



The

# BULLETIN

THE • COLLEGE • OF • PSYCHOLOGISTS • OF • ONTARIO

## COMPLAINTS COMMITTEE TASK FORCE CREATED

The College has created a Task Force whose mandate is 1) to examine the complaints process and 2) to communicate to members of the College issues related to complaints.

The Task Force has met once and has identified the necessity to review the entire complaints process. One concern is how to ensure effective and efficient use of the College's human and financial resources. The Task Force is also planning to develop written policy regarding the complaints and investigation procedure. This is to ensure that all complaints are investigated in a consistent and fair manner and that the College's investigators have the backing of formal written procedures on those occasions when Complaints Committee decisions are appealed to the Health Professions Board. At present a considerable number of cases, where there was a decision to dismiss a complaint or caution the member, are being appealed by complainants.

The Task Force would like to hear from anyone who has a concern or reaction to an issue related to complaints. The Task Force members are Dr. Margaret Hearn, Dr. John Goodman, Dr. Nina Josefowitz, and Ms. Marilyn Norman. The Task Force members can be contacted either through the College or through our addresses as listed in the Registry. Ms. Norman, who is a public member, may be reached through the College.

### Overview of Complaints Process

The Complaints Committee tends to be the College committee that causes high anxiety for College members. Reports from members suggests that one reason is the lack of knowledge concerning the actual complaints process. Over this past year a number of changes have been made in the Complaints process that the College believes meet the member's need for fairness and the needs of the public in terms of public protection, which is the College's mandate. The changes are based upon the College's commitment to using alternate dispute resolution mechanisms. These include negotiated settlements, letters of concern and mediation in appropriate situations.

The following is a brief description of the process. The College has two staff members, Susan Brooks and Claire Barcik, whose responsibility is to investigate complaints. Both are trained lawyers, but are not practicing as lawyers at the College. Upon receiving a complaint, the investigators will write

to the complainant to clarify any issues and also to receive permission to give the member a copy of the complaint. At that time a copy of the complaint is sent to the member and the member is asked to respond to the complaint. The member may also be asked to provide additional information if the investigator believes it will assist the case.

After receiving the member's response the investigators may investigate further. For example, if the complaint involved a breach of confidentiality, the investigators may contact the member and ask for any signed forms indicating consent to release confidential information, or, if the complainant indicated that he had discussed his complaint with his physician, the physician might be contacted and asked about the incident. Once all the necessary information is collected the investigators prepare the "investigator's notes". This is an internal document that includes a presentation of these issues and a discussion of these issues in relation to the relevant legislation, standards and ethics.

There are two panels of the Complaints Committee. Under the RHPA each panel must consist of at least 3 members, at least one of whom is a public member. Each panel meets about 4 - 5 times a year. Before assigning cases, the investigators ensure that panel members do not have any relationship that would constitute a conflict of interest with the parties to a complaint. Ten days prior to the panel meeting, the members of a complaints panel receive all the information on the cases that

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### INSERTS

- Diagnosis and Delegation Discussion Paper
- Statutory Requirements for Client Information Management

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will be discussed. For each case they receive the complainant's letter, the member's response and investigators notes and all other documentation that was obtained. Last year there were about 8-10 cases heard by a panel on a given meeting of a Complaints Committee panel. All panel members are responsible for reviewing and considering all the cases. In addition, each case is assigned to a particular panel member, who is responsible for preparing a first draft decision for that case. This first draft is considered as a basis for starting the discussion that will lead to a decision. A quick survey of last year's Complaints Committee members indicated that they spent approximately 1-3 hours reviewing each case, and 1-5 hours drafting the first draft decision.

When the panel meets, each case is reviewed and discussed, usually for between 1-1½ hours per case. The panel considers the issues and reviews and evaluates the evidence presented by the complainant along with the member's response. The discussions are thorough. The panel attempts to operate on a consensus model in which deliberation continues until everyone agrees. In reaching its decision, the Complaints Committee is concerned with upholding minimal standards of competence and with reaching a just decision. The Complaints Committee also has the mandate to educate the member, if the Complaints Committee believes that the member has made an error.

The Complaints Committee members have a number of options in the disposition of cases.

*First*, a case can be dismissed. In some cases, if a case is dismissed because the member's conduct met minimal standards, but the committee wishes to encourage the member to change certain aspects of their practice to further comply with the spirit of the law, the Committee may include a note with either advice or recommendation for future practice.

*Second*, the Committee can issue a caution. A caution is issued when the Committee has concerns about a member's conduct, but does not consider these sufficiently serious to refer allegations to discipline. In most cases a caution is issued when a member has not followed the specific standards and guidelines of the College. In such cases the Committee usually advises the member of their particular concerns and may make recommendations concerning the member's practice. However, it should be noted that these are recommendations only.

*Third*, the Committee can attempt a form of alternate dispute resolution (ADR). The Committee may suggest either mediation between the parties, or they may write a letter of concern outlining the Committee's concerns and offering a proposed resolution. The proposed resolution might include, for example, the member undertaking some form of education or supervision in the area. If the Committee's proposal is accepted, the committee issues a caution, and the specific undertakings

are included in the final decision. If the member rejects the Committee's proposed settlement, the matter is referred back to the Complaints Committee for a decision.

*Fourth*, in cases that the Committee considers extremely serious, the Committee can refer allegations to the Discipline Committee. Referral to Discipline involves a detailed statement of the Complaints Committee's concerns. Even after allegations have been referred to Discipline, prior to the Discipline hearing, the College in appropriate cases may attempt to negotiate a settlement with the member. At this point if a negotiated settlement is reached, it may include such clauses as publication of the member's name in the Bulletin, as well as a variety of undertakings. A notation on the public record must be made if there is any limitation on the member's certificate. If the negotiation is unsuccessful, or if a negotiated settlement is inappropriate, the case will proceed to a discipline hearing. Lastly, there are also provisions for the Complaints Committee to refer allegations to the Executive or Quality Assurance Committee in specific - and rare- circumstances.

The complainant and the member have the right to request a review of the Committee's decision by the Health Professions Board (HPB) unless there has been a referral to the Executive or Discipline Committees. Generally speaking the purpose of the HPB is to ensure that the process has been fair. At present about 40% of eligible cases are being appealed to the HPB. At the Complaints Committee level, College procedures are designed to keep confidential, even to members of Council, any information about a complaint. Once allegations are referred to Discipline, and a notice of hearing is issued and served to the member, it becomes public information that there is an upcoming hearing related to the matter. However, the College has no jurisdiction regarding confidentiality in cases appealed to the HPB. It is our hope that this helps clarify the existing process. If there are any questions or concerns, we would appreciate hearing from you.

*Complaints Committee Task Force: Dr. Margaret Hearn, Dr. John Goodman, Dr. Nina Josefowitz, Ms. Marilyn Norman.*

**College Initiates Informal Resolution  
at the Initial Contact Stage**

The Task Force started the review of the Complaints process by examining the initial contact when a member of the public first contacted the College. As a result the following procedures were initiated and approved by Council.

When a member of the public contacts the College and clearly states his/her wish to initiate a complaint against a member,

the College will assist the member of the public in laying the complaint. In other cases, where it is unclear if the member of the public wishes to lay a complaint, the investigators will discuss what the member of the public hopes to achieve by contacting the College. Depending upon the response, the investigators will suggest a number of options. The options will include among others:

- > sending information to the caller - for example, depending on the issue the College might send information relating to professional standards or guidelines.
- > explaining that either the complaint or desired outcome is not within the College's jurisdiction.
- > if appropriate, exploring the possibility of the member of the public contacting the psychologist or psychological associate by phone or letter to discuss their concern and
- > the College sending the psychologist or psychological associate a letter indicating that the member of the public (name included) had contacted the College and the reason for the contact.

The purpose of this letter is to inform the psychologist or psychological associate of the concerns, and to enable the resolution of these, if possible. The College does not make any judgment concerning the case, and the letter clarifies that the member of the public still has a right to lay a complaint at a later date.

Upon receipt of such a letter, the psychologist or psychological associate has no obligation to respond to either the College or the member of the public. In fact the College does not expect to receive a response. It is within the psychologist or psychological associate's judgment as to whether they want to contact the member of the public and attempt to resolve the issue. If the member of the public subsequently decides to lay a complaint respecting the concerns raised, the correspondence from this informal resolution cannot be included in that Complaint.

> Finally, the member of the public is also informed that they have the right to lodge a formal complaint. If the caller wishes, the process of laying a complaint is explained and explanatory information is sent to the caller.

The Task Force hopes that by identifying these options at the outset, the College can facilitate solutions that are responsive to the public's desired outcomes. The College hopes that formal complaints may be avoided where an informal resolution would be more effective.

The Task Force would welcome comments on this process as it is a new initiative for the College.

*Task Force Members: Dr. Margaret Hearn, Dr. John Goodman, Dr. Nina Josefowitz, Ms. Marilyn Norman. §*

## **Policy re: Use of Similar Fact Evidence by Complaints Committees**

### **Background**

In consideration of:

- a) the view of the Health Professions Board, which has the authority to review decisions of the Complaints Committee, that it is impossible for the College to regulate the profession adequately if it does not maintain records of and respond to the existence of recurring complaints of a strikingly similar nature against the same member of the profession and monitor patterns of conduct by its members; and
- b) the adoption of policies concerning this issue by other health care regulating bodies (e.g., the College of Nurses of Ontario, the College of Physicians and Surgeons of Ontario).

In September, 1995, the Council of the College of Psychologists of Ontario adopted a policy which provides for the Complaints Committee to be informed of prior investigations or hearings in certain specified circumstances. The policy will take effect no earlier than April 1, 1996, and will involve only those Complaints or Discipline Committee decisions which are made after April 1, 1996.

### **The Policy**

If there have been prior investigations or hearings regarding incidents that are "strikingly similar" (i.e., similar fact) to the current matter being reviewed by the Complaints Committee and the Complaints Committee's Decision in the prior matter consisted of a caution to the member or there was a finding of misconduct or incompetence by the Discipline Committee, information about the prior incidents will be brought to the Committee's attention to assist the Committee in determining whether or not the current incident is substantiated. The information provided will consist of the Decision and Reasons issued by the Committee in the prior matter, as well as a summary of the complaint investigation.

Any information that is noted on the public Register of the College with respect to the member in question shall be brought to the attention of the Complaints Committee at the time when the complaint is considered.

If the Complaints Committee considering the current matter determines that it has concerns about the con-

duct of the member, based on the allegations raised by the complainant, the Committee may consider the following information in determining the appropriate disposition of the matter: the Complaints Committee's Decision and Reasons in a prior matter which was "strikingly similar", where it had issued a caution to the member, the Discipline Committee's Decision and Reasons in a prior matter which was "strikingly similar", where there was a finding of misconduct or incompetence, or the Fitness to Practise Committee's Decision in a prior matter which was "strikingly similar", where there was a finding of incapacity. In all such cases, a summary of the investigation will also be provided.

In considering whether to provide the Committee with information about a prior investigation or hearing, the investigative staff, with the assistance of legal counsel, if they are of the view that it is necessary, will evaluate and determine if a previous incident meets the test of "similar fact". In doing so, the investigative staff will consider several factors, including:

- 1) whether a similar type of service was provided by the member in the prior case and the current complaint;
- 2) whether the allegations raised by the complainant in the prior case are of a strikingly similar nature to those raised in the current complaint;
- 3) whether the complainant in the prior investigation alleged a strikingly similar pattern of conduct to that alleged/found in the current complaint (e.g., specific statements made, methods of providing services, unusual markers);
- 4) whether the concerns noted by the Committee in the prior decision are of a strikingly similar nature to the allegations raised by the complainant in the present complaint;
- 5) whether there is a real and substantial nexus or connection between the allegations made in the current case and the facts related to the previous complaint; and
- 6) whether the prejudicial effect to the member is overridden by the probative value of the information.

In determining what weight to ascribe to the similar fact information from the prior investigation, the Committee will consider the following issues:

- 1) Are the complainants known to each other?
- 2) How similar are the details of each case? Does it appear that there is a distinct "system/pattern" of conduct in place?
- 3) How long ago was the prior investigation carried out? How long ago did the events related to the prior investigation occur?
- 4) How many complaints of a strikingly similar nature have there been? How many previous decisions of the Complaints Committee exist with respect to this particular member and this type of allegation?

Prior to issuing a decision of the Complaints Committee, the member complained against will be provided with a copy of the previous Decision and Reasons, stemming from the case which has been assessed to be a similar fact situation. The member will be asked to make a submission in writing as to the degree of relevance and weight that the Committee should place on this information in determining whether the current matter under review is substantiated. This submission will be forwarded to the Committee along with the investigation report. §



# COLLEGE NOTICES

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The College's experience with the RHPA has prompted a major review and revision of the provisions in the documents relating to registration. In the July 1995 issue of the Bulletin members read the proposed revision to the **regulation** on registration. Having considered the comments received from members, Council has now approved that revision for submission to the Ministry of Health for its review and approval.

The next step has been to prepare a comprehensive set of **guidelines** to complement the amended regulation. These guidelines have now been approved by the Council and are provided for your information. You will see that each set of guidelines relates to specific provisions in the amended registration regulation. Once again, the College would welcome any comments from the membership respecting these guidelines. §

## GUIDELINES FOR CERTIFICATE OF REGISTRATION AUTHORIZING SUPERVISED PRACTICE

### *Psychologist*

Applicants must take the following steps and meet the following requirements in order to obtain a certificate of registration authorizing supervised practice. **This certificate is the normal prerequisite to eligibility for a certificate authorizing autonomous practice.**

#### A. How to apply:

1. Application materials may be purchased from the College of Psychologists of Ontario.
2. The application procedure is as follows:
  - a) A completed application form (Application for Registration: Psychologist) is submitted together with the application fee, to the Registrar of the College. The fee is non-refundable. If a formal academic credentials review was conducted by the College, within the past ten years, the applicant may submit a copy of the positive review findings, pay a reduced application fee, and not be required to resubmit official transcripts.
  - b) The applicant must have submitted, directly to the College, reference statements from three individuals who are members of the College, regulated members of the profession of psychology in another jurisdiction, or full time academics in a department of psychology. These referees must have known the applicant and his/her work for at least one year and submit their references on the forms provided by the College.

- c) The applicant himself/herself must request the post-secondary institutions attended to send directly to the College an official copy of all undergraduate and graduate transcripts, in fulfilment of Registration Regulation, Section 4.-(1) 3. i). Where this is not explicitly indicated in the transcript, the applicant must request from the institution (Registrar, Dean, or Chair) an attestation of the date at which all doctoral degree requirements were met.

If the post-secondary institutions attended include universities in countries other than Canada or the United States, the College will require a verification that each is recognized as a degree granting institution and of the level of the degrees as compared to those of a Canadian university, from the Comparative Education Service of the University of Toronto.

Applicants whose transcripts are in languages other than English or French must arrange for translations into English or French. Applicants who are Canadian citizens or permanent residents of Canada may obtain English translations through the Multilingual Translation Unit, The Ministry of Citizenship.

- d) In completing the application form, the applicant must list the coursework taken, in keeping with the divisions and instructions on the application form, ensuring that all psychology courses taken are listed under those sections for which the applicant wishes them to be credited by the College, and providing brief but clear content descriptions. The applicant should note that it is a re-



sponsibility of the Registration Committee to verify the congruence between the candidate's coursework as listed in the application form and the coursework as found in the official transcript. It is also the responsibility of the Registration Committee to review and approve the specific courses in relation to the College's Guidelines for Academic Preparation Leading to Eligibility for Registration.

The applicant must make a distinction between coursework, including practica taken as part of a course, and practical training under supervision. The former should be listed as coursework and the latter should be listed in the Professional Experience section of the application.

e) If the applicant has been registered, licensed, or certified as a psychologist by another jurisdiction, the applicant is required to request that jurisdiction to confirm, in a document addressed directly to the College, the current or former status in that jurisdiction and whether there are any outstanding matters.

f) If the applicant has previously taken the Examination for Professional Practice in Psychology (EPPP), then the applicant must request a report of the EPPP results, to be transmitted directly to the College either by the Board which administered the exam or by the Interstate Reporting Service of the Professional Examination Service in New York.

g) The applicant is required to complete a declaration of good character by answering the appropriate questions in the application form. Although, a "yes" reply to any of these questions does not in itself preclude registration, the College may ask the applicant to supply an explanation and details. A false declaration may disqualify the applicant from the registration process, or if discovered later may lead to a revocation of the certificate of registration.

h) The applicant is required to complete a declaration of competence. This is intended to express those areas of psychological practice which the candidate intends as the principal focus of his or her psychological practice, and in which the candidate will be expected to demonstrate adequate competence prior to the award of a certificate of registration for autonomous practice.

- i) the applicant is required to provide his or her supervisors with a copy of the declaration of competence.
- ii) the declaration of competence will serve as a basis for supervision and evaluation.
- iii) if an applicant's declaration of competence is in an area other than that in which the applicant was

trained, the applicant is expected to submit a needs analysis and training plan prepared in conjunction with the supervisor(s).

iv) changes in the declaration of competence proposed by the applicant, while on the register for supervised practice, must be acknowledged by the supervisor and reviewed by the Registration Committee not less than six weeks prior to the oral examination. The Registration Committee may, in the case of major changes, request further training and experience.

i) The applicant must request two members of the College, who hold certificates of registration for autonomous practice, normally as psychologists, to:

i) sign and submit undertakings, on the forms provided by the College, to supervise the applicant as primary and alternate supervisors respectively, in fulfilment of the Registration Regulation 4.-(1)3 ii).

ii) thereby agree to comply, in a timely manner, with all clauses of the undertaking, including those requiring formal ratings of the candidate.

The supervisors are expected to have competence in areas of practice which are congruent with those intended for supervised practice by the candidate. Optimally, both supervisors will work in the same setting as the applicant. When necessary, the College may approve a supervisor who works in a different setting, provided that consistent mentoring and regular contact can be ensured.

