



Psychiatric Patient Advocate Office

Bureau de l'intervention en faveur des patients des établissements psychiatriques

April 24, 2007

Mr. Ernie Parsons, MPP
Chair
Standing Committee on Social Policy
99 Wellesley Street West
Room 1405,
Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Mr. Parsons:

Re: Bill 171 (*The Health Systems Improvement Act, 2006*) An Act to improve health systems by amending or repealing various enactments and enacting certain Acts

As a rights protection organization, the Psychiatric Patient Advocate Office (PPAO) is particularly concerned about the protection of vulnerable individuals who are consumers of mental health and other health care services. This submission is in response to the consultation on Bill 171 being conducted by the Standing Committee on Social Policy.

The PPAO is an arm's length office of the Ministry of Health and Long-Term Care. Since 1983 the PPAO has provided individual advocacy, rights protection and rights advice to clients of tertiary care psychiatric facilities in Ontario. Through our community rights advice service, we also provide rights advice in nearly all psychiatric units of Schedule 1 and 2 hospitals throughout Ontario. For more than two decades the PPAO has advocated strenuously on behalf of consumers of mental health services in an effort to address significant local, regional and provincial systemic issues.

Broadly, the proposed omnibus legislation will impact a number of existing statutes and is intended to:

- Ensure greater accountability through the Ontario Health Insurance Plan by creating a new billing review and appeal process and review board.
- Promote increased public protection by amending the *Regulated Health Professions Act (RHPA)*: committee functions will be collapsed in order to streamline the complaints process; the public will have greater access to practice information and practice restrictions, and any disciplinary actions being taken against college members; the *RHPA*'s "harm clause" will include "psychological harm;" facility operators will be required to report any concerns to health colleges about possible incapacity or incompetence; and colleges will have authority to order an immediate interim suspension where an investigation indicates serious public risk as a consequence of the continued practice by the regulated health care professional.

- Promote public health by establishing the Ontario Agency for Health Protection and Promotion which will provide specialized research and scientific and technical advice in the areas of infectious disease, infection control and prevention, health promotion, chronic disease and injury prevention and environmental health.
- Improve patient access to services by expanding services offered by optometrists, pharmacists and dental hygienists by amending the *RHPA* and by creating four new regulated professions.

In this submission, we focus on proposed changes to the *RHPA* and the creation of a College of Psychotherapists and the regulation of psychotherapy as a controlled act. While many of the proposed amendments to the *RHPA* enhance protective and regulatory mechanisms, we believe some important considerations have been overlooked. We have previously made submissions to the Health Professions Regulatory Advisory Council (HPRAC) regarding changes to the *RHPA* (Submission Regarding Regulated Health Professions Act, December 2005) and the regulation of psychotherapy and psychotherapists (Submission to the Health Professions Regulatory Advisory Council Re: Consultation on the possible regulation of psychotherapy and /or psychotherapists, October 2005). We draw upon our previous observations and recommendations wherever relevant to the current consultation. Finally, we recommend the creation of the position of Health Systems Advocate to further the stated purpose of the proposed legislation.

Alternative Dispute Resolution

In Schedule M, sections 25.1(1) and (2) outline the use of alternative dispute resolution (ADR) to address complaints. Under the proposed amendments this process requires the consent of both the complainant and the member and cannot be used in cases involving allegations of sexual abuse. All communications made during ADR, including the facilitator's notes and records, are considered confidential and made without prejudice to the parties in any other proceedings. Where the complainant and the member reach a resolution the panel may adopt the resolution or continue with its investigation. We have previously noted that the use of ADR may magnify power imbalances between parties and may be perceived by vulnerable complainants as minimizing their concerns. The proposed approach appears to strike a balance between the power of the complainant and member; however, colleges need to ensure that clients have a full understanding of the process and the range of outcomes that are available. ADR should not be used where complaints involve allegations of professional misconduct or practice deficiencies. In addition, not only should ADR not be considered in situations involving allegations of sexual abuse, but it should not be used in situations involving any kind of abuse, including physical or emotional abuse.

Recommendation:

- Ensure that complainants are fully informed about the ADR process and range of outcomes that are available.
- Amend section 25.1(2) to prohibit the use of ADR for all situations involving alleged abuse, including physical and emotional abuse.

