TASK GROUP FOR COUNSELLOR REGULATION IN BRITISH COLUMBIA

SUBMISSION TO

THE B.C. MINISTER OF HEALTH SERVICES

OPTIONS FOR THE SELF-REGULATION OF COUNSELLING THERAPISTS IN B.C.

February 18, 2009

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EXECUTIVE SUMMARY

In response to a November 2008 request from the Minister of Health Services, the Task Group has prepared this Options Paper to consider the different ways that counselling therapy could be regulated in British Columbia.

Chapter one of this Paper summarizes the principle findings of the Health Professions Council's 1997 report on the designation of counselling under the *Health Professions Act*. In that report, the Council determined that counselling was a health profession and there was a need to regulate this profession, but for various reasons, it did not conclude that regulation under the HPA was possible at that time. The Council did not consider other regulatory options.

In response to the Council's report, the Ministry hired David Logan to look at all the ways that counselling could be regulated. After considering the Council's earlier report and consulting extensively with various interested parties, Mr. Logan's 1998 report summarized the regulatory and non-regulatory options, and identified a set of criteria that could be used to make a final decision on the best option. Mr. Logan did not go further and propose a specific regulatory option. His report is summarized in chapter two of this Paper.

Since that time, the different counselling organizations represented within the Task Group for Counsellor Regulation have worked together to complete a number of projects. Many of these projects were specifically designed to address the Council's 1997 reasons for not recommending designation under the HPA. Two of the most important of the Group's initiatives are:

- The 1998 *Joint Response to the Discussion Paper on the Regulation of Counselling* (see chapter three): This paper considered the risks of harm that can be associated with the unregulated practice of counselling therapy, and recommended a title protection form of designation under the HPA. The paper also proposed a "two-tier" registration model, with an entry-to-practice standard based on defined competencies (not credentials) that would include as many counsellors as possible. The second tier would recognize areas of specialized or advanced counselling practice.
- The 2007 *Competency Profile for Counselling Therapists* (see chapter four): This Profile was developed over several years after extensive consultation with the professions in BC and across Canada. The Profile sets out in detail several hundred specific competency statements for an entry-to-practice counsellor. The Group anticipates that the Profile can be used as the foundation to develop a registration examination for assessing entry competencies, rather than adopting a credentials-based approach.

In chapter five of this Paper, the Task Group proposes a comprehensive set of criteria it believes can be used to compare and assess the different regulatory options. These criteria are based on the criteria set out in regulation under the HPA, the Council's 1997 standards, and Mr. Logan's 1998 criteria. The criteria also take into consideration recent developments in professional regulation in BC, in particular the changes to the HPA made during the past five years.

In chapter six, this Paper identifies and describes seven options or approaches to regulating counseling therapy in BC. Applying the assessment criteria, each option is assessed and its strengths and weaknesses are summarized from the perspective of government, the profession and the general public.

Taking each of the options into consideration, this Paper concludes that the best and most viable way to regulate counselling therapy in BC remains – as was first proposed by the Ministry in April 2001 – to designate the professions under the HPA and create the College of Counselling Therapists. Specific details on how to implement this option are provided in the closing section.

INTRODUCTION

During a November 6, 2008 meeting with the Hon. George Abbott, Minister of Health Services, representatives of the BC Association of Clinical Counsellors discussed with the Minister and his senior officials the challenges that flowed from the Health Professions Council's 1997 report on the regulation of counselling in BC.[1] In particular, and in light of the Council's recommendations, the Minister and his officials had a number of questions concerning the best form for such regulation. At the end of the meeting, the Minister requested the Task Group for Counsellor Regulation (the Task Group) undertake the following tasks:

i) document that the membership of the Task Group organizations and other counselling associations continue to support the regulation of the profession and, in particular, understand that creating a College would likely result in new costs which would have to be paid for in annual registration fees;

ii) work with the Minister and his officials to identify the options for regulating the profession in BC;

iii) identify the affiliated professions that could be regulated together under a single regulatory umbrella.

The purpose of this Options Paper is to present the various options for regulating the profession of counselling therapy,[2] and to consider the advantages/disadvantages of each option. As such, this paper is the Task Group's response to the second and third tasks noted above. A separate report will be prepared to convey to the Ministry the results of the Task Group membership survey, as described in the first task.

To provide a foundation for a consideration of the regulatory options, this paper begins with a summary of the 1997 report of the Health Professions Council (HPC) on the designation of counselling. This is followed in chapter two by a consideration of the 1998 Logan Report.

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[1] Health Professions Council, *Recommendations on the Designation of Counselling* (February 21, 1997); posted at: www.health.gov.bc.ca/leg/hpc/reports/apps-counsl.html.

[2] The term "counselling therapy" and the title Counselling Therapist were first proposed by the Ministry of Health in a draft regulation to designate the profession under the HPA that was sent to the Group in April 2001. Since that time, the Group has used that generic term to describe the different counselling professions that practice in BC, whether or not they are represented within the Group. For an edited version of the Group's May 14, 2001 commentary on the draft designation regulation see: www.bc-counsellors.org/files/doc20.pdf.

CHAPTER 1) THE HEALTH PROFESSIONS COUNCIL'S REPORT

The recommendations set out in the HPC's 1997 report on the designation of counselling are not well understood or appreciated. Many assume that the Council did nothing more than find that a College of Counselling should not be created under the *Health Professions Act* (HPA). That does not accurately convey the result of the Council's deliberations.

While it is true that the HPC did not recommend that counselling be designated under the HPA at that time, it did in fact conclude that the counselling profession needed to be regulated. In support of this recommendation, the Council made a number of important findings:

- counselling falls within the definition of a "health profession" as that term is defined and used under HPA;
- the practice of counselling involves some risk of physical, mental or emotional harm to the health, safety or well-being of the public; [3]
- there is a public interest in ensuring the availability of counselling services;
- there has been a recognizable and demonstrated benefit to the public from (a) the provision of counselling services generally, and (b) the role the professional associations play in regulating their members.

The Council's reasons for not going further and recommending designation under the HPA can be summarized as follows:

- ***Risk of harm analysis:*** The Council found it difficult to assess the actual risk of harm in relation to counselling, because there was little available data.
- ***A common body of knowledge:*** The Council felt there was not a common body of knowledge that applied to all those engaged in the practice of counselling.
- ***Post-secondary education:*** The Council noted that there was no consistent standard of education among the associations, and that certain standards could exclude many persons who are presently practicing, which is not in the public interest.
- ***Continuing competency:*** The Council felt that, because of the wide disparities in treatment modalities employed by the different types of counsellors, a mechanism for ensuring competency would be difficult to implement and enforce.

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[3] The HPC stated that there is "some evidence of potential harm to the public" albeit "very little objective evidence… of actual harm." But there is a "significant amount" of counselling performed in unregulated, unsupervised private practice, where the potential for harm is greater than in institutions which ensure accountability.

- ***Co-operation and support:*** While the Council felt the associations had demonstrated leadership, it was concerned that the various groups did not have the will or desire to work together effectively and co-operatively, or that all practitioners might not support the emerging leadership.
- ***Viability of a College:*** The Council felt that it was unlikely that a college would be capable of carrying out the duties imposed by the Act for two reasons: (a) diversity of services provided; and (b) different standards of practice and education.
- ***Restriction on access to counselling services:*** The Council felt that, in the absence of a consensus on the issue of what constitutes the practice of counselling, and on the required qualifications and training, the creation of a college had the potential to restrict the availability of counselling services.

The Council then recommended that alternative models be investigated. In doing so, it suggested that four factors should be considered when developing such a model:

- That a "no strings attached" registration model would allow anyone who is engaged in counselling (as broadly defined) to become registered, coupled with a prohibition on persons providing counselling unless they were registered.
- A title protection model[4] that would give exclusive rights to registrants of specific titles if they were registered as specialists.[5]
- There should be a centralized complaint investigation and discipline process, informed by a common code of ethics.
- Exemptions to the mandatory registration may be allowed for persons who are regulated under other statutes or employed by government or its agencies, such as hospitals, schools and universities.

It is worth noting that the Council rejected any suggestion that counselling should become a "reserved action" under the HPA. The Council also restated its recommendations from earlier reports that the title protection provisions of the *Society Act* should be removed, at least so long as those provisions could be applied to potential health professions.

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[4] The HPC used the term "certification", but for the purposes of this paper I will the more descriptive term "title protection" because certification is also a term that is used to describe a model where a specific academic degree is defined as the entry requirement (as opposed to employing competency-based entry requirements).

[5] The HPC went on to suggest that specialists should hold a master's degree and two years supervised practice, but that a special board would determine the specific specialty groups, their qualifications, etc. This board would be representing various counselling professions, as well as other health professions that provide counselling such as medicine and psychology, and public representatives.

CHAPTER 2) THE LOGAN REPORT

Following the release of the HPC's 1997 report on the designation of counselling, a number of the professional associations protested vigorously before the Ministry both the Council's process and its findings. In response, the Ministry contracted with David Logan, a policy consultant, who produced a report[6] that looked at alternative ways counselling could be regulated, as had been suggested by the Council. This paper is now commonly referred to as the Logan Report.

The Logan Report evaluated the Council's earlier report on counselling, and fleshed-out in more detail certain social policy considerations and legal issues that had informed the Council's final recommendations. The Report then briefly outlined a series of alternative regulatory models:

- a single college for all counsellors under the HPA;
- a college but only for certain groups of counsellors under the HPA;
- an appointed board to regulate counselling that would be supported by government (e.g., similar to the Board of Hearing Aid Dealers and Consultants under the *Hearing Aid Act*);
- a provincial licensing mechanism mandated by a separate statute (e.g., similar to the *Health Emergency Act*);
- title protection granted to societies registered under the *Society Act*;
- a "no strings attached" registration model (e.g., Washington State);
- a certification model (e.g., Nebraska);
- other non-regulatory options, such as institutional licensure, affiliation with existing professions, civil liability and mandatory insurance, and public education.

In the end, Mr. Logan did not recommend a single model or particular approach, but instead discussed a series of specific issues that he felt needed to be addressed regardless of the regulatory model to be developed. These issues can be summarized by asking:[7]

- What should be the definition of "counselling" for the purposes of regulation?

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[6] Logan, D. *Discussion Paper on the Regulation of Counselling*, prepared for the Ministry of Health and Ministry Responsible for Seniors (July 1998).

[7] This summary uses somewhat different language than the way these issues were set out in the Logan Report, as it is necessary to restate certain of the issues in language that reflects recent developments in professional regulation and changes to the HPA.

- Should the regulation of counselling extend to include social work? And are there other groups practicing counselling who should or could be regulated along with health care counsellors?
- Should there be “no strings attached” registration for all persons practicing counselling?
- If some educational/training should be a pre-condition for registration, what should be the minimum requirements for registration?
- Should some form of restricted activity be granted to the counselling profession?
- Should there be a generic, non-specialist class of registration for counsellors?
- What type and number of specialist classes of counsellors should be created?
- How should the minimum educational and training requirements for registration be established? And who should perform this function?
- If grand-parenting is employed for initial registration, what limitations should be applied to this approach?
- What should be the composition of the regulatory board? Or a professional advisory body?
- What obligations and duties should be imposed on registrants?
- Is a common code of ethics and sets of practice standards realistically achievable for all counsellors?
- Who should provide the resources for the complaint investigation, resolution and disciplinary processes? And how should these functions be funded?
- What exemptions, if any, should there be from the form of regulation?
- What would be the fee that should be charged to fund the regulatory model?
- To what extent should public education be incorporated into the regulatory model?

These policy questions and the HPC’s earlier criteria will be used later in this paper as a basis to compare the various regulatory options that are available to government. Before doing so, however, the Group would like to explain how it has responded to the Council’s 1997 concerns.

CHAPTER 3) THE TASK GROUP'S RESPONSES

The Task Group was formed in direct response to the HPC's 1997 report and later participated in Mr. Logan's review. At the present, the Group is composed of seven professional associations,[8] which collectively represent about 3,000 counselling therapists currently practicing in BC.

In November 1998, the Task Group issued its *Joint Response to the Discussion paper on the Regulation of Counselling*[9] (the Joint Response), which set out the Group's responses to each of the policy questions asked in the earlier Logan Report. This landmark document has laid the foundation for much of the work the Group has undertaken during the past decade and, further, the Group believes that it has now addressed all the issues the Council identified in its 1997 report, as well as those developed within the 1998 Logan Report.

Using the above noted sub-headings to identify the Council's 1997 concerns, the Group will respond to each of those issues below. The next chapter of this paper will set out the Group's options for regulating counselling therapy in BC, which will include a more detailed considered examination of the Logan Report.

a) Risks of harm associated with counselling therapy

While the HPC did find that there was some risk of harm to the public that can be associated with the unregulated practice of counselling, the Council found it difficult to determine the full scope of actual harm to then justify designation under the HPA.

In its 1998 Joint Response, the Task Group identified the physical, psychological, emotional and financial harms that can be expected to occur if counselling services are provided by persons who are *not* sufficiently skilled, knowledgeable or experienced. It also discussed the harms that may occur if counselling services are provided in an unethical or impaired fashion. The potential harms the Group identified are:

Harm resulting from incompetence

- Failure to obtain sufficient background information from the client (e.g., medical problems, family history, previous therapies, etc.) or failure to undertake a complete assessment of the client's problem and situation, leading to incorrect or inappropriate treatments, which can compound the true problem or be ineffective, resulting in further trauma to the client.

