**The Changing Nature of Profession-State Relations in Canada: The persistence of self-regulation in the context of reform, 1960-2010**

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*Abstract*

This chapter examines changes in professional regulation in two Canadian provinces, Ontario and British Columbia, over a 50-year span of time (1960-2010). Patterns of professional regulation extend *beyond professionalism* and specifically reflect professions' relations with society and states. Professional regulation is intended to serve the public interest; however, there was rising concern in the 1960s and succeeding decades that prevailing systems of regulation were failing in this mission. Several commissions recommended sweeping changes. Nevertheless, in Ontario and British Columbia, reform was more incremental, resulting in a continuation of professional self-regulation, and an expansion of the number of regulated professions (despite commission recommendations discouraging the extension of professional powers to new groups). Findings are consistent with ecological and neo-Weberian theories, demonstrating that regulatory change is informed by numerous stakeholders, and that it can reflect changing social values. The shifting nature of professional regulation illuminates the changing role of professions in society in a context of declining public trust.

*Keywords:* Professional regulation, Canada, Social change

## 1. Introduction

In the west, traditional meanings and structures of professionalism have been contested over the last 50 years, and professionals' roles in society are being redefined. Professional authority and autonomy have been challenged by a wide range of societal stakeholders, including politicians and other state actors, consumers, managers and other leaders in professional workplaces, as well as lower-status workers seeking to increase their social influence and market position (see also Chapter 6, Chapter 8). Professionals' claims to apply their knowledge and expertise in the service of the public interest have been regarded sceptically, and dramatic scandals have provided periodic evidence of their failure to meet their public interest obligations (Saks 2015; Eyal 2019).

At the same time, expertise remains crucial to western economies, and regulating professional work in the public interest continues to be essential. Experts who are engaged in practices that carry potential risks to the public and society –especially in fields like health, law, engineering and several others– continue to be governed by state legislation and legislated bodies charged with monitoring professionals' work to ensure it is conducted competently and ethically in the public interest. Despite calls for deregulation in some locales, professional regulation persists, since completely unregulated markets are believed to carry risks that endanger the public (Freidson 2001). In this sense professional regulation remains an important if contested social

practice, that extends 'beyond professionalism,' and reflects the continuing importance of professional expertise and practice within western societies.

There is little agreement, however, about how expert work is best regulated. Structures of professional regulation vary cross-nationally –and in some locales cross-regionally– and across professions. In Anglo-American countries, self-regulation was historically the norm. Bodies composed predominantly of professionals made key decisions about entry into practice and the conduct of practice, also overseeing complaints and discipline. Self-regulation was highly contested in the late twentieth and early twenty-first centuries, leading to legislative change that has reduced, although not entirely eliminated, professionals' ability to have a voice in their regulation. The trend appears to be toward systems of co-regulation where state leaders and lay members play predominant roles (Leslie et al. 2018). Still, regulatory best practices continue to be debated.

This chapter explores professional regulation in Canada, where self-regulation has taken a different form than in some other countries, and where it has persisted longer. More specifically, I explore regulatory change in two provinces, Ontario and British Columbia, over a 50-year span of time (1960-2010). Patterns of professional regulation extend 'beyond professionalism' and specifically reflect professions' relations with society. These relations are being redefined as social values and the interests of various stakeholders –including professionals, the state, and consumers– are changing in a context of declining public trust.

## 2. Theorizing Professions and Professional Regulation

Within sociological research on professions, it has become the norm to focus on experts and expertise rather than professionals (Eyal 2019). Nonetheless, only some experts are regulated by statute in a manner that allows them a voice over their own affairs, and these –in Canada at least– are commonly called professions. This article treats professions as occupations requiring advanced education, training, and expertise that are regulated by state legislation establishing bodies to govern their practice. Self-regulating professions are those that have a voice in their own regulation: bodies comprised of professionals (and members of the public) make key decisions about professional governance, guided by legislation and state (or state-sanctioned) oversight bodies. In Canada, professions have enjoyed a particular form of self-regulation wherein all practitioners are incorporated into a 'college' or association that is governed by a council/board comprised of professionals and members of the public. Regulation varies cross-regionally in the country, but historically professionals made up the majority of board members, and most of these professionals were elected by their peers. Such structures aimed to establish democratic processes and avoid the pitfalls of nepotism (Adams 2018), but they are increasingly viewed as outdated (Cayton 2018).

