

Response to the
Health Professions Regulatory Advisory Council's

Consultation Discussion Guide
On Issues Relating to the Ministerial Referral on
Psychotherapy and Psychotherapists

Submitted by the
Ontario Coalition of Mental Health Professionals

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Introduction

The Ontario Coalition of Mental Health Professionals (“the Coalition”) welcomes the opportunity to respond to the Health Professions Regulatory Advisory Council’s *Consultation Discussion Guide on Issues Relating to the Ministerial Referral on Psychotherapy and Psychotherapists*. The Coalition participated in an invitational workshop conducted by HPRAC on July 13-14, 2005 to begin discussion on the referral by the Minister of Health and Long-term Care on two important policy questions:

- 1) Whether psychotherapy should be an additional Controlled Act under the *Regulated Health Professions Act (RHPA)*, and if so, which regulated professions should have psychotherapy in their scopes of practice and how standards should be set and measured; and
- 2) Whether psychotherapists should be regulated under *RHPA* as a profession, what their scope of practice should be and what Controlled Acts they should be authorized to perform, as well as any protected titles, and whether it is appropriate that psychotherapists be regulated under an existing profession-specific act.

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

Canadian Association for Psychoanalytic Child Therapists (CAPCT)
 Canadian Counselling Association (CCA)
 Canadian Association for Child and Play Therapy (CACPT)
 Music Therapy Association of Ontario (MTAO)
 Ontario Art Therapy Association (OATA)
 Ontario Association of Consultants, Counsellors, Psychometrists and
 Psychotherapists (OACCPP)
 Ontario Association for Marriage and Family Therapy (OAMFT)
 Ontario College Counsellors (OCC)
 Ontario Native Education Counselling Association (ONECA)
 Ontario Society of Psychotherapists (OSP)

The Coalition represents approximately 4,700 highly qualified mental health practitioners throughout the province. Of these, 3,100 have Masters or Doctoral level credentials and each practitioner provides approximately 16 hours of direct client contact per week, for a total of 49,600 of counselling hours per week across Ontario. Other practitioners represented in the Coalition do not have graduate level degrees but have undergone extensive training in their respective fields of practice.

The Coalition participated in the previous HPRAC consultation in 2001-2002 on proposed amendments to the *RHPA*. A wide range of mental health professionals in the non-statutory self-regulating sector spoke with one voice on the dangers of restricting the practice of psychotherapy to the small number of practitioners currently regulated under the *RHPA*. The Coalition is pleased to address the more inclusive series of questions posed by HPRAC in the current consultation. The *Discussion Guide* captures the role of the thousands of mental health practitioners currently unregulated by the *RHPA* or any other statute. The role of these practitioners is vital in providing access and choice in the delivery of high-quality mental health services to Ontarians in many diverse communities across the province.

Question (1)

Is it necessary to define psychotherapy in order to effectively regulate it? If so, is broad agreement on a definition necessary?

As noted in the commentary that precedes this question, psychotherapy is not easily defined and there are almost as many definitions as there are jurisdictions that regulate psychotherapy. Some jurisdictions in the United States, such as Arizona, California, and Florida do not actually define psychotherapy in statute but, rather, define the professions authorized to perform psychotherapy and the scope of practice of professions such as clinical social workers, mental health counselors and marriage and family therapists.

The *RHPA* allows for this same type of regulation that does not require a definition of psychotherapy *per se*, but rather, regulates psychotherapy indirectly by granting title protection to practitioners who provide psychotherapeutic services. This form of regulation would require only a broad-based definition of the scope of practice of psychotherapists (and possibly also the practice of other mental health professionals who also provide psychotherapeutic services).

However, if psychotherapy were to be regulated under the *RHPA* as a Controlled Act, then a much more precise definition of psychotherapy would be necessary. The definition of psychotherapy would have to be sufficiently narrow to a) clearly describe the Controlled Act and b) not capture those aspects of the practice of psychotherapy that do not constitute a sufficiently serious risk of harm to the public.

In both a title protection and a Controlled Act form of regulation, a definition of the scope of practice of psychotherapy would be necessary. But an additional, narrower definition would also be necessary to regulate psychotherapy as a Controlled Act in a licensing rather than certification model.

Thus, while some forms of regulation do not require that psychotherapy be defined in statute, the Coalition agrees that it is useful to have a working definition of psychotherapy to anchor the public discussion of whether any

statutory intervention is necessary and, if so, how best to regulate psychotherapeutic services in Ontario. Similarly, broad agreement on what is captured under the rubric of “psychotherapy” is desirable for the purpose of setting the general parameters of that discussion.

Question (2)

Please comment on the working definition. Are there elements that should be included or deleted?

“Psychotherapy is the treatment of a person or persons (who have cognitive, emotional, behavioural or social dysfunctions) through psychological, psychosocial or interpersonal methods. The nature of psychotherapy is often probing and intensive, and a specific treatment plan guides the application of these procedures. The practice of psychotherapy can be distinguished from both counselling, where the focus is on the provision of information, advice-giving, encouragement and instruction, and from spiritual counselling, which is counselling based on religion or faith-based systems.”