[8] American Association of Pastoral Counselors, B. C. Association of Clinical Counsellors, B. C. Association for Marriage and Family Therapy, B. C. Art Therapy Association, Canadian Counselling Association (BC Chapter), Canadian Association for Pastoral Practice and Education (B.C.), and Music Therapy Association of B.C.
[9] A copy of the Joint Response is posted at the BCACC website at: www.bc-counsellors.org/files/doc08.pdf.

- Failure to correctly administer or interpret an assessment instrument, resulting in an incorrect assessment of the client, resulting in harm to the client.
- Inadequate, inappropriate or incorrect assessment of a client's underlying problem, leading to a treatment or therapy that either compounds the problem or is totally ineffective, resulting in further trauma to the client.
- Failure to correctly apply an appropriate treatment or therapy, which can compound the identified problem or be ineffective, resulting in greater or continued trauma to the client.
- Inappropriate use of hypnosis or guided imagery, such as with a client who has been hospitalized for psychosis or major depression, resulting in trauma to the client.
- Inappropriately advising a couple or individual client to end a relationship (or, conversely, to remain together) resulting in trauma to the client and others, such as children.
- Failure to inform a client that mental images which could emerge during certain therapeutic modalities may not be memories of actual events, resulting in trauma to the client and others.
- Failure to provide an objective means of evaluating the client's progress, resulting in exploitation of the client.
- Failure to properly assess, prevent, and document the possibility and potential of the client being suicidal or homicidal, resulting in serious harm to or death of the client or others, or failure to take steps to inform the police or the potential victim of homicidal threats, resulting in serious harm to or the death of the victim.
- Failure to report to the police or other authorities, information disclosed by a client of an apparent situation of child abuse or neglect, resulting in trauma to or death of a child.
- Failure to recognize the possibility that the client may be suffering from a serious mental disorder, which may require hospitalization, medication, or other treatment that is beyond the counsellor's abilities, and the further failure to refer the client with such a disorder to a psychiatrist or psychologists, resulting in trauma to or death of the client.
- Recommending the client discontinue use of a prescribed medication, resulting in

trauma to or death of the client.

Harm resulting from unethical practice (i.e., therapist-client boundary problems)

- Failure to preserve the client's right to confidentiality (except as exempted by law), resulting in public disclosure of sensitive or personal information that harms the client.
- Inappropriate touching of or communicating verbally with a client in a sexual or romantic way, resulting in a breach of trust and trauma to the client.
- Expressing personal anger or frustration to a client, resulting in trauma to the client.
- Introducing the therapist's religious beliefs into therapy without the client's consent, resulting in exploitation of the client.
- Becoming involved in a business relationship with a client (e.g., renting a basement suite to a client), resulting in exploitation of the client.

Harm resulting from impaired practice

- Providing a service to a client while the counsellor is impaired by alcohol, drugs, a physical or mental illness or some other dysfunction, resulting in trauma to the client.

Harm resulting from unprofessional practice

- Failure to ensure that the interview/therapy room or setting is located and arranged so as to ensure the client feels comfortable about meeting with the counsellor, resulting in discomfort or possible trauma to the client.
- Discriminating against a client based on sexual orientation, race, disability, etc., resulting in trauma to the client.
- Pressuring a client to remain in the counselling relationship against the client's expressed desire to terminate, resulting in trauma to and exploitation of the client.
- Making a record or signing or issuing a certificate, report, account or similar document that is false, misleading or otherwise improper, resulting in trauma to the client.
- Failure to submit a required report that adversely affects a compensation claim (e.g., through a national fund for victims of sexual abuse at residential schools) resulting in

a financial loss to a claimant.

- Charging a fee that is excessive in relation to the services provided, charging for services that were not provided or providing an unnecessary service, resulting in exploitation of the client.
- Requiring payment of the fee for service prior to service being provided, resulting in exploitation of the client.

The Task Group has not found a more comprehensive list of risks of harm that can be associated with providing counselling therapy services. As such, the Group believes its list remains as valid and useful now as it was in 1998.

Later sections of this paper will return to a consideration of these risks of harm as they inform the choice of regulatory options to be discussed next.

b) Options flowing from a risk of harm analysis

While it is important to identify the potential harms that can flow from providing an unregulated health service, the Task Group has also spent time considering the regulatory options that government can employ to respond to those identified risks.

In its landmark report from 1994, the Manitoba Law Reform Commission ("MLRC")[10] drew a distinction between the sorts of risks of harm that should lead to a licensing model (in which "restricted activities" in BC or "controlled acts" in Ontario would be granted to one or more professions) and the sorts of risks that indicate that a title protection model would be more appropriate. Unfortunately, the Council did not appear to be aware of the MLRC's observations: there is no reference in the Council's 1997 report on counselling to the MLRC's earlier legal and policy analysis. Also, the Council did not undertake a full or meaningful risk of harm analysis that could then inform its decisions on counselling. The Council appeared to simply assume that, unless some significant risk of physical harm could be directly associated with providing counselling services, designation under the HPA was not warranted.

In later reports, however, the Council did recognized that there were in fact two different thresholds of risk that needed to be considered when determining if a profession should be regulated and, more importantly, what the best regulatory model would be. It is

[10] Manitoba Law Reform Commission, *Regulating Professions and Occupations* (1994).

useful to quote from the Council's 1998 report on Traditional Chinese Medicine (TCM) where this distinction was first articulated:[11]

> The Public Interest Criteria contained in s. 5(1) of the Regulation provide the context in which the Council will analyze the risk of harm in the applicants' practice. While the Council may also consider the s.5(2) criteria in making its designation decision, these criteria do not address risk of harm. If the Council decides that the profession should be designated, the Council will determine an appropriate scope of practice statement for the profession. The Council will then determine which aspects of the scope of practice have been shown to present a significant risk of harm. These will be defined as reserved acts, as directed in s.10(3)(b)(v) of the HPA and the Council's Terms of Reference. Any other aspects of the scope of practice of a health profession are considered to be capable of being shared with other health practitioners and the general public.
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> There is a distinction between analyzing risk of harm for the purposes of s.5(1) and for reserved acts. The s.5(1) analysis is broadly based and looks at the extent of the risk of physical, mental or emotional harm to the health, safety or well being of the public in the practice of the profession. This analysis looks generally at the services performed by practitioners, the technology used, the invasiveness of procedures or treatments and the degree of regulation or supervision of practitioners, as directed in s.5(1)(a), (b), (c) and (d). The Council will make its determination of whether the profession should be designated on the basis of this analysis together with the analysis of the criteria contained in s.5(2) of the Regulation.
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> After it is determined that the profession should be designated, a more narrowly focused risk of harm analysis is conducted to determine whether the health profession will be granted one or more reserved acts. The Council emphasizes that it is not necessary for a health profession to be granted any reserved acts in order to be designated. However, once the decision to designate is made, the Council will look at whether there are acts or activities within the profession's scope of practice which present such a significant risk of harm that they must be designated reserved acts, as directed in s.10(3)(b)(v) of the HPA. In the Shared Scope of Practice Working Paper issued by the Council in January 1998, reserved acts have been restricted primarily to physical acts which carry a significant risk of harm.

From this, it is apparent that the first step in the risk of harm analysis considers whether it is in the public interest to designate a profession and grant it some form of title protection. Granting a profession only title protection can be a good option if no direct risks of serious harm can be reasonably associated with the provided services, but where - instead

[11] Health Professions Council, *Recommendations on the Designation of Traditional Chinese Medicine* (July 1998), pages 9 & 10.

– the analysis indicates that it is necessary to help the public to distinguish or differentiate between those who are members of a professional regulatory body and thus accountable to their peers and the public, and those who are not. These are two very different policy considerations.

In most cases of professional regulation, the regulated professionals must meet certain minimum qualifications and agree to abide by a code of ethics or set of practice standards. Their regulatory body can investigate complaints about their conduct, even if they quit the profession. These administrative elements are found in a title protection model in that anyone who is granted the right to use a restricted title is thus subject to these legal requirements.

The title protection model of professional regulation provides the public with some assurance that the professional who is using an exclusive title has basic competencies, must follow a code of conduct, and is accountable to an authority with the mandate to promote competent and ethical behaviour. Under this model, the public is free to purchase services from the registered professional, or from anyone else who may also be providing those same services. This is because a practice monopoly is not granted to a profession under a title protection model. Anyone can provide the services in question. Only professional title is controlled.

The risks that point in the direction of a title protection model would be risks that have less serious consequences - such as emotional distress or upset, and minor financial loss. These are risks that flow from uninformed choices and are not inherent in the nature of the services provided. In economic terms, the title protection model is intended to remedy conditions of imperfect information so that consumers can make better and more informed decisions.

As will be explained in more detail below, a title protection model does not work well if serious risks of harm can affect persons who did not participate in the decision to hire the service provider (i.e., if there are unintended and serious third party effects).

If consumers have reasonable access to sufficient information that allows them to make informed decisions as to whom they should purchase a service from, what type of service they need, and the ability and ethics of the service provider, then there may not be a need to regulate the profession at all. However, for professions like counselling, those seeking services are often under emotional or psychological duress, and they may rely heavily on the assurances of quality services that they associate with a particular occupational title. The inherent vulnerability of people seeking counselling services means that, even with full and accurate information, they may not be in a position to make a fully informed choice in the absence of title protection.

The second or higher-level of risk of harm analysis considers a different type of public interest. The results of this further step in the analysis are focused on determining if the profession should be granted both an exclusive occupational title *and* some form of

practice monopoly (what are known under the HPA as "restricted activities"). If a profession is granted a restricted activity, this has the effect of limiting public choice in relation to the provision of services that fall within the scope of that activity. Only that profession (and others who may also be granted that same restricted activity or a similar one) would be allowed to provide those controlled services. Those who have not also been granted the restricted activity could be subject to injunction or prosecution for contravention of the controlled act prohibition that is itself set out in the governing legislation.[12]

Usually, governments will not act to grant restricted activities to a profession unless the risks of not so acting are sufficiently great to then warrant a reduction in public choice. The greater the risk of harm, the less public choice will be allowed.

Employing a restricted activity model also protects third parties, limiting the choices of someone seeking the service to only those professionals who are granted the practice monopolies. Someone seeking higher risk services is thus limited in assuming the risk for both themselves and for third parties, than would be the case under a title protection model.

During its tenure, the HPC developed a list of specific reserved actions (now called restricted activities) that it concluded presented a serious risk of harm to the public if they were performed by persons who did not have sufficient competencies to do so safely. The restricted activities approach that is now enshrined within the HPA allows only members of professions that have been granted these monopolies to provide these high-risk services to the public. This restricted activity model of professional regulation clearly limits public choice as to who may provide them with these high-risk services.[13]

For governments to grant a profession a restricted activity (as opposed to granting just a protected title), a serious risk of demonstrable harm must be reasonably associated with the service or function in question. In particular, that harm should result if persons who are not suitably trained and experienced so as to avoid or minimize the identified risks provided the service.

As noted above, in its 1998 report on TCM, the HPC explained that it is not necessary for a health profession to be granted a restricted activity in order to be designated under the HPA. Indeed, there are regulated professions in both Ontario and BC that have not been granted any practice monopolies, and yet there is a clear public interest in their continued regulation.[14]

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[12] See Part 4.1 and sections 51 & 52 of the HPA.
[13] The latest version of the list of restricted activities that will be regulated under the HPA is set out at the Ministry's website: www.health.gov.bc.ca/leg/pdfs/HPGR_proposed_restricted_activities_Dec_11-2008.pdf.
[14] For example, in Ontario, registered massage therapists have not been granted any type of controlled act, and yet it is clearly important that massage therapists continue to be regulated by a College under the HPRA because (amongst other reasons) they provide a "hands on" therapy to nude or nearly nude members of the public, behind closed doors, and without supervision. BC's Council recommended that massage therapists not be granted any form of restricted activity, yet did not go so far as to recommend their College be disbanded.

Subject to one proviso, the Task Group is proposing, as an important feature of the options to be discussed later, that the title protection model be used for regulating counselling therapy in BC.

If the Ministry decided to reverse another of the HPC's recommendations[15] and create a new restricted activity of psychotherapy (as has recently taken place in Ontario[16]), then the Group would propose that this new restricted activity should also be granted to those counselling therapists who have demonstrated competencies in psychotherapy. For now, however, the Group will assume that title protection is the only self-regulatory model being considered.[17]

c) A common body of knowledge

Given that it was the HPC that merged five separate designation applications it had received from the different counselling organizations, it is not surprising that the Council would then find that there was no common body of knowledge for counsellors generally. Instead of asking the applicants to determine if there was a common body of knowledge that could be used by a later College as a foundation for setting the entry standard, the Council used its flawed approach to this issue as a major reason for not recommending designation. Despite this deficiency in the Council's methodology, the Task Group has nonetheless pursued this issue, recognizing that identifying the common elements of counsellor education and training is a basis for future regulation.

