

Self-Regulation: the Frontier We All Confront

Self-regulation, membership in a professional organization and the emerging regulatory issues are increasingly becoming topics of interest to different regulatory bodies in Canada. For example, health professions in Saskatchewan, under the umbrella of the Network of Inter-professional Regulatory Organizations (NIRO), met in Saskatoon on October 14, 2015 to deliberate on the possibility to influence the content of the upcoming template legislation for regulatory bodies and discuss common regulatory health and social issues in their respective professions. With the proclamation of the *Registered Teachers Act* on July 1, 2015, the government of Saskatchewan has not only granted the teachers in the province the privilege of self-regulation, but also transferred the responsibility for the certification of teachers from the Ministry of Education to the Saskatchewan Professional Teachers Regulatory Board (SPTRB). SPTRB is currently a self-regulated body responsible for teacher certification, registration and discipline.¹ From November 1 to November 4, 2015, the Alliance of Medical Radiation Technologists Regulators of Canada (AMRTRC) and the Canadian Network of National Associations of Regulators (CNNAR) are meeting in Vancouver to educate the unregulated provinces and the members about the merits of self-regulation.

These examples reveal that our contemporary society increasingly values self-regulation. Both the public and the provincial governments trust professional regulatory bodies and professional associations to cater for the health and social needs of the population. This article discusses the merits and limitations of self-regulation among the health professions in Saskatchewan, and explains how the concept of government intervention, and other externalities resulting from such regulation, can enhance or limit the roles of professional regulatory bodies and professional associations. For simplicity of readership and for the purpose of this article, self-regulated bodies refer to both the colleges and associations whose differences are described in Table 1.

Relationship between the Government and Regulatory Bodies

Governments empower and regulate professional regulatory bodies to ensure they fully execute their responsibilities in protecting the public. This expectation to serve the public interest and protect the vulnerable members of the society comes with some governance and professional tradeoffs and challenges. For example, in countries like the United States where health services are privately funded and delivered, government regulation results in transfer of costs and expenses to the public—the same cohort that the regulation is supposed to protect (Krueger and Kleiner 2008). Krueger and Kleiner critically observe that licenced or registered members compensate for the costs of insurance, licensure, professional training, long-term residency, examination, and other requirements and services by highly charging the patients. As a result, both the average quality and the average prices for these health services usually increase as licensing requirements are tightened, resulting in benefits for those who want higher quality, but at a tremendous cost to those who are in lower quality services. In countries like Canada where health care services are publicly funded and privately delivered through health regions, the governments trust health professionals to put aside their self-interest in favor of protecting the public interest. This ideology of service, commonly known as ethos of professionalism (Balthazard 2015), is integral to self-regulation.

¹ More information about the responsibilities and functions of the Saskatchewan Professional Teachers Regulatory Board (SPTRB) is available on the board web site: <http://www.sptrb.ca/web/sptrb>.

Self-regulation results from the federal system of government in Canada. Section 92 of the Canadian Constitution Act, 1867, assigns the provinces the authority to make laws in relation to property and civil rights. The Supreme Court and other courts frequently interpret property and civil rights to include regulation of self-regulated bodies. The implication of this provision is that there cannot be a national body for health professions, unless there are fundamental changes made to the Constitution. As a result of this regulatory disparity, self-regulation is done differently in all provinces, although there is some coordination across provinces. Some of this interprovincial coordination comes in the form of agreements, such as the Agreement on Internal Trade (AIT) and the New West Partnership Trade Agreement (NWPTA). In implementing these agreements, the federal, provincial and territorial governments hope to promote labor mobility through mutual processes and relationships. Nevertheless, labour mobility agreements do not override the provincial responsibility and oversight of the self-regulated bodies. Before granting them membership and licenses, the provincial MRT regulatory bodies require AIT members to disclose limitations on their certificates, disciplinary and criminal proceedings, professional misconduct and any other information regarding complaints in different jurisdictions.²

However, self-regulated bodies are not totally free from the government control and oversight. In Saskatchewan, the government monitors the activities of self-regulated bodies by introducing a number of mechanisms to enhance accountability. For example, the Ministry of Health requires health self-regulated bodies to submit annual financial statements in an attempt to monitor the financial sustainability. Other mechanisms include the appointment of public representatives to the councils and boards of self-regulated bodies and the creation of departments and branches to oversee some aspects and operations of the self-regulated bodies. The government intervention, as evident in the proportion of government appointees sitting on councils in different regulatory bodies, has been referred to as ‘co-regulation’ rather than ‘self-regulation’ (Balthazard 2015).

