

# **NOTEBOOK ON ETHICS, LEGAL ISSUES AND STANDARDS OF PRACTICE FOR COUNSELLORS AND PSYCHOTHERAPISTS**

## **Regulation and Title Protection: An Update**

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I am delighted to begin this Notebook with congratulations to the members of the Canadian Counselling and Psychotherapy Association (CCPA) and others in Prince Edward Island for their success in achieving the regulation of counselling therapists in their Province. The **PEI Regulatory College of Counselling Therapists** has already been established! This tremendous achievement required the hard work, advocacy and patience of many people. The CCPA was supportive throughout the search for this success and Barbara MacCallum served as its knowledgeable, skilled, and supportive facilitator.

PEI now joins the Provinces of Nova Scotia and New Brunswick with their colleges of counselling therapists already well established. These achievements in Atlantic Canada are in addition to the regulation of psychotherapists in Ontario and Quebec. Alberta has the statutory legislation for the regulation of psychotherapists approved but have not yet established a regulatory college. In Quebec the regulation of psychotherapists is managed by the **Ordre des psychologues du Québec**. This results from a decision of the Quebec Government to limit the increase in new Ordres (colleges) as additional professions become regulated. Each of the Provinces of Saskatchewan, British Columbia, Manitoba, Alberta, and Newfoundland have a federation of associations of counsellors and therapists (FACT) which are advocating for the regulation of counselling therapists and are doing the necessary work to be ready when it happens.

In all these regulatory environments in Canada the regulations protect and restrict the use of the professional titles of counselling therapists or psychotherapists. This means that it is illegal to use any of these protected titles unless the user is a member of the provincial regulatory college in which they reside. These regulations do not put a regulatory boundary around professional practices, nevertheless, they are very significant as a source of public information and public protection.

It informs the members of the community in which professionals with these protected titles choose to practice that they have acquired these titles by virtue of their having the professional qualifications to do so. Also, that these qualifications were evaluated and approved by an independent college of regulators with the legal obligation to do so. Additionally, for members of the public, it will become evident that following is also true for those individuals with the privilege to have these titles:

- They have formally committed to adhere in their professional practices to a Code of Ethics and Standards of Practice.
- If a member of the public believes that they have breached their ethical code when providing professional services to them they may lodge a complaint and it will be adjudicated in a fair and just manner.

- These professionals are required to engage in activities intended to achieve assurance that the quality of their professional services remain up to date (e.g. continuing education).
- They have access to liability insurance to assist them should they have to address a complaint against them.

In addition to title protection, the provisions for the regulation of psychotherapists in Ontario contains a “controlled act.” Such an “act” refers to a professional activity that can only be provided by regulated health professionals authorized to do so. In Ontario the “controlled act” is defined as follows:

*Treating by means of psychotherapy technique, delivered through therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception, or memory that may seriously impair the individual's judgement, insight, behaviour, communication, or social functioning.*

Because of the breadth of this definition and its lack of sufficient specificity the College of Regulated Psychotherapists of Ontario (CRPO) established a committee to develop additional guidance to assist health professionals with a fuller understanding of this controlled act and its application in their professional practices. The CRPO also states that “this controlled act of psychotherapy is only one small aspect of the overall practice of psychotherapy”.

### **Some examples of circumvention and/or noncompliance with title protection:**

- Here we have an example of what appears to be an attempt to circumvent a protected title regulation. (*Organization of Chartered Professional Accountants of British Columbia v Nordine, 2017 BCCA 103*). Some accountants were using the title “Professional Business Accountants” with the designation PBA. The title “Professional Accountant” (PA) is the protected title. A lower court failed to grant the regulator an injunction against this practice stating that the regulation did not specifically prohibit the use of such protected title variations. However, the court of appeal reversed this judgement. It stated that those who used the PBA title would likely be seen by the public as regulated practitioners. It also asserted that it was not unfair for a court to expect compliance with the professional title protection statute.
- In the case from the field of medicine an individual without the appropriate regulation used the protected titles of “physician” and “doctor” when presenting them self as qualified to practice medicine (*College of Physicians and Surgeons of British Columbia v Ezzati, 2020 BCSC 339*.) When deciding the sanction for this unacceptable conduct the court considered the following factors in this case and issued a fine of \$5000.00:
  - The gravity of the offence (in this case disregarding a court order);
  - The need to deter the offender;
  - The past record and character of the offender (e.g., is this a first finding);
  - The need to protect the public from the offender's conduct;
  - The ability of the offender to pay a fine and
  - The “extent to which the breach was flagrant and wilful and defy the court's authority”.

- In the case of *Royal Domaria Wins Co. Ltd v Lieutenant Governor in Council, 2018 ONSC 7525* the issue of whether a federal trade title could be used to circumvent provincially approved terms and designations was addressed. The court concluded that obtaining a trade mark title could not be used to avoid compliance with a provincial law requirement.
- It is generally understood that a protected title can only be used by those who are entitled to do so by virtue of their being registered. Also members of the public understand that those with the title designation have been judged to be competent to provide their professional services. So, the outcome in this court case came as quite a surprise (*Charter of Rights and Freedoms: College of Midwives of British Columbia v MaryMoon, 2019 BESC 1670*).

MaryMoon used the title of “Death Midwife” as a way of referencing her work of helping individuals and families through the dying process. The College of Midwives sought an injunction to stop her from using this title. She argued that the title would not cause public confusion because it had nothing to do with midwifery. The court agreed with her and concluded that not allowing use of the title infringed on her freedom of expression. It also stated that there was not sufficient evidence provided to support the Regulator’s view that use of the title could lead to public confusion.

The College of Midwives appealed the decision. In *College of Midwives of British Columbia v MaryMoon, 2020 BCCA 224*, the title protection sought by the regulator was restored and the injunction was imposed. The court stated that the infringement on MaryMoon freedom of expression was necessary and compatible with the regulatory provisions for midwifery in BC. It also gave the following reason for title protection provisions.

*“Reserved titles afford a means for consumers to identify the different types of health care providers, to distinguish the qualified from the unqualified, and to differentiate those practitioners who are regulated from those who are not.”*

I welcome comments from readers about this Notebook and, in particular, any references to other challenges to title protection.