

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

SUBMISSION TO THE TRANSITIONAL COUNCIL  
OF THE COLLEGE OF REGISTERED  
PSYCHOTHERAPISTS AND REGISTERED MENTAL  
HEALTH THERAPISTS OF ONTARIO

***DRAFT REGISTRATION REGULATION***

*September 26, 2011*

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## INTRODUCTION

The Task Group for Counsellor Regulation in British Columbia (the Task Group) is pleased to have this opportunity to comment on the draft Registration Regulation proposed by the Transitional Council of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (the Transitional Council).

### *1) About the Task Group*

The Task Group was formed in 1998, in response to the recommendation of BC's Health Professions Council that counselling be regulated in British Columbia, albeit not under BC's umbrella health professions legislation. Since that time, the Task Group has worked on putting in place the foundation for what it anticipates will become a new College of Counselling Therapists under BC's *Health Professions Act*<sup>1</sup> (HPA).

For example, the Task Group developed the *National Entry-To-Practice Competency Profile for Counselling Therapists* (May 2007). This Profile has become the model for defining the competencies for counselling and psychotherapy across Canada, and has likely influenced the competency profile for Ontario psychotherapists and mental health therapists that is currently being developed by the Transitional Council.<sup>2</sup>

The Task Group is currently comprised of six member organizations (in alphabetical order): (i) the American Association of Pastoral Counsellors (BC Chapter), (ii) the BC Art Therapy Association, (iii) the BC Association of Clinical Counsellors, (iv) the Canadian Association for Spiritual Care (BC Chapter), (v) the Canadian Counselling and Psychotherapy Association (BC Chapter), and (vi) the Music Therapy Association of BC. These six organizations represent about 2,500 counselling therapists working throughout the province.

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<sup>1</sup> RSBC 1996, c.183.

<sup>2</sup> Indeed, a comparison of the 2007 BC profile to the 2008 Ontario Coalition of Mental Health Professionals' *Entry-to-Practice Competency Profile for Psychotherapists and Registered Mental Health Therapists* makes it clear that the BC profile was adopted by the Ontario Coalition with only minor amendments.

## ***2) Why is the Task Group commenting?***

The Task Group is offering its comments on Ontario's draft Registration Regulation because, under the labour mobility provisions of the *Agreement on Internal Trade*, it is likely that Ontario's registration standards will become the model that all other provincial regulatory bodies outside of Quebec will adopt as their governments also move forward with regulating counselling therapy and psychotherapy within their respective jurisdictions.

## ***3) Consent***

The Task Group understands and, by providing this Submission to the Transitional Council, it thus consents to the following terms and conditions:

- (a) this Submission may be posted on the website of the Transitional Council of the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (CRPRMHTO);
- (b) information that could identify individuals, including names and contact information such as addresses, phone numbers and email addresses, will be removed from submissions that are posted publicly;
- (c) the names of organizations and individuals submitting on behalf of organizations will be posted publicly, though contact information will not be posted;
- (d) the Transitional Council will review submissions and, at its discretion, may choose not to post submissions if they include content or wording that is derogatory, defamatory, threatening, abusive or otherwise inappropriate, or that reveals private or personal information.

## ASSESSMENT CRITERIA

The Task Group has adopted the criteria for assessing a health profession's registration standards and practices that are affirmed in both Ontario's and British Columbia's legislation.

Section 22.2 of Ontario's *Health Professions Procedure Code*<sup>3</sup> (Procedure Code) sets out the four essential elements of the general duty that all Ontario health profession colleges hold with respect to their registration standards and practices: "The College has a duty to provide registration practices that are transparent, objective, impartial and fair."

In turn, Ontario's Fairness Commissioner has provided guidance as to how a regulatory body could demonstrate compliance with the general duties set out in section 22.2 of the *Procedure Code*.<sup>4</sup> (This guidance is set out in Appendix A of this Submission.)

BC's criteria are derived from section 16 of its *Health Professions Act*. Under this section, a BC college must aim (in part, emphasis added) "(i.1) to establish and employ registration ... procedures that are transparent, objective, impartial and fair." The BC criteria appear to be the same as those employed in Ontario.

While BC does not have a Fairness Commissioner to help interpret the registration fairness duty imposed on BC's colleges under section 16 of the HPA, the province does have a Health Professions Review Board (BC Review Board). The Review Board has been given the mandate under section 50.53(1)(d) of the HPA (in part, emphasis added) "to develop and publish guidelines and recommendations for the purpose of assisting colleges to establish and employ registration ... procedures that are transparent, objective, impartial and fair."

To date, the BC Review Board has not issued a set of guidelines pursuant to section 50.53(1)(d) to help BC colleges develop and use registration criteria and practices that are "transparent, objective, impartial and fair." However, in April 2010, the BC Review Board issued a report entitled, *Best Practices Pilot Study on Health Professions Registration* (the

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<sup>3</sup> Schedule 2 of the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18.

<sup>4</sup> Office of the Fairness Commissioner, *Registration Practices Assessment Guide – for Health Regulatory Colleges*, (undated), pages 13-14, General Duty; posted at: [http://www.fairnesscommissioner.ca/en/downloads/PDF/assessment\\_guide\\_rhpa.pdf](http://www.fairnesscommissioner.ca/en/downloads/PDF/assessment_guide_rhpa.pdf)

2010 Report). The 2010 Report focused on the registration of internationally trained applicants at BC's 21 different HPA colleges. (An extract from the 2010 Report is set out in Appendix B of this Submission.)