Government intervention creates a paradox for many emerging professions which are interested in becoming self-regulated because of the enhanced legitimacy and status for their members. Generally speaking, it is whether the public needs protection, not whether the profession ‘deserves’ to be recognized as a profession, that motivates the government to regulate health professions. Around the world, governments mainly regulate health and other professions in circumstances where (1) the public does not have the capacity to evaluate the competence of the professional or service provider; (2) the public does not have the choice of the practitioner or professional; (3) there is an imbalance in the power of the service provider and that of the patients or clients who receive services; and (4) the consequences of the actions of incompetent or unethical practitioners need immediate intervention and action (Balthazard 2015, p. 5).

The Differences between Associations and Colleges

Because of the potential conflicts of interest between making decisions in the interest of the public and making decisions in the interest of the profession or its members, the government often imposes a separation between professional associations, whose sole mandate is to serve the interests and advocate for their members, and professional regulatory bodies, whose sole mandate is to protect and promote the public interest by regulating its members.

² Alliance of Medical Radiation Technologists Regulators of Canada. Certificate from the Out-of-Province MRT Regulatory Authority under the Agreement on Internal Trade (AIT). October 2013.

Table 1: Functional and Regulatory Differences between Colleges and Associations.³

Professional Regulatory Bodies (College)	Professional Associations (Association)
They are more likely to impose obligations, such as mandatory professional liability insurance, on the members.	They are hesitant in imposing any burdens on the members. Members have choices to join and opt out of these professional services.
They are more likely to issue binding professional guidance and establish standards of practice that all members must comply with.	They are more likely to describe the best practices to which members should adhere, but the regulatory reinforcement is very limited.
They maintain public registers that contain information that is in the public interest for the public to know, including disciplinary history.	They maintain directories for the purpose of enhancing networking among the members. The directories are often only accessible to members who login (membership benefit).
They have detailed rules that govern the conduct and practice of the members. Codes of ethics are legally binding covenants which are to be vigorously enforced by provincial laws.	They often have codes of ethics which express laudable principles, but are not always enforceable statements by provincial statuses or designated legislation and acts.
They implement quality assurance programs, such as professional inspection and peer review.	They are reluctant to introduce programs which would be seen as interfering with membership.
They have sophisticated investigatory and disciplinary processes which are often subject to procedural standards, laws and provincial acts. The decisions of statutory committees (professional conduct and discipline) are subject to review by the courts.	They will often have discipline mechanisms 'on the books'. Both the procedural standards and the subsequent discipline and investigatory processes tend to be rudimentary.
The regulatory statutes will grant specific rights of appeal to the courts to individuals who are the subject of regulatory decisions.	The policies and procedures of professional regulatory bodies are much less sophisticated than those of professional regulatory bodies.

Professional regulatory bodies are required by law to protect and promote the public interest by (1) regulating the practice of the profession—to minimize and mitigate the risks to the public that may arise from the practice of the profession, (2) defining criteria for registration, licensing and certification of members, (3) providing guidance to members in the form of codes of ethics, rules of professional conduct and standards of practice, (4) maintaining a public register which contains detailed information about registered members with the professional regulatory body, and (5) investigating complaints and disciplining members, where appropriate (Schultze 2010).

