

**A Report to the Minister of Health
on the Investigation of the Application for the Regulation of
Massage Therapists
under *The Regulated Health Professions Act***

MANITOBA

The Health Professions Advisory Council

Conseil Consultatif des Professions de la Santé

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September 18, 2015

The Honourable Sharon Blady
Minister of Health
Room 302
Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Minister,

The Health Professions Advisory Council (the "Council") is pleased to submit to you its report respecting the regulation of massage therapists in response to your referral of the application made by the Massage Therapy Association of Manitoba ("MTAM").

MTAM is a voluntary professional association whose members agree to abide and be bound by its bylaws, code of ethics and standards of practice. MTAM has been praised by some who say that voluntary self-regulation has been effective in providing Manitobans with competent and trained massage therapists and monitoring the industry for unethical practitioners. MTAM's application indicates that it has been pursuing self-regulation since 1974.

The Council has investigated the question of whether massage therapists should be regulated under *The Regulated Health Professions Act* through the establishment of a college of massage therapy.

Based on the Council's consideration of relevant factors and the evidence presented to it, the Council notes that while the profession does not perform reserved acts, the Council is satisfied that there is a risk of harm to the public from incompetent practice of the profession, albeit not a substantial risk.

It is noteworthy that the activities massage therapists perform are within the public domain and so there is no prohibition to prevent others from performing such activities, including unregulated practitioners. However, the Council recognizes that the regulation of the

profession will reduce the risk of harm to the public to the extent that the practitioners meet the registration requirements of its regulatory college, submit to become members of its regulatory college and comply with the terms of membership, thereby permitting them to use the protected titles recommended by the Council. The public will know a practitioner is part of a regulated profession because the practitioner will be permitted to use a protected title.

If you wish, the Council would be pleased to meet with you to discuss our recommendations.

Sincerely,

Original signed by

Neil Duboff, Chair
Health Professions Advisory Council

Original signed by

Lynne Fineman

Original signed by

Bev Ann Murray

Original signed by

David Schellenberg

Original signed by

John Harvie

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Executive Summary

In a July 10, 2012 letter, the Minister of Health (the “Minister”) indicated that the Massage Therapy Association of Manitoba (“MTAM”) had applied for designation as a regulated health profession under *The Regulated Health Professions Act* (the “RHPA”). The Minister asked the Health Professions Advisory Council (the “Council”) to investigate and advise whether massage therapists should be regulated in Manitoba under the RHPA and, “if so, what would be the appropriate college, scope of practice, reserved acts and titles”.

As part of its investigation, the Council gave public notice of its review of MTAM’s application and invited interested parties to participate. Twenty-five individuals and organizations participated in the review (the “Participants”) of MTAM’s application.

The Council’s Mandate and Terms of Reference require that its advice to the Minister be based on evidence, academic or professional studies, the opinion of experts and other interested and informed persons. This requirement is meant to guard against the advice of the Council being based on anecdotes, subjective preconceptions or instinct. The Council understands that its duties under the RHPA are carried out in order to provide advice to the Minister about matters related to the RHPA, including whether to regulate a profession under the RHPA. Section 161(1) RHPA requires that

Upon completing an investigation, the advisory council must recommend to the Minister, with reasons (emphasis added), whether or not it would be in the public interest that the health profession be regulated under this Act.

In order to provide a transparent process to review requests for designation as a regulated profession, applicants must provide responses to a series of questions based on criteria identified in Section 159 of the RHPA¹:

- Whether a substantial portion of the profession’s members are engaged in activities that are under the jurisdiction of the Minister.
- The nature and degree of risk of physical, emotional or mental harm to individual patient/clients arises from incompetent, unethical or impaired practice of the profession having regard to:
 - the services performed by the practitioners;

¹ In accordance with the RHPA, the Council “must have regard to all matters that it considers relevant, which may include those” identified in s 159.

- the technology, including instruments and materials, used by practitioners; and
- the invasiveness of the procedure or mode of treatment used by the practitioners.
- Whether a significant number of the members of the profession do not have the quality of their performance monitored effectively.
- Regulation under the RHPA must be a more appropriate means to regulate the profession than other means.
- Whether the health profession is a distinct and identifiable profession with a distinct and identifiable body of knowledge that forms the basis of the standards of practice of the profession.
- There must be qualifications and minimum standards of competence for persons applying to practise the profession.
- The profession's leadership has shown that it will distinguish between the interests of the public and the profession's self-interest and, in self-regulating, will favour the former over the latter.
- Sufficiency of membership support and willingness to be regulated.
- The potential economic impact of regulation on the profession, the public and the health care system.

The applicant's responses to the questions allows for the analysis of whether the health profession should be regulated under the Act and, if so, for analysis regarding the appropriate college to regulate the practitioners, scope of practice, reserved acts and titles.

Currently, massage therapy in Manitoba is not a regulated profession. At the time of this writing, the Council is aware that the only required licensing for massage therapists are for those massage therapists practising in the cities of Thompson and Winnipeg where the practitioners are required to obtain a business licence under municipal by-laws. Anyone, with or without qualifications, can call themselves a massage therapist and/or practise massage therapy. Other than for those massage therapists who voluntarily belong to MTAM, there is no requirement for massage therapists to adhere to standards for education and qualification, participate in a continuing competency program, comply with practice standards and a code of ethics, or subject themselves to a complaints and discipline process.

Massage therapists do not perform any reserved acts nor did MTAM request that its members have the authority to perform any; all the activities of massage therapists are within the public domain. Therefore, there is no prohibition to prevent unregulated practitioners from performing these activities. The public will only be protected by the

provisions of the RHPA to the extent that a massage therapist meets the entry-to-practice requirements of a Manitoba college of massage therapists and allows themselves to be regulated by the college. Massage therapists who do not meet the entry to practice requirements of a college of massage therapy or choose not to be a member may practise massage therapy but would not be permitted to use any of the protected titles.

The Council finds that there is a risk of harm involved in the provision of massage therapy services, albeit not a substantial risk. The Council is of the opinion that this harm will be mitigated through a college of massage therapy which would set qualification standards for entry to practice, standards for practice and which would allow the public to access a complaints and discipline process. Reserving the use of the recommended protected titles for members of the college will let the public know that they are accessing massage therapy services provided by qualified members of the profession.

Based on the Council's investigation:

1. The Council recommends that the profession of massage therapy proceed to regulation under the RHPA to be governed by a College of Massage Therapy of Manitoba.
2. The Council recommends that the scope of practice statement for the profession of massage therapy be as follows:

The practice of massage therapy is the assessment of the soft tissues and joints of the body, and the treatment and prevention of physical dysfunction and pain of the soft tissues and joints by manipulation to develop, maintain, rehabilitate or augment physical function, to relieve pain, or to promote health.

3. The Council recommends that massage therapists not be granted authority to perform reserved acts under *The Regulated Health Professions Act*.
4. The Council recommends that the following titles and its variations, abbreviations and initials be restricted to members of the College of Massage Therapy of Manitoba:
 - “massage therapist”;
 - “registered massage therapist”; and
 - “licensed massage therapist”.

Introduction

The Manitoba Law Reform Commission 1993 discussion paper, *The Future of Occupational Regulation in Manitoba* noted that “in Manitoba, there is at present no single structure within the Legislature, the Cabinet or the provincial bureaucracy designed to consider proposals . . . for the introduction of a regulatory regime. . . . As a result, it is not clear why some applicant groups are granted self-government while others are not.”² Subsequently, the Manitoba Law Reform Commission Report #84, *Regulating Professions and Occupations* recommended that the purpose of occupational regulation should be to protect the public from harm; it should not be used to benefit or reward practitioners.³ In 2006, Manitoba Health (the “Department”) decided to replace the fragmented arrangements for the regulation of health professionals and replace it with a common legislative framework that would address the findings of the Law Reform Commission. In January 2009, the Department released a consultation document which proposed umbrella legislation to consolidate Manitoba’s many health profession statutes under a common legislative framework.⁴ *The Regulated Health Professions Act* (“the RHPA” or “the Act”) was passed by the Legislature in June 2009 for this purpose.

The relevant provisions of the RHPA which established the Health Professions Advisory Council (the “Council”) were proclaimed effective June 1, 2011, in advance of the enactment of the provisions of the balance of the Act. With the exception of a number of provisions relating to specific professions, the remainder of the RHPA was proclaimed into force on January 1, 2014. Audiologists and speech-language pathologists are the first two regulated health professions to transition to regulation under the RHPA. Professional self-regulation continues for the remaining health professions governed by 21 separate acts which are intended to be phased out as the corresponding health profession is brought under the provisions of the RHPA.

The purpose of the Council is to provide advice to the Minister on matters related to the regulation of health professions in Manitoba. On the Minister’s request, the Council is to provide advice about any matter related to the Act, including advice about:

- Whether an unregulated health profession should be regulated under the Act;

² Manitoba Law Reform Commission (November 1993) *The Future of Occupational Regulation in Manitoba* at 6.

³ Manitoba Law Reform Commission (October 1994) *Regulating Professions and Occupations* at 23.

⁴ Manitoba Health. *Proposed Umbrella Health Professions Legislation: The Regulated Health Professions Act*. January 2009.

- Whether the list of reserved acts should be revised;
- Who may or may not perform reserved acts;
- The use of professional or occupational titles by members of a regulated health profession or other persons;
- Entry-to-practice requirements for health professions;
- The continuing competency programs established by colleges; and
- Health human resource planning and management.

To assist the Council in formulating its advice to the Minister, Section 150 of the RHPA allows the Council to consult with or engage experts, persons who have information relevant to the work of the Council, and persons who have technical or specialized knowledge related to the work of the Council; to receive submissions; and to hold public meetings. These powers afforded the Council are meant to guard against its advice being based on anecdotes, subjective preconceptions or instinct. The Council understands that its duties under the RHPA are carried out in order to provide advice to the Minister about matters related to the RHPA, including whether to regulate a profession under the RHPA.