To this end, the Task Group has prepared a comprehensive *Competency Profile for Counselling Therapists*. This Competency Profile (details on the development and content are set out in chapter four of this Paper) documents the skills, knowledge and abilities that someone at the entry-to-practice level of counselling should possess. The Profile has also been validated across Canada, and will help to guide the Ontario Transition Council as it determines what the entry standards should be for registration of a Psychotherapist in that

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[15] Health Professions Council, *Safe Choices*, Part I, Vol. 2 "Post-Hearing Update of Preliminary Report – Psychologists" (March 2001).
[16] *Psychotherapy Act, 2007*, S.O. 2007, c. 10, Sch. R.
[17] The Group also notes that there exist many different definitions of psychotherapy, in particular legislative ones. Ontario's new Psychotherapy Act defines psychotherapy broadly as a scope of practice for this new profession, but also narrowly as a controlled act that only Psychotherapists and other specific health professions will be allowed to perform.
The Group views psychotherapy as a conversational process between a highly trained professional practitioner and a client seeking relief from psychological distress in which a relationship based on trust and the communication of client subjectivity is enhanced by specific methods for generating skills, awarenesses, thoughts, feelings, or attitudinal perspectives useful to the client in reducing distress, engaging in productive behavior, reaching decisions, or reconciling to ontological inevitabilities. This definition is intended to be inclusive of the four main areas of therapeutic practice: interactive emotional systems, cognitive-behavioral approaches, existential-humanist orientations, and psychodynamic perspectives. *Reference: Grigg, D. G. (2005). Toward a transtheoretical definition of psychotherapy: Specifying the concourse. Unpublished manuscript, Walden University.*

province. Details on the development of this Profile are set out in the next chapter of this paper.

By the open and transparent method the Task Group employed to develop the Competency Profile, the Group can now present an objective set of competency statements created through a dynamic process involving over a thousand different types of counsellors across Canada. The Competency Profile statements provide substantial and objective evidence that there is in fact a common foundation that informs the practice of counselling therapy, regardless of the counsellor's particular clinical focus or preferred modality. While it is true that there is not a single "common body of knowledge" in that every counselling training program teaches its students the same material, the articulation within the Competency Profile of a common set of competency statements illustrates that there is strong agreement amongst practicing counsellors and educators as to the core skills, abilities and attitudes of an entry-to-practice counselling therapist.

In the Group's view, this aspect of the HPC's 1997 concerns has been thoroughly and completely resolved. The Competency Profile is the cornerstone of the Group's regulatory model.

d) Post-secondary education

While the Council was correct in noting that the different professional associations that were seeking designation of the profession a decade ago did not set the same educational standard for admission to their respective organizations, the Council was mistaken in then concluding that these differences could not be resolved within a single regulatory umbrella.

The Group believes that, in keeping with best regulatory practices and the expectations of the *Agreement on Internal Trade*, admission to a College of Counselling Therapists should be competency-based, not credential-based. In particular, to ensure that registrants will possess the necessary competencies for safe, effective and ethical practice at the entry-to-practice level, the Group believes that every applicant to the College should complete a competency assessment process. (The details of such a process have not yet been worked out, but it will be informed by the specific standards that are set out in the Competency Profile.)

The Group has developed a common position on this issue with the Canadian Professional Counsellors Association, and the two parties have informed the Ministry of Health that:[18]

> 1. Admission to the College of Counselling Therapists shall be competency-based, not credential-based.

[18] April 7, 2008 letter from Jim Browne (Task Group) and Jim Wright (CPCA) to Daryl Beckett, Director, Professional Regulation, BC Ministry of Health.

2. To ensure an applicant to the College possesses the required competencies for safe, effective and ethical practice, the applicant must complete a competency assessment process under the authority of the College.

Even though it concluded the HPC drew the wrong conclusion in its report on this issue, the Group now believes that this aspect of the Council's 1997 concern has also been resolved.

e) Continuing competency

The Task Group feels that the Council was in error when it concluded that, because of the differences in treatment modalities used by the different types of counsellors represented by the associations seeking designation, a mechanism for ensuring competency would be difficult to implement and enforce. In the Group's view, even if the treatment modalities or focuses were as profoundly different as the Council (mistakenly) concluded, it does not automatically follow that it would be impossible to develop a program for continuing competency for the new profession.

As noted above, the Competency Profile has demonstrated that, despite the range of different counselling approaches or modalities, there is a core set of competencies that are shared by many different types of counselling therapists. With the expansion of this analysis to areas of specialized or advanced clinical practice, the Group has every expectation that it should be possible to develop meaningful continuing competency programs for both the entry-to-practice counsellor *and* those with specialized or advanced practices.

One merely has to look at the different branches of medicine or law to see examples where other professions have dramatically different areas of specialty or advanced practice. Despite the range of their practices, these professions seem to be perfectly capable of developing continuing educational programs that promote the competencies of their members, including those who have focused their practices in particular fields of medicine or law.

The Task Group believes that it should not be difficult for continuing educational programs to be developed for the counselling therapy profession, be these focused on a generalist (entry-to-practice) counselling therapist or a therapist who may work in more specialized fields, such as marriage and family therapy, music or art therapy, or psychotherapy. As such, the Group believes this issue has also been resolved.

f) Inter-professional cooperation

The Council was concerned that the applicant groups it had merged into a single process did not have the will or desire to work together effectively and co-operatively. Unfortunately, the Council did not provide the groups with an opportunity to demonstrate that the different types of counsellors could co-operate.

The seven professional associations that make up the Task Group have worked very well together during the past decade. While the Canadian Professional Counsellor Association decided to separate from the Group several years ago, the CPCA and the Group continue to work together and have reached an agreement on the basic issues for regulating the profession (see above). The Group believes there is now ample evidence to prove that the various counselling groups have the will and the capacity to work together effectively and co-operatively.

The Group also believes it should be easy to create a governance structure for the new College that would reflect the different types of counselling therapists in BC. The Group understands that a viable governance model has been developed to help with the governance of the three distinct professions that will be regulated by the new College of Speech and Hearing Health Professionals of BC. The Group believes that it should be possible to adapt that model to the counselling therapy professions.

The Competency Profile should provide a foundation upon which it should be possible to build broad support for the leadership of the new College, regardless of treatment modality or client base of any particular director. The issue of governance within the College is one that will be explored in more detail in the options chapter of this paper.

g) Membership support

Even though it presented no evidence in support, the Council also expressed concerned that the various counselling practitioners might not support an emerging leadership to govern a college.

Throughout the past decade the various member organizations have kept their membership appraised of the work of the Task Group, and have always received a strong endorsement of those initiatives and the objective of securing a regulatory body to govern all counselling professionals. More recently, the organizations have surveyed their membership and the results – to be reported separately – show that there is over-whelming membership support for a college, and a willingness to pay the additional cost of such an option.

h) Viability of a College

Again, the Group's Competency Profile has demonstrated that there is a great deal of common ground amongst the different counselling professions. Indeed, a diversity of services exists for other professions, and this has not been a particular barrier to the creation of new colleges; e.g., the two professions regulated by the College of Traditional Chinese Medicine Practitioners and Acupuncturists, and the three professions that are to be regulated by the new College of Speech and Hearing Health Professionals.

Rather than being an impediment, the range of counsellors and their different clinical focuses could in fact become a strength of the new College. Having counselling therapists with different clinical practices working together under a single regulatory umbrella should be a catalyst for professional synergies and growth that would not otherwise take place. The exchange of ideas across different clinical disciplines can only help to strengthen individual practitioners and the profession as a whole.

The individual organizations within the Group have also agreed to commit significant resources to help start a new College without the need for government funding. While a detailed operating budget for the first year or two of the College's operation has not yet been developed, based on approaches that have been established by other new professions, the Group believes it should be possible to fund the start-up phase of the new College through a commercial loan (that would be repaid once registration fees are collected) with or without start-up grants to the College from individual counselling associations.

More recently, the Task Group organizations have surveyed their memberships to ascertain the degree of support for regulating the profession and, in particular, for paying the increased fees that are likely to result. While the details of this survey will be provided in a separate report, the Group can report that there was overwhelming support within the professions for moving forward with regulation (under the HPA) and a willingness to pay the associated costs of that new organizational and regulatory structure.

For these reasons, the Task Group believes that these elements of the HPC's 1997 concerns have been addressed.

i) Restriction on access to counselling services

Linking designation under the HPA to an automatic restriction on the public's access to counselling service was perhaps the most deficient statement in the HPC's 1997 report. This error in the Council's analysis was not addressed until the Council was faced with an application for designation by other professions. Specifically, it was not until the Council recognized in its 1998 report on the designation of TCM that there were actually two levels of its risk of harm analysis. (See above for a more detailed discussion on this point.)

More importantly, it was not until sometime after its report on counselling that the Council first recognized that a title protection approach to professional regulation could be a useful way to facilitate public choice, and that designation could proceed without the need to put restrictions on public access to the regulated services.[19]

This very same approach has recently been adopted in Nova Scotia with the passage of the *Counselling Therapists Act*.[20] Section 23 of this Act employs a title protection form of professional regulation. Further, section 66 explicitly states that the Act does not prevent non-registrants from carrying-out the practice of counselling therapy.

Since its first submissions to government,[21] the Task Group has been proposing a title protection model for regulating counselling therapy in BC. As such, there should be no legal or practical impediment to the public to continue to obtain a range of counselling services from both regulated and non-regulated counsellors, at least so long as the Ministry continues to agree with the Council's recommendation not to create a restricted activity of psychotherapy under the HPA. As was explained in more detail above, the title protection model proposed by the Group is designed to inform the public and facilitate choice. It should have no negative impact on the public's ability to access counselling services.

Finally, once a health profession becomes regulated, public access to the profession can in fact increase rather than decrease, because extended benefits health plans and large employers would prefer to pay professionals who are regulated rather than those who are not. In other words, the plans and employers do not have to be concerned about ensuring the quality of the professional services their clients are obtaining; that function can be taken on by the professional's own regulatory body.

It may also be possible for the clients of regulated counselling therapists to claim the fees they pay for counselling therapy services as "medical" expenses on their personal income tax returns. While this has an obvious benefit to the profession, it also means that people will be less reluctant to seek out the services of a counsellor than they would if counselling therapy was not an allowed deduction.

For these reasons, the Task Group believes that this final concern of the HPC has been completely resolved.

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[19] The title protection model was later employed when the Council recommended that massage therapy no longer have a monopoly control over providing massage therapy, and – in particular – that this profession would not be granted any type of restricted activity under the HPA. Instead, the Council recommended the profession continue to have authority to regulate only who may or may not use the title Massage Therapist.
[20] *Counselling Therapists Act*, S.N.S. 2008, c. 37.
[21] 1998 Joint Submission.

CHPATER 4) THE COMPETENCY PROFILE

The Competency Profile, which the Task Group has been developing, is a critical element of the Group's over-all proposal to regulate counselling therapists.[22] In brief, the Profile provides proof that despite the different clinical perspectives and treatment modalities employed by counsellors, there exists a core set of competencies common to all members of the profession. The Profile will also provide the College with a foundation to develop a registration assessment process that would be independent of graduation from a particular academic program.

The degree of common competencies is also proof that it should be possible to develop quality assurance programs that promote continued competencies for all counsellors. The Profile also provides support for the idea that, despite the variety of counselling practices, the foundation that all counsellors share means it should be possible for a leadership to emerge that all counsellors would support, regardless of their particular clinical orientation.

This chapter provides details on the steps that the Task Group has taken to develop the current version of the Competency Profile.

a) A foundation concept

The idea of developing a Competency Profile has been the central feature of the Task Group's efforts to secure statutory regulation for the counselling professions in BC. Indeed, in the 1998 *Joint Response*, the Group stated (at page 19):

> [The] Task Group would recommend to the regulatory body for counsellors that it adopt a competency-based approach to defining the entry requirements for the profession of counselling. While the members of the Task Group require either a university degree (often at the Master's level) or a diploma from a private post-secondary educational program, we acknowledge that such educational requirements are simply a proxy for identifying professional competency.

The Group went on to describe the social policy and legal reasons why it was important for any regulatory body to adopt a competency-based approach to setting registration standards. It was not until several years later, however, that the Group had the opportunity to develop further the concept stated in the *Joint Response* and work directly on identifying the core competencies for registering counselling therapists.

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[22] The term "Counselling Therapist" includes professionals who provide counselling and mental health therapy employing a variety of modalities and practice settings.

b) The development of the Competency Profile[23]

In May 2004, the Group held a meeting to work out the details of a competency-based approach to registration. The outcome was recognition that occupational competencies (job task definitions) may provide an explicit way to articulate common ground, and furthermore that competency-based regulatory standards are inherently more defensible and robust than credential-based standards.

The Task Group proceeded to engage a consultant specializing in the development of occupational competencies, and to establish a Working Committee made up of counsellors and therapists representing its membership.

Through a series of facilitated meetings over a period of a year the Working Committee:

- developed a Scope of Practice statement for the Counselling Therapist;
- completed an Occupational Analysis based upon the Scope of Practice to identify broad categories of work;
- identified occupational competencies (job task definitions) within each category that
    - were defensible in terms of public protection,
    - provided a realistic and meaningful entry-level standard for the profession, and
    - were written in generic language that could be expressed within different therapeutic modalities and diverse practice settings;
- compiled a draft Competency Profile that was accepted by the Task Group as a vehicle for broader consultation.

