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Membership Advisory

Self-Regulation of Professions in Saskatchewan

This advisory is based on excerpts from a presentation provided by Ms. Merrilee Rasmussen Q.C. (legal counsel) at the 2015 AGM of the College.

The regulation of professions in Canada is a provincial jurisdiction. Thus, it is no surprise that there is substantial variability in licensure standards for the profession of Psychology across the country. The history of the regulation of professions in the province goes back to the turn of the last century. One of the first pieces of legislation in the province pertaining to a health profession was enacted in 1917 in regard to the profession of Nursing. The legislative proposal was submitted as a private bill as opposed to a government measure. The fact that it was a private bill highlights that the practice of the profession was not viewed at the time as a practice that the public should be or was concerned with. “However, very quickly The Registered Nurses Act came to be regarded as public legislation and amendments to it and all other professional legislation are now handled as government measures that are part of the government's legislative program.”

The first piece of governing legislation in the province for the profession of Psychology was enacted in 1962 and was called the Registered Psychologist Act. The legislation provided the profession with the authority to establish bylaws regarding important issues such as who can register as a Psychologist, regulation, discipline, and the investigation of complaints from the public. At that time registration as a Psychologist required “a Doctoral degree and an exam, or a Doctoral degree and three years’ experience, or a Master’s degree and five years’ experience. A refusal of a membership application could be appealed to the Court of Queen’s Bench. Bylaws were confirmed by the membership but did not require Ministerial approval. The discipline provisions of that first Act comprised only one section, but if a member was suspended or expelled that decision had to be reported to the Minister who could request council to reconsider, send the matter to an arbitration hearing, or appeal to the Court. That Act remained pretty much unchanged until 1997”.

Template legislation was developed for the professions by the provincial government in the mid-1980s after an attempt at establishing umbrella legislation (an overarching piece of legislation that would cover all professions) was unsuccessful. Thus, while there is no umbrella legislation for professions in Saskatchewan, the template has been applied to the majority of legislative requests since that time thus creating “an umbrella of a strange sort.” The template has morphed over time, and changes to the template are applied going forward. Thus, existing legislation is not amended when there is a change to the template, resulting in issues of inconsistency between the professions in terms of authorities granted under the legislation, and difficulties in interpretation of the differences in the authorities. In considering the issue of the inconsistency in the template legislation in the province Ms. Rasmussen stated:

“... it is a general rule of statutory interpretation that if the Legislature means to say the same thing it uses the same words and, of course, if it means to say something different it uses different words. So, if the same provisions are worded differently in different template profession Acts, should they be understood as intending different results? Or if there are different provisions in template profession Acts should they be understood so as to make a difference in how or what the different professions are supposed to do or not do? These are questions that can only be answered in the context of specific situations as circumstances arise. One of the most interesting of these differences is the adoption of a “duty and objects” section in the professions legislation enacted since 2006, which states:

Duty and objects of college [or association]

4 (1) It is the duty of the college at all times:

- (a) to serve and protect the public; and*
- (b) to exercise its powers and discharge its responsibilities in the public interest and not in the interests of the members.*

(2) The objects of the college are:

- (a) to regulate the practice of the profession and to govern the members in accordance with this Act and the bylaws; and*
- (b) to assure the public of the knowledge, skill, proficiency and competency of members in the practice of [the profession].*

The “duty and objects” section of the 2006 template legislation identifies clearly that a regulatory College is not an advocacy body for the profession it regulates, and that the needs of the members of the profession are secondary to that of the public interest. “In effect, this provision codifies the 19th century ideal: professionals are persons who apply their skill and knowledge for the benefit of humanity. In my opinion, it would be very difficult to argue that this not the objective of those professions who do not have this explicit provision in their Acts.”

The distinction between regulation and advocacy is an important one. In 2008 in England the legal profession was stripped of its right to self-regulate due to the perceived inability of the profession to separate its regulatory responsibility from its own self-interest. The 2006 amendment to the provincial template legislation is clear in outlining the responsibilities of the professions in regard to regulating in the public interest. The duty we have as members of the profession is to provide ethical and competent services to our clients, and to act in their best interests. The duty of the College as the regulatory body is to serve and protect the public through the establishment of standards of competence and conduct, and the handling of complaints in regard to concerns of professional misconduct and/or professional misconduct. The 2006 amendment to the template legislation has implications for the College as well as its members. Ms. Rasmussen noted:

“Members should not look to their profession to advocate for them, but for guidance concerning what are the acceptable standards of conduct and competence to be met.

Members should assist their profession in determining and setting appropriate standards and in ensuring that they are enforced, because this is the price of self-regulation. A failure to accomplish these goals in a manner acceptable to the public will lead to the loss of the ability to self-regulate. In this sense, a profession does not exist for its members at all.”

The legislation, the Psychologists Act 1997 identifies the responsibilities of the College as being:

- ensuring persons admitted to membership are qualified through education and good character
- establishing codes of ethics and practice standards that members must meet
- investigating complaints or concerns of misconduct or incompetence to determine if members meet the standards set
- imposing, if necessary, the means by which a member can meet the required standard through further education, training or other consequences that will achieve that goal, and;
- suspending or expelling the member when that is not possible

Ms. Rasmussen further notes:

“... The role of individual members is to support their profession in this primary function, not just by meeting the standards that are set, but also by contributing to the work that must be done to develop those standards and to enforce them and in the governance of the professional association that exists for that purpose.”

“When these functions are appropriately fulfilled, the profession is truly self-regulating and public protection is achieved”