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**Presentation Outline**

- Professional Regulation: Some Concepts
- Self-Regulation: The Theory
- Self-Regulation: The Risk
- Self-Regulation: A Risk Management Strategy or ...
- Oversight of Registration Practices
- The Québec Commissioner for Complaints
- Appendix: The Québec Professional System



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**Professional Regulation:  
Some Concepts**



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**Concepts**

- Aspects influencing the concept of profession and how it is regulated
  - Culture, traditions and customs
  - Vision of State intervention: expectations from the public and the business sector
  - Purpose and delivery of professional services: serving the public, the economic activities and/or auxiliaries to State functions



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**Concepts (cont.)**

- Aspects influencing the concept of profession and how it is regulated (cont.)
  - Local aspects, proximity service delivery setting
  - External projection: transnational service delivery setting, presence of foreign service providers, trade and mobility agreements, accommodating harmonization



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**Concepts (cont.)**

- Guiding principles
  - Protecting the public is a State mandate
  - The concept and organization of regulated professions serve the needs of the community
  - Regulation reflects the socio-economic realities instead of setting it
  - A community can decide for itself on the need and the means to regulate. With interaction with what's going on elsewhere



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Concepts (cont.)

- Tools for regulation: powers to be assumed or delegated by the State
  - Protecting the public is a State mandate
  - Setting requirements for entry to practice
  - Professional training
    - Entry level and continuing education



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Concepts (cont.)

- Tools for regulation: powers to be assumed or delegated by the State (cont.)
  - Assessment and issuance of permit/license
  - Setting standards of practice
  - Surveillance of practice according to standards
    - Investigation on compliance to standards
  - Clients complaints and compensation
  - Disciplinary process and sanctions



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Concepts (cont.)

- Regulation schemes
  - by a specialized governmental entity
  - by a professional self-governing public entity
  - by a professional association (self-regulation)
  - the "Market" (another vision of self-regulation)



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Concepts (cont.)

- Variety of degrees in fixing the parameters
  - Delegation and autonomy
  - Involvement of the professionals
  - Oversight



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Concepts (cont.)

- Policy issues impacting professional regulation schemes
  - Public protection
  - Social justice
  - Democracy
  - Demographics and labour market
  - Trade liberalization and mobility
  - Economic development
  - Education and training
  - Immigration



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Concepts (cont'd)

- Democratic principles and regulation
  - Those in charge of adopting and enforcing regulation should be at the appropriate level, in reach of the public they protect and report to
  - Delegation of powers from the State goes with accountability and oversight as a democratic balance



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Self-Regulation: The Theory



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Theory

- The case for Self-Regulation
  - Government has no expertise to set the standards and enforce compliance
  - Betting on the expertise of professionals for an insightful and more efficient regulation



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Theory (cont.)

- The case for Self-Regulation (cont.)
  - Involvement of professionals in their regulation scheme
    - Self-regulation (standards, admission, conduct)
    - Self-discipline (enforcement)
    - Self-management (efficiency and leadership)
    - Self-finance (cost)



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Theory (cont.)

- The case **for** Self-Regulation (cont.)
  - The professionals:
    - are the specialists in their field
      - They hold the knowledge to assess and regulate the practice
    - can be mobilized to help, be part of, and/or run the entity which regulates their profession



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Theory (cont.)

- The case **for** Self-Regulation (cont.)
  - Beliefs that it will bring more
    - Relevance
    - Adequacy
    - Buy-in
    - Cohesion
    - Efficiency



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Theory (cont.)

- The case **against** Self-Regulation
  - Risks of adverse impact (cost) of regulation on the economy
  - May restrict entry and mobility
    - Effect on price and availability of services



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Theory (cont.)

- The case **against** Self-Regulation (cont.)
  - Uncompetitive framework (“Closed shop”)
  - Diversion of the purpose of regulation
    - Appropriation by a group
    - “Turf war” on scope of practice



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Self-Regulation: The Risk



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Risk

- Self-Regulation inherent risk: The human factor
  - Success depends mainly on the attitude of who’s running the regulation scheme
- Possible diversion of the objective of regulation through political influence by a group, for its own interest
  - Less focus on public interest, consumer protection and competition principles



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Self-Regulation:  
A Risk Management Strategy or ...



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Two options

- A. Get at the root of the problem
  - Get rid of Self-Regulation scheme
- B. A risk management strategy
  - If trust and credibility have not been lost yet
  - Manage the risks felt by stakeholders
  - Put some checks and balance in the scheme
  - Oversight, reporting, transparency, members of the public in the governance structure, etc.



