

**Regulation of the Naturopath Profession in the
Northwest Territories:**

Discussion Paper

**Prepared for the Department of Health and Social Services,
Government of the Northwest Territories
by Field LLP**

Submitted: July 5, 2012

CONTENTS

I.	Introduction.....	2
A.	Objective of the Discussion Paper	2
B.	Project Steps and Methodology	2
C.	Overview of Naturopaths in the Northwest Territories	3
D.	Services Provided by Naturopaths in the NWT Are Not Insured	4
II.	Review of Legislation	5
A.	Naturopaths Not Regulated in Every Canadian Jurisdiction	5
B.	Summary of Legislation in Jurisdictions that Regulate Naturopaths.....	5
1.	British Columbia.....	5
2.	Alberta.....	6
3.	Saskatchewan.....	7
4.	Manitoba	8
5.	Ontario	10
6.	Nova Scotia.....	11
C.	Discussion of Trends in Regulation of Naturopaths	12
D.	Educational Requirements for Naturopaths	13
1.	Overview of Accredited Naturopathic Medicine Programs.....	13
2.	Licensing Examinations.....	14
III.	Consultation Process	14
IV.	Analysis.....	16
A.	Criteria for Regulating a Health Profession Under the HSSPA	16
1.	Risk of Harm Posed by Unregulated Practice.....	17
2.	Regulation of Naturopaths in Other Canadian Jurisdictions.....	17
3.	Risk Management in the Regulation of Health and Social Services Professions	18
4.	Existence of Professional Association	18
5.	Whether Established Standards of Practice and Codes of Ethics Exist for the Profession	18
6.	Other Implications Arising from Regulation of Naturopaths	18
V.	Recommendation	19

I. INTRODUCTION

A. Objective of the Discussion Paper

The Department of Health and Social Services (the “Department”) of the Government of the Northwest Territories is currently developing umbrella legislation that will regulate a number of the health and social services professions in the NWT. This legislation is provisionally entitled the *Health and Social Services Professions Act* (“HSSPA” or “the Act”).

Because the HSSPA will allow for additional health and social services professions to be brought under this Act in the future, the Department has asked Field Law to prepare a Discussion Paper that considers the regulation of Naturopaths in Canada in order to assist the Department with its planning. As such, the purpose of this Discussion Paper is to provide a framework through which to analyze the legal and policy implications of regulating Naturopaths in the NWT. The Discussion Paper will:

- Provide information about the profession and practice of Naturopathy in the NWT;
- Summarize and discuss the legislation in Canada that regulates Naturopaths;
- Review the consultations that Field Law conducted with Naturopaths currently working in the NWT, as well as a representative of the Canadian Association of Naturopathic Doctors (the “CAND”); and
- Analyze the policy and legal issues that arise in relation to the potential regulation of Naturopaths in the NWT.

B. Project Steps and Methodology

The preparation of the Discussion Paper involved a number of stages, which are outlined below:

1. The Department asked Field Law to prepare a Discussion Paper that analyzes the regulation of Naturopaths in Canada.
2. Field Law performed a detailed review of all legislation that regulates Naturopaths in other Canadian common law jurisdictions in order to identify the different models adopted across the country for regulating Naturopaths. A comprehensive summary of the legislation that regulates Naturopaths reviewed for the Discussion Paper appears in Part II, below.
3. The Department provided contact information for Naturopaths currently working in the NWT, and Field Law completed 3 consultation interviews via teleconference during the month of December, 2011. A summary of the telephone consultation interviews appears in Part III of the Discussion Paper.

4. Field Law prepared this Discussion Paper, which has been reviewed by the Department.
5. Field Law has incorporated the Department's feedback into the final version of the Discussion Paper, which will now be circulated to Naturopaths working in the NWT, and interested members of the public.

C. Overview of Naturopaths in the Northwest Territories

There are currently two Naturopaths actively practicing in the NWT, and one Naturopath who is not currently practicing, but who intends to resume her work in the future. In addition, there is one student of Naturopathy who is in the process of completing the educational requirements that are required to be licensed as a Naturopathic Doctor in any of the jurisdictions in Canada that regulate Naturopaths. As discussed in more detail in Part II, D, below, there are currently two accredited institutions in Canada (located in New Westminster, British Columbia and Toronto, Ontario, respectively), that offer a program in Naturopathic Medicine. The two Naturopaths currently working in the NWT are licensed in British Columbia, and the Naturopath who intends to return shortly is licensed in Ontario.

Naturopaths in the NWT work in a private practice setting, sometimes in concert with other health professionals such as massage therapists and chiropractors.

The type of services that Naturopaths provide in the NWT consist of the following:

- Naturopath manipulations;
- Nutritional counseling;
- Acupuncture;
- Herbal and botanical medicine;
- Assessment;
- Interpreting lab tests; and
- Lifestyle coaching.

A wide cross-section of the public currently seeks the services of Naturopaths, including children, adults and the elderly.