In reading the 2010 Report, it is clear that the BC Review Board adopted the four criteria set out in both section 16(2)(i.1) and 50.53(1)(d) of the HPA, but it also went further and added two additional criteria (or, as the Board describes them, "guiding principles"): flexibility and self-evaluation.

Clearly, Ontario and British Columbia have identified the same four "legislated" duties or criteria in relation to setting registration requirements: (a) transparency, (b) objectivity, (c) impartiality, and (d) fairness. To these four, British Columbia appears to have added two additional criteria: (e) flexibility and (f) self-evaluation.

It would appear that Ontario is missing two criteria (flexibility and self-evaluation) from its general registration requirements. However, given the way that BC's Review Board has described them, flexibility appears to be an element of fairness, and self-evaluation appears to be an element of transparency. Indeed, Ontario's legislation requires its health profession colleges to undertake their own evaluations to ascertain if they are meeting the general duty set out in section 22.2 of the Procedure Code.

What is more important for the purposes of this Submission is that both Ontario's and British Columbia's criteria appear to fall into two distinct groups. One group contains the criteria that can be used to assess the specific registration requirements or standards, as reflected in the substantive provisions of a college's regulations or bylaws. For example, a substantive requirement would be that an applicant must pass a registration examination with a certain mark.

The other group of criteria can be used to assess the process that a college employs when it applies the registration requirements from the first group. For example, a process requirement would be that an applicant must submit an application form or pay an application fee.

Having considered what Ontario's Fairness Commissioner and BC's Review Board have said about the assessment criteria set out in their respective legislation, in the Task Group's view, the criteria of flexibility and objectivity apply to the substantive registration requirements. In contrast, the criteria of transparency and impartiality apply to the process that a college employs when it is processing an application.

That said, it also appears that the fairness criteria can apply to both the substantive registration requirements and the registration process. And self-evaluation appears to have little application as a criterion that can be applied to assess the draft Registration Requirements.

In summary, the Task Group will apply the criteria of fairness, flexibility and objectivity when it considers a substantive or non-procedural provision of the draft Registration Regulation. To the extent that the Group will comment on a procedural aspect of the draft Registration Regulation, it will apply the criteria of fairness, transparency and impartiality.

## **GENERAL COMMENTS**

Before submitting its comments on specific provisions of the draft Registration Regulation, the Task Group would like to offer some general comments concerning the Transitional Council's approach to establishing registration requirements for psychotherapists and mental health therapists in Ontario. The Task Group will also comment on the relationship between counselling therapy and psychotherapy.

### ***1) The important of a competency profile***

The Task Group fully endorses the Transitional Council's commitment to developing registration criteria that are grounded on a bedrock of clearly defined and appropriately articulated competencies. Not only will taking this approach ensure that the Council's resulting registration requirements are objective and fair, but this approach should also insulate the College from future legal or political claims that it had applied registration criteria that are subjective, biased or not in the public interest.

A number of years ago, the Task Group recognized that the development of a competency profile for BC's various types of counselling therapists would provide a future College of Counselling Therapists with the foundation that would allow it to then articulate meaningful and defensible registration criteria and processes. That the Ontario Transitional Council has adopted a similar approach is gratifying for the Task Group.

As the Ontario Transitional Council was developing its registration provisions, it undoubtedly came to appreciate, as the Task Force did in its early days, that the broad diversity of education, training and experiences held by both psychotherapists and mental health therapists would neither be respected nor reflected in its regulation if the Ontario College adopted any particular academic credential as a measure of competence. Both types of therapist develop their skills and abilities through a variety of routes, not all of which involve formal post-secondary training at a university graduate program. The College must set registration standards that reflect that reality. In other words, the resulting registration standards must be both fair and flexible.

For many years, the Task Group has advocated that persons applying to become registered counselling therapists under the long-anticipated College of Counselling Therapists of BC should not be required to follow a particular path through a graduate degree program in counselling or psychology. The Task Group applauds the Ontario Transitional Council for rejecting calls to adopt any one academic credential as the entry-to-practice requirement.

Adopting the competence-based approach to setting flexible registration requirements not only reflects the diversity of the counselling and psychotherapy professions, but it should also help the Ontario College promote safe, ethical and effective mental health services in Ontario, regardless of the particular setting or practice modality of the registered therapist.

## ***2) Counselling therapy and psychotherapy***

The Ontario Transitional Council may wonder why counselling therapists from BC feel compelled to submit comments on its draft Registration Regulation. In the Task Group's view there is not a substantial difference between the practice of counselling therapy and that of psychotherapy. Therefore, the precedent that will be set in Ontario for defining the registration standards for psychotherapy and mental health practitioners is likely to have a significant impact in BC due to labour mobility and as our government moves forward with regulating the counselling therapy professions.

That said, it is instructive to consider the question:

### **Why did Ontario not recommend regulating counselling?**

On page 208 of its 2006 designation report,<sup>5</sup> the Ontario Health Professions Regulatory Advisory Council (HPRAC) distinguished psychotherapy from counselling in these terms: "The practice of psychotherapy is distinct from both counselling, where the focus is on the provision of information, advice-giving, encouragement and instruction, and spiritual counselling, which is counselling related to religious or faith-based beliefs."

