

RECOMMENDATIONS ON THE DESIGNATION OF COUNSELLING

Irvine Epstein, Q.C., Chair
David MacAulay, Member
James Chisholm, Member

Application by the
British Columbia Association of Clinical Counsellors
British Columbia Art Therapy Association
British Columbia Association for Marriage & Family Therapy
Canadian Assoc. of Rehabilitation Personnel, BC Society
Canadian Professional Counsellors Association

February 21, 1997

FOREWORD

This report is in response to applications for designation under the Health Professions Act (R.S.B.C. 1979, c.162.7) by the British Columbia Association of Clinical Counsellors, the British Columbia Art Therapy Association, the British Columbia Association for Marriage and Family Therapy, the Canadian Association of Rehabilitation Personnel, B.C. Society, and the Canadian Professional Counsellors Association. Under this Act, the Health Professions Council is a nine person advisory body appointed by the Government of British Columbia to make recommendations to the Minister of Health and Minister Responsible for Seniors about the regulation of health professions. This report is the result of an investigation of counselling by a three member panel of the Health Professions Council.

CONTENTS

EXECUTIVE SUMMARY	iv
I. APPLICATION AND PROCESS OF INVESTIGATION.....	1
II. STATEMENT OF ISSUES.....	3
III. RECOMMENDATIONS	3
IV. RATIONALE FOR RECOMMENDATIONS	3
<u>Issue 1</u> : Does the practice of counselling meet the definition of health profession in section 1 of the <u>Act</u> ?	3
<u>Issue 2</u> : If counselling is a health profession, should the practice of counselling be designated, and thus regulated, under the <u>Act</u> ?	9
<u>Issue 3</u> : If designation under the <u>Act</u> is not appropriate, are there alternative ways of regulating counselling?	19
APPENDICES.....	26

EXECUTIVE SUMMARY

Five groups representing various counselling disciplines independently applied to the Health Professions Council for designation of their professions. Despite differences in the education and training required, and the treatment modalities used by each applicant, the Council decided that the applications raised very similar issues and decided to deal with them together. In essence, the issue raised by the applications was whether "counselling" should be designated as a health profession under the Health Professions Act the (Act).

The Council reviewed the applications, considered written submissions, and heard oral presentations by the applicants, the public and other interested organizations at a public hearing held in Vancouver on November 21 and 22, 1995. The Council also sought information from other jurisdictions where counselling is currently regulated.

The Council considered whether the applicants' practices fell within the definition of a health profession in section 1 of the Act as several submissions received during the investigation indicated there was some controversy regarding this issue. Without making a decision on this point, the Council decided to apply the public interest criteria in the Health Professions Act Regulation to determine whether designation under the Act was appropriate for counselling, assuming that counselling did fall within the definition of a health profession.

After reviewing the applications, considering the submissions made and analyzing the public interest criteria in relation to each application, the Council decided that the regulatory model established under the Act was not an appropriate way to regulate counselling. The Council was particularly influenced by the wide diversity amongst the applicants in terms of education, training and services provided. The Council also had some concerns about whether an effective leadership, acceptable to all of the various practitioners of counselling, would emerge as a result of designation under the Act. In the Council's view, the college model of regulation under the Act is not appropriate for such a widely divergent activity as counselling.

As a result, the Council declined to recommend that any of the applicants, or the applicant group as a whole, be designated under the Act.

However, the Council concluded there was some risk of harm in the unregulated practice of counselling, and that some form of regulation was necessary. The Council recommended that consideration be given to alternative regulatory systems which could be used for counselling as well as other health related activities for which the Act is not appropriate.

I. APPLICATION AND PROCESS OF INVESTIGATION

(a) General Introduction

The Health Professions Council has considered applications for designation as a health profession under the Health Professions Act (the Act) from the following five organizations:

- The British Columbia Association of Clinical Counsellors
- The British Columbia Art Therapy Association
- The British Columbia Association for Marriage and Family Therapy
- Canadian Association of Rehabilitation Personnel, BC Society
- Canadian Professional Counsellors Association

After an initial review, the Council determined that there was a significant overlap in the issues raised by the applications. Although each applicant provided different definitions of their scope of practice the Council decided that, for the most part, the primary activity performed by each of the applicants was encompassed in the general term "counselling".

Thus, despite the wide variation in the applicant groups' education, training and treatment modalities, the Council decided that the main issue raised by the five applications was whether counselling should be designated as a health profession under the Act.

As a result, the Council felt that a combined approach to the applications would result in a more effective use of the parties' and the public's time and resources, and the applications were considered together.

The term "counselling" embodies a wide range of services including but not limited to interviewing, assessing, behaviour therapy, behaviour modification, hypnosis and research. Although counselling falls within the scope of practice of some currently regulated health professionals, notably psychologists and medical practitioners, this

is the first time that the possibility of regulating counselling as a distinct profession has been explored in British Columbia.

The Council's primary responsibility, as set out in the Act, is to determine whether it would be in the public interest to designate a health profession under the Act. Designation under the Act is the only form of regulation that falls within the Council's mandate and the Council believes it important to understand that designation is an expensive and elaborate form of regulation. The consequences of designation are significant, as once designated, a health profession must establish a college and create registration, inquiry and discipline committees to regulate its members. As a result, in the course of its investigation of counselling the Council decided to consider other forms of professional regulation.

(b) Investigation

The Council's consultation process involved related professions, consumer interest groups, and educators in British Columbia and other jurisdictions. A list of the organizations the Council contacted for information about the practice of counselling can be found in Appendix A.