D. Services Provided by Naturopaths in the NWT Are Not Insured

The services provided by Naturopaths are not insured under the Health and Social Services System in the NWT. Whether or not a service provided by a health care practitioner is an "insured service" depends on whether it has been designated as an insured service under the *Hospital Insurance and Health and Social Services Administration Act*, which governs the insured services provided in hospitals, or the *Medical Care Act*, which governs insured services provided by medical practitioners.

Consequently, the issues of whether services provided by Naturopaths should be insured services or whether Naturopaths should be designated as medical practitioners, are questions that fall outside the scope of this Discussion Paper, the primary purpose of which is to analyze the legal and policy implications of regulating Naturopaths under the HSSPA. The policy considerations that arise when deciding whether to regulate a health profession under the HSSPA in the NWT include:

- Public safety;
- Number of professionals and the nature of the services provided;
- Ensuring professional competence through the development of standards of practice, codes of ethics and continuing competence requirements;
- Accountability of professionals through a comprehensive complaints and discipline process; and
- Effective use of the Department's resources.

Conversely, the policy considerations relating to whether a health service should be an insured service are entirely separate as they relate to the economic considerations of providing health care to residents of the NWT. In other words, whether a health profession is regulated by legislation, be it the HSSPA or another statute such as the *Medical Profession Act*, has no bearing on whether the services provided by the regulated professional should be insured services.

II. REVIEW OF LEGISLATION

A. Naturopaths Not Regulated in Every Canadian Jurisdiction

Currently, there are 7 jurisdictions in Canada that have not enacted legislation that regulates Naturopaths: Quebec, New Brunswick¹, Prince Edward Island, Newfoundland, Nunavut, the Yukon, and the NWT.

B. Summary of Legislation in Jurisdictions that Regulate Naturopaths

There are currently 5 Canadian jurisdictions that regulate Naturopaths: British Columbia, Saskatchewan, Manitoba, Ontario and Nova Scotia. In Alberta, Naturopaths are not currently regulated, but will soon be regulated under the *Health Professions Act*; however, the regulation that will apply to Naturopaths has not yet been proclaimed.

The key aspects of the legislation in place in each of these jurisdictions are summarized below, followed by an overview of the trends and commonalities that have emerged from this legislative review.

1. British Columbia

Naturopaths in British Columbia are regulated under the *Naturopathic Physicians Regulation*, B.C. Reg 282/2008, which was passed pursuant to the *Health Professions Act*, R.S.B.C. 1996, c. 183, British Columbia's umbrella health professions legislation.

Naturopathy is a self-regulating profession in British Columbia, and the governing body is the College of Naturopathic Physicians of British Columbia.

The *Regulation* defines “naturopathic medicine” as follows, and s. 4 of the *Regulation* stipulates that only those who are registered may practice naturopathic medicine:

...the health profession in which a person provides the services of prevention, assessment and treatment of an individual’s diseases, disorders and conditions using education and naturopathic techniques, therapies or therapeutics to stimulate or support healing processes and promote, maintain or restore the overall health of the individual.

The College of Naturopathic Physicians of British Columbia has established the following registration requirements:

¹ I am advised by a representative of the New Brunswick Association of Naturopathic Doctors that the Association has circulated draft legislation to be reviewed by other regulated professions. Once this review process is complete, the Association intends to introduce the Bill for debate in the legislature.

- Complete at least three years of approved undergraduate study;
- Graduate from an approved college of naturopathic medicine, which requires completion of at least 4500 instructional hours over 4 years;
- Successful completion of Part I and II of the NPLEX, plus additional NPLEX exams in homeopathy and minor surgery; and
- Completion of the British Columbia Jurisprudence and Oral Exams.

The *Regulation* also includes the following professional titles, and the use of these titles is exclusively reserved for members of the College:

- Naturopath;
- Naturopathic Physician;
- Naturopathic Doctor;
- Physician (unless this title is permitted by another enactment regulating a health profession); and
- Doctor (unless this title is permitted by another enactment regulating a health profession).

As British Columbia's *Health Professions Act* adopts a controlled acts regulatory model, the *Regulation* also contains a detailed list of reserved acts that members of the College may perform.

Notably, Naturopaths registered in British Columbia are permitted under the *Regulation* to perform minor surgery and to prescribe, compound, dispense and administer certain pharmaceuticals, provided they have completed an additional certification program. In that regard, if the scopes of practice contained in the legislation that regulates Naturopaths across Canada are considered as a continuum, the scope of practice for Naturopaths in British Columbia is situated at the most comprehensive and expansive end of the spectrum.

As Naturopaths in British Columbia are governed by umbrella health professions legislation, they are also subject to the comprehensive complaints and disciplines process set out in that legislation.

Section 8 of the *Regulation* grants Naturopaths registered in British Columbia the ability to offer their services through health profession corporations.