In late 2005, the Task Group initiated a Competency Validation Survey that was made available to the entire BC-based membership of every Task Group member organization. The on-line survey requested feedback on the degree to which respondents considered each proposed competency to be important for safe and effective practice, and asked about the respondent's frequency of use of each competency. An opportunity was also provided to suggest significant entry-to-practice competencies that were missing from the draft Profile.

Eleven percent (11%) of the potential respondent pool completed the survey, providing a strong validation for the proposed competencies. Of those responding, there was overwhelming support for the proposed competencies. This level of response produced data with a margin of error better than +/- 5% at 90% confidence. As a result of this feedback,

[23] Thanks to David Cane for his contribution to this chapter of the paper.

refinements were made to the Competency Profile, which was then approved by the Task Group in May 2006.

The positive validation of the Profile in BC, and the fact that many respondents to the survey were members of counselling specialties which were not directly represented on the Working Committee that developed the document, led the Task Group to conclude that the Profile was possibly applicable to counsellors and therapists across Canada (if not beyond) and in a very broad range of counselling and mental-health related fields.

The newly developed Competency Profile was presented nationally in meetings, conferences and journals. Further validation surveys took place:

- in the provinces of New Brunswick, Nova Scotia and Prince Edward Island, by professional counselling associations advocating for statutory regulation (May to November, 2006);
- with the national membership of the Canadian Counselling Association, whose survey took place in both English and French (January to March, 2007);
- in Ontario by the Coalition of Mental Health Professionals, in preparation for their work with the Transitional Council for the College of Psychotherapists and Mental Health Therapists (August 2007 to September 2008);
- with the national membership of the Canadian Association for Pastoral Practice and Education (January to July, 2008).

Every one of these additional surveys resulted in a strong validation of the competencies; no substantial changes were made to the content of the Competency Profile as a result of these national validation processes (although some refinements to wording did take place). This fact further reinforces the Task Group's belief that the Profile is both a complete and accurate summary of the competencies required for entry-to-practice counselling therapy

The Task Group will consider updating the Competency Profile in the near future, particularly with reference to data on psychotherapy competencies that is being obtained from Ontario.

The Task Group estimates that 140 working days were spent developing the initial version of the Counselling Therapist Competency Profile. During the past several years, 1,022 counsellors and mental health therapists from across Canada have responded positively to the various validation surveys based upon the Profile. The Group estimates the validation phase involved a further 150 working days. Therefore, to date about 300 working days (or about 1,800 person hours) have gone into developing the current version of Profile.

The significant involvement of different practitioners across Canada in the development of and validation of the Profile is strong evidence that the document provides an accurate description of the common ground among diverse approaches to the counselling profession, and that it would be an appropriate standard to set the registration criteria at the entry-to-practice level of the profession.

In order for the Competency Profile to serve as a regulatory standard, it must be possible to use it as a blueprint for a competency assessment process for registration applicants. To prepare for this next step, the Group has defined a level of performance that constitutes entry-to-practice proficiency in the competencies. Additionally the Group has identified for each competency the setting (clinical, simulated or academic) in which assessment is to take place. This work will enable the development of performance indicators to be measured in a registration examination.

The Group will continue to work toward developing a competency-based registration examination process, and to look at developing profiles for each of the areas of specialized or advanced competencies registration. The next section summarizes the Competency Profile.

c) A description of the Competency Profile

For the purposes of this submission, it is useful to provide a general description of the Profile. The Task Group would be pleased to provide the Ministry with a copy of the latest version currently about 20 pages in length.

The Competency Profile has been divided into five competency areas and, within each area, a series of general competencies:

Competency Area 1: Foundational Principles
1.1 Apply a theory of human functioning.
1.2 Work within an established theoretical framework.
1.3 Maintain awareness of self in relation to professional role.
1.4 Apply knowledge of human and cultural diversity.

Competency Area 2: Collegial Relationships
2.1 Use effective professional communication.
2.2 Maintain effective relationships.
2.3 Contribute to a collaborative and productive atmosphere.
2.4 Display sensitivity to diversity.

Competency Area 3: Professional Practice and Ethics
3.1 Comply with legal requirements.
3.2 Comply with general requirements of the provincial regulatory body (where applicable).
3.3 Maintain awareness of relevant professional associations.
3.4 Apply an ethical decision making process.

3.5 Maintain self-care and level of health necessary for responsible counselling.
3.6 Evaluate and improve professional performance.
3.7 Participate in continuing education and professional development.
3.8 Obtain clinical supervision.
3.9 Practice in a manner consistent with the role of the Counselling Therapist within the health care system.
3.10 Provide consultation within the limits of therapist's expertise.
3.11 Provide education and training within the limits of therapist's expertise.
3.12 Facilitate group process.
3.13 Maintain client records.
3.14 Establish business practices relevant to professional role.
3.15 Advocate for clients.
3.16 Prepare clear, concise and accurate reports.

Competency Area 4: Counselling Process
4.1 Orient client to Counselling Therapist's practice.
4.2 Establish and maintain core conditions, consistent with selected theory and practice.
4.3 Obtain and integrate multiple levels of information during the therapeutic process.
4.4 Conduct an appropriate risk assessment.
4.5 Maintain an effective therapeutic relationship.
4.6 Structure and facilitate the therapeutic process.
4.7 Manage interruptions to the therapeutic process.
4.8 Refer client.
4.9 Conduct an effective closure process.
4.10 Evaluate clinical practice.

Competency Area 5: Applied Research
5.1 Use research findings to inform clinical practice.
5.2 Remain current with professional literature and other relevant media.
5.3 Participate in informal inquiry.

A number of specific competency statements have been developed to provide more detail for each of the 37 general competencies listed above. The result is several hundred specific competency statements collectively define the entry-to-practice requirements for a counselling therapist. The Task Group's Profile, however, does not stop at that point. More is required to ensure the Profile can be used in a meaningful fashion.

For each specific competency statement, the Competency Profile goes on to identify a proficiency environment. The proficiency environment establishes the setting in which proficiency is to be determined.

Three distinct proficiency environments are used in the Task Group's Competency Profile and are defined as follows:

Proficiency Environment (PE) Definition	***Definition***
A (Academic)	Proficiency must be determined through objective assessment of the candidate in a written or oral examination.
S (Simulated)	Proficiency must be determined through objective assessment of the candidate participating in an activity (such as role playing) that simulates professional practice.
C (Clinical Practice)	Proficiency must be determined through objective assessment of the candidate working directly with a client in clinical practice. (This could occur through supervision, videotape review etc.)

The proficiency environment selected for each competency statement is intended to ensure that proficiency is determined in a manner that affords an appropriate level of protection to the public. In turn, an individual with advanced skills in the profession should assess an applicant in each proficiency.

The Task Group has determined that a counselling therapist should be able to demonstrate, as a minimum, an entry-to-practice proficiency relative to each competency statement in the Competency Profile. The Group has defined the entry-to-practice proficiency as follows:

> When presented with routine situations, the entry-to-practice Counselling Therapist applies each relevant competency in a manner consistent with generally accepted standards in the profession, without supervision or direction, and within a reasonable timeframe. The Therapist selects and applies competencies in an informed manner. The Therapist anticipates what outcomes to expect in a given situation, and responds appropriately.
>
> The entry-to-practice Counselling Therapist recognizes unusual, difficult to resolve and complex situations, and takes appropriate steps to address them based on ethics and standards of practice; this includes seeking consultation or supervision, reviewing research literature, and referring the client.

In relation to development beyond entry-to-practice (i.e., advanced skills), the Group has determined:

> The therapist working at an advanced level has extensive experience and exhibits a nuanced understanding of clinical situations. Decision-making and treatment flow more effectively because the therapist readily perceives which aspects of a presenting situation are the important ones, and how they should be addressed. The therapist working at an advanced level deals effectively with most unusual, difficult to resolve and complex situations.
>
> Beyond the advanced level, therapists may be recognized as leaders in

their fields, who regularly contribute to the advancement of the profession.

The Competency Profile lists the entry-to-practice competencies that are proposed as requirements for the Counselling Therapist. It identifies the common ground that exists among a wide variety of counselling orientations. It defines a minimum standard of practice, and has been developed with protection of the public as a prime motive.

The competencies in the Profile represent an integrated set of knowledge, skills and behaviour that the Task Group believes all entry-level Counselling Therapists must possess. This has been confirmed by the national processes that have been employed to validate the Profile, as described above.

Each competency in the Profile informs and qualifies each other competency; competencies are not intended to be used in isolation.

The Task Group also believes that each competency should be interpreted in a manner consistent with the counselling therapist's chosen framework of theory and practice. For example, the term "empathic understanding" will be interpreted differently dependent upon theoretical framework. Likewise the approaches to assessment and closure may vary.

The organization of the competencies within the Profile should not be construed as prescribing a process for therapy. Counselling therapists are expected to use professional judgment and to apply the competencies in a manner that suits their theoretical framework and the situation at hand.

The Competency Profile is intended to define the minimum set of competencies necessary for registration as a Counselling Therapist. Educational programs may provide learning outcomes over and above this minimum competency set; candidates for registration may present with additional competencies; both situations are to be encouraged. Furthermore, in the future, the regulatory body, through an advanced or specialized registration category, might recognize more advanced competency sets.

d) Future uses of the Competency Profile

When Counselling Therapy becomes a regulated profession in British Columbia, the Task Group would recommend that its Competency Profile be adopted as the regulatory standard. The Competency Profile would then serve the following purposes:

- It would provide a blueprint for the development of a registration examination, if such were deemed necessary by the regulatory body.
- It would provide a standard against which counsellor education programs may be developed and / or evaluated, to determine if their learning outcomes provide a basis for registration.

In addition, the regulatory body for counselling therapy may recognize more advanced competency sets that could then be used to set the entry standards for advanced practice or specialized registration categories.

CHAPTER 5) THE ASSESSMENT CRITERIA

Both the HPC's 1997 designation report and the 1998 Logan Report contained criteria to assess the viability of the various options for regulating counselling therapy in BC. Bearing in mind that the Ministry has its own criteria (as evidenced by its recent designation regulations, and the revised Health Professions Designation Regulation[24]), the Task Group has developed a set of assessment criteria. In the next chapter of this paper, these criteria will be used to assess the viability of each of the proposed self-regulation options.

So as not to suggest that any particular regulatory option is being preferred in framing these criteria, this chapter refers to a "regulatory body" regardless as to how it may be constituted.

a) What are the terms of the "social contract"

The legislation that sets out how any particular profession will be regulated is sometimes referred to as a "social contract". In the legislation, the government grants to a profession certain rights or privileges (see next topic) and, in exchange, the profession agrees to carry out the mandate (e.g., to serve and protect the public interest). There can be many variations, but these are the essential terms of the social contract.

Under this conception, the government has the authority to revoke the social contract (or amend its terms and condition) if it determines that the profession is not living up to its public protection obligations.

b) What form of regulation should be employed by this option? And why?

As noted above, there are two basic forms or ways to regulate a profession under the HPA or any other form of professional legislation: either a title protection or a restricted activity model. Which form of regulation will be employed is a decision that should be informed by an understanding of the different policy objectives of these two forms of regulation, and by applying the results of a risk of harm analysis.

c) Can the profession's scope of practice be defined under this option? And how should that scope be defined?[25]

However it is worded, the scope of practice statement for a profession is important if for no other reason that it provides the public, potential members of the profession, other professionals and ultimately the courts with a legal description of the profession. The rights

[24] B.C. Reg. 270/2008.
[25] Based in part on the discussion in the Logan Report, topic 8.1 at page 31.

that then flow to the profession under the applicable legislation, or limits that may be imposed on non-registrants, often start with an assessment as to whether or not the activities in question fall within or outside this definition. The scope statement also allows for a comparison of the similarities and differences across different professions. Finally, any restricted activity to be granted to the profession must fall squarely within its scope statement.

The Ministry has provided this useful explanation:[26]

> Scope of practice statements are the concise descriptions, in broad, non-exclusive terms, of each regulated profession's activities and areas of professional practice. These statements describe in general what each profession does and how it does it. They are not exhaustive lists of every service the profession may provide, nor do they exclude other regulated professions or unregulated persons from providing services that fall within a particular profession's scope of practice.

d) What scope or range of professionals should be included within the regulatory option?[27]

The number or range of professionals that can be regulated under any particular option can have a direct bearing on the viability of that option. Generally speaking, the greater the number or range of persons who become registrants of a profession, the higher the level of the resulting public protection. This is because more practitioners should be admitted to the profession and thus subject to the applicable ethical and practice standards.

e) How does the option provide for setting registration requirements? And what should be the registration requirements?[28]

The way that a regulatory option establishes standards for registration can have a direct impact on whether or not it will be accepted both within and outside the profession. Consequently, the process leading to setting those standards needs to be fair, transparent and defensible (be this in a court of law or in the court of public opinion).

As for determining what the specific entry requirements should be, there is a relationship between the registration requirements and the number of resulting registrants. Briefly, the higher the registration standards are set, the fewer persons will be registered and, therefore, the narrower the scope of professionals who are thus regulated under the particular option.

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[26] Ministry of Health Services, "Scope of Practice Statements", under *Scope of Practice Reform*; www.health.gov.bc.ca/leg/regulatoryreform.html.
[27] Based in part on the discussion in the Logan Report, topic 8.2 at page 31.
[28] Based in part on the discussion in the Logan Report, topics 8.3 to 8.6 at pages 32 to 33.

