
Be Careful What You Wish For: Issues in the Statutory Regulation of Counsellors

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Abstract

The purpose of this article is to examine important elements of the decision of whether and how counselling should be regulated by statute. First, the current status of certification, registration, and licensure of counselling in Canada is presented. This is followed by a presentation of nature and components of regulatory schemes in North America along with important issues associated with each one, focusing on the pitfalls and unintended negative consequences inherent in regulation. Finally, it is recommended that provincial counselling associations should answer four fundamental questions when they consider applying for statutory regulation.

Résumé

Cet article traite des grandes questions entourant la réglementation officielle du counseling, ses modalités et les décisions à prendre à cet égard. D'abord, les auteurs font le point sur la certification, l'autorisation et le permis d'exercice du counseling au Canada. Ils abordent ensuite la nature et les éléments des systèmes de réglementation en Amérique du Nord, ainsi que l'analyse des questions importantes associées à chaque système, surtout les conséquences négatives et les écueils liés à la réglementation. Finalement, il est recommandé que les associations de counseling provinciales répondent à quatre questions fondamentales lorsqu'elles envisagent de demander la réglementation sous le régime d'une loi.

Counsellors in Canada are at a crossroads in their development as a profession. They have a national professional association, guidelines for ethical practice, and a voluntary certification program — all to assure that counsellors provide competent and ethical practice. As well, considerable interest exists among counsellors in several provinces to take what seems to be the logical next step in regulation, registration or licensure under provincial statute. Our thesis is that regulation is not an automatic and unqualified wise choice for professions; instead it should be approached with caution. The purpose of this article is to highlight some important elements of the decisions regarding whether and how counsellors should be regulated by statute. We will outline the nature and components of regulatory schemes and present several important issues associated with each one, focusing on the possible pitfalls and unintended negative consequences inherent in regulation. First, we briefly examine the current status of certification, registration, and licensure of counsellors in Canada.

CURRENT REGULATION OF COUNSELLING IN CANADA

At present, one Canadian national association offers voluntary certification of counsellors and four provinces are at various stages in acquiring regulation under legislation. In 1987, the Canadian Guidance and Counselling Association (CGCA) initiated a certification process for counsellors with a Master's degree or equivalent education (CGCA, 1996). This certification allows counsellors to identify themselves to the public as Certified Canadian Counsellors. Approximately 560 counsellors are currently certified by CGCA. In May, 1997, the Board of CGCA voted to replace the present Guidelines for Ethical Behaviour (CGCA, 1989) with new documents that will include a Code of Ethics and Standards of Practice. CGCA will provide these resources to affiliated provincial counselling associations for use in their efforts to pursue legislated status for counsellors in individual provinces (L. Laframboise, personal communication, June 13, 1997; C. Cooper, personal communication, June 16, 1977).

Four provinces are at various stages of seeking legislated status for counsellors. The Nova Scotia Association of Professional Counsellors was organized in 1995 with the mandate to seek statutory regulation for counsellors (Hung, 1996). The Executive of the organization is currently in the process of hiring a consultant to advise them on identifying the "key message, issues, and strategy for lobbying" the government for registration legislation (J. Hung, personal communication, June 12, 1997). The New Brunswick Professional Counsellors Association was developed in 1996 to represent counsellors in professional practice (New Brunswick Professional Counsellors Association, 1996). This organization is currently working to meet the requirements in existing legislation for the presentation of a private member's bill in the provincial legislature for licensure legislation (J. Stewart, personal communication, June 12, 1997; P. Donihee, personal communication, June 18, 1997).

In 1996, five counselling groups applied to the British Columbia Health Professions Council for "designation" and thus regulation under the *Health Professions Act* (1979). After reviewing written submissions and holding public hearings, the Council chose not to make a decision on whether or not any of the applicants fell within the definition of a "health profession." The Council decided that the services provided by the applicants met the criteria within the *Act* to be considered health professions, but "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'" (Health Professions Council, 1997, p. 5). Because the five counselling groups differed in the education and training required for membership and in the wide range of services provided, the Council decided that the model of regulation available under the *Act* would not be appropriate for counselling. "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*" (Health Professions Council, 1997, p. iv). As a result, the Council failed to recommend any of the applicants, or the applicant group as an aggregate, be designated under the *Act*. The Council did conclude that the unregulated practice of counselling had some risk of harm, and thus other models of regulatory control should be explored for implementation. The content of the report by the Health Professions Council may provide important information to counsellors in other provinces wanting to learn about the process of governmental review and how other professions in their province may respond to their application.

