

**TASK GROUP FOR COUNSELLOR REGULATION  
IN BRITISH COLUMBIA**

***DISCUSSION PAPER***

ONTARIO'S PROPOSED *PSYCHOTHERAPY ACT, 2006*  
*being Schedule Q, Health System Improvements Act, 2006*  
*as introduced in the Ontario Legislature by Bill #171 (2006)*

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## 1) INTRODUCTION

On Tuesday, December 12, 2007, the Hon. George Smitherman, Ontario's Minister of Health and Long-Term Care, introduced in the Ontario Legislature Bill #171 (2006). When this Bill is eventually approved by the Legislature and receives Royal Assent, it will enact the *Health Systems Improvements Act, 2006* (HSIA). This is a lengthy Act of 159 pages, which contains a number of schedules. The last one, Schedule Q, sets out what will become the *Psychotherapy Act, 2006*. For ease of reference, I will refer to this scheduled act in this Discussion Paper as simply the *Psychotherapy Act*.

When it is proclaimed into force, the *Psychotherapy Act* will establish the College of Psychotherapists of Ontario and provide the legislative foundation for regulating psychotherapy in Ontario. The English text of Schedule Q is set out in Appendix A of this Discussion Paper.

In this Discussion Paper, I will explain the legislative framework the Ontario government has used to regulate health professions in that province, and compare it to the framework that is used in BC. With an understanding of the differences between these two frameworks, I will then discuss the salient features of the proposed new *Psychotherapy Act* and identify where the Ontario government has either accepted or rejected (or not acted) on the Ontario Health Professions Regulatory Advisory Council's April 2001 recommendations.<sup>1</sup>

A review of the proposed new *Psychotherapy Act* will be followed a commentary on the apparent problems with this new Act. I will then summarize the major issues that flow from the proposed legislation which are likely to be of greatest interest to the Task Group for Counsellor Regulation (Task Group) as it works to secure the regulation of the counselling professions in BC.

I will end this Paper by proposing a series of questions that the Group could use to guide its deliberations and decision-making, be this by email or in some future meeting (telephone conference call or face-to-face).

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<sup>1</sup> See chapter 7 of *Regulation of Health Professions in Ontario: New Directions*, the report of the Health Professions Regulatory Advisory Council (April 2006).

## 2) COMPARING LEGISLATIVE FRAMEWORKS

Before considering the specific provisions of the proposed *Psychotherapy Act*, it is helpful to identify the different legislative frameworks that the BC and Ontario government's have developed to regulating the health professions in their respective jurisdictions. Understanding the two frameworks is the first step in studying Ontario's proposed new legislation and considering its impact here in BC.

In general terms, "legislation" is the term that describes all forms of government approved or sanctioned rules. A legislative hierarchy exists and it can be summarized as follows (top to bottom):

- The *Constitution* and the *Canadian Charter of Rights and Freedoms* – the foundation legislation which defines the authority of the federal and provincial governments to pass legislation, and sets limits on governments' authority to regulate its citizens;
- Statutes (Acts or enactment) – the primary rules which are approved by a Legislature through instruments called Bills;
- Regulations – the secondary rules which are approved by a Cabinet through instruments called Orders in Council;
- Bylaws or Rules – the third level of rules that are approved by a regulatory body (and sometimes also a Cabinet).

There must be sufficient legislative authority within an enactment to allow for the creation of the subsequent regulations, bylaws or rules. Insufficient rule-making authority can result in a regulation, bylaw or rule being declared *ultra vires* (beyond the authority of) the body that approved it. In a similar way, a provincial (or federal) statute can be challenged as being *ultra vires* the government's legislative authority as allocated in the *Constitution* or in conflict with the *Charter*.

### 2.1) British Columbia

The government of BC has employed what can be described as an "umbrella" framework for organizing its legislation that regulates health professions in this province. The top or covering of the umbrella (so to speak) is a single act, the *Health Professions Act*<sup>2</sup> ("HPA").

The HPA provides an over-arching framework for the regulation of all health professions in BC. Not only does the HPA contain in a single source all the policies that the BC government has made in relation to the regulation of the health professions, but the Act also provides the authority for the Cabinet to bring all health professions under this umbrella by way of what are known as designation regulations.

Under BC's framework, there is no need for the BC Legislature to approve a new Act to designate or regulate a new health profession. Each health profession becomes regulated under the HPA by way of a designation regulation that is itself approved by the Cabinet.

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<sup>2</sup> *Health Professions Act*, R.S.B.C. 1996, c. 183.

Thus BC's umbrella framework is composed of one statute and a series of profession-specific regulations, which are secondary to or fall under the authority of the single Act.

One advantage of the HPA is that it centralizes into a single document all the BC government's policies regarding the regulation of health professions. Thus, if the government decides to change or drop an existing policy or to add a new policy that it wants to apply to all regulated health professions, it can do so by making a single amendment to the HPA, rather than making the same amendment to a number of individual, profession-specific statutes.

A profession-specific designation regulation approved under the HPA typically contains only a few sections that do the following:

- designates the profession as a "health profession" under the HPA;
- names the resulting College;
- defines the scope or practice for the profession;
- grants one or more occupational titles that will be exclusive for that profession.

Many but not all health professions may also be granted one or more reserved actions (or sub-sets of such actions), which can also be "shared" across different professions. So, for example, physicians are to be granted a broadly framed reserved action of diagnosis, but other professions like dentistry will be granted a narrower version (the one for dentists focuses on diseases, disorders and conditions of the orofacial complex and associated structures).

Currently in BC, there are 15 designation regulations that have established colleges to regulate 17 distinct health professions under the HPA, as follows (in alphabetical order by regulation):

- Dental Hygienists Regulation, B.C. Reg. 486/94
- Dental Technicians Regulation, B.C. Reg. 509/95
- Denturists Regulation, B.C. Reg. 68/2000
- Dietitians Regulation, B.C. Reg. 296/2002
- Licensed Practical Nurses Regulation, B.C. Reg. 71/96
- Massage Therapists Regulation, B.C. Reg. 484/94
- Midwives Regulation, B.C. Reg. 103/95
- Naturopathic Physicians Regulation, B.C. Reg. 449/99
- Nurses (Registered) and Nurse Practitioners Regulation, B.C. Reg. 233/2005
- Occupational Therapists Regulation, B.C. Reg. 432/98
- Opticians Regulation, B.C. Reg. 487/94
- Physical Therapists Regulation, B.C. Reg. 485/94
- Psychologists Regulation, B.C. Reg. 442/99
- Registered Psychiatric Nurses Regulation, B.C. Reg. 115/99
- Traditional Chinese Medicine Practitioners and Acupuncturists Regulation, B.C. Reg. 385/2000

The recent set of four proposed new designation regulations would add five more professions to this list: chiropractors, dentists, medical practitioners (and osteopaths), and

pharmacists. A regulation for optometrists is still being developed. Each of these “remaining professions” are currently regulated by separate statutes that will be repealed once their designation regulations are approved under the HPA. In addition, hearing instrument practitioners (who are currently regulated under the *Hearing Aid Act*) will be designated along with speech-language pathologists and audiologists to form a new College of Speech and Hearing Health Professionals.

