

BULLETIN

THE • ONTARIO • BOARD • OF • EXAMINERS • IN • PSYCHOLOGY

HEALTH PROFESSIONS LEGISLATION REVIEW:

In August, 1985 the Review team provided the participating professional organizations with copies of a discussion paper, inviting comments by early October, on various legal and procedural issues involved in the regulation of the health professions.

The Board's response is reproduced here in full for the information of all psychologists in Ontario. Attempts will be made in subsequent issues of the Bulletin to inform our members of further developments in the Review process.

Legal and Procedural Issues Associated with the Self-Regulation of Health Professionals

The Ontario Board of Examiners in Psychology shares the view of many of the other participants in the review process that the Health Disciplines Act provided an excellent legislative foundation. If this model is pursued in developing a new umbrella act setting out a similar structure and set of procedures for all the health professions we would be pleased to see provisions introduced for psychology that would include elected members of Council and lay members appointed by the Lieutenant-Governor in Council. Similarly, we concede that having regulations approved, or even imposed, by government are reasonable measures in protecting the public interest. Our draft of a Psychology Act, submitted to the government in 1982, follows very closely the provisions of the Health Disciplines Act. (The Review Committee received a copy of this proposal as part of the Board's submission in 1983.)

The Review Committee's discussion paper on legal and procedural issues raises some questions we may not have considered in drafting our original proposal. We have provided comments on some questions below, under the headings set out in the Committee's paper.

THE ROLE OF PARTICIPANTS

The Board is of the opinion that the Health Disciplines Act sets out a role for the complainant that adequately protects the public interest. It is not clear, however, that practitioners are protected against repeated investigations resulting from complaints by malicious or disturbed complainants. We believe that the nature and scope of other interested parties is taken care of, provided decisions and reasons are made available to them.

PUBLICATION OF DECISIONS. We approve of the principle of publishing the outcome of a hearing, provided that the decision is not published until the appeal period has ended. It is important that the members of the profession be made aware of the professional issues that are involved in the proceedings.

We approve of the right to withhold the name of the professional, if found not guilty, or if other reasons can be reasonably established for withholding the name. For example, in some cases the shame and distress involved in appearing before a tribunal, as well as the expense which is not covered by psychologist's liability insurance, is severe punishment in itself. However, the onus should rest on the professional to establish that reasons do exist for withholding the name.

OPEN HEARINGS. We agree hearings should be open unless the tribunal considers they should be closed to protect, for example, a vulnerable witness or, as in the case of a hearing into fitness to practice, for compassionate reasons.

PENALTY. We think that it is important for a tribunal to provide its reasons for the penalty it exacts. This is necessary in order to satisfy the complainant and the members of the public, as well as to educate the members of the profession.

OPEN PARTICIPATION. In the Board's view open hearings and the presence of lay members on governing bodies serves to protect the public interest. We have heard no compelling reason in support of participation by interested parties in these hearings. Moreover, open participation would be burdensome and, for some governing bodies, unbearably expensive. The expense entailed for this Board in holding hearings, including space, board members' and witnesses' expenses and legal fees, represented over \$47,000, or 12.5 percent, of the Board's budget in the fiscal year ending May 31, 1985. It might very well be impossible for the Board to bear the cost of a hearing which permitted all interested parties to participate at will.

THE COMPLAINTS PROCESS

MEDIATION ROLE. A mediating role per se does not seem to us to be appropriate to the proceedings of a regulatory body. We do see the possibility of facilitating communication,

or removing misunderstanding, but we tend to believe this role should be played by a complaints committee only when it has previously been decided that the complaint does not warrant a hearing and only after this decision has been communicated to both parties.

FORMAL INVITATION. We believe there is a place for the procedure we understand the Law Society of Upper Canada refers to as an Invitation in which the complaints committee has decided that a hearing is not warranted but that the issue is nevertheless of concern. In addition to providing an opportunity for admonishment it would also enable the committee to have the professional agree to change some aspect of his or her method of operating. We have done this in instances where record keeping or reporting to clients, for example, were the issue.