Since 1963, Québec guidance counsellors have practiced under a registration act (currently titled *Professional Order of Guidance Counsellors of Québec*, 1994). Approximately 1800 Master's and Doctoral level counsellors practice under this *Order*. It is anticipated that, in the near future, a licensure component will be added to this legislation (G. Schoel, personal communication, June 12, 1997). Knowledge of this legislation and the process of its development may provide valuable information to other provinces considering a registration or licensure act.

TENSION BETWEEN PUBLIC AND PROFESSIONAL INTERESTS

Professions seem to progress through a natural history with certain definable events (Greenwood, 1957) and an inexorable push towards statutory regulation. New professions often develop as a complement to an established profession or a subgroup of a profession which has grown too bureaucratic and exclusionary. The new professionals may be idealistic, innovative, and committed to providing greater access to services at a lower cost to consumers.

Practitioners who are developing such innovative, nontraditional services soon come together for mutual support and guidance. They form associations that help define their knowledge base, articulate their differences from other groups, and provide recognition for the new group. However, increased recognition of the important services provided leads to more people wanting to enter the field and to an increased risk to the public from professionals who are acting incompetently or unethically.

Associations develop codes of ethics in an effort to deal with risk. They may also begin their own certification programs to help the public understand the minimum professional qualifications necessary for optimal practice. For example, Canadian consumers know that when they seek services from a Certified Canadian Counsellor, they are seeing someone with a Master's degree. Practitioners who are not certified by CGCA use titles that convey no reliable information to the public about their qualifications.

In the natural history of professions, increased risk and recognition are accompanied by increased earning potential, which is facilitated only partially by voluntary, private, certification. It is at this point that professions may seek statutory regulation, in the form of registration, certification, or licensure.

The primary purpose of regulation is to protect the public from the unsafe practice of occupations that the public may find difficult to judge. However, there is a basic tension in all regulation between the government's interest in protecting the public and the profession's own political and economic interests. Such interests may include the reduction of competition through increased control over who enters the profession and the legal sanction of certain payment mechanisms.

We use the term "tension" rather than "conflict" because public and professional interests overlap to a significant degree. Professionals are concerned with public welfare, which is not necessarily mutually exclusive of legitimate professional interests such as recognition of their work, the ability to earn money for their efforts, and the ability to move across jurisdictions. The overlap of interests can be seen when market forces are operative: Excellent counsellors will develop good reputations which lead to increased client referrals and income; in turn, the public is better served. However, such market forces do not operate perfectly in occupations that require extensive training and technical expertise. To the extent that professions rely on technical skills not possessed by lay people, the greater the risk for exploitation of clients. Indeed, the inability of consumers to judge the benefits they are getting or to know when they are being exploited is called market failure, and constitutes a major rationale for professional regulation (Wolfson, Trebilcock, & Tuohy, 1980).

One example of the tension between professional and public interests comes from a publication of the American Association of State Social Work Boards, (1996), (AASSWB), which advises its members to give different lobbying messages to different audiences. When dealing with legislators, public welfare is to be stressed: "This cannot be overemphasized. What should be pointed out here to legislators and others is that public regulation has no interest other than the public interest" (AASSWB, 1996, p. 6). However, this is not the message recommended when the goal is to enlist the help of rank-and-file professionals: "It helps to mobilize social workers if it is pointed out that licensure lends credibility to the profession. It also keeps social workers on an even footing when they are in competitive situations with practitioners in other mental health fields, particularly where other government regulations may require credentials" (AASSWB, 1996, p. 8). A careful inspection of various aspects of regulation reveals that public interest motives often take a back seat to professional interests (Young, 1987).

WHAT IS THE GOAL OF REGULATION?

The tension between public and professional interests exists even when addressing the basic purpose of regulation. The professions may argue that the public is entitled to excellent service that can only be provided by the most highly educated and experienced practitioners who have undergone a rigorous examination process. However, such a high standard has several drawbacks. For example, high levels of education and experience may not guarantee excellent practice (Handelsman, 1997; Rottenberg, 1980). A classic work by Hogan (1979), on the regulation of psychotherapy, highlights several potential problems with restricting practice only to excellent providers: it may stifle competition, raise prices, discourage innovation, and reduce access to services among those who may need services the most (Hogan, 1979).