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<sup>5</sup> In chapter 7 ("Regulation of Psychotherapy"), *Regulation of Health Professions in Ontario: New Direction* (April 2006).

The Council made this distinction because of a unique provision in Ontario's legislation that creates an exemption from the broad prohibition against persons who are not members of regulated health professions performing a controlled act. Section 27(1) of the *Regulated Health Professions Act*<sup>6</sup> states:

*Controlled acts restricted*

27(1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,  
(a) the person is a member authorized by a health profession Act to perform the controlled act; or  
(b) the performance of the controlled act has been delegated to the person by a member described in clause (a).

Thirteen controlled acts are then listed in section 27(2). However, section 29(2) creates an exception to the section 27(1) prohibition (emphasis added):

*Counselling*

(2) Subsection 27(1) does not apply with respect to a communication made in the course of counselling about emotional, social, educational or spiritual matters as long as it is not a communication that a health profession Act authorizes members to make

It would be difficult for the government to move forward with creating a controlled act concerning counselling or counselling therapy given that section 29(2) of the RHPA creates an exemption that is based upon communications made during counselling.

Psychotherapy is part of the counselling continuum

In the Task Force's view, psychotherapy as it is more commonly defined and understood by therapists is not as distinct from counselling as the Ontario Council suggested. Rather, psychotherapy is part of a spectrum of activities that counsellors may engage in. Like their counterparts in Ontario, many but not all BC counselling therapists provide psychotherapy as part of the range of services they may offer to their clients.

The definitions that the Ontario Council developed for psychotherapy and counselling are describing essentially the same type of professional services, but in different words.

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<sup>6</sup> S.O. 1991, c.18.

In relation to the way that services are provided, the Council concluded that psychotherapy is “delivered through a therapeutic relationship.” Counselling is also delivered through a therapeutic relationship.

The Task Group believes it is clear that people who are seeking counselling for mental health, psychological or emotional reasons are not entering into a non-therapeutic relationship. It is not a casual relationship they are pursuing, nor is it one based on simple friendship. A client sees a counsellor for assistance and therapy, not just for pleasant conversation and support. Thus, the Group believes that the forum within which both psychotherapy and counselling are provided is essentially the same.

As for the purpose of psychotherapy, the Council concluded that it was to obtain “treatment of cognitive, emotional or behavioural disturbances.” The purpose of counselling (or more accurately, of counselling therapy or clinical counselling) is no different than the purpose articulated for psychotherapy. While there are many different *forms* of counselling (*e.g.*, financial, employment and spiritual), those who are seeking counselling from mental health and similar types of therapists are seeking counselling to help them deal with the cognitive, emotional or behavioural difficulties that they are facing in their lives. Thus, the underlying purpose of both counselling and psychotherapy is the same; or at least, it is very similar.

If psychotherapy and counselling are delivered in essentially the same way, and if their underlying purposes are substantially the same, a final question must be asked: is the apparent distinction between the nature of these two services meaningful? In other words, is there a significant difference between

- a) “the provision of [a] psychological intervention” within the definition of psychotherapy, and
- b) “the provision of information, encouragement, advice or instruction about emotional, social, educational or spiritual matters” within counselling, at least as that term has been defined by the Council?

Considering the differences in the nature of these two therapies allows us to identify the fundamental problem with the Council’s proposed definitions and its resulting regulatory recommendations.

Clearly, when it was considering psychotherapy, the Council had in mind psychological interventions, or – more generally – interventions that are concerned with the nature, functions and phenomena of the human mind, or mental characteristics. On the other hand, the Council’s definition of counselling focuses on the process of communication between two or more persons concerning emotional, social, educational or spiritual matters.

There are many different forms of counselling where inter-personal communications is a key component. For example, there are financial counsellors, spiritual counsellors, employment counsellors, and mental health counsellors. Each of these practitioners must listen to and provide information to their clients; they often give advice; they can encourage the client to make recommended choices, and they sometimes give instruction on how to avoid negative outcomes. The key element that is missing from the Council’s definition of counselling is its context. Specifically, the Council did not address either the way that counselling (as it defined that term) is provided, nor did the Council consider the purposes of counselling. Had the Council provided these two missing elements within its definition of counselling, the Task Group believes the subsequent distinction the Council tried to draw between psychotherapy and counselling could not have been sustained.

In the Task Group’s view, the Council should not have tried to define a word like “counselling” *per se*. Instead, it should have defined a term like “counselling therapy” or “clinical counselling”. It is these forms of counselling that deal with or focus on helping a client deal with mental health issues and emotional challenges. And these types of counsellors often employ psychological interventions, such as psychotherapy.<sup>7</sup>

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<sup>7</sup> Despite their long-standing claim to the contrary, psychologists do not have a legal or a practical monopoly over the use or provision of “psychological interventions”.

Counselling in the context of health care is a continuum of services and processes. Counsellors deal with people who are experiencing deep personal or inter-personal crises. They may employ psychotherapy to help their clients through their crises. Such therapeutic counsellors can be said to reside on one end of the counselling continuum.

