

Professional Regulation

Purpose

The goal of professional regulation is to reduce the risk of harm to the public, while maximizing the well-being of clients. This section will describe the basic processes of public protection through a statutory professional college.

Findings

The practice of counselling includes a risk of harm to a client. Harms come about because of *negligence*, the failure to meet a basic standard; because of *malpractice*, performing activities beyond the practitioner's scope of practice; because of *incompetence*; or because of *ethical violations*. When these violations occur, serious and often-irreparable harm can follow.

Furthermore, a member of the general public cannot always discern whether a counsellor is capable of respecting these duties and limits and whether a counsellor is providing professional services consistent with ethical guidelines and standard of practice. Consequently, counselling needs to be regulated as a health care profession.

In Canada, professional self-regulation is granted by provincial or territorial governments as a privilege. The cost of this privilege is that the profession funds the regulatory process to standards prescribed by the provincial governments. Under the Agreement on Internal Trade (AIT), these standards must be comparable across the country so as to facilitate labour mobility.

There are two forms for statutes governing the regulation of counselling in a provincial legal framework. One is as a "stand alone" statute, such as we see in Nova Scotia. In this case, the law refers only to a single profession, counselling, and sets out limits and standards that apply to that profession in particular. Another approach is to regulate counselling as a part of a larger act governing all health professions, as is the case in Ontario. Here, the counselling profession will share many of the privileges, processes, and requirements of all the other health professions.

However it is framed in law, the entity that regulates the profession is typically called a *College*, but may also be referred in some instances as a Board, and the counsellors who practice the profession are the *Registrants*. The three main functions of the college are (1) *Registration*, determining who qualifies as a registrant; (2) *Inquiry*, providing responses to public complaints and concerns, and (3) *Discipline*, providing limits and sanctions for registrants found to have violated professional standards.

Registration

In order to become a registrant, applicants to a college must demonstrate that they possess a set of entry-level competencies necessary for the ethical and safe conduct of the profession. This is achieved through comprehensive examinations, supervisory reports, training records, and the like. In addition to this there is often an educational requirement that is closely tied to the competency profile, as is the case in many master's degrees and applied doctoral programs. In addition, applicants must show that they are personally suitable to take on the fiduciary duties required of a professional. This is demonstrated through such processes as criminal record checks and professional recommendations.

Some registrations continue automatically until they are revoked or the member resigns. In other systems, registrations are renewed at intervals at which time competency and suitability are re-evaluated. It is common to require ongoing competency development and maintenance in order to retain a registration. Registrants are typically required to carry adequate liability insurance for the financial protection of clients. How registrations are maintained, and under what conditions, will be an important consideration for any college.

Colleges must also address the very large question of specializations. Should a registrant be required to meet a specific college requirement before making a claim of some area of specialty such as music therapy or family counselling? Or should the claim of specialization be subject to the general provision that professionals do not practice beyond their scope of competence?

Regulators must also grapple with the questions of *equivalence* (When is a registration from another jurisdiction deemed to be equivalent?); *rehabilitation* (How does an applicant, at one time found to be unfit to practice, become prepared to undertake professional responsibility?); and *multiple registrations* (can an individual fulfill the roles of more than one profession simultaneously?)

In summary, the registration process mediates the crucial tension between the need to register qualified candidates so as to bring them under the accountability structure of a college, and the need to exclude from professional privilege those who do not possess the competencies or personal suitability for positions of trust.

Inquiry

Inquiry is the investigation of complaints from the public. Counselling has an immediate and crucial choice point. When a complaint is made in the traditional model the focus is on the guilt or innocence of a registrant who is either exonerated or punished. The advantages are it contains liability and has a long tradition of precedent. An alternative approach centers on restoration of harms, mediation of disputes, and the correction of errors. This approach is responsive, provides relief to those who have suffered harm, distributes responsibility rather than blame, and is consistent with the values of counselling and psychotherapy. Plus it is a first line of response, and allows for practitioner-centered processes where restoration and mediation are inappropriate or unsuccessful.

A further choice point is whether inquiry should be passive or active. Passive processes publish standards, and wait for complaints before responding. The passive approach requires less effort and structure, and is much less intrusive. Active inquiry processes specifically support practice standards through such means as education, inspections, audits, and college-initiated complaints. An active approach is intended to find more difficulties, but to remediate them before they become full-scale problems.

Some essentials of professional inquiry include self-regulation through accountable committee structures, the use of qualified investigators, and the inclusion of public representatives in the inquiry process.

Experience has shown that most complaints about the professional practices of counsellors include *competencies* for the performance of particular tasks and procedures; creation of *reports*;

maintenance of *boundaries* in relationships with clients and other professionals; and *forensics*, particularly custody and access reports.

Discipline

The disciplinary functions of a college, those functions which set sanctions and limits on the practice of a registrant—up to and including expulsion from the college—must be undertaken by members of the profession. It is important that training be provided for those who serve on discipline panels. Furthermore, the guidelines under which discipline panels work must be consistent with other legal processes and the tenets of natural justice.

A particular challenge in this work is to provide timely responses to complaints while balancing the right of the registrant to practice with the duty to protect the public and uphold the standards of the profession. As well, disciplinary processes must be in line with human rights legislation and associated processes.

An important part of this public protection is the duty to inform the general public, other professions, and other jurisdictions when registrants have been found to have violated professional standards.

Professional discipline has some key obligations and limits. It must follow the general standards for all professions. As well, professional discipline is separate from criminal law, contract law, and civil law. Professional regulators must be prepared to cooperate with, but not intrude upon, the jurisdiction of these other sources of liability.

Discussion and Considerations

Confidentiality is a particular concern for counselling which is relationally-based and takes place behind closed doors.

Consideration of a professional college raises the question: Why do I need to pay fees to a college when I already pay fees to a professional association that seems to fulfill the functions of a college? The answer is that an association has a duty to the welfare of its membership, while a college has the protection and well-being of the public as its primary objective. If an association tries to represent the interests of the public, as well as its members, it can find itself in a conflict of interest when a member of the public brings a complaint about a member of the association. Separating college and association functions eliminates this conflict of interest.

Canada's AIT says that a registrant, moving from one province to another, is "deemed registerable". This means that the receiving province or territory the one the registrant is moving to, is expected to quickly register that professional, or to provide a compelling reason for any additional demand for qualifications. The implication of this provision is that national standards, particularly for registration, will support both the public's best interest and the interest of the professions. Without national standards, the provinces must go to great lengths to demonstrate why their registration requirements are justified, or professional mobility will be halted, or else the standards for registration will automatically become the least rigorous provincial registration criteria in the country.

No two provincial colleges will be exactly alike because no two provinces have exactly the same legislative structure. Yet, these colleges will need to work together. They must solve such problems as making provision for practice outside of one's registration jurisdiction, as might the case when, temporarily, a counsellor from Quebec provides consultation services to a counsellor in New Brunswick

Building a new profession will require that registrants pay college fees. Any entity providing all of the services and processes described above will be costly, and counsellors can expect to pay fees in line with those of other professions. However, rigorous attention to standards, and the sharing of development costs between provinces, not to mention proactive efforts to prevent harm, is crucial to keeping costs down. In cases where registered individuals are deemed unsuitable, or when registrants violate professional standards, the costs of a college can skyrocket, while at the same time the public's trust in the profession is eroded.