Scholars seeking to understand professional regulation –both past and present– have drawn on a variety of theories, with neo-Weberian approaches being the most influential. Professional privileges generally, and regulatory privileges specifically, are the product of social closure

processes whereby professionals succeed in cutting off access to education, training, and entry into practice. To achieve social closure, professionals organise and appeal to the state for legislation that allows them to limit access to skills and opportunities, and to enhance market privileges (Saks 2015). Historically, several professions like medicine and law succeeded in achieving social closure and benefitted accordingly.

While the concept of social closure provides a description of a set of processes that are important to the creation of professions, it cannot effectively explain how these processes played out historically. Several accounts either have the state simply acceding to professionals' requests for power unquestioningly, or negotiating a 'regulative bargain', whereby legislators granted professionals power in exchange for the promise that they would use their powers in the public interest (Macdonald 1995). Although there was certainly an expectation that self-regulating professions would govern in the public interest, regulatory outcomes were a great deal more controversial and fraught than such accounts imply (Adams 2018). To understand these processes better, some scholars have returned to Weber, this time to draw on his theories of social action (Adams and Saks 2018). Weber has argued that much of social action is rational, in that it is goal-oriented (Weber 1968). The most common types of goal-oriented actions are instrumentally rational actions –aimed at achieving calculated ends that are generally material in nature– and value-rational actions, focused on achieving more intrinsic and less material goals, or that act in accordance with values (Weber 1968). Research drawing on this theory has explored the complex and changing reasons why state actors delegate regulatory authority to certain professions at specific points in time, and what political, economic goals and social values have shaped their activity. A neo-Weberian action approach also sheds light on the complexity of professionals' efforts, acknowledging that professionals' drive for self-regulation is not simply about enhancing their power, but is shaped by social values including the public interest (Adams and Saks 2018; Bonnin 2019), as well as the intersection of class, gender, and race (Adams 2018).

Weber's concepts of social action and social closure help to shed light on regulatory processes and outcomes, but they are predominantly focused at the micro level. To understand the macro-level contexts in which these processes occur, it is helpful to draw on Abbott's (1988; 2005) ecological approach. Abbott (1988) has argued that professions exist in an ecology or system, within which they jockey for jurisdiction; that is, they battle for control over a scope of practice or field of activity by appealing to a variety of audiences, including the state, the public, workplaces, and others. For Abbott, developments within the ecology of professions are driven by inter-professional conflicts (Abbott 1988), as well as by the interplay between activities in that ecology and ecologies linked to it, such as the state, or education and health care systems (Abbott 2005). Later writers have emphasised that collaboration and alliances within and across ecologies are also important (Adams 2007; 2018). Indeed, Abbott (2005) has argued that when it comes to regulation, it is at those moments where regulatory solutions address concerns within both state and professional ecologies that change is most likely to occur.

Combining neo-Weberian and ecological theory enables us to understand the broader contexts in which social action and social closure processes occur. Nevertheless, Abbott does not fully

illuminate how linked ecologies have changed over time, and how they differ across social and historical contexts. Here it is helpful to bring in Light's (1995) concept of *countervailing powers* – the idea that once a party accumulates sufficient power, other parties will mobilise to counter them and diminish their influence. Light (1995) has applied this concept to understanding changes in healthcare, and especially the declining influence of dominant professions such as medicine in the late twentieth century, brought about by a constellation of actors: politicians, consumer and occupational groups, managers, and others. Light's concept draws our attention to a wide range of actors that shape professional and regulatory change, and to the increasingly important role of consumers and other stakeholders in shaping regulatory processes. It is not simply professionals, state actors and their linked ecologies that determine regulatory outcomes, but a wide variety of goal-oriented individuals and groups, influenced by changing social values. Many of the latter are decidedly reform-minded, seeking to reduce professional power, with some groups endeavouring to advance their own claims to power and influence.

This combined theory helps illuminate processes of professional regulation and regulatory change – shedding light on the actors and motivations that shape regulation, as well as the contexts in which it occurs. It highlights the roles of actors and social-historical context, as well as the centrality of relationships to regulation. Professions are embedded within institutions and ecologies. It is the relationships between and among professional groups, state actors, consumers, within and across these institutions (within, between, and beyond professionalism), which shape processes of change and power inequalities. Even as their collective power declines, professions remain important societal institutions, and professional practice continues to be a key focus of state and social oversight.

