



Psychiatric Patient Advocate Office

*Submission Regarding
Regulated Health Professions Act*

December 2005

Psychiatric Patient Advocate Office
55 St. Clair Avenue West
Suite 802, Box 28
Toronto, ON, M4V 2Y7
Telephone: (416) 327-7000
Toll Free: 1-800-578-2343
www.ppao.gov.on.ca

PROMOTING PATIENTS' RIGHTS



Psychiatric Patient Advocate Office

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

December 14, 2005

Ms. Karen Lane
Consultation Co-ordinator
Health Professions Regulatory Advisory Council
55 St. Clair Avenue West
Suite 806 Box 18
Toronto, ON M4V 2Y7

Dear Ms. Lane:

Re: Consultation on the *Regulated Health Professions Act*

I am pleased to submit the response of the Psychiatric Patient Advocate Office (PPAO) regarding the current review of the *Regulated Health Professions Act (RHPA)*.

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.

Professional regulation and oversight are essential to consumer protection and ensuring the delivery of the highest quality of care, standards of practice and conduct and practitioner qualifications. However, clients challenged by mental illness may be disadvantaged by the existing regulatory scheme if it fails to take into account and accommodate their special needs regarding access to available protective mechanisms. These individuals face significant barriers to their inclusion in society at large as a consequence of stigma and discrimination and, at times may find themselves disempowered and marginalized within the health care system. They may encounter a range of barriers in lodging complaints with professional colleges.

In this submission, we review the *RHPA* and make recommendations for its improvement and the development of an accessible and effective regulatory system that addresses the special needs of consumers of mental health services.

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

Sincerely,

David Simpson
Director (A)

Summary of Recommendations

Psychiatric Patient Advocate Office

Public Protection - Recommendations:

- The PPAO recommends that the current model of self-regulation be reviewed and revised to incorporate the increased involvement of public members in oversight functions.
- The PPAO recommends the development of guidelines for the reassignment to an alternative health care provider pending the outcome of a complaint against an assigned practitioner, in situations where a complainant does not have the freedom to choose another practitioner.
- The PPAO recommends limiting the use of alternative dispute resolution (ADR). ADR should not be considered appropriate in cases of serious professional misconduct or practice deficiencies. ADR should not be considered in cases of sexual, physical or emotional abuse.
- The PPAO recommends the development of an oversight and accountability mechanism for psychotherapy (and counselling). The practice of psychotherapy (and counselling) carries with it a significant potential for harm to consumers. A regulatory mechanism would set a standard for entry-level and ongoing practice, and provide avenues for complaint, discipline and quality assurance.
- The PPAO recommends the regulation of psychotherapists and counselors in the context of the psychotherapy and counselling services they provide.
- The PPAO recommends the regulation of psychotherapy and counselling (in tandem with the regulation of psychotherapists and counselors) to offer consumers and the public the greatest level of protection.
- The PPAO recommends the development of a new statutory scheme for the regulation of psychotherapy (and counselling) and psychotherapists (and counselors).
- The PPAO recommends the establishment of a title scheme for psychotherapists and counselors.
- The PPAO recommends the establishment of practice and conduct guidelines for psychotherapy and counselling.
- The PPAO recommends that colleges establish clear guidelines for the provision of rights information to individuals found incapable of consenting to treatments proposed by member practitioners. Colleges must ensure that members understand the information to be provided and be able to assist individuals in making application to the Consent and Capacity Board (CCB) who wish to challenge a finding of treatment incapacity. Colleges must provide sanctions for those who fail to provide information on the consequences of a finding of treatment incapacity and who fail to assist patients in exercising their right to review this finding through application to the CCB.
- The PPAO recommends that mandatory education about mental illness, stigma, discrimination, mental health legislation and patients' rights be provided to college members who review complaints from individuals with mental illness.