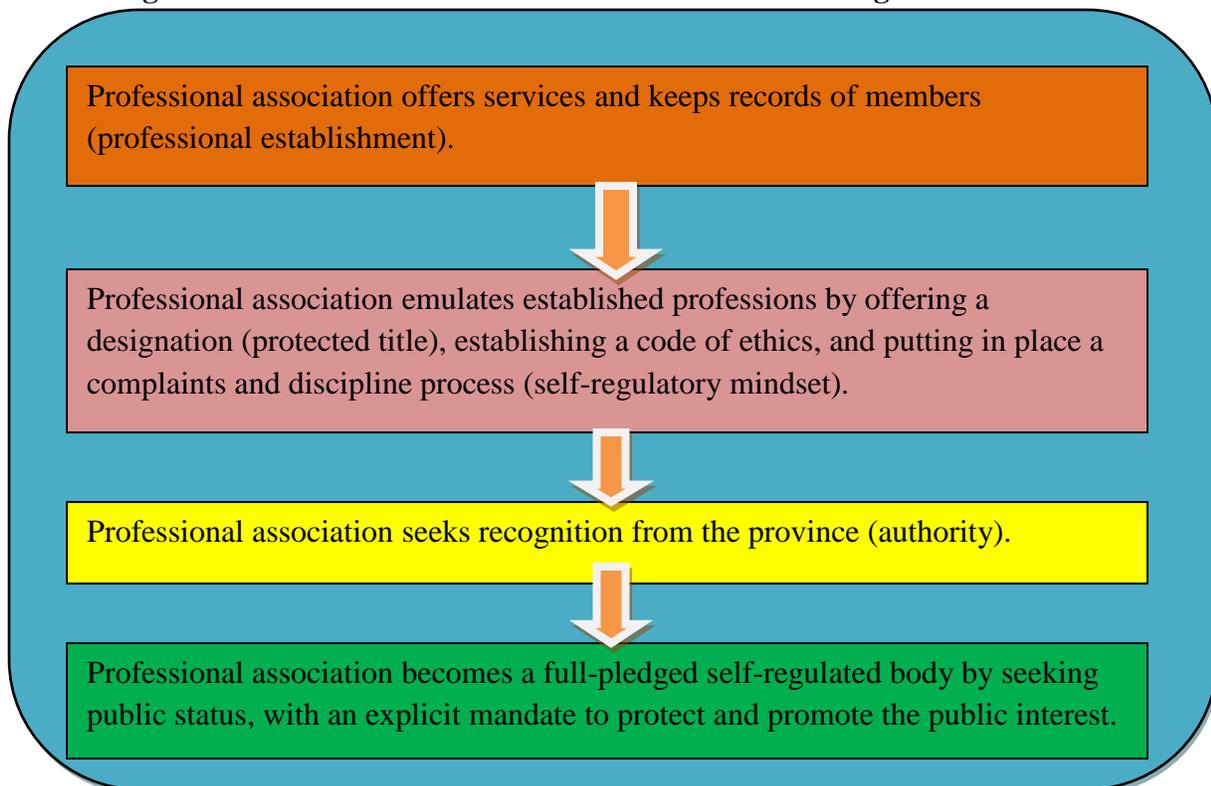
³ This table and the figure on the following page modified versions from Balthazard (2015).

On the other hand, professional associations serve the interests of their members by (1) providing networking and job opportunities to the members and employers, (2) publishing information, conducting research, and organizing conferences, seminars, and workshops on topics that are of interest to their members, (3) negotiating preferential and promotional rates of various products and services for their members, and (4) lobbying the government to influence policies and issues of the interests to the members (Balthazard 2015). See Table 1. It should be noted that there are some overlaps between the responsibilities of the professional regulatory bodies and the professional associations. For example, professional associations may offer professional development activities to help members advance their careers, while professional regulatory bodies may offer professional development activities to remedy a specific knowledge or skills gap which poses some risk to the public. In addition, professional regulators may set entry criteria to limit the number of individuals who may qualify to practise the profession, whereas professional associations may strive to attract as many members as they can to boost the financial sustainability through membership fees.

Transition from Professionalization to Self-Regulation

Out of the needs to reconcile the functional and regulatory differences, dual-object professional organizations—the organizations which try to find ways of managing the tensions inherent in the conflict of interests and the power struggles among self-regulated bodies—have emerged in health professions. One of the first steps that the professional associations take along the path of professionalization is to apply for self-regulation through a provincial act that makes it an offence to use unprotected title or initials without being a member of a self-regulated body. Professionalization has been defined as the process by which the members of an occupation collectively achieve the recognition and status that is accorded to the established professions by emulating or adopting the characteristics of the established professions (Balthazard 2015). The journey from an association to a regulatory body is not only a matter of increasing regulatory authority; it also requires a fundamental change in perspective, as shown below.