In exceptional circumstances (e.g. the applicant works in multiple settings or seeks to acquire additional expertise in a new area of practice) a third supervisor may be selected.

Applicants working in correctional facilities should normally have at least one on-site supervisor.

j) Candidates considering acquiring their supervised work experience in a private practice setting should take note of the following:

i) Holders of a certificate authorizing supervised practice are normally not permitted to engage in their own independent private practice, because their competencies have not been formally evaluated by the College and therefore the public risk is unknown. This prohibition against private practice encompasses all professional helping activities and is unrelated to the amount of time spent in such activities.

ii) Holders of a certificate authorizing supervised

practice may work in the private practice of a member of the College, if in accordance with the following:

- the setting provides such diversity in clientele and practice activities as will prepare the candidate adequately for autonomous practice in the intended area of practice.
- it is made clear to clients from the outset of provision of service, to third party carriers, and in all public announcements, that services are being provided by a holder of a certificate authorizing supervised practice. As well, the identity of the supervisor must also be provided in each of these instances.
- clients are further advised that meetings between the clients and the supervisor may occur at the request of the client, the supervisor, or the applicant.
- all formal reports and communications are co-signed by the supervising member of the College.
- the registrant under supervision provides the College with written assurance that billing of clients, and the collection of client fees, are carried out by the supervising member of the College. Such billings must include a statement of the supervisory relationship and the identities of the supervisor and supervisee.
- where a private practice takes place in more than one site, the supervising member of the College and the holder of the certificate authorizing supervised practice should normally work in the same site.

#### **B. Review of completed application by the Registration Committee:**

Note: It is the applicant's responsibility to ensure that all application items have been received by the College, and that the application file is complete. Applicants are encouraged to verify with College staff that their application file is complete.

1. Due to the diversity of curricula in psychology, to the multiplicity of areas of psychological practice, and to the variety of settings in which psychological services are provided, the Registrar is expected to refer all applications to the Registration Committee, in keeping with the Regulated Health Professions Code, section 15-(1)(b) and (2) for review and decision.
2. Once the application file has been completed (the application form, all reference statements, all transcripts, and signed undertakings from two supervisors) the Registrar will give

written notice of the date on which the Registration Committee will review the application file. The candidate will have thirty days to submit any further documents or information in support of the application. Care should be taken to ensure that supervisory arrangements are fully described.

In exceptional circumstances (out-of-country applicant, unemployed applicant, applicant needing eligibility statement), the Registration Committee may consider an application file which is complete except for the receipt of signed undertakings from two supervisors and details of the intended Ontario work setting. In such instances, the Registration Committee will issue an eligibility statement only, reserving its decision on issuance of the certificate authorizing supervised practice.

3. Following a formal evaluation of the completed application by the Registration Committee, the Registrar is directed to inform the applicant in writing of the outcome of the evaluation. The Registrar will issue a certificate of registration authorizing supervised practice **or** refuse the application, giving reasons in accordance with the direction of the Registration Committee.

The College will normally treat as confidential all application materials. A person whose application is refused may request a review by the Health Professions Board. In this case, the College is required to submit to both the applicant and the Health Professions Board all documents and information upon which the refusal was based.

Candidates will not be issued a certificate of registration authorizing supervised practice prior to receipt, and Committee approval, of the intended work, setting, and supervision.

#### **C. Guidelines for completing the requirements of postdoctoral supervised practice**

1. To comply with Regulation 878/93, Registration, section 4-(1)(i)b), the holder of a certificate of registration authorizing supervised practice must fulfil the following conditions:
  - a) Carry out all of the required supervised work experience in the Province of Ontario.
  - b) Practise in accordance with all statutes, regulations, standards of professional conduct and guidelines adopted by the College.
  - c) Maintain employment, and supervision, as agreed upon at the time of issuance of the certificate. For any changes, the prior approval of the College must normally be requested in writing by the member.





d) Maintain an active certificate of registration authorizing supervised practice by paying the prescribed fees and taking the EPPP within one year of issuance of the certificate of registration authorizing supervised practice and, if required, yearly thereafter.

e) For persons:

i) not previously registered as a psychologist, a minimum of 1500 hours of supervised, post doctoral practice in Ontario is required. The supervised practice must be in an area (or areas) of psychology that is directly relevant to the candidate's intended psychological practice.

ii) previously registered as psychologists for less than five years in another jurisdiction with requirements equivalent to those of the College, a certificate of registration authorizing supervised practice may be issued for a period of not less than six months. In such cases, a minimum of 750 hours of supervised, postdoctoral practice in Ontario is normally required.

iii) who, regardless of previous training and experience, plan to change the area of practice during the supervised postdoctoral period, the following principle shall apply: The candidate must acquire such training and supervision to yield competencies comparable to those held by graduates at the doctoral level in the intended area. In such cases, additional supervised post doctoral practice in Ontario may be anticipated, beyond the minimum stated in e) i and ii above.

f) The member of the College under supervision shall, in all written and oral communications, indicate that he/she is a psychologist who is the holder of a certificate authorizing supervised practice. In writing, the designation should be as follows:

Jane Doe, Ph.D., C.Psych. (Supervised Practice)

2. A certificate of registration authorizing supervised practice is of limited duration.

a) Supervised work experience normally starts on the date at which the Registration Committee formally awards the certificate of registration authorizing supervised practice.

i) In exceptional circumstances, where the applicant has been working under the close supervision of primary and alternate supervisors immediately preceding the award of this certificate, and when the work and supervision are acceptable to the Registration Committee, the Registration Committee may back-date the approved supervised work experience to a maximum of three months, provided that the supervisors agree to assess and document the applicant's back-dated performance using the forms provided by the College. Nonetheless, applicants are strongly encouraged to submit their completed applications in a timely manner and thereby avoid a request for back-dating of supervised work experience.

b) The expiry date is specified on the certificate. For persons not previously registered as psychologists, the certificate shall be issued for a period of not less than one, nor more than two, calendar years.

c) Where appropriate, the certificate may be renewed by the Registration Committee of the College upon written request from the holder of the certificate. A candidate requiring renewal of the certificate of registration authorizing supervised practice must present a written request to the Registration Committee of the College prior to the expiry date. The Registrar may extend a certificate of registration authorizing supervised practice for a period of up to sixty days.

#### **D. Lapse of certificate of registration authorizing supervised practice:**

Normally it is expected that a **certificate of registration authorizing autonomous practice** will be issued, following the successful completion of all required examinations, prior to the date of expiry of the certificate of registration authorizing supervised practice. Otherwise, for whatever reasons, the certificate of registration authorizing supervised practice will lapse and the holder of the certificate will cease to be a member of the College. According to section 8.(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 . . ."

Approved by Council September 15, 1995 §



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## GUIDELINES FOR SUPERVISION OF MEMBERS HOLDING CERTIFICATES AUTHORIZING SUPERVISED PRACTICE

### *Directions for Supervisors of Psychologists*

Supervisors play an important role in preparing candidates for the autonomous practice of psychology. In all aspects, supervisors should be sensitive to the needs of candidates and should make every effort to ascertain their requirements for training. Supervisors should note that these candidates hold a certificate which is the normal prerequisite to eligibility for a certificate authorizing autonomous practice.

#### **A. Role of supervisors**

The role of supervisor has the following key aspects:

1. Supervisors accept tutorial responsibility for raising the level of skills, knowledge and general professional functioning of candidates to a level acceptable for autonomous practice, in keeping with the candidate's declaration of competence and any other requirements of the Registration Committee during the post-doctoral supervised experience.
2. As an on-going part of this tutorial process, they provide the candidates with appraisals of their competencies.
3. The supervisor accepts ultimate responsibility for the services provided to clients by the candidates under their supervision.
4. They formally agree to provide the College with objective assessments of each candidate's progress during this period.

#### **B. Primary and alternate supervisors**

A minimum of two supervisors is mandatory. Normally, candidates are required to designate a primary supervisor and an alternate supervisor. Exceptionally, a second alternate supervisor may be designated. Signed undertakings from all supervisors must be submitted to the Registration Committee for approval.

1. Specific responsibilities of the primary supervisor:
  - a) Setting training goals and objectives for the supervisory period, consistent with the candidate's declaration of competence and any other requirements of the Registration Committee.
  - b) Supervision of the candidate's professional perform-

ance, including training, monitoring, and assessment of performance, throughout the supervisory period.

- c) Reporting to the College, at three-month intervals, on the candidate's progress, assets, and liabilities.

- i) Reports must be submitted on the forms provided by the College. Dates, duration, and content of each supervisory session must be recorded by the supervisor. Clients' names should be omitted.

- ii) All reports must be received by the College before a candidate can be admitted to the oral examination.

- d) When there are changes to the candidate's declaration of competence, they must be acknowledged by the supervisor to the Registration Committee and explicitly considered in the supervisor's subsequent appraisal(s) of the candidate.

2. Specific responsibilities of the alternate supervisor:

- a) In general, the responsibilities of the alternate supervisor parallel those of the primary supervisor, as the alternate must be able to replace the primary supervisor if the latter must withdraw for whatever reason. Both supervisors are expected to work within the goals and objectives set by the candidate in cooperation with them.

- b) The alternate supervisor meets with the candidate in individual sessions a minimum of two hours per month. Supervisory sessions normally take place in the candidate's work setting. Any exceptions must be approved by the College. The alternate supervisor must submit (at a minimum) an annual report to the College and a subsequent report, if required, at the end of the period of supervised experience, on the forms provided by the College.

#### **C. Payment for provision of supervision**

1. Normally, supervisors are expected to provide supervision as part of their collegial contribution to the profession.

2. In certain circumstances, particularly in private practice settings, it may be necessary for supervisors to request payment for the provision of supervision to candidates, subject to the following conditions:



a) When the candidate provides services to the supervisor's clients, it would not be appropriate for the supervisor to seek payment for supervision from the candidate. The supervision occurs in the normal course of providing services to the client and is part of the supervisor's professional responsibility to the client.

b) When the candidate provides services to clients who are not part of the supervisor's practice, the supervisor may consider charging a reasonable amount for this supervision, if such supervision would otherwise affect the earning of the supervisor.

#### D. Use of the Supervisor's Work Appraisal Form

1. All supervisors' reports must be submitted to the College in a timely fashion, using the form provided by the College, with attachments when appropriate.

2. The Supervisor's Work Appraisal Form includes a rating scale, with dimension and rating categories which are intended to provide a consistent frame of reference for supervisors, candidates, the Registration Committee, and the College's oral examiners. Since the purpose of registration is public protection, supervisors are reminded that they are expected in their final work appraisal form to take very seriously their ratings of the candidate's readiness for autonomous practice.

a) Unanimous supervisor ratings indicating in all categories readiness for autonomous practice are a prerequisite, by the end of the period under supervision, for eligibility to attend the College's oral examination.

b) Supervisors are reminded that their ratings are nec-

essarily based on their supervisory contacts with the candidates, while the ratings of the College's oral examiners are based on the broader perspective of assessing readiness for autonomous practice. Therefore, occasional discrepancies are to be expected.

3. The Supervisor's Work Appraisal Form requests a detailed record of supervisory contacts. The supervisor is responsible for ensuring accuracy and completeness with respect to all contacts with the candidate, the dates and duration of such contacts, and the supervisory themes.

a) In a separate section of the form, the supervisor is expected to indicate the different professional activities in which the candidate engages, and the hours devoted to each during the reported period.

b) To ascertain that the supervisor and candidate have reviewed the entire completed form, each must so indicate by a signed and dated declaration which is part of the form.

#### E. Public protection

Supervisors are reminded that the most important purpose of professional regulation is to protect the public from incompetent or unethical service providers. Here, the overall focus of post-degree supervision is to ensure that, by the end of the period under supervision, the candidate is able to provide competent and ethical professional services, autonomously, within his or her limits of competence.

Approved by Council September 15, 1995

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### GUIDELINES FOR CERTIFICATE OF REGISTRATION AUTHORIZING SUPERVISED PRACTICE

#### *Psychological Associate*

Applicants must take the following steps and meet the following requirements in order to obtain a certificate of registration authorizing supervised practice. **This certificate is the normal prerequisite to eligibility for a certificate authorizing autonomous practice.**

#### A. How to apply:

1. Application materials may be purchased from the College of Psychologists of Ontario.

2. The application procedure is as follows:

a) A completed application form (Application for Registration: Psychological Associate) is submitted together with the application fee, to the Registrar of the College. The fee is non-refundable. If a formal academic credentials review was conducted by the College, within the past ten years, the applicant may submit a copy of the positive review findings, pay a reduced application fee, and not be required to resubmit official transcripts.

b) The applicant himself/herself must request the post-secondary institutions attended to send directly to the College an official copy of all undergraduate and graduate transcripts, in fulfilment of Registration Regulation,



Section 4.-(2) 3. i). The transcript upon which registration is sought must include the date at which the masters degree was awarded.

If the post-secondary institutions attended include universities in countries other than Canada or the United States, the College will require a verification that each is recognized as a degree granting institution and of the level of the degrees as compared to those of a Canadian university, from the Comparative Education Service of the University of Toronto.

Applicants whose transcripts are in languages other than English or French must arrange for translations into English or French. Applicants who are Canadian citizens or permanent residents of Canada may obtain English translations through the Multilingual Translation Unit, The Ministry of Citizenship.

c) In completing the application form, the applicant must list the coursework taken, in keeping with the divisions and instructions on the application form, ensuring that all psychology courses taken are listed under those sections for which the applicant wishes them to be credited by the College, and providing brief but clear content descriptions. The applicant should note that it is a responsibility of the Registration Committee to verify the congruence between the candidate's coursework as listed in the application form and the coursework as found in the official transcript. It is also the responsibility of the Registration Committee to review and approve the specific courses in relation to the College's Guidelines for Academic Preparation Leading to Eligibility for Registration.

The applicant must make a distinction between coursework, including practica taken as part of a course, and practical training under supervision. The former should be listed as coursework and the latter should be listed in the Professional Experience section of the application.

d) The applicant must submit evidence from employers or supervisors of having completed four or more years of relevant, post-masters degree, full time (min. 1500 hours/year), or equivalent part time, work experience, of which at least two years were completed under the supervision of a regulated member of the profession.

Relevant work experience includes the provision of psychological services under supervision and the provision of mental health services that are related to the practice of psychology.

The Registration Committee will not accept work

experience if there is evidence that it was carried out in an unprofessional, incompetent, or unethical manner.

e) The applicant must have submitted, directly to the College, reference statements from three individuals who are members of the College, regulated members of the profession of psychology in another jurisdiction, or full time academics in a department of psychology. These referees must have known the applicant and his/her work for at least one year and submit their references on the forms provided by the College.

f) If the applicant has been registered, licensed, or certified as a psychological services provider by another jurisdiction, the applicant is required to request that jurisdiction to confirm, in a document addressed directly to the College, the current or former status in that jurisdiction and whether there are any outstanding matters.

g) If the applicant has previously taken the Examination for Professional Practice in Psychology (EPPP), then the applicant must request a report of the EPPP results, to be transmitted directly to the College either by the Board which administered the exam or by the Interstate Reporting Service of the Professional Examination Service in New York.

h) The applicant is required to complete a declaration of good character by answering the appropriate questions in the application form. Although, a "yes" reply to any of these questions does not in itself preclude registration, the College may ask the applicant to supply an explanation and details. A false declaration may disqualify the applicant from the registration process, or if discovered later may lead to a revocation of the certificate of registration.

i) The applicant is required to complete a declaration of competence. This is intended to express those areas of psychological practice which the candidate intends as the principal focus of his or her psychological practice, and in which the candidate will be expected to demonstrate adequate competence prior to the award of a certificate of registration for autonomous practice.

i) the applicant is required to provide his or her supervisors with a copy of the declaration of competence.

ii) the declaration of competence will serve as a basis for supervision and evaluation.

iii) if an applicant's declaration of competence is in an area other than that in which the applicant was trained, the applicant is expected to submit a needs analysis and training plan prepared in conjunction with the supervisor(s).



iv) changes in the declaration of competence proposed by the applicant, while on the register for supervised practice, must be acknowledged by the supervisor and reviewed by the Registration Committee not less than six weeks prior to the oral examination. The Registration Committee may, in the case of major changes, request further training and experience.

j) The applicant must request two members of the College, who hold certificates of registration for autonomous practice to:

- i) sign and submit undertakings, on the forms provided by the College, to supervise the applicant as primary and alternate supervisors respectively, in fulfilment of the Registration Regulation 4.-(1)3.ii.
- ii) thereby agree to comply, in a timely manner, with all clauses of the undertaking, including those requiring formal ratings of the candidate.

The supervisors are expected to have competence in areas of practice which are congruent with those intended for supervised practice by the candidate. Optimally, both supervisors will work in the same setting as the applicant. When necessary, the College may approve a supervisor who works in a different setting, provided that consistent mentoring and regular contact can be ensured.

In exceptional circumstances (e.g. the applicant works in multiple settings or seeks to acquire additional expertise in a new area of practice) a third supervisor may be selected.

Applicants working in correctional facilities should normally have at least one on-site supervisor.

k) Candidates considering acquiring their supervised work experience in a private practice setting should take note of the following:

i) Holders of a certificate authorizing supervised practice are normally not permitted to engage in their own independent private practice, because their competencies have not been formally evaluated by the College and therefore the public risk is unknown. This prohibition against private practice encompasses all professional helping activities and is unrelated to the amount of time spent in such activities.

ii) Holders of a certificate authorizing supervised practice may work in the private practice of a member of the College, if in accordance with the following:

- the setting provides such diversity in clientele and practice activities as will prepare the candidate adequately for autonomous practice in the intended area of practice.

- it is made clear to clients from the outset of provision of service, to third party carriers, and in all public announcements, that services are being provided by a holder of a certificate authorizing supervised practice. As well, the identity of the supervisor must also be provided in each of these instances.

- clients are further advised that meetings between the clients and the supervisor may occur at the request of the client, the supervisor, or the applicant.