There has been much debate within the Coalition about the working definition put forward by HPRAC. The key concerns are a) that the definition is too focused on the “medical model”, b) that psychotherapy and counselling are too rigidly distinguished, and c) that the rich variety of modalities encompassed by psychotherapy are not captured in the definition.

The Coalition is also not clear as to whether HPRAC is proposing this working definition as a basis for a) defining the scope of practice for psychotherapy practitioners in a title protection scheme or b) defining the Controlled Act of psychotherapy in a licensing scheme. We will comment on this point later.

Historically, the medical profession in Ontario has had a leading role in framing the terms of reference for the practice of psychotherapy. For example, the practice of “medical psychotherapy” is rigidly differentiated from “supportive counselling”. This is reflected in the Ontario Hospital Insurance Plan (OHIP) which draws a categorical distinction between “counselling” and “psychotherapy”, disallowing the former from being claimed as part of ongoing treatment.

The “medical model” orientation is evident in HPRAC’s working definition of psychotherapy which a) draws a clear-cut line between counselling and psychotherapy, and b) relies on medical concepts such as “treatment” and “dysfunction”.

The Coalition views the line drawn by HPRAC between counselling and psychotherapy as unnecessarily rigid, and even artificial. It is more accurate to view psychotherapy on a continuum with counselling where there is no precise line between them.

We find instructive the approach taken by the Task Group for Counsellor Regulation in British Columbia (“BC Task Group”), as expressed in its commentary on the HPRAC *Discussion Guide*. The BC Task Group views psychotherapy as an aspect of the broader practice of counselling rather than as a practice that is different or distinct from counselling. It defines psychotherapy as one particular form of counselling and we agree that a review of many definitions of counselling would support this approach.

A host of jurisdictions recognize that counselling encompasses a broad range of professional responses based on well-established theoretical approaches in psychotherapy such as client-centred therapy, cognitive therapy, behavioural therapy, family systems therapy, Jungian therapy, Adlerian therapy, etc. A wide range of approaches are applied in psychotherapeutic counselling with persons experiencing emotional, behavioural, interpersonal or social distress. A variety of psychotherapeutic interventions are utilized in the context of structured interaction between client and practitioner.

The simplest way to define the core of psychotherapeutic practice is to say that it establishes a dynamic relationship between client and practitioner to promote positive emotional, mental, psychological and behavioural change and growth through a plan of intervention. One formulation supported by the Coalition is based on the definition of counselling and psychotherapy adopted by the 1997 Standing Conference of Educators and Trainers in Counselling and Psychotherapy:

“Psychotherapy and Counselling are professional activities that utilize an interpersonal relationship to enable clients to develop an understanding about themselves and to make changes in their lives. Professional Psychotherapists and Counsellors work within a clearly contracted, principled relationship that enables clients to obtain assistance in exploring and resolving issues of an interpersonal, intrapsychic, or personal nature.”

Another helpful definition is the one put forward by the BC Task Group to define the scope of practice for “counselling therapists”:

“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 Coalition is unclear as to whether or not HPRAC’s working definition of psychotherapy is meant to serve as a basis for defining a Controlled Act under the *RHPA*. If that is the intent, the Coalition concurs with the BC Task Group that

HPRAC's working definition of psychotherapy is far too broad to serve that purpose:

"...this definition is not one that would provide that public, the profession, a college or (ultimately) the courts with any meaningful guidance in terms of deciding if an unregulated person was providing services that fell within the psychotherapy controlled act."

Likewise, the Coalition concurs with the BC Task Group that if HPRAC's intent is to have its working definition of psychotherapy serve as a description of the scope of practice of psychotherapists, then such a general and broad definition could well serve that more limited purpose. As noted above, the Coalition finds that HPRAC's *Discussion Guide* does not distinguish sufficiently between the two regulatory options possible under the *RHPA*, namely, title protection for a variety of psychotherapeutic practitioners versus making psychotherapy a Controlled Act. We will address this issue in more detail later in Questions 3 and 10.

Question (3)

Does the practice of psychotherapy pose a risk of harm to the public? If so, how?

HPRAC's commentary states that "psychotherapy" (our use of this term includes "counselling" as noted above) is characterized by a) an emotionally intense client-therapist relationship, b) an inherent power imbalance that could lead to exploitation such as sexual, financial or emotional abuse by an unscrupulous practitioner, and c) the possibility of inadequate assessment, inappropriate treatment, and failure to refer appropriately when the problem is beyond the practitioner's competence.

The Coalition agrees that there is a risk of physical, psychological, emotional, and financial harm that can reasonably be expected to occur if psychotherapy counselling services are provided by practitioners who are not sufficiently skilled, knowledgeable, and experienced or who practice in an unethical or impaired fashion.

The importance of a risk of harm analysis is self-evident. There is no need for statutory regulation of a profession unless there is a risk of harm to the public. Public protection is the central principle of regulatory intervention. The rationale for regulation and the specific form of regulation are both functions of a risk of harm analysis.