On the other side of the continuum is the view that government has no interest in assuring excellence. Rather, the government's only interest may be in the safety of the public; it could be argued that government should restrict providers of services only on these minimal grounds. As Hogan wrote, "Licensing laws are meant to protect the public from harm. A reasonable interpretation of this policy would be that even minimal competence need not be shown, so long as a practitioner could guarantee that no client would be hurt or injured" (1979, p. 101). This argument assumes that consumers can and should make choices from a range of minimally safe providers (Meyer, 1980). Thus, the public retains access to a variety of services, competition is stimulated, and cost is reduced.

An analogy to automobiles may help make these positions clear. The least restrictive regulatory system is supported by the argument that the public should be able to buy any car as long as it does not explode or present other threats to life and limb, even if the car cannot run. Supporters of the most restrictive regulation would argue that consumers should only be able to buy cars that are guaranteed to take people to their destinations safely, effectively, and efficiently. In the middle of the continuum is regulation that assures safety plus some minimal level of competence. According to this view, government certainly has an interest in cars that will not explode, and an interest in having consumers buy cars that run at least to some degree. Counsellors should be able to say that they provide safe practice, and that they usually provide some benefit to their clients. Obviously, the question of how much benefit provided offsets how much risk of "explosions" depends not only on empirical knowledge in the counselling field but on economic and political philosophy.

Any regulatory system needs to balance a multitude of factors, including safety, competence, access, and cost of services. Although all professionals argue that regulation will protect the public, we can tease out

professional self-interest if we note that established professions argue more on the side of competence, and professions seeking regulation argue that their profession allows for greater access.

TITLE VS. PRACTICE PROTECTION

One dimension of regulation that has a direct bearing on the balance of quality and access is the issue of licensure vs. registration or certification. Licensure typically refers to systems of regulation that restrict (or “protect,” from the perspective of the regulated professions) both practice and the use of professional titles (Schmitt & Shimberg, 1996). A scope of practice is defined for a given profession, minimum qualifications are outlined, and those who do not meet those qualifications are not allowed to practice. This restrictive model clearly puts a premium on setting high standards for entry at the expense of access to services. Licensure is clearly advantageous to the profession wishing to be regulated.

A less restrictive method—registration or certification—protects only a title, not a scope of practice. Those who meet a set of qualifications are granted the use of a protected title. However, those who do not meet these qualifications are not barred from providing services. In this approach, consumers remain free to buy services from unregistered or uncertified practitioners, and they enjoy the benefit of knowing which providers have met certain qualifications.

Typically, licensure laws protect both practice and title, whereas registration and certification laws protect only the title. However, the Definitions of the terms registration, certification, and licensure vary somewhat among authors in the field, and among governmental jurisdictions. For example, certification is sometimes used to refer only to private (non-governmental) regulation, and registration is sometimes used to refer to systems in which the government records names of practitioners but requires no minimum qualifications. We should also note that these terms may be accurate in describing the intent of a particular statute but inaccurate when describing their effects; many laws that are called—and/or intended to be—licensure laws turn out to have more similarities to certification laws.

Because of the nature of mental health services and the overlap among many related professions, true practice protection is difficult and licensure laws often function as certification laws (Rétfalvi & Simon, 1996). Nevertheless, registration seems appropriate and flexible (Young, 1987), especially in a profession without a clearly defined set of empirically-tested procedures. “The usual arguments for licensure . . . are satisfied almost entirely by certification alone” (Friedman, 1962, p. 149). As Hogan (1979) argued,

Registration has much to recommend it. Entry into the field is not restricted, utilization of paraprofessionals is not inhibited, and the cost of services is not

artificially increased. In fact, a system of registration produces few of the negative side effects created by traditional licensure. Registration laws allow the state to provide clients with relevant information and encourage the potential consumer of services to use careful judgment in selecting a professional. (p. 371)

Friedman (1962) and Hogan (1979) have written seminal works on regulation, and if they and other authors are correct that licensure has more drawbacks than registration or certification, government may not need to be involved in regulation at all. For example, Young argued, "Highly skilled practitioners have incentives to differentiate their product from the less skilled. Certification is one way to do this, and there is no reason why this function cannot be performed by nongovernmental organizations" (Young, 1987, p. 19).