- all formal reports and communications are co-signed by the supervising member of the College.

- the registrant under supervision provides the College with written assurance that billing of clients, and the collection of client fees, are carried out by the supervising member of the College. Such billings must include a statement of the supervisory relationship and the identities of the supervisor and supervisee.

- where a private practice takes place in more than one site, the supervising member of the College and the holder of the certificate authorizing supervised practice should normally work in the same site.

## **B. Review of completed application by the Registration Committee:**

Note: It is the applicant's responsibility to ensure that all application items have been received by the College, and that the application file is complete. Applicants are encouraged to verify with College staff that their application file is complete.

1. Due to the diversity of curricula in psychology, to the multiplicity of areas of psychological practice, and to the variety of settings in which psychological services are provided, the Registrar is expected to refer all applications to the Registration Committee, in keeping with the Regulated Health Professions Code, section 15-(1)(b) and (2) for review and decision.

2. Once the application file has been completed (the application form, all reference statements, all transcripts, and signed undertakings from two supervisors) the Registrar will give written notice of the date on which the Registration Committee will review the application file. The candidate will have thirty days to submit any further documents or information in

*continued on page 20*

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The College of Psychologists of Ontario

Annual Report in Brief  
1994/95

The full Annual Report is available from the  
College of Psychologists of Ontario upon request

# Annual Report in Brief

## THE COLLEGE

With proclamation of the Regulated Health Professions Act and the Psychology Act December 31, 1993, the Ontario Board of Examiners in Psychology became the College of Psychologists of Ontario, with the continuing duty to serve and protect the public interest. The new title of Psychological Associate was added for the registration of qualified masters level providers of psychological services. The Board became the Council

and increased in size from 10 to 16 members and the number of statutory committees increased to seven.

The first Council elections were held at the end of March, 1994 and the new Council met with the outgoing Council one month later. The College retained its fiscal year of June 1 to May 31. This abbreviated annual report covers the period June 1, 1994 to May 31, 1995. §

## COUNCIL

**Introduction.** The Council is the board of directors of the College and is responsible for managing and administering the affairs of the College. In the spring of 1994, members of the College elected 7 regional representatives and 2 academic representatives to the Council plus one ex officio member representing the new psychological associate members of the College. Six public members were appointed by the Ministry.

**Deliberations.** The Council met quarterly in June, September, December and March for two days on each occasion (Friday and Saturday). Council meetings were open to the public and a notice was published in the press in collaboration with the other Health Colleges.

Key issues addressed by Council during the year included the College's deficit, a review and reframing of the prosecution budget, a move to alternate dispute resolution for complaints and discipline, approval of a set of by-laws, interpretation of

the controlled act in schools, a report on models of specialty designation, an increase in registration fees, a proposed regulation on professional liability insurance and the program for funding, a sexual abuse prevention plan, the implications of trade agreements and reciprocity, a move toward a distinct jurisprudence examination, and proposed amendments to the registration regulation.

**Objectives for 1995-1996.** The Council will address policy on complaint investigation procedures and on the conduct of hearings and related proceedings, elimination of the deficit and development of a reserve fund for the College, increasing the accessibility of the College to members and to the public, clarifying the interpretation of the controlled act in professional practice, reviewing policy on delegation of the controlled act, debating the issues relating to specialty designation including the public interest and feasibility, and developing a long term strategic plan for the College. §

## EXECUTIVE COMMITTEE

**Introduction.** Between meetings of the Council, the Executive Committee has all of the powers of the Council other than the power to make, amend or revoke a regulation or by-law. The Committee is required to report on its actions to Council at its next meeting.

**Actions.** During the year, the Executive Committee held five half day meetings and one teleconference. The Committee took action or made recommendations to the Council on matters including appointments to statutory committees, financial planning, procedures for the adjudication of complaints

from members of the public against professional members of Council or staff, staffing and employee compensation, appointment of delegates to meetings with other psychology regulators, communication with government, liaison with other professional organizations, and legislative matters.

**Objectives for 1995-1996.** Issues to be addressed this year include recommending to Council goals and financial objectives as well as a strategic plan for the next five to ten years and continuing to identify areas for policy development and change. §

**REGISTRATION COMMITTEE**

**Introduction** This Committee has three essential roles: (1) to study all applications for registration of psychologists and psychological associates, at all steps in the registration or appeal process, and to make individual registration decisions; (2) to review and decide upon requests for changes in declared areas of competence or for removal of a limitation to a certificate of registration; and (3) to recommend registration policy and procedures consistent with RHPA and with applicable interprovincial or international agreements such as the AIT and NAFTA.

**Results of panel deliberations** All cases require thorough preliminary staff review with multiple interactions between the applicant and staff, approximately half the cases require more than one review by a panel prior to placement on the

temporary register or approval for an oral examination. An increasing number of cases, where the decision is not favourable to the applicant, result in appeals to the Health Professions Board (HPB). The Registration "track-record" before the HPB is positive, but has consistently yielded request for the HPB for more detailed decision, updated regulations and more detailed, explicit, and consistent guidelines.

**Objectives for 1995-1996** The key objectives for 1995-1996 are: 1) To carry out the routine mandated work of the Committee; 2) To complete the ongoing task of updating and drafting regulations, guidelines, procedures and forms for the total process of registration; 3) To make recommendations as required with respect to the AIT, NAFTA, and reciprocity agreements; 4) To make recommendations to Council concerning the procedures for the delegation of the controlled act. §

**REGISTRATION COMMITTEE DECISIONS IN 1994-95**

Applications for:	Considered	Refused	Academic credentials approved ***	Added to temporary register (may proceed to examinations)	Approved for examinations	Issued registration **
Psychologist	110	3	14	93	n/a	111
Psychologist (reciprocity agreement)	1	0	0	n/a	1	1
Psychological Associate (transition stream)	87	9	4	1	73	64
Psychological Associate (regular entry)	0	0	0	0	0	0
<b>Total</b>	<b>198</b>	<b>12</b>	<b>18</b>	<b>94</b>	<b>74</b>	<b>176</b>

NOTE:

\* columns not intended to be added horizontally

\*\* calculation for registration issued based upon three oral examination sessions in the fiscal year.

\*\*\* academic credential approved means the formal education meets the College's guidelines but further requirements for registration remain.



## COMPLAINTS COMMITTEE

**Introduction.** Under section 25 of the Procedural Code of the *Regulated Health Professions Act*, the Complaints Committee of the College is responsible for investigating complaints against psychologists and psychological associates. The Complaints Committee consists of five members of the Council of the College, including two public appointees, as well as two other members of the College for a total of seven members.

To investigate a complaint, a panel of at least three members of the Complaints Committee is required and at least one of these persons must be a public appointee. Section 26 of the Procedural Code under the *RHPA* sets out the powers of the Committee in dealing with a complaint.

**Deliberations.** There were a total of ten meetings of the Committee to render decisions about complaints. There were three members of the Committee fluent in French and able to consider a case in which all of the documentation was provided in French.

The College received a total of 86 new complaints during the fiscal year. Of the 66 cases resolved during the year, 12 cases had been received in the previous fiscal year and 54 cases were received in the current fiscal year. Excluding one case deliberated by teleconference, the Committee dealt with an average of 7.33 cases at each meeting.

Thirteen complaints were not adjudicated as the College had no jurisdiction or the complaint was withdrawn. Of those fully considered by the Committee, one case was referred to discipline. The Committee dismissed 24 complaints and issued a caution in 12 cases. In four cases the Committee sent a letter of concern and was able to resolve the matter through an agreement reached between the member and the College. Complete statistics and more detail respecting the type of alternate dispute resolution mechanisms adopted by the College may be found in the Annual Report, available on request from the College.

**Objectives for 1995-1996.** This past year the Committee made recommendations to Council respecting the adoption of alternate dispute resolution procedures including mediation and negotiated settlements. It is anticipated that policy respecting specific components of the complaints investigation process will be articulated by Council and will facilitate the work of the investigators and of the Committee. §

Nature of Complaint Received	
<b>Professional Conduct</b>	
Sexual Impropriety	4
Words & Gestures of a Sexual Nature	0
Dual relationship, Conflict of Interest	0
<b>Provision of Services</b>	
Inadequate Handling of Termination	0
Custody & Access Assessments/Child Welfare	28
Sexual Abuse Assessments	1
Employment Assessments	3
Other Assessments	15
Confidentiality	6
Practising Outside the Area of Competence	3
Insensitive Treatment of Clients	5
Fitness to Practice, Competence	1
Failure to Respond to a Request in a Timely Manner	0
Failure to Obtain Informed Consent	0
Failure to Provide Services Sought	1
Services Failing to Meet Standards	4
<b>Conduct in Professional Relations</b>	
Supervision of Personnel	4
Conduct Toward a Colleague	6
Conduct Toward an Employee	0
<b>Management of Private Practice</b>	
Advertising and Announcements	3
Fees and Billing	1
Complaint Unclear	1
<b>Total</b>	<b>86</b>

Resolution	
Complaint Withdrawn	8
Dismissal of Complaint	24
Letter of Concern	4
Caution to Member	12
No Jurisdiction	5
Mediation	0
In Progress	32
Sent to Discipline	1
<b>Total</b>	<b>86</b>

**DISCIPLINE COMMITTEE**

**Introduction.** Under section 26 of the Procedural Code of the *Regulated Health Professions Act*, the Complaints Committee of the College can refer allegations of misconduct or incompetence to the Discipline Committee. Under section 36, the Executive Committee can refer allegations of misconduct or incompetence to the Discipline Committee.

The Discipline Committee consists of six members of the Council who are members of the College, four members of the Council who are public appointees, as well as two members of the College who are not members of the Council for a total of twelve members. Under section 38, a panel of the Discipline Committee consists of at least three and no more than five members of the Discipline Committee and at least two of these persons must be public appointees. At least one of the members of a panel shall be both a member of the College and a member of the Council. Three members of a panel, at least one of whom is a public appointee, constitute a quorum.

**Deliberations.** There were a total of 15 hearing days over the fiscal year where the Committee dealt with 8 cases. A typical hearing may run from three to five days. A hearing may begin in one fiscal year and be adjourned and continue into another fiscal year. A hearing is considered to be concluded when the Decision is signed by the Discipline Committee.

There were seven cases where the Discipline Committee signed its Decision during the fiscal year of May 31, 1994 to June 1, 1995. Information about the nature of these cases and the types of penalties ordered by the Committee is provided in the Table. One additional case dealt with by the Discipline Committee during the fiscal year which is to continue in the next fiscal year. More detailed statistics are to be found in the full Annual Report, available from the College on request.

**Objectives for 1995-1996.** There are two hearings currently scheduled for fiscal 1995-1996 and another four matters referred to discipline which await the firm setting of hearing dates. During the year it is anticipated that a small task force from the Discipline Committee will make recommendations to Council respecting policy and procedures which are intended to focus on the key issues in a discipline matter and facilitate timely resolution either through a pre-hearing settlement or through the hearing process itself. §

Penalties Ordered by the Discipline Committee	
<b>Professional Conduct</b>	
Sexual Impropriety	9
<b>Provision of Services</b>	
Custody & Access Assessments/Child Welfare	3
Insensitive Treatment of Clients	2
Services Failing to Meet Standards	1
<b>Total</b>	<b>15</b>

Nature of Penalty	
Suspension of Practice	5
Revocation of Certificate	1
Limits on Practice	1
Supervision of Practice	3
Education	3
Undergo an Assessment	1
Treatment	1
<b>Total</b>	<b>15</b>

**ALTERNATE DISPUTE RESOLUTION**

Alternate dispute resolution (ADR) is used by the College at the Complaints Committee level and at the Discipline Committee level. For matters referred to Discipline, the College and the member may reach a negotiated settlement, either in consultation with the complainant or through a mediated process with the complainant as a party. The College must be satisfied that the public interest is adequately served in the concluding of any settlement agreement. During the year, seven matters were settled through an agreed upon resolution. More detailed information respecting the various approaches to alternate dispute resolution is available in the Annual Report.

Where a matter is not deemed appropriate for this type of resolution or where attempts to resolve the matter by agreement fail, the matter will proceed to a hearing where the Discipline Committee will determine whether the member is guilty of professional misconduct or incompetence and will order a penalty in the matter, if such a finding is made. §

## Fitness To Practice

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**Introduction.** The RHPA Procedural Code defines "incapacitated" as meaning that a member of the College is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member no longer be permitted to practise or that the member's practice be restricted.

If the Registrar believes that a member may be incapacitated, the Registrar may make inquiries and report to the Executive Committee who will determine whether a board of inquiry should be appointed. The board of inquiry has broad powers and may be able to resolve the concern with an agreement, between the College and the member, which protects the public. The board must report to the Executive Committee which may refer the matter to the Fitness to Practise Committee for a formal hearing if there is reason to believe that the member remains "incapacitated". If the panel conducting the hearing finds the member to be incapacitated, it may direct the Registrar

to revoke, suspend or impose a term, limitation or condition on the member's certificate of registration. If there is no finding of incapacity, the matter is concluded.

**Deliberations.** No hearings were conducted during the year. The Committee as a whole met twice to establish guidelines and procedures for handling reports of incapacity. The Committee approved a manual adapted with permission from the manual prepared by the College of Nurses. In addition, the Chair of the Committee and the Registrar attended two meetings of the Federation Working Group on Fitness to Practice, which consists of representatives from most of the Health Colleges.

**Objectives for 1995-1996.** Unless policy issues arise or the Executive makes a referral for an incapacity hearing, the Committee does not expect to meet during the year. A representative will continue to attend Federation meetings and workshops on Fitness to Practise. §

## CLIENT RELATIONS COMMITTEE

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**Introduction** Under Section 84 of the Procedural Code of the *Regulated Health Professions Act*, the College is directed to have a Client Relations Program which includes measures for preventing or dealing with sexual abuse of clients. These measures must include educational requirements for members, guidelines for the conduct of members with their clients, training for the College staff and the provision of information to the public.

**Actions** The Committee met three times during the year. The Committee developed a regulation on Professional Liability Insurance, including eligibility criteria and exemptions

and a regulation on the Program for Funding for victims of sexual abuse. A Sexual abuse Prevention Plan was completed and submitted to the Ministry of Health. As well, the Committee has developed a user satisfaction survey for clients whose complaints were resolved using Alternate Dispute Resolution.

**Objectives for 1995-1996** The Committee awaits the approval of the regulations submitted to the Ministry of Health. Further work will be done to develop guidelines/boundaries for the conduct of members with their clients, development of an evaluation of program effectiveness and a public education brochure. §

## QUALITY ASSURANCE COMMITTEE

**Introduction** Under the RHPA a Quality Assurance Program (QAP) is defined as "a program to assure the quality of the practice of the profession and to promote the continuing competence among the members". The statutory committee responsible for the development and implementation of the QAP is the Quality Assurance Committee (QAC). The Committee met on three occasions in 1994

**Mission** The Committee adopted the following mission and goal statements: "To help members better serve the public by assuring the quality of the services that they provide is consistent with the evolving standards of professional practice."

### Goals

1. To motivate members of the College to maintain the quality of their service and, as appropriate, to remedy any practice deficiencies.
2. To provide members of the College with the means to assess their own performance and professional development needs
3. To inform members about those areas of professional practice which appear to be most in need of remedial attention.
4. To develop procedures and establish standards to assess the performance of members in their areas of practice
5. To promote the development of practice standards and guidelines
6. To promote the provision of continuing education opportunities

**Activities and Achievements** Conducted a survey of quality assurance activities within regulatory bodies of psychologists within Canada and the USA, presented the results of the North American survey at the fall meeting of the Association of State and Provincial Psychology Boards, began work on a survey of members of the College to determine how they maintain currency in their areas of practice, began work on a consultation paper to inform members of the College of the intentions of the Committee and to obtain feedback on them and prepared a presentation on Quality Assurance for the Barbara Wand Symposium.

**Objectives for 1995** To complete the Regulation for the Quality Assurance Program, to survey members on continuous learning activities and publish the results, to prepare policies and procedures for the Self Assessment, Peer Assessment and Practice Enhancement Programs, to prepare a proposal for the funding of a computerized self assessment instrument, to develop a workshop for the training of supervisors of registrants on "temporary" registers. §



continued from page 12

support of the application. Care should be taken to ensure that supervisory arrangements are fully described.

In exceptional circumstances (out-of-country applicant, unemployed applicant, applicant needing eligibility statement), the Registration Committee may consider an application file which is complete except for the receipt of signed undertakings from two supervisors and details of the intended Ontario work setting. In such instances, the Registration Committee will issue an eligibility statement only, reserving its decision on issuance of the certificate authorizing supervised practice.

3. Following a formal evaluation of the completed application by the Registration Committee, the Registrar is directed to inform the applicant in writing of the outcome of the evaluation. The Registrar will issue a certificate of registration authorizing supervised practice **or** refuse the application, giving reasons in accordance with the direction of the Registration Committee.

The College will normally treat as confidential all application materials. A person whose application is refused may request a review by the Health Professions Board. In this case, the College is required to submit to both the applicant and the Health Professions Board all documents and information upon which the refusal was based.

Candidates will not be issued a certificate of registration authorizing supervised practice prior to receipt, and Committee approval, of the intended work, setting, and supervision.