2. Alberta

As noted above, the Regulation that will bring Naturopaths under Alberta's *Health Profession Act* has not yet been proclaimed. It is anticipated that the Regulation will be proclaimed in the near future. When the Regulation is proclaimed, the current Alberta Association of Naturopathic Practitioners will be continued as the College of Naturopathic Doctors of Alberta. Accordingly, Naturopathy will be a self-regulating profession with the College of Naturopathic Doctors of Alberta as its governing body.

Schedule 14 of Alberta's *Health Professions Act* will apply to the "Profession of Naturopaths." Section 2 of Schedule 14 enables a member of the College of Naturopathic Doctors of Alberta to use the following titles:

- Naturopathic Doctor;
- Doctor of Naturopathic Medicine;
- Naturopathic Practitioner;
- Naturopath;
- N.D.; and
- R.N.D.

The practice of naturopathic practitioners is set out in s. 3 of Schedule 14 as follows:

3 In their practice, naturopathic practitioners do one or more of the following:

- (a) promote health, prevent illness and treat disease by using natural therapies and substances that promote the body's ability to heal,
- (b) focus on the overall health of the individual on the basis of naturopathic assessment and common diagnostic procedures,
 - (b.1) teach, manage and conduct research in the science, techniques and practice of naturopathic medicine, and
- (c) provide restricted activities authorized by the regulations.

As Alberta's *Health Professions Act* adopts a controlled acts model, the restricted activities referenced in s. 3(c) refer to the restricted activities as set out in the *Government Organization Act*².

3. Saskatchewan

Naturopaths in Saskatchewan are regulated under the *Naturopathy Act*, R.S.S. 1978, c. N-4. Saskatchewan does not have umbrella health professions legislation.

Section 2 of the *Act* defines "naturopathy" as "the art of healing by natural methods as taught in recognized schools of naturopathy."

Naturopaths in Saskatchewan are self-regulated through the Saskatchewan Association of Naturopathic Practitioners ("SANP"), which is empowered to pass additional bylaws governing Naturopaths.

The *Act* establishes the following registration requirements:

² For a more detailed discussion on the controlled acts model, please refer to page 19 and following of the Discussion Paper on the Umbrella Health and Social Services Legislation in the Northwest Territories, prepared by Field Law in March, 2011. Currently, there are no controlled acts applicable to the Naturopaths, as the *Naturopathic Practitioners Regulation* has not yet been passed.

- Completion of a recognized educational program; and
- Completion of examinations satisfactory to the University of Saskatchewan on the following subjects: anatomy, physiology, chemistry, pathology, histology, sanitation and hygiene, general diagnoses and the principles and practice of naturopathy, and other subjects as required (note that all of these topics are covered in the accredited Naturopathic Medicine curriculum, discussed below in Part III).

In terms of regulatory model, Saskatchewan’s legislation establishes an exclusive scope of practice for Naturopaths in s. 9 of the *Act*:

No person other than a naturopathic practitioner registered under this Act as a member of the association shall engage in the practice of naturopathy or use the title “Naturopathic Practitioner,” “Naturopath,” “Doctor of Naturopathy,” or any word, title or designation, abbreviated or otherwise, to imply that he is engaged in the practice of naturopathy, and every person who contravenes this section is guilty of an offence against this Act.

The exclusive scope of practice granted to Naturopaths under s. 9 is qualified by s. 10, which stipulates that Naturopaths may practice naturopathy, but they are not entitled to prescribe or administer drugs, anesthetics, practice medicine, surgery or midwifery. Notably, title protection for Naturopaths is also addressed in this section, which creates an offence for the improper use of the protected titles.

As doctors practicing in Saskatchewan are regulated by the *Medical Profession Act*, there is also a provision in the *Naturopathy Act* that states that the terms of the *Medical Profession Act*, which grant doctors an exclusive scope of practice, shall not prohibit the practice of naturopathic medicine by registered Naturopaths.

Complaints and inquiries about Naturopaths practicing in Saskatchewan are overseen by the SANP, which is empowered by the *Act* to create by-laws relating to complaints and discipline.

4. Manitoba

Naturopaths in Manitoba are currently governed by the *Naturopathic Act*, C.C.S.M., N80. However, Schedule 2 of Manitoba’s recently enacted umbrella health professions legislation, *The Regulated Health Professions Act*, C.C.S.M. c. R117, identifies Naturopathy as one of the professions that will be governed by the umbrella legislation. As such, the regulation of the Naturopathy profession in Manitoba is in a state of transition.

The *Naturopathic Act* defines “naturopathy” as follows:

“naturopathy” means a drugless system of therapy that treats human injuries, ailments, or diseases, by natural methods, including any one or

more of the physical, mechanical, or material, forces or agencies of nature, and employs as auxiliaries for such purpose the use of electro-therapy, hydro-therapy, body manipulations, or dietetics.

Naturopaths in Manitoba are self-regulated by the Manitoba Naturopathic Association.