Along the continuum are career or guidance counsellors who help individuals deal with their personal well-being and try to help their clients achieve success or happiness in their careers or employment settings. School counsellors help students deal with behavioural issues that arise within the school system; they try to help students achieve academic success. Both of these forms of counsellor employ many of the same strategies or methodologies that are used by mental health counsellors, although these counsellors are less likely to use psychotherapy as a regular part of their day-to-day practice.

There is also an overlap between the practice of counselling therapists and other counsellors who provide mental health services<sup>8</sup> and the practice of those counsellors who provide counselling in relation to educational or employment services. Thus, the continuum is not composed of discrete types of counsellors who can be clearly demarcated.

The Council's description of counselling as being merely in relation to the provision of information, encouragement, advice or instruction about emotional, social, educational or spiritual matters ignores the broad spectrum of all counselling services. The Council's definition of counselling is thus seriously flawed, even if it then allowed the Council to isolate psychotherapy as a single therapeutic approach to be considered for the purposes of creating a new controlled act.

Therapeutic counsellors who use almost exclusively a psychotherapeutic approach are justifiably identified as Psychotherapists. But other counsellors may be providing psychotherapy, and may also want to be known as Psychotherapists instead of or in addition to their current title.

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<sup>8</sup> Specific examples would include marriage and family therapists, art therapists, music therapists and play therapists.

The Task Group believes the Ontario Council could have avoided the problem created by this focus on defining psychotherapy had the Council focused on defining counselling in the broader context of the provision of mental health, psychological and emotional services, while also recommending amendments to the RHPA to correct the problem with section 29(2) of that Act.

## SPECIFIC COMMENTS

In this section of its Submission, the Task Group will comment on specific provisions of Ontario's draft Registration Regulation. In each numbered subsection below, the wording of a proposed provision from this Regulation is set out, followed by comments on that provision, if not also recommendations.

In the next section, the Task Group will comment on editorial or drafting problems within the draft Registration Regulation.

### ***1) General Requirements Applicable to All Applicants: Applicant has practised for at least 750 hours over three years***

Regulation #2(1)9 states (in part):

*2.(1) 9. The applicant, other than an applicant for a certificate of Inactive or Qualifying Registration, must ...  
(ii) have practised the profession at least 750 hours within a three-year period that begins no earlier than three years before the date of his or her application ...*

The Task Group is concerned that this requirement creates an unfair requirement: one that creates a "catch-22" for any applicant who had been practising psychotherapy prior to seeking registration.

If it will be a breach of the *Regulated Health Professions Act* for someone who is not a registrant of the College (or any of the other colleges that have also been granted the controlled act of psychotherapy) to in fact perform psychotherapy, it follows that anyone who has practised psychotherapy for at least 750 hours three years before applying for registration would therefore be in breach of the controlled act provisions of the Act. Therefore, it does not seem fair or logical to require an applicant to have breached the Act before they can apply for registration as either a psychotherapist or a mental health therapist.

On the other hand, this requirement may not create such a legal catch-22 if it applies *only* to those potential registrants of the College who are applying through the grandfathering provisions as set out in provisions #4(2)1 and #5(2)1. Indeed, this requirement is already set out in those two grandfathering provisions.

Therefore, the Task Group recommends that this wording be deleted from provision #2(1)9.

***2) General Requirements Applicable to All Applicants: Applicant has successfully completed approved upgrading activities***

Regulation #2(1)9 states (in part, emphasis added):

*2.(1) 9. The applicant, other than an applicant for a certificate of Inactive or Qualifying Registration, must ...*

*(iii) have successfully completed upgrading activities approved by the Registration Committee no earlier than twelve months prior to the date of his or her application.*

The Task Group believes this requirement is also unfair.

It is likely that an applicant will not know which approved upgrading activities he or she will need to complete until *after* that applicant has submitted an application and the College has had a chance to assess where the applicant needs additional upgrading. Therefore, there should be no pre-application time condition as to when the applicant must successfully complete the required upgrading. Such a condition would appear to put an applicant in an impossible position in having to complete upgrading before even knowing what type of upgrading needs to be completed.

If the Transitional Council intended that an applicant had to complete an approved upgrading activity within a defined period of time *after applying*, then this clause should be amended to reflect that intention. For example, the Council might consider making it a requirement that the applicant must successfully complete the approved upgrading activities within three years of applying. And, once completed, then the applicant could be registered. (Or the applicant could be granted some form of conditional registration.) That sort of time limit would appear to be fairer and more consistent with the purposes of requiring upgrading.

To further confuse the issue, it would appear that – under provision #3(1)7(b) – the Registrar can suspend a member’s registration (without due process or an explanation) if that member has not “successfully completed upgrading activities approved by the Registration Committee.” This begs the question: *Can an applicant become registered without having*

completed the upgrading activities? If “yes”, that would seem to conflict with the requirement in provision #2(1)9(iii).

