

## THE HEALTH PROFESSIONS LEGISLATION

On June 6, 1990 Mrs. Elinor Caplan, Minister of Health introduced Bill 178, An Act respecting the regulation of health professions in Ontario as well as 21 related professional Acts. These bills represented the culmination of a lengthy and intensive review of health professions legislation initiated in 1983 by Mr. Larry Grossman, then Minister of Health in the Conservative government.

The Ontario Board of Examiners in Psychology has participated actively in this review, expressing its views in what it has perceived to be the public interest. While in principle supporting the purpose of the proposed new legislation, the Board was deeply concerned to discover on June 6 that the legislative provisions do not enable the public to identify a member of a regulated profession and to make an informed choice. Although amendments had been introduced to the clauses setting out the descriptive terms reserved for members of regulated professions, the Board had not been consulted. It found the amendments inconsistent with the stated purpose of the legislation and therefore unacceptable, particularly in the case of the Psychology Act.

Early in July the Board informed all Ontario registrants of the implications of the legislation, particularly serious for members of the public seeking psychological services. Many psychologists, sharing the Board's concern, wrote to the Minister, and have forwarded to the Board copies of their letters as well as the Minister's reply. In the Board's view Mrs. Caplan's reply to these psychologists did not address the problems they had raised.

As a result of the provincial election on September 6, the situation has changed. The Liberal government will leave office on October 1, and it may be some time before the new NDP government determines its priorities for health legislation. Although the health professions legislation may be considered to be important by the new Cabinet, as it was by the last, it may be that the Health Professions Regulation Act, Bill 178, and its attendant professional Acts will need to be reintroduced in the legislature.

This issue of *The Bulletin* is devoted to informing Ontario psychologists of further action the Board has taken to make its case that the proposed legislation, in particular the Psychology Act, must be changed if the public is to be adequately protected. We reproduce below the Board's position statement in which it examines the question: "Will the proposed legislation achieve its goals?" The Board is publishing this statement in order that psychologists, as well as the legislators, Ministry officials and others may understand exactly the problems we see in the wording of the Psychology Act, especially Section 15. To illustrate the problem, we include as an insert an exercise that could be referred to as "The Yellow Pages Game". In carrying out this exercise the "players" attempt to locate a psychologist, registered under the Act and therefore accountable, among the Yellow Pages listings that the proposed new legislation would permit. We suggest that our readers try it.

Also included is the Board's recent letter to Mrs. Caplan, who retains her portfolio as Minister of Health until October 1. In addition to our letter to Mrs. Caplan, the Board's legal counsel, Ronald G. Slaght, O.C., has expressed the Board's concerns and set out our recommendations in a letter to Ms. Linda Bohnen, Legal Counsel, Ministry of Health, who shares considerable responsibility for the implementation of the health professions legislation with Mr. Alan Burrows, Director of the Professional Relations Branch in the Ministry. Both Ms. Bohnen and Mr. Burrows will be kept fully informed of the Board's position on the legislation, as will the new Minister when he or she is appointed.

In publishing this material the Board does not wish to give the impression that its concerns with the proposed legislation are limited to the means by which regulated professionals can be identified. For example, the wording of one of the "controlled acts" to be restricted to the professions of chiropractic, dentistry, medicine, optometry and psychology, and formerly referred to as "diagnosis", remains contentious, both in its wording and its assignment to these professions alone. This and other concerns will be discussed in later issues of *The Bulletin*.

### Will the legislation achieve its goals?

#### GOALS OF THE LEGISLATION

In her statement to the legislature on June 6,

the Minister of Health identified the main purpose of the health professions legislation

to be the "maximum protection to the public in the provision of health services". Related to this purpose were several guiding principles, among them (1) "that the public must be permitted to exercise freedom of choice of health care provider [within safe options]" and (2) the provision of "quality assurance" and accountability in health service delivery (Backgrounder, page 1).

As the regulatory body for psychology appointed by the government to protect the public interest, the Ontario Board of Examiners in Psychology has had no hesitation in supporting these principles or in supporting the thrust of Bill 178, the Health Professions Regulation Act. We heartily agree that through this Act "accountability would be enhanced" (Backgrounder, page 2) in the regulation of the health professions by the increased public representation on councils and committees of the professional governing bodies, and by the more open and standardized procedures used by the colleges. We also agree that "public protection would be enhanced by extending colleges' powers to ensure members are competent" (Backgrounder, page 2). However, we are concerned that the purpose of the legislation cannot effectively be realized or the principles applied unless each of the professional Acts contains provisions that would enable the public to identify members of regulated professions. Otherwise, particularly in respect to psychological services, the public's ability and freedom to make informed choices and the Ministry's ability to assure the quality of the services provided will be significantly limited. These concerns, first with regard to freedom of choice, and then with respect to quality assurance, are elaborated below.