Accountability – Recommendations:

- The PPAO recommends the appointment of a majority of public members to college councils and committees. This is intended to facilitate a shift toward greater public accountability, striking a better balance between self-regulation and public oversight.
- The PPAO recommends that the qualifications of public members be set out in the *RHPA* and that the process for recommending appointment to the Lieutenant Governor in Council also be set out in this legislation.
- The PPAO recommends that guidelines be established for the orientation and training of public appointees.
- The PPAO recommends that the regulatory framework include the development of a consumer advisory committee on mental health, mental illness and addictions to provide advice and support to the various colleges.
- The PPAO recommends that information be provided to the public on the numbers of complaints adjudicated, complaints dismissed and reasons for complaint dismissal, and the time taken to discharge complaints.
- The PPAO recommends that the status of college members be readily available to the public at their place of practice.
- The PPAO recommends that the standards of practice be enshrined in a client “bill of rights.” A bill of rights would also outline steps to be taken if the care received fails to meet the established standard.
- The PPAO recommends that prospective health care practitioners from other regions seeking college membership in Ontario provide information on their college membership status in other jurisdictions. Individuals disciplined in other jurisdictions should be assessed for their potential risks to consumers in Ontario and precluded from college membership, if warranted.
- The PPAO recommends that a mechanism be established to monitor and enforce compliance with established and revised timelines for disposal of complaints. Complainants need to be informed of any delays in the process and consulted with respect to new timelines.

Quality Assurance – Recommendations:

- The PPAO recommends that the evaluation of quality assurance programs be carried out on a continuing basis.
- The PPAO recommends the promotion of public awareness about the quality assurance, disciplinary and accountability functions of professional colleges.
- The PPAO recommends that additional mechanisms be developed to enhance the continued delivery of the highest quality services by College members. A system that monitors continuing education and practitioner competency should be implemented to ensure that regulated health care providers maintain an acceptable standard of current best practice.

Fairness – Recommendations:

- The PPAO recommends that colleges and their members be sensitized to and educated about the barriers faced by mental health consumers in accessing the complaints and discipline process.
- The PPAO recommends that the special communication needs of clients be taken into account to support their utilization of existing safeguards.
- The PPAO recommends that colleges only request personal health information that is directly related to the complaint under review.
- The PPAO recommends that complainants have equitable access to the complaints process independent of geographic location.
- The PPAO recommends that the *RHPA* include provisions to support and accommodate the individuals with mental illness, special needs, or special circumstances.
- The PPAO recommends that use of the process of alternative dispute resolution (ADR) be used under limited circumstances with complainant consent, so as not to circumvent or undermine the discipline process. ADR should not be used as a mechanism to avoid member accountability. The *RHPA* should be amended to set out the circumstances under which ADR would be used.
- The PPAO recommends that the minister reconsider measures allowing colleges to dismiss complaints as frivolous or vexatious. Practice guideline should be developed to define the circumstances under which a complaint may be dismissed as frivolous or vexatious.

Efficiency – Recommendations:

- The PPAO recommends that efforts to streamline administrative processes do not compromise practice standards and protective mechanisms. Models of collaboration or merger between colleges should not undermine the protection of the public.
- The PPAO recommends that a regional complaints process be created to facilitate access for those living in remote geographic areas.

Introduction and Background

The Psychiatric Patient Advocate Office (PPAO) is an arm's length office of the Ministry of Health and Long-Term Care. The PPAO provides individual advocacy, rights protection and rights advice to clients of the current and former provincial psychiatric hospitals in Ontario. Through its community rights advice service, the PPAO provides rights advice to nearly all psychiatric units of Schedule 1 and Schedule 2 hospitals throughout Ontario. For more than two decades the PPAO has also advocated strenuously on behalf of consumers of mental health services in an effort to address significant local, regional and provincial systemic issues.