A Vancouver journalist mentioned the investigation in her columns in the Vancouver Province newspaper. As a result, the Council received letters from about 40 individuals who had experiences (many negative, some positive) with counselling.

The Council felt it needed more information before it could determine whether counselling was a profession eligible for designation under the Act, and to understand better whether continuation of unregulated counselling presented a risk of harm to the public.

The Council held a public hearing on November 20 and 21, 1995 in Vancouver at which the applicants and 17 other organizations made presentations. The hearing afforded the Council the opportunity to ask questions and discuss the issues in more detail. A list of the participants in the public hearing is attached as Appendix B.

II. STATEMENT OF ISSUES

During the investigation, the three main issues addressed by the Council were:

- 1) Does the practice of counselling meet the definition of health profession in section 1 of the Act?
- 2) If counselling is a health profession, should counselling be designated, and thus regulated, under the Act?
- 3) If designation under the Act is not appropriate, are there alternatives ways of regulating counselling?

III. RECOMMENDATIONS

Pursuant to section 10 of the Act, the Health Professions Council recommends to the Minister of Health and Minister Responsible for Seniors that:

- 1) the practice of counselling not be designated under the Act,
- 2) alternative ways of regulating counselling be explored.

IV. RATIONALE FOR THE RECOMMENDATIONS

In this section, the Council proposes to discuss the rationale for its recommendations under the headings set out in the section, **Statement of Issues**:

- 1) Does the practice of counselling meet the definition of health profession in section 1 of the Act?
- 2) If counselling is a health profession, should the practice of counselling be designated, and thus regulated, under the Act?
- 3) If designation under the Act is not appropriate, are there alternatives ways of regulating counselling?

Each of these issues is considered below.

Issue 1: Does the practice of counselling meet the definition of health profession in section 1 of the Act?

A fundamental first step in any application is to determine whether the applicant group falls within the definition of "health profession" in section 1 of the Act:

"health profession" means a profession in which a person exercises skill or judgment or provides a service related to

(a) the preservation or improvement of the health of individuals, or

(b) the treatment or care of individuals who are injured, sick, disabled or infirm

The Council must be satisfied that the applicant group meets this definition before considering the issue of whether designation under the Act is appropriate.

The services performed by each of the applicant groups are summarized below:

• **British Columbia Association for Marriage and Family Therapy:**

Marriage and family therapy includes family therapy and individual therapy and addresses problems within the family context. The services provided include couples therapy, relationship therapy, parenting programs, family life education, marital mediation and conciliation, marriage therapy, premarital therapy, divorce therapy and sexual therapy.

• **Canadian Professional Counsellors Association**

Members of this organization provide counselling services in the following areas: sexual abuse, alcohol and drug abuse, co-dependency, depression, communication and conflict resolution, suicide and crisis intervention, loss and grief, career counselling, personality disorders, anxiety and mood disorders, and eating disorders/weight loss counselling.

• **British Columbia Association of Clinical Counsellors**

Members of this group describe their services as the application of diagnostic and treatment principles and methods, and procedures of counselling knowledge, for facilitating effective functioning during the life-span developmental process.

• **Canadian Association of Rehabilitation Personnel - BC Society**

Rehabilitation practitioners provide rehabilitation counselling with vocational redirection to individuals with disabilities. The services include medical and psychological service coordination, case management, job placement and job development, rehabilitation services coordination, job analysis, client

assessment, administrative planning, court and vocational assessments, employment counselling, and independent living services.

• **British Columbia Art Therapy Association**

The practice of art therapy includes diagnostic and assessment processes; maintenance and centering activities; cognitive development and stabilization for individuals with varying levels of retardation; ameliorative treatment for victims of trauma and subsequent reframing of response; gaining perspective and emotional/spiritual healing for patients with physical illness (AIDS, cancer, etc.) or limitations (physical injury, stroke, etc.); focusing on self-perception and self-change; and enhancement of emotional well-being and personal growth.

In reviewing this list of services provided by the applicant groups, it was clear that all provided services to "sick" or "infirm" individuals with a view to "improving" or "preserving" the individuals' health. Therefore, the Council was satisfied that the services performed by each of the applicant groups appear to fall within the criteria set out in subsections (a) and (b) of the definition.

However, the Council was less certain that the applicants had met the introductory part of the definition which requires them to establish that "counselling" constitutes a "profession". As a first step the Council attempted to define what was meant by the term "profession" and was assisted by an excerpt from the Seaton Commission's report *Closer to Home*. In its chapter on professional regulation, the Seaton Commission stated that one of the factors to consider in deciding whether self regulatory status is appropriate is whether the core activity of the members of the profession constitutes a "clear, integrated and broadly accepted whole".

The Council also believes that the term "profession" in section 1 must be understood in the context of the Act and the Regulations as a whole. Specifically, one must consider the effect of designation when considering how to define the term profession. Once designated under the Act, the profession must establish a college which has as its main object the regulation of the profession in the public interest. The duties and objects of the college are set out in more detail in section 15.1 of the Act and include:

- establishing and monitoring standards of education and qualifications for registration;
- establishing, monitoring and enforcing standards of practice;
- establishing and maintaining a continuing competency program to promote high practice standards.

The Council does not believe that a college can effectively carry out such duties without some common understanding and general acceptance of its core activity. In short, the Council believes that in order to qualify as a "profession" under the Act one must be able to identify a clear, integrated and broadly accepted core activity performed by the applicant group(s).

In the case of counselling, there was considerable debate over whether "counselling" was an activity performed by many health professionals or whether "counselling" could in itself be said to constitute a profession.