### C. Guidelines for completing the requirements of supervised practice as a psychological associate

1. To comply with Regulation 878/93, Registration, section 4.-(2)1.i)c), the holder of a certificate of registration authorizing supervised practice must fulfil the following conditions:

- a) Carry out all of the required supervised work experience in the Province of Ontario.
- b) Practise in accordance with all statutes, regulations, standards of professional conduct and guidelines adopted by the College.
- c) Maintain employment, and supervision, as agreed upon at the time of issuance of the certificate. For any changes, the prior approval of the College must normally be requested in writing by the member.
- d) Maintain an active certificate of registration authorizing supervised practice by paying the prescribed fees and taking the EPPP within one year of issuance of the certificate of registration authorizing supervised practice

and, if required, yearly thereafter.

e) For persons:

i) not previously registered as a psychological services provider a minimum of 1500 hours of supervised practice as a psychological associate in Ontario is required. This supervised practice must be in an area (or areas) of psychology that is directly relevant to the candidate's intended psychological practice.

ii) previously registered as a psychological services provider for less than five years in another jurisdiction with requirements equivalent to those of the College, a certificate of registration authorizing supervised practice may be issued for a period of not less than six months. In such cases, a minimum of 750 hours of supervised, postdoctoral practice in Ontario is normally required.

iii) who, regardless of previous training and experience, plan to change the area of practice during the supervised period as a psychological associate, the following principle shall apply: The candidate must acquire such training and supervision to yield competencies comparable to those held by graduates at the masters level in the intended area. In such cases, additional supervised practice in Ontario may be anticipated, beyond the minimum stated in e) i and ii above.

f) The member of the College under supervision shall, in all written and oral communications, indicate that he/she is a psychological associate who is the holder of a certificate authorizing supervised practice. In writing, the designation should be as follows:

John Doe, M.A., C.Psych.Assoc. (Supervised Practice)

2. A certificate of registration authorizing supervised practice is of limited duration.

a) Supervised work experience normally starts on the date at which the Registration Committee formally awards the certificate of registration authorizing supervised practice.

i) In exceptional circumstances, where the applicant has been working under the close supervision of primary and alternate supervisors immediately preceding the award of this certificate, and when the work and supervision are acceptable to the Registration Committee, the Registration Committee may back-date the approved supervised work experience to a maximum of three months, provided that the



supervisors agree to assess and document the applicant's back-dated performance using the forms provided by the College. Nonetheless, applicants are strongly encouraged to submit their completed applications in a timely manner and thereby avoid a request for back-dating of supervised work experience.

b) The expiry date is specified on the certificate. For persons not previously registered as psychological services providers the certificate shall be issued for a period of not less than one, nor more than two, calendar years.

c) Where appropriate, the certificate may be renewed by the Registration Committee of the College upon written request from the holder of the certificate. A candidate requiring renewal of the certificate of registration authorizing supervised practice must present a written request to the Registration Committee of the College prior to the expiry date. The Registrar may extend a certificate

of registration authorizing supervised practice for a period of up to sixty days.

#### **D. Lapse of certificate of registration authorizing supervised practice:**

Normally it is expected that a **certificate of registration authorizing autonomous practice** will be issued, following the successful completion of all required examinations, prior to the date of expiry of the certificate of registration authorizing supervised practice. Otherwise, for whatever reasons, the certificate of registration authorizing supervised practice will lapse and the holder of the certificate will cease to be a member of the College. According to section 8.(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 . . . psychological associate . . ."

Approved by Council September 15, 1995

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## **GUIDELINES FOR SUPERVISION OF MEMBERS HOLDING CERTIFICATES AUTHORIZING SUPERVISED PRACTICE**

### *Psychological Associate*

Supervisors play an important role in preparing candidates for the autonomous practice of psychology. In all aspects, supervisors should be sensitive to the needs of candidates and should make every effort to ascertain their requirements for training. Supervisors should note that these candidates hold a certificate which is the normal prerequisite to eligibility for a certificate authorizing autonomous practice.

#### **A. Role of supervisors**

The role of supervisor has the following key aspects:

1. Supervisors accept tutorial responsibility for raising the level of skills, knowledge and general professional functioning of candidates to a level acceptable for autonomous practice, in keeping with the candidate's declaration of competence and any other requirements of the Registration Committee during the required post-masters supervised experience.
2. As an on-going part of this tutorial process, they provide the candidates with appraisals of their competencies.
3. The supervisor accepts ultimate responsibility for the services provided to clients by the candidates under their supervision.

4. They formally agree to provide the College with objective assessments of each candidate's progress during this period.

#### **B. Primary and alternate supervisors**

A minimum of two supervisors is mandatory. Normally, candidates are required to designate a primary supervisor and an alternate supervisor. Exceptionally, a second alternate supervisor may be designated. Signed undertakings from all supervisors must be submitted to the Registration Committee for approval.

1. Specific responsibilities of the primary supervisor:
  - a) Setting training goals and objectives for the supervisory period, consistent with the candidate's declaration of competence and any other requirements of the Registration Committee.
  - b) Supervision of the candidate's professional performance, including training, monitoring, and assessment of performance, throughout the supervisory period.
  - c) Reporting to the College, at three-month intervals, on the candidate's progress, assets, and liabilities.



- i) Reports must be submitted on the forms provided by the College. Dates, duration, and content of each supervisory session must be recorded by the supervisor. Clients' names should be omitted.
- ii) All reports must be received by the College before a candidate can be admitted to the oral examination.

d) When there are changes to the candidate's declaration of competence, they must be acknowledged by the supervisor to the Registration Committee and explicitly considered in the supervisor's subsequent appraisal(s) of the candidate.

2. Specific responsibilities of the alternate supervisor:

a) In general, the responsibilities of the alternate supervisor parallel those of the primary supervisor, as the alternate must be able to replace the primary supervisor if the latter must withdraw for whatever reason. Both supervisors are expected to work within the goals and objectives set by the candidate in cooperation with them.

b) The alternate supervisor meets with the candidate in individual sessions a minimum of two hours per month. Supervisory sessions normally take place in the candidate's work setting. Any exceptions must be approved by the College. The alternate supervisor must submit (at a minimum) an annual report to the College and a subsequent report, if required, at the end of the period of supervised experience, on the forms provided by the College.

**C. Payment for provision of supervision**

1. Normally, supervisors are expected to provide supervision as part of their collegial contribution to the profession.

2. In certain circumstances, particularly in private practice settings, it may be necessary for supervisors to request payment for the provision of supervision to candidates, subject to the following conditions:

a) When the candidate provides services to the supervisor's clients, it would not be appropriate for the supervisor to seek payment for supervision from the candidate. The supervision occurs in the normal course of providing services to the client and is part of the supervisor's professional responsibility to the client.

b) When the candidate provides services to clients who are not part of the supervisor's practice, the supervisor may consider charging a reasonable amount for this supervision, if such supervision would otherwise affect the earning of the supervisor.

**D. Use of the Supervisor's Work Appraisal Form**

1. All supervisors' reports must be submitted to the College in a timely fashion, using the form provided by the College, with attachments when appropriate.

2. The Supervisor's Work Appraisal Form includes a rating scale, with dimension and rating categories which are intended to provide a consistent frame of reference for supervisors, candidates, the Registration Committee, and the College's oral examiners. Since the purpose of registration is public protection, supervisors are reminded that they are expected in their final work appraisal form to take very seriously their ratings of the candidate's readiness for autonomous practice.

a) Unanimous supervisor ratings indicating in all categories readiness for autonomous practice are a prerequisite, by the end of the period under supervision, for eligibility to attend the College's oral examination.

b) Supervisors are reminded that their ratings are necessarily based on their supervisory contacts with the candidates, while the ratings of the College's oral examiners are based on the broader perspective of assessing readiness for autonomous practice. Therefore, occasional discrepancies are to be expected.

3. The Supervisor's Work Appraisal Form requests a detailed record of supervisory contacts. The supervisor is responsible for ensuring accuracy and completeness with respect to all contacts with the candidate, the dates and duration of such contacts, and the supervisory themes.

a) In a separate section of the form, the supervisor is expected to indicate the different professional activities in which the candidate engages, and the hours devoted to each during the reported period.

b) To ascertain that the supervisor and candidate have reviewed the entire completed form, each must so indicate by a signed and dated declaration which is part of the form.

**E. Public protection**

Supervisors are reminded that the most important purpose of professional regulation is to protect the public from incompetent or unethical service providers. Here, the overall focus of post-degree supervision is to ensure that, by the end of the period under supervision, the candidate is able to provide competent and ethical professional services, autonomously, within his or her limits of competence.

Approved by Council September, 1995





## MINTZ & PARTNERS

Chartered Accountants



### AUDITORS' REPORT

To the Members of The College:

We have audited the balance sheet of The College of Psychologists of Ontario as at May 31, 1995 and the statements of revenue, expenses and deficit and changes in financial position for the year then ended. These financial statements are the responsibility of the college's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the college as at May 31, 1995 and the results of its activities and the changes in its financial position for the year then ended in accordance with generally accepted accounting principles.

Toronto, Ontario.  
August 3, 1995.

CHARTERED ACCOUNTANTS

*continued on page 24*



continued from page 23

THE COLLEGE OF PSYCHOLOGISTS OF ONTARIO  
BALANCE SHEET

AS AT MAY 31	1995	1994
<b>ASSETS</b>		
Bank	\$ 569,270	\$ 348,280
Short-term investments	—	264,741
Sundry assets	9,283	10,354
Capital assets (Note 2)	59,772	86,288
	<u>\$ 638,305</u>	<u>\$ 715,661</u>
<b>LIABILITIES</b>		
Accounts payable and accrued liabilities	\$ 85,335	\$ 98,395
Registration fees received in advance	605,522	655,850
	<u>690,857</u>	<u>752,245</u>
<b>ACCUMULATED DEFICIT</b>		
	(52,552)	(36,584)
	<u>\$ 638,305</u>	<u>\$ 715,661</u>

Approved on Behalf of the Board

*Mr. J. Keenan*

*[Signature]*

See Accompanying Notes

2

THE COLLEGE OF PSYCHOLOGISTS OF ONTARIO  
STATEMENT OF REVENUE, EXPENSES AND DEFICIT

FOR THE YEAR ENDED MAY 31	1995	1994
<b>REVENUE</b>		
Registration fees	\$ 1,051,500	\$ 999,928
Examination fees	143,900	96,250
Interest and miscellaneous income	37,744	32,711
	<u>1,233,144</u>	<u>1,128,889</u>
<b>EXPENSES</b>		
Salaries	393,354	469,557
Legal and investigation	281,041	379,906
Examination	140,837	96,810
Travel and meetings	108,446	79,810
Rent and occupancy	96,228	93,534
Employees benefits	68,828	73,724
Printing and distribution	58,705	41,044
General and office	36,256	35,959
Directory advertising	11,803	11,244
Communication and education	10,255	7,155
Telephone	7,288	8,447
Audit	5,391	8,154
Election expenses	3,163	9,214
Transition costs re RHPA	—	66,841
Depreciation	29,534	26,930
	<u>1,249,112</u>	<u>1,410,039</u>
<b>DEFICIENCY OF REVENUE OVER EXPENSES</b>		
	(15,968)	(281,150)
<b>(DEFICIT) SURPLUS - Beginning of year</b>		
	(36,584)	208,566
	(52,552)	(72,584)
<b>ELIMINATION OF STABILIZATION FUND</b>		
	—	36,000
<b>DEFICIT - End of year</b>		
	<u>\$ (52,552)</u>	<u>\$ (36,584)</u>

See Accompanying Notes

3

THE COLLEGE OF PSYCHOLOGISTS OF ONTARIO  
STATEMENT OF CHANGES IN FINANCIAL POSITION

FOR THE YEAR ENDED MAY 31	1995	1994
<b>OPERATING ACTIVITIES</b>		
Deficiency of revenue over expenses	\$ (15,968)	\$ (281,150)
Add: Non-cash outlay		
Depreciation	29,534	28,930
	13,566	(252,220)
Decrease (Increase) in sundry assets	7,091	(6,833)
(Decrease) Increase in accounts payable and accrued liabilities	(11,060)	66,585
(Decrease) Increase in registration fees received in advance	(50,328)	35,850
<b>CASH USED IN OPERATING ACTIVITIES</b>	<u>(40,730)</u>	<u>(156,638)</u>
<b>INVESTING ACTIVITIES</b>		
Purchase of capital assets	(3,021)	(18,428)
<b>CASH USED IN INVESTING ACTIVITIES</b>	<u>(3,021)</u>	<u>(18,428)</u>
<b>DECREASE IN CASH</b>		
	(43,751)	(173,064)
<b>CASH - Beginning of Year</b>	<u>613,021</u>	<u>786,085</u>
<b>CASH - End of Year</b>	<u>\$ 569,269</u>	<u>\$ 613,021</u>
<b>CASH CONSISTS OF</b>		
Bank	\$ 569,270	\$ 348,280
Short-term investments	—	264,741
	<u>\$ 569,270</u>	<u>\$ 613,021</u>

See Accompanying Notes

4

THE COLLEGE OF PSYCHOLOGISTS OF ONTARIO  
NOTES TO FINANCIAL STATEMENTS  
MAY 31, 1995

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a) Capital Assets

Capital Assets are recorded at cost less accumulated depreciation. Rates and basis of depreciation applied to write off the cost of capital assets over their estimated useful lives are as follows:

Furniture and equipment	5 years straight-line
Computer equipment	4 years straight-line
Leasehold improvements	10 years straight-line or the remaining term of the lease

b) Dues Income

In accordance with the regulations of the organization, annual registration fees cover a period of twelve months commencing June 1, of each year. Registration fees received prior to May 31, 1995 covering the subsequent period from June 1, 1995 to May 31, 1996 have been deferred.

2. CAPITAL ASSETS

	Cost	Accumulated Depreciation	Net Book Value 1995	1994
Furniture and equipment	\$ 96,480	\$ 71,580	\$ 24,900	\$ 41,172
Computer equipment	20,203	17,809	2,394	7,445
Leasehold improvements	51,909	19,431	32,478	37,869
	<u>\$ 168,572</u>	<u>\$ 108,800</u>	<u>\$ 59,772</u>	<u>\$ 86,288</u>

3. COMMITMENTS

Under the terms of a lease expiring February 28, 2002, the College is liable for the following minimum annual rental payments:

1998	\$ 42,048
1997	31,536
1996	46,720
1995	52,560
2000 and thereafter	157,680

In addition the College is liable for its proportionate share of operating costs.

Continued

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Persons whose certificates of registration have lapsed due to retirement and whose names are removed from the Register

Agnew, Neil	McLeod, Hugh
Ashem, Beatrice Ann	McQuaig, Jack Hunter O.
Brown, Burke Avery	Norton, W. Anthony
Doherty, Gillian	Riddell, Sylvia Aileen
Harris, Georgina Bernice	Riese, Reinhold R
Holland, Cornelius Joseph	Rosenberg, Jack Aaron
Jerry, Marian Bernice	Sanders, Sidney
Johnston, Richard William	Smith, Philip B
Kunycia, Eleanor Joan	Staples, Frederick Richard
Lazar, Leo	Thom, Evalene Carlyle
Luker, Samuel Robert	Wevrick, Leonard
McCallum, Jason W	Wilson, Nancy Edith
	Young, Brian William

Persons whose certificates of registration have lapsed due to unpaid fees and whose names are removed from the Register

Amell, Verna Jean (Semkow)	Mpumlwana, Vuyo
Besner, Robert Allan	Nesbitt, Paul D
Bielajew, Catherine	Neufeld, Richard Walter
Bramwel, J.R	O'Hara, Thomas John
Burton, Sharon	Olver, Margaret Ann
Chan, Randolph Maurice	Piccinin, Sheila Dorothy
Cohen, Ronald Louis	Pitt, Clifford C.V
Crealock, Carol Marie	Plapp, Jon Michael
Dupont, Gilles Rene Louis	Posehn, Kirsten
Eissele-Enfield, Susan Gail	Posthuma, Allan B
Enfield, Roger Earl	Potter, Wendy
Frank, Hallie	Preston, Charles Franklin
Glasberg, Rhoda Elizabeth	Quinn, Joanne
Gliksman, Louis	Ross, Abraham Schwartz
Goodman, Michelle	Sanchez-Craig, Beatriz
Graham, Joyce R	Schiff, Myra R
Harris, Roma Maria	Schopflocher, Carol
Harwood, Paul William	Sermat, Vello
Hawkins, John Trevor	Sibbald, Charles Patrick
Hislop, Mervyn Warren	Stager, Paul
Hope, Gordon FK	Steinberg, Rhona
Hutchison, Harry Clinch	Stokes, Louis Walter
Kerr, Gillian Paula	Sullivan, Edmund
Kerr, Deborah	Sussman, Peter
Klein, Eva Gajdos	Tansley, Brian Warren
Knapper, Christopher K	Teare, Jane L.
Kord, Dennis John	Verniero, Sharon Ann
Lefcourt, Herbert M	Watters, Robert G
Lempert, Henrietta	Wesley, Patrick
Losztyn, Stefan Bohdan	Wilgoeh, Lorraine Rose
Mazuryk, Gregory Frederick	Wilkinson, David Adrian
Miller, Avrum	Young, Frank David
Mooney, Dean Joseph Martin	

THE COLLEGE OF PSYCHOLOGISTS OF ONTARIO  
 NOTES TO FINANCIAL STATEMENTS  
 MAY 31, 1995

4. COMPARATIVE FIGURES

Comparative figures have been reclassified in accordance with the current year's presentation.



### Complaints Committee - Panel A Meeting of August 3, 1995

#### Resolution of New Cases

The Committee reviewed 10 cases. In six cases, the Committee dismissed the Complaint. In three cases, the Committee dismissed the complaint and provided advice to the member. In one case, the Committee referred allegations of professional misconduct to the Discipline Committee.

#### Nature of the Cases

Six cases dealt with the adequacy of assessment, one case dealt with mediation services provided by a psychologist with respect to issues of custody and access. One case dealt with consent issues related to a child development assessment. One case dealt with an alleged breach of confidentiality in providing an opinion about treatment of an employee in an insitutional context. One case dealt with alleged supervision by a psychologist of a non-registered provider of services and the propriety of the psychologist's response to an inquiry for information. §

### DISCIPLINARY UPDATE

Dr. Rhoderick Howitt has provided an Undertaking to the College indicating that for a period of one year from June 1, 1995, he will provide services to the following clients only under certain specified terms of supervision:

1. children (that is, persons under the age of 12 pursuant to the Young Offenders Act) who are alleged to either been abused or to have abused others, and the families of the allegedly abused or abusing children.
2. families of young persons (that is, persons between the ages of 12 and 18, pursuant to the Young Offenders Act) who are alleged to have been abused or to have abused others.