#### FREEDOM OF CHOICE

In her address, Mrs. Caplan indicated that exclusive licenses to practise have caused "inflexibility and rigidity in the provision of health care - affecting the choices available to health consumers" (Statement of the Minister, page 6). We do not dispute the validity of this statement in describing certain sectors of the system of health services.

It is necessary to point out, however, that over the thirty years that the practice of psychology has been regulated in Ontario by the Ministry of Health under the Psychologists Registration Act, the choices available to health consumers have not been restricted. Psychologists have not had exclusive rights to particular activities, and under existing

legislation no practitioner, regulated or not, or qualified or not, is prevented from doing what psychologists do. To a certain extent, special education teachers, school counsellors, vocational rehabilitation counsellors, behavioural counsellors, pastoral counsellors, and marriage and family counsellors may engage and do engage in any of the activities in which psychologists engage. The Board has no desire to restrict such activities.

Furthermore, under existing legislation, members of the public have had absolute freedom of choice in obtaining intellectual or personality assessments, psychotherapy, or behaviour modification services from any one they wish to consult, including unregulated practitioners. There is only one existing restriction: Under present legislation, in offering these services practitioners may not represent themselves to be psychologists and may not describe their services as "psychological" or "psychology" unless they are registered by the Ontario Board of Examiners in Psychology. A similar restriction exists in every other jurisdiction in Canada and the United States, with the exception of those jurisdictions where the practice of psychology is licensed. In these jurisdictions, psychological services are defined and prohibited to persons who do not hold a license to practise psychology.

Bill 210, the proposed Psychology Act, contains the following wording in Section 15 regarding "restricted titles":

- 15 (1) No person other than a member shall use the title "psychologist", a variation or abbreviation of it or its equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals.
- (2) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a psychologist or in a specialty of psychology.

The narrow form of restriction placed on the use of the title "psychologist" in subsection 15(1), permits unregulated practitioners with little or no training in psychology to hold themselves out as "psychologists" in the provision of any service that is not considered to be "health care" or that is not provided to "individuals." "Health care" is not defined in the legislation, and legal opinion contends that it would be defined narrowly by the courts.

The Board has been advised that whatever meaning is given to the term 'health care', certain psychologists will fall outside the definition and thus a body of psychologists now identified under the current regime will

stand outside the provisions for identification by title afforded by Section 15(1). This will deregulate the practice of psychology with regard to a wide range of psychological activities that are currently regulated, resulting in hopeless confusion for members of the public seeking psychological assistance in these areas of concern. The public would have extreme difficulty in distinguishing psychologists from the multitude of unregulated practitioners who may be able to represent themselves as "psychologists" when providing services to school systems, correctional facilities, industries or organizations, and to the courts in cases of civil or criminal litigation.

While the wording of subsection 15(2) might seem to prohibit individuals from representing themselves as psychologists unless they are members of the College of Psychology, unfortunately, this is not the case. Legal opinion maintains that the wording of this clause is such that it will be interpreted by the courts only as prohibiting holding oneself out to be a member of the College of Psychologists, while allowing to anyone, trained or untrained, the use of descriptors such as "psychology" and "psychological."

Thus, neither part of Section 15 would clearly prohibit an unregulated practitioner from using the terms "psychological", "psychology", and in some cases even "psychologist", a prohibition presently enforceable under the Psychologists Registration Act, R.S.O. 1980, C. 404. It must be recognized that psychologists often deal with extremely sensitive problems - involving sometimes the risk of suicide or explosive aggression, other times, the separation of families and the custody of children. The profession of psychology, and the Ontario Board of Examiners in Psychology, has laboured to maintain and enhance the standards of training and ethical practice so as to assure the public that someone who can legally offer psychological services or call himself or herself a psychologist is not only properly trained and professionally mature, but is subject to strict disciplinary procedures should there be any deviation from professional and ethical standards. The Board is concerned that individuals, often in time of personal or family crisis, will be exposed to considerable risk. For example, the public could be presented with listings or notices by unregulated practitioners, such as:

Bathurst Psychological Services, Inc.  
or  
John Smith, Practice in Psychology  
or  
Martha Jones, Forensic Psychologist

Reports could be prepared and signed by unregulated and untrained practitioners, such as:

Joan Smith, Consultant in Psychology  
or

William Brown, Industrial Psychologist  
While all such listings would be allowed by the new legislation, none of the individuals in the above examples would need to have any particular education or training, nor would they be subject to any control by the College of Psychology or any other agency.