**3) Registered Mental Health Therapist / Registered Psychotherapist: The need to accredit their educational programs**

Regulation #4(1)1 states (emphasis added):

*4.(1) 1. The applicant must have successfully completed:*

- (i) a minimum 2-year diploma program in a field of training related to the scope of practice of psychotherapy that includes at least 5 semester courses or 180 hours of education and training central to the practice of psychotherapy, excluding practicum and supervision hours, and that leads to the development of the entry-to-practice competencies listed in Schedule A, or*
- (ii) a program in aboriginal healing that leads to the development of the entry-to-practice competencies listed in Schedule A, or*
- (iii) a program that is deemed by the Registration Committee to be substantially equivalent to a program referred to in subparagraph (i).*

And regulation #5(1)1 states (emphasis added):

*5.(1) 1. The applicant must have successfully completed*

- (i) a structured, coherent program of education and training in psychotherapy which has as a prerequisite an undergraduate degree and which includes at least 360 hours of training and education central to the practice of psychotherapy, excluding practicum and supervision hours, and which leads to the development of the entry-to-practice competencies listed in Schedule B, or*
- (ii) a program in aboriginal healing that leads to the development of the entry-to-practice competencies listed in Schedule B, or*
- (iii) a program that is deemed by the Registration Committee to be substantially equivalent to a program referred to in subparagraph (i).*

As reflected in its general comments, the Task Group fully supports the Transitional Council’s adoption of a set of entry-to-practice competencies that will eventually be listed in Schedules A and B of the draft Registration Regulation. The Group understands that the Council is currently engaged in a process to validate its draft competencies profile for both psychotherapists and mental health practitioners. While it would have been preferable to have been able to review a list of competencies set out in a proposed Schedule A and B as part of this review of the draft Registration Regulation, the Task Group is pleased that the Ontario Council is expressing its commitment to a competency-based approach in setting the educational program requirements for registration.

That said, the Task Group would point out that linking the learning outcomes that an educational program must achieve to a list of prescribed entry-to-practice competencies may require the development of another regulatory mechanism that is currently missing within the proposed Registration Regulation.

In order to ensure that an education program (be it a two-year diploma program, a program in aboriginal healing, or some equivalent program) in fact “leads to the development of the entry-to-practice competencies listed in Schedule A [or B],” the Ontario College may have to develop its own educational program accreditation system. If an independent and viable accreditation system does not emerge in the near future, with the capacity to accredit psychotherapy or mental health therapy educational programs to ensure they provide their graduates with the prescribed set of entry-to-practice competencies (as listed in Schedule A or B), then the College may have to consider developing its own system.

Further, in order for the College’s Registration Committee to be able to make some meaningful and objective assessment that a program is in fact “substantially equivalent to a program referred to in subparagraph (i),” the Committee will have to develop some system to be able to measure or assess equivalency. While being able to refer to a set of competencies listed in either Schedule A or B will be helpful, going further and making an actual determination of substantial equivalency will move the College closer to some sort of educational program accreditation system.

While the Council should be commended for adopting a set of competencies as the foundation for defining the educational program requirements for both mental health therapists and psychotherapists, this approach does beg the question: *How can the College be assured that any particular educational program is in fact providing its graduates with the entry-to-practice competencies that are listed in Schedule A or B?* Until the Council can answer this question, this could be a major policy if not legal gap in its proposed registration model.

The Task Group therefore recommends that the Transitional Council consider the option of creating its own or adopting some external educational program accreditation

system. Such a system should employ the core competencies that will eventually be set out in Schedules A and B of the Registration Regulation.

***4) Registered Mental Health Therapist / Registered Psychotherapist: Linking the registration examination to the entry-to-practice competencies***

Regulation #4(1)2 states (in part):

*4.(1) 2. The applicant must have successfully completed the registration examination, set or approved by the Registration Committee. ...*

And regulation #5(1)2 states (in part):

*5.(1) 2. The applicant must have successfully completed the registration examination, set or approved by the Registration Committee. ...*

In regulations #4(1)1 and #5(1)1, the Transitional Council clearly decided that the need for an educational program for either type of therapist must lead to a set of entry-to-practice competencies, that would – in turn – be listed in Schedules A and B of the final version of the Registration Regulation.

In the Task Group's view, given that a profession's competency profile is the foundation for all three of the College's registration requirements, it is also important to link the competencies listed in Schedules A and B to the registration examinations for both types of therapist.

Therefore, the Group recommends these two provisions be amended as follows (new text underlined):

4.(1) 2. The applicant must have successfully completed the registration examination, set or approved by the Registration Committee, that assesses whether or not the applicant has obtained the entry-to-practice competencies listed in Schedule A . ...

5.(1) 2. The applicant must have successfully completed the registration examination, set or approved by the Registration Committee, that assesses whether or not the applicant has obtained the entry-to-practice competencies listed in Schedule A . ...

## EDITORIAL COMMENTS

In this section the Task Group offers some editorial suggestions as to how the Transitional Council could improve the wording of the draft Registration Regulation without affecting any substantive policy issues.

### ***1) General Requirements Applicable to All Applicants: Application and registration fees***

Regulation #2(1)2 states:

*2.(1) 2. The applicant must pay the application and registration fees specified in the by-laws.*

While the Transition Council has explained that the College must cover its expenses on a cost-recovery basis, in the interests of transparency it would have been helpful had the Council disclosed in the public consultation draft of the Registration Regulation what amounts for these two fees it was considering setting out in the bylaws.