On the "**activity**" side, the following statement from a joint submission made to the Council by the Board of Registration for Social Workers and the BC Association of Social Workers is typical of the submissions received:

We believe 'counselling' is an intervention technique used by a range of professionals and non-professionals including social workers, psychologists, physicians, lawyers, occupational therapists, members of the clergy, dieticians, guidance counsellors, peer counsellors and members of self help groups. Counselling is a term used to refer to the activities of groups whose performance is based upon establishing a therapeutic relationship with a client. We do not believe counselling is a profession based upon a particular body of knowledge.

...

We do not feel it would be in the public interest to designate counselling as a self governing profession under the Health Professions Act because counselling is a function and not a profession per se.

A similar submission was received from the Canadian Psychiatric Association:

... the Council should consider that the term counselling lacks clear definition which is a substantial problem should there be a college of counsellors. Part of the reason for this is that counselling describes a general activity which is very non-specific rather than a profession. Counselling can of course range from financial counselling to job counselling to pastoral counselling to psychiatric counselling, the latter itself may vary from relatively simple supportive counselling to complicated long-term intensive insight orientated psychotherapy.

...

Without a clear definition, a professional group is difficult to regulate or discipline, if not impossible.

The Council received many similar submissions including submissions from the BC Dieticians' and Nutritionists' Association, the BC Psychiatric Association, the BC Psychological Association and the BC Society of Occupational Therapists.

On the "**profession**" side, representatives of the University of British Columbia submitted at the public hearing that counselling is clearly a profession as it has a distinct body of knowledge, a code of ethics and is represented in a distinct university program. The UBC representative also stated that the minimum qualification for admission to this "profession" should be a Masters of Counselling. The Council notes that such a requirement would exclude many people who currently perform what may be characterized as counselling services, and indeed many members of some of the applicant groups.

The Council also noted that there is a lack of consensus over what constitutes the basic standards of practice of counselling. As noted by the British Columbia Psychiatric Association:

There is not to our knowledge any body of knowledge forming a basis of standards of practice in counselling. There are between 70 and 100 different schools of psychotherapy presently practised by various therapists within the United States, from analytic to Rogerian, to hypnotherapy or psychodrama. There is overlap between them but no unifying pattern or body of study.

In considering this issue, the Council reviewed each applicants' training and qualifications:

- British Columbia Art Therapy Association

Currently, there is no degree level program for art therapy in BC and only one in Canada. Members of this Association now are required to have 750-800 hours of supervised practicum. By 1998 they will be required to have a minimum of a Master's degree.

- British Columbia Association of Clinical Counsellors

Seventy percent of the members of this Association have a Masters or Ph.D. as well as two years of post-graduate supervised practice in an area of their choice.

- British Columbia Association for Marriage and Family Therapy

Members of this Association have one graduate degree plus 300 hours of face to face supervised counselling and a post-graduate degree with 1000 hours of face to face counselling, including 200 hours of supervised face to face counselling.

- Canadian Association of Rehabilitation Personnel - BC Society

Practitioners must have a Masters degree, either in Rehabilitation Counselling or with related graduate courses and a combination of internship/employment experience.

- Canadian Professional Counsellors Association

Members of this association must successfully complete a qualifying examination and have two years experience in counselling practice. There are no minimum academic requirements.

CONCLUSION :

Clearly, there exist wide disparities in the applicants' educational and practical backgrounds, services performed and treatment modalities employed. The Council notes these applicants do not include numerous persons and organizations currently performing what may be characterized as counselling services. In its submission to the Council, the Canadian Professional Counsellors Association provided a comprehensive list of counselling service providers which included the following:

Weight Loss Counsellor, Pastoral Counsellor, Spiritual Counsellor, Family Violence Counsellor, Alcohol and Drug Counsellor, Aboriginal Counsellor, Child Care Counsellor, Geriatric Counsellor and Immigrant Counsellor.

It is likely that there is a great variation in the services performed and training required by these and other groups.

After a careful review of this issue, the Council believes that although each of the applicants is involved in some way in communicating with individuals to assess or treat mental, emotional or behavioral disorders (albeit with widely divergent treatment modalities), it is difficult to identify a clear, integrated and broadly accepted core activity in the practice of counselling. However, the Council is not prepared to conclude that counselling does not meet the broad definition of health profession under the Act, and will conduct the public interest analysis mandated by the Act on the assumption that counselling does fall within the definition of a health profession.

Issue 2. If counselling is a health profession, should the practice of counselling be designated, and thus regulated, under the Act?

Section 10(1) of the HPA sets out the Council's mandate regarding applications for designation:

Where the council receives an application under section 7(1) or a direction under section 8, the council shall determine whether it would be in the public interest to designate a health profession under this Act, having regard to the information obtained in any investigation conducted by the council and in accordance with the prescribed criteria, if any.

The "prescribed criteria" are set out in section 5 of the Health Professions Regulation:

5(1) For the purposes of section 10(1) of the Act, the Council **must** consider the extent to which the practice of a health profession may involve a risk of physical, mental or emotional harm to the health, safety or well being of the public, having regard to

- (a) the services performed by practitioners of the health profession,
- (b) the technology, including instruments and materials, used by practitioners,
- (c) the invasiveness of the procedure or mode of treatment used by practitioners, and
- (d) the degree to which the health profession is
 - (i) practised under the supervision of another person who is qualified to practise as a member of a different health profession, or
 - (ii) practised in a currently regulated environment.

