PROFESSIONAL REGULATION IN CANADA: PAST AND PRESENT

ABSTRACT

This paper briefly reviews the history of professional regulation in Canada. Regulation entails restricting access to professions to protect the public and ensure professional competence. The challenge facing professions today is to maintain restrictions to exclude the untrained, while improving the ability of those trained outside of Canada to enter professional practice.

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Professional regulation in Canada: past and present

In 1797, the Government of Upper Canada passed "An act for better regulating the practice of law" (the *Law Society Act*). The purpose of this legislation was to establish a legal profession and a mechanism for training and creating lawyers in the province. It was one of the first key pieces of legislation regulating professions in Canada and was notable (and largely unique in the English-speaking world) for the extensive rights and privileges that it granted to the nascent legal profession in what was to become Ontario (Moore 1997). Lawyers themselves, represented by their most prominent members, serving as "Benchers," were to set standards for entry into and for the practice of law and to ensure that these standards were met. The legal profession was given the right to pass by-laws and regulate access, education, and practice conduct. Through the legislation, the government seems to have sought to create a legal profession somewhat similar to that existing in England, yet it encoded into law, rights and privileges that were not so formally specified elsewhere. The government had to adapt English, custom-rooted in its traditional social hierarchy, to a colony with a vastly different population, topography and social relations.

The profession of law was not the only profession regulated in the Canadas before Confederation. Early on, colonial governments in Upper and Lower Canada sought to regulate specific occupations, such as medicine and land surveying, which were viewed as being key to the functioning of government and the well-being of the populace. Legislation regulating these occupations typically aimed to improve competency by requiring new practitioners to pass an examination. Here, however, regulation rested firmly in the hands of the government and its appointees. Envious of their lawyer counterparts, prominent medical doctors and land surveyors lobbied for decades for legislation granting them the right to regulate their own practice. Both occupations were eventually successful in the latter half of the nineteenth century.

The regulation of law, medicine, and other occupations, including dentistry and pharmacy, in the years following Confederation in 1867 established a precedent for the regulation of many occupations in Canada. Regulation is defined as legislation limiting the practice of certain jobs to those with specific training, education, and credentials, and governing the practice of these jobs to protect public safety as well as to ensure that work is done ethically. Some professions (like law, medicine, dentistry, and many others) are self-regulating, meaning that a regulatory college or board made up of practitioners (and, in modern times, representatives from outside the profession as well) has been established to set entry standards and oversee professional conduct. Some are regulated by government representatives from outside of the profession (like teaching, historically). Canada is not alone in regulating occupations and professions; most countries in the world regulate at least some occupations and thus limit access to them. Canada differs from many nations, however, in the extent of its legislation, the number of occupations covered, and the number of professions granted self-regulation.

In this paper, I review the nature of past and current professional regulation in Canada and how historical practices have shaped access to professions. Professional regulation is designed to limit access to practice. Limiting access is deemed essential to protect the public and ensure competence. Nevertheless, regulation creates barriers. In Canada, because professional regulation is generally a provincial concern, and because certain occupations are regulated differently here than elsewhere, these barriers are sometimes particularly acute, especially for the foreign-trained. The challenge facing

professions is to improve access, without undermining the very real gains brought about through regulation and restricted access to professional employment in Canada.

Traditions of regulation in Canada

One might ask why governments regulate occupations at all. Why do we need laws governing certain kinds of activities and restricting access to some jobs? The simple answer is that certain jobs are seen as so important to the public and to social well-being that they cannot be left unregulated. Historically, having a legal profession was seen as crucial to defining and maintaining law and order in the country. Regulating medicine was useful to ensure that those providing health services would do more good than harm. Regulation in these professions and others helps consumers separate the competent from the incompetent, by granting credentials and licenses to the qualified. More broadly, sociologists have argued that the regulation of occupations and professions was an important component in the rise of nation-states, and establishing social order (Johnson 1993). Establishing expertise in key areas of social life (law, land, health) facilitates governments' ability to govern. Regulation may have been particularly important in early Canada, with its small and geographically dispersed population (Adams 2005). Establishing professions enabled governments to foster social and economic development (through law, land surveying, and eventually engineering), and improve the well-being of citizens (through health professions, educational reform, and so on).