## 2.2) Ontario

The government of Ontario has used what can be described as a “satellite” framework to organize its legislation for regulating health professions working within its jurisdiction. The centre of this framework is a statute known as the *Regulated Health Professions Act, 1991*<sup>3</sup> (RHPA).

Outside of the central RHPA, and on an equal footing within the legislative hierarchy, are a series of 21 individual, profession-specific statutes that in turn regulate over two dozen distinct health professions (statutes listed in alphabetical order):

- Audiology and Speech-Language Pathology Act, 1991
- Chiropractic Act, 1991
- Chiropractic Act, 1991
- Dental Hygiene Act, 1991
- Dental Technology Act, 1991
- Dentistry Act, 1991
- Denturism Act, 1991
- Dietetics Act, 1991
- Massage Therapy Act, 1991
- Medical Laboratory Technology Act, 1991
- Medical Radiation Technology Act, 1991
- Medicine Act, 1991
- Midwifery Act, 1991
- Nursing Act, 1991
- Occupational Therapy Act, 1991
- Opticianry Act, 1991
- Optometry Act, 1991
- Pharmacy Act, 1991
- Physiotherapy Act, 1991
- Psychology Act, 1991
- Respiratory Therapy Act, 1991

The RHPA contains most but not all of the Ontario’s government’s policies regarding the regulation of health professions. For example, the central statute contains a procedural code that governs how all professions must conduct complaint investigations, etc. Each of the satellite statutes refer to and incorporate by reference this Procedural Code, thus creating a legislative bridge between the central statute and each of the satellite statutes.

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<sup>3</sup> *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18

Each of the satellite statutes contains the remaining policy decisions concerning each profession. For example, the proposed *Psychotherapy Act* is made up of 21 sections, although many of those are transitional provisions or amend other statutes. The central or core provisions of a satellite statute in Ontario, however, are similar to BC’s designation regulations, in that each statute:

- designates the profession as a “health profession” under the RHPA;
- names the resulting College;
- defines the scope or practice for the profession;
- grants one or more exclusive occupational titles; and
- may also authorize a member of the College to perform one or more of the controlled acts, as set out under the RHPA.

Depending on the policy changes that the Ontario government intends to make, it may have to amend up to 21 separate statutes.<sup>4</sup> Unlike in BC, if the Ontario government wishes to establish a new health profession, it must do so by introducing a new Act by way of a Bill that is tabled before the Ontario Legislature. This can be a more time-consuming and difficult process than establishing a profession by way of a designation regulation, the approach taken in BC.

### 2.3) Summary

The legislative frameworks of BC and Ontario can be summarized and compared in the following table:

<i>Feature</i>	<i>British Columbia</i>	<i>Ontario</i>
Type of legislative framework for regulating the health professions	Umbrella	Satellite
What level of government makes the decision to designate a profession?	The Cabinet (in the form of the Lt. Governor in Council)	The Legislature
What form does this designation take place?	By a Designation Regulation under the regulation-making authorities of the HPA	By a Statute (or Act)
What is involved in making a legislative change that would effect all the health professions?	Needs to amend only the HPA	May have to amend the RHPA and each of the 21 satellite, profession-specific statutes

<sup>4</sup> An illustration of this problem can be found in the proposed *Health System Improvements Act, 2006*, as other schedules within this Act amend a number of the profession-specific statutes that are listed above.

### **3) THE PROPOSED PSYCHOTHERAPY ACT**

As noted above, the *Psychotherapy Act* is the last schedule in the proposed *Health System Improvement Act, 2006*. The English version of the Act is set out in full in appendix A of this Discussion Paper. Under this heading, I will set out the major provisions of the proposed Act as a springboard to discuss these provisions in the next chapter of this Paper. This presentation will not follow the same sequence as the sections are numbered in the *Psychotherapy Act*.

For each of the major provisions of the *Psychotherapy Act* summarized here, I will refer to the corresponding recommendations of the Ontario Council that it issued in chapter 7 of its April 2006 report, *New Directions*.<sup>5</sup> (The Council's recommendations are set out in Appendix B of this Paper.) However, as many of those recommendations were more procedural than substantive in nature, I will focus on those that have major policy implications.

There are a number of provisions in the *Psychotherapy Act* that will establish Transitional Council. This Council will be mandated to set up and administer the College until such time as a College Council can be elected from amongst the new registrants. The *Psychotherapy Act* also contains a number of sections that amend other Acts, some of which will be noted here.

#### **3.1) College established and named**

Section 5 of the *Psychotherapy Act* states:

The College is established under the name College of Psychotherapists of Ontario in English and Ordre des psychothérapeutes de l'Ontario in French.

Subsequent sections prescribe the composition of the College's Council (section 6(1)), who can vote in elections to the Council (section 6(2)), and the positions of President and Vice-President who must be elected each year from amongst the Council members (section 7).

These sections implement the Ontario Council's recommendations 1, 2, 4 and 6, as set out in chapter 7 of *New Directions*.

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<sup>5</sup> Health Professions Regulatory Advisory Council of Ontario, *Regulation of Health Professions in Ontario: New Directions* (April 2006).

### **3.2) Scope of practice**

Section 3 of the *Psychotherapy Act* defines:

The practice of psychotherapy is the assessment and treatment of cognitive, emotional or behavioural disturbances by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication.

This section implements in part the Ontario Council recommendation 3(1). I will discuss the differences between the Council's recommended wording and the statutory definition in chapter 5, below.

### **3.3) Controlled (Authorized) Act**

The *Regulated Health Professions Act, 1991* (RHPA) contains a list of controlled acts which persons who are not registrants of a college authorized to perform such acts are prohibited from providing to the public. In order to be allowed to perform one or more controlled acts or some sub-set of such an act, the profession's governing statute must expressly grant the authorized act. Under Schedule Q, the controlled act of "psychotherapy" is granted to members of the College of Psychotherapy, and later it also adds psychotherapy as a controlled act under the RHPA.

Section 4 of the *Psychotherapy Act* states:

In the course of engaging in the practice of psychotherapy, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to treat, by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

Later, section 19 of the *Psychotherapy Act* amends the RHPA at section 27(2) by adding a new controlled act:

14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

These sections in the *Psychotherapy Act* are a significant departure from the Ontario Council's recommendation 3(2): that psychotherapy should become an "enforceable scope of practice". Clearly, the government's lawyers advised the Ministry that the Council's recommendation was bad policy and legally problematic. While one can argue

with the government's decision to then make psychotherapy a controlled act, that option is preferred over making psychotherapy an enforceable scope of practice.<sup>6</sup>

### **3.4) Restricted titles and representations**

Titles will be controlled in two ways under the *Psychotherapy Act*. First, section 8(1) states that:

No person other than a member shall use the title Psychotherapist or Registered Mental Health Therapist, a variation or abbreviation or an equivalent in another language.

Next, section 8(2) controls non-members who attempt to represent their qualifications:

No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a psychotherapist or a registered mental health therapist.

These sections implement in part the Ontario Council's recommendations 7 and 8: that only members of the new College be entitled to use the title Psychotherapist. However, recommendation 7 went further and proposed that psychologists, physicians, social workers and nurses who practice psychotherapy should also be able to use this title. This aspect of recommendation 7 is not reflected in the *Psychotherapy Act*, nor is it found in any of the other schedules of the proposed HSIA.