## 3. Professional Regulation and Change in Canada

As noted above, in Canada most professions are regulated at the provincial level; who is regulated and how varies from one province to another. In several provinces, regulatory legislation recognizes *colleges* (especially in the area of health), or *associations/societies*. All registered/licensed practitioners belong to one of these organisational entities, which are each governed by a council (or board). Members of these regulatory councils may be elected or appointed, but it has been common for professionals to elect at least some of their number to the boards that govern them, in line with the principles of democracy which guided early profession formation in Canada (Adams 2018). Traditional professions were truly self-regulating in this respect. Since it was the state that delegated these powers of self-regulation to the professions, they were accountable to it, but the degree of oversight was variable, and not typically high.

Although these structures have always had their critics, professional regulatory bodies were often regarded as valued social institutions that enabled professionals to govern in both their own interests and the public's interests, with state actors and the public occasionally reining professionals in to remind them of their public responsibilities. The establishment of professions was important in Canada's early days as a country. With a small population spread across a large territory, a small nascent state, and government that only sat for a few weeks a year, professions

helped to extend governance and order at no cost to the state, since they were self-funding (Adams 2018).

This system of professional regulation was regularly tweaked throughout the late nineteenth and early twentieth centuries, but its fundamental essence did not change. It came up against its first strong challenges in Canada, as well as in other countries (Saks 2015), beginning in the 1960s and over subsequent decades. At this time, forces outside professions –from counter-culture and civil-rights movements, changes to the health sector wrought by the emergence of publicly-funded healthcare and other changes, increasing specialization and the rise of new healthcare occupations and professions, and consumer-advocacy movements– combined with trends within professions to generate winds of change.

In the remainder of this chapter, I focus on the nature of these changes, paying particular attention to trends in professional self-regulation in Canada, through a focus on two provinces – Ontario and British Columbia (BC). I examine how social change, tensions within the ecology of the professions, and various stakeholders (professions, the state and consumers) shaped regulatory change. Research questions include the following:

1) How did professional regulation in these two Canadian provinces change in the 50-year period between 1960 and 2010?

2) How did attitudes (and values) surrounding professional self-regulation alter during this period?

## 4. A Brief Note on Methodology and Sources

To address these research questions and shed light on processes of change in professional regulation I use historical methods, analysing historical documents including legislation and government-commissioned reports on professional regulation, as well as relevant legislative debates in British Columbia and Ontario between 1960 and 2010. These historical documents not only reveal what was regulated and when, but the values and concerns that drove regulation and regulatory change in the past. This analysis sheds light on shifting social values and countervailing powers, and looks 'beyond professionalism' to explore professions' relationships with the state and other social institutions.

Initially, all (477) acts passed in the two provinces respecting professional regulation between 1960 and 2010 were identified and reviewed, as were the debates surrounding this legislation; legislative trends over time were also mapped. Subsequently, the findings of six policy commissions in the two provinces were analysed. Analysis of documents was both descriptive and thematic. The thematic analyses revealed the changing nature of professionalism and the changing role of expertise in society in the late twentieth and early twenty-first centuries.

The findings, presented in the following sections, highlight trends by era.

## 5. Findings

### 5.1 The 1960s and 1970s

In Canada, as elsewhere, the 1960s represented a time of significant social change where a wide variety of voices questioned prevailing social institutions and the systems of social inequality they reproduced and upheld. Professions were one of the dominant social institutions challenged by the civil rights movement, which raised questions about professional powers, limited access to professional careers, and uneven access to professional services. State actors faced rising costs and were challenged by grassroots movements demanding change. The decision to implement a publicly funded healthcare system in Canada generated concerns about costs and inefficiencies, at least some of which were blamed on professionals and the prevailing system of professional regulation which was not designed with efficiency as an overarching goal. These trends (and others) collided to generate considerable debate in the 1970s and in subsequent decades, and in some instances led to regulatory change.

With respect to professional regulation, by 1960 the pattern of regulation in Canada was well-established. A list of self-regulating professions in both provinces in 1960 is provided in Table 11.1, along with the dates these professions first became self-regulating. Early professions established in the late nineteenth century included law, medicine, dentistry, pharmacy, and land surveying. As European settlers moved into British Columbia later than Ontario, BC established self-regulating professions later on. In the early twentieth century, the number of self-regulating professions in each province expanded to include a variety of building and resource professions, as well as other allied and alternative health occupations. The latter were initially granted only limited powers of self-regulation. In the period immediately following the Second World War, a variety of new professions were established, not only in health care but in accounting, forestry and agrology. Some new professions provided support for, or worked in tandem with, earlier professions including dental technicians and licensed/registered practical nurses.