Proposals for New Professional Regulation

One of the key provisions of the RHPA is the formalization of the process to address proposals for new professional regulation. The over-arching principles for regulation of a group under the RHPA are:

- (1) the profession delivers health care as defined by the RHPA,
- (2) the health care provided by the practitioners poses a risk of harm to the public;
and
- (3) regulation under the RHPA is the most appropriate means to regulate the profession.

The legislation sets out the general process for an unregulated health profession to apply to be regulated. A group seeking to be regulated as a health care profession applies to the Minister of Health (the “Minister”) in the form and containing the information required by the Minister. Applicants must complete a questionnaire as prescribed in an appendix to the Application Process for Requests for Self-Regulation under the RHPA. Producing evidence, applicants must establish, among other things, that;

- the profession is identifiable;
- there is general agreement on qualifications, standards and competencies;

- the profession's leadership will favour the public interest over the profession's self-interest;
- the members of the profession support regulation and will be compliant; and
- the profession has an understanding and appreciation of the economic impact of regulation on its members, the public and the health care system.

Section 161(1) RHPA provides that

Upon completing an investigation, the advisory council must recommend to the Minister, with reasons (emphasis added), whether or not it would be in the public interest that the health profession be regulated under this Act.

Regulation Administered by Government or by the Profession

The primary purpose for a government to regulate an activity is the protection of the public from harm. Generally, professional regulation is generated and administered by government. In some cases, government delegates to a profession or occupation the privilege of self-regulation. In its 1994 report, the Law Reform Commission explained the difference between government administration of regulation and self-regulation:

In general, when government decides to introduce regulations to control a particular activity, it administers them itself. Frequently, a government department is assigned this task, in which case departmental employees administer the regulations directly. Government can also administer a regulatory regime indirectly by using a body it appoints but which acts at arm's length from government. . . .

Self-governing occupational groups . . . are an exception to the general rule of administration of regulation by government. The classic model of self-government represents a delegation by the Legislature of administrative authority to an organization whose officers and directors are elected by practitioners rather than being appointed by government. . . . Just as government is expected to exercise its administrative powers in the interest of the public, so administrative powers wielded by practitioners should be exercised only in the public interest.⁵

The delegation of authority by government to self-governing organizations, or "colleges", gives colleges the authority to register applicants who meet the qualifications for entry to practice established by the college, establish and monitor the standards of practice for

⁵ Manitoba Law Reform Commission (October 1994) *Regulating Professions and Occupations* at 46.

the profession, and administer a complaints and discipline process. The objective of regulation is to protect the public interest and ensure the public that the profession's practitioners are qualified, competent and will conform to the appropriate standards of care and conduct.

Section A

The Massage Therapy Association of Manitoba Application

In July 2012, the Minister of Health, the Honourable Theresa Oswald, referred to the Council an application by the Massage Therapy Association of Manitoba (“MTAM”) for the designation of massage therapy as a regulated health profession under the RHPA. The Minister instructed the Council “to investigate and advise whether massage therapists in Manitoba should be regulated under the Act and if so, what would be the appropriate college, scope of practice, reserved acts and titles”.

The Council’s activities with respect to MTAM’s application included:

1. A public notice of the Council review of the MTAM application.
2. The distribution of MTAM’s application to individuals and organizations who indicated a willingness to participate in the review. Participants in the consultation process are listed in Appendix A (the “Participants”).
3. The receipt of written submissions from Participants.
4. The exchange of submissions from Participants and the opportunity for MTAM and the Participants to provide written responses to any of the submissions from other Participants.
5. Correspondence from the Council to MTAM requesting written responses to a set of questions in relation to its application.
6. The distribution to Participants of MTAM’s responses to the Council’s questions and an invitation for Participants to comment.

The Status of Massage Therapy in Manitoba

Currently, massage therapy in Manitoba is not a regulated profession. At the time of this writing, the Council is aware that the only required licensing for massage therapists is for those massage therapists practising in the cities of Thompson and Winnipeg where the practitioners are required to obtain a business licence pursuant to municipal by-laws.

The City of Thompson Business Licensing By-law No. 1677-2002 defines a “massage therapist” as “a person who is an operator or an employee of a massage therapy clinic and who is a registered member of a recognized Canadian Massage Therapy Association” and defines a “massagist” as “any person carrying on the business or occupation of massaging, whether as operator of a massage clinic or as an employee or assistant therein or otherwise, but does not include a registered physiotherapist or a massage therapist.”

Under the City of Winnipeg Doing Business in Winnipeg Bylaw No. 91/2008, a “body rub practitioner” does not include any health professional regulated under the RHPA, a massage therapist, an esthetician or a member in good standing of an exempt organization. The Bylaw further defines a “massage therapist” as a member in good standing with MTAM, the College of Massage Therapists of British Columbia, the College of Massage Therapists of Ontario or the College of Massage Therapists of Newfoundland and Labrador or a person who provides evidence that they have graduated from an educational program in massage therapy which requires a minimum 2200 hours of study or completion of a 2-year program. The Bylaw defines an “exempt organization” as one that has been registered as a corporation in Canada for at least 5 years; members of the organization are governed by a comprehensive code of ethics which prohibits sexual relations with clients; membership is restricted to individuals who have graduated from credible educational institutions; continued membership requires continuing competency; members are covered by professional liability insurance; and the organization has a complaints process. An exempt organization must annually supply a list of its members to the City and must immediately notify the City when a member of the organization is suspended, expelled or has their practice restricted.

In its application, MTAM indicated that in 2011 it had 746 members of whom 700 were in practice. MTAM operates in Manitoba as a professional and voluntary self-regulating organization for massage therapists who wish to join and agree to the following terms of membership:

The undersigned applicant for Practicing Membership hereby agrees to abide and be bound by the Massage Therapy Association of Manitoba Inc.’s (MTAM) Bylaws, Code of Ethics, Conflict of Interest Code, Policies, Standards of Practice, together with all amendments thereto from time to time, and all additional bylaws, codes, guidelines, policies, practices, procedures and standards that may be implemented by the MTAM from time to time. The undersigned applicant also agrees to disclose to the MTAM the details of any prior or new criminal conviction in Canada or elsewhere, and any new or outstanding criminal charges. . . . Furthermore, the undersigned applicant agrees to conduct their practice within the scope of practice of massage therapy, in a competent, professional and ethical manner, and in accordance with all of the foregoing.⁶

⁶ Massage Therapy Association of Manitoba. Retrieved from <http://www.mtam.mb.ca/admin/uploads/files/Practicing%20Member%20Application%202014.pdf> 27 June 2014

To gain membership in MTAM, applicants must have completed a two-year massage therapy diploma program from a recognized school of massage therapy (MTAM recognizes all schools that are recognized/accredited by the College of Massage Therapists of British Columbia, the College of Massage Therapists of Newfoundland and Labrador and the College of Massage Therapists of Ontario. MTAM supports a minimum entry-to-practice education of 2200 hours of instruction, or approximately two years of academic and practical/clinical education.), and have attained a minimum grade point average of 75%.⁷

The Natural Health Practitioners of Canada Association (“NHPCA”), based in Edmonton and established in 1988, indicates it represents 365 massage therapists in Manitoba. The NHPCA points out that its members who are massage therapists possess varying degrees of education, ranging from 250 hours of study to over 3000 hours of study, and provide all types of massage therapy, from basic to advanced remedial services.⁸

Massage therapists are a self-regulated profession in British Columbia, New Brunswick, Newfoundland and Labrador, and Ontario.

Table 1: Legislation Regulating Massage Therapists, by Province

Province	Legislation governing Massage Therapy	Administration of legislation	Self-regulation (Yes/No)
Alberta	-	-	No ⁹
British Columbia	Massage Therapists Regulation pursuant to the <i>Health Professions Act</i>	College of Massage Therapists of British Columbia	Yes
Manitoba	-	-	No

⁷ Massage Therapy Association of Manitoba. Retrieved from <http://www.mtam.mb.ca/join-mtam.asp>

⁸ January 3, 2013 letter from NHPCA to Council.

⁹ As MTAM notes, massage therapists in Alberta have been transitioning to self-regulation under the *Health Professions Act* since 2009. At that time, the Alberta Minister of Health directed that the Massage Therapist Association of Alberta, the Remedial Massage Therapist Association and the Natural Health Practitioners of Canada Association participate on a transitional steering Committee to develop regulation policies and bylaws. In an April 4, 2014 letter to the Council, the Natural Health Practitioners of Canada wrote that “discussions continue regarding the need to regulate and the government is considering surveying practitioners in the province to determine their view of these issues.” At the time of this writing, there has been no official confirmation that a survey was or has been conducted. The new government elected in Alberta in May 2015 has not indicated whether the regulation of massage therapists will be a priority.

New Brunswick	An Act to Incorporate the College of Massage Therapists of New Brunswick	College of Massage Therapists of New Brunswick	Yes
Newfoundland and Labrador	Massage Therapy Act, 2005	College of Massage Therapists of Newfoundland and Labrador	Yes
Nova Scotia	Massage Therapy Act received Royal Assent May 22, 2003	Not yet established.	No
Ontario	Massage Therapy Act, 1991	College of Massage Therapists of Ontario	Yes
Prince Edward Island	-	-	No
Quebec	-	-	No
Saskatchewan	-	-	No ¹⁰

Criteria for Self-Regulation

In order to provide a transparent process to review requests for designation as a regulated profession, applicants must provide responses to a series of questions based on criteria identified in section 159 of the RHPA¹¹:

- Whether a substantial portion of the profession’s members are engaged in activities that are under the jurisdiction of the Minister.
- The nature and degree of risk of physical, emotional or mental harm to individual patient/clients arises from incompetent, unethical or impaired practice of the profession having regard to:
 - the services¹² performed by the practitioners;

¹⁰ The Massage Therapist Association of Saskatchewan has submitted to the Minister of Health a legislative proposal for self-regulation and is awaiting a government decision as to whether a bill will be introduced in the Fall 2015 sitting of the Legislature.

¹¹ In accordance with the RHPA, the Council “must have regard to all matters that it considers relevant, which may include those” identified in s 159.