As a rights protection organization, the PPAO is particularly concerned about the protection of vulnerable individuals who are consumers of mental health and other health care services. The current submission is in response to the consultation conducted by the Health Professions Regulatory Advisory Council (HPRAC) regarding the effectiveness, fairness, flexibility and efficiency of the *Regulated Health Professions Act (RHPA)*. This submission draws upon and extends the PPAO's 1999 submission made in response to "Weighing the Balance: A Review of the Regulated Health Professions Act." The current submission takes into account HPRAC's report, "Adjusting the Balance," as well as other evaluation reports dealing with issues of quality assurance, complaint and discipline for professional misconduct, and patient relations.

Clients challenged by mental illness may be disadvantaged by the existing regulatory scheme if it fails to take into account and accommodate their special needs regarding access to available protective mechanisms. These individuals face significant barriers to their inclusion in society at large as a consequence of stigma and discrimination and, at times, may find themselves disempowered and marginalized within the health care system. They may encounter a range of barriers in lodging complaints with professional colleges, including:

- difficulty in navigating an overly complex and lengthy complaints process;
- the need for extensive written documentation in filing complaints;
- restrictions on communication for hospitalized clients;
- the lack of resources to support communication, e.g., telephone, long distance calling, fax, assistance with letter writing;
- power imbalances between clients and practitioners and fear of reprisal by health care providers;
- fear that filing a complaint will rupture a relationship with a needed service provider;
- lack of knowledge about the complaint process;
- no access to independent advocacy or legal resources;
- no access to funding for travel to attend a hearing in person or to retain professional services for representation purposes;
- fear of being labeled as a "difficult or non-compliant patient;"
- inability to file and take forward a complaint through a third party; and,

- the belief that the system is inherently biased toward health practitioners and therefore unfair.

Overcoming these tangible and perceived barriers is pivotal to developing and fully implementing a regulatory system that is accessible and transparent to the most vulnerable consumers.

The current submission reviews the *RHPA* and makes recommendations for its improvement and the development of an accessible and effective regulatory system that addresses the special needs of consumers of mental health services.

Public Protection

Public vs. Peer Scrutiny

As noted in the PPAO's previous submission, the *RHPA* may not provide sufficient protection to health care consumers insofar as individual colleges are provided with too much flexibility in adjudicating complaints, affording greater protection to college members than to the public. Many consumers are suspicious of the "guild" nature of colleges and feel that these regulatory bodies exist solely to promote professional interests. Striking a balance between public versus peer scrutiny is fundamental to establishing a fair process of disposing of complaints, and addressing perceived or real conflicts of interest. Reports from clients have highlighted a number of practices that potentially undermine confidence in the ability of colleges to protect consumer interests. For example, in some instances college members have been able to avoid accountability for practices engaged in while acting in an "administrative capacity," as opposed to acting in their role as a regulated professional. In several such instances, one college argued that it had no jurisdiction to address clients' complaints. These decisions were seen as both unfair and unjust by the complainants. Such decisions also raise questions about administrative fairness, due process, and the dismissal of complaints by the colleges without careful review or adjudication. Some clients also report that the colleges don't appear to take their complaints seriously as soon as they learn that they are a client in a mental health facility or that they have a mental health history.

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 the outcome of their complaint. These individuals may be forced to receive services from practitioners they have concerns about, and may be compelled to petition hospital administration for reassignment to other staff. Clients may be unsuccessful in their efforts to advocate for reassignment, as hospitals are under no professional obligation to honor such requests. These circumstances leave clients, who have already lost considerable autonomy, feeling unprotected and powerless.

The PPAO believes that the *RHPA* should address this issue and that colleges should work with stakeholders to develop guidelines to protect the rights of all individuals, including those of both the complainants and the respondents. Clients would then not have to fear retaliation or be suspicious of the care and treatment that they were receiving from practitioners about whom they had made a complaint.