DEFINITION OF A COMPLAINT. Occasionally after investigation, the "question" or "concern" expressed by a client, patient or colleague may pertain to an action which, in the view of the complaints committee, outlines a serious instance of misconduct. The Board has no suggestion on how this should be stated in legislation except to recommend that complaints committees should have the prerogative, if not the obligation, to investigate the incident whether it is phrased as a complaint, a concern, or a question. The reason is that members of the public are sometimes hesitant to label as a complaint an account of a professional's action when they are not sure that it is an infraction of professional standards. Nevertheless, we agree that the concern, or complaint, should be set out in writing.

PROCEDURAL ISSUES

THE SOURCE OF EXPERTISE. When the panel is considering a technical aspect of practice (for example, in psychology, the appropriateness of tests used) the record should include the testimony of expert witnesses rather than relying on the professional judgment of the panel which, however valid, would not be part of the record. However, in cases where the panel is considering factual evidence on whether the professional did or did not violate a clearly stated professional standard (for example, did or did not provide reports in a timely fashion), it would not be necessary or appropriate to provide expert testimony.

HEARSAY EVIDENCE. Although not required to follow the civil rules of evidence when conducting a hearing under the Statutory Powers Procedure Act, legal counsel for

this Board have chosen to submit evidence only if it is admissible according to the civil rules of evidence. We believe this should be required of all professional disciplinary tribunals. Non-lawyers may find the rules difficult to apply, but we believe it should be required nevertheless. Tribunals can be briefed prior to hearings on procedural matters.

In regard to matters of registration, the members of the registration committee are the experts; they have acquired expertise through their experience in interpreting the legislation and in dealing with applications. This is particularly important in the registration of psychologists, as academic preparation varies across institutions and lacks the uniformity of training institutions in professions such as law.

THE ROLE OF INDEPENDENT LEGAL COUNSEL. We are not particularly in favour of using independent legal counsel to advise the tribunal during the conduct of a hearing. Members of hearing tribunals can if necessary be briefed in regard to procedures to ensure fairness and consistency. Perhaps the use of legal counsel by tribunals should be permitted, but we oppose it as a requirement. If independent legal advice is used in hearings, the use should certainly be made known to the parties. We would also oppose the delegation to counsel of writing or participating in a decision as this could influence the decision of the tribunal.

However, we tend toward the view that the Review Committee could provide useful guidance in this area.

THE SEARCH AND SEIZURE POWER. In order to fulfill the Board's legislative responsibility to protect the public, it is essential to have the power to obtain necessary evidence. Again, in this instance, we would welcome the Review Committee's expert opinion as to the necessary procedural protections that should be included in the search and seizure powers.

Some legislative changes may be necessary in order to require institutions governed by an Act, such as hospitals, to release information to a professional discipline committee. This obligation should be extended to permit professional regulatory bodies to obtain evidence they may require. At present, we believe a hospital has no obligation to release information requested by the Ontario Board of Examiners in Psychology, even with patient consent.

On occasion, the information sought may legitimately extend beyond the contents of patient files to, for example, a hospital's reasons for terminating the employment of a psychologist.

REVIEW AND APPEAL MECHANISMS

The experience of the Ontario Board of Examiners in Psychology is limited to appeals of its decisions to the Divisional Court, and to the Ombudsman. We have cooperated with the Ombudsman although it has not been established to our satisfaction that we fall under the jurisdiction of that body. Insofar as we have attempted to use expert testimony in establishing evidence, we are content with the review processes to which our decisions thus far have been subjected. One possible exception might be the review of registration decisions which require careful scrutiny of transcripts and documentation of reasons for refusal. However, these too are available in the written record and the reasoning would be self-evident to review committees, appeal boards or the courts. With the provision of a review committee, we see no need for the presence of the Ombudsman in the area of professional regulation.

REGISTRATION

We believe entry to a profession should be decided by the members of the profession obligated to carry out the provisions set out in the Act. Reviewing academic and training credentials, setting and conducting examinations

should be the responsibility of peers. The procedural protections to the applicant should be provided by the appeal process.

The practice of a profession is a privilege that must be earned and not a right to which all persons are entitled. Therefore candidates for registration should bear the onus of proof in registration questions.