¹² The Council notes that subsection 159(c)(i) refers to “health care” not “services”.

- the technology, including instruments and materials, used by practitioners; and
- the invasiveness of the procedure or mode of treatment used by the practitioners.
- A significant number of the members of the profession do not have the quality of their performance monitored effectively.
- Regulation under the RHPA must be a more appropriate means to regulate the profession than other means.
- Whether the health profession is a distinct and identifiable profession with a distinct and identifiable body of knowledge that forms the basis of the standards of practice of the profession.
- There must be qualifications and minimum standards of competence for persons applying to practise the profession.
- The profession's leadership has shown that it will distinguish between the public interest and the profession's self-interest and in self-regulating will favour the former over the latter.
- Sufficiency of membership support and willingness to be regulated.
- The potential economic impact of regulation on the profession, the public and the health care system.

The applicant's responses to the questions allows for the analysis of whether massage therapists in Manitoba should be regulated under the Act and, if so, for analysis regarding the appropriate college to regulate the profession, scope of practice, reserved acts and titles.

The Council's Examination of the Application

The Council reviewed the Application having regard to all matters that it considered relevant, and in relation to each of the criteria set out in Section 159 of the RHPA and the information provided by the Participants. The criteria are important factors in Council's consideration whether to recommend a health profession for regulation under the RHPA. The Council considered the importance, relevance and weight of each criterion based on how the criteria related to such public interest considerations as risk of harm, feasibility of regulation and likelihood of membership compliance. Each criterion, taken separately, is not conclusive for a recommendation for self-regulation; the Council makes its recommendations on the basis of the responses to the criteria, on the whole, in addition to any other relevant matters¹³.

¹³ In accordance with the RHPA, the Council "must have regard to all matters that it considers relevant, which may include those" identified in Section 159.

Relevance to the Minister of Health

The Minister of Health is responsible for the administration of the RHPA. While applicants for designation under the RHPA are not asked to respond to any questions corresponding to “Relevance to the Minister of Health”, it is an implicit precondition to the investigation. Under Section 159, the Council is permitted to consider what proportion of the profession’s members are engaged in activities that are under the jurisdiction of the Minister of Health and whether the primary objective of the care/services they provide is the promotion or restoration of health:

Investigation by advisory council

159 In conducting an investigation under section 157 or 158, the advisory council must have regard to all matters that it considers relevant, which may include:

- (a) whether a substantial proportion of the practitioners of the health profession are engaged in activities that are under the minister's jurisdiction;
- (b) whether the primary objective of the health profession is to provide health care as contemplated by this Act.

“Health care” is defined in the RHPA as follows:

"health care" means any care, service or procedure

- (a) provided to diagnose, treat or maintain an individual's health;
- (b) provided to prevent disease or injury or promote health; or
- (c) that affects the structure or a function of the body.

For a health profession to fall within the Minister’s jurisdiction, its primary activity and objective must be to provide health care. MTAM indicated that massage therapists “treat the soft tissues and joints of the human body” with the “intent to promote tissue healing; rehabilitate physical function; maintain, develop or augment physical function; prevent physical dysfunction; prevent or relieve pain; and promote relaxation and general wellness.” Applicants for designation under the RHPA are not asked to present empirical evidence demonstrating the efficacy of the treatment provided.

The Canadian Life and Health Insurance Association points out that employee health care benefit packages often include massage therapy.¹⁴ The Council notes that the ministers of health in Newfoundland and Labrador, New Brunswick, Ontario, and British

¹⁴ In its December 21, 2012 letter to the Council, the Canadian Life and Health Insurance Association noted that “at a time when sustainability of benefit plans is a real concern for many employers, one cost-containment measure utilized by employers is the requirement for a physician referral for massage therapy.”

Columbia are responsible for legislation regulating massage therapists in their respective jurisdictions. Massage therapists in Alberta have been transitioning to regulation under Alberta's *Health Professions Act* since 2009. The Massage Therapist Association of Saskatchewan has submitted to the Minister of Health a legislative proposal for self-regulation and is awaiting a government decision as to whether a bill will be introduced in the fall 2015 sitting of the Legislature.¹⁵

In consideration of MTAM's explanation of the activities and practice of massage therapists, the inclusion of massage therapy services in employee health care benefit packages and the establishment of self-regulating colleges in four other provinces, the Council is of the view that the criterion of relevance has been met.

Below is the Council's examination of the criteria listed in Section 159 as organized by subject area in the Application with reference to and in consideration of:

- MTAM's responses to the subject area questions,
- submissions made by the Participants in the review,
- MTAM's written responses to the Council's questions, and
- Participants' comments on MTAM's responses to the Council's questions.

Each subject area is numbered with its explanatory description in italics, as it appears in the Application. Where the language used in the subject areas of the Application varies from the language used in the criteria listed in Section 159, the Council relied on the provisions of Section 159.

¹⁵ Massage Therapist Association of Saskatchewan. E-Newsletter. Annual Report: Annual Report 2014-15. Retrieved from website <http://www.saskmassagetherapy.com/index.php?page=1091> 4 June 2015.

1. Risk of Harm

A substantial risk of physical, emotional or mental harm to individual patients/clients arises in the practice of the profession, having regard to*

- a) the services** performed by practitioners of the health profession,*
- b) the technology, including instruments and materials, used by practitioners, and*
- c) the invasiveness of the procedure or mode of treatment used by practitioners.*

The harm must be recognizable and not remote or dependent on tenuous argument.

* The Council notes that subsection 159(a) of the RHPA does not require the Council to find a “substantial” risk of harm. The standard set out in the subsection is “the nature and degree, if any, of the risk of harm to the health and safety of the public from incompetent, unethical or impaired practice of the health profession”.

** The Council notes that subsection 159(c)(i) refers to “health care” not “services”.

Under the risk of harm criterion, the applicant is asked to define what practitioners do; what diagnostic tools, equipment and methods they employ; how their area of practice compares to others; what assessments, treatment modalities and services entail a risk of harm; and how regulation will mitigate the risk of significant harm. In its application, MTAM provided the following response:

Massage therapists assess and treat the soft tissues and joints of the human body, and perform both specific and general treatments using various modalities of manual and physical manipulation, with intent to promote tissue healing; rehabilitate physical function; maintain, develop or augment physical function; prevent physical dysfunction; prevent or relieve pain; and promote relaxation and general wellness.

MTAM indicates that there are various modalities of manual and physical treatment¹⁶ and that some massage therapists also perform a range of adjunctive therapeutic

¹⁶ Swedish massage, neuromuscular massage, myofascial massage, joint mobilizations, manual lymphatic drainage, hydrotherapies, thermal therapies and remedial exercises.

modalities.¹⁷ MTAM indicated to the Council (July 12, 2013 letter) that massage therapists may learn and include in their practice other modalities and techniques.¹⁸

Applicants are asked to specify areas of practice, treatment modalities, and services which are performed exclusively by practitioners of the profession. In its application, MTAM responded:

Massage therapists perform a wide array of different massage therapy treatment modalities, as indicated It is this complete constellation of treatment modalities . . . that is unique, rather than any of these specific modalities of treatment. Additionally, the extended treatment time for massage therapy services is quite unique to massage therapy (emphasis added) This significant amount of skilled, compassionate, intentional therapeutic touch and tissue manipulation performed directly by the therapist seems to be distinctive of massage therapy practice.

MTAM acknowledges that the treatment modalities and services performed by massage therapists are also performed by other regulated health professions - physiotherapists, chiropractors, naturopaths, some occupational therapists, some registered nurses and nurse practitioners, some dentists and dental hygienists, and some physicians - and other unregulated providers – athletic therapists, kinesiologists, osteopathic manual practitioners, traditional Chinese medicine practitioners, acupuncturists, estheticians, reflexologists, rolfers and personal trainers. MTAM has put forward to the Council that what distinguishes massage therapy from the other health professions is the breadth of treatments and services, the length of time involved in providing treatment, and the therapeutic touch and manipulation involved. The Council takes note that massage therapists do not have any exclusivity over the treatment modalities or services they perform. This is supported by MTAM's acknowledgement in a May 3, 2013 letter to the Council stating that "nothing is 'exclusive' to massage therapy practice per se."

MTAM points out that, in the case of physiotherapists, "physiotherapy treatments are typically of shorter duration than massage therapy treatments, and components of treatment may be delegated to assistants rather than being applied directly by the

¹⁷ Low intensity laser therapy, transcutaneous electrical nerve stimulation, therapeutic ultrasound, strapping and taping, cranio-sacral therapy, visceral manipulation, muscle energy techniques, and acupuncture.

¹⁸ Sport massage, breast massage, labour support massage, palliative care massage, cupping therapy, active release therapy, ligamentous articular strain techniques, structural integration, complete decongestive therapy and some bodywork modalities such as reflexology, aromatherapy massage, Lomi Lomi massage, traditional Thai massage, Shiatsu massage, somato-emotional release therapy, and Bowen therapy.

therapist.” This statement is supported by the College of Physiotherapists of Manitoba in a January 2, 2013 letter to the Council: “Massage therapy has become too expensive for physiotherapists to provide because it is a time intensive treatment. Third party payers no longer reimburse practitioners lengthy treatment times, which is what massage therapy entails.”

