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## Psychotherapy Takeover Fears III: Call for Feedback DISCUSSION PAPER

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This discussion paper provides a brief update on the controlled act of psychotherapy in Ontario. It builds on two other papers, available [here](#) and [here](#). None of this commentary should be construed as legal advice.

Those following regulation of psychotherapy in Ontario will recall that the controlled act of psychotherapy has not been proclaimed. This means the legal definition of psychotherapy is not yet in force.

In spring 2015, the Ministry of Health and Long-Term Care (MOHLTC) directed the six regulatory colleges whose members will be authorized to perform the controlled act to work together in clarifying the legal definition.

### CRPO Requesting Feedback – Survey

Last week, the College of Registered Psychotherapists of Ontario (CRPO) finally released the working group's [document](#) and a [YouTube video](#) to clarify the meaning of the controlled act of psychotherapy. The document is meant to make the definition transparent to members of the six regulated professions, potential applicants and the public. **The CRPO is now seeking feedback on the document until February 7, 2017** with a survey available [here](#).

The document expands on elements of the definition, without providing much clarity. The regulators seem to intend regulation of “serious or deep” psychotherapy only, leaving the broader scope of general psychotherapy and counselling untouched. Please be mindful that the law itself needs to be clear. Policy documents do help guide courts on interpretation but they should not be a replacement for transparent legislation.

In one of the webcasts I watched, there were repeated warnings that people who think the controlled act might apply to their services should join the CRPO to avoid being a “test case”. In the courts, a test case is typically one where a new issue is decided. In this context, the court would have to decide what the definition of psychotherapy means at law and whether it captures the accused person's conduct. The court hearing would happen only once the administrative review and hearing process has been exhausted. It would be months or years before anything resolved, not weeks.

Recall that the controlled act of psychotherapy is defined as follows:

14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.<sup>1</sup>

<sup>1</sup> [Regulated Health Professions Act, 1991](#), SO 1991, c 18, s. 27(2)(14) (RHPA).

The newly released document, titled [Understanding When Psychotherapy is a Controlled Act](#), expands on the definition. For example, “psychotherapy technique” now “involves one or more interventions or approaches based on recognized psychotherapeutic theories, models or frameworks and/or empirical evidence”. If you are not sure how to differentiate “techniques” from “theories, models or frameworks etc.”, you are not alone.

The controlled act twice mentions the word serious but this too remains unclear despite the details in the working group’s document. On my reading, ADD and ADHD would qualify as serious. So could chronic indecision.

Critics point to a number of authoritative psychotherapy texts to show that just about every healing modality, including meditation, energy work, body work, and nutritional advice are “psychotherapy techniques”. We can see how a practitioner providing nutritional and lifestyle advice to a person struggling with ADD could run afoul of the law, despite the CRPO’s policies.

The CRPO concedes that psychotherapy and counselling can be highly interrelated.<sup>2</sup> It is clear in their webinars that the staff is as mystified as everyone else but the definition is to blame, not the staff. They reiterate protections for counselling and spiritual counselling pursuant to the *RHPA*. It is suggested coaching, addiction groups, and even crisis counselling would not be governed by the controlled act of psychotherapy. It would have been more helpful for the working group to provide a list of examples and scenarios in addition to the explanatory document.

Regulatory staff come and go with differing philosophical bents. Inconsistent discretion in enforcement actions will reflect this when the law is unclear. Regulators may claim a certain policy but things change quickly when a complaint is made, or when an unforeseeable tragedy occurs. Prosecutions should pursue problematic behaviour, not vengeful complaints made by persons taking advantage of ambiguity in the law.

#### Update on Prosecutions in Québec

Recall from my [last discussion paper](#) that two individuals in Quebec were prosecuted for the illegal practice of psychotherapy. I could not find any reported decisions but a newsletter from the Ordre des Psychologues du Québec reveals that self-described “coach and gypsy” from St. Sauveur agreed to a voluntary undertaking. My review of her [website](#) shows careful, neutral wording consistent with coaching and/or counselling. The second individual pleaded guilty to use of the restricted title but no further details were provided.<sup>3</sup> I suspect this person is involved in natural health field.

#### Choosing Registration Out of Fear

As the grandparenting application deadline looms on March 31, 2017, some practitioners may apply to the CRPO out of uncertainty, and to avoid being that “test case”. However, if parts of your practice are unconventional, you may encounter regulatory enforcement for straying beyond the scope of practice. This usually happens in response to a complaint from a disgruntled member of the public.

Think of a regulatory college as granting very specific powers to its members. This includes oversight on standards of practice and what is not allowed. By joining a regulatory college, registrants agree to the prescribed scope of practice and may have to renounce certain liberties. For example, a medical doctor is granted the right to prescribe regulated drugs. This same doctor may run afoul of the rules as soon as s/he strays beyond the accepted scope of practice by administering certain natural therapies. It would not matter that s/he pursued special training and could demonstrate safety and effectiveness.

In these situations, a registrant may have to choose between his or her registration with the college and the unconventional practices. Those truly practicing the controlled act of psychotherapy and providing

<sup>2</sup> <http://www.crpo.ca/home/info-for-applicants/definitions/>

<sup>3</sup> <https://www.ordrepsy.qc.ca/-/la-pratique-illegale-des-chiffres-et-des-tendances>

non-approved services will be in a particularly difficult position. Again, discretion takes over when the law is unclear. A practice may be acceptable to one regulator, but not another. Disciplinary examples follow.

In Québec, *Psychologues c. Allaire* imposed a 3-month suspension and \$2000 fine on a psychologist who relied on paranormal principles in his professional practice. Allaire had recommended that a teenager suffering from hallucinations and an adult with terminal cancer consult a medium. He also drove the cancer patient to the medium's place of work for the session. In arriving at its decision, the disciplinary council summarized other actions against registrants who strayed from the scope of practice:

- *Malenfant*: a psychologist prepared and observed a treatment plan involving an exorcism (\$1000 fine);
- *Nantel*: a psychologist applied a psychotherapy technique based on past lives, telepathy and shamanism (\$1000 fine);
- *Dubue*: a psychologist failed to observe generally accepted scientific principles in psychology by analysing "energy fields" and "energetic blockages at the heart, thymus and solar plexus". The accused further strayed from accepted principles by applying "karmic knot" and "chakra, heart and body" healing exercises (reprimand and reimbursement of professional fee paid by client);
- *Pelletier*: a doctor performed repeated mesotherapy treatments (subcutaneous injections) (5-month suspension); and
- *Lemay*: a chiropractor advertised ear infection treatments that were not recognized by generally accepted chiropractic principles (reprimand).<sup>4</sup>

These examples are given not as an endorsement of unconventional practices but to illustrate consequences for natural health practitioners. If services are not clearly delineated, a registered psychotherapist who also practices reiki or other energy work with a client may run into trouble. However, a reiki practitioner who provides counselling would theoretically be protected under current enforcement policies.

### **Complete the Survey, Make Your Voice Heard**

The CRPO is seeking feedback on the explanatory document until February 7, 2017 [here](#).

Please take advantage of this opportunity by voicing your concerns. Get legal advice specific to your circumstances. Write your MPP, the Ministry of Health and Long-Term Care, CRPO directly and ask your professional associations to give examples of how Ontario's definition for the controlled act of psychotherapy may, or may not, apply to your unique practice.

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<sup>4</sup> *Psychologues (Ordre professionnel des) c. Allaire*, [2016 CanLII 70558](#) (QC OPQ).