Historically, Canadian legislators have been more likely to embrace professional regulation than their counterparts in United Kingdom and the United States. Despite some early attempts at regulation in the US, regulation of professions like law and medicine was generally short-term, piecemeal, and only standardized in the early 20th century. The regulation of occupations such as medicine, law, and dentistry was more sweeping in Canada than in the UK. Some occupations, such as engineering, are highly regulated in Canada, while they are only partially or loosely regulated in the UK and the US. Historically, Canadian provincial governments, with their largely decentralized, and non-bureaucratic structures, as well as their ideological commitment to order and hierarchy, appear to have been far more willing to regulate professions than were others. This established a pattern and acceptance of regulation that has carried into the present day.

At the same time, it is important to recognize that the impetus for regulating professions often does not originate with legislators, but rather with workers themselves. As noted above, legislation granting medicine and land surveying self-regulation was the product of an intense lobby by leading practitioners and their professional organizations. Legislation regulating dentistry, veterinary surgery, accounting, architecture and many others similarly resulted from campaigns led by practitioners. Why did these workers and others – from nurses and chiropractors, to naturopaths, acupuncturists and information technology workers – seek regulation? Traditionally, workers have had a great deal to gain. Many professional groups seek regulation when faced with intense competition from lesser-trained workers who purport to provide similar services at a much cheaper price.

This is particularly evident in the health care field. Historically, traditional medical doctors faced competition from homeopathic doctors, botanical healers, midwives, apothecaries, and a wide range of other specialists who advertised miracle cures and medicine for all ailments. As a result, it was difficult for esteemed and educated doctors to make a living, earn public respect, and maintain themselves and their families in the style to which they aspired (Gidney and Millar 1994). Through legislation, they sought a monopoly over medical practice to reduce their competition, protect their livelihoods, autonomy and social status, and to protect their claims to expertise. While they were not initially successful in excluding all other health providers, medical doctors obtained legislation that restricted access into medicine, and granted them the right to set admission and education standards and examinations. Today's diverse health care providers face similar competition and seek similar gains through regulation. Through regulation (and restricted access), practitioners can control the supply of workers and thereby improve their working conditions and rewards. At the same time, however, they can also ensure that all practitioners have gone through extensive training, improving the quality of services being offered to the public. Traditionally, provincial governments have seen this as a win-win situation: regulating professions, and restricting access into professions, creates competent workers who can provide important services to a (potentially) vulnerable public who might otherwise not be able to distinguish the skilled provider from the unskilled. If these workers are in turn rewarded for their services with satisfying, well-paying work, then surely everyone benefits.

In the past, as in the present, educational and training credentials were the primary means through which entry into professions was limited. Only those with the appropriate credentials were given permission to practice. Access to professions was historically also restricted by gender, race, ethnicity, and religion. The ideal professional practitioner in the late 19th and early 20th centuries was an Anglo-Saxon, White, middle or upper class, Protestant male, and those who did not fit into this category often faced many explicit and implicit barriers. From the very beginning, access was also restricted by country of birth and region of training. Early legislation regulating dentistry in Ontario was typical: entry into the profession was restricted to British citizens of "integrity and good morals" who had passed the matriculation, education and examination requirements set by the Ontario dentists' regulatory college, the Royal College of Dental Surgeons of Ontario (Adams 2000). Thus, anyone born outside of the British Empire who had not passed the exams set by Ontario dentists was not eligible. Such regulations became increasingly problematic.