The Coalition finds that the HPRAC *Discussion Guide* does not clearly distinguish the two different levels of harm that would engage either title protection (lower level of harm) or a Controlled Act (higher level of harm). This distinction is critical. It is discussed in considerable detail in the BC Task Group's response to HPRAC so we will not repeat it here. Suffice it to say that any

definition of psychotherapy, for the purposes of defining a Controlled Act under the *RHPA*, would have to be far more precise than the working definition proposed by HPRAC.

The Coalition notes that a general and broadly based analysis of the risks of harm to the public posed by the practice of psychotherapy is sufficient to lead to the conclusion that the public needs, at a minimum, the level of protection afforded by a title protection scheme which includes scope of practice but not a Controlled Act.

The BC Task Group outlined the risks of harm in its 1998 submission to the Ministry of Health advocating the regulation of “Counselling Therapists” under the Health Professions Act. The Task Group states that these forms of harm would result in “...either the continuation of the original problem or the worsening of the situation, leading to a continued or greater personal suffering.”

The risks of harm enumerated by the BC Task Group are instructive and could well serve as a basis for considering title protection for psychotherapeutic practitioners in Ontario until HPRAC has undertaken its own fuller analysis. We list them here in summary form:

Harm resulting from incompetence

These forms of harm can lead to incorrect or inappropriate treatment that compounds the true problem, resulting in further trauma to or death of the client.

- Failure to obtain sufficient background information from the client or to undertake a complete assessment
- Failure to correctly administer or interpret an assessment instrument
- Inadequate, inappropriate or incorrect assessment of a client’s underlying problem
- Failure to correctly apply an appropriate treatment or therapy
- Inappropriate use of hypnosis or guided imagery, such as with a client who has been hospitalized for psychosis or major depression
- Inappropriately advising a couple or an individual client to end their relationship, or, conversely, to remain together
- Failure to inform a client that mental images which could emerge during certain treatment modalities may not be memories of actual events
- Failure to provide an objective means of evaluating the client’s progress
- Failure to properly assess, prevent, and document the suicidal or homicidal potential of the client
- Failure to inform the police or the victim of homicidal threats
- Failure to report to the authorities information disclosed about apparent child abuse or neglect, resulting in trauma to or death of the child

- Failure to recognize that the client may be suffering from a serious mental disorder which may require hospitalization, medication, or other treatment that is beyond the practitioners professional abilities
- Recommending that the client discontinue use of prescribed medication

Harm resulting from unethical practice, such as therapist-client boundary problems, etc. These forms of harm can result in breach of trust, exploitation or trauma to the client.

- Failure to preserve the client's right to confidentiality (except when excused by law) resulting in public disclosure of sensitive personal information
- Inappropriate touching of or communicating verbally with a client in a sexual or romantic way
- Expressing personal anger or frustration to a client
- Introducing the practitioner's religious beliefs into therapy without the client's consent
- Becoming involved in a business relationship with the client

Harm resulting from impaired practice

These forms of harm can cause trauma to the client.

- Providing a service to a client while impaired by alcohol, drugs, a physical or mental illness or some other dysfunction

Harm resulting from unprofessional practice

These forms of harm can result in trauma or exploitation of the client.

- Failure to ensure that the therapy setting is safe and comfortable for the client
- Discriminating against a client based on sexual orientation, race, disability, etc.
- Pressuring a client to remain in the therapeutic relationship against the client's expressed desire to terminate
- Issuing or signing any record, report, or certificate that is false, misleading, or otherwise improper
- Failure to submit a required report that adversely affects a compensation claim such as through a national fund for victims of sexual abuse at residential schools
- Charging a excessive fee for services provided, or charging for services that were not provided or were not necessary
- Requiring payment of fee for services prior to services being provided

As noted above, the Coalition believes that the above list of identified risks for "counselling therapy" can serve as a starting point from which HPRAC could

recommend to the Minister that psychotherapeutic counselling professions in Ontario be granted regulation in the form of title protection.

Alternatively, as suggested by the BC Task Group, HPRAC may want to:

“...reframe its mandate from the Minister and consider the broader question of how best to regulate counselling, and whether or not psychotherapy should become a controlled act and, if it should be, whether it should then be made available to counselling therapists (generally or only those with more advanced credentials).”

If HPRAC were to take this broader approach, the above list could serve as a basis for developing a more comprehensive account of the risks of harm that would be needed to justify the more stringent regulation of psychotherapy as a Controlled Act.

Question (4)

Would regulatory intervention decrease the risk of harm to patients/clients? If so, how?

Statutory regulation of psychotherapists and counsellors would provide the accountability or enforcement mechanisms to protect the public from harm that are currently missing.

It is certainly the case that professional associations represented in the Coalition operate according to public interest principles much like currently regulated professions in the fields of health and social work. They set standards of qualification, standards of practice, standards of skill and knowledge, and standards of professional ethics. Their respective members are held accountable to a code of ethics through an accessible complaints process dealing with disciplinary matters.