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Self-Regulation: Trends in the Field



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**Trends in the Field**

- Governments are getting more involved in:
  - Defining public interest
  - Protecting the consumer
  - Insuring good competition



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**Trends in the Field (cont.)**

- Shift from Self-Regulation to Co-Regulation, or to complete government takeover of the regulatory functions
  - Ex.: England (lawyers and else), Australia (lawyers)
  - Canada is one of the last bastion of Self-Regulation



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**Trends in the Field (cont.)**

- Trade and mobility agreements
  - Government driven policy orientation on regulatory aspects
  - More specific provisions on regulatory bodies obligations and compliance (entire chapters on mobility and mutual recognition)
- Specialized oversight mechanisms
  - Discipline
  - Admission-registration



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Oversight of Registration Practices



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Context

- Registration of foreign-trained professionals: persistent difficulties or questioning
  - Information
  - Assessment methodologies
  - Credentials evaluation
  - Work experience evaluation
  - Access to bridging programs



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Context (cont.)

- Registration of foreign-trained professionals: persistent difficulties or questioning (cont.)
  - Complexity, length and costs of the process
  - Overall transparency
  - Overall cultural sensitivity
  - Coordination of a multi-stakeholders process
  - Appeal or review process



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Context (cont.)

- Many difficulties associated to processes and methodologies
- Pressure on the self-governed regulatory bodies for
  - More accountability and transparency
  - More sensitivity on individuals rights as well as economic and social issues



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Context (cont.)

- Registration of foreign-trained professionals is the new public interest debate and challenge facing the regulatory bodies, after professional discipline
  - Issue of fair and efficient recognition of foreign qualifications
- Individuals, stakeholders and governments are demanding change



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Context (cont.)

- Recognition of competence is evolving as a discipline of its own, where different public policies and issues have a stake and an influence
  - Public protection
  - Demographics and labour market
  - Trade liberalization and mobility
  - Economic development
  - Education and training
  - Immigration



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New Registration Oversight Mechanisms (cont.)

- The Commissioners and Review Officer in Canada
  - Ontario (2006)
    - Fairness Commissioner
  - Manitoba (2007)
    - Fairness Commissioner



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New Registration Oversight Mechanisms (cont.)

- The Commissioners and Review Officer in Canada (cont.)
  - Nova-Scotia (2008)
    - Review Officer for the Fair Registration Practices Act
  - Québec (2009)
    - Commissioner for Complaints concerning the Recognition of Professional Competence



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New Registration Oversight Mechanisms (cont.)

- The mandates (overview)
  - Review registration practices by regulatory bodies
  - Independent (“at arm’s length” for Ontario)
  - Extensive powers of investigation
  - Issue recommendations and compliance notice
  - Facilitate collaborative and partnership programs
  - Act in advisory capacity



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**New Registration Oversight Mechanisms (cont.)**

- The mandates (overview) (cont.)
  - Examine individual complaints (Québec)
  - Monitor and issue recommendations on the coordination leading to bridging programs (Québec)



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**New Registration Oversight Mechanisms (cont.)**

- Codes of Fair Registration Practices (overview)
  - Incorporated in an Act (except Québec)
  - Principles (related duties, requirements and standards)
    - Transparency
    - Objectivity
    - Impartiality
    - Fairness
  - Procedural, substantive, relational



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**New Registration Oversight Mechanisms (cont.)**

- Oversight tools and methods (overview)
  - Registration practices review and assessment
  - Investigation
  - Improvement strategy
  - Compliance Order or Notice
  - Recommendation
  - Expertise, advice and some support
  - Data gathering on applicants and process



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New Registration Oversight Mechanisms  
(cont.)

- Impact so far
  - Increased understanding of the challenges faced by the foreign-trained professionals
  - Improved knowledge and understanding of the principles of good registration practices
  - Improvements in registration practices
    - Information
    - Methods
    - Procedures



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New Registration Oversight Mechanisms  
(cont.)

- But still...
  - Improvement is not uniform among regulators
  - Registration process is often lengthy and costly
  - Need of a continuous improvement process
  - Need to look for fairness beyond registration
  - Need of a commitment from other than the regulators (government, education system, employers, and else)



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The Québec Commissioner for  
Complaints



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### History

- Created in response to recommendations from *The Inquiry Commission on Diversity and Integration in Québec* (Bouchard-Taylor Commission, 2007-2008)
- Bill passed at the end of 2009 by the National Assembly of Québec



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### History (cont.)

- An oversight entity granted independence and wide investigation powers
- Administratively attached to the Office of the Professions, an agency which already has oversight functions over the 44 professional regulatory bodies



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### Functions-Mandate

- Receive and examine individual complaints concerning the recognition of competence by the regulatory bodies
- Verify the mechanisms for recognition of competence (in a more systemic way compared to case-by-case)
- Monitor collaboration between the education and the professional systems (re: bridging programs and internships)



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### Functions-Mandate (cont.)