MTAM’s response to the application question, “Specify which diagnoses/assessments, treatment modalities and services entail a risk of harm to patients/clients” is presented, for ease of reference, in the following table:

Table 2: Massage Therapy Treatment and Risk of Harm, as Identified by MTAM

Massage Therapy Modality/Technique	Risk of Harm, as identified by MTAM
Thermal therapy (use of heat, cold, and contrasting heat-cold)	Burns, frostbite, or unsafe increase in circulation
Manual lymphatic drainage	Congestive heart failure
Acupuncture	Infection, puncture injuries to internal organs, damage to major vessels and nerves
Deep tissue techniques	Tissue damage, vascular damage, hematoma, or bone fracture
Frictional techniques and acupressure or ischemic compression	Bruising or tissue damage
Cupping massage	Bruising of the tissue
Swedish massage	Can potentially release a thrombus (blood clot)
Joint play mobilization techniques	Damage to joint structures or neurovascular damage
Any assessment and treatment of the structures of the neck	Tissue damage
Therapeutic exercise applications (including stretching, range of motion, strengthening, conditioning)	Exacerbated pain, damage to muscle tissues and connective tissues (MTAM notes that “this risk [also] exists . . . when . . . performed . . . by the patient independently after instruction by the therapist.”)
Low intensity laser therapy	Can irritate underlying conditions.
Massage therapy assessments (such as joint play assessments, passive range of motion assessments, strength testing and special orthopedic tests)	Increased pain, aggravate existing conditions, or damage tissues

Notwithstanding the risk of harm which MTAM indicates is associated with the above treatments, it states that “physical harm . . . is not in the forefront of public complaints. Complaints in other regulated provinces focus on . . . unprofessional conduct/sexual touching . . . record keeping . . . continuing competency violations . . . improper treatment/boundary issues/breaches of confidentiality. Rarely does the profession of Massage Therapy deal with dramatic physical harm issues.”¹⁹

Having acknowledged that “dramatic” physical harm is a rare consequence of massage therapy treatment, MTAM contends that regulation is necessary to prevent sexual assaults by massage therapists. Since, as MTAM explains, “massage therapy treatment typically involves extensive direct physical contact for an extended period of time, and patients are often disrobed or partly disrobed during the treatment session”, the potential for sexually inappropriate touching, or other criminal activity, is self-evident. However, it must be pointed out that the situation of physical contact by a health practitioner is not unique or exclusive to massage therapy.

The Council recognizes that massage therapists may cause harm to their clients through sexual misconduct. However inappropriate, improper and perhaps criminal, sexual misconduct is not an issue of competency; it is a breach of professional standards and perhaps of the law. When a massage therapist sexually assaults a client, the massage therapist is not providing a massage therapy service. The sexual assault is an inherently criminal act; competency is not an issue. Being competently trained to carry out massage therapy will not in and of itself prevent criminal activity. Furthermore, regulation is a weak and ineffective way to address criminal activity. Having said this, the Council accepts that a college of massage therapy does play a role in addressing sexually inappropriate activity in that after investigating and finding a member guilty of committing an act of professional misconduct by improper sexual conduct, the college may make an order against the member, including suspending or canceling the member’s registration or certificate of practice, rendering the member unable to practise in Manitoba using a reserved title.

MTAM’s response to the application question regarding risk of harm to public health, safety or well-being, supports MTAM’s observation that the preponderance of complaints against massage therapists does not involve physical harm. Of the 16 complaints which MTAM received between 2002 and 2010, only one involved “a

¹⁹ May 3, 2013 letter from MTAM to the Council at 12.

complaint alleging significant neck and shoulder pain as a result of treatment by a massage therapist (not an MTAM member).²⁰

The College of Massage Therapists of Ontario provided the Council with information respecting the final disposition of 39 complaints of physical harm it received between 2002 and 2013. In over 50% or 20 of the cases, the College did not take action against the member and one complaint was withdrawn. In 16 cases, the Ontario College took remedial action which was accomplished “by way of an agreement with a registrant through an Undertaking/Agreement or by imposing an Order for a Specified Continuing Education and Remedial Program.”²¹ Only two cases over the period were referred to discipline which the College states “is reserved for serious risk of harm matters such as a blatant disregard for the standards of practice or serious incompetence.”²² Without knowing how many massages were provided in Ontario over the same period, it is difficult to put the number of cases sent to discipline in perspective.

Based on the Council’s consideration of the evidence provided, the Council is satisfied there is a risk of harm to the public from massage therapy, albeit not a substantial risk of harm.

²⁰ Massage Therapy Association of Manitoba, “Application for Designation as a Regulated Health Profession Under Section 156, *The Regulated Health Professions Act*, Province of Manitoba” 7 May 2012.

²¹ June 24, 2014 letter from the College of Massage Therapists of Ontario to the Council.

²² Ibid.

2. Sufficiency of Supervision

A significant number of members of the profession do not have the quality of their performance monitored effectively, either by supervisors in regulated institutions, by supervisors who are themselves regulated professionals, or by regulated professions who assign this profession's services.

MTAM acknowledged that in most practice settings, there is no supervision of members of the profession. The Council was advised by MTAM that approximately 85% of massage therapists work as solo practitioners or with other practitioners in highly independent work environments. MTAM estimates that 10-15% of massage therapists work as employees in settings such as spas, clinics, or personal care homes, where their services are provided in private rooms with no direct supervision.

MTAM indicates that currently massage therapists are not required to participate in any peer reviewed processes such as practice or file audits. In addition, continuing competency programs are not mandatory for massage therapists.

In the current environment where massage therapists rarely have a professional supervisor, clients who have a concern regarding the nature or ethics of the services provided have limited recourse to lay a complaint to a knowledgeable, experienced independent third party and have the complaint investigated, adjudicated and, where necessary, a remedy provided. Options available to clients include speaking with the practitioner, with the practitioner's employer, where one exists, or raising a concern through a voluntary massage therapy organization if the massage therapist being complained about is a member of the organization.

Given that massage therapists practise independently and are not necessarily supervised, Sufficiency of Supervision was considered a significant criterion in the Council's consideration for self-regulation. Accordingly, the Council is of the view that this criterion has been met.

3. Alternative Regulatory Mechanism

Regulation under the RHPA must be a more appropriate means to regulate the profession than other means.

In addition to self-regulation, there are a number of other regulatory options for the public to be protected from improper or incompetent activity of a profession:

Voluntary Self-regulation

This is the current status of MTAM as membership in MTAM is voluntary. To be eligible for membership, applicants must have a diploma from a two-year massage therapy program from a school recognized by the regulators in British Columbia, Ontario or Newfoundland and Labrador. Members agree to abide by the MTAM Standards of Practice and Code of Ethics, and to disclose any criminal convictions.

In its April 4, 2014 letter to the Council, the Natural Health Practitioners of Canada Association (“NHPCA”) submitted that voluntary self-regulation has been effective in so far as “MTAM . . . performs the functions and provides similar outcomes as self-regulating associations with appropriate codes of conduct, enforcement and complaint mechanisms, insurance coverage, and professional discipline.”

Voluntary self-regulation, however, can impose only a limited range of sanctions for breaches of its rules and lacks the power of enforcement; MTAM members may break their undertakings with MTAM and relinquish their membership in MTAM but continue to practise outside MTAM-established standards and without penalty.

Some participants suggested that maintaining the status quo would be preferable to implementing a self-regulating college for massage therapists. One participant is of the view that voluntary self-regulation has been effective in Manitoba:

The massage therapy industry is working well as is in Manitoba. . . . It would be hard for a member of the public to find an incompetent, uneducated or under-educated “massage therapist” in Manitoba thanks to work done by the massage therapy associations in Manitoba in educating the public in how to access a reputable massage therapist as well as their continued work in monitoring the industry and weeding out unscrupulous practitioners.²³

²³ January 3, 2013 correspondence from Participant B to Council.

Government Registry of Practitioners

Under this structure, massage therapy practitioners would be encouraged to join a government-maintained registry on a voluntary basis and provide information about their training, qualification and areas of practice. Information on the registry would be available to the public. A registry would provide limited protection to the public since it sets no minimum requirements for education, standards of practice or a process for investigating complaints. Anyone, with or without qualifications, would be entitled to practise and be included in the registry.

Certification

Certification involves the issuance of a certificate by a governing body which attests that the certificate holder has met a mandatory period of education or training and/or has passed a given examination. Certification informs the public that an individual has the credentials and is eligible to practise a profession, but does not restrict the right of others who are not certified to practise. This regulatory option provides greater informed consumer choice as consumers also may use the services of uncertified practitioners.

The governing body may have limited or no commitment or resources for monitoring and enforcing standards of practice. There is a limited range of sanctions available for breaching the rules of certification; the usual sanctions are expulsion or a fine. Redress for consumer complaints about standards of practice may be unavailable unless legislation provides for it.

Regulation within an Existing College of a Regulated Profession

This option requires the support of the profession seeking regulation and, as importantly, a college willing to take on the added regulatory responsibility. This option is not supported by MTAM, and the Council has no evidence that an existing college is prepared to serve the role of regulating massage therapists.

Municipal By-law

The Council notes the City of Winnipeg By-law No. 91/2008 exempts massage therapists, principally members of MTAM, from licensing under the bylaw which applies to body modification services, escort agencies, food service establishments, hostels, body rub practitioners and parlours, public swimming pools and businesses dealing in used goods and precious metals. The City of Thompson Business Licensing By-law No. 1677-2002 also exempts registered massage therapists from the definition of "massagist". These by-laws set out the requirements for a business license and provide

no protection from incompetent providers or from poor quality service. Furthermore, the by-laws are only applicable within two cities in Manitoba whereas provincial legislation would apply equally across the province.

Self-Regulation

Government sanctioned self-regulation is the most common form of regulation for health professions in Canada. In Manitoba, under the RHPA, the legislature delegates legal authority to certain health professions to regulate themselves and government exercises indirect oversight through legislation. The governing body or college attests that the individual to whom it has issued a certificate of practice or licence has met specific requirements and is sufficiently competent to ensure protection of the public.

The administration of a regulatory regime by practitioners (or self-regulation) may be less costly than administration by government which is financed by taxpayers. In self-regulation, the costs of administration are financed entirely through the collection of annual membership dues or fees from the members of the profession. For government to administer a regulatory regime, experts may have to be hired at considerable expense, to assist it in its task. In self-regulation, the administration is assisted by members of the profession who can address complex issues with inside knowledge of the realities of the profession, common values and assumptions, and can more easily deal with matters of subjective judgement, such as questions of propriety. In a government administration, costs are borne by taxpayers, whether individual taxpayers use the services of the profession or not. The costs of self-regulation are ultimately borne by the individual client and third-party insurers (in privately-funded services) or indirectly by taxpayers (in publicly-funded services).