Figure 1: Transition from Professionalization to Self-Regulation.



Implications of Government Intervention on Self-Regulation

After being granted the power and authority to self-govern and to protect and promote the public interest, the health professions can devise their own mechanism of regulating members and sustaining themselves. For example, different self-regulated bodies require registration and licensure for members to use the title and continue employment in their respective professions. For the professional associations, it is difficult to restrict members from using the title after they complete the requirements of the program. Are members paying fees to exchange their privileges after studying requirements of the profession for four or more years? How far can self-regulated bodies extend their powers to restrict the practice and behaviour of their members in an attempt to protect and promote public interest? Does the regulation override the interests of members and other human rights implications that may emerge from the obligation to protect the public?

In some instances, members are opting out of registration with the professional associations because they are working in areas they are not required to have licenses or register with the professional associations. In Ontario and other provinces where professional regulatory bodies (colleges) operate separately from professional associations, the requirements for registration are lenient. In this case, the conflict between the use of the protected title and the requirement for employment has been resolved by voluntary membership in the professional association. In provinces like Saskatchewan where most professional regulatory bodies have the same mandate as professional associations, the authorities are negotiating with different employers (health regions) to require compulsory membership and registration. For example, Kids First and CPAS workers are currently social workers whom the health regions require the registration or eligibility to register with the Saskatchewan Association of Social Workers.

Additionally, there are differences in values and principles that may hinder coordination and communication among the self-regulated bodies. For example, some provincial self-regulated bodies may pull out of a national body when there are conflicts in values. Leaders may rely on ideologies and values that impact their decision to make policies. The Saskatchewan College of Paramedics (SCoP) is hesitant to join the Paramedic Association of Canada (PAC) because of ideological difference in the objective about service to members and the protection of public interest. Besides, Quebec, Ontario and Alberta have pulled out of the Canadian Association of Social Workers (CASW) because of ideological differences about the value of social justice, and other governance issues. CASW takes pride in a national representation on coalitions and sustained lobbying to the Parliament of Canada that is focused on promoting and strengthening the profession while advocating on issues of social justice.⁴ According to provincial regulatory bodies which have pulled out of the national association, CASW has been deeply involved in politics and partisan activities—the truth and reconciliation commission, refugee crisis, health care, and other social policy and social actions—that seem to portray the CASW in different conflicting roles as a political party, advocacy coalition and a professional association.

There are still many substantial areas where the provincial government should work closely with the health professions and other self-regulated bodies in the province to better serve the public interest. For example, there are currently no provisions that address the emerging regulatory issue of incapacity and subsequent social and regulatory issues, such as the fitness to practise, in

⁴ More information about the activities of CASW, including criticism and press releases against different policies from the government, can be found in the association website: <http://www.casw-acts.ca>.

different acts for the health professions. With limited authority from the acts, the health self-regulated bodies cannot create bylaws and policies that would best address emerging regulatory issues in substantial areas that are susceptible to possible human rights implications.

In Ontario, for example, the *Regulated Health Professions Act, 1991* (RHPA) provides measures that the health professions may undertake to address the possible legal and regulatory implications where members' incapacity may compromise patient care. In this case, incapacity refers to a situation where the member is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member's registration be subjected to terms, conditions or limitations, or that the member no longer be permitted to practise (College of Kinesiologists of Ontario 2013). From this provision, the self-regulated bodies in Ontario can develop bylaws and policies to better regulate the practice of members in the health professions. Saskatchewan should include similar provision in different acts and legislations for regulatory bodies, and specify some measures to shield the self-regulated bodies from possible human rights implications.

There are merits and demerits of government intervention and self-regulation among the health professions in Saskatchewan. Nevertheless, the self-regulated bodies should take frontline roles in advocating for self-regulation because it is beneficial to both the self-regulated bodies and the public. The government should encourage the self-regulated bodies to contribute to the legislations and policies that recognize the maturity of health professions, honor the special skills, knowledge and experience that a profession possesses, and delegate government regulatory functions to those who have the specialized knowledge necessary to do the job.

References

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