However, the problem from a public protection point of view is that none of these measures are legally enforceable. A practitioner who is sanctioned by his or her professional association can simply leave and continue to practice at will. Statutory regulation would provide the enforcement mechanisms required whenever protection of the public is a key factor. An effective system of statutory self-regulation would include:

- 1) Setting standards and mechanisms to determine whether or not a practitioner has sufficient knowledge, skill, ability and judgment to provide the services competently and ethically
- 2) Identifying the need for further training in specific areas once a practitioner has been admitted to the regulatory body
- 3) Developing a set of practice standards, a code of ethics and disciplinary procedures to hold practitioners accountable

- 4) Continuing education programs to ensure competent and ethical service delivery on an ongoing basis
- 5) Identifying self-monitoring functions, annual performance or practice audits, case reviews, and other accountability mechanisms

The Coalition believes that there is a need to regulate the practice of psychotherapy in its multiplicity of forms, with title protection and scope of practice for a wide array of psychotherapeutic practitioners. It is widely recognized in other jurisdictions that the provision of such services presents a sufficient risk of harm to the public that the practice of psychotherapy should not remain unregulated.

Question (5)

Please identify any other factors that weigh for or against regulatory intervention

The Coalition is aware of the “need to balance public protection/risk of harm by untrained practitioners against the potential impact of regulation on those currently practicing psychotherapy” as noted in HPRAC’s commentary. Specifically, practitioners who are currently part of the non-statutory self-regulating sector of the mental health system form an essential component within the system that guarantees choice, access and good value to many clients who would otherwise be un/under-serviced.

The Coalition’s member groups have emphasized in previous consultations the need to include practitioners in the non-statutory self-regulating sector in any new regulatory regime recommended by HPRAC to the Minister. The impact of excluding these practitioners generated serious concern during HPRAC’s previous review of *RHPA* in 2001-2002.

For example, in a letter to the RHPA Project dated March 12, 2002, Dr. Hugh Drouin, then head of Family Service Ontario (FSO) wrote about the Ontario Association of Marriage and Family Therapy (OAMFT):

“ OAMFT professionals have been key specialists in our agencies when working with our population group. If these professionals were taken out of the equation and rendered unable to offer services...it would seriously impact our client base of over 250,000 Ontarians. These clients would have nowhere to go to receive competent individual, marital and family therapy as the vast majority are low income and could not afford to pay private practitioners. This would cause a flood of individual problem individuals, couples and families to the doorsteps of the already overburdened family practitioners, hospital emergency rooms and a myriad of other health care services.”

The Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists (OACCPP) made much the same point in its “Supplementary Response” to HPRAC dated January 31, 2002:

“A conservative estimate of the number of clients being treated at the present time by therapists who are members of professional self-regulated associations would fall between 25 and 30 thousand people. Such numbers are substantiated by employee assistance agencies, children’s aid societies, family service organizations, hospital outpatient clinics, churches offering pastoral counselling, groups homes, hostels and shelters, to name only a few. When discussing access to services, the numbers are overwhelming.”

The same strong caution was issued by other respected organizations who are concerned that many community-based health and counselling centres across the province are relying ever more heavily on the services provided by the non-statutory self-regulating sector. The Ontario Federation of Community Health and Addictions Programs has noted that people with mental health and/or addiction problems will require more expensive institutional treatment if community-based alternatives are not available. As psychiatric beds close and general hospitals tighten their admission criteria, the need to invest in community-based treatment becomes more and more urgent. The Federation estimates that 20% of Ontarians will have mental health and/or addiction problems during their lifetime and that without community services and supports, more people will end up homeless, untreated, in jail, and in the criminal justice system.

Experts have also noted that a significant number of the practitioners in the non-statutory self-regulating sector of mental health professionals are in private practice and their ability to continue providing high quality services would also be in jeopardy.

The Coalition urges HPRAC to ensure that its recommendations to the Minister include the ability of this vital sector of mental health practitioners to continue to practice with the necessary regulatory safeguards to protect the public from harm. We are concerned about the possible “over-regulation” of psychotherapy as a Controlled Act, in the absence of the necessary risk of harm analysis, which would exclude many qualified practitioners who are currently outside the *RHPA* or any other statute.

In this connection, we note that the BC Task Group addresses the issue of access by pointing out that it would not be a factor in a title protection scheme:

“In the Guide, the Ontario Council suggests that one disadvantage of regulatory intervention would be that public access to psychotherapy would be reduced. Reduced access would not be a problem if only a title protection model of regulation was used to regulate psychotherapists, if not also counsellors.”

On the other hand, if the decision is made to create a psychotherapy controlled act in Ontario, then reduced public access to psychotherapy would be a factor that would have to be taken into consideration.”

Question (6)

Would a significant public need be met by regulating psychotherapists?

As noted in the HPRAC commentary, right now anyone can hang out a shingle as a “psychotherapist” in Ontario regardless of credentials, training or the services offered. This state of affairs leaves the public vulnerable to individuals who can make unsubstantiated, or worse, false, claims about their credentials and the efficacy of the services they offer. As argued above, title protection for psychotherapeutic practitioners would go a long way in meeting the need of protecting the public from incompetent and unscrupulous practitioners. It would also provide enforceable mechanisms to ensure the competency and continued fitness to practice of the members of any newly-regulated profession(s).