Having considered the status quo, other forms of professional regulation and municipal regulation, the Council is of the view that self-regulation is the most effective regulatory mechanism to regulate massage therapy. The Council is satisfied that this criterion has been met.

4. Body of Knowledge

The members of this profession must call upon a distinctive, systematic body of knowledge in assessing, treating or serving their patients/clients. The core activities performed by members of this profession must be discernible as a clear and integrated whole and must be broadly accepted as such within the profession.

The body of knowledge possessed by a profession should be distinct from the body of knowledge on which other health professions are based. It is the collective knowledge currently known and shared by practitioners to provide a sound basis for understanding the phenomena of illness, its signs and symptoms, and the basic, clinical and cognitive sciences underlying the techniques and modalities of the profession which will alter or manage illness. In other words, can the profession describe the interaction between treatment and outcome? This knowledge can be described in terms of its key concepts and language, its core theories and related empirical evidence.

The applicant is asked to describe the core body of knowledge and to relate the body of knowledge to its proposed scope of practice statement. MTAM provided the Council with the following scope of practice statement:

The practice of massage therapy is the assessment of the soft tissues and joints of the body, and the treatment and prevention of physical dysfunction and pain of the soft tissues and joints primarily by manipulation to develop, maintain, rehabilitate or augment physical function, to relieve pain, or to promote health.

MTAM advises that the body of knowledge of the profession is found within the *Inter-jurisdictional Entry to Practice Competency Profile for Massage Therapists* (the “Competency Profile”) which identifies 150 competencies required for entry to practice. The *Competency Profile* also states that entry-level massage therapists should apply in the workplace “comprehensive foundational knowledge relevant to Massage Therapy” in the areas of anatomy, physiology, pathophysiology, pharmacology, kinesiology and nutrition. However, MTAM does not describe the distinct aspects of these knowledge areas which are relevant to massage therapy, nor does it relate the body of knowledge to its proposed scope of practice statement. Anatomy, physiology, pathophysiology, pharmacology, kinesiology and nutrition are also foundational to medicine, nursing, physiotherapy, pharmacy and other professions.

For the purpose of assessing whether the applicant has met this criterion respecting a body of knowledge, it is useful to divide the criterion into three key components:

- (1) A distinct body of knowledge,

- (2) Systematic body of knowledge, and
- (3) Core activities performed by members of the profession.

(1) A Distinct Body of Knowledge

A health profession is defined, in part, by a body of knowledge which is distinct from those of other professions. Competencies, as per the *Competency Profile*, cannot be a substitute for a distinctive body of knowledge. Without a distinctive body of knowledge, a College cannot determine a profession's scope of practice and, consequently, when its members have acted outside that scope.

(2) A Systematic Body of Knowledge

A profession contributes to a systematic body of knowledge through a history of systematic research, such as controlled trials and rigorous research methods; gathering of empirical evidence, evaluation, documentation and dissemination of the efficacy of its treatments; and an analysis of patient outcomes. The findings from these processes advance the body of knowledge for a profession, strengthen that body of knowledge and produce empirical evidence of the efficacy for some of the modalities of treatment, allowing the profession to discard treatments that are ineffective or (potentially) harmful.

The findings from research processes also form the basis of a systematic body of knowledge, allowing the profession to establish standards of practice which aid in the protection of the public. These standards of practice underpin the quality assurance programs which are requisite under the RHPA and so enable a college to effectively regulate its members.

A participant in the review of MTAM's application stated that "massage therapy has still not proven the efficacious effects of this modality as supported by well-designed clinical studies. Massage is hindered from reaching the gold standard of scientific research which includes placebo-controlled and double-blind controlled trials."²⁴ While MTAM provided the names of periodicals and some published work pertaining to massage therapy research, it also acknowledged that "massage therapy research and evidence-based practice is in relatively early stages

²⁴ July 9, 2012 letter received from Participant P by Minister of Health, referred to the Council.

Further evidence comes from related professions with overlapping scopes, such as physiotherapy.”²⁵

(3) Core activities performed by members of the profession

In its May 3, 2013 letter to the Council, MTAM explained that “massage therapy is a comprehensive system of care that encompasses a variety of therapeutic interventions, including various forms of massage, fascial treatment, joint mobilization, thermal therapies, therapeutic exercise and a variety of adjunctive modalities and techniques Massage therapy is everything that massage therapists do in their practice.”

MTAM summarized the massage therapy body of knowledge as “assessing soft tissues, joints, movement, function, posture, and pain; communicating with the patient to clarify their treatment goals and obtain informed consent; and developing a treatment plan to obtain therapeutic goals.”²⁶ While this describes some of the activities that massage therapists perform, MTAM does not articulate a body of knowledge which is foundational to recognizing a health problem and intervening to resolve or remediate it, i.e., a description of the therapeutic mechanism of hands-on manipulation of soft tissue which we take to be at the core of massage therapy practice. MTAM asked the Council to consider the College of Massage Therapists of BC, “Guidelines for Foundational Knowledge in Massage Therapy Educational Programs” and the College of Massage Therapists of Ontario “Massage Therapy Competency Standards”. Both documents are concerned with competencies, which are not a substitute for a body of knowledge.

As the Council noted, MTAM advises that massage therapists receive basic education in anatomy, physiology, pathophysiology, pharmacology, kinesiology and nutrition which are areas of science also studied by other professions. MTAM does not describe a body of knowledge distinct to massage therapy which is foundational to massage therapists recognizing a health problem and intervening to resolve or remediate it. MTAM does acknowledge that massage therapy research and evidence-based practice is in relatively early stages.

This criterion has been only partially met.

²⁵ May 4, 2013 letter to Council at 14.

²⁶ July 12, 2013 letter to Council at 19.

5. Educational Requirements for Entry to Practice

There must be qualifications and minimum standards of competence for persons applying to practise the profession.

These components must include defined routes of entry to the profession such as:

- (a) competency assessment, or*
- (b) academic preparation at a recognized educational institution.*

Entry qualifications must be independently assessed.

One of the primary functions of regulatory bodies is to determine if applicants meet the requirements for registration as a regulated member. A common requirement for registration as a regulated member of the profession is graduation from an approved school or course of study. However, an alternative assessment mechanism must be provided to allow applicants who have not graduated from approved schools or courses of study to demonstrate that they possess the knowledge and skills required for safe and appropriate practice.²⁷

Regulatory bodies use competency assessments, which are tools that measure applicants' ability to apply their knowledge and skills to perform profession-specific procedures or tasks. Different assessment tools may be part of the competency assessment process, such as written examinations, practice assessments, comparisons of prior education/training and work or practice experience to required competencies and interviews. Regulators may use more than one competency assessment tool as one tool cannot always evaluate both knowledge and skill.

There are 60 training programs in the regulated provinces of BC, Ontario and Newfoundland and Labrador and 51 in the non-regulated provinces.²⁸ The programs

²⁷ This is especially important for internationally-educated/trained applicants and for mid-career practitioners who have been practising prior to the introduction of graduation as a requirement for registration. Competency assessments are needed for effective assessment of international applicants unable to provide evidence of the entry to practice requirements, for reasons beyond their control, i.e., breakdowns in bureaucracy stemming from war or natural disasters. Office of the Manitoba Fairness Commissioner. *Manitoba Fair Practices for the Assessment and Recognition of Internationally Educated Applicants* (February 2010) Retrieved from <http://www.manitobafairnesscommissioner.ca/wp-content/uploads/Fair-Registration-Practices-for-the-Assessment-and-Recognition-of-IE-Applicants1.pdf>

²⁸ National Accreditation Planning Committee. *A Plan to Establish a Canadian Accreditation Process for Massage Therapy Education Programs* (October 2013) Retrieved from http://www.cmtca.ca/wp-content/uploads/2014/01/MTCA_FinalReport.pdf at 7

across Canada and within Manitoba vary in both content and length. To be eligible for membership in MTAM, applicants must hold a diploma from a massage therapy program that is at least 2200 hours of instruction over 2 years, with a substantial health sciences component (human physiology and anatomy, musculoskeletal anatomy, kinesiology, pathology/pathophysiology, general nutrition, and general pharmacology) and clinical education program, including massage theory, application and skills in Swedish massage, neuromuscular massage techniques, myofascial techniques, joint mobilization techniques, hydrotherapies and thermal therapies and remedial exercise.

The mere reliance on the fact that someone has graduated from a training program does not provide sufficient proof of competency. As noted by the Law Reform Commission, training programs based solely on hours of instruction with no real definition of content may not adequately protect the public:

If graduation from an approved educational institution is established as an entry requirement, there is risk that the entry requirement will not be related to the performance of the service A reliance on this method of assessment will exclude those who have not obtained the mandated level of education but possess the necessary skills and knowledge Reliance on it as an assessment mechanism may fail to protect the public adequately.²⁹

MTAM supports a transition from what it calls “contact hour-based programs” to competency-based programs which will require accreditation of the programs to ensure the programs are offering courses leading to the graduation of massage therapists who meet the required competencies.³⁰ Accreditation of training and education programs is a process of quality assurance through which it is determined that a program complies with established standards of education, and which ensures that graduates meet the entry-to-practice requirements of the certification or licensing bodies of the profession.

MTAM points out that the National Accreditation Planning Committee was formed to provide direction for the establishment of national accreditation for massage therapy education programs in Canada. Its October 2013 report indicated that by 2020 or Year Seven of operation of the Massage Therapy Council for Accreditation, it would be feasible to accredit all programs in the regulated provinces and up to twelve programs in the currently non-regulated provinces. An April 2014 communication indicated that a

²⁹ Manitoba Law Reform Commission (October 1994) *Regulating Professions and Occupations* at 37.

³⁰ May 3, 2013 letter from MTAM to Council at 8.

founders group is working on the establishment of the Massage Therapy Council for Accreditation and will be seeking financial support from provincial associations toward operations in 2015/16.³¹

MTAM acknowledges there is no active initiative underway for a national entry-to-practice examination which might also be taken by those who do not have the mandated level of training. The availability of an independent assessment, i.e., not by a regulator, of entry-to-practice qualifications for graduates of training programs, such as a national examination, and for those who do not have the mandated level of education, is important under the RHPA.