Dr. Howitt will be permitted to practise in these areas without supervision at the end of one year if a favourable report is provided by the Supervisor. If a favourable report is not provided by the Supervisor at the end of one year, the supervision will continue for a second year. §

#### ADDITIONS TO THE TEMPORARY REGISTER SINCE JUNE, 1995 - PSYCHOLOGISTS

Leslie Amass	Shelley McMain
Pamela Broley	Gail McVey
Elaine Clark	G. Alison Niccols
Mary Hogan-Finlay	Norman Park
Nonie Lyon	Eran Talitman

#### ADDITIONS TO THE PERMANANT REGISTER SINCE JUNE, 1995 - PSYCHOLOGISTS

Renate Schober

#### ADDITIONS TO THE PERMANANT REGISTER SINCE JUNE, 1995 - PSYCHOLOGICAL ASSOCIATES

Elizabeth Michalska

### PROFESSIONAL EDUCATION

Members of the College are expected to maintain their knowledge and skills in their area of practice and their awareness of professional issues so that they practise competently and ethically.

The Client Relations Committee has recommended that members be advised of workshops or publications on practice issues relating to managing boundaries in professional relationships, preventing sexual abuse of clients, dealing appropriately with transference issues in therapy and caring appropriately for the personal needs of the provider to protect the interests of the client and the client-professional relationship.

The following workshops are offered as part of the Fall Continuing Education Institute of the Ontario Psychological Association in November 1995. Further information may be obtained by contacting OPA at (416) 961-5552.

**"The Distressed Professional."** Presented by Gary Schoener at the Embassy Suites Hotel, Markham on Thursday November 9, 1995.

**"Managing Erotic and Loving Feelings in Therapeutic Relationships."** Presented by Nancy Bridges at the Embassy Suites Hotel, Markham on Friday November 10, 1995

## PROPOSED AMENDMENTS TO REGULATIONS

*The College would like to receive comments on these proposed amendments by November 10, 1995. All comments will be made available to Council for its meeting of December 1 and 2, 1995. At that meeting Council will approve a final version of each proposed amendment for submission to the Ministry of Health.*

### Professional Misconduct:

#### Release of Information/Breach of Confidentiality: Danger/ Risk of Harm

Although the APA Ethical Standards 1977 provides for release of confidential information "when there is clear and imminent danger to an individual or to society, and then only to appropriate professional workers or public authorities", the College's regulation on professional misconduct does not explicitly address this issue.

At its September meeting, Council gave initial approval to an amendment to Regulation 801/93 Professional Misconduct, subsection 11 to add the phrase in bold:

11. Giving information about a client to a person other than the client or his or her authorized representative except with the consent of the client or his or her authorized representative or as required or allowed by law **or in circumstances of actual or possible serious harm or death.**

The intent is to clarify that members may breach confidentiality if they believe that there is a reasonable expectation of harm to the client or to someone else and they wish to take steps to minimize the risk.

#### Cooperation with an Investigation

The Regulated Health Professions Act, 1991 provides that when an investigator has been appointed by the Registrar (Section 75 of the Procedural Code) to determine whether a member has committed an act of professional misconduct or is incompetent, the investigator may make inquiries and examine the practice of the member and may enter the member's premises to do so. The investigator must show evidence of his or her appointment to the investigation and may examine anything relevant to the investigation (Code Section 76. subsections (1) and (2)).

Further, the Act prohibits anyone from obstructing an investigator or withholding or concealing from him or her or destroying anything that is relevant to the investigation. These provisions override any statutory provision for the confidentiality of health records.

In order to clarify the obligations of their members respecting an investigation being conducted under the proper authority of any of the Health Colleges, some Colleges have added a section to their professional misconduct regulation where the requirement to cooperate with an investigation is made clear.

At its meeting of March 3 and 4, 1995 the Council of the College of Psychologists approved the following addition to Regulation 861/93, defining professional misconduct:

34. Failing to cooperate with a representative from another College on production of an Appointment under Section 75 of the Regulated Health Professions Act (Code) or to provide access to, or provide copies of a record, document or thing that may be reasonably required for the purpose of the investigation and where appropriate client consent has been obtained.

### Committee Composition:

#### Client Relations Committee

Currently, the regulation provides for only one College member, who is not a member of the Council, to sit on the Client Relations Committee. In order to increase the College representation on the Client Relations committee to two non-Council members, at its June meeting the Council approved the following amendment to Regulation 621/93 subsection 7. (c) so that it reads:

"two members of the College who are not members of the Council". §

## Council Meetings

The upcoming meetings of the Council of the College of Psychologists have been scheduled for:

December 1 and 2, 1995  
March 29 and 30, 1996 (*note new date*)  
June 7 and 8, 1996

Those who wish to attend, please contact the College to ensure space is available.

## COUNCIL HIGHLIGHTS

**1995-1996 Budget Approved.** At its September meeting, Council approved the budget for the current fiscal year. Key features include cost containment for discipline, and upgrading the College's telephone and computer systems to enhance accessibility to the College. The proposed budget will eliminate the accumulated deficit and begin to develop a reserve fund.

**Prosecution Budget.** The proposal submitted by the law firm of McCarthy Tétrault has been approved by Council as meeting the needs of the College.

**Specialty Designation.** Council has set aside a portion of its December 1995 meeting to deliberate the issues relating to the possible development of a process for specialty designation.

Council has agreed to adopt the following as working guidelines should the College elect to proceed with the establishment of specialty designation: (1) Specialty designation is beyond entry level; (2) It must be open to both Psychological Associates and Psychologists; (3) It requires more than just the passage of time; instead it will require additional examinations, courses and/or training; (3) There should be multiple routes to specialty designation; (4) Given the initiative from the Canadian Register of Health Service Providers in Psychology which may provide a potential mechanism for specialty designation, the College should allow time for the development of any CRHSPP initiative while exploring other avenues; Diplomat status may be one avenue that would be acceptable, it may be one of the routes that would allow a subset of our members to achieve specialty designation; (6) The development of specialty designation may best be viewed as a long-term plan with this being stage one.

**MFIPPA: Release of test protocols.** The Divisional Court has set aside a Privacy Commissioner's order requiring that a school board release severed portions of the Stanford-Binet Intelligence Scale to a parent. The College, among other parties, had made representation to the Standing Committee on the Legislature seeking more explicit protection for standardized psychological tests when the Municipal Freedom of Information and Protection of Privacy Act was undergoing review.

**Reciprocity Agreement.** Colorado has had to withdraw from the International Reciprocity Agreement due to statutory constraints. Remaining in the agreement are Ontario, Manitoba, Oklahoma, Kentucky, Iowa and Missouri. §

**The Bulletin** is a publication of the College of Psychologists of Ontario

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### **VICE-PRESIDENT**

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**The Bulletin** is published quarterly.

Subscriptions for members of the College are included in their registration fee.

Others may subscribe at \$10.00 per year, or \$2.50 per single issue. We will also attempt to satisfy requests for back issues of the Bulletin at the same price.

Les articles dans ce numéro de *The Bulletin* sont disponibles en français

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**DIAGNOSIS AND DELEGATION: THE CONTROLLED ACT IN PSYCHOLOGICAL PRACTICE**

**DISCUSSION PAPER AND PROPOSED GUIDELINES**

**September, 1995**

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**A. Lynne Beal, Ph.D., C.Psych.**  
Chief Psychologist, Board of Education  
for the Borough of East York

**Maggie Mamen, Ph.D., C.Psych.**  
Psychologist in Private Practice, Nepean  
Past President, College of Psychologists of Ontario

**Elaine Moroney, M.A., C.Psych.Assoc.**  
Council Member, College of Psychologists of Ontario  
Psychological Associate, E.C. Drury School for the  
Deaf and Trillium School

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**FORWARD**

**Margaret Hearn, Ph.D., C.Psych.**  
**President of the Council**

At its meeting on September 16, 1995 the Council of the College approved the distribution of the following paper to the membership of the College. While this paper gathers together in one article a collection of relevant legislation, standards, and guidelines for the convenience of the reader, its two-fold purpose is to clarify areas which are presently but unnecessarily causing confusion in the profession and to stimulate discussion of new issues which now confront the membership because of RHPA.

Initially its authors' intent was to deal strictly with areas of concern in the provision of psychological services within educational settings. Nearly a year of discussions and consideration has led them instead to a more generic paper with a special section on education with the expectation that experts in other practice settings such as hospitals and corrections will move to describe their own special applications for the membership in similar discussion papers.

By distributing this discussion paper to the membership the Council hopes to receive a large volume of correspondence from members on both particular and more global considerations. For example, how will RHPA as described below affect your service delivery, particularly if your staff is largely composed of as yet unregulated providers? How do these proposals mesh with the roles of services providers from other regulated or unregulated professions on your multidisciplinary team? Do

you agree that a learning disability / disorder belongs within the category of neuropsychological disorders and therefore within the Controlled Act? Have you already made accommodations for RHPA in your service delivery that you would like to share with the Council?

The members' assistance to the Council's work in establishing policy on these important matters would be greatly appreciated before the next Council meeting in December. Please send your correspondence by mail or fax to the College office by November 10, 1995. I conclude by gratefully acknowledging the considerable time and efforts of Drs. Beal and Mamen and Ms. Moroney.

**INTRODUCTION**

Since the proclamation of the Regulated Health Professions Act (RHPA) and the Psychology Act on December 31, 1993, there has been a great deal of concern expressed throughout the profession regarding the effects of the new legislation on the practice of psychology in various work settings. In particular, the inclusion of a "Controlled Act" of communicating a diagnosis in the statute has caused confusion in view of some of the limitations that this places on individuals who have traditionally provided assessment and diagnostic services.

This paper addresses the question of what constitutes this Controlled Act and who may perform it, and then



looks specifically at what constitutes "diagnosis" and its communication within settings where many psychological services have traditionally been provided by non-registered individuals normally under the supervision or direction of Psychologists.

The mandate of the College of Psychologists of Ontario is to act in the interests of the public by ensuring that members are appropriately qualified and competent, and that the ethical standards of the profession are consistently applied and upheld. The College and the public rely on the professional judgement of individual members, as well as on the expectation that members will act in accordance with the legislation, regulation, standards and guidelines of the profession. Thus, it is the responsibility of members to ensure that they are familiar with the relevant legislation governing not only the profession as a whole, but also the particular setting in which they work.

## I - RELEVANT LEGISLATION, REGULATIONS AND STANDARDS

### Controlled Acts under RHPA

Under the RHPA there are 13 "Controlled Acts" that are considered to carry substantial risk of harm if improperly performed. Under Section 27(1),

"no person shall perform a controlled act...unless:

- (a) the person is a member authorized by a health profession Act to perform the controlled act; or
- (b) the performance of the controlled act has been delegated...to the person by a member"

as specified by the regulations.

The single Controlled Act permitted to members of the College of Psychologist of Ontario is defined under RHPA as follows:

"Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis" (emphasis added) [Section 27(1)]

All three elements as underlined must be present for the Controlled Act to be considered to have been performed.

Such communication may be made in either oral or written form, clearly identifying the individual communicating the diagnosis as a member of the College according to the Standards regarding the Use of Title (see Appendix A). It is expected that the member communicating the diagnosis will be able to respond directly to the individual receiving the diagnosis with respect to information about the disorder, including etiology, differential diagnoses, signs and symptoms, prognosis, and the various interventions and treatments available, and that the member will be available to respond to any further questions that the individual may have. It is important to note that information must be given in such a manner as to be readily understood by the individual receiving the communication.

The legislation refers specifically to communicating the diagnosis to the person who is presenting the symptoms or "his or her personal representative". It will be necessary for the individual practitioner to ensure that the client concerned has authorized a third party to act as his or her personal representative, unless otherwise specified by law. It should be noted that another professional and/or a multidisciplinary team does not fit the definition of "client" for this purpose. It will be particularly important to be aware of the conditions of consent or any other provisions made under the new Consent to Treatment legislation in determining to whom the diagnosis should be communicated.

Under RHPA, Section 29(2), it is explained that an individual is NOT considered to be performing the Controlled Act:

"with respect to a communication made in the course of counselling about emotional, social, educational or spiritual matters as long as it is not a communication that a health profession Act authorizes members to make".

Specific authorization under the Psychology Act is explained below.

### Specific Definition of the Controlled Act within the Psychology Act

The "practice of psychology" is defined as:

"...the assessment of behavioural and mental conditions, the diagnosis of neuropsychological disorders and dysfunctions and psychotic, neurotic and personality disorders and dysfunctions and the prevention and treatment of behaviour and mental disorders and dysfunctions and the maintenance and enhancement of physical, intellectual, emotional, social and interpersonal functioning" [the Psychology Act, Section 3].

While the Controlled Act is defined in general terms under RHPA, the Psychology Act is quite specific in terms of authorization:

"In the course of engaging in the practice of psychology, a member (of the College) is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to communicate a diagnosis identifying, as the cause of a person's symptoms, a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder" [Section 4].

The formulation of a diagnosis is usually made in the course of a psychological assessment that takes the observations of an individual's strengths and weaknesses further to identify and integrate causes, antecedents and determinants in such a way as to provide a psychological interpretation consistent with an accepted nomenclature and associated body of knowledge and research.

The Controlled Act is considered to have been performed when such a diagnosis is communicated according to the conditions outlined above. Thus, a diagnosis formulated in the course of practice as defined here may not be communicated to a client or his/her personal representative except by a member of the College who is authorized to do so.

### **Who May Perform the Controlled Act?**

With the signing of the Memorandum of Agreement by the Ontario Board of Examiners, the Ontario Psychological Association, and the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists in 1991, the right to perform the Controlled Act was limited to those entering registration through doctoral-level preparation and using the title "Psychologist". It is important to note, however, that the Controlled Act may only be performed by those Psychologists who have had no limitations placed on their practice by the Registration Committee and who have the appropriate training and experience to communicate diagnoses competently.

RHPA also provides for the delegation of Controlled Acts. A regulation approved by the Transitional Council of the College of Psychologists in 1993 enabled the delegation of psychology's Controlled Act by Psychologists to competent Psychological Associates. This regulation and the standards and guidelines for the delegation process are presented in Appendix B. A sample delegation agreement was published in the December 1994 issue of The Bulletin and the College made the request that signed delegation agreements be forwarded to the College.

It is very important to note that the Psychologist's accountability concerning a delegation agreement rests solely in following the standards and guidelines as they are set out to ensure the appropriateness of the delegation. Once the agreement is signed, the Psychological Associate as an autonomous member is entirely accountable for all aspects of his/her professional service. Thus, accountability for the Psychologist in delegatory arrangements is very limited and specific, whereas in supervisory arrangements with unregulated supervisees accountability is global in all respects.

It is also essential to note that the Controlled Act may not be performed by or delegated to an unregulated provider. In other words, the Controlled Act may no longer be carried out under direction or supervision. The one exception to this allowed by the legislation pertains to those supervisees who are in the course of fulfilling the requirements to become a member of the profession, i.e., those whose applications for registration as Psychologists or Psychological Associates have been deemed acceptable to proceed.

The members of Colleges regulating Speech and Language Pathologists, Audiologists, Occupational Therapists and Physiotherapists do not have access to the Controlled Act of communicating a diagnosis within their own areas of competence and practice. Social Workers are currently unregulated under the law.

### **Penalties for Performing a Controlled Act without Authorization**

Under RHPA [Section 40(1)], every person who contravenes Section 27(1) (performing a Controlled Act without appropriate authorization) is:

"guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both".

In addition, Section 41 states:

"Every person who procures employment for an individual and who knows that the individual cannot perform the duties of the position without contravening subsection 27(1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000".

**FOR INFORMATION - a summary of the various service providers and activities which are permitted under the new legislation is attached as Appendix C.**

**II - SETTINGS WITH UNREGULATED PROVIDERS:  
PROPOSED GUIDELINES FOR THE  
COMMUNICATION OF PSYCHOLOGICAL  
DIAGNOSES**

In situations where psychological assessments are **NOT** performed by a Psychologist or Psychological Associate with appropriate delegation and where a psychological diagnosis is formulated, a process of communicating this diagnosis must be followed that will meet the requirements of the legislation, regulations, standards and guidelines. The following steps should be incorporated.

1. All assessments that involve the use of psychological tests shall be supervised by a member of the College of Psychologists of Ontario - either a Psychologist or Psychological Associate with appropriate delegation. The supervising member of the College is fully responsible and accountable for such assessments.

2. The supervising member of the College is responsible for ensuring that the client or his/her personal representative provides appropriate, fully informed consent to the psychological assessment procedures, including an awareness of the deposition of the information emanating from the assessment, any limitations on confidentiality and any time limit on the consent.

3. Whenever an assessment is supervised by a member of the College, this fact shall be explained to the client or his/her personal representative and shall be included in writing on any written report or correspondence relating to the assessment. The information given shall include the full name of the member of the College, his or her regulated title and highest academic degree in accordance with the Standards on Use of Title.

4. A written report of an assessment that is supervised by a member of the College shall contain the signature and title of that member and indicate the names and qualifications of those involved in the preparation of the report.

5. The supervising member of the College shall take all reasonable steps to be present to communicate in person to the client or his/her personal representative any diagnosis formulated in the course of a psychological assessment. In this circumstance, the member shall be thoroughly familiar with the background and assessment information and shall make clear the roles of the individuals involved in the assessment process.

6. In situations where a psychological diagnosis is formulated by an unregulated practitioner in the course

of an assessment, but where it is impossible for the supervising member of the College to be present in person to communicate the diagnosis to the client or his/her personal representative, the supervising member shall thoroughly review the assessment. The diagnosis, along with supporting information and recommendations for further assessment or follow up, shall be clearly outlined and integrated into the psychological report, and the supervising member shall sign the report (see 4 above) prior to any feedback being given regarding the psychological diagnosis. The report may then be given to the client or his/her personal representative by the individual who conducted the assessment who will interpret the report and recommendations.

