

Ontario Coalition of Mental Health Professionals

Response to the
Health Professions Regulatory Advisory Council's

*Regulation of Health Professions in Ontario:
New Directions
Chapter 7: Regulating Psychotherapy*

Submitted to
The Honourable George Smitherman
Minister of Health and Long-Term Care

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Introduction

The Ontario Coalition of Mental Health Professionals welcomes the opportunity to respond to the recommendations on the regulation of psychotherapy and psychotherapists contained in the April 2006 report of the Health Professions Regulatory Advisory Council (HPRAC).

The Coalition was pleased to participate in the invitational workshop conducted by HPRAC on July 13-14, 2005 and to make written submissions last fall in response to their *Consultation Discussion Guide On Issues Relating to the Ministerial Referral on Psychotherapy and Psychotherapists*.

The Coalition represents many well-established professional associations whose members provide a wide range of mental health services under a system of voluntary non-statutory self-regulation:

- Canadian Counselling Association - Ontario (CCA)
- Canadian Art Therapy Association - Ontario (CATA)
- Canadian Association for Child and Play Therapists - Ontario (CACPT)
- Canadian Association of Pastoral Practice and Education - Ontario (CAPPE)
- Music Therapy Association of Ontario (MTAO)
- Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists (OACCPP)
- Ontario Association for Marriage and Family Therapy (OAMFT)
- Ontario Art Therapy Association (OATA)
- Ontario Chaplain's Association (OCA)
- Ontario College Counsellors (OCC)
- Ontario Society of Psychotherapists (OSP)

The Coalition also has supporting members which include training institutes, certification bodies and agencies that employ mental health practitioners.

The Coalition represents approximately 4,700 highly qualified mental health professionals throughout the province. Of these, 3,100 have Masters-level degrees, many have doctoral degrees, and some have undergraduate degrees along with extensive training in their respective fields of practice.

The Coalition participated in the previous HPRAC consultation in 2001-2002 on proposed amendments to the Regulated Health Professions Act (RHPA). A wide range of mental health professionals spoke with one voice against the dangers of restricting the provision of psychotherapy to the small number of practitioners currently regulated under the RHPA.

The Coalition was very pleased with the more inclusive approach taken by HPRAC in its 2005 consultation on the regulation of psychotherapy. It was clear from the outset that HPRAC recognized the vital role of the currently unregulated mental health practitioners in providing Ontarians with high-quality, cost-effective services in many diverse communities across the province.

The voice of the unregulated sector was heard throughout the entire consultation process and HPRAC's materials reflected the broad spectrum of practitioners, both regulated and unregulated, in Ontario's mental health system.

However, while the Coalition lauds the Council for its inclusiveness, we have serious concerns about how its key recommendations could affect the broad public policy objectives of consumer choice, access to cost-effective quality services, and protection of the public from the risk of harm.

Points of Agreement

The cornerstones of professional regulation since the advent of the *Regulated Health Professions Act (1992)* are the broad policy objectives of protection of the public from unqualified, incompetent or unfit practitioners; encouraging the provision of high quality care; allowing the public the freedom to choose safe health care providers; and promoting flexibility in the roles of health professionals to ensure maximum efficiency in the health care system.

The Council was well aware of the need to link its recommendations on the regulation of psychotherapy to the core public policy objectives stated above. We recognize the valuable research undertaken by the Council to determine such critical issues as the risk of harm to the public from the practice of psychotherapy; the definition of psychotherapy and its scope of practice; the currently regulated and unregulated practitioners in Ontario who should be included in a new regulatory regime, the regulatory practices in other jurisdictions; and the options for regulation within Ontario's statutory framework.

The Coalition's comments will focus exclusively on two broad areas of the Council's Report: the rigid dichotomy between counselling and psychotherapy and the mechanism of a legally enforceable scope of practice.

The Coalition's chief concern is that, taken together, these two recommendations will compromise, rather than serve, the public policy objectives of consumer choice, access to quality care, public protection from harm, and maximum efficiency in the health care system. This concern is based in part on a legal opinion on the regulatory mechanism of a legally enforceable scope of practice prepared for the Coalition by Beth Symes, of Symes & Street, which is appended here for ease of reference.