The first level of public protection available is title protection where there are clearly identifiable risks of harm to the public. This form of regulation helps the public distinguish between certified and non-certified practitioners, i.e. those who are members of a regulatory body and those who are not. Typically, title protection requires practitioners to abide by a code of ethics and their professional conduct can be investigated even if they leave the profession. This form of regulation provides the public with some assurance that the practitioner who is using a reserved title has agreed to abide by a code of conduct and can be held accountable by a regulatory body.

In a title protection scheme, the public is free to purchase services from a certified practitioner or from anyone else providing those services because there are no restrictions on practice. As pointed out in the HPRAC commentary, the danger to the public of regulating only the title is that those who do not qualify to call themselves “psychotherapists” might simply choose another title and continue to provide psychotherapy outside the regulatory framework. However, some of the risk involved in this form of regulation can be mitigated by robust public education campaigns.

A higher level of public protection is available by providing a profession with an exclusive occupational title and some form of practice monopoly or Controlled Act. In this form of regulation, only members of the profession (and others who may also have been granted the Controlled Act) would be permitted to provide the restricted services. Individuals who have not been granted the Controlled Act would be subject to legal sanctions for contravening the service restrictions. The public would thus be protected from unregulated practitioners no matter what they call themselves.

As noted earlier, the Coalition believes that there is a sufficient risk of harm in the practice of psychotherapy to warrant regulation in Ontario, at least at the level of title protection. The BC Task Group put it well when it said that “The public must be assured that there is some mechanism in place that will monitor the conduct of members of a health profession that provides health services, usually behind closed doors, to members of the public who are often emotionally, psychologically, spiritually and financially vulnerable.”

Although reducing the potential risk of harm is an important “public need”, it is not the only such need that warrants consideration. The BC Task Group has pointed out that another “public need” would be met when third-party payors (health care insurance plans) pay for psychotherapeutic services on behalf of their beneficiaries, employees or clients knowing that the money is going to professionals who are members of a regulatory body governed by legislation. Statutory regulation would mean that third-party payors could rely on “...the screening and monitoring functions of the college without having to implement those sorts of quality controls themselves. Indeed, many insurance plans or third party payors do not, as a matter of corporate policy, cover the costs of counselling services that are provided by persons who are not currently members of a regulatory body established under government legislation.”

Question 7

Should the title “psychotherapist” be restricted? If so, to whom?

The Coalition would be strongly opposed to restricting the title “psychotherapist” to currently regulated practitioners (e.g. psychologists, physicians, nurses and social workers). This approach would be arbitrary at best. It would also fail to reflect current realities on the ground, namely, that the mental health care system includes a multiplicity of highly trained unregulated professionals offering many forms of psychotherapeutic services to tens of thousands of Ontarians in many institutional and community settings.

Arbitrarily restricting the title of “psychotherapist” to currently regulated professions would be out of step with prevailing regulatory trends in many jurisdictions. In the United States, 49 states plus the District of Columbia, Guam and Puerto Rico currently regulate mental health counsellors with various restricted titles and scopes of practice that include “psychotherapy”. The same is true of Marriage and Family Therapists (MFT) who are regulated in 49 jurisdictions in the United States as specialized psychotherapeutic practitioners. The US Public Service Health Act recognizes MFTs as core mental health professionals along with psychiatrists, clinical psychologists, clinical social workers and psychiatric nurse specialists.

The Coalition is in favour of regulating psychotherapeutic practitioners through more than the single restricted title of “psychotherapist”. It is too limiting. There are many professionals who are highly trained and competently providing a wide

range of psychotherapeutic services throughout the mental health care system. Any new regulatory scheme needs to address that diversity to properly reflect the public interest. For example, one approach would be to allow for both generalist and specialist titles as is currently being considered under the Health Professions Act in British Columbia.

Specifically, the BC Task Group is proposing a two-tiered model that would allow the general or entry-level registrants to use the generic title of “Counselling Therapist”. A second tier of registrants with more advanced competencies would register in areas of specialized practice with protected titles such as “Marriage and Family Therapist”, “Art Therapist”, “Clinical Counsellor”, “Music Therapist”, “Addictions Counsellor”, and so on. The Coalition would urge HPRAC to study the BC model with a view to recommending to the Minister that Ontario consider taking a similar approach.

Question 8

Yes, as noted above, the Coalition favours the initial step of regulating psychotherapeutic practitioners through title protection rather than through the Controlled Act of “psychotherapy”. This approach would allow for the recognition of a broad range of diverse orientations in psychotherapeutic practice as well as the flexibility to recognize new and emerging areas of practice as they develop.

Question 9

Are there any other issues relating to the regulation of psychotherapists, as distinct from psychotherapy, you would like to comment on?

The Coalition would support simple title protection as a minimum step to bringing unregulated mental health practitioners in Ontario within a framework of statutory regulation. This should also include practitioners who are currently regulated as members of “non-health” professions such as social workers who belong to the Ontario College of Social Workers and Social Service Workers. Regulation as mental health professionals should entail not only reserved titles but also scope of practice, which clearly defines the professions’ activities in broad non-exclusive terms, as is the case with all *RHPA* regulated professions.

