

**TASK GROUP FOR COUNSELLOR REGULATION
IN BRITISH COLUMBIA**

**AN OUTLINE OF BYLAWS FOR THE
COLLEGE OF COUNSELLING THERAPISTS OF B.C.**

January 26, 2010

Prepared for the Task Group
by George Bryce, legal counsel

Introduction.....	1
Bylaw vs. Statutory requirements	1
Outline (Headings) of the College Bylaws	3

Introduction

At the January 22, 2010 meeting of the BC Task Group for Counsellor Regulation (“Task Group”), I explained that one of the key documents the Ministry will want to see in place *before* it would move forward with designating the professions under the *Health Professions Act*¹ (HPA) is a set of Bylaws for the proposed College of Counselling Therapists.² Task Group members expressed an interest in understanding the scope and content of such Bylaws, in particular how those Bylaws may vary from those the professional associations currently employ. This document provides an outline of what a set of College Bylaws might look like.

For more than a decade, the Ministry of Health Services has produced a set of Model Bylaws for Colleges established under the HPA. The last version of the Model Bylaws was produced in 2004, but - since then - the Act has been amended several times. This has resulted in a number of the 2004 bylaws no longer being applicable, and gaps where new policies have been introduced into the Act that are not reflected in the old Bylaws. As such, a review on the 2004 Model Bylaws would not provide the Task Group with a reliable understanding of what the College Bylaws should contain.

During the past five years, a number of “senior” health professions that used to be regulated under separate statutes have been designated under the HPA.³ This has resulted in new Bylaws being created for each of the resulting Colleges. The most up-to-date set of Bylaws were prepared for the College of Speech and Hearing Health Professionals.⁴ This Outline of Bylaws is based upon these newer Bylaws, but it has also been supplemented with additional headings for provisions that I felt would be necessary for the long-anticipated College of Counselling Therapists.

Bylaw vs. Statutory requirements

In order to understand how a College’s Bylaws fit within the general framework of the HPA, it is critical to understand some basic legislative rules.

First, if the HPA contains a rule or requirement on a particular issue, a College Bylaw cannot duplicate, conflict with or vary that statutory requirement. The Act is the primary expression of government policy on how health professions are to be regulated in BC, and the colleges cannot pass bylaws that purport to change those policies.

Second, the HPA contains the highest level of rules within the general legislative framework that a College and its registrants must follow. (There are, of course, many

¹ R.S.B.C. 1996, c. 183.

² The two other major documents the Ministry would want to see are: (a) a detailed Strategic/Action Plan, explaining what steps the College would take from designation through to registration of the first set of registrants, and (b) a detailed Budget Projection, including an identification of sources of start-up funding for the first board.

³ Chiropractors (2009), Dentists (2009), Medical Doctors (2009), Optometry (2009), Pharmacy (2009), Registered Nursing (2005), and – more recently - Audiologists, Hearing Instrument Practitioners & Speech-Language Pathologists (2009).

⁴ To access details for all the designated health professionals, visit the Ministry of Health Services website: www.health.gov.bc.ca/leg/health_professions.html

other statutes that a College and its registrants must also follow, and they are also bound by the common law.) Unlike association bylaws established under the *Society Act*, there will be many important requirements set out under the HPA that will not appear within the College Bylaws. Therefore, in order to understand the complete legislative framework, it is necessary to also study the Act's requirements and how they relate to the Bylaws. The statutory requirements are *not* summarized in this Outline.⁵

Third, it is critical that any rule set out in the College Bylaws be supported or authorized under the HPA. Section 19(1) of the Act provides a list of the subjects over which a college board may make bylaws. If a college bylaw is not supported by one of those bylaw-making authorities, a court could strike-down that bylaw as being *ultra vires* (beyond the authority) of the Act.