### ***2) General Requirements Applicable to All Applicants: Education, examination or experience***

Regulation #2(1)9 states (in part, emphasis added):

*2.(1) 9. The applicant, other than an applicant for a certificate of Inactive or Qualifying Registration, must*

*(i) have successfully completed one of his or her qualifying education program, or registration examination or clinical experience program no earlier than twelve months prior to the date of his or her application...*

The Task Group has identified two drafting issues within, or that flow from, this general provision.

First, the explanation for this provision makes it clear that completing a qualifying educational program, a registration examination or a clinical experience program are three different paths to registration (as distinct from qualifying or inactive registration). As the specific requirements for these three paths are set out in subsequent provisions, it may be useful to make it clear in those later provisions that each one is referring to either the qualifying educational program, the registration examination or the clinical experience program for that class of registration.

For example, regulation 4(1)1 could be amended to read (new text underlined): “The applicant must have successfully completed one of the following qualifying educational programs.” (Regulation 4(1)2 does refer to “registration examination”, so it does not need to be so amended.) And regulation 4(1)3 could be amended to read (new text underlined, repealed text struck-through): “The applicant must have successfully completed a clinical experience program in the profession that is structured, comprehensive, supervised and evaluated ~~program of clinical experience in the profession that~~, and is the equivalent of at least 900 hours.”

Second, the word “or” between the phrases “qualifying educational program” and “registration examination” is probably not necessary.

### ***3) General Requirements Applicable to All Applicants: Failing to provide proof of insurance***

Regulation #2(1)11 states:

*2.(1)11. The applicant must provide proof of current professional liability insurance coverage specified in the by-laws of the College or undertake to provide, within 30 days of registration, such proof of coverage effective from the date of registration.*

And later regulations #3(1)4 and 5 state:

*3.(1) 4. The member shall provide the College within two business days with details in writing if the member does not have the professional liability insurance coverage specified in the by-laws of the College.*

*3.(1) 5. The Registrar may suspend the member’s certificate of registration if the member does not have the professional liability insurance coverage specified in the by-laws of the College.*

Does the two-business-days time requirement in provision #3(1)4 apply after the 30-day deadline in provision #2(1)11?

And does the ability of the Registrar to suspend take effect after the 30-day deadline in provision #2(1)11? Or after the passing of the two additional business days suggested by provision #3(1)4?

Finally, how long can the suspension be? If the member does not comply within a defined period of time, should the suspension then be converted into an (automatic) termination?

Provision #3(3) suggests that a suspension can continue for up to three years, but that seems like too long a period of time to allow the suspension to apply if it is for failure to provide something as important to public protection as proof of insurance.

***4) General Requirements Applicable to All Applicants: Provisions not applicable to applying for registration***

There are a few provisions in the draft Registration Regulation that do not appear to relate to the issue of what an applicant must do to be registered, or what happens if a condition of registration changes after the applicant is registered. The Task Group suggests that the following provisions should be moved to another part of the College's regulations and not retained in the Registration Regulation:

- provision 3(1)9 re: use of the title or professional designation;
- provision 3(1)11 re: practising only in the areas of the profession in which the member has knowledge, skill and judgment.

## **APPENDIX A – ONTARIO FAIRNESS COMMISSIONER’S GUIDELINES**

The following is extracted from the Office of the Ontario Fairness Commissioner guideline, *Registration Practices Assessment Guide – for Health Regulatory Colleges* (undated):

### **TRANSPARENCY**

1. Good: Registration policies and criteria are well-documented. They are easy to find. They are described in a direct way. Their meaning is readily apparent. They are well-defined and unambiguous. There are no unwritten policies.
2. Good: Regulatory bodies communicate well with applicants about their application. Applicants know how their applications are progressing. Decisions and the reasons for them are communicated clearly. Applicants can see that the stated policies have been followed in their case.

### **OBJECTIVITY**

1. Good: Criteria can be measured by using verifiable data, without requiring a subjective assessment that applies personal views or judgments. For example, well-crafted marking templates or multiple-choice questions may be used to help make the grading of exams a more objective exercise; good character requirements may be measured against concrete criteria such as the lack of a criminal record, or the completion of a standard template for references.
2. Good: Decision-makers can determine whether the criteria have been met or not in a straightforward way. Different decision-makers reach consistent decisions.

### **IMPARTIALITY**

1. Good: Registration decisions are made free from bias and preconceived notions about any individual or group of individuals.
2. Good: Decision-makers come to each case without a preconceived view about the merits of the application. They maintain an open mind as they review the evidence to determine whether the applicant meets the criteria.
3. Good: Decision-makers do not undervalue applicants from certain jurisdictions or give undue preference to those from other jurisdictions, because the decision-makers are well trained in applying assessment criteria.
4. Good: Assessors, decision-makers and any other staff members who deal with registration applications are free from real or perceived