(2) The council **may** also consider the following criteria:

- (a) the extent to which the health profession has demonstrated that there is a public interest in ensuring the availability of regulated services provided by the health profession;
- (b) the extent to which the services of the health profession provide a recognized and demonstrated benefit to the health, safety or well being of the public;
- (c) the extent to which there exists a body of knowledge that forms the basis of the standards of practice of the health profession;
- (d) whether members of the profession are awarded a certificate or degree from a recognized post-secondary educational institution;

- (e) whether it is important that continuing competence of the practitioner be monitored;
- (f) the extent to which there exists within the health profession recognized leadership which has expressed a commitment to regulate the profession in the public interest;
- (g) the likelihood that a college established under the Act would be capable of carrying out the duties imposed by the Act, having regard to factors which in the view of the Council may affect the viable operation of the college;
- (h) whether designation of the health profession is likely to limit the availability of services contrary to the public interest.

Thus, the criteria fall into two categories: "risk of harm" set out in section 5(1) which must be considered; and discretionary factors set out in section 5(2) which may be considered. The Council proposes to deal with each in turn.

A. Risk of Harm - Section 5(1) of The HPA Regulation.

The risk of harm involved in the practice of a health profession is the most important reason for regulating its practitioners. Because of the possible negative effects of regulation under the Act, including the potential for reduced competition and consumer choice and increased cost, the Council believes that a profession should only be designated where the risk of harm is serious, having regard to the factors set out in section 5(1)(a) to (d).

s.5(1)(a) the services performed by practitioners of the health profession

The services performed by the applicant groups were described in the discussion of Issue 1, above. While each applicant offers some services specific to their specialty, there are certain common elements. All the groups perform evaluation, diagnosis, assessment, and treatment of individuals, families and groups.

In both the applications made and submissions received there was a strong consensus that there is a potential risk of mental or emotional harm to the public from counselling services. The submission of the Canadian Professional Counsellors Association summarized the potential as follows:

The risk of harm from incompetent, unethical, or impaired practice of counselling is potentially significant as in the instances of unreported child sexual abuse, failure to assess and prevent suicidal intent, sexual involvement with a client, and suggesting that a client was sexually abused as an infant thereby contributing to false memories and tragic lawsuits.

Many similar submissions were received including submissions from the Music Therapy Association, the Canadian Psychological Association, the British Columbia Psychological Association, the B.C. Association of Social Workers, and the Canadian Mental Health Association.

Further evidence of harm was received from the public. As a result of an article by Kathy Tait in the Vancouver Province the Council received approximately 40 letters from members of the public relating stories of unethical, unprofessional and dangerous practices employed by counsellors, most of whom were either already regulated under a professional association or college or working in a controlled environment. The Council would like to express its gratitude to those who came forward to relate what in many cases were traumatic stories of abuse and ill treatment. The contribution to our process is greatly appreciated.

However, overall there was very little objective evidence presented of actual harm from currently unregulated practitioners.

After considering the submissions, the Council believes that based on the information provided, there is some evidence of potential harm to the public arising from the services provided in the practice of counselling.

s.5(1)(b) the technology, including instruments and materials, used by practitioners

s.5(1)(c) the invasiveness of the procedure or mode of treatment used by practitioners

These factors are not relevant to the present applications as there is no risk of harm arising from technology or invasive procedures used in counselling.

s. 5(1)(d) the degree to which the health profession is

(i) practised under the supervision of another person who is qualified to practise as a member of a different health profession,

(ii) practised in a currently regulated environment

In the Council's view, the potential for harm is greater where services are performed in unsupervised and unregulated environments. This factor is difficult to assess in the case of counselling. The Council received several submissions, notably from the B.C. Teachers Federation, stating that counselling services are in many cases provided within institutions which ensure accountability of service providers. Further, counselling services are provided by many currently regulated health professions such as psychologists, medical practitioners and nurses.

However, in reviewing the applications and submissions, the Council determined that a significant amount of counselling is performed by practitioners in private practice who are currently unregulated and unsupervised. Aside from the Society Act, which requires no specific qualifications or training and provides only title protection for registered associations, there is no law which regulates these practitioners.

After considering the section 5(1)(a) to (d) factors, the Council is satisfied that the practice of counselling may involve a risk of physical, mental or emotional harm to the health, safety or well being of the public. However, the Council notes that the extent of the risk is difficult to assess because of the lack of detailed data on the issue.

B. Discretionary Criteria - Section 5(2) of the HPA Regulation.

s.5(2)(a) the extent to which the health profession has demonstrated that there is a public interest in ensuring the availability of regulated services provided by the health profession

Most of the written submissions and presenters at the hearing support the applicants' position that there is a public interest in ensuring the availability of counselling services. In fact, at the hearing, the representative of the BC Psychiatric Association indicated that it is recommending the delisting of family counselling from the psychiatric fees schedule because it feels that this is an area where the public can be better served by counselling professionals. The Council agrees that there is a public interest in ensuring the availability of counselling services.

s.5(2)(b) the extent to which the services of the health profession provide a recognized and demonstrated benefit to the health, safety or well being of the public

On the basis of the written and oral submissions, the Health Professions Council determined that there has been a recognizable and demonstrated benefit from the applicants' services and from the provision of counselling services generally.