Finally, there are also a number of procedural rules under the HPA that apply to a College's Bylaws that underscore how different they are from those that an association may establish under the *Society Act*.⁶ For example:

- A college must provide other colleges, the profession and the public at large with an opportunity to review and comment on new bylaws (or proposed changes to current bylaws). The review period is set in the Act at 90 days, but can be reduced with approval of the Minister.
- After a college board approves its bylaws, it must submit those approved bylaws to the Minister (Ministry) for his (its) review and approval. The Minister has (somewhat limited) authorities to reject approved bylaws or to order changes to a College's Bylaws.⁷
- As the college board is given the exclusive authority to approve bylaws (in the first instance), members of the college do not have the authority under the Act to either approve or reject a proposed new or amendment to an existing bylaw. Other than the 90-day public consultation process, there is no requirement for a college board to obtain membership approval over College Bylaws.⁸

Given these constraints on college bylaws, the rest of this document provides an outline of what could become the Bylaws for the College of Counselling Therapists, or at least the headings for those possible bylaws.

⁵ If the Task Group requested, I could revise this Outline to include an outline of the requirements of the HPA and show how they relate to these Bylaw provisions.

⁶ All of these differences explain why it is not useful to try to adopt or consolidate the Task Group member association bylaws to convert them into the College Bylaws.

⁷ There is a narrow band of issues or subjects that the Minister does not have the authority to approve or may not change, in particular re: a profession's code of ethics and its standards of practice.

⁸ In fact, a college board would be fettering its legal authority under the HPA if it was to give registrants the right to approve (or reject) bylaws or changes to the bylaws!

Outline (Headings) of the College Bylaws

1. Definitions

DIVISION A – GOVERNANCE AND ADMINISTRATION

Part 1 – College Board

2. Composition of the board (number of directors, representation, etc.)
3. Notice of election
4. Nomination procedure
5. Election procedure
6. Terms of office
7. Assuming or leaving office
8. Removal of an elected board member
9. Deemed removal of an elected board member due to disciplinary proceeding
10. Vacancy on the board
11. Remuneration of board members
12. Chair and vice-chair
13. Board meetings
14. Notice of a board meeting
15. *In camera* meetings
16. Voting by the board
17. Special resolutions in writing
18. Speaking on behalf of the College
19. Board Members' Code of Ethics
20. Registrar (additional powers re: section 19(2.1) of the Act)

Part 2 – College Committees

21. Registration committee (composition and additional powers re: Parts 2 and 3 of the Act)
22. Inquiry committee (composition and additional powers re: sections 33 to 37.1 of the Act)
23. Discipline committee (composition and additional powers re: sections 38 and 39 of the Act)
24. Quality assurance committee (composition and additional powers re: sections 26.1 and 26.2 of the Act)
25. Client relations committee (composition and powers re: preventing complaints of professional misconduct of a sexual nature)
26. Finance and administration committee (composition and powers)
27. Committee terms, membership, chair and reporting requirements
28. Meetings of a committee, voting, etc.

Part 3 – Panels

29. Board or committee may meet in panels
30. Composition of panels

31. Activated (special) panels (for registration committee, inquiry committee, discipline committee and quality assurance committee)⁹
32. Authority of a panel
33. Meetings of a panel, voting, etc.

Part 4 – General Meetings of Registrants

34. General meetings
35. Notice of general meetings
36. Notice to public representatives
37. Proceedings at general meetings
38. Voting by registrants
39. Resolutions proposed by registrants (are not binding on the board)

Part 5 – College Records

40. Body responsible for administering the *Freedom of Information and Protection of Privacy Act*.
41. Fees for information requests
42. Protection of personal information
43. Disclosure of annual report
44. Disclosure of registration status
45. Manner of disposal of college records containing personal information

Part 6 – College Administration

46. Seal
47. Deputy registrar
48. Fiscal year
49. Banking
50. Payments and commitments
51. Borrowing powers
52. Investments
53. Accountant
54. Legal counsel
55. Insurance

DIVISION B – REGISTRATION AND CERTIFICATION

Part 7 – Registration (All Professions)

56. Classes of registrants
57. Payment of registration and other fees
58. Fee adjustments
59. Active registration (criteria and application process)
60. Inactive registration (criteria and application process)
61. Retired registration (criteria and application process)
62. Temporary registration (criteria and application process)

⁹ A member of the board or committee from the profession or specialty in question may activate the creation of a profession/specialty-specific panel or refer the matter to a profession/specialty-specific standing panel of a committee.