Public Protection

The Coalition operates from the premise that public protection must be the driving force behind the regulation of psychotherapy in Ontario. Mental health services are provided to the public by a wide range of qualified professionals who call themselves counsellors, counselling therapists, therapists, psychotherapists, etc. Regardless of what professional titles are used, these practitioners utilize a variety of methods and techniques, including psychotherapy, to resolve many different types of cognitive, emotional and behavioural issues faced by their clients/patients.

Mental health professionals, both regulated and unregulated, operate in a wide range of arenas including hospitals, clinics, community agencies, schools, prisons, and many institutional and community-based programs funded by the provincial government.

It is in the public interest for Ontarians to have the choice of a wide range of mental health services to ensure that:

- the pool of qualified mental health care providers is not diminished
- mental health services are available in remote areas
- services are available in languages other than English and French
- services are available that are culturally competent and accessible to diverse communities

Public protection is vitally necessary in the practice of mental health because:

- people receiving mental health care are vulnerable at the time in their lives when they seek assistance or treatment
- all mental health professionals, regardless of the titles they use, pose a risk of harm to the public due to the nature of their work
- mental health practitioners will continue to provide much-needed services and thus a broad spectrum of professionals needs to be regulated

Counselling vs. Psychotherapy

Mental health professionals operate on a continuum that encompasses a broad range of approaches to treatment that cannot be artificially separated. There are no bright lines separating psychotherapy from other forms of mental health counselling. Psychotherapy and counselling exist on a continuum that can shift back and forth over the course of the therapeutic relationship or even in the course of a single session. That very fluidity is part of what makes the practice of mental health vital and able to respond to the complex and multi-layered needs of clients/patients. What all mental health professionals have in common is that they are trained to provide services that promote positive emotional, mental, psychological and behavioural change and growth through assessment and a plan of intervention.

The Coalition disagrees with the Council's definition of the differences between counselling and psychotherapy. We find their definitions to be arbitrary and unnecessarily rigid. As well, they do not accurately reflect the prevailing practice in the mental health field today. The Council states that:

“Psychotherapy is most often characterized by an intense client-therapist relationship which often involves the examination of deeply emotional experiences, destructive behaviors patterns and serious mental health issues.”

“The practice of psychotherapy is distinct from counselling, where the focus is on the provision of information, advice giving, encouragement and instruction, and spiritual counselling, which is counselling related to religious or faith-based beliefs.”

There are scores of mental health professionals who practice as counsellors but whose training and competencies go well beyond the Council's definition of counselling. Clinical counselling shares the same essential features as psychotherapy: a) the services provided are for mental health, psychological or emotional reasons, and b) the services are delivered through a therapeutic relationship. The same is true of all mental health professionals.

The scope of practice statements of mental health professional associations often include a reference to psychotherapy as a method of treatment to deal with behavioural, cognitive, social, mental or emotional issues in order to promote, enhance and maintain mental and emotional health. Such definitions of counselling are virtually indistinguishable from the Council's description of psychotherapy.

Many mental health counsellors who are part of the Coalition have objected to the Council's definition of counselling. We have been inundated with examples of the services they routinely provide which include psychotherapy. Although some counsellors would identify themselves as psychotherapists because they deal almost exclusively with psychotherapeutic approaches in their work, others use psychotherapy as an advanced competency for which they have been trained.

What will happen to such practitioners if the Council's definitions form the basis for the regulation of psychotherapy and psychotherapists in Ontario?

The Coalition recognizes that certain types of counselling do indeed belong in the category of information, advice and encouragement, precisely as the Council has

described counselling. These might include peer counselling with rape survivors or substance abusers, outreach work with the homeless, community-based counselling with immigrant women, credit counselling, to name only a few. No one would argue that such practitioners need to be regulated. Organizations such as the Ontario Federation of Community Health and Addiction Programs have warned against too broad an approach to regulation.