While it is clear, especially from the letters generated by Kathy Tait's column in the Province, that some persons providing counselling services can be irresponsible and unethical, the Council believes that the letters were sent not to question the general benefits of counselling services but rather to support the regulation of counselling.

s.5(2)(c) the extent to which there exists a body of knowledge that forms the basis of the standards of practice of the health profession

This issue was problematic. Both the written and oral submissions indicate disagreement amongst practitioners on whether a common body of knowledge exists. For example, a representative of the Department of Counselling Psychology, Faculty of Education, University of British Columbia indicated that there exists a large body of knowledge upon which its post-graduate program is based, but the Council notes that the body of knowledge is not common to all of the applicants. At the same time, the BC Psychiatric Association, along with others, stated there is no recognizable body of knowledge and that the treatments and services provided vary widely amongst those who provide counselling services.

The Council believes that it is difficult, if not impossible, to identify a common body of knowledge which applies to all those engaged in the practice of counselling.

s.5(2)(d) whether members of the profession are awarded a certificate or degree from a recognized post-secondary educational institution

This issue, too, was problematic. As the investigation proceeded, it became very clear that the practice of counselling encompasses a wide variety of services requiring an equally wide range of educational qualifications. The educational requirements of each of the applicant groups were summarized above. Clearly, even among the applicants (who do not represent all providers of counselling services), the educational requirements vary widely.

In addition, some of the submissions received during the consultation were from other organizations whose members practice counselling, and their educational requirements also varied amongst these groups. For example, the American Association of Pastoral Counsellors requires members to have at least a Masters degree. A further degree qualifies a member as a Fellow. Employees of the Family Services of Greater Vancouver - Family Therapy Department must have an M.A. or an M.S.W. Criteria for membership in the Board of Registration of Social Workers is a B.S.W. from an accredited university.

It is clear that there is no consistent basic standard of education among the applicants. While there are Masters level programs available in counselling at the University of British Columbia, a Masters level entry requirement for a proposed college would exclude many practicing members of the applicant groups.

These varying educational requirements indicate that there exists a variety of certificate and degree programs for people engaging in counselling practice. Because of the diversity of counselling approaches, philosophies and activities, the Council believes that it would be extremely difficult to set and enforce educational requirements or standards under the college system of regulation mandated by the Act. Further, depending on the standards or requirements imposed, many persons currently engaged in the practice of counselling may be excluded from the proposed college. The result could well be a reduction in available alternatives to the detriment of the public interest.

s.5(2)(e) whether it is important that continuing competence of the practitioner be monitored

It is essential that counselling practitioners, like all health professionals, keep updated on advances in their professions. However, in the case of counselling, the mechanism for ensuring competency would be difficult to implement and enforce because of the wide disparities in treatment modalities.

s.5(2)(f) the extent to which there exists within the health profession recognized leadership which has expressed a commitment to regulate the profession in the public interest

The applicants appeared to the Council to have demonstrated committed leadership of their respective organizations. However, the Council questions whether the various groups have the will or desire to work together effectively and co-operatively. As discussed, the various applicants provide a wide array of services and come from widely varying educational, theoretical and professional backgrounds.

The Council believes that establishing a college for the purpose of regulating counselling has the potential to lead to unproductive and unnecessary disputes about who is best suited to regulate the practice of counselling. Indeed, during the Council's investigation two of the applicants engaged in a testy exchange of correspondence regarding the educational backgrounds of their respective members. The Council also notes that the present applicants in no way represent all individuals who provide counselling services. In short, the Council believes that it is unlikely that an effective leadership, acceptable to all of the various practitioners of counselling and committed to governing the practice of counselling in the public interest, would emerge as a result of designation under the Act.

s.5(2)(g) the likelihood that a college established under the Act would be capable of carrying out the duties imposed by the Act, having regard to factors which in the view of the council may affect the viable operation of the college

This issue has already been touched on in the discussion of whether counselling is a profession and in the immediately preceding section on leadership, but the Council wishes to elaborate as the viability of a college is, in the Council's view, perhaps the most significant factor mitigating against designation under the Act.

According to section 15.1(2) of the Act a college established under the Act has the following objects:

- (a) to superintend the practice of the profession;

- (b) to govern registrants according to the Act, the regulations and the bylaws of the college;
- (c) to establish, monitor and enforce standards of education and qualifications for registration of registrants;
- (d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;
- (e) to establish and maintain a continuing competency program to promote high practice standards amongst registrants;
- (f) to establish, for a college designated under section 12(2)(h), a patient relations program to seek to prevent professional misconduct of a sexual nature;
- (g) to establish, monitor and enforce standards of professional ethics amongst registrants;
- (h) to require registrants to provide to an individual, access to the individual's health care records in appropriate circumstances;
- (i) to inform individuals of their rights under this Act, the regulations and the bylaws of the College and the *Freedom of Information and Protection of Privacy Act*;
- (j) to administer the affairs of the College and perform other duties through the exercise of the powers conferred by the Act, the regulations or the bylaws.

A college established under the Act is also required to establish registration, inquiry and discipline committees.

After considering the written and oral presentations, the Council has determined that it is unlikely that a college established under the Act for the practice of counselling would be capable of carrying out the duties imposed by the Act. In the Council's view, two factors are likely to affect the viable operation of a college model for the practice of counselling: diversity of services provided and diversity of standards of practice and education.

It was clear to the Council that there is wide diversity within the counselling profession. In addition to the applicants and other groups that participated in our investigation through written or oral presentations, there exist less traditional approaches to counselling - what might be referred to as 'new age' approaches.

The Council heard repeatedly of the difficulties inherent in one college governing practitioners using different counselling approaches. It is questionable whether representatives of the applicants could effectively work together to establish uniform standards of practice and governance procedures for each of the various counselling groups. Of particular concern was that the practitioners on the more established or traditional end of the continuum of counselling practitioners would regulate practitioners on the more alternative or non-traditional end of the continuum. Several of the less traditional groups felt that they would not get fair treatment under such a system.