FRAMEWORK OR STRUCTURE OF LEGISLATION

The Board is supportive of the expressed aims of the Review and the working model for the proposed legislation. We do have some uncertainty, however, about the Review Committee's statement that "shared governing bodies may foster efficiency and ensure increased commitment to mutual compromises". Our view is that it depends on who is sharing and we are aware that some shared governing bodies are grossly inefficient. Of course, in contrast to these we understand that in Ontario the College of Nurses, regulating both nurses and nursing assistants, functions efficiently.

In summary, we can endorse an umbrella Act that sets out the structure, powers, and duties of governing bodies; the structure and functions of a review board; and the procedural protections. However, we would have serious reservations that "clusters" of professions to share governing bodies" could in fact "retain the essence of self-regulation" (p.16). We tend to think that the many discipline-specific aspects of regulation would render the shared governing body virtually redundant. The exception might be in cases where the knowledge base and skills are closely related, and where supervisory powers adhere in one body, with limited functions permitted to the other. There are obvious disadvantages in this model, however, which we attempted to explore in our previous submission. ■

ORAL EXAMINATIONS

The oral examinations were held in Toronto on November 26 and 27. Assisting the Board in conducting these examinations were the following psychologists:

GEORGE ASHMAN, Ph.D., Director of Psychology; Chief Psychologist, Kingston General Hospital; Associate Professor, Queen's University;

LYNNE BEAL, Ph.D., Senior Psychologist, Toronto Board of Education;

JOHN CALLAGAN, Ph.D., Professor, University of Guelph;

NEVILLE DOXEY, Ph.D., Chief Psychologist, Workers' Compensation Board Rehabilitation

Centre, Toronto;

RON FRISCH, Ph.D., Associate Professor, University of Windsor;

THEODORE GRUSEC, Ph.D., Chief, Impact Control, Department of Communications, Federal government;

JILL LARKIN, Ph.D., Coordinator, Program Evaluation, Canadian Mental Health Association;

JANE LEDINGHAM, Ph.D., Director of Professional Programs, School of Psychology, University of Ottawa;

ALAN MARCUS, Ph.D., Private practice;

RYMANTAS PETRAUSKAS, Ph.D., Staff consultant, Neuropsychology and Learning Disorders, Metropolitan Separate School Board;

HERMAN VAN DER SPUY, Ph.D., Department head, Chedoke-McMaster Hospital, McMaster University;

JAMES SWEENEY, Ph.D., Executive and Clinical Director, Children's Mental Health Centre, Parry Sound;

MARJORIE WHITNEY, Ph.D., Senior psychologist, Adult Services, North York General Hospital.

WRITTEN EXAMINATION

On April 19 and October 11 the written Examination for Professional Practice in Psychology was held in London, North Bay, Ottawa, Toronto and Windsor. The Board is grateful to Prof. Gilles Chagnon, Dr. David Evans, Dr. G. Ron Frisch, Dr. Matti Saari and Mrs. Naomi Jeffs who served as proctors.

SUPERVISION OF TEMPORARY REGISTRANTS

As in several other jurisdictions, Ontario psychologists have played an important role in the certification/licensing of new members of the profession. Considerable attention has already been directed in these pages to the importance of other forms of assessment. For example, we have described the role of the Examination for Professional Practice in Psychology (EPPP) in confirming that a candidate possesses a minimally acceptable fund of general knowledge in the discipline of psychology,

knowledge considered essential as a basis for the competent practice of psychology. In addition, in the oral examination, an effort is made to establish that the candidate is able to exercise the professional judgment necessary for independent practice. We hope in time to include a fuller discussion of the important role in certification/licensing played by the many psychologists who generously volunteer their time to supervise and monitor the performance of candidates for registration during

their year on the Temporary Register.

Recognizing the vital role the supervising psychologist plays in the certification/licensure process, the Board would like to thank those psychologists who provided supervision for the candidates admitted to the Permanent Register in 1985. The Board appreciates the time and effort taken by these psychologists and takes pleasure in listing their names below:

James Alcock	Charles Cunningham	Tim Hogan	Kevin Mooney	William Ross
Jeanette Amdur	Bill Cupchik	Cornelius Holland	Norman Morris	Donald Rudzinski
Harvey Anchel	Joyce D'Eon	Mary Hopley	Roy Musten	Matti Saari
Charles Banner	Maurice Daignault	Ken Hbranchuk	Paul Nesbitt	John Schneider
Olga Barilko	Phillip Daniels	Sandra Keller	William Neufeld	Masud Siddiqui
Rosemary Barnes	Hy Day	Felix Klajner	William Newby	Jane Siegel
Pierre Baron	Susan Denburg	Valerie Knox	Ervin Newcombe	Ronald Skippon
Francisco Barrera	Garry Dibb	Marianthi Konstantareas	Charles Newstrom	Trevor Smith
Carl Bartashunas	Neville Doxy	Geoffrey Langford	George Nicholl	Jane Staub
Edward Bassis	Gilles Dupont	Edward Larkin	Thomas O'Hara	Richard Steffy
Ruth Baumal	Kenneth Elliott	Jean-Paul Laroche	Edwin Peacock	John Strang
Philippe Beaudry	David Factor	Terrence Laughlin	Marjorie Perkins	Diane Syer-Solursh
James Bebko	Bruce Ferguson	Glen Lawson	Catherine Petrimoulx	Henry Tamowski
Howard Bernstein	Greg Finlayson	James Lawson	Robert Pilon	Thomas Tanski
Stephen Bernstein	John Fisk	Paul Lerner	Herb Pollack	Barry Taub
Richard Berry	Sidney Folb	John McAfee	Nathan Pollock	Anthony Thompson
Richard Blair	Barbara Fradkin	William McDermott	Raymond Proulx	Sarah Usher
Thomas Blakely	Barry Francis	Jeannette McGlone	Manfred Pruesse	Paul Valliant
Carson Bock	Mary-Ellen Francoeur	Dorothy McKenzie	Gerald Pulvermacher	Herman van der Spuy
James Bonta	Lee Gage	Ashton McKinnell	Brian Quirk	Carlo Vigna
Robert Bourgeois	Peter Gamlin	John Machry	Douglas Quirt	David Weiss
Patricia Bowers	David Garner	Robert MacIntyre	Zophia Radziuk	Elizabeth Werth
Ken Breitman	Reva Gerstein	Allan Mandel	Nancy Ragan	Heather White
Mary Broga	Gerald Gladkowski	Lucia Mandziuk	Patricia Reavy	Marjorie Whitney
Harvey Brooker	Robert Gluekauf	Howard Marcovitch	John Renner	Judith Wiener
Raymond Brunette	Leonard Goldsmith	Roderick Martin	Martin Resnick	Marc Wilchesky
Denton Buchanan	Graham Haley	William Melnyk	Reginald Reynolds	Brian Wilson
Douglas Cann	Walter Hambley	Harold Miller	Marnie Rice	
Arthur Cott	Joel Herscovitch	Rickey Miller	Gerald Ringuette	
Ann Croll	Bernard Hoddinott	Nancy Montgomery	Malcolm Rose	

NEW TEMPORARY REGISTRANTS SINCE SEPTEMBER, 1985

Linda Alcorn	Paul King
Robert Bagby	Jo-Anne Lewicki
Catherine Bielajew	Bruce Linder
Pierre Boucher	Ian Manion
Brian Burt	John Miller
Patricia Canning	Maxine Morrison
Robin Cappe	Robert Morton
Steven Cronshaw	Mark Olioff
Eileen Davelaar	Michael Persinger
Ted DeYoung	Miroslav Richter
Debora Dubreuil	Stuart Ross
Jennifer Dunn-Geier	Susan Ross
Susan Eadie	Linda Siegel
Lawrence Freedman	Zitza Simpson
Leonard George	Cindy Wahler
Louise Hartley	Harvey Weingarten

NEW PERMANENT REGISTRANTS SINCE AUGUST, 1985

Dyane Adam	Shalini Gupta	Carol Parrott
Sergio Bacal	Jean Ju	Jeffrey Phillips
Donald Blackburn	Richard Kaley	Edward Rawana
Kathryn Boschen	Rosemary Keogh	Jaan Reitav
Calvin Brown	Reena Kronitz	Mitchell Shack
Shirley Bryntwick	Carolyn Lennox	Karen Steele
Wendy Chan	Brenda Mann	Nalini Stiemering
Katherine Clarke	Richard Marlin	Clare Stoddart
Salvatore Colletta	Patricia Minnes	Christine Stoughton
Aurelie Collings	Nina Mistry	A. Jeffers Toby
Clinton Davis	Linda Olinger	Anne Vagi
Ruth Droege	Robert Orr	John Voss
John Fleming	Edite Ozols	Sue Weinstein
Nancy Friesen	Carmela Pakula	Izabella Wieckowska
Catherine Gildiner	Kenneth Palmer	Christopher Wuerscher
Jill Goldberg-Reitman	Kevin Parker	Mingche Yeh