In its report, the Ontario Council made no recommendation with respect to the title Registered Mental Health Therapist. In fact, the Council went to some lengths to try to separate the regulation of psychotherapy from the regulation of counselling (however described), and focused its recommendations only on psychotherapy. I will discuss the origins of this new title in more detail in chapter 4, below.

### **3.5) Complementary amendments to other satellite statutes**

As noted above, the *Psychotherapy Act* contains a number of sections that amend other statutes. In one form or other, each of the following satellite statutes were amended to authorize the corresponding profession to perform the new controlled act of psychotherapy:

- *Medicine Act, 1991* at section 4;
- *Nursing Act, 1991* at section 4;
- *Occupational Therapy Act, 1991* by adding section 3.1;
- *Psychology Act, 1991* at section 4.

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<sup>6</sup> For a discussion on this point, see Task Group, *Commentary on the Ontario Health Professions Regulatory Advisory Councils Recommendations re: the Regulation of Psychotherapy*, as pages 15 to 26 (June 16, 2006).

In each case the wording of the authorized act of psychotherapy is the same as the one being granted to Psychotherapists in section 4 of the proposed Act.

These amendments are in keeping with the Ontario Council recommendation 3(2), with two noted exceptions. The Council recommended that social workers also be entitled to practice psychotherapy, but this is not reflected in the proposed Act. On the other hand, the government has gone further and granted this controlled act to occupational therapists (at least those with the necessary training), but the Council did not recommend this addition. These issues will be discussed further under topic #4.5, below.

#### 4) PROBLEMS WITH THE PROPOSED ACT

My initial review of the proposed *Psychotherapy Act* has led me to identify a number of problems with this proposed legislation which, if not addressed, are likely to create significant challenges for the Transitional Council or, worse, make the legislation very difficult to administer. I will summarize these problems in this chapter and then discuss the implications of the proposed *Psychotherapy Act* for the Task Group in the next one.

##### 4.1) Psychotherapy as a scope definition and as a controlled act

As should be apparent from the discussions in topics 3.2 and 3.3, above, the *Psychotherapy Act* defines psychotherapy in two different ways and for two different purposes. The first definition (found in section 3 of the *Psychotherapy Act*) sets out the scope of practice, which describes what Psychotherapists do; the second one (found in section 19, which amends section 27(2) of the RHPA), sets out a narrower description of psychotherapy as a controlled act. It is instructive to compare these two terms in the following table:

<i>Section 3 Psychotherapy Act “scope of practice” of psychotherapy</i>	<i>Section 27(2).14 RHPA “controlled act” of psychotherapy</i>
The practice of psychotherapy is the assessment and treatment of cognitive, emotional or behavioural disturbances by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication	Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual’s serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual’s judgement, insight, behaviour, communication or social functioning

The primary difference between psychotherapy as a scope definition and psychotherapy as a controlled act is a matter of “degrees of seriousness” or risk of harm. Controlled acts in Ontario (reserved action in BC) are worded to describe an area of practice within the broader sphere of professional practice where it is possible to identify a high risk of serious harm to the public if that service or function is not performed by someone with the necessary competencies. Thus, it is not surprising that the formulation of psychotherapy as a controlled act focuses on “serious disorders” that may “seriously impair” an individual in specific ways.

Whether this description of psychotherapy as a controlled act will be meaningful in either practice or a court of law, is a subject for a later discussion and debate. One can, however, compare the wording of this proposed controlled act to those that have been formulated for other high-risk health care services. (See the list of current controlled act in Ontario as set out in section 27(2) of the RHPA.) In these other cases, it is readily apparent what the risks are and the nature of the resulting physical harm. The same cannot be said for the proposed controlled act of psychotherapy.

The other differences between the scope definition and the controlled act of psychotherapy go beyond the “serious” distinction and are more a matter of detail. The scope definition for psychotherapy speaks generally of “cognitive, emotional and behavioural disturbances” while the controlled act of psychotherapy is more specific and refers to “disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual’s judgement, insight, behaviour, communication or social functioning.”

The scope of practice also refers to “a therapeutic relationship based primarily on verbal or non-verbal communication”, while the controlled act uses the phrasing: “treating, by means of psychotherapy technique, delivered through a therapeutic relationship”.

For these reasons, it would appear that the controlled act of psychotherapy would fit within the broadly described practice of psychotherapy.

On the other hand, the fact that psychotherapy has two meanings in the proposed *Psychotherapy Act* as a practice description and as a controlled act could create problems for how the Act will be read and interpreted. It would have been preferable if the Act had defined counselling in a broad and expansive form (and as including psychotherapy, as was recommended by the Task Group), and then proposed a single narrow definition for psychotherapy as a controlled act that would fall within that definition. Instead, by creating two terms that must relate to each other, the Ontario Ministry may be creating more confusion than clarity.

#### **4.2) Why the new title Registered Mental Health Therapist?**

As noted in topic #3.4, above, section 8(1) of the *Psychotherapy Act* introduces two restricted titles for the exclusive use of registrants of the new College of Psychologists. One of these titles is new: Registered Mental Health Therapists (RMHT). The Ontario Council made no recommendations in chapter 7 of *New Directions* concerning these therapists or even what title they should be given. In fact, the Council went to great lengths to try to distinguish between psychotherapy and counselling, and between Psychotherapists and Counsellors. The Council focused its recommendations on regulating psychotherapy to the expressed exclusion of counselling in any form.

It now appears that by adding the title RMHT the Ontario government is moving away from the Ontario Council report, at least on those issues where the Council was not prepared to address the need to regulate counselling. Instead, the government appears to be trying to bring mental health therapists into its proposed regulatory model for Psychotherapists. But in doing so, one must ask: Why did the Ministry not simply use the term Counsellor, or Counselling Therapist, or Clinical Counsellor instead? These are commonly used descriptions and more widely accepted than RMHT. An answer to this question appears to be based on a technical problem within the RHPA itself.

Section 30(1) of the RHPA sets out what is commonly referred to as the residual harm clause. This section states:

*Treatment, etc., where risk of harm*

30(1) No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious physical harm may result from the treatment or advice or from an omission from them.

The purpose of this provision is to cover any risk that may arise from services or functions that have *not* been regulated within the controlled acts as set out in section 27 of the RHPA. Thus, this is a “residual” prohibition provision of the Act.

Section 30(4) of the RHPA creates an exclusion to the residual harm clause and it reads:

*Counselling*

(4) Subsection [30](1) does not apply with respect to counselling about emotional, social, educational or spiritual matters.

Apparently, the Ministry was concerned that, if it adopted or used an occupational title like Counsellor, Counselling Therapist or Clinical Counsellor to identify those therapists who provide counselling services to the public but who do *not* also provide any form of psychotherapy, then those titles and any description of the services provided by these counsellors would conflict with section 30(4) of the Act. Rather than amend this section to remove or resolve such a conflict, the Ministry chose instead to create the new title of a RMHT.

This is also an unfortunate policy decision for another reason. Simply because section 30(4) of the RHPA may have the legal effect of exemption counselling from the residual harm clause, this does not mean that – as a matter of policy or law – it is not possible to use counselling to describe a profession regulated under the Act. The policy and legislative officials within the Ministry appear to be trying to bend over backwards to avoid a problem that does not really exist. As a result, they have avoided a fundamentally important decision they could have made: To bring the regulation of all forms of mental health counselling in under the same regulatory model that would include the regulation of psychotherapy. That the Ministry appears to have squandered this opportunity in the proposed *Psychotherapy Act* is regrettable, but hopefully this problem can be corrected when the Schedule Q is subjected to review by the Legislature sitting in Committee.