**Table 11.1 Self-regulating professions (closed and reserved title) to 1960**

| Profession | BC | Ontario |
|---|---|---|
| Lawyers | 1874 | 1797 |
| Medical Doctors | 1886 | (1839) 1869 |
| Dentists | 1886 | 1868 |
| Pharmacists | 1891 | 1871 |
| Land Surveyors | 1891 | 1892 |
| Architects | 1920 | 1890 |
| Chartered Accountants | 1905 | 1882 |
| Engineers | 1918 | 1922 |
| Veterinary Medicine | 1901 | 1920 |
| Optometrists | 1920 | 1919 |
| Nurses | 1918 | 1922 |

| | | |
|---|---|---|
| Drugless Practitioners | (Naturopathy) | 1925 |
| Osteopaths | (Med act 1909) | (under DP Act) |
| Chiropractors | 1934 | (DP Act), 1991 |
| Chiropodists/Podiatrists | 1929 | (DP Act), 1944 |
| Naturopaths | 1936 | (DP Act), 2007 |
| Funeral Directors & Embalmers | | 1928 |
| Miscellaneous other accountants | 1945, 1951 | 1926, 1941 |
| Physiotherapy (& Massage Therapy) | 1946 | DP |
| Music Teachers | 1947 | 1946 |
| Professional Foresters | 1947 | 1957 |
| Agrology | 1947 | 1960 |
| Dental Technicians | 1958 | 1946 |
| Teachers | 1987 | 1968 |
| Psychiatric Nursing | 1951 | n/a |
| Practical Nurses | 1951 | 1947 (1963) |
| Notaries | 1956 | n/a |
| Interior Decorators/Designers | n/a | 1956 |
| Dieticians | 2002 | 1958 |

The first seven rows of Table 11.2 (below) show the new professions created between 1960 and 1979 – a very small number. Only psychologists and radiological technicians were first regulated in both provinces during this two-decade period. Opticians, landscape architects, denturists and social workers began to be regulated in one province, with legislation following in the other province several decades later. Although a number of acts regulating professions were passed in this era, they typically only tweaked the regulation of existing professions, rather than regulating new professions. This was a period of reflection and debate about the purposes and goals of professional regulation, and of systematic reviews being made of existing regulatory policy. These reviews informed subsequent regulatory change. It is worth looking at these reviews and the issues they raised in more detail to get a sense of the values, conflicts, and concerns of this period.

There were several major commissions that produced reports during this period, including the federal *Royal Commission on Health Services* (1961 to 1964), the detailed investigations conducted by Ontario's *Committee on the Healing Arts* (1966-1970), BC's *Foulkes Commission into Health Security for British Columbians* (1972-1973), and Ontario's *Royal Commission Inquiry into Civil Rights* (1964-71). These reports were the results of considerable research and consultation with a variety of stakeholders, and hence reflect prevailing thought about self-regulation in this era. Their recommendations shaped regulatory legislation moving forward. The federal Royal Commission on Health Services report was primarily important for its impact on the other health commissions and the rise of Medicare in Canada, generally. This Commission (also known as the Hall Commission) examined healthcare services, facilities, supply and demand of professionals in Canada, with particular attention to issues including costs and

financing, system improvements, training, and the best use of health services personnel (Hall 1965). A variety of health professional practices were reviewed, and in some cases recommendations for expansion and licensing were advanced. Not only did this Commission lead to publicly funded healthcare in Canada, but its in-depth look at health services encouraged provinces like Ontario and British Columbia to take a closer look at the healthcare system, and the professions working within it.

Ontario's *McRuer Commission Inquiry into Civil Rights* examined all the laws and statutes of the province, so its scope was not limited to professional regulation; however, McRuer did conduct a full review of regulatory legislation, and published a detailed and influential evaluation of self-regulating professions in the early 1960s (there were 22 such professions at the time). McRuer confirmed that professional self-regulation was "a delegation of legislative and judicial functions" from the state to professional bodies, and there was only one justification for this delegation – that these powers were exercised in "the public interest" (McRuer 1968, p.1162). McRuer was critical of professional self-regulation in some respects. He identified discriminatory practices within professions, and he found that laws, structures, and state oversight were variable and inconsistent. He had great concerns about disciplinary mechanisms, questioning why "extensive judicial powers" were placed in "the hands of persons who have little to no judicial experience" (1184). Nonetheless, he ultimately supported self-regulation with more oversight and public participation. McRuer opposed the extension of self-regulation to what he called 'technical occupations'; however, he supported the continuing independence of existing self-regulating professions, as long as public members were appointed to governing councils, and the government supervised regulatory activities. The latter changes would ensure that regulators prioritised the public interest. At the same time, he recommended that disciplinary powers be removed from individual regulators, and that instead, these should be centralised in a Professions Disciplinary Tribunal, comprised of representatives of the professions.