7. Upon request, the supervising member of the College shall make him or herself available to the client or his/her personal representative receiving the communication of any diagnosis in order to respond to questions and to provide further clarification or information as required. This shall be clearly indicated in any written report or at any oral feedback session.

These guidelines are to be used in conjunction with the Standards and Guidelines of the College including the Standards and Guidelines for Delegation, Guidelines for Supervision of Unregistered Personnel, and the Standards for Administration of Psychological Tests.

**III - SPECIAL APPLICATIONS: EDUCATION**

This final section presents for discussion some issues related to the Controlled Act for those whose practice includes educational or school psychology. It is anticipated that further discussion papers will deal with additional topics related to other specific workplace settings such as hospitals and correctional facilities.

**The Controlled Act of Diagnosis under the  
Psychology Act and the Identification of Excep-  
tional Pupils by the IPRC under the Education Act**

The Education Act, R.S.O. 1980, defines an Exceptional Pupil as:

“a pupil whose behavioural, communicational, intellectual, physical or multiple exceptionalities are such that he is considered to need placement in a special education program”.

For the purpose of subsection 8(2) of The Education Act, Chapter 129, the exceptionalities of pupils are set out by exceptionality groupings, specific exceptionality identifications, and specific exceptionality definition.

These Exceptionality Groupings and Exceptionality Identifications are used by an Identification, Placement and Review Committee (IPRC) for the purpose of identifying those pupils who require special education placements. Under the Education Act, the IPRC may identify pupils under these Exceptionality Groupings and Exceptionality Identifications and communicate this information to the Exceptional Pupils or their parents, guardians or personal representative, in circumstances where it is reasonably foreseeable that the pupil, parents, guardians or personal representatives will rely upon the identification. By doing so, members of the IPRC are not performing the Controlled Act of Diagnosis under the Psychology Act.

To come to the conclusion that a pupil may be categorized under an Exceptionality Grouping or Exceptionality Identification, the IPRC relies on a wide variety of information provided by the pupil's parents, teachers and other professionals who have assessed the pupil. Where a psychological assessment is provided, the IPRC may rely upon the description of the pupil's characteristics or the psychological diagnosis provided in the psychological report in their determination of a pupil's Exceptionality Identification. The IPRC may also rely on descriptions of the pupil's characteristics and disorders provided by other professionals such as physicians, speech-language pathologists, physiotherapists, etc. Normally, the outcomes of psychological assessments, including any psychological diagnoses have been communicated to the pupil or his or her parents, guardians or personal representative prior to the IPRC meeting because of the implications of potential harm and the right of the client to have direct access to the regulated professional who is accountable to the public.

Several Exceptionality Groupings describe "learning disorders" which identify, as the cause of the pupil's symptoms, a neuropsychological disorder, or a psychologically-based psychotic, neurotic or personality disorder. These include:

#### Communication

Autism

Language impairment

Learning disability

where the learning disorder is associated with one or more condition diagnosed as:

- a perceptual handicap
- minimal brain dysfunction
- developmental aphasia
- a brain injury
- dyslexia

#### Intellectual

Educable retardation

Trainable retardation

#### Behaviour

Emotional disturbance and/or social maladjustment.

#### Diagnosis under the Psychology Act: Learning and Behaviour Disorders

In the course of providing assessment and consultation services, a diagnosis is formulated in circumstances where the assessment or consultation:

- identifies a significant delay in development or a serious impairment of skill or a distortion of development which can be linked to a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder;
- classifies the person's intellectual capacity and adaptive functioning as falling within a category of mental retardation;
- determines that a person's skill level in an area of academic functioning is markedly below the level expected on the basis of the person's intellectual capacity, where the discrepancy is not due to deficient educational opportunities, cultural or linguistic difference, hearing or vision impairment, physical disability, or primary emotional disturbance;
- compares a person's language, speech or motor skill development to an expected developmental level and identifies a disorder or a significant delay which is not due to demonstratable physical disorders, mental retardation, a pervasive developmental disorder or deficient educational opportunities;
- provides an explanation for a learning problem through a classification, formulation or causal statement linking it to a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder.

Various classification systems, such as DSM-IV, include such categories of learning and behaviour disorders as are described above.

#### Learning and Behavioural Characteristics that are NOT Diagnoses under the Psychology Act

Academic deficits which are described in terms of academic skills are not diagnoses under the Psychology Act. For example, reading specialists, teaching staff and unregulated psychology staff may describe and communi-

*prematurely by using their right of access to the child's records?*

A: Preventative action in case management is of major importance. In seeking parental consent to treatment the child's need for confidentiality might be discussed and agreed upon with the parents. This does not provide a legal barrier of course, so that the child should be made aware of the potential limits of confidentiality with respect to parental access. In many cases, a plan for parental participation might be developed with the child that would meet parental desires to be involved.

*Q: I agree, but what about parents who nevertheless insist on access under the MPIFF Act?*

A: The provisions noted earlier with respect to disclosure of personal information constituting a threat to the well-being of the requester (N) also apply here. If one can argue that the mental health of the child is likely to be endangered by parental access to specific records, then under the FIPP and MFIPP Acts the head or delegate may exercise a discretionary right to deny parental access to particular documents or to a whole record.

*Q: Is there not some legislation that denies the right of parental access to their child's treatment records?*

A: You may be thinking of Section 28 of the CFS Act which permits children age 12 and less than 16 who, without parental consent, seek and receive treatment or counselling from a facility affected by this Act. The case and working files of such children can only be accessed by their parents with the written permission of the child. This provision includes the requirement that the desirability of parental involvement be discussed with the child at the earliest appropriate opportunity.

*Q: Do any of these Acts permit withholding disclosure of parts of my working file when it has been requested by a subpoena, or a court order?*

A: In general, the PRIVACY ACTS do not impose limitations or conditions to access to personal information by litigants, courts or tribunals. However, one of the few proclaimed provisions of Part VII of the CFS Act is Section 183 which pertains to records of "mental disorder"; where this term is defined as: "a substantial disorder of emotional processes, thought or cognition of the person which grossly impairs the person's capacity to make reasoned judgements".(183(1)) This section stipulates that when such documents are required by: "a summons, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act" that they must

be disclosed, unless a *physician* submits in writing that this is likely to harm the treatment or recovery of the individual, or if disclosure is likely to result in injury to the mental condition of another person, or bodily harm to another person.(183(2)) This section continues setting out the subsequent legal actions that may be involved in resolving any conflict. (183(3)-(7)) There is a comparable section present in the MH Act (35 (6)-(9)).

### DISCLOSURE OF PSYCHOLOGICAL TEST DATA

*Q: One reason that we keep independent working files in institutional settings is to avoid non-psychological workers misinterpreting the detailed test information to the disadvantage of the client. Surely the danger of misinterpretation is even greater when clients have access to such information.*

A: Undoubtedly for some clients there is a real unavoidable risk in such access. However, when formally requested such information must be supplied. The PRIVACY ACTS override the explicit or implied professional requirements for restricted disclosure of detailed test information.

*Q: Some of the working files that I produce contain reports or memoranda for the treatment team working with a client. Not all such reports are shown to the patient or client, and they often involve technical terminology that would confuse, and perhaps upset, some clients looking at their working file. I would be willing to have clients look at these documents if I could be with them in order to explain what some of the technical language really means.*

A: The Acts disagree on this matter. Section 14 of the regulations of the Privacy Act (SOR/83-508) permits the head of an institution to require an individual seeking his/her personal information respecting physical or mental health to "...examine the information in person and in the presence of duly qualified medical practitioner or psychologist so that the practitioner or psychologist may explain or clarify the information to the individual". There is no similar provision in the FIPP or MFIPP Acts. Indeed, the Commissioner has ruled on an appeal that access to such personal information cannot be conditioned in this way. If, however, there are particular terms or sections of a record that you believe might confuse or mislead the person seeking his/her personal information, it is always possible to add an explanatory note to the file that may help to avoid such difficulties for the person seeking personal information.



*Q: Is it possible to have some particular words or sentences erased that might trouble or confuse the client?*

A: Parts of a document cannot be severed in order to make it less confusing for the seeker of personal information. The Commissioner of the FIPP and MFIPP Acts has ruled on this matter.

**THIRD PARTY RIGHTS - COMMERCIAL**

*Q: Some of the published test protocols that I use are purchased under an agreement with the publisher to not reveal the contents publicly. Besides, the protocol forms are copyrighted and cannot be duplicated without permission. Must such materials be handed over if the contents of the working file are requested?*

A: The fact that a test protocol form is copyright is irrelevant for disclosure under the PRIVACY ACTS. It is obvious to psychologists that the general disclosure of information such as test items, scoring procedures, etc., would threaten the validity of a test and result in its abandonment by qualified users and financial loss to test suppliers. Accordingly, It has been the College's position that mandatory provisions of the FIPP and MFIPP Acts for withholding from a requester "technical information" which could result in financial loss to a commercial supplier apply to many published test protocols. (P) There are similar provisions in the federal Access to Information Act, 1983 which is the companion Act to the Privacy Act. In most jurisdictions Information Co-ordinator's have accepted this view and have either withheld complete protocols or, have transferred client responses to paper devoid of item and/or scoring information. The position adopted by the College has been challenged, but as yet there has not been a ruling on an appeal, or a judgement on judicial review, that adds specificity or force to the College's position. Also, the Provincial Legislature has not acted on the College's request for an amendment or regulation to the FIPP and MFIPP Acts giving explicit recognition that the provisions cited apply to the protection of test information in published protocols.<sup>2</sup>  
p.115-117 ( Note: please refer to page 28 of the Bulletin, Vol. 22, No.2 for an update)

It is worth noting that arguments made to an Information Co-ordinator to withhold disclosure of test information are strengthened if both the supplier and the institution made explicit reference to the terms of the understood confidentiality in their correspondence at the time of purchase. Additionally, the institution must present a reasonable argument that a financial loss to the supplier is likely on the basis of a general release of the

technical information and not on the basis of the known or suspected motives of the requester.

*Q: Suppose the person seeking information of his/her test performance also wishes to examine the tests, can he/she require me to show them the Rorschach plates, or the Raven Matrices, etc?*

A: The tests themselves are not personal information, nor are they documents produced by the government agency or institution. Accordingly, you cannot be required to show the test materials to a requester, but in particular cases you might wish to comply with a request to examine these materials if you believed this to be in the best interests of the client.

*Q: Some of the psychological test forms that I use are semi-experimental in nature and have questionable commercial value since they are in an early stage of test development. However, they do contain test item information that would threaten the validity of the test if circulated generally. Can these protocols be withheld?*

A: There is a provision in the FIPP and MFIPP Acts (Q) which gives the head of an institution, or the delegated Co-ordinator, the discretionary right to withhold "questions that are to be used in an examination or test for an educational purpose". If the test under development may be regarded as having educational implications in a broad sense, then the head of the institution, or the Co-ordinator, may exercise the discretionary right to withhold this information. Based on ruling of the Commissioner this provision in the MFIPP Act does not apply to multiple choice questions posed in a particular course examination where subsequent examinations differ considerably in the content of the questions. There is nothing comparable in the Privacy Act.

**THIRD PARTY RIGHTS - PRIVACY**

*Q: Interviews with the parents of children that I am treating often yield information that is given in confidence. How can I protect this information from the child who might seek access to his/her working file?*

A: When informants give information in confidence, some of this information may consist of facts about the client or opinions of the client. Under the PRIVACY ACTS this information would be considered the client's personal information and could not be withheld from the client unless one could invoke the provisions relating to threats to mental health, safety of others, etc.(N) The informant

APPENDIX C - RANGE OF SERVICES PROVIDED

ACTIVITIES

SERVICE PROVIDER

	ASSESSMENT of academic skills, intellectual potential, perceptual skills, behavioural and personality traits (includes formal and informal testing, interviews, observations)	PERFORMING THE CONTROLLED ACT OF DIAGNOSIS UNDER R.H.P.A. AND THE PSYCHOLOGY ACT	CONSULTATION PREVENTION INTERVENTION
PSYCHOLOGISTS	YES permitted as an identified member of the College of Psychologists of Ontario, according to the Standards and Guidelines of the profession	YES permitted if within area(s) of competence and provided there are no conditions or limitations imposed on the individual's certificate to practise	YES permitted as an identified member of the College of Psychologists of Ontario, according to the Standards and Guidelines of the Profession
PSYCHOLOGICAL ASSOCIATES	YES permitted as an identified member of the College of Psychologists of Ontario, according to the Standards and Guidelines of the profession	YES, WHEN DELEGATED permitted ONLY with signed Delegation Agreement between Psychological Associate and Psychologist	YES permitted as an identified member of the College of Psychologists of Ontario, according to the Standards and Guidelines of the profession
UNREGULATED PROVIDERS OF PSYCHOLOGICAL SERVICES SUPERVISED BY A MEMBER OF THE COLLEGE OF PSYCHOLOGISTS (e.g., psychometrists, psychoeducational consultants, etc.)	YES permitted according to the College's Standards and Guidelines for the Supervision of Unregulated Staff	NO not permitted unless the individual is in the course of fulfilling the requirements to become a member of the profession - e.g. on the Register for Supervised Practice (Temporary Register)	YES permitted according to the College's Standards and Guidelines for the Supervision of Unregulated Personnel
INDEPENDENT UNREGULATED UNSUPERVISED PROVIDERS (e.g. teaching staff, social workers, private psychoeducational consultants, etc.)	YES permitted if no protected terms (i.e. "psychology" or "psychological") are used to describe the service or the provider, and if the provider possesses the qualifications specified by the test producers	NO not permitted	YES permitted if no protected terms (i.e., "psychology" or "psychological") are used to describe the service or the provider



## STATUTORY REQUIREMENTS FOR CLIENT INFORMATION MANAGEMENT

**Bruce Quarrington, Ph.D., C.Psych.**

The College has received many questions from members regarding the federal and provincial statutes that bear upon the collection, recording, and disclosure of client information. What follows is a selective treatment of legislation organized in a dialogue format reflecting largely commonly asked questions. The discussion is not confined strictly to the content of the Acts, but offers some suggestions for practise where the provisions of the Acts present compliance problems. Where rulings of the Ontario Information and Privacy Commissioner

or the investigative reports of that office have clarified parts of legislation of particular interest to psychologists, these are mentioned.<sup>1</sup>

Citations in the text by upper case letters, e.g. (A), refer to sections of Part I - Guide to the PRIVACY ACTS, which for the three Acts involved, identify the location of the matters under discussion. Text locations are only given in the narrative when they cannot be tabled.

### OVERVIEW

*Q: Several years ago the College published proposals for regulations for client records and their management. Have these proposals become Regulations to the Psychology Act?*

A: You are referring to the proposed model regulations that the College submitted to the Ministry of Health which were published in the Bulletin of December, 1992 (vol.19,#2). As yet, the Ministry has not made these into a Regulation, but the College expects members to observe the requirements of the proposals in their private practices and in their employment where members assume a major or primary responsibility for client assessment or care.

*Q: But what if the employer is a government institution or agency that has its own policy or is affected by other statutory requirements that conflict with the requirements of the College?*

A: Legislation affecting an institution should be known and respected. This knowledge will assist a member in seeking to modify institutional policy that is not based on legislative requirements so that conflict with professional requirements may be avoided.

*Q: I can see that precise knowledge of what is required by statute could be useful. What are the statutes that I should know about?*

A: Many members are employed by a psychiatric hospital or work in a government designated psychiatric facility and should be familiar with Sections 35 and 36 of the Mental Health Act, 1990 (MH Act). Those employed

by a public hospital should know about the Medical Records part of the Regulation 965 of the Public Hospitals Act, 1990 (PH Act).

*Q: I believe that I have a fair knowledge of these Acts and it is my impression that they do not bear directly on the management of psychological records.*

A: That is so, these Acts are narrowly cast along lines of medical responsibility, and it is more recent legislation that bears more directly on psychological record keeping issues. The Freedom of Information and Protection of Privacy Act, 1987 (FIPP Act) affects the records of psychologists in agencies and institutions serving adults and managed by, or receiving major funding from, the Ministry of Community and Social Services (MCSS). The Vocational Rehabilitation Services is an example. This Act also affects the collection and use of client in-

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looks specifically at what constitutes "diagnosis" and its communication within settings where many psychological services have traditionally been provided by non-registered individuals normally under the supervision or direction of Psychologists.

The mandate of the College of Psychologists of Ontario is to act in the interests of the public by ensuring that members are appropriately qualified and competent, and that the ethical standards of the profession are consistently applied and upheld. The College and the public rely on the professional judgement of individual members, as well as on the expectation that members will act in accordance with the legislation, regulation, standards and guidelines of the profession. Thus, it is the responsibility of members to ensure that they are familiar with the relevant legislation governing not only the profession as a whole, but also the particular setting in which they work.

## I - RELEVANT LEGISLATION, REGULATIONS AND STANDARDS

### Controlled Acts under RHPA

Under the RHPA there are 13 "Controlled Acts" that are considered to carry substantial risk of harm if improperly performed. Under Section 27(1),

"no person shall perform a controlled act...unless:

- (a) the person is a member authorized by a health profession Act to perform the controlled act; or
- (b) the performance of the controlled act has been delegated...to the person by a member"

as specified by the regulations.

The single Controlled Act permitted to members of the College of Psychologist of Ontario is defined under RHPA as follows:

"Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis" (emphasis added) [Section 27(1)]

All three elements as underlined must be present for the Controlled Act to be considered to have been performed.

Such communication may be made in either oral or written form, clearly identifying the individual communicating the diagnosis as a member of the College according to the Standards regarding the Use of Title (see Appendix A). It is expected that the member communicating the diagnosis will be able to respond directly to the individual receiving the diagnosis with respect to information about the disorder, including etiology, differential diagnoses, signs and symptoms, prognosis, and the various interventions and treatments available, and that the member will be available to respond to any further questions that the individual may have. It is important to note that information must be given in such a manner as to be readily understood by the individual receiving the communication.