Section 10 of the *Act* requires all applicants to complete the following requirements in order to be registered as a Naturopath:

- Passed junior matriculation examinations;
- Graduated from a college of naturopathy approved by the Association in a program at least four years in length (note: all of the CNME accredited programs are four years in duration); and
- Passed an examination approved by the examining committee in the following subjects: anatomy, physiology, chemistry, pathology, histology, neurology, gynecology, sanitation and hygiene, general diagnoses including symptomatology, and the principles and practice of the methods of Naturopathy (note: these topics are all covered in the accredited Naturopathic Medicine curriculum).

In addition, the Manitoba Naturopathic Association has passed the *Manitoba Naturopathic Association Regulations*, which establish the following registration requirements for Naturopaths:

- Successful completion of Part I and Part II of the NPLEX; and
- Successful completion of provincial examination(s) required by the Association.

There are five registration categories for Naturopaths in Manitoba:

- Full;
- Non-practicing;
- Conditional;
- Temporary; and
- Student.

The *Naturopathic Act* establishes an exclusive scope of practice for Naturopaths registered in Manitoba who practice Naturopathy as it is defined in the *Act*, and creates an offence for the contravention of this provision.

Although the title “Naturopath” is protected by the *Act*, s. 12(4) of the *Act* prohibits Naturopaths from using the title “doctor” or “Dr.” unless the word “Naturopath” or “Naturopathy” is used immediately following or preceding this title, for example, “Doctor of Naturopathy.”

As in Saskatchewan, Naturopaths in Manitoba are prohibited by their governing legislation from administering or prescribing drugs or anesthetics, and from practicing surgery or midwifery.

Part 5 of the *Manitoba Naturopathic Association Regulations* establishes a detailed complaints and discipline process that involves a complaints committee, investigation, information resolution, and an inquiry committee who presides over disciplinary hearings. Once Naturopaths in Manitoba are brought under the *Regulated Health Professions Act*, they will be governed by the complaints and discipline process provided for in the umbrella legislation.

5. Ontario

At present, Naturopaths in Ontario are governed by the *Drugless Practitioners Act*, R.S.O. 1990, c. D-18, and the *General Regulation*, R.R.O. 1990, Reg. 278 passed pursuant that *Act*. However, similar to Manitoba, Naturopaths will soon be brought under Ontario's umbrella health professions legislation, the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 and governed by the *Naturopathy Act, 2007*, S.O. 2007, c. 10. The *Naturopathy Act* has been approved, but has not yet been proclaimed in force. As part of this transition, the College of Naturopaths of Ontario will be created once the *Naturopathy Act* comes into force. Currently, the Board of Directors of Drugless Therapy-Naturopathy (BDDT-N) oversees the registration and licensing of Naturopaths in Ontario.

Drugless Practitioners Act & Regulation

The *Drugless Practitioners Act* defines “drugless practitioner” as follows:

A person who practices the treatment of any ailment, disease, defect or disability of the human body by manipulation, adjustment, manual or electro-therapy or by any similar method

Regulation 278 defines “drugless therapist” as:

Any person who practices or advertises or holds himself out in any way as practicing the treatment by diagnosis, including all diagnostic methods, direction, advice, written or otherwise, of any ailment, disease, defect or disability of the human body by methods taught in colleges of drugless therapy or naturopathy and approved by the board.

The *Drugless Practitioners Act* stipulates that the legislation does not authorize drugless practitioners to practice surgery, midwifery or to administer or prescribe drugs or anesthetics.

The registration requirements under the *Drugless Practitioners Act* are:

- Successful completion of an approved Naturopathy education program that is four-years in duration and teaches a minimum of 4200 instructional hours in: anatomy; physiology; chemistry; medical jurisprudence; pathology; psychology; eyes, ears, nose and throat; histology; dietetics; diagnosis; first aid and minor surgery; psychiatry; gynecology; bacteriology; hygiene and sanitation; symptomatology; obstetrics; and principles of practice, technique and treatment;

- Examinations established by the Board in acupuncture, instrumentation, manipulation and jurisprudence; and
- Part I and Part II of NPLEX examinations.

The *Drugless Practitioners Act* and its corresponding regulation establishes a complaints and discipline process to address allegations of misconduct, incompetence, or contravention of the legislation.

Naturopathy Act, 2007

Under the *Naturopathy Act*, the practice of Naturopathy is defined as follows:

The practice of naturopathy is the assessment of diseases, disorders and dysfunctions and the naturopathic diagnoses and treatment of diseases, disorders and dysfunctions using naturopathic techniques to promote, maintain or restore health.

The *Naturopathy Act* will also restrict the use of the title “naturopath” only to those who are members of the College.

As Ontario’s *Regulated Health Profession Act* has adopted a controlled acts model, the list of controlled acts that Naturopaths will be permitted to perform are also set out in the *Act*, and they include injections, using low amplitude thrusts for spinal adjustments, communicating naturopathic diagnoses and taking blood samples.