Alternative Dispute Resolution

The use of alternative dispute resolution (ADR) to address complaints may have limited application and requires review. The use of ADR may magnify power imbalances between parties and may also be perceived by vulnerable complainants as a means of minimizing their concerns, or “burying” complaints that should be fully investigated. ADR may be an effective approach to conflict resolution, but may have limited or questionable application in cases of alleged professional misconduct or deficiencies of professional practice. Clearly, ADR has no place in dealing with allegations of abuse of any kind (sexual, physical, or emotional). There are no overarching guidelines for the use of ADR and different colleges may apply this methodology differently.

The PPAO is of the opinion that ADR should only be used if clients have made an informed decision and have been advised that they can withdraw from the process at any time. Consent and capacity issues may need to be examined by the colleges to ensure that the process is fair and that clients have a full understanding of the process and the range of outcomes available to them.

Regulation of Psychotherapy

The PPAO previously raised concerns regarding the provision of psychotherapy by regulated and unregulated practitioners. Of concern was the potential for exploitation and abuse by unregulated professionals and the absence of safeguards afforded consumers of psychotherapeutic services. In its recent submission (October 2005) to HPRAC regarding the possible regulation of psychotherapy and/or psychotherapists, the PPAO called for a new scheme to regulate both the practice of psychotherapy (by regulated and unregulated professionals and psychotherapists) and psychotherapists. The PPAO reiterates its concerns for the development of practice guidelines, title regulation and the development of a separate professional college for psychotherapists and counselors.

Provision of Rights Information

Health practitioners proposing treatment must seek informed consent from capable individuals or their substitute decision-makers, where the individual has been found incapable to consent to treatment. While rights advice is mandated where individuals are found to be incapable of consenting to treatment of a mental disorder, the *Health Care Consent Act* requires practitioners to provide rights information to incapable individuals respecting other treatments according to guidelines set out by their respective colleges. There are currently no clear guidelines or standards set out for the provision of rights information, and incapable clients may be inadequately informed of the consequences of a finding of incapacity and the legal remedies available to them. If rights information is

not competently provided, this could result in a serious abridgment of an incapable individual's rights respecting treatments other than those of a mental disorder.

Many clients have advised the PPAO that they were not provided with either rights information or an offer of assistance to obtain legal counsel, apply to the Consent and Capacity Board (CCB) or apply for legal aid. The *RHPA* may need to take into account the issue of rights protection and to codify the information that is to be provided, the manner in which it is provided and the penalty for failing to do so. Clients must have confidence that the government is both monitoring and enforcing these requirements and holding professionals to the standards set out in the *RHPA*. Ideally, clients should be provided with formal independent rights advice as provided in the mental health sector for the past two decades. The provision of formal rights advice would address real or perceived conflicts of interest arising from the provision of rights information by practitioners proposing treatment and who have made a finding of treatment incapacity.

Education and Training

There have been times when colleges may not have been aware of the rights and entitlements of mental health clients and have rendered decisions that do not recognize, respect or safeguard these rights. For this reason, the PPAO would support mandatory education regarding mental health issues, mental health legislation and patients' rights for college members who review complaints from individuals with mental illness. This would assist panel members in understanding the barriers to access faced by this client population. It would also provide a broad understanding of the issues of stigma, discrimination and marginalization encountered by individuals with mental illness..

Public Protection - Recommendations:

- The PPAO recommends that the current model of self-regulation be reviewed and revised to incorporate the increased involvement of public members in oversight functions.
- The PPAO recommends the development of guidelines for the reassignment to an alternative health care provider pending the outcome of a complaint against an assigned practitioner, in situations where a complainant does not have the freedom to choose another practitioner.
- The PPAO recommends limiting the use of alternative dispute resolution (ADR). ADR should not be considered appropriate in cases of serious professional misconduct or practice deficiencies. ADR should not be considered in cases of sexual, physical or emotional abuse.
- The PPAO recommends the development of an oversight and accountability mechanism for psychotherapy (and counselling). The practice of psychotherapy (and counselling) carries with it a significant potential for harm to consumers. A regulatory mechanism would set a standard for entry-level and ongoing practice, and provide avenues for complaint, discipline and quality assurance.
- The PPAO recommends the regulation of psychotherapists and counselors in the context of the psychotherapy and counselling services they provide.