The legislation refers specifically to communicating the diagnosis to the person who is presenting the symptoms or "his or her personal representative". It will be necessary for the individual practitioner to ensure that the client concerned has authorized a third party to act as his or her personal representative, unless otherwise specified by law. It should be noted that another professional and/or a multidisciplinary team does not fit the definition of "client" for this purpose. It will be particularly important to be aware of the conditions of consent or any other provisions made under the new Consent to Treatment legislation in determining to whom the diagnosis should be communicated.

Under RHPA, Section 29(2), it is explained that an individual is NOT considered to be performing the Controlled Act:

"with respect to a communication made in the course of counselling about emotional, social, educational or spiritual matters as long as it is not a communication that a health profession Act authorizes members to make".

Specific authorization under the Psychology Act is explained below.

### Specific Definition of the Controlled Act within the Psychology Act

The "practice of psychology" is defined as:

"...the assessment of behavioural and mental conditions, the diagnosis of neuropsychological disorders and dysfunctions and psychotic, neurotic and personality disorders and dysfunctions and the prevention and treatment of behaviour and mental disorders and dysfunctions and the maintenance and enhancement of physical, intellectual, emotional, social and interpersonal functioning" [the Psychology Act, Section 3].

While the Controlled Act is defined in general terms under RHPA, the Psychology Act is quite specific in terms of authorization:

"In the course of engaging in the practice of psychology, a member (of the College) is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to communicate a diagnosis identifying, as the cause of a person's symptoms, a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder" [Section 4].

The formulation of a diagnosis is usually made in the course of a psychological assessment that takes the observations of an individual's strengths and weaknesses further to identify and integrate causes, antecedents and determinants in such a way as to provide a psychological interpretation consistent with an accepted nomenclature and associated body of knowledge and research.

The Controlled Act is considered to have been performed when such a diagnosis is communicated according to the conditions outlined above. Thus, a diagnosis formulated in the course of practice as defined here may not be communicated to a client or his/her personal representative except by a member of the College who is authorized to do so.

#### **Who May Perform the Controlled Act?**

With the signing of the Memorandum of Agreement by the Ontario Board of Examiners, the Ontario Psychological Association, and the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists in 1991, the right to perform the Controlled Act was limited to those entering registration through doctoral-level preparation and using the title "Psychologist". It is important to note, however, that the Controlled Act may only be performed by those Psychologists who have had no limitations placed on their practice by the Registration Committee and who have the appropriate training and experience to communicate diagnoses competently.

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2. The supervising member of the College is responsible for ensuring that the client or his/her personal representative provides appropriate, fully informed consent to the psychological assessment procedures, including an awareness of the deposition of the information emanating from the assessment, any limitations on confidentiality and any time limit on the consent.

3. Whenever an assessment is supervised by a member of the College, this fact shall be explained to the client or his/her personal representative and shall be included in writing on any written report or correspondence relating to the assessment. The information given shall include the full name of the member of the College, his or her regulated title and highest academic degree in accordance with the Standards on Use of Title.

4. A written report of an assessment that is supervised by a member of the College shall contain the signature and title of that member and indicate the names and qualifications of those involved in the preparation of the report.

5. The supervising member of the College shall take all reasonable steps to be present to communicate in person to the client or his/her personal representative any diagnosis formulated in the course of a psychological assessment. In this circumstance, the member shall be thoroughly familiar with the background and assessment information and shall make clear the roles of the individuals involved in the assessment process.

6. In situations where a psychological diagnosis is formulated by an unregulated practitioner in the course

of an assessment, but where it is impossible for the supervising member of the College to be present in person to communicate the diagnosis to the client or his/her personal representative, the supervising member shall thoroughly review the assessment. The diagnosis, along with supporting information and recommendations for further assessment or follow up, shall be clearly outlined and integrated into the psychological report, and the supervising member shall sign the report (see 4 above) prior to any feedback being given regarding the psychological diagnosis. The report may then be given to the client or his/her personal representative by the individual who conducted the assessment who will interpret the report and recommendations.

7. Upon request, the supervising member of the College shall make him or herself available to the client or his/her personal representative receiving the communication of any diagnosis in order to respond to questions and to provide further clarification or information as required. This shall be clearly indicated in any written report or at any oral feedback session.

These guidelines are to be used in conjunction with the Standards and Guidelines of the College including the Standards and Guidelines for Delegation, Guidelines for Supervision of Unregistered Personnel, and the Standards for Administration of Psychological Tests.

**III - SPECIAL APPLICATIONS: EDUCATION**

This final section presents for discussion some issues related to the Controlled Act for those whose practice includes educational or school psychology. It is anticipated that further discussion papers will deal with additional topics related to other specific workplace settings such as hospitals and correctional facilities.

**The Controlled Act of Diagnosis under the  
Psychology Act and the Identification of Excep-  
tional Pupils by the IPRC under the Education Act**

The Education Act, R.S.O. 1980, defines an Exceptional Pupil as:

“a pupil whose behavioural, communicational, intellectual, physical or multiple exceptionalities are such that he is considered to need placement in a special education program”.

For the purpose of subsection 8(2) of The Education Act, Chapter 129, the exceptionalities of pupils are set out by exceptionality groupings, specific exceptionality identifications, and specific exceptionality definition.

These Exceptionality Groupings and Exceptionality Identifications are used by an Identification, Placement and Review Committee (IPRC) for the purpose of identifying those pupils who require special education placements. Under the Education Act, the IPRC may identify pupils under these Exceptionality Groupings and Exceptionality Identifications and communicate this information to the Exceptional Pupils or their parents, guardians or personal representative, in circumstances where it is reasonably foreseeable that the pupil, parents, guardians or personal representatives will rely upon the identification. By doing so, members of the IPRC are not performing the Controlled Act of Diagnosis under the Psychology Act.

To come to the conclusion that a pupil may be categorized under an Exceptionality Grouping or Exceptionality Identification, the IPRC relies on a wide variety of information provided by the pupil's parents, teachers and other professionals who have assessed the pupil. Where a psychological assessment is provided, the IPRC may rely upon the description of the pupil's characteristics or the psychological diagnosis provided in the psychological report in their determination of a pupil's Exceptionality Identification. The IPRC may also rely on descriptions of the pupil's characteristics and disorders provided by other professionals such as physicians, speech-language pathologists, physiotherapists, etc. Normally, the outcomes of psychological assessments, including any psychological diagnoses have been communicated to the pupil or his or her parents, guardians or personal representative prior to the IPRC meeting because of the implications of potential harm and the right of the client to have direct access to the regulated professional who is accountable to the public.

Several Exceptionality Groupings describe "learning disorders" which identify, as the cause of the pupil's symptoms, a neuropsychological disorder, or a psychologically-based psychotic, neurotic or personality disorder. These include:

**Communication**

- Autism
- Language impairment
- Learning disability

where the learning disorder is associated with one or more condition diagnosed as:

- a perceptual handicap
- minimal brain dysfunction
- developmental aphasia
- a brain injury
- dyslexia

**Intellectual**

- Educable retardation
- Trainable retardation

**Behaviour**

Emotional disturbance and/or social maladjustment.

**Diagnosis under the Psychology Act: Learning and Behaviour Disorders**

In the course of providing assessment and consultation services, a diagnosis is formulated in circumstances where the assessment or consultation:

- identifies a significant delay in development or a serious impairment of skill or a distortion of development which can be linked to a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder;
- classifies the person's intellectual capacity and adaptive functioning as falling within a category of mental retardation;
- determines that a person's skill level in an area of academic functioning is markedly below the level expected on the basis of the person's intellectual capacity, where the discrepancy is not due to deficient educational opportunities, cultural or linguistic difference, hearing or vision impairment, physical disability, or primary emotional disturbance;
- compares a person's language, speech or motor skill development to an expected developmental level and identifies a disorder or a significant delay which is not due to demonstratable physical disorders, mental retardation, a pervasive developmental disorder or deficient educational opportunities;
- provides an explanation for a learning problem through a classification, formulation or causal statement linking it to a neuropsychological disorder or a psychologically-based psychotic, neurotic or personality disorder.

Various classification systems, such as DSM-IV, include such categories of learning and behaviour disorders as are described above.

**Learning and Behavioural Characteristics that are NOT Diagnoses under the Psychology Act**

Academic deficits which are described in terms of academic skills are not diagnoses under the Psychology Act. For example, reading specialists, teaching staff and unregulated psychology staff may describe and communi-

cate to others the specific subskills of reading that a student has not yet mastered (including awareness of sound-symbol relationships, phonics knowledge, word decoding and reading comprehension) without performing the Controlled Act.

Academic deficits which are attributed to cultural or linguistic differences or lack of exposure to education are not diagnoses under the Psychology Act. Educators such as E.S.L. teachers may describe and communicate the areas of specific curriculum which a student has not mastered without performing the Controlled Act.

Identification of exceptionally high intellectual or cognitive functioning does not constitute a diagnosis of a learning disorder. Practitioners who assess these students and IPRC's may, for example, communicate the conclusion that the student has very superior intelligence without performing psychology's Controlled Act.

### In Conclusion

It is hoped that this discussion paper, will stimulate extensive discussion when in the profession. As mentioned above, other discussion papers will be solicited with reference to special issues arising from the Controlled Act in such settings as hospitals and correctional facilities. As more experience is gained working with the changes engendered by the RHPA, it is anticipated that further interpretation of the legislation and its regulations may be required, and subsequent guidelines may be issued by the College.

Respectfully submitted,  
A. Lynne Beal, Ph.D., C.Psych.  
Maggie Mamen, Ph.D., C.Psych.  
Elaine Moroney, M.A., C.Psych.Assoc. §

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### APPENDIX A

#### STANDARDS FOR THE USE OF TITLE

1. The name of the member and his or her professional title of Psychologist or Psychological Associate (or their abbreviations: C.Psych. or C.Psych. Assoc.) shall be clearly indicated.
2. The highest academic degree upon which registration is based shall immediately precede the professional title; where the member has been registered as a

Psychologist on the basis of a doctoral degree, the prefix Doctor or its abbreviation Dr. may be used, but not both degree and prefix shall be employed.

3. Other degrees or professional titles, such as MBA, P.Eng., may be specified when the area of study is relevant to the member's psychological practice, but the area of study must be specified unless readily apparent.
4. "Member of the College of Psychologists of Ontario" may be used by members.
5. In the case of the member being listed by the College on any register except the main register of the College, the member shall qualify his or her title of Psychologist or Psychological Associate through reference to the register on which he or she is listed.

Approved by Council: December 10, 1994

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### APPENDIX B

#### Proposed regulation made under the authority of RHPA 1991 s28(1) + (2)

1. Any member of the college authorised, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the Controlled Act defined by the Regulated Health Professions Act, 1991, section 27(2)1, and by the Psychology Act, 1991, section 4, may delegate the Controlled Act to other members of the College, subject to the terms, conditions and limitations imposed on the certificate of registration of the members to whom the performance of the Controlled Act is delegated.

Approved by Council, June 1993

#### Additions to Standards: Delegating

Subject to the Regulations, a Psychologist may transfer the authority to perform the Controlled Act of Diagnosis to a Psychological Associate. In order to delegate, the following conditions shall be met:

1. The Psychologist is competent to perform the Controlled Act as specified in the Delegation Agreement, described in Principles 3 and 4.
2. The Psychologist has reasonable grounds to believe that the Psychological Associate is competent to perform the Controlled Act as specified in the Delegation Agreement.



3. A written contract, between the Psychologist and the Psychological Associate, has been completed which clearly specifies the terms of the Delegation Agreement.

4. The Delegation Agreement shall address the following:

- A. The types of clinical diagnoses to be undertaken
- B. The client population to be served
- C. The setting(s) in which the controlled act will be undertaken
- D. The nature and timing of review, as prescribed in Principle 5, of the Delegation Agreement and of the delegate's competence to perform the Controlled Act as specified in the Delegation Agreement. A record of each review should be appended to the Delegation Agreement.

5. The Psychologist shall conduct a review, at least annually, of the Delegation Agreement, and of the delegate's competence to perform the Controlled Act as specified in the Delegation Agreement.

6. In the event that the Psychologist has reasonable grounds to believe that the delegation is no longer appropriate, the Psychologist will terminate the Delegation Agreement in writing.

**Additions to Standards: Conditions for Accepting Delegation.**

The Psychological Associate may accept the delegation of the authority to undertake the Controlled Act only when the following conditions are met:

7. The Psychological Associate is competent to perform the Controlled Act as specified within the Delegation Agreement.

8. A written contract has been completed which clearly specifies the terms of the Delegation Agreement according to Principle 4.

9. The Psychological Associate will participate, at least annually, in a review, conducted by the delegating Psychologist, of the Delegation Agreement and of the delegate's competence to perform the Controlled Act as specified in the Delegation Agreement.

10. In the event that the Psychological Associate knows or ought to know that the delegation is no longer appropriate, the Psychological Associate will terminate the contract in writing.

**Addition to Standards: Additional Provisions**

11. Each party shall retain a signed copy of the Delegation Agreement and of each review.

12. A member of the College shall not accept or provide remuneration of any type in connection with the act of delegation.

13. Professional judgement shall supersede employer's expectations/ employment requirements.

Approved by Council, January 14, 1994

**Additional Standard: Delegation**

14. A member of the College shall not delegate performance of the controlled act to anyone who is not a member of the College.

Approved by Council, March 25 and 26, 1994

**Guidelines: Delegation**

Preamble: It is understood from the Standards that the particulars of the delegation being contemplated falls within the areas of competence established at registration, subject to any changes imposed or authorized by the College subsequent to registration. The parties involved are ultimately responsible for the decision to delegate or to accept delegation. The following Guidelines are provided to assist in the process:

1. Either a Psychologist or a Psychological Associate may initiate a request for delegation.

2. In establishing the competence of the Psychological Associate to perform the Controlled Act, factors to be considered include the ability to formulate and communicate clinical diagnoses to recipients of psychological services. This may be demonstrated through such means as: discussion of actual or hypothetical cases, review of reports, and discussion of considerations involved in providing feedback to recipients of psychological services, their agents, or other professionals involved in providing services.

3. In the Agreement, the parties may describe what factors were considered in establishing competence to perform the Controlled Act.

Approved by Council, January 14, 1994

may also have spoken confidentially about himself/herself, or about other individuals, and this may be considered personal information belonging to the *informant* although it is lodged in the working file of the client. The PRIVACY ACTS contain provisions giving the head the discretionary right to withhold this latter sort of information if its release is judged to constitute an invasion of the persons privacy.(R)

The FIPP and MFIPP Acts also set out the requirement, that should there be an intention to release such information, the affected third party should be informed of this intention, advised as to what it is to be released, and given an opportunity to object to disclosure. These Acts also set out some criteria to be employed by the head in judging if the release of the material in question would constitute an invasion of the third party's privacy.(S) It should also be noted that the FIPP Act contains a special provision that applies to correctional facilities which permits the head to withhold any information supplied in confidence that is part of a correctional record.(49(e))

*Q: In those Acts where the protection of the privacy of third parties is mandatory, who is responsible for identifying this sort of material in a working file?*

A: It is the responsibility of the head or, the delegated Information Co-ordinator responding to the request for personal information. Obviously, this person can be assisted by those producing working files if they do not bury information supplied in confidence in their process notes, but segregate it with a distinct heading indicating that this informant was speaking confidentially. When there is any doubt as to whether an informant's information is being given in confidence, it is probably safer to insist that the interview is confidential and to label the record accordingly.

### LAWFUL COLLECTION OF PERSONAL INFORMATION

*Q: In some cases I might wish to talk with an number of people about the child that I am treating; do I have to make a record of all such interviews?*

A: Probably some of the people that you refer to are employees of the institution who are considered to be part of the treatment team. These people should have been identified in the early discussion of limits of confidentiality with the client, or parents of a child under 16. Your discussions may or may not be recorded depending on what is judged required for competent case man-

agement. Other individuals would be considered as informants and under the FIPP and MFIPP Acts this sort of collection of personal information is only permitted with the consent of the client or the parents of a child.(T) Accordingly, the working file should contain at least the information of when consent was requested and received, and when the interview took place. It should be noted that the act of receiving information from an unauthorized informant is prohibited, not just the recording of such information. The Privacy Act is less stringent in that it permits unauthorized use of informants in those circumstances where compliance might result in inaccurate information, or "defeat the purpose or prejudice the use for which the information is collected". (5(3))

*Q: Sometimes employees of the institution who are not members of a child's treatment team will know that I am seeing a particular child and wish to tell me something about the child. I am not questioning them, but simply being asked to listen to what they have to say. How should this be handled?*

A: This is an awkward situation. Despite your passive role in this situation, according to the FIPP and MFIPP Acts you would be considered to be collecting personal information about the child from an unauthorized informant.(38 (1) FIPP Act; 28 (1) MFIPP Act) Such encounters should be concluded when you realize their nature. If you believe that the individual may have important information, you may seek them out after you have obtained authorization from the client, parent, or guardian.

*Q: Sometimes I observe a child that I am treating doing something on the playground, or elsewhere, that strikes me as important to record. Is there any problem here?*

A: As long as the observations are judged to be relevant to the purpose of your professional activities with the child, the recording of your observations is in accord with the PRIVACY ACTS. (U) These require that all information sought from a client, or an informant, be necessary for the administration of activities lawfully authorized by the institution. In other words, personal information sought and recorded must be justified on the grounds that it was considered likely to be useful in the performance of one's professional duties within the institution. You must keep in mind, though, that this recorded observation may be accessed by the client or parents, so that the most appropriate form of recording might be best known after the observed event has been discussed with the child or the parents.