Once the *Naturopathy Act* is proclaimed in force, Naturopaths in Ontario will be disciplined according to the *Health Professions Procedural Code*, which is the extensive complaints and discipline regime established by the *Regulated Health Professions Act*.

6. Nova Scotia

In Nova Scotia, Naturopaths are governed by the *Naturopathic Doctors Act*, S.N.S. 2008, c. 5. Section 2 of the *Act* states that the purpose of this legislation is to:

- (a) provide assurance to the public that individuals representing themselves and practicing the profession of naturopathic medicine as naturopathic doctors have prescribed minimum qualifications, thereby protecting the public health and safety from harm; and
- (b) provide legal recognition to naturopathic medicine as a health profession.

The *Act* defines “naturopathy” as follows:

“naturopathy” means the assessment of diseases, disorders and dysfunctions and the naturopathic diagnosis and treatment of diseases, disorders and dysfunctions using naturopathic techniques to promote, maintain or restore health.

Section 4 of the *Act* creates an exclusive scope of practice for and extends title protection to Naturopaths who meet the following registration requirements:

- Graduate of an accredited naturopathic program;
- Passed Part I and Part II of the NPLEX examinations;
- Is licensed by another Canadian province that regulates naturopaths;
- Has malpractice insurance;
- Is a member of the Canadian Association of Naturopathic Doctors; and
- Is a member of the Nova Scotia Association of Naturopathic Doctors.

The following titles are granted protection:

- Naturopath;
- Naturopathic Practitioner; and
- Naturopathic Doctor.

Nova Scotia’s legislation does not create a discipline or complaints process for Naturopaths. The only offence and enforcement mechanism provided for in the *Act* is a prohibition on the use of protected titles.

C. Discussion of Trends in Regulation of Naturopaths

The registration requirements in jurisdictions that regulate Naturopaths are, overall, relatively uniform in that they require: (1) that Naturopaths graduate from an accredited CNME program; and (2) that applicants have successfully completed Part I and Part II of the NPLEX exams. In addition, some jurisdictions, such as British Columbia and Ontario, have further exams administered by the provincial regulatory body that must be completed in order to be registered in that province.

As the above legislative review demonstrates, some jurisdictions have included Naturopathy as a profession regulated under umbrella health professions legislation. While British Columbia is the only province where Naturopaths are currently regulated under umbrella health legislation, Alberta, Manitoba and Ontario are currently in the process of transitioning the regulation of Naturopaths, in order to incorporate this profession under the umbrella health professions legislation currently in place in those provinces.

Each province that regulates Naturopaths also has a self-regulating Association or a College that is the governing body responsible for the registration and discipline of Naturopaths, and also develops bylaws, Codes of Ethics and Standards of Practice. This is a major distinction between the HSSPA and the legislation that currently regulates Naturopaths as the HSSPA will not provide for independent regulatory Colleges.

D. Educational Requirements for Naturopaths

The Council on Naturopathic Medical Education (“the CNME”) is the accrediting body for Naturopath education programs, and is responsible for overseeing the accreditation process in both Canada and the United States. Given the relatively small number of educational institutions providing programs in Naturopathic Medicine, it was not efficient from an administrative perspective to have separate accrediting bodies in both Canada and the United States.

The "approved" education programs for Naturopaths referred to in the above legislation review are programs that are accredited by CNME. There are currently 6 educational programs that are CNME accredited: 4 in the United States, and 2 in Canada. As the CNME website notes, the two Canadian programs, offered by the Boucher Institute of Naturopathic Medicine in New Westminster, British Columbia, and the Canadian College of Naturopathic Medicine in Toronto, Ontario, are recognized by all Canadian provinces that regulate Naturopaths.³

1. Overview of Accredited Naturopathic Medicine Programs

Upon completion of an accredited Naturopathic Medicine Program, graduates obtain an N.D. or N.M.D. degree. N.D. stands for “naturopathic doctor” and N.M.D. stands for “doctor of naturopathic medicine”; both denote completion of the same program. To gain entry into an N.D. program, students must have completed pre-med undergraduate courses.

Accredited Naturopathic Medicine Programs are post-graduate programs that are four years in length, and during that time, three major areas of study are covered:

- Basic medical sciences: anatomy, histology, physiology, biochemistry, microbiology and immunology;
- Clinical disciplines: physical and clinical diagnosis, differential and laboratory diagnosis, radiology, naturopathic assessment and orthopedics; and
- Naturopathic disciplines: acupuncture and oriental medicine, botanical and herbal medicine, clinical nutrition, homeopathic medicine, physical medicine and lifestyle counseling.⁴

Over the course of the four-year program, students will complete a minimum of 4500 hours of classroom training and 1500 hours of supervised clinical experience.

³ See: <http://www.cnme.org/programs.html>

⁴ Health Professions Regulatory Advisory Council (HPRAC): Critical Links, Transforming and Supporting Patient Care (2009) at 252.