- The PPAO recommends the regulation of psychotherapy and counselling (in tandem with the regulation of psychotherapists and counselors) to offer consumers and the public the greatest level of protection.
- The PPAO recommends the development of a new statutory scheme for the regulation of psychotherapy (and counselling) and psychotherapists (and counselors).
- The PPAO recommends the establishment of a title scheme for psychotherapists and counselors.
- The PPAO recommends the establishment of practice and conduct guidelines for psychotherapy and counselling.
- The PPAO recommends that colleges establish clear guidelines for the provision of rights information to individuals found incapable of consenting to treatments proposed by member practitioners. Colleges must ensure that members understand the information to be provided and be able to assist individuals in making application to the Consent and Capacity Board (CCB) who wish to challenge a finding of treatment incapacity. Colleges must provide sanctions for those who fail to provide information on the consequences of a finding of treatment incapacity and who fail to assist patients in exercising their right to review this finding through application to the CCB.
- The PPAO recommends that mandatory education about mental illness, stigma, discrimination, mental health legislation and patients' rights be provided to college members who review complaints from individuals with mental illness.

Accountability

Self-Regulation

The PPAO has previously highlighted concerns regarding self-regulation and the perceived and real conflicts of interest arising from a peer regulatory model. A minority of public appointees currently populates college councils and committees. This approach may not best serve the public interest and there is a need to strike a better balance between self-regulation and accountability to the public. This could potentially enhance the protection provided to consumers through the college regulatory process. Toward this end, there needs to be a shift in the number of public appointees to support a majority on college councils and committees. This would represent a significant departure from the current model but would heighten accountability to the public.

Appointment of Public Members

The appointment of members of the public is made by the Lieutenant Governor in Council and the process of public appointments is complex. It may be reasonable to propose an alternative method of appointing public members. In *Adjusting the Balance*, HPRAC has recommended that appointments be “criteria-based,” reflecting desirable characteristics from college and administrative perspectives. The *RHPA* does not specify any guidelines for the orientation and training of members of the public. It has been observed that public appointees defer to professional college members and that this may skew the decision making process of college councils. It may be reasonable to specify

standards for the selection, education and training of public members to better support their role and function. However, the deference of public appointees to professional members may be more indicative of the inherent power imbalances that exist within college councils and committees, rather than solely a lack of knowledge and training. This raises the question of how best to empower public members to fulfill their oversight role. Professional members may need to serve a consultative role in educating and supporting public appointees with respect to practice issues.

Mental Health Consumer Advisory Committee

The PPAO recommends that the regulatory framework include the development of a consumer advisory committee on mental health, mental illness and addictions to provide advice and support to the various colleges. The expertise offered by this advisory committee would strengthen the regulatory process, educate committee members and ensure that the issues that are specific and unique to this sector or not overlooked.

Public Reporting

Under the current framework consumers of health care services and the public at large may not be sufficiently informed about the work of professional colleges. In order to ensure greater accountability, information on the complaint resolution and appeal processes should be provided to the public. Information regarding the number of complaints successfully resolved, the number of complaints dismissed and reasons for dismissal, as well as the time taken to adjudicate complaints should be made available to the public. Information on how to make a complaint should be posted in all locations where practitioners provide services to the public.