The more a new profession argues for more restrictive regulatory options, the greater the possibility of an unintended but serious negative effect: the creation of artificial and politically destructive divisions among mental health fields (Martinez, 1996). Each profession wants to distinguish itself and may find itself doing so by arguing that it is so different as to be better than other professions. Established professions will then defend their own turf by arguing that the new professions are too dangerous to practice at all. There are short term gains to these arguments for each side, but they create a climate in which working together in the legislature on larger and more important issues is difficult.

COMPONENTS OF REGULATION

Regardless of the level at which government decides to protect the public—minimally safe, minimally competent, or highly competent—and the restriction of title or practice, there are four basic components of a regulatory scheme: Initial screening of providers, ongoing screening, disciplining providers who do not uphold professional standards, and public education. Table 1 displays these four components with examples of specific regulatory methods. In this section we shall explore some general themes and pitfalls with each major component. Professions seeking statutory regulation need to consider their arguments carefully, because effective regulation that is truly in the public interest may involve options that providers would not consider desirable.

Initial Screening

The assumption behind this component of regulation is that practitioners at high risk for unsafe or unprofessional practice can be spotted and screened out of the profession. The traditional criteria used in mental health have been years of experience, level and area of degree, examinations covering content knowledge and knowledge of legal and

ethical issues, and what is often referred to as good moral character, which typically means no record of criminal activity (Reaves, 1993).

The effectiveness of these traditional screening measures for preventing unprofessional behaviour—rather than merely reducing the supply of professionals, as some have argued (e.g., Young, 1987)—is an empirical question. Indeed, the literature is not encouraging (Hogan, 1983). For example, one study of licensed and unlicensed psychotherapists in Colorado found that neither years of experience nor level of degree differed between those who had been punished and a random sample of psychotherapists who had never been complained against (Handelsman, 1997).

TABLE 1
Components of Regulation

<i>Major Aspects of Regulation</i>	<i>Activities to Meet Regulatory Goals</i>
Initial Screening	Experience—a certain number of years of supervised experience Level of Degree Area of Degree Content Knowledge—usually assessed by examination Ethics/Legal Knowledge—usually assessed by examination Moral Character—no criminal activity Personality Characteristics—related to professional practice Work Sample Apprenticeship Endorsement by supervisors
Ongoing Screening	Continuing Education Relicensure or recertification—either the same or different examinations Practice Audit
Disciplinary Functions	Investigation of Complaints Application of Professional Standards Adjudication of Complaints Monitoring Compliance with Sanctions
Public Education	Education Campaigns Agency Reports Mandatory Disclosure Requirements—information given to clients Registration of Practitioners—with no entry requirements

It is difficult to see empirically-based reasons why these elements of screening are used and others are not. Boards seem to assume that graduate programs or supervisors adequately screen for characteristics such as empathy or commitment to the field (Handelsman, 1997), but do not adequately screen for knowledge. Other criteria that could be assessed include work samples, such as test reports or videotaped sessions, and personality characteristics such as empathy (Hogan, 1979, 1983).

Alternative screening methods may be developed that may be more related to competence and safe practice, and more flexible than current methods. One such approach may be apprenticeships combined with endorsement by supervisors. In such a model, a counsellor may or may not have a particular degree, but works for a senior practitioner for several years, until the senior counsellor attests to the apprentice's ability to practice independently. Test scores derived from multiple-choice items may be less predictive of professionalism than an honest evaluation by supervisors who have been closely involved with applicants' progress over several years. Another approach to screening may be a "multiple-entry" process, such that some methods could substitute for others. For example, the Ph.D. and a high test score on an ethics test could be one mode of entry, but a Master's level applicant could opt not to take the test, but undergo an apprenticeship instead. To our knowledge, no jurisdiction has tried this approach.

Two factors that may mitigate against innovative change in screening methods are tradition and cognitive dissonance (Festinger, 1957). Current professionals may feel that the hurdles they needed to pass are important, simply because they had to pass them. Over time, traditional methods are defended with something akin to religious zeal, and innovation is stifled.