As noted above, the Coalition is aware of the fact that in a title protection model, those who do not qualify to use one of the restricted titles can simply use a different title and continue to provide psychotherapeutic services outside the regulatory framework. However, that is an expected limitation of the model itself and public education programs by government, regulatory bodies and professional associations can help educate the public and significantly reduce the risks of harm posed by unregulated practitioners.

Question 10

Would a significant public need be met by regulating psychotherapy?

The Coalition does not believe that HPRAC has provided a sufficiently detailed risk of harm analysis to justify the regulation of psychotherapy as a Controlled Act. We do believe that a) the provision of psychotherapy poses a sufficient risk of harm to the public to warrant statutory regulation, and b) that the risk of harm analysis in the *Discussion Guide* would support title protection as a first step in regulating psychotherapeutic professions. Public protection would be significantly enhanced if the provision of psychotherapeutic services were limited to qualified practitioners who had met minimum qualifications and were accountable for their practice to a regulatory body.

The Coalition also believes that this initial form of regulation would only achieve the goal of greater public protection if the qualifications and entry standards generally reflected those of the professionals currently practicing in the non-statutory self-regulating sector. As noted earlier, we support the competency based approach proposed by the BC Task Group rather than a model based solely on academic credentials. The BC Task Group is developing a detailed list of competencies for both generic and specialist registration of “Counselling Therapists” under the Health Protection Act which they first outlined in their 1998 submission to the Ministry of Health.

Question 11

Can psychotherapy be regulated without regulating psychotherapists?

As noted above, the regulation of psychotherapy *per se* would entail granting it to one or more professions as a Controlled Act under the *RHPA*, which in the Coalition’s view is not justified at this time. However, the alternative would be regulating psychotherapeutic practitioners, which could be accomplished more simply by controlling occupational titles in a title protection scheme. The risks of harm outlined above would support this form of regulation under the *RHPA*.

Title protection could provide a significant measure of protection to the public from the risks of harm associated with un/under qualified practitioners. For example, it would no longer be possible for a disgraced physician whose license had been revoked by the College of Physicians and Surgeons of Ontario to simply hang out a new shingle and begin practicing as a “psychotherapist” if that was a restricted title. That physician could no longer hold himself/herself out to be a qualified psychotherapist without meeting the appropriate training qualifications and being subject to the authority of the new regulatory body.

Question 12

Are there any other issues relating to the regulation of psychotherapy you would like to comment on?

The Coalition would urge HPRAC to consider issues of access and cultural diversity in the area of mental health services. Ontario has long suffered serious

shortages of physicians, nurses and other health care practitioners. One obstacle to overcoming the shortages and meeting the growing need for qualified health care personnel is the unduly restrictive nature of the procedures followed by the responsible regulatory bodies. There are many internationally trained physicians and nurses, for example, who wait for many years before their foreign credentials are recognized and are given the opportunity to take the necessary steps to practice their professions in Ontario. A repetition of similar restrictive practices in the field of psychotherapy should be avoided in the interest of fair access to the professions for internationally trained practitioners and equitable access to qualified practitioners by Ontarians across the province.

If there is a decision to regulate psychotherapists and/or psychotherapy:

Question 13

Is the RHPA the most appropriate statutory framework to use to regulate psychotherapists/psychotherapy?

Yes, the *RHPA* is the appropriate framework inasmuch as it can be used to establish either a title protection or a Controlled Act form of regulation. The *RHPA* has all the necessary means for deciding the relevant social policy issues as well as the rules and regulations for operating a new regulatory body. In the Coalition's view, there is no need to set up a parallel statute for mental health professionals that would essentially duplicate what the *RHPA* already provides.

The Coalition is aware of the regulatory model proposed by the BC Task Group on Counsellor Regulation. As noted above, it consists of a two-tier regulatory body that would certify generic and specialist "Counselling Therapists" under the Health Professions Act. The Ontario equivalent would be the creation of a new college under the *RHPA* that would grant psychotherapy professionals title protection and scope of practice to distinguish between generalist practitioners and specialist practitioners such as Marriage and Family Therapists.

Question 14

Should psychotherapy be a Controlled Act under the RHPA? If so, what professions should be authorized to perform the Controlled Act of psychotherapy?

The Coalition remains strongly opposed to psychotherapy becoming a Controlled Act under *RHPA*, especially if it is limited to professionals currently regulated under the Act. As argued above, the risk of harm analysis conducted thus far by HPRAC does not warrant such a drastic step that could severely restrict the practice of psychotherapy to a small number of professionals and bar many highly qualified professionals who are currently practicing psychotherapy competently and ethically.

Also, making psychotherapy a Controlled Act, at least at this time, would ignore the complexity of psychotherapy as a form of practice as well as the many and varied schools of psychotherapy and their attendant modalities. The very nature of psychotherapy, that is, its complexity, is incompatible with it being a Controlled Act as these are presently defined under the *RHPA*. All are clear and distinct physical acts, whereas the “act” that could cause emotional and psychological harm is not at all obvious and would be much more difficult to narrow down and define in such a way that it would be legally enforceable.