Standards of Practice

While colleges have the authority under the *RHPA* to develop practice standards, there does not appear to be a proactive approach to implementing and monitoring member adherence to established guidelines. The complaint process may be the only indicator of the extent to which individual practitioners adhere (or fail to adhere) to established practice standards. While complaint and discipline processes are cornerstones of any regulatory scheme, they are incomplete mechanisms for ensuring that college members are knowledgeable about and comply with standards of practice. A process to both educate college members and evaluate their compliance with professional standards and guidelines is essential. Moreover, consumers of health care services need to be apprised of whether members are meeting the standards of their professional colleges and disciplines. An evaluative process, involving consultation with consumer and professional stakeholders, could be developed to provide continuous feedback on member performance. Individual colleges could issue a “report card” to inform the public about whether individual practitioners are meeting professional standards and providing satisfactory services to clients. Report cards would make information on the Register readily available to the consumers and the public at large. The PPAO agrees with HPRAC’s observation that the public needs to have access to information regarding the competency of practitioners in order to make informed choices regarding their care and treatment. Perhaps standards of practice could be enshrined in a client bill of rights

that specifically sets out what clients can expect to receive with respect to quality care provision and the steps that they can take if they do not receive care to the standards set out in the bill of rights. The bill of rights, in tandem with the *RHPA* would maximize accountability and set a higher standard.

Prospective Registrants from other Jurisdictions

While colleges under the RHPA have the authority to establish registration criteria, there does not appear to be an effective mechanism for establishing the standing of professionals seeking membership from other jurisdictions. An effective information gathering process must be established to ensure full disclosure of the applicant's registration history. Such steps will provide an additional level of protection for the public and allow for clients to make informed decisions about who provides them with care and treatment.

Timelines for Complaint Disposal

Clients continue to report dissatisfaction with delays in adjudicating complaints. *The Health Professions Procedural Code* of the *RHPA* stipulates that complaints will be disposed of within 120 days of filing. Consumers filing complaints may lose confidence in the ability of the complaint process to address their concerns due to the failure of colleges to comply with statutory deadlines. The failure to meet established timelines needs to be addressed to shore up consumer confidence in the complaints process, and to reduce the stress experienced by complainants as a consequence of ongoing delays. Consistent with HPRAC's recommendation, the PPAO believes that consumers need to be informed of the reasons for delays in addressing their concerns and apprised of revised timelines. Delays in adjudicating complaints must be reasonable and new timelines established in consultation with complainants. There also needs to be a way to monitor and enforce compliance with established and revised timelines.

Appeal Processes

Clients must also be advised of the appeal process that is available to them if they are not satisfied with the outcome of the initial complaint to the college. The appeal process must be easily navigated, transparent and accessible if it is to be effective. Without an appeal process that meets these criteria, the complaints process may be seen to be flawed and unworkable, as clients will lose confidence in the process.

Accountability – Recommendations:

- The PPAO recommends the appointment of a majority of public members to college councils and committees. This is intended to facilitate a shift toward greater public accountability, striking a better balance between self-regulation and public oversight.
- The PPAO recommends that the qualifications of public members be set out in the *RHPA* and that the process for recommending appointment to the Lieutenant Governor in Council also be set out in this legislation.
- The PPAO recommends that guidelines be established for the orientation and training of public appointees.

- The PPAO recommends that the regulatory framework include the development of a consumer advisory committee on mental health, mental illness and addictions to provide advice and support to the various colleges.
- The PPAO recommends that information be provided to the public on the numbers of complaints adjudicated, complaints dismissed and reasons for complaint dismissal, and the time taken to discharge complaints.
- The PPAO recommends that the status of college members be readily available to the public at their place of practice.
- The PPAO recommends that the standards of practice be enshrined in a client “bill of rights.” A bill of rights would also outline steps to be taken if the care received fails to meet the established standard.
- The PPAO recommends that prospective health care practitioners from other regions seeking college membership in Ontario provide information on their college membership status in other jurisdictions. Individuals disciplined in other jurisdictions should be assessed for their potential risks to consumers in Ontario and precluded from college membership, if warranted.
- The PPAO recommends that a mechanism be established to monitor and enforce compliance with established and revised timelines for disposal of complaints. Complainants need to be informed of any delays in the process and consulted with respect to new timelines.