However, the Coalition believes that a full range of mental health practitioners needs to be regulated. They work in a variety of settings and include: school and college counsellors dealing with troubled youth; marriage and family therapists in family service agencies; addiction counsellors in rehabilitation programs; chaplains dealing with death and dying in hospitals and prisons; pastoral counsellors assisting grieving families; priests, rabbis, ministers and imams in private practice; music and art therapists treating victims of torture, and so on.

The cases listed below were received by the Coalition and illustrate how the work of mental health counsellors goes well beyond the Council's definition of counselling. The Coalition believes that these counsellors belong in any new regulatory body dealing with psychotherapy for all the same reasons that the Council cites for regulating psychotherapists.

Jim Lee, MSW., RSW, is the Coordinator/Counsellor of the Student Success Centre at Confederation College in Thunder Bay. He is a member of the Ontario College Counsellors (OCC) and provided the following example with the consent of his student:

Seth is a 22-year-old business student who was seeking help with anger-management on the advice of his girlfriend. Assessment tools showed that he was experiencing depression and insomnia, abusing alcohol and marijuana, and expressing anger when he and his girlfriend were drinking. Although they had been together for three years, anger had only become an issue in the past six months. In exploring what had been happening in his life recently, he revealed that his sister had died of cancer 14 months ago and that he felt tremendous guilt for not visiting her in hospital as her health deteriorated. This revelation changed the session dramatically. He cried when describing his sister's final weeks and I sensed that his difficulties were related to unresolved grief. With his consent, we refocused on grief work rather than anger management and dealt with the interpersonal complications resulting from internalized grief.

Another college counsellor described the type of student issues that typically present at counselling centres around the province. This is a compilation based on actual cases:

A student might say that she is facing financial pressure and time management issues but is also observed to be very nervous and anxious. Questions reveal that she is also dealing with a troubled personal relationship with her boyfriend involving alcohol and drug abuse. She wants to leave him but feels guilty and has been crying daily and suffering from insomnia. She discloses that both her parents were addicted to drugs and alcohol. The counsellor offers her 8 sessions of brief solution-focused psychotherapy, which she accepts, to explore this further and help her make decisions about her current relationship.

This same college counsellor made the following comments about what was required of the practitioner in the session described above:

- The counsellor focused on developing a therapeutic alliance, using tools of active listening, empathy, observation, genuineness, and positive regard.
- The counsellor's interventions were informed by professional counselling/ psychotherapeutic theory, professional standards of practice, and a code of ethics.
- The counsellor moved seamlessly, with the student, providing counselling and psychotherapy that allowed the student to feel safe and disclose issues causing pain and to work with the counsellor to explore possible interventions that could produce improvements in her life.

The Coalition also heard from mental health counsellors who are certified by the Canadian Counselling Association (CCA). They emphasized that their clients receive far more than information, advice, encouragement and instruction, as claimed by the Council. They offered examples to show how counselling and psychotherapy operate on a continuum and cannot be arbitrarily separated.

Reina S. McSheffrey, M.Ed, CCC, who is a counsellor at Jewish Family Services in Ottawa stated:

- As a counsellor in a social service agency, I perform several functions (including running a cognitive/behavioural skills-based anger management group) and practice many kinds of psychotherapy. I deal with adult survivors of childhood sexual abuse, counsel individuals and couples and sometimes entire families. I have counselled women with Dissociative

Identity Disorder and clients who are gay or bisexual which requires a structural approach to counselling inclusive of their environment and societal norms/pressures. I often work with depressed men and women, using a cognitive-behavioural approach to compliment their drug therapy (in conjunction with a psychiatrist).

Hope Wojcik, B.Sc., B.Ed., M.Ed., CCC, who is a counsellor at Hillcrest High School stated:

- My particular work environment puts me in contact with teens ranging in age from 13 – 19. It is well documented that the adolescent years can be the most turbulent of one's entire life. Consequently, I am required to assist adolescents and their families with a range of mental health issues including abuse, drug addiction, teen pregnancy, homelessness, self injurious behaviour, depression, suicide, etc. To effectively assist with such serious issues, my counselling training, skills and expertise goes vastly beyond "information, advice-giving, encouragement and instruction". Instead, I work from a range of therapeutic modalities such as Cognitive, Cognitive-Behavioural, Rational-Emotive, etc., conducting in-depth assessments of past experience, presenting problems and a treatment plan to heal the mental and emotional suffering.