#### **QUALITY ASSURANCE**

By introducing this legislation the Minister of Health intends that public protection will be enhanced through the increased powers of the colleges to require evidence of the continuing competence of their members. The intention is laudable. However, we question the efficacy of the mechanisms the legislation provides, for if the public is unable to differentiate between the regulated and the unregulated practitioner, then the public cannot have any assurance of quality because for the unregulated practitioner there is neither accountability nor quality assurance. None of the regulatory mechanisms introduced to "enhance accountability" or increase "quality assurance" would apply to the unregulated practitioner. No standards exist and no assessment or accountability would be required of the host of unregulated practitioners who would for the first time be empowered under this legislation to hold themselves out to the public as "psychologists" or to describe their services as "psychological". As stated earlier, in the absence of a definition of "health care", and assuming the narrow interpretation of health care that it is predicted will be taken by the courts, the public will have no protection from the unregulated "forensic psychologist", "industrial psychologist" or "educational psychologist", nor from anyone who chooses to advertise that they offer "psychological services". The intent to provide quality assurance will not apply to these services. Moreover, even in the area of health care, members of the public who receive "psychological" services from unregulated practitioners will have no regulatory body to which to appeal when the services they receive are inferior, improper or harmful.

#### **THE EFFECT ON THE COLLEGES AND THEIR MEMBERS**

It is true that the members of the colleges will be required to meet new demands. In the case of psychologists registered by the new College of Psychologists there will be greater scrutiny and assessment of their practices. However, in many cases it will cease to be meaningful or relevant for qualified indivi-



**PERSONS WHOSE CERTIFICATES OF REGISTRATION HAVE LAPSED  
DUE TO RETIREMENT OR UNPAID FEES AND WHOSE NAMES ARE WITHDRAWN  
FROM THE REGISTER**

Charles Acker  
Donald A. Andrews  
David J. Baxter  
Marion J. Coles  
Eileen Davelaar  
Ralph W. Dent  
Karen Eamon  
Francis Hare  
Lyn Ellen Jansen  
Herbert M. Lescourt  
Gordon R. Lowe  
Walter R. Luyenduk

Frances S. McDonald  
Scot R. McFadden  
Lesley M. Millar  
Aubrey J. Millard  
Harold A. Minden  
Marlene Moretti  
Ervin E. Newcombe  
Albert Newman  
Louis M. Newman  
Sidney L. North  
Willem H. Otto  
Ray DeVere Peters

Donald H. Richardson  
Jeremy D. Safran  
Susan Saravis  
George R. Schlotterer  
Richard Schneider  
Howard E. Shecter  
Dorothy Shipe  
Howard P. Smith  
Paul Stager  
Richard G. Stennett  
James A. Tuck  
Nina Woulff

**ADDITIONS TO THE TEMPORARY  
REGISTER SINCE JULY, 1990**

Nancy Benson  
Mauro Caudarella  
Gregory Chowanec  
Karen Coupland  
Marion Cuddy  
Bikram DasGupta  
Jacqueline Douglas  
Daniel Fitzgerald  
Gloria Mary Grace  
Steve Graffi  
Christopher Holmes  
Sylvia Kahgee  
Joel Katz  
Beatrice Lawrence  
Andrea Lazosky  
Gael MacPherson  
Lott Mamabolo  
Lambros Mermigis  
David Mibashan  
Laurie Miller  
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Lynn Oldershaw  
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Andree Tellier  
Debbie Vanderheyden  
Linda Wieland  
Linda Winter

**WILL THE LEGISLATION ACHIEVE  
ITS GOALS?**

*Continued from page 3*

nevertheless it is the case that the work of psychologists in all areas of endeavour are supportive of optimal human functioning and the prevention of dysfunction. Of the roughly 1,800 psychologists registered in Ontario, we estimate that only 30 percent are employed in hospitals or other facilities operated under the jurisdiction of the Ministry of Health. An additional 10 percent working in facilities responsible to the Ministry of Community and Social Services may, or may not be, providing services that could be construed to be health care.