One possible explanation for the fervor with which professionals defend their methods of screening (and newer professions want to adopt them) is that such barriers to entry protect the professionals' economic interests. As Gellhorn (1976) noted about the most restrictive form of initial screening, licensure:

Licensing has been eagerly sought—always on the purported ground that licensure protects the uninformed public against incompetence and dishonesty, but invariably with the consequence that members of the licensed group become protected against competition from the newcomers. That restricting access is the real purpose and not merely a side effect can scarcely be doubted. . . . The self-interested proponents of a new licensing law generally constitute a more effective political force than the citizens who, if aware of the matter at all, have no special interest which moves them to organize in opposition. (Gellhorn, 1976, p. 11)

The use of government regulation to foster such professional ends has been called "capture theory" (Stigler, 1971), because the professions "capture" government and use the power of government to enforce entry requirements and other standards that they set themselves. Authors have

provided three major types of evidence for capture theory. First, regulation is virtually always sought by the profession, not the public or the government (Gross, 1984; Schmitt & Shimberg, 1996; Swenson, 1993). Second, it has been virtually impossible to sunset, or discontinue the regulation of a profession (Schmitt & Shimberg, 1996; White, 1979); and professions exert considerable lobbying pressure to keep their advantages (AASSWB, 1996). The third type of evidence is what White (1979) termed escalator effects, which "refer to the tendency common among all professions of increasing constraints on entry . . . after licensing laws have been introduced (Young, 1987, p. 27). The concept of escalator effects applies both to regulatory boards that want to increase years of experience or test scores for regulation, and to professions who want to move from title protection to practice protection strategies.

Ongoing Screening

Professions argue that initial screening requirements prevent professional misbehaviour by identifying incompetence. If this is true, the same argument could be made for assessing and/or assuring competence on a continuing basis. Most regulatory schemes attempt to accomplish this by requiring or encouraging continuing education which has the advantage of giving members of the profession the opportunity to stay abreast of current developments in the field. It also is a source of income for providers of continuing education programs. However, the effectiveness of continuing education has not been demonstrated (Schmitt & Shimberg, 1996).

Recognizing the rapid pace of advancements in counselling and mental health, and accepting the traditional arguments in favour of strict entry requirements, professions serious about public protection may need to look carefully at relicensure (or recertification) after a number of years to assure ongoing safe and competent practice. Indeed, many of the ethical lapses that result in punishment of professionals are not due to inexperience, but seem to be due to personal pressures, carelessness, and other factors that become salient several years into one's practice (Handelsman, 1997). However, relicensure is not seriously advocated by most professions, with the result that "those already in practice remain entrenched without a demonstration of fitness or probity" (Gellhorn, 1976, p. 11). The result is that professions appear not to be serious about assuring continued competence. "Perhaps the most glaring indication that licensing laws are ineffective in protecting the public is their failure to reassess periodically whether a practitioner is still competent" (Hogan, 1979, p. 254).

An approach to ongoing screening that may be more effective than continuing education but not as drastic as relicensure is the practice audit. In effect, providers would engage a consultant for a short time, and

the consultant would monitor the providers' practice for competence and for indicators of ethical lapses—which could include record keeping, boundary crossings (Gutheil & Gabbard, 1993), predictors of sexual activity with clients (Pope & Bouhoutsos, 1986), financial arrangements, and other potential problem areas (Peterson, 1996)—and certify that the providers were acting in accordance with accepted standards of practice.

Disciplinary Functions

Regulatory bodies typically investigate grievances against professionals and adjudicate complaints by applying professional standards. They also monitor compliance with probationary sanctions. Professions often think of regulation only in regard to licensure or certification (i.e., initial screening) and pay insufficient attention to several important issues regarding complaints against professionals.

A paradox emerges when professions first seek regulation. Their initial argument for regulation is that they provide important services to the public and should be recognized in the form of government sanction. But recognition alone is insufficient justification for regulation. Thus, professions must also argue that the application of their procedures is potentially dangerous to the public, and the government must hold regulated professionals accountable for unsafe or incompetent practice.

Accountability, with possible punishments, is the flip side of recognition and one that rank-and-file providers may consider too high a price to pay for regulation. Responding to complaints, even frivolous ones, is an onerous task, especially when providers have gone through similar procedures in civil court and/or with provincial or national ethics committees. The punishments, including letters of admonition or reprimand, practice monitoring, probation, and suspension or revocation of license (Reaves, 1993), all could mean a loss of earning potential greater than the gains made by regulation. We are not arguing that professionals do not want to be held accountable for their actions. Rather, we are suggesting that it is not clear that statutory regulation provides any more incentive for professionals to act ethically than do existing means of accountability.