Conclusion: mental health services are provided to the public on a continuum from counsellors through and including psychotherapists. In the provision of these services there is no bright line between counselling and psychotherapy.

Enforceable Scope of Practice

In the past, the Coalition's preferred approach to the regulation of mental health practitioners has been to have title protection with a scope of practice statement but no controlled act. In light of the Council's recommendations, we believe that there are other viable options to ensure that the public is adequately protected from harm.

We fully agree with the Council that a controlled act of psychotherapy is not workable. We will not repeat their arguments in this document. However, we are puzzled by Council's recommendation that a legally enforceable scope of practice (ESP) is necessary for psychotherapy to protect the public from harm. Having rejected a controlled act of psychotherapy, the Council then proposes a regulatory mechanism which is virtually identical at law. As the Council itself describes the ESP, it would define the nature and extent of the activities that would be regulated and, in turn, it would "prohibit practitioners of existing colleges who are not qualified to practice psychotherapy and those who are not members of the College of Psychotherapists from practicing within the scope."

Thus, as a matter of policy and law, whether the activity is described as a

controlled act or an ESP, the legal objectives the Council has articulated would be the same for both options under the RHPA, namely, that no one but a member of a college could perform the described act or process unless they fell into one of the exceptions or exemptions. This prohibition would be backed up by either an injunction or a prosecution under the Act.

The legal opinion obtained by the Coalition from *Symes and Street* states that “Enforceable scope of practice goes back to the more heavy-handed regulation of a defined practice”. Coalition counsel, Beth Symes, explains that the Health Disciplines Act (HDA), which preceded the RHPA:

...gave persons licensed by their College the exclusive right to practice their profession. Anyone who was not licensed by the College was prohibited from performing or engaging in any aspect within that scope of practice.

The RHPA took a very different approach to the Regulation of health services, namely that of Regulating in the public interest, really consumer protection.

Legal counsel quotes from the landmark 1989 report “Striking a New Balance: A Blueprint for the Regulation of Ontario’s Health Professions” by Alan Schwartz:

We believe that the public should have the freedom to choose the caregivers from whom it obtains those services that are not unduly hazardous.

We believe that the existing regulatory model – both in principle and how it has been applied – inadequately protects the public. Moreover, we believe that it has undesirable effects on the health care system. In particular, it discourages flexibility and resists innovation in the provision of health services.”

Counsel notes that the shift from HDA’s enforceable scope of practice to RHPA’s controlled acts was “part of a movement for lighter-handed regulation, was seen to give the public greater choice and was seen as giving the public sufficient protection from harm.”

Symes states that HPRAC’s recommendation to reintroduce ESP now “is counter to the more than ten years’ experience of giving the public the right to choose who will deliver the health care services...” and, contrary to Council’s claim that

the ESP is somewhere between title protection and a controlled act, is in fact more restrictive than a controlled act of psychotherapy because it bars non-registrants of the regulatory body from practicing the entire scope of practice, not just certain parts of it, and in the case of psychotherapy, that would be every aspect of “the treatment of cognitive, emotional or behavioural disturbances.”

Symes concludes that “Council has recommended a method of regulating psychotherapists that is akin to how health care professionals were regulated under the *HDA*. It is unclear why this option is in the best interests of the public or psychotherapists.”

The Public Interest

As noted earlier, the Coalition’s chief concern is that the combination of defining psychotherapy too narrowly and granting psychotherapists an enforceable scope of practice will not achieve the policy objectives embedded in the RHPA of providing the public with choice and access to high quality mental health services. In fact, the precise opposite will be the case.

The public’s choice of safe mental health practitioners will be seriously curtailed because the ESP will prevent thousands of practitioners who are mental health professionals, but not psychotherapists *per se*, from continuing to offer services that deal with “cognitive, emotional or behavioural disturbances”.

