

OPSEU submission

in response to proposed amendments to Ontario
regulation 107/96, respecting controlled acts
under the *Regulated Health Professions Act, 1991*

**Presented by the Sector Executive Committee of the Children's Treatment
Sector of the Ontario Public Service Employees Union**

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Background

The Children's Treatment Sector of the Ontario Public Service Employees Union represents approximately 2,800 workers who provide mental health and rehabilitation services to children, youth, and families across Ontario in community agencies in the broader public sector.

Children and youth mental health workers provide a range of treatment services in a variety of settings (school, agency, home). These services can include assessment; individual, group and family therapy; day treatment programs; and residential treatment programs. Currently, both regulated professionals and non-regulated professionals work in community-based programs.

Regulated professionals include Psychologists, Psychiatrists, Social Workers, Social Service Workers, Occupational Therapists, Nurses, Physiotherapists, and Speech and Language Therapists; non-regulated professionals include Child and Youth Counsellors, Addiction Counsellors, Autism Spectrum Disorder Workers, Infant Therapists, Court Mental Health Workers, Prevention Workers, and Residential Counsellors.

We understand the need to regulate the practice of psychotherapy to ensure that the public has confidence in, and can rely on, a system where practitioners receive supervision and training, uphold ethical standards, and are accountable to a governing body. OPSEU supports the intent of the *Psychotherapy Act, 2007*. However, we remain concerned about the impending proclamation of Section 4 of the *Psychotherapy Act*, which will make psychotherapy a controlled act and thereby restrict practice. Section 27(1) (14) of the *Regulated Health Professions Act* (RHPA) defines who will be able to perform the controlled act once it is proclaimed. It also includes any exceptions under section 29.

The Ministry of Health and Long-Term Care (MOHLTC) has spent 10 years attempting to reach clarity on a definition of what does and does not qualify as the practice of the controlled act of psychotherapy. The definition remains unclear: when do psychotherapy techniques cross the threshold into the controlled act of psychotherapy? The definition of psychotherapy remains problematic for individuals tasked with assessing whether or not they will be required to apply (and qualify for) entry into a regulatory college for authorization to perform the controlled act.

Should the controlled act be proclaimed as written, we anticipate ongoing interpretational challenges based on experience thus far since the College of Registered Psychotherapists of Ontario (CRPO) became operational on April 1, 2015. These challenges have already contributed to fewer psychotherapy services being available to the public, and they may continue to do so. As noted in Section 10 of the *Psychotherapy Act*, contraventions of Section 8

can result in hefty fines, and practitioners may err on the side of caution due to the ongoing lack of clarity.

Concerns regarding the proposed amendments to the controlled act

The current definition of the controlled act of psychotherapy is ambiguous

The practice of psychotherapy continues to evolve across disciplines and professions and has a wide array of applications. Many who work in the community mental health field apply a variety of modalities, including but not limited to: art therapy, narrative therapy, cognitive behaviour therapy (CBT), solution-focused therapy, dialectical behavioural therapy, group therapy, family therapy, mindfulness, psychoanalytic therapy, behaviour therapy, and transactional analysis.

The Health Professions Regulatory Advisory Council (HPRAC) has identified the problem with attempting to reduce the definition of psychotherapy to a single act. In a 2006 document, HPRAC pointed out that the practice of psychotherapy, unlike other protected controlled acts under the statute, is not viable for regulation because it is not characterized by a single act.

While acknowledging the potential benefits of a controlled act as providing the highest level of regulation and public protection, HPRAC concluded that it was “not a workable option” (Health Professions Regulatory Advisory Council, *New Directions*, April 2016).

OPSEU's submission to the standing committee on social policy on Bill 171 (the *Psychotherapy Act*) in 2007 also highlighted the limitations with the definition proposed at the time. The definition was amended and remains problematic today.

The current definition of the controlled act of psychotherapy as contained, but not yet proclaimed, in the *Regulated Health Professions Act* leaves room for interpretation and ambiguity. Employers in community mental health agencies, as a consequence, have not provided clear direction to employees with respect to changing job descriptions, the impact on service delivery, or the requirement to join a professional regulatory body (for Psychologists, Nurses, Occupational Therapists, Physicians, Registered Psychotherapists or Social Workers) as will be required under the act once it is proclaimed. This process has been destabilizing for the workforce and potentially for mental health community services.

If employers are concerned that certain types of psychotherapeutic interventions could fall within the protected definition of psychotherapy, there could be a reduction in community mental health options available to the public and offered through public agencies. In several instances, employers have eliminated job positions wholesale or are considering doing so:

- In 2016, at the Royal Ottawa Hospital, the addictions counsellor positions in one the substance abuse programs were laid off and replaced with psychologists, social workers and nurses (<http://www.cbc.ca/news/canada/ottawa/royal-ottawa-substance-abuse-counsellors-laid-off-1.3760436>).
- In November 2017, staff at Kinark Child and Family Services whose positions are being impacted by the controlled act have been notified by the employer and have been given the choice of registering with a regulated college or not. Employees who do not have the required credentials and have been in the field for numerous years remain uncertain about their jobs (OPSEU Local 355, November 2017).

The medical model does not easily translate to community-based services

This legislation privileges regulated professions that have increasingly adopted practices and structures from the medical model which does not easily translate to the community sector.

There are many counseling modalities and approaches to treatment that place emphasis on a relational, social justice model. People who work as addiction counsellors, supportive housing workers, rape crisis workers, and child and youth workers, among others, are not served by a regulation that places them within the territory of being sanctioned for lack of clarity in their approach to providing psychotherapeutic services. The consequence of this is a potential retrenchment or narrowing of services delivered across many types of programs serving vulnerable populations.

Some mental health workers have opted to join the College of Registered Psychotherapists of Ontario (CRPO) within the grandparenting period (which ended on March 31, 2017) for fear of losing their jobs, and have been recently notified that employers will not be including psychotherapy as a requirement of their position. Other employers have given direction that positions will require employees to perform psychotherapy as defined in the act.

Recommendations

In view of the lack of clarity in the definition of the controlled act, and despite efforts by the ministry and regulatory colleges to more clearly define when psychotherapy crosses over into Section 4 of the *Psychotherapy Act*, OPSEU recommends that:

- 1) Section 4 of the *Psychotherapy Act* should be withdrawn until the MOHLTC provides a revised definition that addresses widespread concerns expressed by the stakeholder groups who provided input to the HPRAC, the MOHLTC, and the affected regulatory colleges over the past 10 years.
- 2) Should section 4 of the *Psychotherapy Act* be proclaimed,
 - the proposed amendment to the *Regulated Health Professionals Act*, (O.Reg. 107/96) should have a transition period of five years to enable workers impacted by the legislation to obtain required clinical supervision hours and/or complete a degree as per CRPO registration requirements; and
 - the CRPO should be instructed to re-open the grandparenting period which concluded March 31, 2017, prior to resolution of proclamation of the controlled act, for a further two years concurrent to this five-year transition to enable those that may qualify for membership time to apply for an additional two years.
- 3) Further exemptions should be developed for those workers who work in publicly funded agencies and are therefore accountable under applicable government acts as well as internal policies and procedures. These exemptions would assist workers and employers in making a determination as to whether or not one is required under the act to be a member of a regulatory college to perform their work.