

**Submission to the
Standing Committee on Social Policy:**

***Bill 283, Advancing Oversight and Planning
in Ontario's Health System Act, 2021***

**Schedule 4:
*Psychology and Applied Behaviour Analysis Act***

Submitted by:

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The College of Early Childhood Educators (the College) is pleased to provide the Standing Committee on Social Policy with input during the Committee's consideration of Bill 283, *Advancing Oversight and Planning in Ontario's Health System Act, 2021*. These comments are focused on Schedule 4 to the Bill, which would enact the *Psychology and Applied Behaviour Analysis Act, 2021* (Schedule 4).

The College of Early Childhood Educators was established under the *Early Childhood Educators Act, 2007* (ECE Act). The College regulates the profession of early childhood education in the interests of children, families, and the public of Ontario, and is accountable to the Ministry of Education. The College has over 56,000 current registered early childhood educators (RECEs) who are trusted to provide education and care to the most vulnerable members of Ontario's population.

Recommendation: That an exemption be added to the *Psychology and Applied Behaviour Analysis Act* to prevent dual regulation of professionals using the title of behaviour analyst or engaging in the practice of applied behaviour analysis while practicing as a member of a profession which is already regulated.

1. Unnecessary Dual Regulation of Professionals Already Subject to Oversight

The College acknowledges the importance of ensuring that all Ontarians, including children, have access to high quality educational and mental health supports delivered by appropriately qualified professionals who are subject to regulatory oversight. The greatest benefit to the public from the regulation of behavior analysts and the practice of applied behaviour analysis (ABA) is the opportunity to bring currently unregulated practitioners under the oversight of a regulatory college.

However, the regulatory model proposed in Schedule 4 is overly broad and will result in unnecessary dual regulation of professionals who are already registered under a number of existing regulatory colleges. Significant numbers of behaviour analysts are already regulated as members of:

- the College of Early Childhood Educators
- the Ontario College of Social Workers and Social Service Workers
- the College of Occupational Therapists of Ontario
- the College of Audiologists and Speech Language Pathologists of Ontario
- the College of Registered Psychotherapists of Ontario

These professionals may use the title of behaviour analyst and provide services which fall within the proposed scope of practice for applied behaviour analysis in the context of the practice of their regulated profession.

Under the proposed *Psychology and Applied Behaviour Analysis Act, 2021*, use of the title “behaviour analyst” (or a variant or abbreviation thereof) and holding oneself out as qualified to practise applied behaviour analysis would be restricted to registered members of the College of Psychologists and Behaviour Analysts of Ontario. If passed, regulated professionals in Ontario who engage in the practice of ABA within the scope of their practice as regulated professionals will be required to either:

- a) be dually regulated by both their original college and the College of Psychologists and Behaviour Analysts; **OR**
- b) relinquish the title and practice of ABA so as not to breach the requirements of the *Psychology and Applied Behaviour Analysis Act, 2021*.

In March 2020, a joint letter was submitted by five affected Colleges, supported by the College of Psychologists, stating our joint position that:

‘professionals who are currently regulated under a college other than the College of Psychologists of Ontario (CPO), should not be required, under any proposed model, to register as well with the CPO ... Requiring professionals to register with more than one regulatory body would seem to us to be not only an unnecessary duplication of regulatory efforts, but also one which would place an undue regulatory burden on those professionals.’¹

¹ Letter dated March 6, 2020 is attached as Appendix 1.

Increased regulatory and administrative burden on professionals

Dual regulation would increase the regulatory and administrative burden on these professionals. Professionals practicing applied behaviour analysis within the context of their regulated profession would be required to meet the registration requirements for two colleges, would have to undergo the application process to register with the College of Psychologists and Behaviour Analysts, and would have to ensure ongoing compliance with the regulatory requirements of both colleges.

Increased cost and reduced access to services

Dual regulation increases the costs to the professionals themselves, which risks driving them out of the practice of applied behaviour analysis, leading to further challenges to children and families in accessing high quality services in a timely and accessible manner. It also increases the costs of regulation of all professions impacted, drawing resources away from the goal of the legislation, which is to provide appropriate oversight to practitioners who are currently unregulated.