Defining a Controlled Act of psychotherapy would be a function of a clearer, more in-depth analysis of the risks of harm to the public associated with the practice of psychotherapy. However, we feel strongly that such course of action at this time would be premature, at best, and could potentially add to the risks of harm to the public by curtailing access to a host of well qualified practitioners across the province.

The Coalition concurs with the BC Task Group’s conclusion in its HPRAC commentary:

“If the risk of harm analysis for psychotherapy eventually results in an articulation of the minimum competencies that are necessary for a practitioner to hold so as to reduce or avoid the adverse effects of the incompetent or unethical provision of this therapy, then – so long as any profession can demonstrate that its members have those same or greater competencies – those professions should in turn be entitled to perform the psychotherapy controlled act. On this principle, it would not matter if physicians, nurses, psychologists, social workers or counselling therapists wanted to provide psychotherapy. The legislation and their regulations should not allow them to do so unless and until each profession can demonstrate that it possesses the necessary competencies to provide psychotherapy in a safe and ethical fashion. So long as a profession can demonstrate that it has those competencies, it can share in the controlled act of psychotherapy with the other, equally competent professions.”

Question 15

Should psychotherapists be regulated as a new profession under the RHPA?

- a) Should psychotherapists be regulated as part of an existing health regulatory College or under a new, separate College?***
- b) Should psychotherapists be regulated as a class within an existing College?***

As noted above, the Coalition would support a form of regulation that describes in legislation the general activities (scope of practice) that define psychotherapy practice rather than defining “psychotherapy” *per se* and making it a Controlled Act. In this approach, title protection could encompass more than one restricted

title, reflecting the diversity of psychotherapeutic approaches, specializations, and the wide range of qualified practitioners.

The Coalition is opposed to adding psychotherapy professionals to an existing college under the *RHPA*. For example, the College of Psychologists might seem to be a logical home for psychotherapists. However, it has been pointed out by many experts that the wide range of psychotherapy orientations and modalities have very little in common with clinical psychology. Whatever advantages might be gained by joining an existing College would be offset by the difficulties in setting standards and oversight mechanisms for a wide range of psychotherapeutic approaches and practices that differ fundamentally from clinical psychology.

The Coalition supports the regulation of psychotherapeutic practitioners in a new College established under the *RHPA* that captures a wide range of orientations and practices and is flexible enough to incorporate emerging fields of practice as they develop.

The Coalition is strongly opposed to authorizing only currently regulated professionals to practice psychotherapy. As argued above, this course of action is arbitrary and unnecessarily restrictive. It would severely limit the number of practitioners who could deliver psychotherapeutic services; it would leave many recognized and highly qualified professionals such as Addictions Counsellors and Marriage and Family Therapists unable to continue their critical role in the mental health care system; and it would place Ontario outside the mainstream of regulatory trends across North America.

Question 16

Should another regulatory framework (using a new or existing statute) be used to address all matters relating to the issue of regulating psychotherapy or psychotherapists?

As already noted, the Coalition supports a form of regulation under the *RHPA* that describes specific psychotherapy activities (scope of practice) and the restricted titles of practitioners who practice these activities (title protection). There is no need to look beyond the *RHPA* to other existing statutes, much less to the creation of a new statute.

Question 17

Are there any other models that should be considered?

The Coalition is currently participating in the five-year review of the Social Work and Social Service Work Act. We have submitted a brief showing that the inclusion of mental health counsellors into the Ontario College of Social Workers and Social Service Workers is an avenue for regulation that has many precedents in jurisdictions throughout the United States. The Ontario Association

for Marriage and Family Therapy, one of the Coalition's founding groups, has made the same argument for similar reasons, also citing the precedent in Quebec where Marriage and Family Therapy is recognized as a psychotherapeutic profession and regulated in the same body with Social Workers.

If the decision is made not to regulate psychotherapists/psychotherapy in Ontario, the United Kingdom has developed an effective system of voluntary registration for practitioners in the field of psychotherapy. The UK Council for Psychotherapy (UKCP) contains 80 psychotherapy organizations and publishes a register of 6000 approved psychotherapists. Its stated aim is to "promote and maintain the profession of psychotherapy and the highest standards in the practice of psychotherapy ...for the benefit of the public." Although the UKPC Register is currently voluntary, the aim of the Council is to continue working with government to achieve the statutory regulation of psychotherapy in the future. The UKPC is a member of the European Association for Psychotherapy which, in turn, is a founding member of the World Council for Psychotherapy.

Question 18

If there is to be regulatory intervention, should exceptions be made? If so, for what professions and/or services?

Identifying exceptions is a common mechanism for ensuring that statutory regulation, in the form of a Controlled Act, does not prevent legitimate practitioners from continuing to offer their services. In the case of psychotherapy, some of the exceptions might include Aboriginal Counsellors and faith-based counsellors in order to allow them to perform what would otherwise be a restricted act. However, the Coalition considers such questions premature since we do not support a Controlled Act approach to regulating psychotherapeutic services at this time, for the reasons already stated.