Dismissal of Frivolous and Vexatious Complaints

Under section 26(4), the panel may decide to take no action on matters they consider to be frivolous or vexatious. While such decisions may be appealed, this practice may disadvantage complainants with legitimate grievances since there are no guidelines outlined in the *RHPA* for what constitutes a frivolous or vexatious complaint.

Dismissing a complaint on this basis may seem an arbitrary process, which may compel the complainant to engage in a time-consuming appeal process in seeking redress. We would hope that complaints from individuals with mental illness do not disproportionately fall into this category of dismissals. A public reporting mechanism is needed that provides information on frivolous or vexatious complaints as a means to monitor and guard against this possibility.

Recommendations:

- Amend section 26(4) to establish guidelines for what constitutes a frivolous or vexatious complaint.
- Develop a public reporting mechanism to monitor trends in the dismissal of frivolous and vexatious complaints.

Timelines for Complaints Disposal

As we have previously noted, clients continue to report dissatisfaction with delays in adjudicating complaints. It is now proposed that complaints be disposed of within 150 days of filing. Additional delays in providing a disposition of up to 90 days are possible. However, the Registrar must provide the complainant and member with written reasons for the delay and an expected disposition date. Written notice and the provision of reasons for delays may help to mitigate complainants' frustrations. However, it is important to consult with complainants when delays are anticipated and new timelines are being established for complaint resolution. There needs to be a way to monitor and enforce compliance with established and revised timelines. This is particularly true given the generous timelines stipulated in the proposed legislation.

Recommendations:

- Develop a mechanism to monitor and enforce compliance with established guidelines.
- Establish guidelines to minimize unnecessary delays in adjudicating complaints.

Practitioner Reassignment Pending Complaint Outcome

For clients detained in hospital involuntarily (e.g., under the *Mental Health Act* or mental disorder provisions of the *Criminal Code of Canada*) who have filed a complaint with a college, there are no guidelines in the *RHPA* for mandatory reassignment to another practitioner pending outcome of their complaint. These individuals may be forced to receive services from practitioners they have concerns about. Clients may be

unsuccessful in their efforts to petition hospital administration for reassignment, as hospitals are under no professional obligation to honour such requests. These circumstances leave hospitalized complainants feeling unprotected and powerless. The PPAO believes that the *RHPA* should develop guidelines to address this issue.

Recommendation:

- Develop guidelines for reassignment to an alternative health care provider pending complaint outcome, where a complainant does not have the freedom to choose another practitioner.

Support Fair Access to Complaints Process

Clients challenged by mental illness face significant barriers to accessing available safeguards offered by professional colleges. They may be disadvantaged by a process that they perceive as overly complex and lengthy and that, at times, relies heavily on written communication. Moreover, clients living in areas distant from Toronto, where all professional colleges are currently located, may be denied justice by a complaints process that is geographically remote from their home communities. Efforts need to be made to address the needs of complainants living in geographically remote areas. These individuals may not have the financial resources to travel to Toronto to attend discipline hearings and may also be unable to afford legal representation.

Consumers of mental health services may benefit from accommodations that support their access to complaints mechanisms and full participation in the complaints process. Permitting third parties to file a complaint on behalf of consumers who are unable to do so, could facilitate their fair access to the complaints process. Similarly, we also recommend that individuals be permitted to have a person of choice available to support them throughout the complaint process, without requiring that person to be identified as an “agent” or “representative.” The PPAO believes the *RHPA* must include provisions to support and accommodate individuals with mental illness, special needs or special circumstances.

Recommendations:

- Provide education in consultation with mental health consumers and other stakeholders, to sensitize colleges and their members to barriers faced by mental health consumers in accessing and using the complaints process.
- Ensure equitable access to the complaints process regardless of geographic location.
- Include provisions to support and accommodate individuals with mental illness, special needs or special circumstances.

Regulation of Psychotherapy and Psychotherapists

We have previously made submissions to HPRAC on the regulation of psychotherapy and psychotherapists and we believe that Bill 171 has addressed many of earlier concerns regarding the protection of vulnerable individuals who are consumers of mental health services. We noted that help-seekers, and in particular those faced with the complex therapeutic needs of serious mental illness, may have difficulty in safely navigating the vast array of available psychotherapeutic and counselling strategies. We called for the regulation of both psychotherapy and its practitioners and, therefore, largely endorse the regulatory scheme created in Schedule Q, the *Psychotherapy Act, 2006*.