**DISCLOSURE WITHOUT CONSENT**

*Q: I understand that no client information, including the client's name, may be disclosed without the client's consent. But suppose that I am persuaded that a sixteen year old child that I am treating plans to run away from home and will not give me permission to get in touch with his/her parents? Would these Acts permit me to violate client confidentiality?*

A: The Privacy Act permits the head of an institution to disclose personal information where he/she believes the public interest outweighs the invasion of privacy or, where disclosure would clearly benefit the individual to whom the information relates. (V) In the example you offer, the facts might persuade the head or the delegate that requirements for disclosure without consent were met. A comparable case might well not be judged to meet the requirements for unauthorized disclosure under the FIPP and MFIPP Acts. (V) Here, the head of an institution is required to disclose to the public, or to persons affected, any record if there are reasonable and probable grounds to believe that this would be in the public interest, and that the record reveals a grave environmental, health or safety hazard to the public. These Acts also require the head to notify the individual whose personal information is to be disclosed where this is practicable, and to give the individual some opportunity to object.

*Q: If an adult client tells me in confidence that her spouse is beating or sexually abusing her child, do these Acts permit me to violate client confidentiality to inform the appropriate authorities?*

A: If, from the information available, you believe that the mother is reporting accurately you are bound to report your belief and the relevant information to a Children's Aid Society so that it may carry out an investigation. Ideally, you would be able to do this with the consent of the mother, but with or without her consent, an enacted section of the CFS Act requires that you report. The CFS Act requires anyone "...who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and information..." (72(2)) Furthermore a special obligation is placed on certain professions and others in special relations with children. The Act specifies 'Psychologists' as one of the professions bound by the Act. (72(4)(a) The requirement to report overrides conflicting demands of any other legislation. (72(3))

*Q: I can see that some of the provisions for disclosure without consent of the client could be useful, particularly in situations where there is no great urgency, but what if I believe that a client is going to harm a particular person in the next few hours?*

A: Unusual circumstances may arise that require action not authorized by legislation. If your considered judgement calls for unauthorized disclosure or other action to protect the welfare of the client or others, then the risk must be taken that a complaint may be subsequently made to your College regarding your action. Such complaints would be assessed in terms of the professional competence shown in evaluating the situation and in choosing appropriate action.

**DISCLOSURE NEEDED FOR SERVICING**

*Q: Do I need the consent of the individual to show a colleague his/her test results to get a second opinion?*

A: As long as you reveal no information that would identify the individual to whom the test information relates this is permissible.

*Q: Do I need the consent of the individual to show test results or to discuss his/her case with a colleague and where this/her identification is necessary or inescapable?*

A: Where the colleague is an employee of the institution and can be said to have a need to know what will be shown him/her, or revealed in discussion, in order to carry out his/her lawful duties, then the consent of the client is not needed. (W) This colleague might be from another discipline and also servicing the client, or might be a psychologist who is providing you supervision. It should be noted that the College would expect that, as far as possible, these individuals would have been identified for the client when the limits of confidentiality were discussed. Not surprisingly, all of the PRIVACY ACTS contain provisions which sanction the disclosing or sharing of that personal information of the client among individuals who have a lawful need for this specific information in providing services to the client, or in their administration of the institution.

**THE RESEARCH USE  
OF PERSONAL INFORMATION**

*Q: Some of the test findings acquired in the clinical assessment of clients may also have research value. Do these Acts permit the use of test data or other personal information, for research purposes?*

A: Yes, but the question of whether record linkage is required is the first matter that must be considered. If it is possible to abstract data from working files in such a way that all identifying information is removed, and no additional individuals become aware of the identity of the clients involved, then these data are no longer organized in a way that constitutes personal information and may be used freely for research purposes.

*Q: This might permit some limited research, but ordinarily one needs a name, or a code number, so that working file data can be related to information from other sources such as the general case file, so that test data can be related to diagnosis, for example. What is permitted when linkage information is needed?*

A: The requirements are fewer under the Privacy Act. (X) Here the head of the institution must be satisfied that the research can only be accomplished if the data are provided in a form that would identify the individuals to whom the information relates and if the researcher gives a written undertaking that any subsequent disclosure of the information will not reveal the identity of the individuals involved. The FIPP and MFIPP Acts (X) set the same requirements, but add the additional condition that the head must be satisfied that: "the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained". This last requirement appears to imply that: 1) the client must have been made aware of the possible research usage of the personal information to be collected and did not object. 2) the head must consider the research purposes to be related to the services provided the clients by the institution.

The regulations to the FIPP and MFIPP Acts (X) set out the requirements for a written agreement to release personal information to an investigator. These include requirements to: limit access and usage of the data, provide file security, destroy identifiers by a specific date, and refrain from contacting clients without permission.

*Q: Do these requirements apply only to investigators who are not employees of the institution?*

A: No these are the conditions that all must meet whether they are employees or not.

**THE GENERAL CASE FILE:  
RECORDS OF ADVICE**

*Q: There are some documents in my working files that are copies of letters, memoranda and psychological reports that I have submitted to the general case file. If there are grounds for withholding disclosure of some of these documents in the working file, would these also apply to the original documents in the general case file?*

A: In the Acts which we have considered all those provisions for withholding disclosure also apply to the general case file. The practical difficulty is that while you are likely to be alerted when a client requests access to his/her working file, when only the general case file is requested you may not be made aware of this. If there are documents that you have produced for the general case file that would give you concern if accessed by the client you must make what arrangements are possible within your institution to assure that you are notified and may take appropriate action.

*Q: Occasionally, the director of my unit will ask several of us who know a particular client to make recommendations in writing as to some course of action that will affect the client importantly. Sometimes the course of action I recommend may not be in accord with the client's wishes. If I am still in a therapeutic relationship with this client, the disclosure of this information to the client could completely disrupt our relationship. Is there anything that can be done to prevent disclosure of this in both the general case and working files?*

A: In the FIPP and MFIPP Acts there is a specific provision permitting the head of an institution to refuse disclosure of a record which "... would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by the institution." (Y) The Commissioner in ruling on an appeal has made it clear that this provision may only be invoked when a clear recommendation that goes beyond an opinion is involved.

While the Privacy Act does not contain a similar provision, it might be pointed out that, for correctional and parole facilities, the head of an institution has a broad discretionary right mentioned earlier to withhold disclosure which could accomplish the same protection of a

therapeutic relationship believed to be endangered by disclosure of advice.(24(a),(b))

**THE CLINICAL RECORD:  
THE MENTAL HEALTH ACT**

*Q: Now that we are considering the contents of the general case file, I would like to know something of the provisions of the Mental Health Act. Does the client have a right of access to the 'clinical record'? Can the client copy the record?*

A: In answering these questions let us deliberately change our terminology from 'client' to 'patient', not only to match the language of the legislation, but also as a reminder that this Act is, in the narrow sense, medical in its frame of reference. By 'patient' the Act refers to out-patients as well as hospitalized patients in a psychiatric facility, and also includes former patients. (35(1))

If the patient is mentally competent, the patient is entitled to examine and/or copy, at the patient's own expense, the clinical record. (36 (1)) The request must be in writing to the officer in charge.(36(2)) Where the patient is held to be mentally incompetent, the person entitled to give or refuse consent to treatment on the patient's behalf under the Consent to Treatment Act, 1992, or the representative appointed under Section 36.1 or 36.2 of the MH Act, has the same entitlement as a competent patient in this respect (36(16)) and in all matters respecting correction of the record, and in appealing a denial of access to all or part of the clinical record.(36(17))

*Q: What are the patient's rights with respect to a correction of the record?*

A: The correction of errors or omissions may be requested. If these are denied the patient or representative has a right to require that a note of disagreement be appended to the clinical record. The notification of all individuals or organizations to whom the record has been disclosed may also be required by the competent patient or representative of the incompetent patient.(36 (13) (a),(b),(c))

*Q: Can a patient or a representative be denied access to all or part of the clinical record?*

A: Within 7 days of receiving a valid request for access, the officer in charge, upon advice received from the attending physician may apply to the Review Board for permission to withhold disclosure from all or part of the record. (36(4)) Also the patient or representative must be informed of the grounds upon which the denial of access is based. (36(11)). A written decision then is made

by the Review Board, or specifically, a panel of the Board, within 7 days of receiving the application of the officer in charge.

*Q: What evidence is heard?*

A: The Board panel receives submissions from the attending physician and the patient. Submissions are heard from the attending physician in the absence of the patient. The physician may, or may not be present when the submission on behalf of the patient is heard. (36 (7),(8),(9))

*Q: I am particularly interested in the extent to which ongoing treatment might be disrupted by patient access to reports submitted by a patient's therapist. What are the acceptable grounds for denying access?*

A: Access may be denied if disclosure is believed likely to result in "serious harm to the treatment or recovery of the patient while in the treatment facility", or "serious physical harm or serious emotional harm to another person". (36 (6)(a),(b)) The language of this section is such that considerable protection is offered patients, and their therapists, against materials in the record that might seriously disrupt a therapeutic relationship.

*Q: Can a former patient of a psychiatric facility request the transmittal of a copy of his/her clinical record to a health care facility not affected by the Mental Health Act?*

A: Yes. Officially, a request for disclosure or transmittal is made by the chief executive officer of the receiving facility or practitioner by means of Form 14, a form approved by the Ministry of Health under Section 13 (14) of Regulation 741, as amended by O.Reg. 15/95. Typically, what is received is the admission and discharge notes together with any reports (psychological, social work,etc.) thought to be useful. Certain authorized requests for disclosure, such as those from insurance companies, are likely to receive only a specially prepared summary of the clinical record.

*Q: Could a psychologist in private practice who is treating a former patient of a psychiatric facility receive a copy of the clinical record?*

A: The psychologist could expect to receive the sort of responses to his/her authorized request for access to the clinical record just outlined.

*Q: Are clinical records available for research?*

A: The officer in charge and the attending physician are permitted to grant access to the use of clinical records

within the institution to a person for the purpose of research, academic pursuits or the compilation of statistical data. (35(3)) The person granted access is bound not to disclose any personally identifying information in further use of this information. (35(4)(b)) Where the clinical records are to be transmitted outside the institution all personally identifying information must be removed. (35(4)(a))

**THE MEDICAL RECORD:  
THE PUBLIC HOSPITALS ACT**

*Q: What is the "medical record"?*

A: What must be included in the medical record is set out clearly for in-patients and for out-patients in Reg.965, subsection 19(4)(a) as amended by O.Reg. 761/93, and 19(4)(b) respectively. Some hospitals may require that additional materials are to be included. Although not required to be part of the medical record, the regulation indicated also requires that hospitals observe the same preservation requirements for: "Notes, charts and other material relating to patient care." (20(2) 2)

*Q: What is the required preservation period?*

A: It is the same for patients and outpatients and depends on the age of the patient. For those 18 or older, it is ten years after the date of discharge or death. For those under 18, it is ten years after their eighteenth birthday.

*Q: Would not working files be included by the phrase: "other material relating to patient care"?*

A: Probably, although the correct interpretation will only be known when tested at law. Arguments can be made that psychological working files are included in the phrase you mention. At the same time, the marked medical orientation of this Act permits the interpretation that the phrase in question refers to the medical care of patients. On the advice its of legal counsel, the College recommends that psychologists employed by public hospitals should proceed with this latter interpretation until it is shown inappropriate at law.

*Q: What are the implications of this view?*

A: First of all, it implies that the contents of working files should be independently maintained. Secondly, it implies that the disclosure of the contents of these files should be at the discretion of the psychologists involved, and should not be simply determined by the provisions of the Act or their routine application.

*Q: Does the Public Hospitals Act have much the same provisions as the Mental Health Act?*

A: No. Generally, the PH Act gives the hospital board wide discretionary powers with respect to the disclosure of the medical records and other documents related to patient care. The hospital administrator is made responsible for the maintenance of the record system, but the it is the board, assisted by the medical advisory committee, which sets policy, within the framework of the Act, as to access and disclosure. Strictly speaking, even the attending physician, dentist, and/or midwife, is accorded access to the medical record of a patient by the permission of the board.

*Q: Does the patient have a right of access to his/her medical record?*

A: The PH Act does not award this right, nor does it give the board explicit permission to grant this request. While hospital practices vary, recent trends incline toward granting patients supervised access to their medical records if their reasons are not judged to be frivolous, and if they are persistent. It should also be noted that this practice may soon change to readier patient access in recognition of the decision of the Supreme Court of Canada which held that a patient had a general right of access to his/her medical records, and that a record keeper had to justify denying a patient access to his/her medical records. (*McInerney v. MacDonald* (1992), D.L.R. (4th) 415 at 427-428)

*Q: Can the patient authorize the access of others to the his/her medical record?*

A: The Act allows the board to permit "a person who presents a written request signed by, the patient,...to inspect and receive information from medical records and from notes, charts, and other material relating to patient care and to be given copies therefrom." (Reg.965, 22(6)(c)(i)) If the request is from a physician, then typically a selection of documents will be sent including the discharge note, the operative note if surgery was involved, together with what consultative reports or summaries are thought to be useful. Requests for authorized disclosure from other health professionals may, or may not, be treated in a similar manner depending onboard policy. It is of interest to note that the PH Act gives the board the right to disclose a patient's medical record to another hospital on the written request of the administrator, but without the consent of the patient.

*Q: Would the parents of a child being treated have a right of access to the medical records?*

A: The Act gives the board the discretionary right to disclose the records "to the parent or person who has lawful custody of an unmarried patient under sixteen years of age." (22(6)(c)(iii)) How this will be applied may vary considerably.

*Q: Under what conditions are medical records and "other material related to patient care" available for research?*

A: The hospital board is permitted to grant access to medical records ("and other material relating to patient care") to a member of the medical, dental, or midwifery staff for teaching purposes, or for scientific research that has been approved by the medical advisory committee. (22(6)(d)(i),(ii) as amended by O.Reg. 761/93 S.10(2)).

Curiously, the board is also permitted to grant access to any person for the purposes of scientific research, without any further condition mentioned in the Act. (22(6)(f))

**References**

1) Management Board Secretariat: Ontario's Access and Privacy Legislation: An Annotation. Toronto: Publications Ontario, 1993

2) Standing Committee on the Legislative Assembly: Report on the Municipal Freedom of Information and Protection of Privacy Act, 1989 3rd Session, 35th Parliament, 43 Elizabeth II. Toronto: Legislative Assembly of Ontario, 1994.

**PART 1 - GUIDE TO THE PRIVACY ACTS**

	<b>FIPP Act</b>	<b>MFIPP Act</b>	<b>Privacy Act</b>
(A) DECLARATION OF FILE SYSTEMS	44 & 61(1)(b)	48(1)(b)	10(1)(a), (b)
(B) DESCRIPTION OF FILE SYSTEMS	45(a)-(g)	34(1)(a)-(g)	11(1)(a) (i)-(iv) 11(1)(b)*
(C) ACCESS RIGHT	10(1), (2) 47(1)(a), (b)	4(1), (2) 36(1)(a), (b)	12(1)(a), (b) 17(2)(a), (b)
(D) RIGHT TO COPY	30(1), (3)	23(1), (3)	17(1)(b)
(E) AUTHORIZE DISCLOSURE TO OTHERS	21(1)(a)	14(1)(a)	8(1)
(F) NATURE OF CONSENT REQUIRED	42(b)	32(b)	not specified
(G) DEFINITION OF PERSONAL INFORMATION	2 "personal information" (b), (e), (g)	2 "personal information" (b), (e), (g)	2 "personal information" (b), (e), (g)
(H) MINIMUM PRESERVATION PERIOD	40(1) Reg. 460 5 (1)	30(1) Reg. 823 5	6(1) SOR/83-508 4 (1)(a)
(I) SANCTIONED EARLY RECORD DESTRUCTION	Reg. 460, 5(1)	Reg. 823 5	not permitted
(J) RECORD UPDATE OBLIGATION	40(2)	30(2)	6(2)

**PART 2 - GUIDE TO THE PRIVACY ACTS**

	<b>FIPP Act</b>	<b>MFIPP Act</b>	<b>Privacy Act</b>
(K) RIGHT TO CORRECTION OF RECORD	47(2)(a), (c)	36(2)(a), (c)	12(2)(a)
(L) APPENDING DISAGREEMENT NOTE	47(2)(b)	36(2)(b)	12(2)(b)
(M) NOTIFICATION OF CORRECTION	47(2)(c)	36(2)(c)	12(2)(c)(i),(ii)
(N) WITHOLDING DISCLOSURE - THREAT TO WELL BEING	20	13	28: SOR/83-50 8 SOR 90/157 13(2)
(O) WITHOLDING DISCLOSURE - HARM TO OTHERS	20	13	25
(P) THIRD PARTY RIGHTS - COMMERCIAL	17(1)(c) 18(a), (c)	10(1)(c) 11(a), (c)	Access to Information Act 20(1)
(Q) THIRD PARTY RIGHTS - TEST ITEMS	18(1)(h)	11(1)(h)	nil
(R) THIRD PARTY RIGHTS - INVASION OF PRIVACY	21(1)(f) 28(1)-(9)	5(2), (3)(a)-(c), (4)	8(1); 26
(S) INVASION OF PRIVACY CRITERIA	21(2), (3)	14(2), (3)	not specified
(T) AUTHORIZATION OF INFORMATION	38(1); 39(1)(a)	28(1); 29(1)(a)	5(1)-(3)*
(U) DATA COLLECTION LIMITS	38(1), (2)	28(1), (2)	4
(V) DISCLOSURE WITHOUT CONSENT	21(1)(b) 11(1)-(4)	14(1)(b) 5(1)-(4)	8(2)(m)(i), (ii)
(W) DISCLOSURE NEEDED FOR SERVICING	Reg. 460 (2)	Reg. 823 3(2)	7(a)
(X) DISCLOSURE FOR RESEARCH	21(1)(c) Reg 460 4(2)	14(1)(c) Reg. 823 (10)(1)	8(2)(j)(i), (ii)
(Y) WITHOLDING RECORDS OF ADVICE	13(1), (2)	7(1), (2)	24(a), (b)*

*\* Indicates a similar but importantly different provision*

NOTES