

SOME REFLECTIONS ON BILL 171

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Earlier in December we got to see the proposed legislation that will regulate Psychotherapy in Ontario (Bill 171, the Health Systems Improvements Act 2006, Schedule Q The Psychotherapy Act). The crucial determinations are the following:

1. A new College of Psychotherapy is established, integrating our profession in the public health care system in unprecedented ways.
2. “Psychotherapist” and “registered mental health therapist” become protected titles, i.e., no one who is not a member of the College may use them.
3. A scope of practice is legislated, defining the kinds of things that only a member of the College may do.
4. A new controlled act is established, i.e., a specific part of what a psychotherapist may do is listed as potentially causing harm and therefore only to be done by a member of the College.
5. The Transitional Council is to be appointed by the Lieutenant Governor in Council without any specification of membership.

The Controlled Act

The 4th of these, the controlled act, was a surprise, considering that *New Directions* (the HPRAC advice to the Minister) had stated:

The problem, however, is that the RHPA’s controlled act approach is unworkable for psychotherapy. This is because it is impossible to single out a clearly discernible act that forms part of the practice of psychotherapy (and is unique to it) that serves to create risk of harm for patients. (p.220)

The framers of Bill 171 disagree with this assessment and propose a new controlled (authorized) act:

4. In the course of engaging in the practice of psychotherapy, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to treat, by means of psychotherapy technique delivered through a therapeutic relationship, an individual’s serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual’s judgement, insight, behaviour, communication or social functioning. (Schedule Q, Psychotherapy Act, 2006, p.138)

Controlled acts need to be clearly discernible. Almost all of them refer to cutting the skin, injecting substances into the body, and such. The only “spiritual” controlled act so far has been diagnosis, and it is made discernible by making the empirical act of communicating a diagnosis the controlled act.

In this new case, “to treat, by means of a therapeutic relationship” cannot possibly function as the easily discernible part; so all the burden of discernibility is shifted to the “serious disorder . . . that may seriously impair.”

The legislators have seemingly taken advice from that tradition of practice that is quite confident about the accuracy and reliability of preliminary diagnosis and the prediction of consequences. There is, however, much controversy about the current theory and practice of diagnosis. Thus in the long run, the controlled act will probably have to bear on what even common sense would have to see as a serious disorder, e.g., manifest, enduring psychotic behaviour.

The “high” definition of the controlled act of psychotherapy and the hint that some members of the College might not be authorized to do it (by “limitations on his or her certificate of registration”) makes one wonder whether the advisors to the legislator may be envisaging a two tier certification.

We must be careful that the legislation does not open the way to a two tier system where only psychologists and MD’s, for example, could do the controlled act.

Such an outcome would seem to be against the spirit of Bill 171 expressed in the ***Compendium*** (p.48):

The Ontario legislative framework for regulated professionals is not intended to judge or compare the value of one health care profession over another or test the theory of certain health care practices over others.

The legislation is caught in something of a post modern dilemma. It does not wish to give state sanction to anything as true, yet it gives complete power to the Transitional Council to prescribe what are acceptable therapies.

Transitional Council

This brings us to a comment on number 5. *New Directions* had recommended that the hugely powerful Transitional Council should have 6 to 9 unregulated practitioners as members (out of a possible 29 total).

All this effort to ensure certain representation is gone from the Bill. The Lieutenant Governor in Council appoints everybody. On the other hand, the College Council does have membership specification: 6 to 9 members of the College, 5 to 8 appointed who are not members of any Colleges or Councils (as defined in the RHP Act).

We could argue backwards from the requirements of the College Council to the need to give major representation on the T.C. to those who are potentially members of the new College, namely, the presently unregulated psychotherapists.

The T.C. is given the powers “to do anything that is necessary or advisable for the implementation of this Act . . .” (Schedule Q 11.3, p.140). Two things are mentioned specifically: the prescribing and prohibition of therapies; and issuing certificates of registration to psychotherapists.

Everything is left to the determination of the T.C. All the issues of training standards, qualification for certification, and grandfathering that exercised us in our briefs to HPRAC and the MOH are left to the regulation of the T.C.

The Scope of Practice

On the scope of practice (#2), *New Directions* had tried to put teeth in the scope of practice because they considered a controlled act of psychotherapy incoherent. The scope of practice they suggested was the following:

Psychotherapy is the provision of a psychological intervention or interventions delivered through a therapeutic relationship for the treatment of cognitive, emotional or behavioural disturbances. (9.8, p.221)

They tried to mark psychotherapy off formally from counseling by exempting counselors from the act specifying that

it does not apply to counselors providing information, encouragement, advice or instruction about emotional, social, education or spiritual matters (9.9, p.222)

Strong representation was made to the Ministry before June 30th in reply to *New Directions*, that this scope of practice would hamstring counselors in their work.

The legislators seemed to listen to this, as the new scope runs:

3. The practice of psychotherapy is the assessment and treatment of cognitive, emotional or behavioural disturbances by psychotherapeutic means, delivered through a therapeutic relationship based primarily on verbal or non-verbal communication. (Schedule Q, 3, p.139)

Having removed the factor of “serious” disorder into the controlled act, they can give a general scope of practice that does not have to define itself against counseling.

In fact, by saying “assessment and treatment of . . .disturbances by psychotherapeutic means . . .,” they open the way for counseling to deal with the same matters “by counseling means.”

The thing to be defined (“psychotherapy”) is in the definition (“psychotherapeutic means”) which makes for bad logic, but removes a legal threat to counseling. It also reduces the power of the scope of practice almost to a repetition of title protection. All the teeth in this law are in the definition of the controlled act.

In Summary

Through our briefs and interventions we gained much in New Directions:

- 1) Clear recognition of Psychotherapy as a distinct profession.
- 2) Explicit recognition of the traditions of which we are part.
- 3) Recognition of the necessity of specific training.
- 4) Some recognition of the essentially relational nature of psychotherapy.
- 5) Major representation of unregulated psychotherapists on the Transitional Council.

In the legislation only 1) and 4) are retained.

The new scope of practice actually has the welcome addition of the phrase “based primarily on verbal or non-verbal communication” (Schedule Q, 3, p.139).

However, both the scope and the controlled act retain the dominant language of psychotherapy as a treatment delivered to the client or patient.

The Way Forward

1) We have the choice of trying to alter the legislation. It has only been given first reading and may go to the Social Policy committee, who may accept briefs from people like us.

Possible changes we might go for:

A) A positive mandate to the Transitional Council and the College to protect the diversity and extent of present unregulated psychotherapy in Ontario.

B) A positive mandate to the Transitional Council and College to acknowledge free standing training institutes.

C) Specify the composition of the T.C. allowing for 6 to 9 unregulated practitioners as ***New Directions*** specified.

D) Removal of the Controlled Act as unnecessary and incoherent.

2) If we decide we can live with the legislation as written, we need to work hard to influence the composition and ongoing work of the Transitional Council.