Bearing in mind the particular form of regulation that is to be employed (i.e., either title protection or a restricted activity model), in general terms, setting the membership requirements for the entry-to-practice professional at a level that will maximize the number of persons who will become registrants of the regulatory body is a strategy that supports a title protection model. This is because the title protection model is not designed to limit the right to perform all or part of the profession's scope of practice to only those with sufficient skills so as to avoid the harms associated with an identified restricted activity. Instead, the title protection model is intended to help the public make informed choices as to which service providers are accountable or not. As such, the criteria for setting the registration requirements should take into consideration the need to ensure the public that persons who are regulated by the college have basic competencies, and have agreed to abide by a code of ethics, etc.

Another factor that will influence the choice of registration criteria is the movement across Canada away from what is known as a "credentials" approach to setting registration criteria, such as requiring a particular academic diploma or degree. Without an objective and verifiable assessment that such academic credentials provide the only way for the graduate/applicant to achieve basic competencies, the credentials approach does not rest on a solid policy or legal foundation. Therefore, the professions that have taken the time to identify and fully describe the core competencies for safe and ethical practice in an objective and measurable way can not only better evaluate whether any particular credential provides those knowledge, skills and abilities, but they can also apply that analysis to help them assess the credentials of foreign-trained applicants.

f) Does the option allow for some form of specialty or advanced practice registration, if necessary?[29]

Many health professions assess their applicants and register them on the basis of the competencies they require for entry-to-practice. But these same professions have also determined that there is a need to recognize areas of specialized or advanced practice, and to set meaningful criteria for registrants who want to be recognized for their particular clinical focus.

A number of factors can be taken into consideration when deciding if a regulatory body should develop a particular form of specialty registration, but a fundamental question is whether the specific regulatory option would allow specialty or advanced practices to be recognized and regulated in whatever fashion would be most appropriate.[30]

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[29] Based in part on the discussion in the Logan Report, topics 8.4 and 8.7 at pages 32 to 34.

[30] For a more details on this issue, see Bryce, G, *Options for Regulating Specialists under the Health Professions Act*, a discussion paper prepared for the Task Group, September 10, 2008.

g) Does the option allow there to be a period of grand-parenting for initial registrants?[31]

For new professions, it is often necessary to allow persons who are currently providing the services to be granted automatic registration with the new regulatory body, with or without certain conditions. This not only allows the regulatory body to generate sufficient resources so as to fund it operations, but it also provides a source of registrants who can then take on a range of tasks that a new body typically must undertake in a short period of time.

Sometimes it is necessary to admit into the profession persons who, for various reasons, do not meet the basic criteria for grand-parenting (e.g., they have not been practicing for a minimum of two years prior to application). In such cases, these registrants could be required to bring their skills sets up to the entry level as defined by the college and to do so within a specified period of time, or risk losing their registration. This is known as "conditional" registration.

h) How does the option define the composition of the Board?[32]

Determining the composition of the Board of Directors of a regulatory body, in particular the first Board, can be a challenge. If two or more distinct professions are to be regulated by the new regulatory body, then assigning specific seats for each profession on the Board can be a way to over-come concerns about one profession being "absorbed" by the other, a particular concern if one profession will have a much larger membership than the other, or if one profession practices at a "higher" or more complex level than the other.

In general terms, the more similar each of the professions to be regulated are to each other, the less likely it will be necessary to establish dedicated seat on the Board for each profession.

i) How does the option allow for the development of ethical and practice standards for the profession(s)?

Again, the degree to which there should be separate Codes of Ethics and Practice Standards for the professions will largely depend on how different or similar the various professions are to each other. In general terms, the more similar each of the professions are to each other, the less likely it will be necessary to establish a separate Code or set of Standards for each profession.

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[31] Based in part on the discussion in the Logan Report, topic 8.9 at pages 34 to 35.
[32] Based in part on the discussion in the Logan Report, topic 8.10 at page 35.

On the other hand, if specialist areas of practice are to also be recognized by the regulatory body, there may then be a need to develop more specific rules of conduct or standards of practice for each area of specialist or advanced practice.

j) How does the option provide for complaint investigation, resolution and disciplinary proceeding?[33]

The capacity of a regulatory body to undertake investigations and resolve complaints, or even to prosecute a member by issuing a citation to initiate a disciplinary proceeding for a breach of a code or standard, is a fundamental issue to explore when evaluating the viability of a regulatory model. Whether these capacities are granted by way of government legislation or established by contract law in the form of bylaws, an organization that does not have the ability to take these steps cannot be considered to be a *bona fide* regulatory body, or one that is acting, or can act in the public interest.

Further, the members of the profession should have either past experience in or training in evaluating and investigating complaints filed against other members, or the capacity to obtain such training or assistance in a timely and cost-effective fashion. The skill sets that are necessary to perform the particular profession are unlikely to include the types of experiences that are useful in complaint investigation and resolution, let alone how to conduct a disciplinary proceeding.

k) Does the regulatory body have jurisdiction over former members?

Unless there is some legal impediment, a registrant can resign from a regulatory body so as to avoid a complaint investigation or a subsequent disciplinary hearing. So, it is in the public interest, in particular under a title protection model, to ascertain whether the regulatory body will have jurisdiction over its former members.

l) Does the option allow for exemptions to the regulatory system? If so, what exemptions should be allowed?[34]

The question of granting exemptions to particular types of persons who provide the profession's service from having to become registrants with the regulatory body is one that may be necessary to address if the profession is to be granted some form of restricted activity, in addition to an exclusive occupational title. However, because a title protection model does not restrict whom the public may hire to provide the particular services, it is far less likely that exemptions to granted titles would be necessary.

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[33] Based in part on the discussion in the Logan Report, topic 8.11 at pages 35 to 36.
[34] Based in part on the discussion in the Logan Report, topic 8.14 at page 37.

Section 14 of the HPA already lists those areas where exemptions may be necessary in relation to the prohibitions regarding professional practice that are authorized under section 13 of the Act. The Task Group does not see a need to add to this list of exemptions, at least not for the purposes of regulating counselling therapy.

m) **How will the regulatory body be funded?[35]**

Without sufficient financial and human resources, any regulatory body is doomed to become an ineffective organization incapable of acting in the public interest. Ensuring that a particular regulatory option will be a viable one requires a secure and sufficient source of money in the form of registration or similar fees, or – in some cases – in the form of government funding or taxation policies

n) **How will the public be informed about the profession?[36]**

If the public does not know that a regulatory body has been established with a mandate to regulate the profession, or if the public does not know that a particular title means that the professional in question is accountable to a regulatory body, then the particular regulatory option is unlikely to have the desired effect, even if it meets all the previous criteria. For example, if the public does not know there is a regulatory body, the public will not derive any benefit from that body's complaint investigation and resolution program.

The nature of the public information program and how well it is funded are not necessarily issues that can be evaluated prior to creating the regulatory body, but they are issues that can be used to conduct after-the-fact assessments.

o) **Does the option allow for government to exercise some form of oversight?**

It is usually not sufficient for a government to simply set-up a regulatory body and then not monitor that body to ensure that it is following its mandate. The scope and ability of government to monitor a regulatory body and to ensure the body is accountable to the public through government are issues that also need to be considered in terms of assessing the viability of a particular regulatory option. This is particularly important because members of the profession are likely to often find that they have to balance personal or professional self-interest against (what may be a new concept of) public interest. Government must therefore have the capacity to monitor how the regulatory body is performing and to take corrective action when necessary.

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[35] Based in part on the discussion in the Logan Report, topic 8.15 at page 37.
[36] Based in part on the discussion in the Logan Report, topic 8.16 at page 38.

p) **Does the option ensure that the regulatory body is "transparent" to the public?**

There is a growing trend in the fields of professional governance (and in the broader context) to encourage regulatory bodies (corporations, etc.) to be more open and transparent with the public concerning both the types of decisions they make and the reasons for making those decisions. Therefore, the ways that a particular option can require the regulatory body to be transparent to the public are also useful factors to consider.

q) **Does the option ensure compliance with labour mobility agreements?**

The BC government has entered into two labour mobility agreements[37] that require regulatory bodies for many different professions to undertake certain things or for the bodies to commit to certain policies for the promotion of the movement of professions across Canada (or between BC and Alberta).

Each of these criteria will now be employed to assess the various regulatory options to be discussed in the next chapter of this paper.

[37] For more information on the federal-provincial-territorial *Agreement on Internal Trade*, see: www.ait-aci.ca/index_en.htm. For information on the BC and Alberta *Trade, Investment and Labour Mobility Agreement* see: www.tilma.ca.

CHAPTER 6) THE SELF-REGULATORY OPTIONS

Based on its research to date, and taking into consideration the work that the Task Group has undertaken during the past decade, the Group believes that there are a limited number of ways that counselling therapy could be regulated. In this chapter, the Group will summarize the self-regulatory options that it has identified as being the most viable, in both theory and practice. After each option is described, the Group will discuss its strengths and limitations.[38]

Option One) College of Counselling Therapists under the HPA

Under this option, counselling therapy would be designated under the HPA and a new College of Counselling Therapists would be created.[39] This approach assumes that the Ministry will uphold the HPC's 1997 finding that counselling constitutes a health profession as defined under the Act. This was the option that the Ministry first proposed to the Group in 2001,[40] and which the Group had understood until recently was the only option that remained on the table.

Before identifying its strengths and weaknesses, it is necessary to summarize the salient features of this self-regulatory option:

i) *Social contract:* The parties to the contract would be the Ministry of Health Services and the members of the profession, and both sides must agree to its terms. The Ministry has considerable authority to amend or revoke the contract. The "exchange of considerations" is addressed next.

ii) *Form of regulation:* The Task Group is proposing that counselling therapy be designated under the HPA using a title protection rather than a restricted activity model of professional regulation. In the Group's evaluation, the risks of harm that can be associated with the practice of counselling (see section 3(a), above) can best be addressed by granting the profession control under the HPA over the title Counselling Therapist. This would become the new title to describe a wide range of existing counselling

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[38] The Logan Report also discussed a series of non-regulatory options. However, as those options fall outside the authority of the Ministry, if not the government of BC, to implement, and as they also involve quite different approaches to assess their viability, those non-regulatory options will not be considered in this paper.

[39] This is essentially the same as option A, as set out on page 22 of the Logan Report.

[40] See correspondence between the Task Group and Ministry of Health Planning officials from the Spring of 2001, and a *Commentary on the Draft Designation Regulation* (May 14, 2001) posted at the BCACC website at: www.bc-counsellors.org/files/doc20.pdf. On April 3rd, Ms. Falconer provided the Task Group with a confidential working draft of a regulation to designated counselling therapists under the HPA. This draft contained a scope of practice definition for counselling therapy and an occupational title for the exclusive use of college registrants, but it did not contain a series of titles for each counselling specialty, nor did it propose a "psychological diagnosis" or a "psychotherapy" reserved act.

therapists who currently use different titles.[41] The types of harms that the Group has identified above do not suggest that it is necessary to go further and grant the profession a restricted activity, such as "psychotherapy" (as has been done in Ontario).

iii) *Defining counselling therapy:* While the HPC struggled with trying to define counselling as a profession and describing counselling as an activity, the Logan Report identified that it should be possible to develop a workable definition for BC. There are several sources that can be employed to develop a scope of practice definition for the new profession. The Task Group has developed its own definition, but the definition in Nova Scotia's new act should also be considered, as it is the first statutory definition of counselling therapy in Canadian legislation. Whatever source is employed, the final definition should reflect the Ministry's criteria.[42]

iv) *Scope of registrants:* The Group is proposing that the scope of counselling therapists who become registrants of the new profession should be as broad and as all encompassing as possible. This will ensure that the maximum number of counsellors in the province become registrants of the new College.[43]

At a minimum, the membership of the new College would include the types of counsellors that are represented by the Task Group, such as: art therapists, career counsellors, clinical counsellors, marriage and family therapists, music therapists, and pastoral counsellors. But other types of counsellors who are not represented by the Group organizations should also be included, such as those represented by the CPCA, and counsellors working in the addictions field, Native health, etc. who are not members of any particular association. Given that social workers, in particular clinical social workers, are to be governed by a new and revised *Social Workers Act*, they are more likely going be regulated (and want to be regulated) under that new statute than under the HPA.

v) *Registration requirements:* To be granted admission to the College, the Group is proposing that the admission criteria be competency-based, using the *Competency Profile* as the foundation. A recently reported case from Ontario[44] provides support for the Group's long-standing position that membership in a college should be based on an

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[41] Under the Group's proposed model, once a Counselling Therapist was registered in the entry-to-practice class, the CT could then seek to be registered in one or more areas of specialized or advanced practice. Once so registered, this would entitle the CT to then describe their area of counselling specialty.
[42] Ministry of Health Services, "Scope of Practice Statements", under *Scope of Practice Reform*; www.health.gov.bc.ca/leg/regulatoryreform.html.
[43] In this respect, the Task Group does not believe that it is in the public interest to explore the option of a new College created under the HPA that would regulate only a limited number of counsellors; see option B, as set out on page 22 of the Logan Report.
[44] Basciano v. Ontario Asstn. of Landscape Architects 2008 WL 4409299 (Ont. S.C.J.), 2008 CarswellOnt 5660, 2008 CanLll 48637 (On. S.C.D.C.)

assessment of basic competencies that are necessary for safe, ethical and effective practice.[45]

The Group has determined that employing a credentials approach to registration (in particular adopting a master's degree as the academic minimum qualification) would not be fair to counsellors who have obtained their skill sets by other routes. Given the diversity of educational and training programs that exist for counselling, and the different types of supervised practicum requirements, the Group further proposes that there should be a formal assessment process that would be administered or over-seen by the College. This process would likely lead to the creation of a common registration examination that all applicants must pass, unless they can demonstrate that they have already been assessed for substantially the same competencies and levels as set out in the *Competency Profile*. In addition to these educational/training requirements, an applicant would have to submit to a criminal records check, pay a registration fee and agree to abide by a code of ethics and practice standards (to be discussed in more detail below).

vi) *Grand-parenting:* As it may take some time for the College to develop a competency-based assessment process, in particular a registration examination, it may be necessary in the interim to simply grand-parent all members in good standing of the existing organizations within the Task Group and similar organizations that also exercise a mandate to regulate their members, such as the CPCA. This option, however, would be time-limited.[46]

vii) *Specialty registration:* While the Group anticipates that there will be thousands of counsellors who would be registered in the generalist or entry-level class, there could also be hundreds registered in the various specialist classes the Group has proposed since 1998. Further consideration will have be given to defining the standards that a generalist therapist would have to meet to then be registered in one or more of the specialist classes. For now, the Group has identified the need to create a series of specialist/advanced practice registration classes.

viii) *Board composition:* The Board of Directors of the new College would be composed of registrants from among the broad scope of all counselling therapists who are members of the new College. There would be no dedicated seats set aside for particular types of counsellors or their professional associations. This approach reflects the fact that, as

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[45] Credentialing is also not a transparent process because there is currently no disclosure by the graduate educational programs as to what specific competencies their students obtain on graduation, let alone how the programs ensure their graduates obtain those competencies.