As onerous as the disciplinary process is, many authors note that the enforcement by government regulatory boards of legal standards is not very effective. Shimberg (1982) cited several reasons for problems in enforcement. The first is weak laws: "Laws regulating professionals often fail to give boards explicit authority to discipline licensees even for gross negligence" (Shimberg, 1982, p. 105). One response to weak laws has been to write professional ethics codes into regulatory laws, but some courts have found the codes too vague to be enforced (*White v. North Carolina State Board of Examiners of Practicing Psychologists*, 1990). When

more specific standards are written into the law, it appears to be in the nature of government boards to be conservative in their interpretations. "Licensing boards have tended to adopt narrow statutory interpretations of grounds for discipline. The result is that the public is only protected from relatively infrequent and extreme offenses" (Hogan, 1979, p. 262).

In fields such as counselling in which there are few precise procedures and the definition of "generally accepted standards of practice" is often vague, complaints are often quite onerous, both for practitioners, who don't know how to defend themselves, and for consumers, who cannot obtain accurate information about the chances that their grievances will be successful. Such vagueness makes it difficult to define and identify competence (Fortune & Hutchins, 1994; Hogan, 1979). Hogan (1979) argued that all the mental health professions have been granted licensure too early in their history, at a time when procedures are not yet standardized on the basis of sound research. Perhaps the relative "youth" of the counselling profession is part of the reason the Health Professions Council (1997) denied British Columbia counselling groups designation as a health profession.

The second problem Shimberg noted with the ability of government boards to handle complaints is the limited range of sanctions available to them. Rehabilitative efforts such as supervision or particular educational experiences may look like a slap on the wrist to complainants even though they provide the best hope of public protection. However, the only more serious sanction may be revocation, a step which boards may be "reluctant to impose . . . except in the most serious cases" (Shimberg, 1982, p. 105). The result of a perceived or actual disparity between seriousness of the case and seriousness of the sanction may be dissatisfaction for professionals, who may see the sanctions imposed as arbitrary, and frustration for complainants, who may perceive the board acting to protect professionals' right and ability to practice but offering no relief to consumers.

The third problem noted by Shimberg (1982) is lack of resources. Fees paid to government bodies are typically used more for screening measures such as testing than for enforcement of standards. Some jurisdictions, such as Colorado (A. D. Martinez, personal communication, July 1996), have reversed this trend, and allocated a much greater percentage of their budgets to enforcement. Indeed, some have argued that if the enforcement works well, there is no need for screening: "One could regulate quality in a professional market solely through standard setting and enforcement, thus entailing free entry into a professional market but, where justified, enforced exit from it" (Wolfson et al., 1980 p. 210).

Between 1988 and 1998, Colorado tried another innovation in regulating mental health professionals by integrating the enforcement function across several mental health disciplines. The practice of psychotherapy

was regulated by a state board with authority to discipline psychologists, social workers, professional counsellors, family therapists, and unlicensed psychotherapists (who could practice merely by virtue of signing up on a data base administered by the State). Each profession was licensed separately, but grievances were handled by an omnibus grievance board with representatives of all the professions and of the public. The Colorado Board seemed to have done a better job than previous discipline-specific boards (Handelsman, 1997; Schmitt, 1995), but was attacked by the professions because of the perceived loss of professional autonomy and control. The repeal of this system in 1998 may be an example of capture theory; professional interests were at least as important as public interests in the lobbying that took place.

In light of past difficulties in policing professionals, new professions may have to argue that specific standards be developed (or raised) and written into the law, that a full range of disciplinary and probation activities be authorized, that registration fees should be high enough to provide adequate resources for investigation and monitoring, that they are willing to participate in integrated efforts with related professions, and that they are willing to put relatively more energy and resources into enforcement than into initial screening. Whether these measures are worth the benefits of regulation is an open question that depends on personal, professional, and political values, but it is a question that needs explicitly to be addressed.

Public Education

Prospective clients need adequate information if they are to make good decisions about the professionals they choose. Informing the public about the available choices is part of the regulatory process, but a relatively neglected one. Agency reports can provide useful information both to the public and to professionals about the efforts made to ensure safe and competent practice. Such reports may be easily distributed to support groups, medical professionals, the media, and others who can help prospective clients understand what therapy is about and how government regulation works.