conflicts of interest.<sup>2</sup>

## FAIRNESS

1. Good: Registration decisions adhere to published criteria, standards and policies.
2. Good: Applicants are treated in a way that takes their circumstances into consideration (reasonable accommodation) to achieve an equitable result. For example, insisting that all applicants provide original documents treats everyone the same but may not be fair where records are not obtainable, and where alternative methods exist to prove the credential or competency.
3. Good: Registration fees are reasonable. The regulatory body can show how fees under its control are set and can provide the rationale for the amounts. Fees are not unjustifiably higher than the cost of providing the service.
4. Good: The regulatory body is able to explain how all requirements emerged and why they are necessary and relevant to the practice of the profession.
5. Good: Requirements do not unjustifiably exclude or limit certain groups, such as internationally trained applicants.
6. Good: The regulatory body can clearly justify the Canadian or Ontario experience it claims is necessary for applicants to become familiar with the specifics of practice in Ontario.
7. Good: The regulatory body can explain how international experience alone is insufficient to meet the objectives of the regulatory body's workplace or clinical experience requirement.
8. Good: The registration process is streamlined and unnecessary steps are eliminated.
9. Good: The regulatory body ensures that the following are done within a reasonable amount of time:
  - making registration decisions; giving the decisions (in writing) to applicants; and giving reasons, where applicable
  - making decisions about internal reviews and appeals; giving the decisions (in writing) to applicants; and giving reasons, where applicable
  - responding to applicants' inquiries or requests

<sup>2</sup> A conflict of interest includes, for example, any situation or circumstance in which the person's other commitments, relationships or financial interests:

- could improperly influence the person's objective, unbiased and impartial exercise of his or her independent judgment, or could be perceived as doing so; or
- could compromise, impair or be incompatible with the person's effective performance of his or her contractual obligations, or could be perceived as doing so.

## APPENDIX B – BC REVIEW BOARD COMMENTARY

On pages 17 to 21 of its 2010 *Best Practices Pilot Study on Health Professions Registration* report, the Health Professions Review Board described how it viewed BC's six assessment criteria:

### 4.4.1 Flexibility

63. As previously stated, the various professional health colleges are all quite different, as are the individuals from whom they accept applications. It is difficult to create universally applicable guidelines that apply equally to all applicants; it is thus important to be flexible in one's approach to international registration issues. Granted, this does not apply to some requirements (specifically those directly related to public safety issues), as each serves its purpose; but many processes (some administrative) can indeed stand as unfair restrictions based on the unique situation of an otherwise acceptable applicant.

64. Implicit in the idea of flexibility is that of open-mindedness. It is not necessarily about bending the standards to fit the applicants but rather the recognition that there is more than one route to an objective standard. Skills and competencies can be learned or achieved through many means. Being flexible implies an allowance for these varied routes.

65. Out of one of the pilot interviews, an observation that effectively crystallizes the issue of flexibility in terms of the registration of internationally trained applicants was that an "exam is *a* measure, not *the* measure." Implicit in this statement is a flexibility in what constitutes acceptable evidence of competencies. A competency-based framework is based on legitimate courses and programs that teach similar skills. For this reason, flexibility and self-evaluation need to work together. An understanding of one's own standards allows the flexibility to bend requirements where it is prudent to do so.

66. There were numerous instances across each of the colleges interviewed where courses, exams, assessments and other aspects of their registration process were offered either online, through distance education, or in many of the applicants' countries of origin. While allowing parts of the process to take place outside of B.C. may have its drawbacks, it offers applicants more options than might otherwise be possible. Applicants are able to remain in their home countries while still working and have their applications or assessments progress accordingly.

### 4.4.2 Transparency

67. Transparent registration practices include well-documented policies and criteria and good communication with applicants about their applications. Indicators of transparent policies and criteria include the following: the

policies and criteria are easy to find; they are described in a forthright, direct way and their meanings are readily apparent; they are well-defined and unambiguous; and nothing is hidden in “unwritten” policies. Indicators of transparent communication are: applicants know how their applications are progressing; decisions and the reasons for them are communicated clearly; and an applicant can see that the stated policies have been followed in his or her case.

68. In the previously described example of the paper-free system — the electronic form of application process and records management — applicants would be permitted to log on to their files and view the status of their application, including a more detailed view of how the file is progressing. For example, applicants would likely be able to view which transcripts have arrived (if there are multiple transcripts required). This kind of transparency allows applicants to take further action on their files if they wish.

69. Using more traditional methods, some of the colleges interviewed indicated that their applicants are informed of their status at every juncture in the evaluation process (by letter, email or phone). This makes the application less about waiting for an acceptance or denial and more of an articulated process that may or may not involve additional steps such as more courses, etc. This is a sometimes laborious task given the number of applicants as well as steps in the process, but it serves an important purpose of transparency. In this case, applicants know how their applications are progressing and have the opportunity to discuss any decision that is rendered as it comes up. In this way, the process between application and registration can be moved along as quickly as possible. It should be noted, however, that this may only work for some colleges. Depending on methods of information dissemination, number of applicants and other variables, this approach could become burdensome. The implementation of an electronic records management system is an example of the kinds of transparent measures available to colleges. It is hoped that there will be further discussions of other options.

#### *4.4.3 Fairness*

70. Fairness means that access to the profession is available to all qualified candidates. This definition encompasses both (1) procedural fairness and (2) substantive fairness. The main question of procedural fairness is: how fair is the process by which qualifications are assessed and registration decisions are made? Indicators of procedural fairness are: decisions adhere to published criteria, standards and policies; applicants receive due process in relation to their application; and a variety of interested parties have confidence in the criteria, process and results. Substantive fairness calls for the requirements to be clearly justified and logically connected to the matter at hand. One indicator of substantive fairness would be that special requirements for internationally trained applicants are clearly justified.