These recommendations reflect the dissatisfaction of many stakeholders –and especially of the public– with the existing systems of self-regulation. Further, they reflect a desire to alter the prevailing relationships between professions and society. At the same time, these reports continued to endorse self-regulation, with increased accountability to government and the public. Only some of McRuer's recommendations were adopted: specifically, changes to add public members to regulatory boards and increased state oversight. Various other changes (deregulating technical occupations, centralised discipline) are still being discussed in some corners, over half a century later. The McRuer report is important in signalling the principle that professional regulation should be guided by principles of fairness, equity, and accountability, as well as the public interest, and that regulation should become more standardised so that each profession is on a similar footing.

Ontario's Committee on the Healing Arts (1970, p.29) also underscored that professional self-government was "a delegation from the state" and that it "imposes on the profession…a corresponding trust to see that the right is exercised in the public interest". This latter point was emphasised: "It cannot be overemphasised that *primacy of the public interest* must be the cornerstone of any regulatory structure". The Committee also stressed that self-regulating

professions should remain autonomous, and not micro-managed by government. Nonetheless, state oversight was needed: "society can no longer afford to tolerate a total abdication by government of the right to guide, direct, and in some areas, become directly involved in the affairs of the professions" (Ibid). The Committee also emphasised the need for more interprofessional collaboration, signalling that conflict within the professional ecology had become a problem for the state ecology, prompting reform. Although the Committee endorsed continuing self-regulation, it cautioned against the creation of new self-regulating professions, arguing that new professions should only be created if "it is clearly established that the public interest demands it" (p.45). Moreover, it was recommended that many occupations linked to health (from dental hygienists and pharmacy assistants, to opticians, physiotherapists, chiropractors and others) be regulated under one amalgamated board (the Health Disciplines Regulation Board). With respect to other changes, the Committee recommended more public membership on regulatory boards and more standardization. Finally, they asserted that professions needed to recognize that their interests and those of the public might differ, and their overriding consideration needed to be the public interest.

Reflecting widespread attitudes at the time, the Committee on the Healing Arts was critical of both the government and professions, but ultimately endorsed professional self-regulation, especially for long-established professions, with an alternative structure for regulating other practices.

Finally, British Columbia's Foulkes Commission had a slightly different mandate as it focused on health services, with the goal of enhancing co-ordination and efficiency. Controversially, the report recommended "a complete re-organization of services including integration of all levels of Health and Human Resources" (Foulkes 1973, p.III-5-3). Moreover, Foulkes recommended a redistribution of power, which he saw as being too centralised in "the hands of politicians, bureaucrats, professionals (especially the medical profession), and businessmen [sic]" (p.3). His recommendations included diminishing the role of dominant professions, and increasing the voice of subordinate professionals and consumers, in part through establishing a Health Disciplines Regulation board to oversee the professional regulators, as professions had been left to operate with too little oversight. Nonetheless, Foulkes continued to endorse self-regulation. For him, "the key task … is to establish a framework … under which the professions … accept public regulation & accountability … without crushing professional autonomy and pride" and without lowering service quality (Foulkes, 1973 p.III-5-8).

Combined, these various reports provided a clear blueprint with respect to regulation for state actors, but the response from politicians was half-hearted at best. On one extreme, the Foulkes report was highly criticized, and its controversial suggestions largely buried, in the face of medical opposition and government resistance. In Ontario, only some recommendations from The Committee on the Healing Arts and the McRuer Commission were eventually adopted, including the enhancement of state oversight and the participation of lay members on regulatory boards.

Ontario's *Health Disciplines Act* (1974) brought several professions under one legislative umbrella (medicine, dentistry, pharmacy, nursing and optometry), introduced lay members to regulatory councils and committees, and subjected these professional groups to tighter oversight by the Minister of Health. Legislation was also passed to create a Health Disciplines Board to oversee cases and hear appeals concerning complaints, discipline, and registration at the Colleges. Professionals protested about this diminishing their self-regulation (CMAJ 1974), but they continued to manage their own affairs despite additional layers of oversight. Parallel changes to professional regulation were not made in BC following Foulkes' recommendations.