When an unregulated health profession is designated as a regulated health profession, a transitional council is appointed to make operational the new college. The transitional council will develop registration regulations and bylaws, set a budget, appoint a registrar and ensure all other necessary work is completed to enact the profession-specific regulation and elect the first college council. In the absence of a defined competency assessment, MTAM proposes that a transitional council develop the appropriate components of such an assessment. However, a transitional council will have need for assistance in this regard since, as already mentioned, there is no accreditation of training programs in Canada nor a national exam for graduates of the programs. It is possible the transitional council might be able to borrow from the regulatory colleges in British Columbia and Ontario. In BC, for example, college applicants

- (1) trained in Canadian provinces where massage therapy is not regulated,
- (2) internationally educated,
- (3) not graduated from a BC accredited institution or
- (4) not a registrant in another regulated province (Ontario, New Brunswick or Newfoundland/Labrador)

are required to apply for a credential and prior learning assessment to determine if they have the knowledge and skills equivalent to those acquired through education in BC. In Ontario, college applicants from a province where massage therapy is not regulated or are internationally trained are required to undergo credential or prior learning assessment. If the knowledge and skills are assessed as not equivalent to the educational standards in Ontario and the assessment determines “minimal to moderate Ontario-specific upgrading” is required, the applicant is referred to a bridging program.

³¹ Canadian Massage Therapy Council for Accreditation. Resources. Retrieved from http://www.cmtca.ca/wp-content/uploads/2014/04/MTCFAUpdate1_April2014.pdf

If the assessment determines that general retraining is required, the applicant is referred to an Ontario diploma program.

The profession acknowledges that standards of education across the country are varied.³² National accreditation standards will define the minimally expected outcomes of the training programs and will produce graduates of the training programs who are reasonably eligible candidates for a national entry-to-practice examination (when such an examination is developed for massage therapy) or other processes for entry to practice established by the profession.

There is, as yet, neither national accreditation of training programs nor independent assessment of entry-to-practice qualifications. As pointed out by the Manitoba Law Reform Commission, for any attempt at regulation to succeed, a profession's entry-to-practice qualifications must be resolved:

A licensing or certification regime is defined by . . . the standards for entry into the regime and for continued practice within it. . . . A decision to implement a licensing or certification regime cannot be made until . . . entry and practice standards are known.³³

The Council is of the opinion this criterion has not been met.

³² National Accreditation Planning Committee (October 2013) *A Plan to Establish a Canadian Accreditation Process for Massage Therapy Education Programs* at 3.

³³ Manitoba Law Reform Commission (October 1994) *Regulating Professions and Occupations* at 25.

6. Leadership's Understanding of Need³⁴ to Favour the Public Interest

The profession's leadership has shown that it will distinguish between the public interest and the profession's self-interest and in self-regulating will favour the former over the latter.

Typically, a self-regulating profession has two distinct bodies concerned with its activities: a regulating body and an advocacy or professional body concerned with promoting the economic and professional interests of its members. The RHPA requires a separation of these two functions because of the potential for conflict between the two competing interests. It is not in the public's interest to grant a profession the authority to self-regulate if it is not certain that the profession can favour the public interest over the self-interest of the profession. Where a profession has not had opportunity to set and enforce standards of practice, assessing an application against this criterion must be done against other measures which demonstrate a commitment to leadership in the public interest.

MTAM has written standards of practice for its members relating to assessment and treatment, communication and recordkeeping. These standards along with a Code of Ethics are considered in responding to complaints about members. However, the standards apply only to members of MTAM. MTAM also established a mandatory continuing education and professional development program for its members. In 2011, MTAM revoked 2% of its membership for failure to comply with the requirements of the program.

In its application, MTAM has indicated an awareness that the profession will need to keep separate activities designed to further the interests of its members and that it would transfer many of its functions to a regulatory college and continue to advocate for the professional interests of massage therapists:

Many of the functions that the MTAM currently assumes would be transferred to a regulatory college (e.g., registration, continuing competence, complaints and discipline processes), while some of the functions would remain the responsibility of the association (e.g., offering

³⁴ The subject area of this criterion as it appears in the Application is described as "Leadership Ability to Favour the Public Interest". The Council revised the description slightly to reflect, in its opinion, the meaning of the criterion.

continuing education options, promoting the profession, providing resources and disseminating research findings to members, etc.).³⁵

The application indicates that through MTAM the profession has made a commitment to the public interest insofar as it has developed standards of practice, a code of ethics and a complaints and discipline procedure.

MTAM is not clear that they understand the required focus for a health profession which is seeking self-regulation. For example, MTAM indicates in its application that there might be potential and external benefits to individuals and pecuniary benefits to the profession through a negotiated fee schedule with third parties. In the covering letter to the application, the President of MTAM states that “designation [under the RHPA] will also assist the advocate associations across the country to then pursue removal of the GST from Massage Therapy services provided to clients/patients, and to have Manitobans able to claim Massage Therapy treatments as medical expenses under the Income Tax Act similar to other Canadians who are able to do so. It will also enable the MTAM to open negotiations with WCB Manitoba and the Manitoba Public Insurance Corporation who currently do not recognize Massage Therapy for client/patient treatments as the profession is not recognized by the Province of Manitoba as a ‘Regulated Health Profession’ under the RHPA.”

MTAM’s argument regarding potential tax treatment of massage therapy services and the benefits to patients of having coverage by insurers must be disregarded by both the profession and the Council when considering self-regulation.

In general, MTAM has demonstrated that it understands the distinctions between a professional association and a regulatory body. It has also taken steps to acquaint its members with some of the functions of a regulatory body.

This criterion has been met.

³⁵ Massage Therapy Association of Manitoba, “Application for Designation as a Regulated Health Profession Under Section 156, *The Regulated Health Professions Act*, Province of Manitoba”, 7 May 2012.

7. Membership support, willingness to be regulated and likelihood of complying with regulation

The members of the profession support self-regulation for themselves with sufficient numbers and commitment that widespread compliance is likely. The practitioners of the profession are sufficiently numerous to staff all committees of a governing body with committed members and are willing to accept the full costs of regulation. At the same time, the profession must be able to maintain a separate professional association.

MTAM estimates it represents 85% of massage therapists in Manitoba, although this estimate is disputed by a participant³⁶ and has not been independently assessed or verified. The Natural Health Practitioners of Canada (“NHPC”) claim to represent a smaller number of massage therapists in Manitoba. MTAM advised in its application that in 2002, its membership unanimously supported a resolution to pursue regulation through legislation and that every year thereafter, the pursuit of regulation is discussed at annual general meetings. In November and December 2012, MTAM surveyed its members to determine support for regulation of massage therapy in Manitoba. Fifty-eight percent responded, with 1% indicating they did not think massage therapy should be a regulated health profession in Manitoba.

The NHPC states it is neither opposed to nor in favour of regulation, but it does not agree with MTAM on certain features of regulation. The points of disagreement include the educational standard for entry to practice, a single standard of education for the profession versus an accommodation of different levels of competency, and title restriction based on a single category of registration.

The College of Physiotherapists of Manitoba (“CPM”) indicated support for self-regulation of massage therapists under the RHPA, on the condition that there are a sufficient number of members prepared to finance and sustain the work of the regulator. The Manitoba Physiotherapy Association supports self-regulation for massage therapists, in principle, and the Manitoba Naturopathic Association supports regulation.

Health professions regulatory bodies are required to provide a range of mandatory functions under the RHPA, including:

- a) establishing requirements for entry to practice, such as education and experience;
- b) establishing and enforcing standards of practice;

³⁶ January 3, 2013 letter from Participant B to the Council at 10.

- c) administering quality assurance programs; and
- d) establishing a disciplinary process to handle complaints.

These statutory requirements have economic and financial implications. The expenses associated with each are over and above those necessary to operate and administer a college. Members of the profession must understand the implications of this increased financial burden and be able and willing to sustain these costs on a continuing basis. For instance, the College of Massage Therapists of British Columbia increased registration fees 11% in 2014³⁷ and 12.5% in 2015³⁸.

MTAM estimates a minimum registration fee of \$350.00 per registrant in the first year of the operation of a college for massage therapists in Manitoba. This fee is lower than that currently charged by the colleges in BC and Ontario whose full registration fees are \$450 and \$578 for 2015, respectively. The Council notes that MTAM projections for Year 1 revenues and expenditures for a college for massage therapists does not include a budget line for complaints and discipline and that legal costs are estimated at \$15,000 or 4% of expenditures. Regulatory colleges incur legal costs not only during the period of transitioning and establishment but also for administering a quasi-judicial disciplinary process. Legal costs and the funding of legal indemnity insurance may comprise a relatively high component of the budget, with disciplinary decisions being open to challenge in the courts. The College of Massage Therapists of British Columbia directs 22% of its expenditures toward addressing complaints.³⁹ For the College of Massage Therapists of Ontario, 15% of expenditures in 2013 went toward complaints and discipline.⁴⁰ The College of Physiotherapists of Manitoba also expressed concern that the financial projections may be too conservative and the membership fees collected may not be sufficient operationally.⁴¹

There has been no evidence provided to the Council that there is a lack of support for self-regulation from the majority of massage therapists in Manitoba and therefore the Council is bound to accept that there is sufficient support. However, the Council does not accept that the budgeting for the proposed college sufficiently contemplates the expenses required to properly operate a college.

³⁷ College of Massage Therapists of British Columbia. *Annual Report 2013* at 7.

³⁸ College of Massage Therapists of British Columbia. *Annual Report 2014* at 10.

³⁹ College of Massage Therapists of British Columbia. *Annual Report 2013* at 7.

⁴⁰ College of Massage Therapists of Ontario. *2013 Annual Report* at 21.

⁴¹ April 3, 2014 letter from the College of Physiotherapists of Manitoba to the Council.

The Council is of the view that this criterion has been partially met.

8. Economic Impact of Regulation

The profession must demonstrate an understanding and appreciation of the economic impact of regulation on the profession, the public and the health care system.