On the other hand, while some may protest this decision – preferring titles like Counsellor, Counselling Therapist or Clinical Counsellor to describe those who do not routinely provide psychotherapy to the public – the fact that a new title has been created to avoid the questionable conflict with section 30(4) of the RHPA is not as profound a problem, at least not compared to the problems which flow from adding this apparently new profession into the regulatory model. In fact, the deficiencies with the proposed *Psychotherapy Act* would exist even if the Ministry had decided to adopt any one of the counselling titles. These more fundamental problems will be explored next.

### **4.3) What about a scope definition for a Registered Mental Health Therapist?**

One scope of practice definition that is noticeable absent from the proposed *Psychotherapy Act* is a description of the practice of a Registered Mental Health Therapists. As noted under topic #3.4, this new title is to be granted to members of the new College, presumably for those who do *not* provide psychotherapy or want to call themselves Psychotherapists. (Neither of these conditions are expressed or addressed within the proposed Act.) The absence of a description of the practice of a RMHT creates a number of problems, for example:

- It is not clear what the Legislature intended in relation to regulating this type of therapist or what role they are to play within the new College;
- It is not clear how distinct a RMHT is from a Psychotherapist, and in particular whether or not there is a significant overlap in their respective clinical practices.

The absence of a definition for the scope of practice of a RMHT within the proposed *Psychotherapy Act* may be disappointing, but it is not entirely unexpected. In its April 2006 report, the Ontario Council did not propose that these types of therapists be regulated along with Psychotherapists, nor did the Council propose anything in the way of a definition of the scope of these therapists. Indeed, it appears that a RMHT is a totally new term that was created by the Ministry to help it deal with the protests and lobbying efforts of Ontario counsellors in response to the Council's misguided obsession with regulating psychotherapy to the exclusion of counselling. Bringing this type of therapist into a regulatory model that is clearly focused on psychotherapy without providing something in the way of a practice description creates a host of policy and legal problems.

Unless the Minister amends Schedule Q to deal with these problems, it is likely that the Transitional Council will be faced with a number of significant challenges as it works on developing a meaningful operational plan for regulating both Psychotherapists and RMHTs. For example the Council will have to address the following sorts of questions:

- Is a RMHT simply a therapist or counsellor who has not (yet) obtained the advanced competencies that are necessary to perform the controlled act of psychotherapy? If so, does this help to locate these therapists within the scope of practice of a Psychotherapist?
- Or is a RMHT some other type of therapist or counsellor who is on a more equal footing with a Psychotherapist but who simply does not provide psychotherapy services? And, if so, in what way does the clinical practice of a RMHT relate and compare to that of Psychotherapist? How different or similar are they?
- In either case, what should be the admission criteria for registering a RMHT with the new College? How different would those be compared to the admission criteria for a Psychotherapist?
- And what are the standards of practice and code of ethics that the new College should apply to RMHTs? And how different would those be compared to the standards and code that would apply to Psychotherapists?

These are the sorts of obvious policy questions one would have thought the Ministry would have take into consideration before adding in the title RMHT, be they then articulated within the proposed *Psychotherapy Act* or addressed in subsequent discussion papers. The lack of any policy guidance from the Ontario government on these issues is a serious deficiency with its proposed regulatory model.

It would seem that under the proposed *Psychotherapy Act*, RMHTs and Psychotherapists would share the same practice description, as proposed in section 3. However, because RMHTs would *not* be able to perform the controlled act of psychotherapy that is to be granted to Psychotherapists under section 4, their particular scope would be narrower than that of Psychotherapists because it would have to expressly exclude this controlled act. To illustrate the result, the following is what the scope for RMHTs could look like:

The practice of a Registered Mental Health Therapists is the assessment and treatment of cognitive, emotional or behavioural disturbances by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication, *except that* a Registered Mental Health Therapists may *not* provide treatment, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning

When reading the proposed Act there are two practice descriptions. The first for Psychotherapists expressly includes psychotherapy as a controlled act that can be performed by Psychotherapists. The second for RMHTs excludes *by implication* the psychotherapy controlled act for these therapists. Given this distinction, it is likely that there will have to be two different entry standards. Specifically, it would appear that RMHTs would *not* need to be licensed to provide psychotherapy (as a controlled act). Therefore, they should enjoy a lower entry standard than Psychotherapists. RMHTs would have to demonstrate competencies in those aspects of a Psychotherapists scope *except* those addition ones that would be required to provide psychotherapy.

#### **4.4) Can other Ontario health professions use the title Psychotherapist?**

In its April 2006 report, the Ontario Council recommended that the members of other colleges be granted the right to provide psychotherapy and, in turn, use the title Psychotherapist (see recommendations 3(2), 8 and 9). But nowhere in the proposed *Psychotherapy Act* or in any other schedule of the HSIA is there a provision that speaks to this issue. As noted above, a number of sections of the *Psychotherapy Act* give various of the currently regulated health professions the authority to perform the controlled act of psychotherapy, but there is no corresponding amendments to their satellite statutes that would give these professionals the right to also use the title Psychotherapist (be this alone

or hyphenated with their profession's own title, as has been proposed in Quebec last year<sup>7</sup>).

The absence of a provision anywhere in the HSIA or the *Psychotherapy Act* that addresses the use of the title of Psychotherapist by other health professions who will be granted the controlled act of psychotherapy is a glaring omission from the proposed legislation. No explanation is given for this missing piece of the puzzle. And its absence will create real problems.

For example, the Ontario Council recommended that the regulatory bodies for all professions that would perform psychotherapy work together to establish (common) high minimum qualifications and general standards for the practice of psychotherapy under their respective professions (recommendation 15). The Council went on to recommend that if a college failed to establish these qualifications and standards, those set by the College of Psychotherapists would be deemed to apply (recommendation 16). Given that psychotherapy is really more of a modality or a form of therapy that is performed by a range of professions than it is a distinct or unique profession, these two recommendations are imminently reasonable if not necessary for the optimum regulation of this activity. The Ontario Ministry's failure to address these important consequential issues in the proposed *Psychotherapy Act* make the entire legislative exercise doubtful.

#### **4.5) What about social workers? And why occupational therapists?**

The Ontario Council had included social workers amongst the professions that should be able to provide psychotherapy and, therefore, entitled to use the title Psychotherapist. As was the case above, there is no provision in the *Psychotherapy Act* or the other schedules of the HSIA that speak to this issue. It appears, therefore, that the government has rejected this aspect of the Council's recommendations. The reason is likely because social workers are not subject to the regulated *Health Professions Act, 1991*, and their governing legislation is administered by a totally different ministry, so it would be difficult to bring them into the legislative constellation that regulates Ontario's health professions.

On the other hand, the Ontario Council made no recommendation concerning whether or not occupational therapists should be able to perform psychotherapy. In fact, there is no mention of this profession anywhere in the Council's April 2006 report. Despite the absence of a supporting recommendation, section 17 of the *Psychotherapy Act* grants to this profession the ability to perform psychotherapy as a controlled act. It would appear that this will be the first controlled act that will be granted to occupational therapists by the Ontario government, as the current version of the *Occupational Therapy Act, 1991* contains no controlled acts whatsoever.