71. An example of procedural fairness is the assurance that applicants have the right to have reviewed any decisions rendered by a college, and also to

have this right communicated to them. To cite an earlier example in regard to language requirements, those colleges that require linguistic proficiency to be displayed upon application can turn away those who do not meet this initial requirement as long as they allow the application to be processed anyway at the behest of the applicant. This balances the fairness of not requiring fees from those who may ultimately not be accepted due to language requirements with the right to be heard for those applicants who do not believe the initial requirement to be applicable or just. All processes must allow for procedural fairness as mandated by the *Health Professions Act*.

72. Furthermore, competencies allow the academic institutions that work with the regulatory bodies to develop courses that are more in tune with the specific needs of those who are falling short on registration requirements. It would certainly be unfair for every applicant who failed one competency to be required to take a substantially larger body of courses to make up this one area. On a similar note, the Canadian jurisprudence exam required of the international applicants of one college is offered as an online, self-directed course. This means that applicants are able to meet the requirements for registration at their own pace while still being able to work.

73. One last example of a fairness policy concerns immigration. Some candidates, while meeting all of the college's criteria, may still fail to secure landed immigrant status in Canada for a variety of reasons. The college in question does what it can to facilitate this process by providing template forms for applicants to supply with their visa application forms or when dealing with Canada Customs. The nature of the application process may sometimes necessitate being in Canada before accommodation is secured. These trips for registration purposes do not qualify as "work trips," nor are they "vacations" under immigration policy. Thus, the college template form explains the process of registration and the ways in which it can be reconciled with border policy. By doing this, the college ensures that few if any applicants are denied the ability to work legally in Canada if they are otherwise able to do so.

#### *4.4.4 Impartiality*

74. Impartiality requires making decisions about individual applicants based on objective criteria and without bias, prejudice or favouritism. Decision-makers must have no vested interest in the outcome and must come to each case without a preconceived view about the merits of the application. Decision-makers must maintain an open mind as they review the evidence to determine if the applicant meets the criteria. Indicators of impartiality include the following: decision-makers are well trained in applying criteria; and they do not give undue preference to applicants from certain jurisdictions or undervalue those from others.

75. A general policy of one of the colleges interviewed for the pilot study is that applicants whose credentials are from approved domestic programs known to meet the standards required by the college are registered by the registrar. Any difficult cases — applications that the registrar believes may be

unsuccessful as well as all applications from internationally trained applicants — go instead to the registration committee, of which the registrar is a member. In this way, those files that do not fit neatly into the prescribed registration criteria can be further discussed in an open manner in order to find the most objective and fair outcomes. The group of applications seen by the registration committee includes all those that might not be successful, thus ensuring that any applicant who is in fact declined registration has received this refusal decision after the deliberation of an entire committee and not just one assessor. Furthermore, having the registrar assess those that clearly fulfill the requirements for registration saves time and resources and ensures that the registration committee has more time to consider and manage the more complex files.

#### *4.4.5 Objectivity*

76. Criteria are objective when they can be measured on the basis of verifiable data without requiring a subjective assessment that applies personal views or judgments. Clear, understandable criteria must be applied. Indicators of objective criteria and decision-making include: determining whether the criteria is applied in a consistent manner; and different decision-makers reach consistent decisions.

77. The example of the title distinction “psychologist” vs. “psychological associate” is one instance of objective standards based on verifiable data. That is, those with a Masters level of education are eligible to apply for the associate status while those with a doctoral degree are eligible for the psychologist distinction. Achievement of these titles, through registration, is still, of course, predicated on the successful completion of the other requirements.

78. On touring one of the colleges, it was noted that the offices in which the assessors worked were open-concept, with more than one assessor to each area. This, upon inquiry, was shown to be one of the benefits of their office in that the assessors can, when presented with a difficult file for assessment, easily pass it to an at-hand colleague in order to help verify a decision. In this way, any files that are found objectively to have the same outcome can move forward, whereas those where thoughts differ can be opened for more dialogue in order to provide a more complete and fair assessment. In addition to these benefits, the registrar of this particular college holds daily meetings with the assessors in order to be briefed on the files being assessed or managed on that day. For those files that prove complex or challenging, even in the group setting, a more inclusive dialogue can take place with the registrar’s participation as well, ensuring the fairest treatment of the file to the benefit of the public interest.

#### *4.4.6 Self-Evaluation*

79. The ability to evaluate one’s own practices is an important aspect of positive development. Every year the changes in the medical fields, emerging technologies and demographic changes to a field’s population give reason to re-evaluate colleges’ practices, including the registration of internationally

trained applicants. A willingness to engage in self-evaluation allows organizations to grow, move forward and strive to become more flexible, fair, objective, impartial and transparent.

80. Each college interviewed for this pilot study showed itself to be proficient at self-evaluation as well as being open to changes in its processes. Whether through formal review or by soliciting feedback from their applicants on how processes could be improved, as one college does, there are numerous opportunities for reflection and self-evaluation. These moments of evaluation also allow for moments of consideration of alternatives. In this way, the Review Board would like to ease this burden with the presentation of alternatives in this pilot report. If not appropriate for each particular college, they will at the very least foster the types of conversation that will bring about other changes.