Quality of Care

Quality assurance represents another critical dimension of professional regulation. The extent to which colleges have now successfully implemented programs of continuous quality improvement remains unclear. To what extent are quality assurance provisions of the *RHPA* being complied with and are they building on established best practices? Do existing quality assurance programs meet objectives for continuing competence, adherence to practice standards, and individual practice enhancement and remediation? Do quality assurance programs build on established best practices and are they informed by ongoing consultation with clients and other stakeholders? Are there regular reviews of standards and expectations? The PPAO agrees with HPRAC’s assertion that the Minister’s evaluation of quality assurance programs offered by colleges should be carried out on a continuing basis, rather than being conducted at a single point in time.

An important element in quality assurance is the ongoing consultation with consumers and the public at large on the regulatory process and the effort of colleges to ensure the highest standards of practice and competence for professional members. Continuing education needs to be provided to the public regarding quality assurance and disciplinary and accountability functions of the colleges.

Additional mechanisms may be needed to enhance the continued delivery of the highest quality of professional services. One approach would be to implement a regularly scheduled license renewal system, following entry to practice. A system that requires

continuing professional education to ensure an understanding and adherence to current and best practice standards should be implemented.

Quality Assurance – Recommendations:

- The PPAO recommends that the evaluation of quality assurance programs be carried out on a continuing basis.
- The PPAO recommends the promotion of public awareness about the quality assurance, disciplinary and accountability functions of professional colleges.
- The PPAO recommends that additional mechanisms be developed to enhance the continued delivery of the highest quality services by college members. A system that monitors continuing education and practitioner competency should be implemented to ensure that regulated health care providers maintain an acceptable standard of current best practice.

Fairness

Barriers to Access

Clients challenged by mental illness face significant barriers to accessing the available safeguards and protective mechanisms offered through the system of professional colleges. Consumers often have difficulty in navigating a complaints process viewed as overly complex and unduly lengthy. At times individuals are hesitant to file complaints because of the stigma attached to mental illness and the very real prospect of not being believed or seen as a credible complainant. Clients receiving service in hospital or institutional settings fear reprisal by health practitioners should they decide to move forward with a complaint. This is particularly true for clients who are detained under the mental disorder provisions of the *Criminal Code*. For these individuals, exercising their right of complaint may result in a negative assessment by members of their clinical team, and they may be labeled as uncooperative or non-compliant. This may hold significant consequences with respect to level of privileges and outcome of their annual Ontario Review Board hearing. Other clients may worry that filing a complaint may rupture or seriously strain a relationship with a needed service provider, resulting in a loss of relationship or service. Thus clients living in under serviced or remote geographic areas may be reluctant to file complaints due to the limited availability of service providers.

Clients face significant barriers in contacting colleges to lodge a complaint and may be disadvantaged by a process that, at times, relies heavily upon written communication. In addition, clients living in areas that are 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 must be made to address the needs of individuals in geographically remote areas. They may not have the financial resources to travel to Toronto to attend discipline hearings. Consumers may also be unable to afford legal representation.

Record of Personal Health Information

Many clients also express concern about the colleges wanting to have full and complete access to their record of personal health information, including all of the information relating to their mental health history. They may be reluctant to share their record because of the nature of the personal information contained in it and out of fear of having it become part of the public record. Disclosure of their personal health information may expose them to unwanted scrutiny and interfere with their wellness and recovery. The PPAO believes that colleges should only request information that is directly related to the complaint and nothing more. Otherwise, clients may believe that the colleges are going on a "fishing expedition" looking for reasons to dismiss a complaint based on their "mental health history." Personal health information relating to mental health matters must be treated with the utmost sensitivity, given the consequences of releasing this information in a public proceeding before a complaints committee.

Accommodations

As stated earlier, consumers may benefit from accommodations that support both their access to complaints mechanisms and full participation in the complaints and discipline process. Allowing third parties to file a complaint on behalf of consumers who are unable to do so could facilitate their access to the complaints process. Similarly, granting party standing to complainants would allow them to be fully involved in all aspects of the discipline process. Moreover, this would give complainants a voice in the decision-making process and potentially decrease the likelihood that practitioners could "broker deals" for reduced penalties.