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<sup>7</sup> *Report of the Quebec Expert Committee on Modernizing Professional Practice in Mental Health and Human Relations* (December 2005).

There was no explanation for these two policy decisions in the supporting documents provided by the Ministry on the day that the proposed *Psychotherapy Act* was tabled in the Ontario Legislature as part of the larger HSIA.

## **5) IMPLICATIONS FOR THE TASK GROUP**

My initial review of the proposed *Psychotherapy Act* has led me to identify a number of issues which may have significant impacts on the work of the Task Group as it pursues its objective of having counselling therapists designated under BC's HPA.

### **5.1) Where did the controlled act of psychotherapy come from?**

In chapter 7 of its April 2006 report, the Ontario Council proposed a definition for psychotherapy in these terms:

Psychotherapy is the provision of a psychological intervention or interventions, delivered through a therapeutic relationship, for the treatment of cognitive, emotional or behavioural disturbances.

Unfortunately, the Council used this definition to describe the profession's scope of practice and to define a controlled act of psychotherapy. For the purposes of this topic, I will apply this definition as a controlled act.

In the *Psychotherapy Act*, the Ontario government is proposing a controlled act of psychotherapy that would read:<sup>8</sup>

Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

The origins of this proposed controlled act of "psychotherapy" can be traced back to a similar activity that is regulated under Alberta's somewhat cumbersome health professions legislation. A restricted activity of "psychosocial intervention" has been defined in Alberta's legislation in these terms:<sup>9</sup>

to perform a psychosocial intervention with an expectation of treating a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs (i) judgment, (ii) behaviour, (iii) capacity to recognize reality, or (iv) ability to meet the ordinary demands of life.

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<sup>8</sup> Section 19 of the *Psychotherapy Act* will amend the *Regulated Health Professions Act, 1991* at section 27(2) by adding this as the 14<sup>th</sup> controlled act.

<sup>9</sup> Clause 2(1)(p), Schedule 7.1 "Health Services Restricted Activities", *Government Organization Act*, R.S.A. 2000, c. G-10.

Persons who are not members of a college established under a schedule to Alberta’s *Health Professions Act*<sup>10</sup> are prohibited from performing this and other restricted activities.

These three terms are compared in the following table, using the four components that the Task Group determined are necessary to address when framing or defining any profession’s scope of practice:

- There should be ACTION verbs to describe what the profession does;
- The SUBJECT or the focus of those actions should be identified;
- The PURPOSE underlying the actions should be summarized;
- Finally, the METHODS the profession generally employs should describe in general terms, without listing everything in detail.<sup>11</sup>

<i>Ontario’s the Ontario Council definition of psychotherapy</i>	<i>Ontario’s Bill #171 (2006) controlled act definition of psychotherapy</i>	<i>Alberta’s restricted activity of psychosocial intervention</i>
<b>ACTION (what the profession does)</b>		
the provision of a psychological intervention or interventions	treating	to perform a psychosocial intervention
<b>SUBJECTS (who receives the service)</b>		
<i>Not specified</i> ; may presume it applies to persons with cognitive, emotional or behavioural disturbances	an individual	<i>Not specified</i> ; may presume it applies to persons who are suffering from a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs (i) judgment, (ii) behaviour, (iii) capacity to recognize reality, or (iv) ability to meet the ordinary demands of life.

<sup>10</sup> *Health Professions Act*, R.S.A. 2000, c. H-7.

<sup>11</sup> Based on the Task Group for Counsellor Regulation, *Discussion Paper on the Issues Relating to the Regulation of Psychotherapy and Psychotherapists in Ontario*, a submission to the Health Professions Regulatory Advisory Council of Ontario (October 28, 2005) at page 15. While I appreciate that the Task Group’s components were originally applied to analyzing scope definitions, they can also be applied to help study reserved actions or controlled acts, as these described activities must themselves fall within the ambit of a scope of practice definition.

PURPOSE (what is the objective of the provided service)		
for the treatment of cognitive, emotional or behavioural disturbances	[to treat] an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning	with an expectation of treating a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs (i) judgment, (ii) behaviour, (iii) capacity to recognize reality, or (iv) ability to meet the ordinary demands of life.
METHODS (in general terms, what methods are employed by the profession)		
delivered through a therapeutic relationship	by means of psychotherapy technique, delivered through a therapeutic relationship	<i>Not specified.</i>

By this comparison, it become clear that Ontario used Alberta's definition of a psychosocial intervention as the basis for its controlled act of psychotherapy, but that it also incorporated elements from the Ontario Council's definition. Specifically, Ontario has adopted the "purpose" component of Alberta's definition, and expanded the "methods" component proposed by the Ontario Council.

## 5.2) Could psychotherapy become a reserved action in BC?

Despite the fact that, in 2001, BC's Health Professions Council rejected the proposal from BC psychologists that there should be a reserved action established under BC's HPA to regulate who may or many not perform psychotherapy,<sup>12</sup> with both Quebec and Ontario now proposing to directly regulate psychotherapy (and given that Alberta currently regulates a related service), BC's Ministry of Health may be forced to reconsider the Council's early recommendation. The Ministry may now reject the Council's 2001 recommendation not to regulate this activity and, instead, add it to the list of actions recently proposed in the Reserved Actions Regulation. If BC does follow the other Canadian jurisdiction, this would have implications for the Task Group and the regulatory model that it is developing.

For example, the Task Group may be faced with the prospect of having to consider sooner than later whether any members of the long-anticipated College of Counselling Therapists should be able to or need to perform psychotherapy *as a reserved action*. If the Groups decides psychotherapy should be granted to those regulated by the new College, this may require the development of an areas of specialty practice for psychotherapy sooner rather than later.

<sup>12</sup> Health Professions Council, *Safe Choices*, Part I – Vol. 2 "Post-Hearing Update of Preliminary Report – Psychologists" (March 2001).

### **5.3) Could BC follow Ontario's lead and regulate only psychotherapy?**

If BC does adopt some form of reserved action of psychotherapy within the HPA, in particular if the government moves to add psychotherapy (however defined) as a new reserved action within the Reserved Actions Regulation, a logical question is: Could the BC Ministry not also follow Ontario's lead and regulate only psychotherapy and, in particular, not include counselling? In other words, could the Ministry depart from its proposed College of Counselling Therapists of BC and opt instead to establish a College of Psychotherapists of BC?

I think this option is highly unlikely for a number of reasons. First, this would run counter to the Council's 1997 recommendations on the need to regulate counselling in some form. Second, BC does not face the same legislative problem with its residual harm clause as apparently exists within Ontario's legislation. Finally, the Ministry seems committed to making its regulatory model as broad and as inclusive as possible, while Ontario's model is exclusive and focuses on Psychotherapists.

### **5.4) How does the practice description for psychotherapy compare to the definition of a counselling therapist?**

In this section, I will compare Ontario's practice description for psychotherapy to the Task Group's definition of a counselling therapist. I will do so to identify any meaningful differences, but also to point out important similarities.

As noted above, the section 3 of the *Psychotherapy Act* states:

The practice of psychotherapy is the assessment and treatment of cognitive, emotional or behavioural disturbances by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication.