The Coalition notes, in the strongest possible terms, that if psychotherapy is granted as a Controlled Act to professions already regulated under the *RHPA*, that the current exemption for "emotional" counselling must be retained to allow currently unregulated professionals to continue to practice. Whatever form of regulatory intervention is chosen in Ontario, the right to practice of all currently qualified practitioners in the non-statutory self-regulating sector must also be safeguarded.

At the HPRAC consultation held on July 13-14, 2005, a number of regulated practitioners supported the Coalition in this critical area. The College of Physicians and Surgeons of Ontario stated that "...regulation should not impede access to good quality psychotherapeutic care", and the Association of Psychological Associates warned that "If psychotherapy becomes regulated in some way, great care must be taken so that unregulated providers in a wide variety of settings do not have their services – often essential – needlessly

curtailed. Trying to reduce the risk of harm to psychotherapy clients through regulation should not result in more harm to many other clients benefiting from unregulated providers by needlessly or unwittingly curtailing their services.”

If there is a decision to regulate psychotherapists and/or psychotherapy:

Question 19

Should there be a transition period during which all practitioners must qualify? If so, how long should it be?

In the event of a title protection scheme, the Coalition would support the establishment of transition period that would last three to five years. This would allow sufficient time for those practitioners who wish to use the restricted titles but who cannot meet the entrance requirements of the new regulatory body to upgrade. Having a formal grace period would permit them to acquire the competencies to meet the registration criteria and thus be entitled to use the same titles they used before statutory regulation came into effect.

Question 20

Should those currently practicing psychotherapy be permitted to continue to practice throughout the transition period without meeting certain requirements?

Yes, in a scenario such as Question 19, practitioners who need to upgrade could be permitted to continue practice if they are members of recognized professional associations that have clear standards for entry into practice along with a code of ethics and a complaints process with disciplinary procedures. Many of the member groups of the Coalition operate within the framework of public interest principles and could provide a form of “interim certification”.

Question 21

Should some or all of those practicing psychotherapy be “grandparented”? Should those seeking “grandparenting” be required to meet a different, less onerous set of minimum qualifications and standards than those likely to be required in a new regulatory environment?

“Grandparenting” is a standard feature of many new regulatory schemes and a system should be put in place that would include practitioners who are currently members of non-statutory self-regulating professional associations. In a title protection scheme, as described in the two questions above, the minimum qualifications and standards for “grandparenting” would have to be carefully considered in light of the impacts that would be created and their effects on the public interest.

Question 22

How and by whom should minimum qualifications and standards be identified and set, including those for “grandparenting”?

All decisions regarding qualifications and standards, including those for “grandparenting”, should be set by the regulatory body, in consultation with the relevant professional associations, although these external groups have no control over the final standards set for membership in the newly regulated profession(s).

As noted earlier, the BC Task Group is in the process of developing a detailed list of core competencies for both entry level and specialized levels of practice in “Counselling Therapy”. In making the case for a core competencies, the Task Group notes that this has become “an almost universal practice for regulatory bodies in Canada, the United States and throughout the western industrialized world.” In its commentary to HPRAC, the Task Group states:

“Competencies are measurable learning outcomes that can be objectively tested. Properly stated, competencies include knowledge, practical skill and attitudinal or behavioural components, thus providing a comprehensive description of requirements for effective counselling practice. Because they focus on outcomes of learning, competency statements are independent of the learning process, and recognize that different individuals may acquire learning in distinct ways. Therefore, competency statements may be used to compare the results of education programs or various combinations of education and clinical experience.”

The BC Task Group also comments on the role of competency based standards for entry into a new regulatory body:

“An agreed set of entry-level competency statements will allow the first board of the new College to decide which members of the existing counselling organizations can automatically become members of the College without having to pass any sort of registration examination or similar process (As noted above, this is described as ‘porting’ of existing registrations with the professional associations.)

An entry-level competency profile will allow the first board of the new College to determine the combination(s) of education and clinical experience that will commonly be accepted as providing these competencies. In addition it will help the board identify other (less common) combinations of education and clinical experience that it may deem to be ‘substantially equivalent’. This will allow persons from other countries who have obtained their competencies as counselors in different ways to be registered, on approval of the registration committee.”

The Coalition notes that some of its constituent groups, such as the Ontario Association for Marriage and Family Therapy, already utilize a detailed set of competencies developed by the American Association for Marriage and Family Therapy (AAMFT) which could be leveraged to describe the specialized competencies of Marriage and Family Therapists regulated under the *RHPA* in Ontario.

Finally, the Coalition shares the view advanced by the BC Task Force that:

“...articulating the practice competencies for counselling will provide the basis for the College to be able to compare entry requirements in one jurisdiction with those from other provinces where counselling (or psychotherapy) may be regulated. Such a comparison – based explicitly on competencies – is required in order to comply with the Agreement on Internal Trade. Indeed, many professions have found it necessary to undertake such a task for the purposes of developing their labour mobility agreements under the AIT.”