2. Licensing Examinations

While enrolled in the N.D. program, students must complete the Naturopathic Physicians Licensing Examinations (“NPLEX”) in order to be eligible for registration in jurisdictions that regulate Naturopaths. The NPLEX is administered by the North American Board of Naturopathic Examiners.

There are two phases of NPLEX examinations. NPLEX Part I is the Biomedical Science Examination, which covers: anatomy, physiology, biochemistry, genetics, microbiology, immunology and pathology and is designed to ensure that the student has the necessary scientific knowledge base to successfully complete clinical training.

Upon successful completion of NPLEX Part I, students must pass NPLEX Part II: Core Clinical Science Examination. Part II is usually taken at the end of the four-year educational program. NPLEX Part II covers: diagnoses, botanical medicine, homeopathy, nutrition, physical medicine, health psychology, emergency medicine, medical procedures, public health, pharmacology, and research. As Part II of the NPLEX, students also have the option of completing the Clinical Elective Examinations in Minor Surgery and Acupuncture, which are required in some jurisdictions in order to register or obtain a license. For example, British Columbia requires completion of these elective examinations.

III. CONSULTATION PROCESS

During the month of December, 2011, Field Law conducted telephone consultation interviews with two Naturopaths currently working in the NWT. Field Law also consulted with the Executive Director for the Canadian Association of Naturopathic Doctors (the "CAND"). A copy of the Consultation Questions Field Law prepared is attached as **Appendix “A”**. For ease of reference and discussion, the Naturopaths currently working in the NWT are referred to collectively as "the Naturopaths."

In accordance with the objective of this Discussion Paper, which is to provide a framework for analyzing the legal and policy implications of regulating Naturopaths in the NWT, this Discussion Paper will review the experience of Naturopaths working in the NWT, and their views on whether Naturopaths should be regulated.

The Naturopaths believe that the profession of Naturopathy should be regulated in the NWT for the following reasons:

First, the Naturopaths explained that, in their view, regulation would improve their access to patient records and medical laboratory services. In the course of the consultations, the Naturopaths expressed concern and frustration about the inefficiencies and delays they experience as a result of their unregulated status when trying to obtain patient records and access medical laboratory services. They stated that at present, they need to refer their patients to a medical doctor in order to gain access to lab tests, and cannot request them on their own.

While it is evident that the Naturopaths are disconcerted as a result of the difficulties they currently experience in relation to accessing patient records and medical laboratory services, Field Law notes that regulation would not necessarily address these concerns, as they do not fall squarely within the subject matter of the HSSPA.

Second, the Naturopaths stated that, from their perspective, being a member of a regulated profession would allow them to access their hospitalized patients as service providers whereas currently, Naturopaths who visit their hospitalized patients only have status as visitors. Similarly, Field Law notes that the HSSPA, which will govern the registration, licensing and complaints process for health professionals, will not address whether health professionals have access to their patients who have been hospitalized as this is a matter of hospital policy and privileging.

Third, the Naturopaths emphasized that regulation would provide title protection as well as an effective enforcement mechanism that allows for recourse in situations where individuals who have not completed a CNME accredited program and passed the NPLEX exams refer to themselves as "Naturopaths." The Naturopaths believe that there are currently a number of individuals in the NWT who claim to be Naturopaths, but who have not undergone any formal training or education. The Naturopaths emphasized that unless they are regulated and unless "Naturopath" is a protected title, there will be no way of preventing these individuals from holding themselves out as Naturopaths. The Naturopaths stated that if they were regulated, depending on the titles protected in the legislation, they could use the titles "Naturopathic Doctor" or "Doctor of Naturopathic Medicine," which are titles that are widely used and protected in jurisdictions that regulate Naturopaths across Canada.

Fourth, because some of the services offered by Naturopaths are also provided by other health professionals, such as medical doctors, acupuncturists, massage therapists and chiropractors, the Naturopaths opined that if they were regulated, their governing legislation could clearly delineate their scope of practice which would minimize confusion and conflict over which services Naturopaths are able to provide. During the consultations, the Naturopaths stated that their services are sometimes sought by patients who unable to access their physician and need immediate medical assistance.

Fifth, the Naturopaths are in favour of becoming a regulated profession as, in their view, this would enable their patients to claim their services as medical expenses under the *Income Tax Act*⁵.

⁵ The *Income Tax Act* provides relief in the form of a tax credit to taxpayers who incur expenses for out-of pocket medical expenses, which the *Act* characterizes as services "provided by practitioners who are authorized to practice in the jurisdiction where the service is provided." Although Field Law has not conducted a detailed assessment of this tax issue, we understand that provision has been interpreted to mean that the services must be provided by an individual who is a regulated provider of health services under provincial or territorial legislation: see *Parent v. Her Majesty the Queen*, 2007 TCC 608 (Tardif J.), in which an individual who obtained the services of a naturopath in Quebec, where naturopaths are not regulated, and thus do not have status as "medical practitioners," could not claim the expenses as a medical service deduction.