Some government agencies publish useful information on such issues as how to choose a mental health professional and how to report misbehaviour (e.g., Colorado State Grievance Board, n.d.). These efforts represent more proactive measures governments can take to prevent harm to the public.

Another method of public education works via providers themselves. States including Washington (RCW 18.83.115) and Colorado (C.R.S. 12-43-214) have instituted mandatory disclosure requirements such that all psychotherapists need to inform all their clients, in writing, about various aspects of treatment. Required information includes the limits of

confidentiality, the right to second opinions, the right to terminate treatment, and the name and address of the regulatory board for filing complaints. There is evidence not only that clients are using the information about filing complaints (Schmitt, 1995), but that such forms may actually have some therapeutic advantages (Sullivan, Martin, & Handelsman, 1993).

Few professionals argue about the desirability of regulatory board reports or other public education material. However, education efforts may be the first to fall victim to budget cuts. In addition, not all elements of public education have been met with favorable reactions. For example, agencies may publish lists of providers who have been complained against or have been sanctioned.

HOW TO CHOOSE A STATUTORY REGULATION SYSTEM FOR COUNSELLORS

We have presented much information suggesting that decisions about statutory regulation of counsellors is complex and often confusing. We suggest that provincial counselling organizations need to answer four fundamental questions when they consider applying for statutory regulation. First, is it in the best interests of the public and the provincial counselling organization to be regulated by statute? Professions have many reasons for seeking regulation, including public protection, practice protection, professional recognition, income benefits, and increased mobility of professionals. Public protection may be the only reason that is either necessary or sufficient as a justification for regulation. Organizations should be honest and clear about the goals they wish to achieve.

The second question to be considered is: If the counselling organization decides on statutory regulation, which general model of regulation does it think is in the best interests of the public and their organization? The options include certification, registration, and licensure, but models can also be some combination of these traditional models, or a grievance-only system.

The third question organizations need to answer may contain the greatest opportunity for creativity: What specific measures (see Table 1) or regulatory functions will work most effectively to achieve the goals of the regulatory model chosen by the counselling organization? To answer this third question, we encourage counselling organizations to work systematically through the four basic components of a regulatory system presented in Table 1 and make clear choices of the specific measures they wish to have included in the model of regulation they have selected.

The fourth question may be the most difficult: Is the counselling organization willing to pay the costs (financial, professional, emotional, political) involved in securing and working under the regulatory processes for which they are advocating? For example, regulation may mean dilution of the effectiveness of private certification programs and a much

greater involvement by the public, in the form of legislators who are beholden to a variety of other interests and of lay members of regulatory boards, in setting and enforcing professional standards.

Fees for the costs involved in both screening and enforcement are often higher than expected. In 1996, for instance, the approximately 1,000 registered psychologists in British Columbia each paid fees of \$449.47. During the year an additional levy of \$100.00 was required of each psychologist because of unforeseen expenses for hearings of complaints. In 1997 psychologists paid fees of \$525.52.

Professions clearly need to differentiate their ultimate goals from the specific strategies that may, or may not, be necessary to achieve them. Deciding on specific measures too quickly may decrease the chances of passage and lock the profession into activities (e.g., testing) with costs that are too high. Organizations must also remember that once a proposal for regulation enters the legislative arena it becomes part of a much broader web of political agendas and struggles (Handelsman, 1995). They must not deceive themselves that the regulatory structure they lobby for is the one that will pass, or the one that will endure. Thus, organizations should not be surprised when they encounter any of the potential problems we have outlined in this article.

The process of answering these four questions may be enhanced by talking with colleagues from jurisdictions operating under statutory regulation. Rank-and-file members should also be polled, because their interests and perspectives may be different than those of their leaders. We realize it will take considerable time and energy for counselling organizations and their executives to answer these questions in a thorough and thoughtful manner, but we believe the outcome will be much more likely to serve well the interests of the public and the counselling organization, regardless of the choices made.

CONCLUSION

Regulation is like a marriage between a profession and the government. Like marriage, it is a drastic measure that should not be entered into lightly. A bad marriage is constraining and divorce is difficult. Like many teenagers, mental health fields may be too young for such a commitment and may only be using regulation to gain a sense of accomplishment, wisdom, or adulthood that can only come through experience and hard work, not through a piece of paper.

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