Change in Oversight of Self-Regulated Professions

André Gariépy | Commissioner, Government of Québec

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

Professional Regulation: Some Concepts
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

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

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
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

Concepts (cont.) (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

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)
### Concepts (cont.)

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

### 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

### 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
Self-Regulation: The Theory

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

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)
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

Theory (cont.)

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

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
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

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

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.

Self-Regulation: Trends in the Field
Trends in the Field

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

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

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
Oversight of Registration Practices

Context

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

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
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

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

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
New Registration Oversight Mechanisms (cont.)

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

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

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
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)

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

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
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

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)

The Québec Commissioner for Complaints
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

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

Functions-Mandate

1. Receive and examine individual complaints concerning the recognition of competence by the regulatory bodies
2. Verify the mechanisms for recognition of competence (in a more systemic way compared to case-by-case)
3. Monitor collaboration between the education and the professional systems (re: bridging programs and internships)
Also responsible for overseeing the implementation by regulatory bodies of their obligations under applicable trade, mobility and mutual recognition agreements

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

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
Third International Congress on Professional and Occupational Regulation
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What is under scrutiny

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

Principles Guiding the Critical Analysis

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

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
Web Site: www.opq.gouv.qc.ca/commissaire
Appendix
The Québec Professional System

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

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
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

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

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
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

Appendix
The Québec Professional System (cont.)

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

The Québec Professional System
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Office of the Professions
Government of Québec
Email: commissaire@opq.gouv.qc.ca
Web Site: www.opq.gouv.qc.ca/commissaire