The PPAO would also recommend that clients be allowed to have a person of choice present to support them throughout the complaint and discipline process, without requiring that person to be identified as an "agent" or "representative." Such a requirement may become a barrier to access and inadvertently silence or discourage some clients from participating in the process. The *RHPA* must include provisions to support and accommodate individuals with mental illness, special needs or special circumstances.

ADR

While ADR may represent a less adversarial approach in addressing complaints filed by clients, care must be taken to ensure that this method is not exploited as a means of evading discipline in cases of professional misconduct or incompetence. ADR approaches may be applicable under limited circumstances with complainant consent to resolve particular classes of issues. The *RHPA* should be amended to set out the circumstances under which ADR would be used. Criteria for the use of ADR should be developed through stakeholder consultation.

Frivolous or Vexatious Complaints

Colleges have the ability to dismiss complaints that are considered to be frivolous or vexatious. While such decisions may be appealed, this practice may disadvantage complainants with legitimate grievances, as 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 potentially lengthy appeal process in seeking redress. We are hopeful that complaints from individuals with mental illness do not disproportionately fall into this category of dismissals. There needs to be a public reporting of complaints that are dismissed as frivolous and vexatious to monitor and guard against this possibility.

Fairness – Recommendations:

- The PPAO recommends that colleges and their members be sensitized to and educated about the barriers faced by mental health consumers in accessing the complaints and discipline process.
- The PPAO recommends that the special communication needs of clients be taken into account to support their utilization of existing safeguards.
- The PPAO recommends that colleges only request personal health information that is directly related to the complaint under review.
- The PPAO recommends that complainants have equitable access to the complaints process independent of geographic location.
- The PPAO recommends that the *RHPA* include provisions to support and accommodate the individuals with mental illness, special needs, or special circumstances.
- The PPAO recommends that alternative dispute resolution (ADR) be used under limited circumstances with complainant consent, so as not to circumvent or undermine the discipline process. Thus, ADR should not be used as a mechanism to avoid member accountability. The *RHPA* should be amended to set out the circumstances under which ADR would be used.
- The PPAO recommends that the minister reconsider measures allowing colleges to dismiss complaints as frivolous or vexatious. Practice guideline should be developed to define the circumstances under which a complaint may be dismissed as frivolous or vexatious.

Efficiency

Clients have expressed a need for a neutral and accessible complaints process. Some clients, due to mental or physical disability or financial constraints may be unable to access the protections offered by the *RHPA*. The complaints process for many is overly complex, time consuming, and consequently burdensome. Systemic changes should be considered that reduce this burden to clients, improving accessibility. Some consideration should be given to accommodating individuals living in remote geographic areas. Toward this end, a regional or decentralized approach to the discipline process should be considered to meet the needs of those complainants who are challenged by travel demands. Models of collaboration between colleges should be considered providing they do not compromise the protection of the public.

Efficiency – Recommendations:

- The PPAO recommends that efforts to streamline administrative processes do not compromise practice standards and protective mechanisms. Models of collaboration or merger between colleges should not undermine the protection of the public.
- The PPAO recommends that a regional complaints process be created to facilitate access for those living in remote geographic areas.

Conclusion

The PPAO is pleased to have the opportunity to provide feedback on the *RHPA* and believes that the recommendations outlined in this submission, if adopted, will both strengthen and enhance current standards. As a patients' rights organization, the PPAO also believes that any steps taken to extend rights protection mechanisms will not only benefit our clients, but the public at large. The barriers to access faced by our clients are not unique, but extend to other sectors and vulnerable populations.

We would be pleased to assist in implementing the recommendations contained in this submission. In particular, we would be available to assist in setting standards for the provision of rights information. Further, we would be pleased to provide education to the colleges regarding mental health legislation and patients' rights.