[46] As a refinement to this option, if someone was admitted to the profession who would not likely be able to pass the registration examination or some other objective assessment instrument that reflects the *Competency Profile*, that registrant could be required to bring his or her skills sets up to the level defined by the Profile within a specified period of time or risk loosing their registration. The HPA allows for such "conditional" registration.

demonstrated by the *Competency Profile*, counsellors have much in common despite their different clinical focuses.[47]

ix) *Ethics and practice standards:* Given the many common competencies and attributes shared by all counsellors, it should be possible to prepare a single Code of Ethics that all registrants of the College would agree to uphold. Further, for many areas of practice, it should be possible to develop a single set of common practice standards (e.g., client needs assessment, obtaining informed consent and complying with the *Personal Information Protection Act*). For areas of specialized or advanced practice, there may be a need to develop more specific rules of conduct or standards of practice.

x) *Complaint investigations and resolution:* The standard approach and the common rules in the investigation and resolution of complaints, or even the prosecution of a citation during a disciplinary proceeding, are HPA mandated functions that would be undertaken by registrants (likely with the advice of legal counsel). As occurs in some professions, there may be a need to hire a professional investigator in some situations. Regardless, the College's registration fees would cover the costs related to investigations, discipline and appeals. As part of this process, there is also the option for persons who disagree with registration, inquiry or discipline decisions to appeal those decisions either within the college or to the new Review Board, if not the courts.

xi) *Jurisdiction over former registrants:* Under section 26 of the HPA, a former member is defined to be a member for the purposes of complaint investigations, resolution and discipline functions under Part 3 of the Act. This means that a registrant cannot resign from the College to avoid a complaint investigation or a subsequent disciplinary hearing.

xii) *Exemptions:* As the model the Group is proposing would not include a restricted activity, and because a new title is being proposed for the profession, it should not be necessary to consider granting any particular types of counsellors an exemption from becoming members of the College. Indeed, many current employers of counsellors (e.g., federal or provincial governments, health authorities, schools, etc.) may find that it is a benefit to their organizations to have the counsellor employees be registrants of the College.

xiii) *Funding:* As noted above, the proposed regulatory model and the operations of the new College would be funded entirely from the fees collected from applicants and members on renewal. There is no expectation within the Group that government will contribute to paying any of the College's start-up or subsequent operating costs.

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[47] If there were a need for a special panel to consider issues that are unique or specific to one type of counselling therapist, it would be possible for the College Bylaws to allow such panels to be created or triggered by specific circumstances. Once so triggered, these special panels would be authorized to make the final decision concerning that type of counsellor. Such decisions are likely to be limited to questions regarding registration, complaint investigations or discipline.

xiv) *Public education:* The title protection model proposed to regulate the profession will require the College to actively promote that title and also educate the public that the Counselling Therapist they see not only holds basic competencies, but is also accountable to a regulatory body if that therapist refuses to acknowledge or correct a mistake or error in judgment. As such, it will be important for the new College to actively promote the title to ensure that the public understands what services a Therapist can provide and who they can turn to if they have concerns for a Therapist's conduct.

xv) *Government oversight:* There are a number of ways that government can monitor how a college pursues the public interest duties and objects that it is assigned under section 16 of the HPA. For example:

- Under section 17 of the Act, the Minister may appoint public representatives to a Board, who must constitute at least 1/3 of the total number of directors. Similar requirements for public representation exist with respect to College committees like Investigation and Discipline. This provides an opportunity for the views of the public to be considered during the policy-making and key decision-making processes within the College. A ministerial appointee also has the right to report to the Minister if that appointee felt the College was not acting in compliance with the Act.
- Under section 18(2), a college board must submit an annual report to the Minister concerning the operation of the college and other matters specified by regulation.
- Under section 18.1 of the Act, the Minister may appoint a person to inquire into any aspect of the administration or operation of a college and – on the completion of such an inquiry – the minister may issue a directive under section 18.2 to the college's board flowing from such an inquiry. This authority provides the capacity for the government to deal with specific and serious problems that may arise, such as a failure of a college or board to meet its duties and objects, as set out under section 16.
- Under section 19(7), a college must provide to the Minister (and the other colleges) a three-month notice of any proposed bylaw or amendment.
- Ministry officials review draft college bylaws or any proposed changes, and – if necessary – on their advice, the Minister can disallow certain provisions or change their effective date under the authority of section 19(3.2) or (3.3). The Minister can also take steps under section 19(6) to directly amend or repeal certain bylaws.
- Under the authority of the *Ombudsman Act,*[48] the office of the Ombudsman of BC exercises further oversight over all HPA colleges to ensure they act in a fair, transparent and impartial fashion when carrying-out their statutory mandates.[49]

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[48] R.S.B.C. 1996, c.340.
[49] For a copy of the Ombudsman's *Fairness Checklist*, see www.ombud.gov.bc.ca/about/fairness-checklist.htm.

xvi) *Public transparency:* The HPA also contains provisions designed to ensure that a college acts in an open and transparent fashion, which thus facilitates a college's accountability to the public. For example:

- Under section 18(3), a college must ensure that it has established a website which the public can access without charge, and that it is kept current.
- Under section 19(7), a college board must ensure that it maintains a complete and up-to-date set of the college's bylaws, and make a copy available to the public for review. Section 19(6.2)(b)(ii) requires the college to post any proposed bylaw amendments or repeals at the college's mandatory website.
- Under section 39.3, but subject to certain privacy limits, a college is required to notify the public of the results of a completed disciplinary proceeding, which must include the registrant's name, and a description of and reasons for any actions that were taken. This duty can be met if the college posts the discipline committee decision (or a summary thereof) at the college's website.

xvii) *Labour mobility:* A college established under the HPA must act in compliance with the labour mobility agreements.

Advantages / Strengths for the government:

- The new two-step designation process under the HPA can be undertaken fairly quickly, without the need for government to pass new legislation to regulate the profession.
- Under the various authorities of the HPA, for the first time the government can influence the behaviour of the regulatory body for counselling therapists to ensure that it meets its statutory mandate and that the College does so in an open and transparent fashion. The Ministry does not currently have the capacity to so influence the different professional associations.
- The Ombudsman's office can exercise authority to ensure the College acts in a fair, transparent and impartial fashion. The Ombudsman does not currently have such authority over the existing professional associations.

Advantages / Strengths for the public:

- With a title protection under the HPA, there would be no legislative limitation on public access to counselling services, but – instead – this model should help to inform the public so the public can make informed choices in the therapists they seek. Helping the public through a title protection model more appropriately addresses the risks of harm described in section 3(a), above, than would the option of creating some sort of restricted activity.
- The competency-based registration criteria proposed by the Task Group should help to ensure the maximum number of counselling therapists becomes registrants of the new

college and that should, in turn, provide for optimum public protection under the title protection model.[50]

- For the first time, a regulatory body for counselling therapists would conduct complaint investigations and resolve complaints (or hold disciplinary proceedings) using a single legal and policy framework that would also be common to other health professions. Further, the college would have jurisdiction over registrants, even if they quit the college to avoid an investigation or discipline hearing.
- The college would not have the authority under the HPA to limit the number of persons who become members of profession, and thus limit the number of persons who can use the designated occupational title.
- It is likely more family doctors and other health professionals would be encouraged to refer their patients for counselling that is provided by a registered professional. This should in turn increase public access to and use of an important mental health resource for British Columbians.[51]
- Regulation should improve inter-disciplinary cooperation between the new College and BC's other regulated health professions.
- The clients who see registered counselling therapist would be able to claim the fees they may pay for those counselling services as a "medical expense" on their income tax forms.
- Organizations that pay for the cost of health care expenses above those covered by the provincial medical plan are more likely to include in the scope of their plan's coverage counselling therapy that is provided by registered professionals.

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[50] In its November 19, 2008 open letter to the Law Amendments Committee of the Nova Scotia Legislature that was considering Bill #201, the *Counselling Therapists Act*, the federal Competition Bureau was critical of the title protection model of regulation that Nova Scotia had coupled with a credentials-based registration requirement in that Act. Specifically, the Act set a master's degree in counselling or similar degree as the entry standard. The Bureau pointed out that private insurance providers (such as insurance plans and other third party payors) are likely to require that someone providing a funded service must be a member of a regulatory body. (This makes economic sense because paying only for the services of regulated professionals means that the payor will not have to directly regulate the quality of the services that are being provided to its beneficiaries.) The Bureau's primary concern was for the unanticipated economic shift that can occur when a title protection model is combined with a credentials approach to setting entry standards. The Bureau felt that setting the entry standard at the master's degree level may be higher, and therefore more restrictive, than is reasonably necessary to support the policy objectives of a title protection model. The Bureau's criticism of Nova's Scotia's approach supports the model the Task Group is proposing for British Columbia. A competency-based registration standard coupled with a title protection model of regulation should increase public access to counselling services when private insurance providers agree to include counselling therapy as a benefit under their plans.

[51] As noted by the BC Medical Association, about 16% of general practitioners work closely with and commonly refer their patients to counsellors and clinical social workers (ref. *Working Together: Enhancing Multidisciplinary Primary Care in BC*, a policy paper, October 2005, pages 2 & 3.) With professional regulation of counselling, this rate of referrals could increase.

Advantages / Strengths for the profession:

- Professional regulation should result in increased credibility for the profession and, while primarily a public benefit, counselling services could also become eligible for inclusion in employer extended health plans and be tax-deductible for clients as medical expense. Counsellors may also enjoy the exemption that allows health professionals to avoid charging and collecting GST on the services they provide to the public.

Disadvantages / Weaknesses for the government:

- As noted by the Logan Report, this option requires the Ministry to reject the Council's recommendation (that counselling not be designated under the HPA), although in the Group's submission there are now many valid reasons for doing so. Nonetheless, the Ministry may have to explain why it is taking a different path than the one recommended by the Council a decade ago.

Disadvantages / Weaknesses for the profession:

- This option will likely result in each counsellor having to pay an additional fee (in the range of $350 to $500 per year).

There are Model Bylaws that the College could adopt to ensure the details of the HPA-mandated policies and programs complement the Act's requirements and are similar to those adopted by other colleges. This ensures, in general terms, that there is a common approach to such issues as complaints and discipline, regardless of the profession involved.

There is now a clear leadership within the Task Group that could become involved with or support the work of First Board of the new College. The member organizations have also agreed to provide financial and other resources to help the First Board ensure the new College would be viable.

The Task Group has developed a number of policies and discussion papers on a range of topics that could be used by the First Board to set-up the new College in a reasonable period of time, including the Competency Profile and specialty registration. The Group will continue to work on other projects, such as a common registration examination, a common Code of Ethics, a governance model, and a detailed start-up budget for the First Board.

Option Two) College of Counselling Therapists under a separate statute

If the Ministry concluded that the HPC was wrong in 1997 and that counselling therapy is not a health profession as defined under the HPA, then – rather than proceed to designate the profession under the Act – the Ministry could draft a new and separate statute to create the new College. Or the Ministry could recommend that another government ministry take on this task and be responsible for the oversight of the new profession outside the HPA framework.

The different legislative foundation for the new College under this option is the only major departure from the descriptions set out in Option 1, above. The Group believes that each of the other features of a College under the HPA can be applied under a separate, dedicated statute. For example, a separate statute could employ title protection, define the scope of practice, promote maximum membership, apply a competency-based registration process, permit specialty registrations, ensure common complaint investigation, resolution and disciplinary processes, retain jurisdiction over former registrants, and adopt similar forms of government oversight and the promotion of public transparency.