MTAM expects regulation to have little or no impact on the availability of massage therapists, on the provision of education training programs (as the schools in Manitoba already offer two-year programs), or on the prices for services charged. Notwithstanding MTAM's position, the Council anticipates some predictable economic and financial implications of regulation.

The economic impact of regulation on the profession includes the cost of time taken to comply with the requirements of the regulator which may take practitioners away from providing services to clients. This can also be seen as an opportunity cost to practitioners who may have to forego earnings, for instance, to take training to meet the competency requirements. Costs for new entrants to practice may also increase as a result of higher standards of education, previously non-existent entry to practice requirements and the costs of assessing competencies. Employers may incur costs ensuring that they have systems in place necessary for the employment of regulated professionals, such as confirming registration or notifying the regulator when a practitioner has terminated employment. Conversely, the regulator may incur costs for involvement in some matters which are presently dealt with internally by the employer, such as investigations into complaints. Although the Council did not receive evidence on this point, the Council is of the view that there is potential for negative costs associated with gaps between the different systems of oversight. One part of the system, for instance, the regulator, might wrongly assume that another part of the system, for instance, the employer, is taking responsibility for detecting and managing risks. The risk of confusion over roles and responsibilities could lead to costs of duplication of effort between employers and the regulator.

The public will also be impacted financially (through wages lost in order to participate in the complaints process or to purchase legal advice) as they attempt to access regulatory mechanisms such as the complaints and discipline process.

MTAM anticipates that "upon regulation" there will be greater access to massage therapy services for clients of Manitoba Public Insurance ("MPI") and the Workers Compensation Board of Manitoba ("WCB"). Were MTAM successful in negotiating a fee structure with either or both MPI and WCB, the cost of massage therapy services would be borne by all ratepayers in the case of MPI and employers in the case of the WCB.

In addition to supporting regulation for the purposes of protecting the public and establishing standards of practice, the Canadian Life and Health Insurance Association (CLHIA) expects that regulation might encourage some employers to reconsider the requirement for physician referral for massage therapy in their employee benefit plans, allowing for more direct access to services. CLHIA expects that implementing regulation of massage therapists will assist in reducing the costs to benefit plans associated with fraudulent claims for and abuse of massage therapy benefits. In the former, self-regulation may expedite client access to massage therapy services which, conversely, financially benefits practitioners. In the latter, insurance companies experience an external benefit of self-regulation - it mitigates some of the costs associated with conducting claims audits by insurance companies and transfers costs for investigation and discipline to the regulator. The external benefits arising, in this instance, from self-regulation accrue to certain individuals, the insurance industry and the profession but do not produce a result that is for the greater good overall or, in other words, in the public interest.

The Council is of the opinion that this criterion has been partially met.

9. Public Need for Regulation

The profession must demonstrate that a significant public need would be met through regulation.

In answer to the question whether any process had been undertaken to determine the public need for regulating the profession and what results were achieved, MTAM responded that it would be difficult to do so as the public perception is that the profession is already regulated. MTAM provided the results of a 2006 survey of 1000 adult Manitobans of whom 42% had been to see a massage therapist. Results showed that 85% of survey participants would be more likely to use the massage therapy services if practitioners were accredited by a professional association.

Although the survey information is important, matters that speak to the public need are not necessarily the same thing as matters which the public demand. We do not regard the degree to which a matter is “demanded” as indicative of something being a public need or in the public interest. To make assertions that regulation in the public interest is necessary requires a consideration of actual harm and the potential for regulation to eliminate or mitigate harm. As previously indicated, the Council has concluded that the practice of massage therapy involves a risk to the public, albeit not a substantial risk. The potential for the regulation of massage therapy to eliminate or mitigate harm will be discussed later in our report.

The RHPA helps to ensure professions comply with Chapter 7 of the Agreement on Internal Trade (the “AIT”). Chapter 7 (Labour Mobility) of the AIT is the agreement to achieve labour mobility for workers in regulated occupations (trades and professions) in Canada. Chapter 7 states that any worker certified for an occupation by a regulatory authority of one province or territory will, upon application, be certified for that occupation by each other province and territory that regulates that occupation, without any requirements for additional training, experience, examinations or assessments. MTAM expects that the adoption of the same entry to practice standards by the proposed college in Manitoba as those in the other regulated provinces in Canada will facilitate registration in jurisdictions receiving massage therapists leaving Manitoba.

This criterion has been partially met.

Summary

The Council's investigation into whether MTAM met the criteria for massage therapists to become regulated under section 156 of *The Regulated Health Professions Act* concluded that not all of the criteria have been satisfied.

The following criteria have been met:

- Relevance to the Minister of Health
- Risk of harm (albeit not a substantial risk)
- Sufficiency of supervision
- Alternative regulatory mechanism
- Leadership's ability to favour the public interest

The following criteria have been partially met:

- Body of knowledge
- Membership support and willingness to be regulated and likelihood of complying with regulation
- Economic impact of regulation
- Public need for regulation

The following criteria have not been met:

- Educational requirements for entry to practice

The Council recommends that the profession of massage therapy proceed to regulation under the RHPA by a College of Massage Therapy of Manitoba.

Section B

Scope of Practice, Reserved Acts and Titles

In view of the Council's recommendation that it is appropriate that the profession of massage therapy proceed to regulation under the RHPA, the Council proceeded to address issues of scope of practice, reserved acts and titles.

Scope of Practice Statement

The scope of practice statement is an important and required component of regulation under the RHPA. The statement describes what activity the College will regulate, what a health profession does and the methods it uses, and also distinguishes the profession from other regulated health professions. Consistent with the RHPA framework, the scope of practice statement will define a profession's activities in broad, non-exclusive terms and may overlap with other professions.

MTAM proposes the following scope of practice statement for massage therapy:

The practice of massage therapy is the assessment of the soft tissues and joints of the body, and the treatment and prevention of physical dysfunction and pain of the soft tissues and joints primarily by manipulation to develop, maintain, rehabilitate or augment physical function, to relieve pain, or to promote health.

The Council notes that the MTAM-proposed scope of practice is very similar to that in Ontario, except for the reference to health promotion and the qualifier "primarily". The Ontario Massage Therapy Act, 1991, defines the massage therapy scope of practice:

Scope of practice

3. The practice of massage therapy is the assessment of the soft tissue and joints of the body and the treatment and prevention of physical dysfunction and pain of the soft tissues and joints by manipulation to develop, maintain, rehabilitate or augment physical function, or relieve pain. 1991, c. 27, s. 3.

As part of its implementation of a new regulatory model under the *Health Professions Act*, the BC Ministry of Health made amendments to the *Massage Therapists Regulation*. The scope of practice statement, which is an essential element of the new regulatory model, was amended for massage therapy in April 2015 and is now defined as:

the health profession in which a person provides, for the purposes of developing, maintaining, rehabilitating or augmenting physical function, or relieving pain or promoting health, the services of:

- (a) assessment of soft tissues and joints of the body, and
- (b) treatment and prevention of physical dysfunction, injury, pain and disorders of soft tissues and joints by manipulation, mobilization and other manual methods.

The prohibition on the application of any form of medical electricity by massage therapists continues in another amendment of the regulation.

The consultations revealed very few objections to the MTAM-proposed scope of practice. The CPM is concerned that MTAM's proposal is so similar to the current scope of physiotherapists and is of the view that the primary scope of practice should be massage therapy:

It is disconcerting to see the Massage Therapy scope of practice so similar to our current scope and not exclusive to their practice We believe the primary scope of a massage therapist should be massage therapy.⁴²

Section 2(1) and (2) of *The Physiotherapists Act* describes physiotherapy practice as:

the assessment and treatment of the body by physical or mechanical means for the purpose of restoring, maintaining or promoting physical function, mobility or health, or to relieve pain.

Subject to the regulations, in the course of engaging in the practice of physiotherapy, a physiotherapist may plan, administer and evaluate a physiotherapy program that includes, but is not limited to, education, ergonomics and interventions such as exercise, massage, articular and soft tissue mobilizations and manipulations, acupuncture, hydrotherapy, tracheal suctioning, and the use of radiant, mechanical and electrical energy.

In summary, the CPM questions the proposed MTAM-proposed scope of practice statement for its perceived similarity to physiotherapy, lack of exclusivity and absence of the term "massage". The following table deconstructs and compares MTAM's proposed scope of practice statement and the practice of physiotherapy in Manitoba.

⁴² April 3, 2014 letter from the College of Physiotherapists of Manitoba at 2.

MTAM-Proposed Scope of Practice Statement	Practice of Physiotherapy in Manitoba
<ul style="list-style-type: none"> the assessment of the soft tissues and joints of the body 	<ul style="list-style-type: none"> the assessment of the body
<ul style="list-style-type: none"> the treatment of physical dysfunction and pain of the soft tissues and joints 	<ul style="list-style-type: none"> treatment of the body soft tissue mobilizations and manipulations
<ul style="list-style-type: none"> the prevention of physical dysfunction and pain of the soft tissues and joints 	
<ul style="list-style-type: none"> treatment primarily by manipulation 	<ul style="list-style-type: none"> treatment of the body by physical or mechanical means soft tissue mobilizations and manipulations
<ul style="list-style-type: none"> to develop, maintain, rehabilitate or augment physical function, 	<ul style="list-style-type: none"> for the purpose of restoring, maintaining or promoting physical function, mobility
<ul style="list-style-type: none"> to relieve pain 	<ul style="list-style-type: none"> to relieve pain
<ul style="list-style-type: none"> to promote health 	<ul style="list-style-type: none"> for the purpose of restoring, maintaining or promoting health
	<ul style="list-style-type: none"> plan, administer and evaluate a physiotherapy program
	<ul style="list-style-type: none"> ergonomics
	<ul style="list-style-type: none"> interventions such as exercise, massage, articular and soft tissue mobilizations and manipulations, acupuncture, hydrotherapy, tracheal suctioning, and the use of radiant, mechanical and electrical energy

In comparing the MTAM-proposed scope of practice statement and the practice of physiotherapy in Manitoba, we note that massage therapy is limited to the assessment and treatment of the soft tissues and joints; physiotherapy assesses and treats the (whole) body. The anticipated outcome of both massage therapy and physiotherapy appears similar if not the same: to affect physical function, relieve pain and promote health. The CPM is concerned that the MTAM-proposed scope of practice is not exclusive, i.e., that it appears to envelope physiotherapy. As noted earlier, the scope of practice for one profession may overlap or be shared with that for another profession. This will be particularly so if none of the services or activities of the profession are reserved – they may be performed by regulated and unregulated practitioners, as is the

case with massage therapy. Regarding the absence of the term “massage” from the proposed statement, its inclusion would be redundant. The words “by manipulation” gives a general description of massage therapy techniques.