Sixth, the Naturopaths believe that being members of a regulated profession would improve their relationships and enhance their credibility with other health professions from whom their patients receive health care services, which is important as Naturopaths work in a private practice setting that is increasingly multidisciplinary in nature.

IV. ANALYSIS

The objective of this section of the Discussion Paper is to provide an overview of the factors to be considered by the Department when determining whether to regulate Naturopaths under the HSSPA.

Before delving into the analysis of each of these factors, it first is important to clarify that the fact that the services provided by Naturopaths are not insured services is an entirely separate consideration from the decision of whether to regulate the Naturopath profession. We understand from the consultation that Naturopaths are dissatisfied that their services are not insured health care services. However, as the discussion below demonstrates, the quintessential policy considerations to be addressed when deciding whether to regulate a profession are the protection of the public, and ensuring professional competence and accountability, whereas the issue of whether to classify a service as an insured service is a resource-based decision involving the economics of health care administration. Similarly, it also bears emphasizing that even if the Department were to decide to regulate Naturopaths, it does not automatically follow that services provided by Naturopaths would become insured services, as this decision is rooted in different policy considerations and concerns amendments to the *Medical Care Act* or the *Hospital Insurance and Health and Social Services Administration Act*, and does not involve the HSSPA.

In addition, the decision of whether and when to regulate Naturopaths in the NWT necessarily involves a consideration of the Department's overall priorities and objectives regarding the regulation of health and social services professions in the NWT. The Department has identified three types of priorities in this area. The first priority involves amending the legislation that governs health and social services professions that are currently regulated, but whose legislation needs updating either by legislative amendments, or by bringing those professions under the HSSPA. The second priority involves regulating health and social services professions that provide insured service in the delivery of health care, in accordance with the *Hospital Insurance and Health and Social Services Administration Act* or the *Medical Care Act*. The third priority involves deciding whether and when to regulate the remaining health and social services professions. For the reasons outlined below, and as discussed in more detail in Part V of the Discussion Paper, Field Law recommends that the Naturopath profession fits into the third priority category.

A. Criteria for Regulating a Health Profession Under the HSSPA

The HSSPA will include a list of factors and criteria the Minister must consider when deciding whether to regulate a profession under the Act. Accordingly, this section of the Discussion Paper analyzes those criteria with reference to the Naturopathy profession.

1. Risk of Harm Posed by Unregulated Practice

The ultimate objective of professional regulation is the protection of the public. Effective regulation ensures that uniform standards are met by professionals providing services, and it creates mechanisms for enforcing these standards so that those who provide services are held accountable when they engage in professional misconduct, are not qualified to provide services, or otherwise contravene their governing legislation. Absent this regulatory oversight, there is no mechanism for protecting the public from individuals who provide services when they are not qualified to do so, nor is there a way of ensuring that all members of a profession meet certain criteria and standards as a prerequisite of being permitted to provide services to the public.

Of the factors enumerated above, the most crucial to consider when determining whether to regulate a health or social services profession that is not currently regulated is the extent to which there is a risk to public safety. The extent of the risk posed to the public must in turn be considered in light of a number of factors, such as the number of professionals, the nature of the services provided, what technology or instruments are used to provide those services, and whether the services performed are invasive or dangerous.

Naturopaths provide a variety of services in the NWT, and the nature of these services, especially acupuncture, naturopathic manipulations and providing assessments, could pose a risk to the public if administered incorrectly. Of particular concern is the fact that Naturopaths are asked to provide primary medical care in situations where the patient's physician is not available. Unless Naturopaths are granted title protection through a regulation passed under the HSSPA, any individual, regardless of training, background or experience can use the title "Naturopath" and provide services to the public in that capacity, which also represents a risk to the public.

The three Naturopaths currently or soon to be working in the NWT have all completed an accredited CMNE program, and passed Part I and Part II of the NPLEX exams and are all licensed as Naturopathic Doctors in other Canadian jurisdictions. However, there is still some risk associated with not regulating Naturopaths because in the absence of regulation, there is no mechanism for preventing individuals who have not graduated from an accredited program or completed the NPLEX exams from providing services as "naturopaths," nor is there any way to address complaints or concerns arising from the services provided by Naturopaths currently working in the NWT.

2. Regulation of Naturopaths in Other Canadian Jurisdictions

A key consideration when deciding whether to regulate Naturopaths is the extent to which Naturopathy is a regulated profession in other Canadian jurisdictions. As discussed in Part II, above, 6 Canadian jurisdictions regulate Naturopaths through independent regulatory Colleges, and 7 Canadian jurisdictions do not regulate Naturopaths. Notably, with the exception of Quebec, the Canadian jurisdictions that do not regulate Naturopaths (New Brunswick, Prince Edward Island, Newfoundland, Nunavut and the Yukon) are jurisdictions which, like the NWT, have smaller populations, and consequently, a smaller membership base for the Naturopath profession.