The Coalition represents professional associations that include many full-time psychotherapists in their membership, but we do not support a regulatory regime that denies the public a choice of safe high-quality mental health services from a broad range of practitioners. Such a restrictive form of regulation would run directly counter to protecting the public interest.

Many of the practitioners who would be infringing on the psychotherapist’s ESP, and thus be subject to legal sanctions, are employed in myriad government funded programs across the province. For example, college counsellors who are members of the Ontario College Counsellors work in a public education sector which receives over a billion dollars annually from the provincial government.

Similarly, chaplains who work in prisons, psychiatric hospitals and general hospitals, who include psychotherapy in their services and operate in a multi-faith environment beyond their personally-held “tenets of religion” would also be in breach of the proposed ESP for psychotherapists. The provincial government has contracted, through a Memorandum of Agreement with the Ontario Multifaith Council on Spiritual and Religious Care, a member of the Coalition, to receive advice on matters of spiritual care and religious rights in government operated and funded institutions. The Ontario Multifaith Council operates under this agreement to ensure the provision of multifaith services, including mental health services, across the province.

Scores of Ontarians would be forced to abandon practitioners of their choice on whom they rely for quality mental health services because, as counsellors rather than psychotherapists, these practitioners would be excluded from the new regulatory body. Counsellors would be in a position of denying needed mental health services, having to refer their clients to registrants of the new regulatory body. In many regions of Ontario, there is no alternative for the referral.

The Coalition is troubled by the fact that the effect of this approach would be precisely what the RHPA was designed to avoid: giving health professions exclusive monopolies over scopes of practice or, put another way, protecting the interests of the professions rather than protecting the interests of the public. As pointed out by Symes in her legal opinion “The HDA regulated the provision of health care services in Ontario in a similar manner as that being proposed to regulate the practice of psychotherapy.” The Council’s recommendations would turn the clock back and compromise public protection, the cornerstone of the RHPA.

The effect of shrinking the pool of authorized practitioners would be to greatly curtail the public’s access to quality mental health services. Access issues are especially critical in rural areas where there are already fewer practitioners to choose from without imposing even further restrictions. The same is true of Ontario’s many diverse communities that rely on practitioners of the same ethnicity, race, sexual orientation, language, and so on. The advances that have been made in access and diversity, rather than being protected and enhanced, would be placed in serious jeopardy.

Many community-based agencies that provide mental health services would also be adversely affected by an unduly restrictive regulatory regime. The Coalition shares the concern of the Ontario Federation of Community Health and Addiction Programs that a greater investment in community-based mental health services is necessary to provide care for the 20% of Ontarians who will experience mental health and/or addiction problems in the course of their lifetime. This cannot be achieved if community-based practitioners are rendered incapable of providing psychotherapeutic services because they are not included in the new regulatory regime. If the regulation of psychotherapy decreases the number of practitioners who can provide mental health services in community-based settings then the goal of ensuring access will have been seriously compromised.

The Coalition is also concerned that the regulatory regime recommended by the Council would not protect the public because it would be virtually unenforceable. How would the new regulatory body police thousands of non-registrants who are trained to provide treatment for “cognitive, emotional and behavioural disturbances” and whose services are desperately needed in communities across Ontario? How could the government justify the expense of prosecuting mental health counsellors who are infringing of the enforceable scope of practice

of psychotherapists? The resources needed to protect the interest of the new profession of psychotherapy would be better spent providing a broad range of quality mental health services to Ontarians.

The Coalition supports a model that would regulate all qualified mental health professionals. This approach is consistent with the policy objectives of choice, access, and protection of the public. It will also help reduce public confusion about the mental health care sector and eliminate the need to prosecute mental health care professionals who are providing psychotherapy but are not psychotherapists. Finally, it would ensure a robust regulatory body with sufficient numbers to carry out the statutory mandate.

Faith-based Practitioners

The Coalition agrees with the Council that the issue of faith-based practitioners should be studied more fully: “Commentators strongly supported the proposition that faith-based practitioners who provide psychotherapy during the course of spiritual or religious care should meet the same qualifications and standards as other practitioners of psychotherapy. This is a matter that should be reviewed further.”