- 63. Examinations
- 64. Examination failures
- 65. Improper conduct during an examination
- 66. Appearing before the registration committee
- 67. Transferring registrant (labour mobility within Canada)
- 68. Transferring registrant (international)
- 69. Substantial equivalency
- 70. Issuing a certificate of registration
- 71. Display of a certificate of registration
- 72. Deemed revocation of certificate of registration
- 73. Return of a certificate of registration
- 74. Registration renewal (active, limited active, inactive and retired)
- 75. Reinstatement after suspension or cancellation (ref. ss. 39(1)(d) or (e) of the Act)
- 76. Reinstatement following non-payment of fees
- 77. Information registrants must provide
- 78. Porting/grand-parenting of association members in good standing (time-limited)
- 79. Participation and voting rights

Part 8 – Specialist Certification Programs

- 80. Application
- 81. General (role of the registration committee)
- 82. Acceptable programs of study (specialists)
- 83. Issuing of specialist certificates
- 84. Right to a decision and a review of a denied certificate (see Part 9, below)
- 85. Display of specialist certificates
- 86. Return of specialist certificates
- 87. Certification renewal
- 88. Continuing specialists competencies program
- 89. Standards of Practice for specialists
- 90. Use of “certified” in advertising

Part 9 – Reviews by the College Board

- 91. Application (right to an internal review re: certification decisions)¹⁰
- 92. Board review of a decision
- 93. Conduct of a board review
- 94. Result of a board review
- 95. Review re: denial of a specialist certificate

DIVISION C – STANDARDS, COMPLAINTS AND DISCIPLINE

Part 10 – Regulating Professional Practice

- 96. Code of ethics and standards of practice for the profession (or each speciality)
- 97. Mandatory liability insurance (amount per claim and type)
- 98. Marketing (and advertising rules)

¹⁰ New Part 4.2 of the HPA provides all applicants whose registration applications have been rejected by a college registration committee to appeal that decision to a new Health Professions Review Board. Internal appeals to a college board for such decisions are no longer necessary.

- 99. Internet marketing
- 100. Use of titles prescribed in the Regulation (adjective that may be used with...)
- 101. Permitted practice descriptions / Preferred areas of practice
- 102. Declaring a speciality
- 103. Ability of registrants to accept delegations or act under supervision re: restricted activities granted to other health professions
- 104. Speaking on behalf of the college and professional endorsements
- 105. Quality assurance (mandatory continuing competencies) programs
- 106. Assessment of professional performance by the quality assurance committee
- 107. Remedial examination of registrants by the quality assurance committee
- 108. Failure to satisfy continuing competencies requirements
- 109. Client records

Part 11 – Complaint Investigation and Resolution¹¹

- 110. Inspections (observation during a clinical session)
- 111. Investigations by inquiry committee
- 112. Registrar authority (to act under section 32(3) of the Act)
- 113. Consent orders (under sections 32.2(4)(b) or 32.3(3)(b) of the Act, etc.)
- 114. Mediation between complainant and registrant (re: section 33(6)(b) of the Act)
- 115. Mediation between committee and registrant (re: section 33(6)(b) of the Act)
- 116. Appointment and payment of mediator
- 117. Mediation terms and agreement to mediate
- 118. Agreement reached by mediation
- 119. Agreement not reached
- 120. Registrant cooperation

Part 12 – Citations and Disciplinary Proceedings

- 121. Citation for disciplinary hearing (re: section 37 of the Act)
- 122. Discipline committee or panel (avoiding conflicts of interest)
- 123. Disciplinary hearings (pre-hearing matters, recording the hearing, etc.)
- 124. Notice of disciplinary decision (re: section 39.3 of the Act requirements)
- 125. Retention of disciplinary committee and inquiry committee records
- 126. Effect of suspension
- 127. Fines (setting the maximum per section 39(2)(f) of the Act)
- 128. Costs (setting tariffs re: ss. 33(7), 37.1(1) & (5), and 39(4) & (5) of the Act)
- 129. Notice of disciplinary action under section 39.1 of Act

Schedule “A” – Schedule of Fees

Schedule “B” – Tariff of Costs

Schedule “C” - Fees for Information Requests

Schedule “D” - Code Of Ethics

¹¹ The HPA contains a great deal of detail re: complaint investigations, mediation, disciplinary hearings, etc.