3. Risk Management in the Regulation of Health and Social Services Professions

When deciding which health and social services professions to regulate, risk management is a crucial aspect of the decision-making process. To that end, Field Law has prepared a Table (See: **Appendix "B"**) that provides an overview of health and social services professions that are regulated in other Canadian jurisdictions, but that are not currently regulated in the NWT. A review of this table demonstrates that there are a number of health and social services professions that provide insured services in the NWT, such as Physiotherapists and Medical Laboratory Technologists that are regulated in the vast majority of Canadian jurisdictions, but that are not yet regulated in the NWT.

In terms of risk management, and in accordance with the Department's priorities as articulated above, Field Law recommends that the Department focus its resources first on regulating health and social services professions that are regulated in the majority of Canadian jurisdictions, but that are not regulated in the NWT. As **Appendix B** demonstrates, there are a number of professions that fall into this category, and the Department should evaluate this in the course of deciding which professions should be regulated under the HSSPA, and in which order they should be regulated.

4. Existence of Professional Association

There is a professional association for Naturopaths working in the NWT: the Northwest Territories Association of Naturopathic Doctors (NTAND). In the context of professional regulation, especially in the NWT where the regulatory college model is not as feasible and the Department carries out the regulatory functions, it is often beneficial for a profession to have an association which can assist with the development of Standards of Practice and Codes of Ethics, and facilitate continuing competence initiatives.

5. Whether Established Standards of Practice and Codes of Ethics Exist for the Profession

The Canadian Association of Naturopathic Doctors has developed template Standards of Practice and Codes of Ethics for Naturopaths, which can be adopted or adapted by provincial regulatory bodies. The CAND templates have been widely used across Canada in jurisdictions that regulate Naturopaths, and could also be adopted or adapted in the NWT when or if the Department decides to regulate Naturopaths.

6. Other Implications Arising from Regulation of Naturopaths

Because the Department will be responsible for the licensing and regulation of the health and social services professions governed by the HSSPA, it is essential to consider the impact that the regulation of Naturopaths would have on the Department's finite resources. In light of the relatively small number of Naturopaths currently in the NWT compared to other professions, the Department needs to consider whether regulating such a small number of professionals is a cost-effective use of its resources, or whether the Department's resources should be directed towards regulating one or more of the health and social services professions identified in **Appendix B**.

This consideration must of course be weighed against the potential for public harm posed by unregulated Naturopaths.

Field Law also emphasizes that should the Department decide to regulate Naturopaths in the future, there are unique challenges associated with regulating the Naturopathy profession because the services that Naturopaths provide may overlap with the exclusive scopes of practice of other health professions that currently are regulated in the NWT, in particular, medical doctors. Consequently, not only would the regulation of Naturopaths likely result in significant difficulties when defining their scope of practice, but it would likely also be necessary to amend any existing health professions legislation in the NWT where there is a potential overlap in scope of practice. In light of the challenges articulated above, the process of regulating Naturopaths would be a very resource-intensive endeavor for the Department.

V. RECOMMENDATION

In light of the above considerations, and in keeping with the policy objectives the Department has articulated, and the ultimate objective of developing umbrella legislation to regulate health and social services professions, Field Law recommends that prior to deciding whether to regulate Naturopaths, the Department should consider devoting its resources first to updating existing legislation in the NWT that licenses health and social services professionals. Subsequently, the Department should consider regulating health and social services professions identified in **Appendix B** that are currently not regulated in the NWT, but that are more widely regulated across Canada than Naturopathy. This recommendation is supported by the following reasons:

With respect to risk assessment, there is some risk associated with not regulating Naturopaths because of the nature of the services that Naturopaths provide, and because absent regulation, anyone, regardless of training or education, can offer services as a naturopath. This risk is somewhat mitigated by the fact that those individuals who are currently working as Naturopaths in the NWT are licensed as Naturopathic Doctors in a Canadian jurisdiction that regulates Naturopaths. Also relevant to the risk assessment analysis is the fact that there is a very small number of Naturopaths in the NWT, as unregulated professions with larger numbers pose a greater risk than unregulated professions with few members.

In considering the potential risk associated with not regulating Naturopaths, it is also necessary to consider the extent to which Naturopaths are regulated in other Canadian jurisdictions. As discussed above, Naturopaths are regulated (or in Alberta, soon be regulated) in only 6 out of 13 jurisdictions in Canada. Furthermore, many of the jurisdictions that do not regulate Naturopaths share important similarities with the NWT in terms of the small number of naturopaths and limited population base.

Similarly, to the extent that the regulation of Naturopaths across other Canadian jurisdictions is a focal point of the Department's decision-making process, the Department must also consider that

Appendix B reveals that the NWT currently does not regulate a number of health and social services professions that are more widely regulated across Canada.

What's more, any consideration of whether to regulate a profession necessarily also involves a consideration of the Department's resources. That Naturopathy is regulated in only 6 Canadian jurisdictions, whereas other professions are widely regulated across Canada but are unregulated in the NWT, should be a key consideration for the Department in deciding how to most effectively allocate its finite resources.