Currently, the RHPA includes an exemption for spiritual and religious care, or “treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment (ss.29(1) (c) and 30(5)(c) of the RHPA.” The Council has recommended that there be an exception in the new Psychotherapy Act specifying that it “does not apply to counsellors providing information, encouragement, advice and instruction about emotional, social, educational or spiritual matters.”

The Canadian Association for Pastoral Practice and Education – Ontario (CAPPE/ACPEP), a member of the Coalition, makes a distinction between faith-based practitioners who operate within their own faith community based on the tenets of their own religion and those, like chaplains and pastoral counsellors, who operate in public hospitals, prisons, universities, other public institutions, private counselling centres, and who practice on a multi-faith basis with clients who may be of any faith or no faith at all.

CAPPE/ACPEP, the Ontario Chaplain’s Association, and the Ontario Multifaith Council, also members of the Coalition, favour statutory regulation for faith-based practitioners in public institutions and private counselling centres who do not only practice according to the tenets of their own religion and whose practice may include psychotherapy. The Coalition supports their position on this issue as well as their call for the continued exemption of faith-specific practitioners in faith-specific schools, nursing facilities, and religious centres such as synagogues, temples, mosques and churches.

The Coalition believes that this approach to regulation would reflect the RHPA policy objectives of choice, access, and public protection for all faith-based communities in Ontario's increasingly diverse public.

Protecting Multiple Titles

The Coalition disagrees with the Council's recommendation to protect only the single title of "Psychotherapist". Mental health is a highly developed area of health care with a wide range of professionals practicing in different modalities and specializations. To educate the public in the rich diversity of practitioners available, the Coalition favours the use of more than one protected title for the practice of psychotherapy. Also, to help some clients deal with shame or the stigma attached to seeking help for their needs, some mental health practitioners and agencies prefer to label their services as counselling. To require all practitioners to use the title "Psychotherapist" would only serve to remove such flexibility and erect more barriers to service.

We agree with the Council that the term "Psychotherapist" is widely understood by the public. However, the use of multiple titles to indicate specialty areas, such as "Marriage and Family Therapist", "Addiction Therapist", etc., would only serve to assist the public in their choice of an appropriate practitioner. We can see no public interest reason for restricting the protected title to only one title. We note the recommendation made by the Quebec *Expert Committee on Modernizing Professionals Practice in Mental Health and Human Relation* (December 2005) to use hyphenated titles such as "physician-psychotherapist", "psychologist-psychotherapist" and urge the Ontario government to adopt this approach.

Recommendations

As noted earlier, the Coalition is particularly concerned about the detrimental effect of combining a restrictive definition of psychotherapy and an enforceable scope of practice in any new regulatory regime. Such an approach would compromise the very public policy objectives that health care regulation in Ontario is mandated to uphold.

Choice, access and public protection must be the foundation of the regulation of psychotherapy in Ontario. The Council's proposed model will restrict the public's choice and access to quality mental health services and it will not provide sufficient protection to the public.

The Coalition strongly recommends that if the government proceeds with draft legislation based on an enforceable scope of practice for psychotherapy, that it do so in conjunction with the following measures:

- Adopt a broad definition of psychotherapy that includes all mental health professionals, including those who are currently unregulated. This would

ensure that qualified practitioners can continue to practice without being in breach of the ESP and that Ontario's increasingly diverse public can continue to have choice and access to a wide range of quality services.

- Require currently regulated health professionals who are practicing psychotherapy i.e., physicians, psychologists, social workers and nurses, to meet qualifications and accountability measure specific to psychotherapy that will be established by their respective Colleges.

Conclusion

The Coalition thanks the Minister for the opportunity to respond to HPRAC's timely report on the regulation of psychotherapy in Ontario. We commend the Council for its thorough and inclusive public consultation and for its analysis of the relevant issues. We urge the Minister to consider the concerns that we have raised and to ensure that any new regime for the regulation of psychotherapy deliver on the public policy objectives of choice, access and protection of the public.