

Joint Submission on Proposed Amendments to O. Reg. 107/96 (Controlled Acts)

Children's Mental Health Ontario (CMHO), the Canadian Mental Health Association, Ontario (CMHA Ontario), and Addictions and Mental Health Ontario (AMHO) appreciate the opportunity to comment on the Proposed Amendments to O.Reg. 107/96 (Controlled Acts). We appreciate the value of regulating the practice of psychotherapy, and the importance of protecting the public from individuals who may be inappropriately and/or unlawfully delivering psychotherapy.

However, this process has also introduced a range of challenges with respect to how to interpret and apply the legislation, and how to ensure that, as we proceed, we are not disrupting the flow of essential mental health and addictions treatment to countless children, youth, adults, and families throughout Ontario. In this submission, we have outlined the community-based mental health and addictions sector's recent efforts to engage the issues surrounding the controlled act of psychotherapy, and what we believe is critical to include in amended regulations.

In particular, we feel it is critical that the government revisit the exemption criteria that was presented to the sector in October—and revise the proposed amendments to include these criteria, or some version of them, in order to provide long-term clarity to unregulated practitioners who may use the controlled act of psychotherapy as a necessary ancillary service to their work. Doing so will help to provide the long-term clarity that is desperately needed.

Background in the Mental Health and Addictions Sector

Collectively, CMHO, CMHA Ontario, and AMHO represent approximately 350 community-based mental health and addictions (MHA) agencies, serving many hundreds of thousands of children, youth, and adults each year—individuals living with the most significant complex mental health and addictions issues. The treatment that is delivered in MHA agencies, including psychotherapy, is provided by a range of regulated health professionals—including psychologists, social workers, nurses, and psychotherapists—as well as many experienced and extensively-educated, but unregulated professionals—such as child and youth care practitioners, addictions workers, and a range of crisis workers.

An ongoing source of ambiguity over the last decade has been what specifically falls within the definition of the controlled act of psychotherapy. Efforts have been made to distinguish between counselling and psychotherapy; as well as between psychotherapy that is not a controlled act and psychotherapy that is. Indeed, earlier this year, five of the six regulatory colleges whose members will have the authority to perform the controlled act of psychotherapy (once it is proclaimed) released a consensus document (“Understanding When Psychotherapy is a Controlled Act”) in an effort to add clarity to this conversation. However, many questions remained, and some new ones emerged.

In the MHA sector, this discussion has been focused within the context of whether unregulated MHA workers, through their contributions to the delivery of mental health and addictions treatment, are ever using psychotherapy that is a controlled act.

In the case of some unregulated MHA workers, depending on their specific roles and responsibilities, MHA agencies have determined their work does *not* require use of the controlled act of psychotherapy. These staff can continue performing their duties as usual. In the case of other unregulated MHA workers, again depending on their specific roles and responsibilities, MHA centres have determined their work clearly *does* include use of the controlled act. These staff have been encouraged or required by their employers to apply to register with one of the relevant regulatory colleges. Specifically, such staff typically sought to register as a psychotherapist with the College of Registered Psychotherapists of Ontario (CRPO) through the grandparent route (which closed on March 31, 2017) or as a social service worker with the Ontario College of Social Workers and Social Service Workers (OCSWSSW).

But **given the imprecise definition of the controlled act of psychotherapy, there remain a wide-range of cases in which it is unclear whether and where an MHA is using psychotherapy**—and where their work might sometimes, but only occasionally, veer into use of the controlled act. And if the government and regulators were to determine that unregulated MHA workers in all of these “grey” cases *are* using the controlled act of psychotherapy, and can no longer do so following proclamation, this would cause considerable and widespread disruption in the delivery of mental health treatment to thousands of children, youth, and adults across the province. This remains an intense fear felt throughout the MHA the sector.

The Previously-Discussed Exemption and the New Proposed Regulatory Amendments

On November 22, the government released its proposed amendments to the Controlled Acts Regulation made under the Regulated Health Professions Act, 1991 in order to facilitate proclamation of the controlled act of psychotherapy. The proposed amendments allow for a period of time during which anyone may perform the controlled act of psychotherapy. Following the transition period, individuals who have not registered with one of the relevant regulatory colleges will no longer be able to perform the controlled act in the course of providing health care services to an individual, unless it is done through legitimate delegation, or subject to certain exceptions set out in the RHPA.

We are dismayed to see that the current proposal does not include the exemption criteria that was previously presented to stakeholders in October 2017.

When the Ministry of Health and Long-Term Care (the Ministry) briefed CMHO and other stakeholders in October, we were presented with the outline of a criteria-based exemption. Under this potential exemption, unregulated MHA workers whose work included use of the controlled act of psychotherapy as merely a necessary ancillary service to the function of their core roles (and who also met the other components of the criteria) would be excluded from the requirement to become registered with an approved regulatory body.

We expect that the Ministry received a diversity of responses to this potential exemption, and acknowledge there may have been some challenges with the definitions. We also appreciate that it did not resolve the fundamental confusion surrounding the need to distinguish psychotherapy that is a controlled act, from psychotherapy that is not.

But, the previously-discussed exemption made an effort to minimize the disruption potentially caused by the proclamation of the controlled act of psychotherapy, by more clearly identifying when it is viewed as acceptable for unregulated MHA workers to use the controlled act of psychotherapy in a limited sense. This earlier form of the exemption provided a clear path forward with respect to how to deal with cases in which an unregulated MHA worker’s contribution to treatment might sometimes, but only occasionally, veer into use of the controlled act of psychotherapy. In other words, it helped deal with the sorts of “grey” cases discussed earlier and we were quite pleased with it. The amendment that has now been formally proposed by the government does not do this.

Moving Forward

Merely implementing a transition period following proclamation only serves to extend the current reality in which anyone can perform the controlled act of psychotherapy, and nobody is quite sure what is acceptable when this period expires. And unlike was at least the case up until March 31 of this year, there is no longer even a realistic option for unregulated MHA workers to attempt to register as a psychotherapist, due to the restrictive educational requirements built into standard registration. So, it is not clear what this transitional period provides, other than the opportunity for the CRPO to potentially complete its review of grandparent-route applications, or for unregulated MHA workers to attempt to register as social service workers with the OCSWSSW—which many unregulated MHA workers may object to. At the very least, should a transitional period be put in place, it should provide ample time (and not be less than 2 years) for a fulsome consultation on the exemption criteria – and to ensure the sector has time to adapt. It will also provide time to work through other contentious issues – such as requiring RNs to have an order to initiate, for example, which would slow down services considerably.

Should the proposed amendments in their current form be carried forward, all of the cases in which it is not clear whether or not a worker is using the controlled act of psychotherapy in some limited sense, and what to do with such cases, will remain unclear.

As such, to provide a clear path forward on how to deal with cases in which an unregulated MHA worker's contribution to treatment might sometimes, but only occasionally, veer into use of the controlled act of psychotherapy, **we feel it is critical that the government revisit the criteria outlined in the previously-discussed version of the exemption—and revise the proposed amendments to include these criteria, or some version of them. Doing so will help to provide long-term clarity to these ongoing problems.**

At the same time, it is essential that the community-based MHA sector receives guidance about what types of work include use of the controlled act of psychotherapy, and which do not. Clarity on this issue has been absent from this discussion for a decade, and we are running out of opportunities to address this in a comprehensive and consistent way, to ensure that we are in the best position possible to serve all Ontarians who are in need of mental health treatment.



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