The proposed legislation defines the scope of psychotherapy practice and amends section 27 (2) of the *RHPA*, identifying treatment by means of psychotherapy as a controlled act. Section 2 (1) of the *Health Care Consent Act* is amended to include members of the College of Psychotherapists. Amendments to the *Medicine Act*, the *Nursing Act*, the *Occupational Therapy Act* and the *Psychology Act* define psychotherapy as an authorized act.

Title Restriction

The *Psychotherapy Act* restricts the use of the titles “psychotherapist” and “registered mental health therapist” to members of the College of Psychotherapists. We previously recommended and now endorse the regulation of the title of psychotherapist, as this term is suggestive of the qualifications of practitioners and the services they offer. We did not anticipate that practitioners of other colleges (e.g., College of Psychologists, College of Physicians and Surgeons) who were qualified to perform the controlled act of psychotherapy would not be able to use the title of psychotherapist. It may be confusing to the public that practitioners who are duly qualified to carry out the controlled act of psychotherapy do not have the authority to refer to themselves as psychotherapists; it may also be misleading in terms of the quality of services offered by the members of different colleges, suggesting to some that those who are able to use this title are better qualified to provide psychotherapy.

Recommendation:

- Amend sections 8 (1) and 8 (2) to permit the use of the title of psychotherapist by all regulated health professionals who are authorized to carry out the controlled act of psychotherapy.

Practice Restriction

The *Psychotherapy Act* does not establish guidelines for psychotherapy practice, however, section 11 allows for future regulations to govern the use and prohibition of therapies provided through psychotherapy. Uniform guidelines are needed for qualified practitioners across colleges with complementary amendments to profession governing legislation to define the scope of psychotherapy practice and practitioner qualifications.

The proposed legislation does not give authority to social workers who are members of the Ontario College of Social Workers and Social Service Workers to provide psychotherapy, despite the fact that a significant number of these professionals may be providing psychotherapy services in a variety of settings. In the absence of clear practice guidelines, it is difficult to ascertain what combination of education, training and skills is required for the practice of psychotherapy and qualification as a psychotherapist. While social workers are not regulated under the *RHPA*, they are accountable under their own regulatory framework under the Ministry of Community and Social Services. Failure to acknowledge and regulate the provision of psychotherapeutic services by social workers may significantly impact the availability these services and limit the protection of the public.

Recommendations:

- Establish uniform guidelines for the practice of psychotherapy for all qualified practitioners regardless of college membership.
- Examine the inclusion of registered social workers as a class of professionals authorized to provide psychotherapy as a controlled act.
- Establish educational and training guidelines for qualification as a provider of psychotherapeutic services.

Definition of Psychotherapy

The *Psychotherapy Act* and its complementary amendments omit counselling approaches from its practice definition. The definition provided in section 3, while broad in scope, does not acknowledge the considerable overlap between counselling and psychotherapeutic interventions. Many counselling approaches, for example humanistic and person-centred counselling, may be equal to psychotherapy in both intensity and specificity of treatment or intervention. While these approaches have different historical and theoretical roots, both approaches rely on the establishment of a helping relationship in a particular therapeutic context. The nature and quality of the helping relationship in both counselling and psychotherapy has the potential to help or harm consumers of these services. For this reason, any definition of psychotherapy should include counselling approaches that share common principles, tasks and goals.

Recommendation:

- Broaden the definition of psychotherapy to include counselling approaches that share common principles, tasks and goals.

Health Systems Advocate

In the context of improving the delivery of health care services in Ontario, we propose the creation of the position of independent Health Systems Advocate to monitor a transforming health care system and report annually on the state of health care in Ontario. The Health Systems Advocate would track significant trends in the delivery of health care services across the province, liaise with Local Health Integration Networks (LHINs) and the Ministry of Health and Long-Term Care (the Ministry) and make recommendations to government.

Recommendation:

- Create the position of independent Health Systems Advocate to monitor a transforming health care system, liaise with the Ministry and LHINs and make recommendations to government.

Thank you for the opportunity to provide feedback on this important and wide-ranging Bill.

Please contact me at (416) 327-7004 should you have any questions regarding this submission.

Sincerely,



David Simpson
Director (A)

Copy: Dawn Ogram, Assistant Deputy Minister, Corporate and Direct Services, MOHLTC