From the submissions made at the public hearing the Council learned that it would be difficult to establish any one professional organization capable of representing the wide diversity of orientations and interests that currently characterize the field of counselling, much less that a single college would be able to join these various professional groups under one administrative umbrella.

An additional concern expressed is that the formation of one College might mislead the public into thinking that there is more uniformity within the profession than is actually the case. The practice of counselling varies widely, as does the training and education of those engaged in counselling. Creating a college may lead members of the public to infer that counsellors possess equal training and education when in fact that is not the case.

In light of the diversity of counsellors practicing in British Columbia and the great differences in their education and practice standards, it would be virtually impossible for a single college to establish, monitor and enforce minimum educational requirements or practice standards appropriate for all counselling professionals.

**s.5(2)(h) whether designation of the health profession is likely to
limit the availability of services contrary to the public
interest**

Concern was expressed that the creation of a college of counselling would restrict the availability of counselling services particularly if such a college were to impose stringent entrance requirements. A submission from the Coastal Mountain College of Healing Arts was typical of the comments received on this point:

In regards to licensing and/or certification, I am concerned that our students, whose training is more extensive than that received in graduate programs, may not qualify for licensing and/or accreditation depending upon your conclusions.

My concerns on this issue of licensing and certification carry far beyond my position here at the college. I believe that narrowing the scope of counselling practice and controlling the types of training and counselling offered to the public ignores the big picture of what is effective and helpful. I want to reiterate that no method of training or therapy has been proven to be more effective than others ...

The Council agrees that in the absence of a consensus on the issue of what constitutes the practice of counselling and on the required qualifications and training, the creation of a college system of regulation has the potential to restrict the availability of counselling services.

Other Factors

In addition to the factors set out in section 5 of the Health Professions Act Regulation, the Council also considered whether designation under the Act is likely to decrease the identified risk of harm. This is an important issue because, as noted above, protection of the public is the single most important reason for regulating a profession.

The Council questions whether designation under the Act would reduce the identified harm in the provision of counselling services. Although the evidence on this point was not definitive, it appeared to the Council that the main risk of harm arose from "fly by night" counsellors or "charlatans" who have no legitimate training or qualifications. It is far from clear, in the Council's view, how designation under the Act would deter the "charlatans" who are very unlikely to have any interest in becoming a member of a regulated body.

Further, the Council considered whether designating separate colleges for each of the applicant groups was an appropriate way to address the risk of harm. Such a decision might improve the general standards of services within each profession, but it would not address the public's need for protection from unqualified providers who operate outside the boundaries of such professional regulation. In any event, the Council does not believe it is in the public interest to create several separate regulatory bodies to regulate what is essentially one activity.

In short, the Council believes it unlikely that the regulatory scheme under the Act would protect the public from the types of risk raised by the practice of counselling. In the Council's view, what is needed is a different approach to regulating the practice of counselling, which recognizes the wide disparity in training, qualifications and treatment provided. The Council will discuss such a system under Issue 3.

CONCLUSION:

After carrying out the public interest criteria analysis mandated by the Act, the Council believes that although the practice of counselling presents such a sufficient risk of harm to the public that it should be regulated, designation under the Act is not an appropriate model for regulating the practice of counselling.

Recommendation 1

The practice of counselling not be designated under the Act.

Issue 3. If designation under the Act is not appropriate, are there alternative ways of regulating counselling?

In the course of its investigation, the Council briefly considered whether there are other forms of professional regulation which would be more appropriate for regulating the practice

of counselling. The Council spoke with representatives from other jurisdictions which do regulate counselling. Two in particular appeared to merit further consideration. They are the models now being used in the states of Washington and Nebraska.

(a) Nebraska's Approach to Regulating Counselling

The state of Nebraska has a Uniform Licensing Law for regulating all health professions and their practitioners. One of the categories of practitioners regulated under the law is mental health practitioners. For mental health practitioners, the law combines two forms of regulation: licensure and certification.

Licensure

The rationale for licensing mental health practitioners is to provide for omnibus legislation to protect the public from unscrupulous and unqualified mental health practitioners.

Licensing under this system means permission to practice certain health professions which would otherwise be unlawful. Mental health practice is now considered a health profession in Nebraska.

The law contains a very broad definition of "mental health practice":

Mental health practice shall mean the provision of treatment, assessment, psychotherapy, counselling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

...

Mental health practice shall include the initial assessment of organic mental or emotional disorders for the purpose of referral or consultation.

The definition excludes several services including practicing psychology or medicine, prescribing drugs or electroconvulsive therapy, treating physical disease, injury or deformity, diagnosing major mental illness or disorder (except in consultation with a qualified physician or licensed clinical psychologist) measuring personality or intelligence for the purposes of diagnosis or treatment planning, and using psychotherapy to treat persons with major mental or emotional problems or organic illnesses (except in consultation with a qualified physician or licensed clinical psychologist).

The law prohibits anyone from engaging in mental health practice unless they have a licence. Certain individuals are exempted from the prohibition including those qualified under other legislation, persons employed in government and members of the clergy.

The law also sets out the requirements for licensure including a master's degree in therapeutic mental health which includes a practicum or internship, three thousand hours of supervised mental health experience and an examination.

The system is regulated through the Department of Health which issues licences and through boards of examiners for each health profession which are appointed by the State Board of Health. The boards of examiners regulate the practice of the profession by various means including the adoption and enforcement of a code of ethics to ensure adequate protection of the public. Among other things, the code of ethics is a method for ensuring standards of professional competence.