Further, most of same strengths and weaknesses in Option 1 apply to this option, although a few new ones need to be considered.

Advantages / Strengths for the government:

- If the Ministry decided to transfer responsibility for the decision to regulate counselling therapy under some other statue (in particular one to be developed by a different ministry), it could avoid expending further resources on this project.

Disadvantages / Weaknesses for the government:

- The Ministry would have to side-step one of the HPC's primary findings (i.e., that counselling is a health profession as defined under the HPA).
- The Ministry would have to devote resources to draft a separate statute or identify another ministry that would be willing to take-on this project.

Disadvantages / Weaknesses for the profession:

- This option will result in further delays in the regulation of the counselling profession, which would no doubt lead to great frustration within the member organizations of the Task Group, if not amongst individual counsellors and their clients. This could result in deterioration in support for the idea of professional regulation.

Option Three) College of Mental Health Professionals under the HPA

This option would broaden the scope of the professions who would be designated under a single regulatory umbrella under the HPA. Specifically, under this option a new College of Mental Health Professionals could include all forms of counsellors, and other mental health professionals such as psychologists.

Creating this new multi-profession College could be accomplished in one of two ways. One approach would be to reconstitute the College of Psychologists as the new College of Mental Health Professionals under the HPA, albeit with a much broader membership that would embrace all forms of counselling therapists. Alternatively, the College of Psychologists could be disbanded and psychologists would then transfer their registration to the new College that would regulate all forms of mental health professionals.[52]

Under either approach, it would be necessary to decide if there would be one or a multiple of classes of registrants. For example, two primary professions could be designated and, therefore, there would be two major classes of registrants: counselling therapists and psychologists. In this respect, the new College would be similar to the College of Traditional Chinese Medicine Practitioners and Acupuncturists, which has two distinct registration classes.[53] In turn, at least two different scopes of practice definitions would then have to be developed; one for counselling therapists and the other for psychologists.

If there were only one class of registrant with a single defined scope of practice, then there would be no differentiation within the designation regulation between psychologists and counselling therapists. However, it is likely that the new College Board would later decide that it had to set out classes for specialist or advanced practice registrants within its Bylaws, one of which could be for Psychologists (at a PhD level).

Regardless as to which approach is taken, it is not clear if psychologists see themselves as being on the same continuum as counselling therapists. (See further comments on this issue below.)

As was the case for the second option, each of the other features of a College of Counselling Therapists under the HPA can be applied to this multi-profession model. For example: this would be a title protection form of regulation; it would promote maximum membership; it could employ a competency-based registration process rather than a credentials approach; it could permit specialty registrations; it would apply a common complaint investigation, resolution and disciplinary process to all registrants; the college

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[52] This second approach is what has taken place with the new College of Speech and Hearing Health Professionals of BC, that will regulated audiologists, hearing instrument practitioners and speech-language pathologists. Only HIPs are currently regulated under the *Hearing Aid Act*. When the new College is fully operational, the HAA will be repealed and HIPs will then be regulated along with their fellow speech and hearing health professionals.

[53] The new College of Speech and Hearing Health Professionals has three separate registration classes.

would retain jurisdiction over former registrants; and it would used similar forms of government oversight and promote public transparency.

Many of the same strengths and weaknesses listed in option two apply to this option; however, there are a few significant weaknesses.

Advantages / Strengths for the government/public:

- As is currently the case under the Psychologists Regulation, this would likely be a title protection model. So, in keeping with Health Professions Council's recommendation and the more recent Utendale decision,[54] there would be no practice monopoly granted to psychologists or counselling therapists over any aspect of the provision of psychology or psychological services.
- Requiring counselling and psychology to be regulated under the same umbrella could improve the relationship between the two professions and help to bridge some of their traditional animosity.

Advantages / Strengths for the profession:

- The same competency-based admission criteria for the entry-to-practice level, at least for counselling therapy, as proposed in option one could be employed under this model. This approach could assist the new College in re-defining the entry criteria for the registration of psychologists.
- With the possibility of a combined membership of over 4,000, the annual registration fee for psychologists should be lowered for that profession as a result of improved economies of scale. (There could also be an increase in fees for counsellors; see below.)

Disadvantages / Weaknesses for the government:

- This is not an option that can succeed unless the College of Psychologists and psychologists in general agree to such a merger. Therefore, the Ministry would have to invest time and resources to convince that College that this approach would work. Specifically, the Ministry would likely have to refer this option to an advisory panel under new Part 1.1 of the HPA.
- If psychotherapy was to become a restricted activity under the HPA, further analysis would have to be undertaken to ascertain which members of the new College could perform this service, be it with or without practice restrictions. This would add further delays to the development of the College.

[54] College of Psychologists of BC v. Utendale, 2007 BCSC 824 (BCSC).

Disadvantages / Weaknesses for the profession:

- As noted above, one way to create a new College of Mental Health Professionals would be to convert the existing College of Psychologists into the new College. That approach, however, may not be perceived as fair by the counselling therapists, because they would be inserting themselves into a pre-existing regulatory culture, rather than being equal partners with psychologists in the creation of a new regulatory culture.
- The College of Psychologists and psychologists generally would have to agree to a merger with counselling therapists, however the new College might be structured. And there are reasons why they may resist this option. For example, psychologists are heavily invested in a credential-based standard. It would be a challenge for a single college regulating both professions to retain simultaneously both the competency-based (for psychologists) and the credential-based approaches (for counselling) to defining the entry standards.
- The need to develop different scopes of practice definitions for the different classes of registrants and the implications of those differences might also mean that further delays in designation would occur.
- Given that the current registration fee for psychologists is substantially higher than the projected fee for counsellors under option #1, it is likely that counsellors would have to pay even more to become members of this new, multi-profession college than would otherwise be the case. Even with economies of scale, the fee is likely to be in the $750 range.

In consideration of this option, it is useful to briefly point out the relationship of counselling professionals to psychologists, and particularly with clinical psychology, by considering how psychology itself evolved.

Part of the history of psychologists has been their need to distinguish themselves from psychiatrists, especially when many psychologists were pressed into a clinical role following World War II. At that time, psychologists asserted their skills as therapists, claimed equal professional status with psychiatrists by virtue of doctoral-level academic preparation, and distinguished themselves as a unique profession by virtue of research skills and mental measurement technology. The legacy has been a "scientist-practitioner" professional culture that emphasizes Ph.D. preparation, mental testing, diagnostics, and research. This contrasts with the counselling tradition of direct client care and treatment and master's level preparation.

Leahey (2000) explains that "throughout World War II the most common job performed by psychologists was mental testing" (p. 446). Leahey goes on to narrate how psychiatrists, after the war, quickly exited the medical corps, leaving much of the mental health work for the remaining psychologists. "Psychologists had heretofore performed

diagnostic duties, but faced with the overwhelming need to provide psychotherapy, psychologists – however ill-trained – began to serve as therapists, too." (Leahey, p. 446).

Whereas psychiatry, given their medical training, asserted at that time the need to supervise the work of the psychologists, the psychologists asserted an independent program of professionalism and training (Hilgard, Kelly, Luckey, Sandore, Schaffer, & Shakow, 1947/2004) as articulated in the Shakow report. Hunsley and Lee (2006, p. 29) document a parallel process in Canada. The legacy has been an emphasis on professional status, an identity as "doctors", and diagnostic measurement.[55]

In brief, given their origins and current relationship with the counselling profession, a broader cultural shift may have to take place within the psychology community and its regulatory body before it would be possible to consider merging the regulation of both counselling and psychology as a viable option.

Option Four) A government-supported and appointed Board

This is option C as described on pages 23 to 24 of the Logan Report.[56] Based on the example of the Board of Hearing Aid Dealers and Consultants under the *Hearing Aid Act*[57] (HAA), Mr. Logan raised this approach as a model that would see government appoint and fund a board that would then regulate the counselling profession. A government employee would be the registrar for such a board. Of necessity, this option would require the government to pass separate legislation that would be similar to the HAA: this option could not be rolled-out under the HPA.

The Task Group does not believe it is necessary to flesh out the details of this option or to explore its strengths and weaknesses. Despite the HPC's recommendation that the BHADC should continue to regulate Hearing Aid Dealers (albeit with some amendments to the HAA),[58] the Ministry has since moved in a different direction. The necessary legislation

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[55] References: (1) Hilgard, E. R., Kelly, E. L. Luckey, B., Sanford, R. N., Schaffer, L. F., Shakow, D. (1947/2004). Recommended graduate training in program in clinical psychology: Report of the Committee on Training in Clinical Psychology of the American Psychological Association. American Psychologist, 2, 539-558. (Retrieved from heep://psychclassics.yorku.ca/APA/training.htm. July 20, 2004.); (2) Hunsley, J. & Lee, C. M. (2006). Introduction to clinical psychology: An evidence-based approach. Mississauga, ON: Wiley; (3) Leahey, T. H. (2000). A history of psychology: Main currents in psychological thought. Upper Saddle River, NJ: Prentice-Hall.

[56] A slight variation on this approach is option D. as set out on page 24 of the Logan Report. The variation is that, unlike the BHADC, the licensing board for paramedics under the *Health Emergency Act* CITATION? does not have the authority to make regulations establishing the qualifications, education and training of emergency personnel. These requirements are set out in government regulation that must be approved by Cabinet.

[57] CITATION?

[58] Health Professions Council, *Recommendations on the Designation of Hearing Aid Dealing and Consulting* (January 2001), ref: www.health.gov.bc.ca/leg/hpc/reports/apps-hearing.html.

has been passed to repeal the HAA, which would result in the elimination of the BHADC.[59]

The providers of hearing aids will now be regulated under the HPA, and will be known as Hearing Instrument Practitioners. They will be regulated along with Audiologists and Speech-Language Pathologists in the new multi-professional regulatory body described above, the new College of Speech and Hearing Health Professions.[60]

For this reason, the Task Group does not believe that this is an option that is worth considering further in this paper. Indeed, as the Logan Report noted, this option would require the government to agree to remain responsible for much of the cost of regulating the profession, which is a role the Ministry has made clear that it is no longer willing to take on.

Option Five) Grant separate occupational title protections under the *Society Act*

Under this option, the existing organizations within the Task Group that have not already obtained title protection under the *Society Act*[61] or the federal *Trademarks Act*[62] would apply to be granted occupational title protection (OTP) under the *Society Act*.[63] The Ministry would have to agree to support each of their respective OTP applications, and then to grant waivers to each of the organizations under section 52.1 of the HPA.

i) *Social contract:* The profession alone would be responsible for setting-up this "social contract"; the Ministry would only play a support role. The profession would not be obligated to "act in the public interest" except as may be indirectly required by the Ministry supporting the OTP and later granting an exemption under the HPA. The Ministry can only exercise a very limited degree of control to revoke or amend this contract.

ii) *Form of regulation:* This would be a form of title protection, as permitted under Part 10 of the *Society Act*.

iii) *Defining counselling therapy:* Each professional association would define the scope of practice for its members, employing its own criteria and process for doing so.

[59] Health Planning Statutes Amendment Act, 2002, SBC 2002, c.??, s.16.
[60] Speech and Hearing Health Professionals Regulation, BC Reg. 1215/2008. Ministerial Order 304/2008 designated the three professions under the HPA and a single regulatory college was established on December 18, 2008. The Ministry will work with the new college throughout 2009 to ensure that it is fully operational. The new college is expected to start registering professionals by late 2009 and will start regulating professional conduct for the licensing year commencing April 1, 2010.
[61] RSBC 1996, c.433.
[62] RSC 1985, c. T-1.
[63] This option is essentially the same one as set out as option E on pages 24 to 25 of the Logan Report, titled "Society Act title protection".

iv) *Scope of registrants*: Memberships would be limited to those who fall within the ambit of each professional association's particular clinical focus or interest. Many currently un-regulated counsellors would still be unable to join the existing associations.

v) *Registration requirements:* While the separate associations could adopt competency-based registration requirements, it is more likely that they will continue to apply their existing credentialing approach. Grand-parenting would not apply.

vi) *Specialty registration:* This would be provided for within those organizations that represent specific types of specialties or advanced practices.

vii) *Board composition:* The board for each separate association would be composed exclusively of members of each association, and there would be no mandatory seats for public representatives, let alone members of the public who would be nominated by government.

viii) *Ethics and practice standards:* Each professional association is likely to retain its existing and unique Code of Ethics and Professional Practice Standards.

ix) *Complaint investigations and resolution:* Each professional association would continue to employ its own complaint investigation, resolution and disciplinary policies and procedures.

x) *Jurisdiction over former registrants:* Each professional association would lose jurisdiction over a member if that member resigned during a complaint investigation or disciplinary proceeding. Having an occupational title may help to reduce the likelihood that a member would resign.

xi) *Funding:* Each professional association would be funded under its existing membership fee structure and collection mechanism. The government would continue not to provide any funding in support of their roles.

xii) *Public education:* It would remain for each professional association to promote the occupational titles that it was granted under the *Society Act*.

xiii) *Government oversight:* Government would not have the capacity to provide any meaningful oversight. For example: it could not appoint public representatives; it could not require annual reports with specific information; it could not review or approve the content of bylaws to ensure they were in the public interest; and the Ombudsman would have no jurisdiction to deal with public complaints.

xiv) *Public transparency:* The government would not have the capacity to ensure that the professional associations have established websites that meeting certain criteria and are free to the public, or maintain up-to-date bylaws, or notify the public of the results of disciplinary proceedings, etc.

xviii) *Labour mobility:* An association has no obligations to comply with the labour mobility agreements.