In 2005, the Task Group refined a definition of the scope of practice for counselling therapists in these terms:<sup>13</sup>

The practice of Counselling Therapy assists people experiencing difficulties in relationships, or within themselves, and enhances their growth and well-being, by making use of relational, conversational, somatic, expressive, or educational methods and techniques informed by established counselling and psychotherapeutic theories, research, ethical standards, human diversity and the range of human traditions.

The same analytical tool that was used to compare the reserved actions in topic #5.1, above, can be applied to compare these two definitions, as follows:

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<sup>13</sup> Approved by the Task Group for Counsellor Regulation in British Columbia on September 13, 2005.

<i>Section 3 Psychotherapy Act “scope of practice” of psychotherapy</i>	<i>Task Group’s definition of a counselling therapist</i>
ACTION (what the profession does)	
To assess and treat: “the assessment and treatment of cognitive, emotional or behavioural disturbances	To assist “people experiencing difficulties in relationships, or within themselves, and enhances their growth and well-being”
SUBJECTS (who receives the service)	
<i>Not specified</i> ; implied as people who are suffering from cognitive, emotional or behavioural disturbances	people [who are experiencing difficulties in relationships, or within themselves, and who want to enhance their growth and well-being]
PURPOSE (what is the objective of the provided service)	
<i>Not specified</i> ; implied as trying to remove or minimize the suffering of people who are experiencing cognitive, emotional or behavioural disturbances	[to assist] people experiencing difficulties in relationships, or within themselves [to enhance the] growth and well-being [of people]
METHODS (in general terms, what methods are employed by the profession)	
by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication	by making use of relational, conversational, somatic, expressive, or educational methods and techniques informed by established counselling and psychotherapeutic theories, research, ethical standards, human diversity and the range of human traditions.

On the basis of this admittedly simple comparison, it is possible to conclude the following:

1. *Different actions are involved*: While psychotherapy involves assessment and treatment, counselling therapy involves assisting and enhancing. Therefore, it appears that psychotherapy is more “clinical” in nature than counselling.
2. *Different subjects are helped*: Both practices are focused on assisting people, but there may be a difference in the types of clients that are seen, at least in terms of the intensity of their symptoms.
3. *Each has a different purpose*: The implied purpose of psychotherapy is to help those who are suffering from “cognitive, emotional or behavioural disturbances”, while for counselling therapy the purpose is to assist people who are experiencing difficulties in relationships, or within themselves, and to enhance personal growth and well-being. Thus, psychotherapy appears to focus on more serious mental health problems that is the case for counselling therapy, with its admittedly broader focus.
4. *And the methods are also different*: Psychotherapy is provided by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication, while counselling therapy

makes use of use of relational, conversational, somatic, expressive, or educational methods and techniques informed by established counselling and psychotherapeutic theories, research, ethical standards, human diversity and the range of human traditions. It may be that the methods employed in psychotherapy are simply one of a set of methods that are also used in counselling therapy.

I do not want to place too much emphasis on the apparent difference between the practice of psychotherapy and counselling therapy. These two definitions evolved in quite diverse ways and for two different purposes. Also, this has been a linguistic analysis, not a true comparison of actual clinical practice or even a meaningful comparison of defined professional competencies. Such an in-depth analysis could generate quite different conclusions.

Perhaps of greater importance, it is likely that the practice description of a counselling therapist would include the more advanced or specialized practice of psychotherapy. In this respect, the comparison of these two practice descriptions is like one being made between a small apple and a very large orange.

Regardless of the strengths or weaknesses of this comparison, a fundamental question remains: What impact will the practice description of psychotherapy proposed in Ontario's *Psychotherapy Act* have on the generalist/specialist regulatory model that the Task Group is proposing? In other words, is it possible to see a specialist classification of Psychotherapy emerge within the BC model that would be for those counselling therapists who have obtained advanced training in this apparently high-risk procedure?

## 6) QUESTIONS FOR THE TASK GROUP TO CONSIDER

In this final chapter of the Discussion Paper, I will simply set out the sorts of questions that I believe the Task Group will need to discuss as it considers its options in the fact of the proposed *Psychotherapy Act* from Ontario.

I have tried to organize and sequence these questions in a way that makes the most sense, but I do not claim that the following is the best way to organize the issues. Also, this is not an exhaustive list and I encourage the Group representatives to develop their own questions to add to the discussions.

Finally, some of these questions may be ones that the Group cannot answer or address now, but which will have to be left for later discussions.

### 6.1) Substantive issues arising from the proposed Act

1. Is the proposed scope of practice description of psychotherapy proposed in section 3 of the *Psychotherapy Act* appropriate? If not, why not?
2. What changes to the section 3 description should be made? And why?
3. Is the proposed controlled act of psychotherapy to be added to section 27(2) of Ontario's existing *Regulated Health Professions Act* appropriate? If not, why not?
4. What changes to the controlled act of psychotherapy should be made? And why?
5. Is it appropriate to bring into the regulatory model proposed by the *Psychotherapy Act* a new profession that would apparently not be entitled to provide psychotherapy?
6. Is the title Registered Mental Health Therapist the best one to describe these practitioners? Or should the Ontario government use some other term to name those who will apparently not provide psychotherapy?
7. What would be an appropriate description of the clinical practice of a Registered Mental Health Therapist (or the other name for those who will apparently not provide psychotherapy)? And how would that description relate to the scope of practice of Psychotherapists?
8. What problems can be identified by bringing Registered Mental Health Therapist (or those who will apparently not provide psychotherapy) into the proposed regulatory model *in addition* to those described in topic #4.3?
9. Should the professions of medicine, nursing and psychology also be allowed to perform psychotherapy? And call themselves Psychotherapists (with or without linking to their current title)? If not, why not?
10. Should social workers also be allowed to perform psychotherapy? And call themselves Psychotherapists (with or without linking to their current title)? If not, why not?

11. Should occupational therapists also be allowed to perform psychotherapy? And call themselves Psychotherapists (with or without linking to their current title)? If not, why not?

## **6.2) Issues of concern for the Task Group**

12. Given the answers to questions #1 to #4, above, what changes should the Task Group consider making to its description of the practice of a Counselling Therapist (if any)? And why?
13. Should psychotherapy become a reserved action under BC's proposed Reserved Actions Regulation, in the same way that psychotherapy is being (or proposed to be) strictly regulated in Alberta, Ontario and Quebec? If not, why not?
14. Should the Group now follow the Ontario model of focusing on the regulation of psychotherapy to the apparent exclusion of counselling therapy? Or should it continue to develop its generalist/specialist regulatory model? Why?
15. Should psychotherapy become a specific class for specialist registration within the Group's regulatory model? If not, why not?
16. If psychotherapy should become a specialist class for registration, what competencies should a Psychotherapist be required to demonstrate before being registered in that class?