No public protection benefit

This additional regulatory burden and cost would provide no additional benefit to the public in terms of oversight or accountability. The fundamental purpose of professional regulation in Ontario is to protect the public interest. There is an inherent risk of harm with any intervention involving vulnerable populations and such interventions should be appropriately regulated. However, requiring dual regulation of professionals who are already regulated would confer no advantage from a public protection standpoint.

2. The Role of RECEs and the Scope of the Impact on Children and Families

Registered Early Childhood Educators practice in settings which include licensed childcare, school boards, and family support programs and children's services which include special needs resourcing, developmental services and children's treatment centres.

RECEs' protected scope of practice under the ECE Act is the planning and delivery of inclusive play-based learning and care programs in order to promote the well-being and holistic development of children, and includes:

- a) the delivery of programs to children 12 years of age or younger;
- b) the assessment of the programs and of the progress of children in the programs; and
- c) communication with the parents or persons with legal custody of the children in the programs in order to improve the development of the children.²

Other legislation, such as the *Child Care and Early Years Act* and the *Education Act*, provide that certain positions, including some special needs resource consulting, in school boards and licensed child care may only be held by an RECE.

Within the context of their practice, RECEs may provide behavioural services that are within the proposed scope of applied behaviour analysis as a complement to other strategies and techniques. For example, RECEs who hold positions as resource consultants work collaboratively with other regulated professionals to design and implement individual plans that support the integration of children with disabilities into a variety of settings including licensed child care programs, school-based classrooms and/or family support programs. These individual plans may include behavioural services administered by the resource consultant, or another RECE or individual working directly with the child.

RECEs may also practise in a context focused exclusively on the delivery of applied behavioural analysis and other behavioural services, such as children's treatment centres. In all practice contexts, RECEs' clients are children and their families.

RECEs practising as behaviour analysts may take specialized training in addition to the entry to practice education requirements for RECE registration. This includes the Early Childhood Education Resource Consulting graduate certificate program and the Inclusive Resource Practice – Child and Family graduate certificate program.

² *Early Childhood Educators Act, 2007*, s. 2

Based on the College's records, more than 800 RECEs are currently practicing in areas which may be affected by the proposed regulation of behaviour analysts.

- Over 400 are in resource teaching or consulting roles.
- The others are in roles which include behavioural therapists / consultants and early intervention. For example,
 - More than 60 list their primary practice location as an organization whose mandate is primarily the provision of services to children with autism and their families; and
 - at least 40 describe their role as behaviour therapist / consultant / technician / or instructional therapist.

In addition to using the protected RECE title, RECEs practicing in these areas may use titles such as ABA therapist, behaviour therapist / technician / consultant or instructor therapist.

3. Preferred Model: Exemption from Schedule 4, Joint Regulation of Applied Behaviour Analysis by Regulated Professionals

Regulatory colleges share a common mandate to serve and protect the public interest and a similar legislative framework. They fulfill this mandate in a number of ways, including:

- Setting entry-to-practice requirements which ensure only those with specialized educational qualifications are eligible for registration.
- Ensuring that only those registered with the College use the protected titles or hold themselves out as regulated professionals.
- Setting, maintaining and ensuring that all members follow a Code of Ethics and Standards of Practice and participate in continuing competence or quality assurance programs.
- Maintaining rigorous complaints and discipline processes. These differ from government oversight systems and process-oriented mechanisms as well as those put in place by individual employers.

- Ensuring public transparency, as all College members are listed on an online Register, which includes information regarding a member's registration status and discipline history (if any).

In the joint letter of March 2020, the affected regulatory colleges committed to working collaboratively to ensure consistent regulation of behaviour analysts. This model was successfully implemented in relation to the regulation of psychotherapy, which may be practiced by members of a number of different colleges, in addition to the College of Psychotherapy. This is accomplished by way of an exemption from the restrictions in legislation on use of title and the protected scope of practice.

Conclusion

The College recommends that any restrictions on use of the title of behaviour analyst and the practice of applied behaviour analysis contain an exemption for those registered and permitted to provide such services by the College of Early Childhood Educators. This ensures that regulated professionals are not subject to unnecessary oversight without compromising the objective of protecting the public.

The College appreciates the opportunity to provide this submission to the Standing Committee on Social Policy during its consideration of Bill 283. The College would be pleased to provide any further information which would be of assistance and participate in consultations related to the early learning and child care sector.