Advantages / Strengths for the government:

- This would provide a limited form of title protection (see above) without need for the Ministry to propose designation under the HPA, or to take any other legislative steps, except to grant an exemption under section 52.1 of the Act to the associations that obtain title protection under the *Society Act*.
- This allows the Ministry to continue to rely on the professional associations to regulate the profession, albeit not with a public protection mandate granted by government.

Advantages / Strengths for the profession:

- The costs of maintaining the association's current regulatory capacity should not increase, so annual membership fees should remain the same.

Disadvantages / Weaknesses for the government/public:

- The Ministry does not recognize volunteer professional regulation as a viable alternative to regulation under a statute like the HPA. Therefore, if this approach was to be pursued the Ministry would have to reverse its previous position against this option.
- This does not address the criticism against the continued use of Part 10 of the *Society Act* that was made by the Royal Commission on Health Care and Costs, and later by the HPC.
- No single definition for counselling therapy is likely to be adopted by the individual organizations to replace their current, member-specific definitions.
- This would not facilitate the regulation of counsellors who are not already members of one of the professional associations.
- The current credentialing approach to setting entry-to-practice standards would not likely change.
- The lack of a common approach to investigating and resolving public complaints would continue.
- While the professional associations would lose jurisdiction over a member who resigns so as to avoid an investigation or disciplinary proceeding, the grant of occupational titles may provide more leverage to ensure such persons remain as members.
- There would be no mechanism for the Minister to appoint public representatives to sit on the boards of the different associations, and the associations would not be required to report to the Minister on how they have carried out their self-proclaimed regulatory functions.

- The Ministry would have no say in the content of the association's bylaws re: complaint investigation, discipline, appeals, quality assurance, etc.
- The Ombudsman would have no jurisdiction to investigate complaints filed against a professional association.
- The Ministry could not require those associations that do not have existing websites to develop such websites, nor could it direct the content of such websites.
- As private organizations, the associations have the authority to limit the number of persons who become members of their society, and thus limit the number of persons who can use the occupational title.

Disadvantages / Weaknesses for the profession:

- It is unlikely the different associations would move to create a single, common Code of Ethics or adopt a uniform set of Practice Standards.

Option Six) A single new society under the *Society Act*

Under this option, a new society would be created that would represent all the counselling professions in BC. Each of the member organizations of the Task Group would disband, and their memberships would be transferred to the New Society, which could be named the BC Association of Counselling Therapists (BCACT). The New Society would obtain title protection for all of the titles that the current associations use, and the Ministry would agree to support a single OTP application for the multiple titles, and to then grant waivers to the New Society under section 52.1 of the HPA for each title.

i) *Social contract:* As above, the profession would play the primary role in setting-up this contract; the Ministry would play a support role. The Ministry can only exercise a very limited degree of control to revoke or amend this contract.

ii) *Form of regulation:* The New Society would obtain protection for each of the titles that the various organizations currently use. Each member organization would then have to give-up any occupational titles it holds under either the *Society Act* or the *Trade-marks Act*, or such rights would disappear on the day that each organization disbanded.

iii) *Defining counselling therapy:* The New Society could develop a single common definition.

iv) *Scope of registrants*: Membership in the New Society may not extend beyond those who currently fall within the ambit of each of professional association's particular clinical focus or interest.

v) *Registration requirements:* The New Society could either adopt the registration criteria currently employed by each of the separate professional associations for each class of membership, or it could create a single registration process similar to what the College of Counselling Therapists is expected to develop.

vi) *Specialty registration:* The New Society should be able to create within its bylaws classes for specific types of specialties or advanced practices.

vii) *Board composition:* The Board could be composed of representatives from the entire membership, or specific seats could be assigned for each specific types of counsellors, reflecting the current composition of the Task Group.

viii) *Ethics and practice standards:* While each professional group could likely retain its existing and unique Code of Ethics and Professional Practice Standards, it would be possible for the New Society to work toward developing a common Code and set of Standards.

ix) *Complaint investigations and resolution:* A single complaint investigation, resolution, disciplinary and appeal process could be developed that would apply to all members of the New Society.

x) *Jurisdiction over former registrants:* The New Society would lose jurisdiction over a member if that member resigned during a complaint investigation or disciplinary proceeding. Having an occupational title may help to reduce the likelihood that a member would thus resign.

xi) *Funding:* The New Society would have to establish a new fee structure, which may also have to take into consideration any specialty or advanced practice registrations. The government would not provide any funding in support of the New Society.

xii) *Public education:* The New Society would have to promote the occupational titles that were granted under the *Society Act*.

xiii) *Government oversight:* Government would not have the capacity to provide any meaningful oversight and the Ombudsman would not have jurisdiction to deal with public complaints.

xiv) *Public transparency:* The government could not ensure that the New Society establish a website that meets certain criteria and is free to the public, or maintain up-to-date bylaws, or notify the public of the results of disciplinary proceedings, etc.

xix) *Labour mobility:* The New Society would have no obligations to comply with the labour mobility agreements.

The same advantages and disadvantages set out under option #5, above, would apply to this option, but with the following refinements.

Advantages / Strengths to the profession:

- The membership fee for the New Society should be a weighted average of the current fees. For some counsellors, this may result in a reduction of their fees. For others, their fees could increase.

Disadvantages / Weaknesses to the profession:

- Each of the member organizations of the Task Group would have to individually agree to merge to create the New Society. Some of these organizations are simply branches of national bodies, so it may not be possible for them to "merge" with a new society.

Option Seven) A "no strings" registration model

This option was raised by the HPC in its final report, and was also discussed as option F in the Logan Report.[64] This option is basically the certification stream approach that has been taken in Washington State, so only the elements of that program will be summarized here. For reasons that will become clear, this model could not be realized under the HPA; a new and separate statute would have to be drafted.

i) *Social contract:* The parties to the contract would be the Ministry of Health Services and the members of the profession, and the Ministry would no doubt retain the authority to amend or revoke the contract. The "exchange of considerations" is addressed next.

ii) *Form of regulation:* The profession would be granted control over a title like Counselling Therapist, or additional titles.

iii) *Defining counselling therapy:* It should be possible to define the scope of practice for the profession within the dedicated statute.

iv) *Scope of registrants:* A wide diversity of counsellors could become members of the new regulatory body, including but not limited to those currently represented by the Task Group organizations.

v) *Registration requirements:*, There are two types of registrations under this option. Persons with specific educational or training criteria can become "certified" and thus entitled to use a particular occupational title, and persons who do not meet those educational or training criteria but simply want to practice counselling can also become

[64] See Logan Report, pages 26 to 27.

registrants entitled to use an occupational title (i.e., "no strings").[65] Time-limited grand-parenting would also be allowed.

vi) *Specialty registration:* This could also be accommodated, but it is likely some assessment of competencies would have to be undertaken before a registrant could claim an area of specialty or advanced practice.

vii) *Board composition:* The board of the regulatory body would be composed of registrants from among the broad scope of all counselling therapists who become members, or--if the government played as significant a role as it does in Washington State–they could be appointed to the government board.

viii) *Ethics and practice standards:* Under the Washington State version of this model, the government plays the lead role in setting the ethical and practice standards for the profession.[66] These could be common to all registrants or they could be differentiated based on areas of practice.

ix) *Complaint investigations and resolution:* Under the Washington State model, it is the government board, not the profession that receives complaints against members of the profession, undertakes investigations, and holds disciplinary hearings, etc. That said, the standard approach to the investigation and resolution of complaints, or even the prosecution of a citation during a disciplinary proceeding as set out under the HPA could be used as a model for the new statute.

x) *Jurisdiction over former registrants:* The new statute would have to make sure that a registrant could not resign from the regulatory body so as to avoid a complaint investigation or a subsequent disciplinary hearing.

xi) *Exemptions:* As there would be little if any admission criteria, there should be no need to consider exemptions.

xii) *Funding:* While the costs of the new regulatory body could be covered under fees payable to the government, the Ministry would have to cover the start-up operating costs.

xiii) *Public education:* The government would have to be responsible for educating the public on the significance of someone who uses the designated occupational titles.

xiv) *Government oversight:* The same mechanisms for government oversight and intervention as set out under the HPA could be incorporated into the new statute.

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[65] All that an applicant needs to provide to become a member of the regulatory body is name, contact information, educational background, title, description of clinical practice, details re: medical history, disclosure of certain criminal or civil legal proceedings, or the denial or loss of another license. The applicant must also complete a four hour AIDS course, read the applicable legislation and agree to pay the annual fee.

[66] Once registered, a Washington counsellor must meet certain minimum standards of practice relating to client consent/confidentiality, maintenance of records, report incidents of abuse or neglect, cooperate with government inspections, payment of fees in advance, and agree not to have sexual contact with a former client for two-years.

xv) *Public transparency:* The same mechanisms to promote openness and transparency, as set out under the HPA, could be incorporated into the new statute.

xvi) *Labour mobility:* The new regulatory body could also be required to act in compliance with both of the labour mobility agreements.

Advantages / Strengths to the public:

- With no requirement for an applicant to have any specific competencies or academic credentials, this approach would ensure that the greatest number of counsellors will become members of the regulatory body.

Disadvantages / Weaknesses to the public:

- With no requirement for an applicant to have any specific competencies, this approach undermines the social policy objective of providing the public with some assurance that a member of the profession possesses at least basic skills, knowledge and attitudes that are necessary to provide safe, ethical and effective counselling therapy. There is the potential to thus mislead the public about quality assurance, when no mechanism exists to provide even a basic degree of such assurance.

Disadvantages / Weaknesses for the government:

- Government would have to agree to devote resources to and pay for the costs for investigating complaints, resolving *bona fide* complaints, and holding disciplinary hearings where complaints cannot be resolved.
- Even if annual fees could cover such costs, the government would still have to pay the start-up costs for this option.

Disadvantages / Weaknesses for the profession:

- This option will result in further delays in the regulation of the counselling profession that would no doubt lead to great frustration within the member organizations of the Task Group, if not amongst individual counsellors and their clients. This could result in deterioration in support for the idea of professional regulation.

CONCLUDING COMMENTS

The Task Group's preferred approach to self-regulation is the first option set out above. Under this option, counselling therapy would be designated as a health profession under the HPA, thereby creating a new College of Counselling Therapists of BC. In the Group's view the nationally validated Competency Profile is the centerpiece that makes this option the most viable.

Under option #1, the profession would be granted control over one or more occupational titles, which would allow the public to continue to obtain counselling or psychotherapy services from psychologists, clinical social workers or other who may not be regulated by a professional body. The scope of practice would not prevent non-registrants from providing counselling therapy; it would be focused on helping the public make informed choices about who they should see for counselling therapy services.

The College of Counselling Therapists would employ a competency-based approach to setting the entry-to-practice standard, and most likely would develop a single registration process to assess the competencies of applicants regardless of their previous training or experience. While developing such a process would be expensive, the Group recognizes that this would be a necessary step in the implementation of this model and, therefore, a path it is willing to pursue. In the future, it may be possible to develop a national registration examination based on the Competency Profile that all the counselling regulatory bodies across Canada could adopt. This would be in keeping with the recently announced changes to the labour mobility chapter in the *Agreement on Internal Trade*.

Option #1 would include the opportunity to create classes of registrants within the Bylaws where areas of specialized or advanced practice could be recognized and regulated. Under this option, it would be possible to regulate counsellors who identify themselves by specific modalities or the clients they serve. In this respect, the model is flexible and can accommodate many professions that are currently affiliated with the Task Group, as well as those that have not yet formed associations.

By way of illustration, the Task Group believes that the new College can regulate the following types of counselling therapists (listed alphabetically):

- Aboriginal counsellors
- Alcohol and drug (addictions) counsellors
- Art therapists
- Career counsellors
- Child care counsellors
- Clinical counsellors
- Dance and movement therapists
- Drama therapists
- Family violence counsellors
- Genetic counsellors
- Geriatric counsellors
- Immigrant counsellors
- Music therapists

- Marriage and family therapists
- Pastoral counsellors
- Psychotherapists
- Spiritual counsellors
- Weight loss counsellors

Despite the potential wide range of therapists to be regulated by the new College, the Task Group does not believe it will be difficult to develop a single, common *Code of Ethics for the Counselling Therapy Profession*, and – in cooperation with the professional associations – it should also be possible to develop standards of practice, in particular for counsellors working in the specialized or advanced practice fields.

The regulatory mechanisms under the HPA would provide a single, common approach for investigating and resolving complaints against all counsellors, which would be a welcomed change from the diverse approaches that each professional association currently employs. And the public would benefit from the government oversight and public accountability provisions of the Act that would apply to the various counselling profession for the first time.

Finally, if the Ministry does not want to pursue option #1 and decides, instead, that it would prefer to see psychology regulated under the same umbrellas as the above list of counselling therapy professions, the Ministry should so advise the College and the Task Group of its reasons for choosing option #3. To implement that decision, the Minister may have to refer this issue to a special advisory panel under Part 1.1 of the HPA.