Certification

The law also provides for the certification of certain specialty areas within mental health practice. Practitioners who meet the qualifications for speciality certification are given the exclusive right to use certain titles and hold themselves out as specialists in a particular area of mental health practice. "Counselling" and "Marriage and Family Therapy" are two such areas of specialty. A person who is licensed as a mental health practitioner may practice within the specified area but, unless certified, cannot use the title reserved for that specialty. In this way, consumers still have some choice but know that certified specialists have met certain qualifications. The Board of Examiners in Mental Health sets the requirements for speciality certification and approves education and training programs.

(b) Washington State's Approach to Regulating Counselling

Like Nebraska, Washington has a centralized approach to regulating health professions. Under the Washington system, there are three forms of professional "credentialling":

Registration

This is the least restrictive form of regulation and requires only that the practitioner of a health profession be identified to the department (i.e., registered), and does not require a qualifying examination. No person may practice or represent himself or herself as a practitioner of a health profession by the use of any title or description of services without being registered to practice by the department, unless otherwise exempted. The state maintains a roster of practitioners in a profession and the location, nature and operation of the health activity practice. A registrant is subject to the Uniform Disciplinary Act, the state law that provides for the disciplining of practitioners for unprofessional conduct. The main sanction is that if registration is denied or cancelled the person is prohibited from carrying on the practice for remuneration.

Certification

Certification is a voluntary process by which the state grants recognition to an individual who

has qualified by examination and met established educational prerequisites. A non-certified person may perform the same tasks, but may not use "certified" in the title. Marriage and family therapists are among professionals who are eligible for certification.

Again, certified practitioners are subject to the state's Uniform Disciplinary Act.

Licensure

Licensure is a method of regulation by which the state grants permission to persons who meet predetermined qualifications to engage in a health profession which would otherwise be unlawful in the absence of the permission. Licensure protects the scope of practice and the title. That is, only a licensed practitioner may perform services within the scope of practice of the profession. Licensed health professionals are also subject to the Uniform Disciplinary Act.

Generally, Washington's practice is to employ the least restrictive level of regulation consistent with the public interest which includes a balance between consumer choice and protection of the public.

Under Washington's Counsellor Law, the only levels of credentialing for "counsellors" are registration and certification.

The law prohibits anyone from engaging in the practice of counselling for a fee unless they are registered with the State Department of Health. Counselling is defined as follows:

Counselling means employing therapeutic techniques, including but not limited to social work, mental health counselling, marriage and family therapy, and hypnotherapy, for a fee, that offer, assist, or attempt to assist an individual or groups of individuals in the amelioration or adjustment of mental, emotional or behavioural problems ...

Certain classes of individuals are exempted from the law including anyone registered, certified or licensed under another law, employees of certain government institutions and persons practising counselling within religious organizations.

The law also provides for certification of certain mental health specialities including counselling and marriage and family therapy which give qualified applicants the exclusive right to use the titles "certified mental health counsellors" and "certified marriage and family therapists". The law sets out the requirements for certification as a specialist which generally include a masters degree, two years of post-graduate training in the chosen field and an examination.

CONCLUSION:

The Council has already stated its conclusion that self-regulation under the present provisions of the Health Professions Act is not an appropriate way to regulate counselling. The Council believes that a different approach to counselling is needed. The approach must adequately address the risk of harm associated with the practice of counselling, and recognize the diverse activities and practises encompassed by the generic term "counselling". This presents particular difficulties with establishing a self-regulating college under the Health Professions Act model.

The Council has briefly examined the Washington State and Nebraska systems. We are satisfied alternative regulatory regimes can be created but only after thorough investigation.

In this connection the responses to the preliminary report make very clear that the applicants and other interested health professionals wish to have an opportunity to participate in the investigation of alternative regulatory systems. The Council fully supports this idea and emphasizes that the Washington State and Nebraska models referred to are no more than examples of alternatives to be considered.

Recommendation 2

Alternative ways of regulating counselling should be explored.

Specifically, the Council recommends that a regulatory model for counselling be explored. The investigation should consider the incorporation of the following matters in any alternative system.

- (1) A registration system for anyone engaged in the practice of counselling, and for this purpose:
 - define counselling broadly to include all services which relate in any way to assisting individuals in dealing with mental, emotional or behavioural problems;
 - prohibit unregistered practise;
 - require all registrants to provide a description of their qualifications, area of practice and the professional title under which they practice.
- (2) A certification system to give certain specialist practitioners the exclusive right to use a descriptive title, and for this purpose:
 - create a board with members representing the various counselling disciplines, members of existing health professions such as medicine and psychology, and the public, to determine the speciality groups and qualifications and

training required for certification;

- limit certification to specialities which require a minimum of a masters degree and two years of supervised clinical work.
- (3) A centralized complaint and discipline process, and a common code of ethics which would apply to all registered practitioners.
- (4) A list of categories of exemptions from the registration system, for example, for persons already regulated under another statute, persons employed by government or government supported agencies such as hospitals, schools or universities.

The Council considered whether licensure was an appropriate element of such a system but, based on our preliminary review, we are currently of the opinion that the difficulties associated with defining an exclusive scope of practice make enforcement unworkable. Any investigation of alternative systems should consider whether licensure will unduly restrict the availability of counselling services contrary to the public interest.

TITLE PROTECTION

An important element of the Council's recommendation is certification of specialist practitioners and the corresponding exclusive right to use a descriptive title. Therefore, it is important that there be a mechanism for controlling the use of descriptive titles. At present, however, the Society Act provides a system for reserving titles under which there is very little government oversight.