The Council notes the proposed scope of practice statement describes massage therapy as treatment and prevention “primarily” by manipulation. The interpretation of “primarily” is vague. It does not exclude other possible services nor does it establish a limitation on possible services as expressed elsewhere in the text of the statement. Excepting the word “primarily”, the Council accepts the scope of practice statement proposed by MTAM. The Council recommends that the scope of practice statement for the profession of massage therapy be as follows:

The practice of massage therapy is the assessment of the soft tissues and joints of the body, and the treatment and prevention of physical dysfunction and pain of the soft tissues and joints by manipulation to develop, maintain, rehabilitate or augment physical function, to relieve pain, or to promote health.

Reserved Acts

MTAM has not requested any reserved acts. MTAM concludes that since massage therapists perform no reserved acts, its activities are within the public domain⁴³ and “can be performed by unregulated providers and lay people”⁴⁴.

Where a profession performs a reserved act, the public is afforded the highest level of regulation and protection under the RHPA. If a profession does not perform any reserved acts, regulation under the Act through a college is limited to title protection and a precisely defined and, if possible, enforceable scope of practice. The shortcomings of establishing a college for massage therapy without reserved acts are:

- (1) Title protection does not prevent
 - a. others from using non-protected titles and engaging in the activities performed by those entitled to use the protected title(s),
 - b. qualified persons from evading regulation, or
 - c. otherwise qualified persons who have been disciplined or stricken from the register from subsequently re-establishing practice and using non-protected titles.

⁴³ May 3, 2013 letter from MTAM to the Council at 21 and July 12, 2013 letter to the Council at 6.

⁴⁴ July 12, 2013 letter to the Council at 6.

- (2) Massage therapy is so broadly encompassing of techniques and modalities that it cannot be defined precisely enough for the purposes of prohibiting others from performing it. Indeed, massage therapy is performed by both unregulated practitioners and by members of regulated professions, as acknowledged by MTAM. Section 2(2) of *The Physiotherapists Act* permits physiotherapists to administer such interventions as massage, soft tissue mobilizations and manipulations and hydrotherapy.

A college of massage therapy can mitigate the risk of harm to the public to the extent that qualified practitioners are willing to become members of a college of massage therapists and submit to regulation. The college will reduce the risk of harm through:

- The introduction of minimum educational requirements for entry to practice,
- Participation by members in professional development and continuing competence activities, and
- Client/patient recourse to a complaints, investigation and discipline process, including loss of registration.

The Council recommends that massage therapists not be granted authority to perform reserved acts under *The Regulated Health Professions Act*.

Titles

Title restriction is an important element of the regulatory framework. Reserving the use of titles exclusively for members of a college means that persons who are not members of the college are prohibited from using those titles or leading others to believe they are members of the college. The RHPA permits a college to make regulations governing the use of titles and initials or a variation or abbreviation of them or an equivalent in another language, including authorizing their use by certain classes of members, and governing and prohibiting their use by other persons in the course of providing health care.⁴⁵

Title protection, in conjunction with membership in a regulatory college, also assists the members of the public in distinguishing a regulated provider from an unregulated provider, allowing them to make informed decisions.

MTAM proposes the following titles be reserved:

- Massage Therapist

⁴⁵ RHPA, subsection 221(1)(y)

- Registered Massage Therapist
- Registered Massage Practitioner

In addition, MTAM proposes that the titles “Remedial Massage Therapist” and “Advanced Remedial Massage Therapist” be reserved as they are designations appearing on diplomas issued by massage therapy schools in Manitoba.

Also on the list of titles MTAM would like to see reserved are:

- Advanced Massage Therapist
- Licensed Massage Therapist
- Certified Massage Therapist
- Massage Therapy Practitioner
- Manitoba – Registered Massage Therapist
- Massagist

MTAM has requested that the law restrict the use of the word “massage” in conjunction with “therapy”, “therapist” or “practitioner”, as in the following:

- Therapeutic Massage Practitioner
- Certified Massage Practitioner
- Massage Practitioner
- Massage Therapy Provider
- Therapeutic Massage Provider
- Therapeutic Massagist
- Registered Massagist

In Ontario, the restricted titles are “massage therapist” or “registered massage therapist”. In New Brunswick, the restricted title is “registered massage therapist.” In BC, the Massage Therapists Regulation reserves the following titles:

- (a) massage therapist;
- (b) registered massage therapist;
- (c) massage practitioner;
- (d) registered massage practitioner.

In comparing the relatively long list of MTAM-proposed reserved titles to the reserved titles in Ontario, New Brunswick and BC, it would appear that MTAM is attempting to severely limit the potential titles which might be used by massage therapists who might meet the qualifications for college membership but are unwilling to join a college of massage therapy or by massage therapists who are not fully qualified but offer a limited

range of services. Restrictions on use of titles may act as a signal to consumers about the quality of the service but such restrictions may also suggest to consumers that only those persons holding the title are qualified to provide massage services. Severely limiting the titles that might be used by unregulated professionals may harm competition and force consumers to purchase higher quality services than they desire, at potentially higher prices.

While MTAM may be opposed to limiting the number of protected titles, the Council is concerned that a lengthy list might be confusing to the public. Under section 77 of the RHPA, title protection is supported by a “holding out” restriction that prohibits a person who is not a member of that college from using a name, title, description or abbreviation in a manner that expresses or implies that he or she is a member of that college. Section 77 makes it unnecessary to have a lengthy list of protected titles.

Use of the term “registered” is regulated under the RHPA⁴⁶. The RHPA prohibits the use of the term by those providing health care unless the person is:

- (a) a member of a college whose members provide health care;
- (b) authorized in another jurisdiction to use the title to indicate membership in a body substantially similar to a college in Manitoba that regulates that profession; or
- (c) is a member of an organization or class of organizations specified by regulation.

Section 81(1) of the RHPA prohibits any person other than a member of a college from using the term “licensed”. Section 4 of the Regulated Health Professions (Ministerial) Regulation specifies that members of MTAM and the Natural Health Practitioners of Canada Association may use the term “registered” as part of the title describing a member’s work.

The Council recommends that the following title and its variations, abbreviations and initials be restricted to members of the College of Massage Therapy of Manitoba:

- “massage therapist”,
- “registered massage therapist”;
- “licensed massage therapist”

⁴⁶ RHPA, subsection 81(1) and (2)

Summary of Recommendations

1. The Council recommends that the profession of massage therapy proceed to regulation under the RHPA by a College of Massage Therapy of Manitoba.
2. The Council recommends that the scope of practice statement for the profession of massage therapy be as follows:

The practice of massage therapy is the assessment of the soft tissues and joints of the body, and the treatment and prevention of physical dysfunction and pain of the soft tissues and joints by manipulation to develop, maintain, rehabilitate or augment physical function, to relieve pain, or to promote health.

3. The Council recommends that massage therapists not be granted authority to perform reserved acts under *The Regulated Health Professions Act*.
4. The Council recommends that the following title and its variations, abbreviations and initials be restricted to members of the College of Massage Therapy of Manitoba:
 - “massage therapist”, the title “registered massage therapist” and the title “licensed massage therapist”

Presently, massage therapy is practised in Manitoba without benefit of statutory regulation. Anyone, with or without qualifications, can call themselves a massage therapist and/or practise massage therapy. There is no requirement for massage therapists to adhere to standards for education and qualification, to take part in continuing competency, comply with practice standards and a code of ethics, and subject themselves to a complaints and discipline process, except for those massage therapists who voluntarily belong to MTAM. Because of the voluntary nature of membership in MTAM, members can avoid discipline by ceasing membership and can re-establish their practice with impunity.

Acts that present a risk of harm to members of the public are listed in the RHPA as reserved acts. Reserved acts can only be performed by members of specified colleges. Massage therapists do not perform any reserved acts; all their activities are within the public domain and so there is no prohibition to prevent others from performing them, including unregulated practitioners. The public will only be protected under the RHPA to the extent that massage therapists meet the entry to practice requirements of a Manitoba college of massage therapists and allow themselves to be regulated by the college. Massage therapists who do not meet the entry to practice requirements of a college of massage therapy or who choose not to be members may practise massage

therapy. As MTAM notes “the proposed model of regulation will not restrict unregulated providers from providing massage in spas or any other setting. Instead, it will restrict unregulated providers from using the protected title(s).” In making this statement, MTAM acknowledges that the ability of regulation to reduce the threat of harm is limited to the extent that massage therapists meet the registration requirements, submit to become members of a regulatory college and comply with the terms of membership, thereby permitting them to use the protected titles. Unregulated providers will not be permitted to use the protected titles.

The Council finds that there is a risk of harm involved in the provision of massage therapy services, albeit not a substantial risk. The Council is of the view that this harm will be mitigated through a college of massage therapy which sets qualification standards for entry to practice, standards for practice and which allows the public to access a complaints and discipline process. Reserving the use of the recommended protected titles for members of the college will serve as a signal to the public that they are accessing massage therapy services provided by qualified members of the profession.

Appendix A – List of Participants**

(includes those organizations and individuals who wrote letters of support for the application)

The College of Occupational Therapists
Natural Health Practitioners of Canada
Manitoba Naturopathic Association
Canadian Life and Health Insurance Association
College of Physiotherapists of Manitoba
Massage Therapist Association of Alberta

** Participants also include 19 individuals whose names cannot be disclosed as per the Council's privacy policy.