- Also responsible for overseeing the implementation by regulatory bodies of their obligations under applicable trade, mobility and mutual recognition agreements



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### Approach

- Case-by-case and systemic oversight
- An agent of change
  - Identifying problems and solutions
- Improvement of registration practices
  - Through recommendations
- Complaints examination
  - Not an appeal process, similar to *Ombudsman*
- Results made public in the end



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### Types of Analysis

A. Conformity

- Laws, regulation, policies

B. Critical analysis

- Question the legal framework and policies
  - If unexpected and undesirable outcomes
  - If unreasonable and unfair
- Principles and good practices in the field of recognition of professional competence



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### What is under scrutiny

- Administration
  - Resources (types and level, competencies)
  - Work organisation
- Methods
  - Assessment and evaluation
  - Standards
- Procedure



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### Principles Guiding the Critical Analysis

- Equality
- Fairness
- Objectivity
- Transparency
- Openness
- Coherence
- Efficiency
- Accountability
- Reasonability
- Continuing improvement



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### Speaker Contact Information

André Gariépy, lawyer, C. Admin.  
Commissioner for Complaints  
concerning the Recognition  
of Professional Competence

Office of the Professions  
Government of Québec



Email: [commissaire@opq.gouv.qc.ca](mailto:commissaire@opq.gouv.qc.ca)  
Web Site: [www.opq.gouv.qc.ca/commissaire](http://www.opq.gouv.qc.ca/commissaire)



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Appendix  
The Québec Professional System



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Appendix  
The Québec Professional System

- Protecting the public is a State mandate
- Harmonized system for all professions
- Public interest and consumer sensitivity



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Appendix  
The Québec Professional System (cont.)

- One basic model for institutions, procedures and disciplinary complaints mechanism for the public
  - Professional Code, in force since 1974
  - Complementary professions' specific legislation
  - Similar regulation and mechanisms for the public
  - Now 52 professions (357 000 individuals) regulated
- Under State orientation and supervision
  - Mainly through the Office of the Professions



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Appendix  
The Québec Professional System (cont.)

- Degree of autonomy and self-regulation
  - Through Professional Orders (regulatory bodies)
  - Role of Professionals in the regulation scheme: specialists running a specialized public entity
  - The Orders can initiate regulation/By-law on important professional matters but, to get the approval, must engage in a dialogue with public authorities about the relevance and the modalities



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Appendix  
The Québec Professional System (cont.)

- Cooperation between Professional Orders
  - Through the Québec Interprofessional Council
- Accountability and transparency
  - Check and balance approach
  - Oversight government agency
    - The Office of the Professions with the Commissioner for Complaints
    - Investigation powers



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Appendix  
The Québec Professional System (cont.)

- Accountability and transparency (cont.)
  - Main regulations/By-laws examined then approved by public authorities and made public
  - Annual public reporting on activities
    - Content of the report established by regulation/By-law
    - Report submitted to the National Assembly



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**Appendix**  
**The Québec Professional System (cont.)**

- Accountability and transparency (cont.)
  - Presence of representatives of the public on
    - Board of Directors of the Office of the Professions
    - Board of Directors and Executive Committee of Professional Orders
    - Advisory Committee on Investigation Review
    - Disciplinary Council (through a lawyer presiding)
  - Subjected to the Access to information Act
    - On public protection related activities

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**Appendix**  
**The Québec Professional System (cont.)**

- Information on the professional system
  - Office of the Professions du Québec (French only)  
[www.opq.gouv.qc.ca](http://www.opq.gouv.qc.ca)
  - Québec interprofessional Council (French, English, Spanish)  
[www.professions-quebec.org](http://www.professions-quebec.org)

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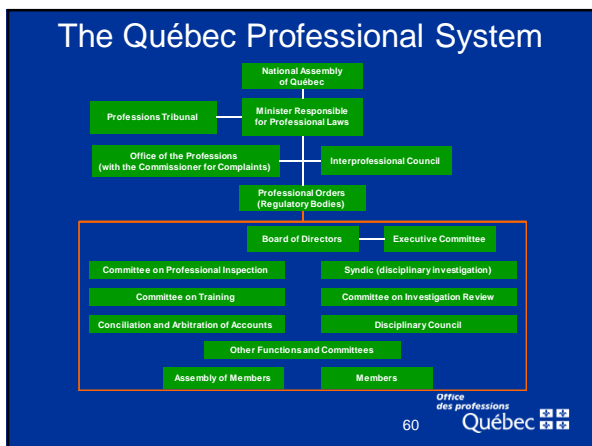
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of Professional Competence

Office of the Professions  
Government of Québec



Email: [commissaire@opq.gouv.qc.ca](mailto:commissaire@opq.gouv.qc.ca)  
Web Site: [www.opq.gouv.qc.ca/commissaire](http://www.opq.gouv.qc.ca/commissaire)



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