**NUMBER OF PSYCHOLOGISTS ISSUED PERMANENT CERTIFICATES OF REGISTRATION
BY THE ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY:**

• 1976-1985 •

YEAR	NUMBER AT START OF YEAR AND RESIDENT IN:			ADDITIONS DURING YEAR					NUMBER AT END OF YEAR AND RESIDENT IN:					GAIN N (%)	
	ONTARIO	OTHER	TOTAL	ONTARIO GRADUATES N (%)	OTHER N (%)	TOTAL	NON RENEWALS	ONTARIO N (%)	OTHER N (%)	TOTAL					
1976	738	96	834	41 (55)	33 (45)	74	16	788 (88)	104 (12)	892	68 (8.2)				
1977	788	104	892	44 (59)	30 (41)	74	20	840 (89)	106 (11)	946	54 (6.1)				
1978	840	106	946	58 (69)	26 (31)	84	33	870 (87)	127 (13)	997	51 (5.4)				
1979	870	127	997	60 (69)	27 (31)	87	2	947 (88)	135 (12)	1,082	85 (8.5)				
1980	936	146	1,082	55 (63)	32 (37)	87	22	1,005 (88)	141 (12)	1,146	65 (6.0)				
1981	1,005	141	1,146	62 (65)	33 (35)	95	25	1,070 (88)	152 (12)	1,220	70 (6.1)				
1982	1,071	149	1,220	67 (80)	16 (20)	83	18	1,130 (87)	163 (13)	1,293	73 (5.6)				
1983	1,130	163	1,293	72 (71)	29 (29)	101	38	1,200 (88)	156 (12)	1,356	63 (4.6)				
1984	1,199	157	1,356	53 (68)	25 (32)	78	30	1,248 (89)	156 (11)	1,404	48 (3.5)				
1985	1,248	156	1,404	59 (63)	35 (37)	94	50	1,260 (87)	194 (13)	1,454	50 (3.4)				

NOTE: Fluctuations in the rate of attrition may be due to changes in Regulation 698 which, in 1977, reduced from ten years to two the period during which lapsed certificates may be renewed; and in 1978, 1979, 1981 and 1985 affected renewal fees.

▷▷▷ ESTABLISHING COMPETENCE

The following excerpt is reprinted from BCPA Footnotes, July/August, 1985 with the permission of the British Columbia Psychological Association (BCPA). In view of an unprecedented number of complaints received by the Ontario Board in the six-month period ending on November 30, the Board wishes to alert psychologists to practices that could lead to complaints against them. Therefore, the following points are reprinted here as they may be helpful to psychologists in Ontario as well as in British Columbia.

There is no intrinsic proactive mechanism within BCPA to determine whether members

are practising within their areas of professional competence.

Nevertheless, it is clearly unethical to offer a service one is not professionally competent to provide.

Professional competence is determined by academic training and supervised experience. Under some circumstances, supervised or other forms of experience (e.g., completion of specialized training offered by a recognized continuing education program) may be seen as equivalent.

While BCPA will not, under current practices, demand that you demonstrate claimed professional competence, you may have to demonstrate such competence if an ethics complaint is lodged against you. If such a situation arises, some of the questions you may have to answer could include:

Did you clearly and fully inform the client as

to the nature and limits of your professional competence?

If your academic background and training does not reflect competence in a given area, did you seek guidance as to your level and limits of competence from a recognized senior psychologist in that area of practice? Did you arrange for a mechanism for appropriate supervision or monitoring of your practice?

Are there justifiable reasons why it was in the client's best interest not to be referred on to a colleague with more clearly demonstrated competence in that area?

In short, it is YOUR responsibility to ensure that you are providing services which are within your professional competence and in the best interest of the client, or to refer that client to someone who can provide such services. Not to do so is to behave unethically. ■

The Bulletin is a publication of the Ontario Board of Examiners in Psychology.

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