## **6.2) Strategy questions (short-term)**

17. Does the Task Group want to send a formal submission to the Ontario Minister of Health in response to the proposed *Psychotherapy Act*? Or does the Group want to take a less direct route of influence and simply support the efforts of the Ontario Coalition once those are known?
18. If the Group wants to file a submission, what issues does it want to raise in that submission? And what changes to the proposed *Psychotherapy Act* does the Group want to see? For example, does it want to encourage the broadening of the regulatory model to include "counselling therapist"?
19. Whether or not the Group files a submission or simply supports the Coalition, does the Group also want to send a commentary to the BC Ministry of Health explaining its concerns for Ontario's proposed *Psychotherapy Act* so as to minimize the likelihood that BC will take the same or a similar route as has been proposed in Ontario? If so, what issues does the Group want to raise in that commentary?

## **APPENDIX A – The Proposed *Psychotherapy Act, 2006***

The following is the text of Schedule Q of the proposed *Health System Improvements Act, 2006*, which will bring about the establishment of the proposed, new *Psychotherapy Act, 2006* in Ontario. This extract is the text of the English version of this proposed statute, as introduced by the Minister on December 12, 2006.

### ***Definitions***

1. In this Act,

“College” means the College of Psychotherapists of Ontario; (“Ordre”)

“Health Professions Procedural Code” means the Health Professions Procedural Code set out in Schedule 2 to the Regulated Health Professions Act, 1991; (“Code des professions de la santé”)

“member” means a member of the College; (“membre”)

“profession” means the profession of psychotherapy; (“profession”)

“this Act” includes the Health Professions Procedural Code. (“la présente loi”)

### ***Health Professions Procedural Code***

2. (1) The Health Professions Procedural Code shall be deemed to be part of this Act.

### ***Same, interpretation***

(2) In the Health Professions Procedural Code, as it applies in respect of this Act,

“College” means the College of Psychotherapists of Ontario; (“ordre”)

“health profession Act” means this Act; (“loi sur une profession de la santé”)

“profession” means the profession of psychotherapy; (“profession”)

“regulations” means the regulations under this Act. (“règlements”)

### ***Definitions in Code***

(3) Definitions in the Health Professions Procedural Code apply with necessary modifications to terms in this Act.

### ***Scope of practice***

3. The practice of psychotherapy is the assessment and treatment of cognitive, emotional or behavioural disturbances by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication.

### ***Authorized Act***

4. In the course of engaging in the practice of psychotherapy, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to treat, by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

### ***College established***

5. The College is established under the name College of Psychotherapists of Ontario in English and Ordre des psychothérapeutes de l'Ontario in French.

### ***Council***

6. (1) The Council shall be composed of,
- (a) at least six and no more than nine persons who are members elected in accordance with the by-laws;
  - (b) at least five and no more than eight persons appointed by the Lieutenant Governor in Council who are not,
    - (i) members,
    - (ii) members of a College as defined in the Regulated Health Professions Act, 1991, or
    - (iii) members of a Council as defined in the Regulated Health Professions Act, 1991.

### ***Who can vote in elections***

(2) Subject to the by-laws, every member who practises or resides in Ontario and who is not in default of payment of the annual membership fee is entitled to vote in an election of members of the Council.

### ***President and Vice-President***

7. The Council shall have a President and Vice-President who shall be elected annually by the Council from among the Council's members.

### ***Restricted titles***

8. (1) No person other than a member shall use the title "psychotherapist" or "registered mental health therapist", a variation or abbreviation or an equivalent in another language.

### ***Representations of qualification, etc.***

(2) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a psychotherapist or a registered mental health therapist.

*Definition*

(3) In this section,

“abbreviation” includes an abbreviation of a variation.

***Notice if suggestions referred to Advisory Council***

9. (1) The Registrar shall give a notice to each member if the Minister refers to the Advisory Council, as defined in the Regulated Health Professions Act, 1991, a suggested,

- (a) amendment to this Act;
- (b) amendment to a regulation made by the Council; or
- (c) regulation to be made by the Council.

*Requirements re notice*

(2) A notice mentioned in subsection (1) shall set out the suggestion referred to the Advisory Council and the notice shall be given within 30 days after the Council of the College receives the Minister’s notice of the suggestion.

***Offence***

10. Every person who contravenes subsection 8 (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence.

***Regulations***

11. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations prescribing therapies involving the practice of psychotherapy, governing the use of prescribed therapies and prohibiting the use of therapies other than the prescribed therapies in the course of the practice of psychotherapy.

***Transition before certain provisions in force***

12. (1) The Lieutenant Governor in Council may appoint a transitional Council.

*Registrar*

(2) The Lieutenant Governor in Council may appoint a Registrar who may do anything that the Registrar may do under the *Regulated Health Professions Act, 1991*.

*Powers of transitional Council and Registrar*

(3) Before section 6 comes into force, the Registrar, the transitional Council and its employees and committees may do anything that is necessary or advisable for the implementation of this Act and anything that the Registrar, the Council, and its employees and committees could do under this Act.

*Same*

(4) Without limiting the generality of subsection (3), the transitional Council and the Registrar and the Council's committees may accept and process applications for the issuance of certificates of registration, charge application fees and issue certificates of registration.

*Powers of the Minister*

(5) The Minister may,

- (a) review the transitional Council's activities and require the transitional Council to provide reports and information;
- (b) require the transitional Council to make, amend or revoke a regulation under this Act;
- (c) require the transitional Council to do anything that, in the opinion of the Minister, is necessary or advisable to carry out the intent of this Act and the *Regulated Health Professions Act, 1991*.

*Transitional Council to comply with Minister's request*

(6) If the Minister requires the transitional Council to do anything under subsection (5), the transitional Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report.

*Regulations*

(7) If the Minister requires the transitional Council to make, amend or revoke a regulation under clause (5) (b) and the transitional Council does not do so within 60 days, the Lieutenant Governor in Council may make, amend or revoke the regulation.

*Same*

(8) Subsection (7) does not give the Lieutenant Governor in Council authority to do anything that the transitional Council does not have authority to do.

*Expenses*

(9) The Minister may pay the transitional Council for expenses incurred in complying with a requirement under subsection (5).

***Transition after certain provisions in force***

13. (1) After section 6 comes into force, the transitional Council shall be the Council of the College if it is constituted in accordance with subsection 6 (1) or, if it is not, it shall be deemed to be the Council of the College until a new Council is constituted in accordance with subsection 6 (1).

*Registrar*

(2) After section 6 comes into force, the Registrar appointed by the Lieutenant Governor in Council shall be deemed to be the Registrar until a new Registrar is appointed by the Council constituted under subsection 6 (1).

## COMPLEMENTARY AMENDMENTS

### ***Health Care Consent Act, 1996***

14. The definition of “health practitioner” in subsection 2 (1) of the Health Care Consent Act, 1996 is amended by adding the following clause:

(q.1) a member of the College of Psychotherapists of Ontario,

### ***Medicine Act, 1991***

15. Section 4 of the Medicine Act, 1991 is amended by adding the following paragraph:

13. Treating, by means of psychotherapy technique delivered through a therapeutic relationship, an individual’s serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual’s judgement, insight, behaviour, communication or social functioning.

### ***Nursing Act, 1991***

16. Section 4 of the Nursing Act, 1991 is amended by adding the following paragraph:

4. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual’s serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual’s judgement, insight, behaviour, communication or social functioning.

### ***Occupational Therapy Act, 1991***

17. (1) The Occupational Therapy Act, 1991 is amended by adding the following section:

#### Authorized act

3.1 (1) A member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to treat, by means of psychotherapy technique delivered through a therapeutic relationship, an individual’s serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual’s judgement, insight, behaviour, communication or social functioning.