For instance, consider Louis Gagne, a medical doctor trained in Quebec who wanted to practice in Ontario around the turn of the twentieth century. Gagne obtained a medical degree from Victoria College in Montreal in 1890. After practicing in Quebec for nine years, he established a practice in a francophone Ontario community. Because he was trained out of province, Gagne's practice was, technically, illegal. Gagne, supported by members of his community, petitioned Parliament for legislation that would grant him the right to practise. The legislation, which was passed early in 1902, permitted Gagne to practise until the fall of 1902 when he was required to pass the

final exams of the College of Physicians and Surgeons of Ontario to obtain a license. Owen Van Epp, an American-trained doctor, pursued a similar path in 1904 when he sought to practise on Pelee Island, with similar results. Van Epp and Gagne were fortunate: many professionals trained out of province had their requests for similar legislation denied (Adams 2005). Clearly, a system that required a separate act of the legislature or the repetition of lengthy training every time someone wanted to practise in a province other than the one in which they were trained, was far from ideal.

In response, many professions in the late 19th and early 20th centuries undertook a process, not dissimilar to that occurring today, to ease the ability of those trained in the US, or in a different province, to practice in the Canadian region of their choice. Within Canada, reciprocity agreements and nation-wide education standards and accreditation practices were designed to ensure that no matter where they were trained, professionals had the required skills. Those trained abroad often had to go through a retraining process. Greater harmonization of training and education practices in Canada and the US has facilitated acceptance of the American-trained, but it has proved difficult to harmonize standards worldwide.

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Broadening access, maintaining competence

Expanding access to professions is not easy because regulation, by its very nature, entails restricting access. Regulation is intended to ensure that professional practitioners are skilled, knowledgeable, and competent, as well as ethical. Ideally, they should be interchangeable; you should get the same excellent service, no matter which doctor, lawyer, or chartered accountant you patronize. As sociologist Magali Sarfatti Larson (1977) has argued, homogeneity is at the heart of professionalism. The goal of professional education is to create workers who are essentially similar in every meaningful way. This was easier to achieve when all practitioners attended the same schools and followed the same training regimen, which historically was frequently the case. With the movement of practitioners across borders, it becomes harder to ensure that all practitioners share the same knowledge, skills and values. The challenge facing professions today is to expand access, while ensuring that all practitioners are equally qualified, equally trained and possess the same professional values and vision.

As the number of foreign-trained professionals in Canada increases, professional bodies are faced with an eclectic array of practitioners with training that may differ substantially from their own. There is no guarantee that foreign-trained professionals possess the skills, background and approach deemed essential by practitioners in Canada. Standards remain a concern. Most professional schools in Canada have high admissions standards, only admitting the best and the brightest. Moreover, professional programs often look for other qualities from their students seeking, for instance, not only good scholars, but people with a wide range of interests, experience, good interpersonal skills and so forth. Professional bodies have given considerable thought to the qualities that are most desirable in practitioners. The qualities sought in Canada may not be those emphasized elsewhere. Furthermore, it must be recognized that some of the foreign-trained are Canadians who seek professional training abroad, sometimes because they cannot meet the standards set by Canadian programs. Professional bodies need to make sure that all of the foreign-trained possess the same competence as the Canadian-trained and that there is no alteration of accepted standards and practices. This is both to their benefit and to ours as a society. Retraining seems the most practical way to ensure that all practitioners possess the same knowledge, skills, outlooks and approaches. Nevertheless, finding a way to do this in a manner that is both cost-effective and not overly time-consuming has been a challenge.

Conclusion

Regulation inherently restricts access to professional practice, but it does so to ensure competence and public well-being. The goal is to ensure that the barriers in place are fair ones that keep out the unskilled and incompetent and do not limit entry to practice based on place of birth, location of training, class background, ethnicity or other factors. The challenge facing professions today is to maintain their control over entry to practice and to maintain their standards, while providing opportunities for the foreign-trained to utilize their skills. Their efforts to ease the entry of the foreign-trained provide an opportunity to revisit the kinds of characteristics and values practitioners need to have and recognize the value of the skills and cultures these workers bring with them from abroad. In the end, the professionals serving Canadians will be more diverse in terms of their backgrounds and the perspectives they bring to their work, and this can only improve the service provided to Canada's increasingly diverse population.

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