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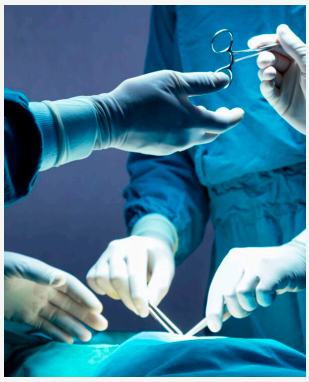
Abbott v. London Health Sciences Centre: Ontario Court of Appeal reaffirms the authority of hospital boards to manage resources



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Key Takeaways

- A group of dental surgeons appealed a hospital board's decision to cancel their operating room access, arguing they weren't provided with procedural fairness, including proper notice.
- The Ontario Court of Appeal upheld the LHSC board of directors' authority under the *Public Hospitals Act* to cease providing operating room services through community dental surgeons.
- The Court of Appeal's decision reinforces the ability of hospital boards to make critical service allocation decisions amidst resource constraints and ongoing pressures on surgical capacity post-COVID-19.

On December 24, 2025, the Court of Appeal for Ontario released its decision in *Abbott v. London Health Sciences Centre*, providing important guidance regarding the *Public Hospitals Act* (PHA) and affirming that boards of public hospitals in Ontario are empowered to make decisions to manage hospital resources.[1]

Background

Abbott is the second time Ontario courts have considered section 44 of the PHA.[2]

Under section 44 of the PHA, if a hospital's board of directors determines that the hospital will cease to provide a "service", it may revoke the appointment of any "physician" to the hospital's staff and cancel their hospital privileges associated with the cancelled service. Section 44 of the PHA also provides that certain decisions made under section 44 may be made without holding a hearing.

The appellants are seven dental surgeons who, for many years, had access to operating room (OR) time and associated resources at LHSC to perform dental procedures on patients

from their private community clinics. These procedures were scheduled outside the provincial Wait Time Information System (WTIS) and outside the hospital's standard referral, prioritization and booking pathways.

In November 2023, as part of a review of OR utilization and Hospital Service Accountability Agreement (HSAA) obligations, the LHSC board of directors determined that continuing to provide OR access in this manner to the community dental surgeons was misaligned with provincial funding, wait-time prioritization and internal hospital policies for use of OR time. Freeing up OR time previously assigned to community dental surgeons for reassignment to higher-priority surgical cases could increase funding to LHSC as well as reduce the waiting time for those surgeries.

The LHSC board of directors therefore decided to

- cease providing OR time to the community dental surgeons and reassign that time to "clinical priority tertiary, quaternary-level surgical cases"
- cancel the hospital privileges of the community dental surgeons and revoke their staff appointments related to using OR time for their private practice patients[3]

The community dental surgeons were advised to refer patients requiring hospital-based surgery to a hospital-based surgeon for assessment, clinical prioritization and scheduling.

The judicial review and the Divisional Court's reasons

The dental surgeons commenced a judicial review of the board decision, which was heard in June 2024. The central question was whether the board's decision fell under section 44 of the PHA.[4]

The dental surgeons argued that the hospital could not characterize the decision as a "service" being discontinued. The dentists further argued that they were denied procedural fairness and that they were not given proper notice of the board's decision or given a hearing before the board or input into the decision. In their application for judicial review, the appellants sought, among other things, to quash the hospital board's decision to cancel the applicants' access to the hospital ORs and restore their access to the hospital's OR.

The Divisional Court dismissed the application for judicial review, finding that LHSC acted within its legislative authority to manage hospital resources and that there was no denial of procedural fairness.

The Divisional Court concluded that the board's decision was a decision to "cease to provide a service" within section 44 of the PHA and, therefore, the statutory scheme displaced the procedural fairness requirements that would otherwise apply to decisions regarding hospital appointments and privileges. The Divisional Court found that the board acted in good faith to align with its accountabilities under the Hospital Service Accountability Agreement (HSAA), which sets out the terms and conditions for hospital funding by Ontario Health.

The dental surgeons were granted leave to appeal the Divisional Court's decision to the Court of Appeal for Ontario.

The Court of Appeal's reasons

A panel of the Court of Appeal unanimously dismissed the appeal and awarded LHSC costs, rejecting all of the dental surgeons' arguments on appeal and finding that the hospital board was entitled to proceed under section 44 of the PHA.

In dismissing the appeal, the Court of Appeal found that it was open to the hospital board to proceed to cancel the community dental OR service based on an interpretation of the "service" that takes into account not only the ultimate treatment that a patient received (i.e., oral surgery) but also the way patients were selected for treatment (i.e., only patients of the private practice oral surgeons), and that their surgery was prioritized by an "outlier" method that did not use WTIS and was out of compliance with LHSC's obligations under the HSAA and LHSC's own OR policy. The Court held that the board was entitled to contrast those features with the way all other surgical patients were referred and prioritized, to identify that the OR access of the private-practice oral surgeons was a distinct service within the meaning of section 44 of the PHA.[5]

The Court rejected all of the dental surgeons' arguments regarding procedural fairness, and affirmed that the legislature entrusted the board with the power to make system-level determinations and to decide what information would be sufficient for its purposes, without importing procedural hearing requirements.

The Court held that section 44 of the PHA expressly authorizes a hospital board to make both the decision to cease providing a service and the related implementation decisions (including cancelling appointments and revoking privileges) without holding a hearing. In reaching this conclusion, the Court emphasized that interpreting the statute otherwise would create an implausible legislative mismatch, whereby a hospital board could decide to close an entire hospital without a hearing, yet be required to hold a hearing to cease a discrete service.[6]

The Court also confirmed that the board did not adopt an unreasonable interpretation of section 44 of the PHA by applying it to the dental surgeons. The dental surgeons fell within the scope of "physician" for purposes of section 44, by operation of the *Hospital Management* regulation[7] (the regulation under the PHA) and the *Medicine Act*,[8] which together extend the term "physician" to include oral surgeons.[9]

Conclusion

This is the second time the Ontario Court of Appeal has considered section 44 of the *Public Hospitals Act*.[10] The Court of Appeal's decision in *Abbott* confirms the authority of hospital boards to make difficult service-realignment and resource-allocation decisions, particularly in a resource-constrained environment.[11]

This welcome guidance comes at a time when many hospitals are facing tremendous resource constraints and pressures to recover from the significant impacts of the COVID-19 pandemic, particularly with respect to surgical recovery, wait times and resource optimization.

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[1] Aislinn Reid and Lipi Mishra were counsel to London Health Sciences Centre in this matter.

[2] R.S.O. 1990, c. P.40.

[3] *Abbott v. London Health Sciences Centre*, 2025 ONCA 895, para. 5.

[4] *Abbott v. London Health Sciences Centre*, 2024 ONSC 3949, para. 11 (Divisional Court

decision).

[5] *Abbott*, para. 64. The Court expressly rejected the appellants' argument that "service" meant an entire specialty, and accepted the board's focus on the distinct pathway and prioritization model used for this subset of cases.

[6] *Abbott*, paras. 58–63.

[7] R.R.O. 1990, Reg. 965.

[8] *Medicine Act, 1991*, S.O. 1991, c. 30.

[9] *Abbott*, para. 65.

[10] The first judicial consideration of section 44 was in *Beattie v. Women's College Hospital*, which involved closure of an urgent care centre and termination of hospital privileges.

[11] The appellants have 60 days from the date of the Court of Appeal's judgment to file an application for leave to appeal to the Supreme Court of Canada.