The regulation of the profession of psychology in all its aspects, has been the responsibility of the Ministry of Health for the past 30 years. To introduce new restrictions on the range of its regulatory powers and to retain only a segment of the profession for regulation, effectively deregulating the remainder, we believe would be detrimental to the interests of the citizens of Ontario.

The Ministry of Health and its officials have spoken of the desirability of enhancing openness and competition in the delivery of health services. We are objecting to neither. In our own legislative proposal of 1982, which predates the health professions legislation review, we proposed legislation which would have reserved to psychologists nothing but representation as a psychologist with a strong holding out provision. We believe that opening up the use of the title, as Section 15 clearly does, to practitioners who may have no recognized training or skill is inconsistent with the purpose of the legislation and will be destructive to the public interest.

Unless choice is informed it is not free. The revisions suggested above are reasonable and necessary if members of the public are to be permitted an informed choice in seeking professional assistance. By eliminating the vague term "health care" from subsection 15(1), the term "psychologist" will continue to be a regulated title in all areas of psychological practice, just as it is in other Canadian and American jurisdictions and just as it has been in Ontario for the past thirty years. It is essential to continue to regulate the terms "psychological" and "psychology" because the public does, and will continue, to interpret these terms to imply services rendered by a psychologist. Accordingly, the public's ability to identify with certainty that they are choosing a psychologist, a professional who meets explicit standards of training, ethical practice and continuing competence, requires that use of these terms be restricted. These changes do not pose a hardship for other regulated and unregulated practitioners, for there is a multitude of unrestricted descriptive terms that practitioners may use to describe their services to the public. Without such changes, the public will lose some of the protection and quality assurance that it has received over the past thirty years. If the public is to benefit fully from the new health professions legislation, clarity in the professional identification of psychologists and other regulated health professionals is essential. ■

*The*  
**BULLETIN**

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**The Health Professions Regulation Act:  
(HPRA)**

**The Psychology Act (Bill 210)**

**Who is a Psychologist?**

**Can the Public Make an Informed Choice?**

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Ontario Board of Examiners in Psychology  
September 1990

**The Health Professions  
Regulation Act**

**Purpose:**

*"The purpose of this legislative package is to provide maximum protection to the public in the provision of health services."*

Statement by Elinor Caplan to the Legislature, June 6, 1990.

*"The public must be permitted to exercise freedom of choice of health care providers within a range of safe options."*

Backgrounder prepared by the Ministry of Health, June 6, 1990.

**The proposed Psychology Act (Bill 210) states:**

**Restricted titles**

15.(1) *No person other than a member shall use the title "Psychologist," a variation or abbreviation of it or its equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals.*

**Representations of qualifications, etc.**

(2) *No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a psychologist or in a specialty of psychology.*

**What is wrong with the proposed Act (Bill 210):**

*The current Psychologists Registration Act (1960) prevents individuals from formally describing their services as **psychological** or **psychology** unless the individuals meet the professional standards set by the regulatory body, the Ontario Board of Examiners in Psychology. The proposed Act does not restrict the use of these terms.*

*The current Psychologists Registration Act (1960) sets standards of education, training, practice and conduct for Psychologists regardless of the services they provide. The proposed Act applies only to practitioners who **provide health care to individuals**. Persons with no training or education in psychology will be permitted to call themselves Psychologists if they provide services in education, industry, corrections and independent practice.*

**What is Needed:**

*The public must be able to make an informed choice.*

**The Question:**

*Will the proposed Psychology Act enable the public to identify Psychologists, ie. those persons who are regulated and are required to meet standards of professional practice, conduct, education and training?*

**Play the Yellow Pages Game . . .**

**Ⓢ The Yellow Pages Game**

The year is 1992 and the Psychology Act (Bill 210) was enacted as proposed at its first reading.

You are emotionally distraught and you wish to consult with a Psychologist who is regulated and belongs to the College of Psychologists.

The following ads appear in the Yellow Pages of your local telephone directory.

Which of the following persons/ organizations offer the services of a regulated practitioner who is a member of the College of Psychologists and who is required to follow professional standards of practice and conduct?

The answer is on the last page . . .