In its recent report regarding occupational therapy, the Council stated:

It is the Council's view that the current situation where other titles with respect to health professions can be reserved under s.9(1) of the Society Act is not in the public interest. Unlike the Council's review of an application for designation under the Act, the Registrar under the Society Act does not conduct a detailed public interest analysis of the society, its membership or the services it provides with a view to regulation of the members of the applicant society. The Council believes that the title protection system under the Society Act could be confusing or misleading to members of the public who may conclude on the basis of the exclusive use of title conferred under the Society Act, that a health professional is subject to regulation which does not, in fact, exist. In addition, there is no restriction on a health care worker using a title which includes the words *registered, licensed or certified* even though he or she has not been granted a title under either the Society Act or the Act. In the Council's view, such unregulated use of these terms is not in the public interest as it may imply government sanction.

In its 1991 Report: The Royal Commission on Health Care and Costs recommended that:

- 7.a. *the Society Act be amended so that the Health Professions Council must approve an occupational title or abbreviation before the Registrar grants protection of it;*
- b. *all of the health profession titles previously granted protection under the Society Act that have not been approved by the Health Professions Council be revoked two years after the passing of the revised Health Professions Act; and*
- c. *the Health Professions Act be amended to prohibit the use of words like "registered", "licensed" or "certified" by any health care worker unless that use has been approved by the Health Professions Council.*

The Council adopts and supports these conclusions and recommends their implementation by the Minister of Health.

The Council reiterates these earlier comments and notes that the title protection system under the Society Act has the potential to undermine the regulatory model for counselling proposed in this report. Title protection for specialists is an important element of the Council's proposal but such protection is worthless if one can obtain the same protection simply by applying under the Society Act. In short, the Council believes that in the case of health care organizations, the Society Act name reservation provisions are misleading and confusing, and have the potential to undermine the regulatory model for counselling proposed in this report.

APPENDIX A

Consultations Counselling Investigation

Associations

Adlerian Psychology Association of British Columbia
British Columbia Association of Play Therapists
British Columbia Association of School Psychologists
British Columbia Association of Social Workers
British Columbia Psychological Association
British Columbia Rehabilitation Society
British Columbia School Counsellors Association
British Columbia Society of Occupational Therapists
Canadian Association for Pastoral Education
Canadian Guidance and Counselling Association
Canadian Psychiatric Association
Canadian Psychological Association
Canadian Society of Clinical Hypnosis
Music Therapy Association of British Columbia
Pastoral Care Association of British Columbia

Health Professions

Board of Registration of Social Workers of British Columbia
College of Physicians and Surgeons of British Columbia
College of Psychologists of British Columbia
Registered Nurses' Association of British Columbia
Registered Psychiatric Nurses' Association of British Columbia

Consumer Organizations

British Columbia Association for Community Living
British Columbia Coalition of People with Disabilities
British Columbia Council for the Family
Canadian Mental Health Association
Canadian National Institute for the Blind
Kathy Tait, Love Columnist, *The Province*
Kinsmen Rehabilitation Foundation of British Columbia
Victim Assistance Program

British Columbia Ministries and Government Agencies

Ministry of Skills, Training and Labour
Ministry of Social Services
Office of the Ombudsman
Workers' Compensation Board of British Columbia

Other Provinces

Alberta Health
Alberta Professions and Occupations Bureau
Manitoba Health
New Brunswick Department of Health and Community Services
Newfoundland Department of Health
Northwest Territories Department of Health and Social Services
Nova Scotia Department of Health and Fitness
Ontario Ministry of Health
P.E.I. Department of Health and Social Services
Offices des Professions du Quebec
Saskatchewan Department of Health
Yukon Department of Health and Human Resources

U.S. Organizations

American Association of Marriage and Family Therapy
American Association of Pastoral Counsellors
American Society of Clinical Hypnosis

APPENDIX B

Canadian Society of Clinical Hypnosis
Lee Pulos, President

American Association of Pastoral Counsellors
Michael Nel

British Columbia Association of School Psychologists
Ted Wormeli, Past President

British Columbia Association for Play Therapy
Gael Paddack, President-Elect

British Columbia Psychological Association
J. MacDonald, President

Family Services of Greater Vancouver, Family Therapy Department
Mark Morissette, Head of Family Therapy Dept.

British Columbia Psychiatric Association
Oliver Robinow, President

Board of Registration of Social Workers
Richard Vedan, Chair

British Columbia Colleges and Institutes Counsellors Association
Beth Weick, President

British Columbia Teachers' Federation
Peter McCue, First Vice President

College of Physical Therapists of British Columbia
Beth Maloney, Registrar

British Columbia College of Teachers
Marie Kerchum, Registrar

Faculty of Education
University of British Columbia
Nancy Sheehan, Dean

Faculty of Education, Department of Counselling Psychology
University of British Columbia
Richard Young, Professor and Head

Victims of Child Abuse Legislation
John Simpson
Ray Ferris

College of Psychologists of British Columbia
William Koch, President

Music Therapy Association of British Columbia
Noele Bird, President

B.C. Association of Clinical Counsellors
James Browne, Executive Director

British Columbia Art Therapy Association
Llona O'Gorman, President

British Columbia Association of Marriage and Family Therapy
Mavis Clark, Member

Canadian Association of Rehabilitation Personnel - B.C. Society
Jodi Holly, Vice-President

Canadian Professional Counsellors Association
Doug Thornton, Consultant