Yours truly,

Beth Deazeley
Registrar & CEO
College of Early Childhood Educators

Stacey Lepine, RECE
President
College of Early Childhood Educators

Appendix A

March 6, 2020

Regulatory Projects

Allison Henry

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Jane Cleve

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Dear Ms. Henry and Ms. Cleve:

As Registrars of a number of the regulatory colleges whose members will be impacted by the model proposed by the Ministry of Health (MOH) and the Ministry of Children, Community and Social Services (MCCSS) for the regulation of behavioural clinicians, we were pleased to be invited to participate in the consultation session held by teleconference on Thursday, February 6, 2020. While each of our colleges intends to provide detailed individual submissions to respond to the consultation questions being asked by the ministries, this joint letter summarizes our shared thoughts and concerns, as discussed at a meeting of the group below on March 2, 2020.

Our comments are as follows:

1. Practitioners who are already regulated by another college:

Our overarching comment with respect to the regulation of behavioural clinicians is that professionals who are currently regulated under a college other than the College of Psychologists of Ontario (CPO), should not be required, under any proposed model, to register as well with the CPO. Significant numbers of behavioural clinicians (both behaviour analysts and behaviour technicians) are registered with each of our colleges. Information-gathering by a number of the colleges suggests that these clinicians most often provide ABA techniques as part, but not all, of their professional practice; there appear to be a small number of clinicians in most of the colleges for whom the provision of ABA services is the sole focus of their practice. Requiring professionals to register with more than one regulatory body would seem to us to be not only an unnecessary duplication of regulatory efforts, but also one which would place an undue regulatory burden on those professionals.

As you know, regulatory colleges share a common mandate to serve and protect the public interest. We fulfill this mandate in a number of ways, including:

- **Setting entry-to-practice requirements** which ensure only those with specialized educational qualifications are eligible for registration.
- Ensuring that only those registered with the College use the **protected titles** or **hold themselves out** as regulated professionals.
- Setting, maintaining and ensuring that all members follow a **Code of Ethics and Standards of Practice** and participate in **continuing competence or quality assurance programs**.
- **Maintaining rigorous complaints and discipline processes.** These differ from government oversight systems and process-oriented mechanisms as well as those put in place by individual employers.

Regulation also provides **public transparency**, as all College members are listed on an **online Register**, which includes information regarding a member's registration status, discipline history (if any) and employer contact information.

In our view, the practitioners who pose the greatest risk of harm to the public are not those who are already regulated but rather those who are not. Complaints from the public about the conduct of a behavioural clinician (whether a supervisor or a technician) who is already registered with one of the other regulatory colleges would be handled through the established complaints and discipline processes. Unregulated practitioners, however, would presumably include those who would not meet the registration requirements of any of the colleges.

2. Taking a phased approach:

We learned through the February 6, 2020 consultation that the MOH and the MCCSS are planning to take a phased approach to the regulation of behavioural clinicians: initial efforts would focus on regulating supervisors (Applied Behaviour Analysts) through the CPO, and behaviour technicians would be regulated at a later date.

In our view, this phased approach may have some serious limitations. Perhaps our most serious concern is that despite requiring significant resources, initially regulating supervisors, rather than those providing direct behavioural services, may be significantly less effective in terms of the Ministries' goal to better protect the public in an area of practice that has proven to pose a significant risk of harm and that has operated without common accountability mechanisms or oversight. This is because supervisors would typically be one step removed from direct practice with clients, and may therefore be unaware of the fact that a clinician that they were supervising was engaging in practice that was harmful to clients.

3. Regulating a modality rather than the service-provider:

In our view, efforts to regulate modalities or techniques rather than service providers presents some significant challenges and may lead to some unintended consequences. This was certainly the experience with the regulation of psychotherapy – a process with which a number of the colleges below have extensive experience. We would suggest that any approach taken by the Ministries in terms of the regulation of behavioural clinicians should focus primarily on the practitioners rather than the behavioural techniques themselves.

We hope that you find our feedback helpful. As a group of regulatory colleges with a strong interest in this issue, we would be very pleased to continue to collaborate with each other and to work with the MOH and the MCCSS to provide any additional insights and/or information that would be of assistance in moving this important issue forward. We are hopeful that this engagement would include involving other colleges whose members may also be impacted.

Sincerely,



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