#### Additional requirements for authorized act

(2) A member shall not perform the procedure provided for in subsection (1) unless the member performs the procedure in accordance with the regulations.

Grounds for misconduct

(3) In addition to the grounds set out in subsection 51(1) of the Health Professions Procedural Code, a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member contravenes subsection (2).

(2) The Act is amended by adding the following section:

Regulations

10.1 Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations governing the performance of the procedure provided for in subsection 3.1 (1) and prescribing the purposes for which, or the circumstances in which, the procedure may be performed.

***Psychology Act, 1991***

18. Section 4 of the Psychology Act, 1991 is repealed and the following substituted:

Authorized acts

4. In the course of engaging in the practice of psychology, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

1. To communicate a diagnosis identifying, as the cause of a person's symptoms, a neuropsychological disorder or psychologically based psychotic, neurotic or personality disorder.
2. To treat, by means of psychotherapy technique delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

***Regulated Health Professions Act, 1991***

19. (1) Subsection 27 (2) of the Regulated Health Professions Act, 1991 is amended by adding the following paragraph:

14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

(2) Schedule 1 to the Act is amended by adding the following:

Psychotherapy Act, 2006	Psychotherapy
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***Commencement***

20. (1) Subject to subsection (2), the Act set out in this Schedule comes into force on the day the Health System Improvements Act, 2006 receives Royal Assent.

*Same*

(2) Sections 3 to 11 and 13 to 19 come into force on a day to be named by proclamation of the Lieutenant Governor.

***Short title***

21. The short title of the Act set out in this Schedule is the Psychotherapy Act, 2006.

## **APPENDIX B – The Ontario Council’s Recommendations re: Psychotherapy**

The following sets out the recommendations of the Ontario Health Professions Regulatory Advisory Council on the regulation of psychotherapy and psychotherapists, as set out in chapter 7 of its April 2006 report, *Regulation of Health Professionals in Ontario: New Directions*.

### *...Recommendations*

the Ontario Council recommends to the Minister:

1. That psychotherapy and psychotherapists be regulated under the *Regulated Health Professions Act*.
2. That a College of Psychotherapists of Ontario (Ordre des psychothérapeutes de l’Ontario) should be established.
3. That an enforceable scope of practice of psychotherapy should be defined in the Act, and that the scope of practice should restrict the practice of psychotherapy to certain regulated professionals, and that an exemption for certain activities should be included as follows:
  - (1) Psychotherapy is the provision of a psychological intervention or interventions, delivered through a therapeutic relationship, for the treatment of cognitive, emotional or behavioural disturbances.
  - (2) No person other than a member in good standing of the College, the College of Psychologists of Ontario, the College of Physicians and Surgeons of Ontario, the Ontario College of Social Workers and Social Service Workers, and the College of Nurses of Ontario who has met the qualifications specific to the practice of psychotherapy as established by their College shall engage at any time in any of the activities as set out in (1).
  - (3) The Act does not apply to counsellors providing information, encouragement, advice or instruction about emotional, social, educational or spiritual matters.
  - (4) Notwithstanding (3), treatment that goes beyond the bounds of counselling should not be exempted.
4. That the Council of the College should be composed of (a) at least six and no more than nine persons who are members elected in accordance with the College’s by-laws; (b) at least five and no more than eight persons appointed by the Lieutenant-Governor-in-

Council who are not members of the College, another College or Council under the *RHPA*.

5. That the Council of the College should establish an Advisory Committee to include representatives of the College of Psychologists of Ontario, College of Physicians and Surgeons of Ontario, Ontario College of Social Workers and Social Service Workers, and the College of Nurses of Ontario.

6. That the Council should have a President and Vice-President elected annually by Council from among its members.

7. That every member of the College who practices psychotherapy or resides in Ontario and who is not in default of payment of the annual membership fee should be entitled to vote in an election of members of the Council.

8. That the use of the title “psychotherapist” should be restricted to members of the College and members of the College of Psychologists of Ontario, the College of Physicians and Surgeons of Ontario, the College of Social Workers and Social Service Workers, and the College of Nurses of Ontario who are qualified to practice psychotherapy.

9. That a person who is not a member of the College, or a member of the College of Psychologists of Ontario, the College of Physicians and Surgeons of Ontario, the Ontario College of Social Workers and Social Service Workers, and the College of Nurses of Ontario who practices psychotherapy should not represent him or herself as a person who is qualified to practice psychotherapy in Ontario.

10. That the Lieutenant-Governor-in-Council, on recommendation of the Minister, should appoint, for a period of three years, a Transitional Council, Chair and Vice-Chair.

11. That the Transitional Council should be composed of a Chair; a Vice-Chair; at least six and no more than nine persons who are currently unregulated practitioners of psychotherapy; at least four and no more than six persons who are nominated by the College of Psychologists of Ontario, the College of Physicians and Surgeons of Ontario, the College of Social Workers and Social Service Workers, and the College of Nurses of Ontario; and at least five and no more than eight persons who are not currently unregulated

practitioners of psychotherapy or members of a regulated College or Council under the *RHPA*.

12. That the Transitional Council should have the authority to appoint a Registrar and the Registrar and the Council's committees should have the authority to accept and process applications for the issuance of certificates of registration, charge application fees and issue certificates of registration.

13. That the Transitional Council and its employees and committees should have the authority to do anything that is necessary or advisable until the Council is established.

14. That upon appointment of its members, the Transitional Council should move immediately to develop:

(a) A list of currently unregulated psychotherapists including the names of persons who practice psychotherapy, their education and training, billing practices, as well as the form of psychotherapy that each registrant practices.

(b) High minimum qualifications for the practice of psychotherapy.

(c) General standards of practice for psychotherapy.

(d) Quality assurance programs for psychotherapy.

(e) The educational qualifications and equivalency standards to address the registration of currently unregulated practitioners.

15. That the Minister of Health and Long-Term Care should issue a direction under section 5 (1) (d) of the *RHPA*, and the Minister of Community and Social Services should issue a direction under Section 11 of the *Social Work and Social Service Workers Act*, requiring the College of Psychologists of Ontario, the College of Physicians and Surgeons of Ontario, the College of Social Workers and Social Service Workers and the College of Nurses of Ontario to establish high minimum qualifications and general standards for the practice of psychotherapy in their professions.

16. That where one or more of those Colleges, in the opinion of the Ministers, fails to establish the qualifications and the necessary mechanisms to implement and enforce these qualifications and standards within the time specified by the Ministers in their directives, the qualifications established by the College of Psychotherapists should be deemed to apply.

17. That subject to the approval of the Lieutenant-Governor-in-Council, and with prior review of the Minister, the Council of the College of Psychotherapy of Ontario should be authorized to make regulations

- Prescribing high minimum qualifications for the practice of psychotherapy.
- Prescribing and governing the therapies involving the practice of the profession and prohibiting other therapies.
- Exempting modalities that do not constitute the practice of psychotherapy.
- Adding protected titles.
- Any matter relevant to the profession of psychotherapist and/or the practice of psychotherapy.

18. That complementary amendments should be made to the *Nursing Act, 1991, Medicine Act, 1991, Psychology Act, 1991* and *Social Workers and Social Service Workers Act, 1998*.