### 5.2 1980s-1990s

Many of the trends shaping regulatory debates in the 1960s and 1970s were carried into the following decades. Consumer movements challenged professional authority. The emergence of new specializations, including technicians and assistants, some of whom sought professional status, combined with existing inter-professional tensions to spur inter-professional conflict. Legislators continued to grapple with how to reform professional regulation in a manner that increased fairness and effectiveness, but that satisfied multiple stakeholders within and across ecologies that were seeking regulatory change. Although the recommendations of McRuer, Foulkes and the Committee on the Healing Arts were relatively recent, governments established additional commissions to guide further change. In Ontario, a Professional Organizations Committee was established in 1976 by the Attorney General's office and the Ontario Law Reform Commission to review professional regulation in accountancy, architecture, engineering and the law (Trebilcock et al. 1979). This committee's recommendations shaped regulatory discussions in the 1980s. Ontario also established the *Health Professions Legislative Review* whose 1989 report was the foundation for redrawing legislation regarding the regulation of health professions in the province in the early 1990s under the umbrella of the *Regulated Health Professions Act* (RHPA, 1991). This legislation expanded who was regulated, standardised how they were regulated by bringing them under one piece of legislation, and partly shifted the focus, regulating the activities performed rather than the practitioner. In British Columbia, the Health Professions Council was established by legislation and the Minister of Health in 1991 "to review the scopes of practice of 15 regulated health professions and to review the legislation under which 10 of them were self-regulating" (HPC 2002). Despite the evident appetite for reform, legislators and policymakers continued to endorse professional self-regulation, arguing that it was consistent with the public interest.

Table 11.2 summarizes new professions regulated in Ontario and British Columbia from 1970 to the early 2000s. Few new professions were established in the 1980s: those that were newly legislated (engineering technicians and technologists, interior designers) were granted restricted titles only.

**Table 11.2 New Self-regulating professions 1960-1979**

| Profession | British Columbia | Ontario |
|---|---|---|

| | | |
|---|---|---|
| Psychologists | 1977 | 1960 |
| Opticians | 1994 | 1961 |
| Radiological Technicians | 1966 | 1963 |
| Landscape Architecture | 1968 | 1984 |
| Denturists | 1995 | 1974 |
| Social Workers | 1968 | 1998 |
| Interior Decorators/Designers | n/a | 1984 |
| Engineering Technicians and Technologists | 1985 | 1984 |
| Midwifery | 1998 | 1991 |
| Audiology & Speech Pathology | 2008 | 1991 |
| Massage Therapists | 1994 | 1991 |
| Occupational Therapists | 1998 | 1991 |
| Dental Hygienists | 1995 | 1991 |
| Respiratory Therapists | n/a | 1991 |
| Geoscientists | 1993 | 2000 |
| Traditional Chinese medicine & Acupuncture | 2000<br>1996 | 2006 |
| Applied biology | 2003 | n/a |

More sweeping change occurred in the 1990s with an expansion of regulated healthcare professions – including midwifery, audiology, speech-language pathology, occupational therapy, traditional Chinese medicine and acupuncture. Massage therapy and dental hygiene had previously been regulated under other acts, but acquired their own legislation and the right to self-regulate. The significant expansion of health professions in this era is perhaps ironic given the advice given by several commissions against creating new self-regulating professions. Governments in both provinces, however, were open to expanding professional self-regulation in the early 1990s, influenced by professional and consumer lobbying.

Regulating more health professions served at least four aims during this period. First, it addressed interprofessional conflict in the ecology of professions and the lobbying activities of a variety of groups seeking regulated status. Second, it addressed consumer concerns about choice, allowing them "a range of safe options" when choosing health providers (HPLR 1987, p.2). Third, it addressed lingering concerns about fairness. For example, the regulation of midwifery and the removal of dental hygienists' regulation from the regulatory control of dentists were both viewed as enhancing gender equity. Fourth, a shift in how regulation was accomplished –through regulations under general legislation in British Columbia and through umbrella legislation focused on controlled acts in Ontario (and later British Columbia)– provided an opportunity for expansion. The shift to controlled acts was an innovation adopted in several Canadian provinces, beginning with Ontario. A number of "controlled acts" (specific activities undertaken by health professionals such as making a diagnosis, or conducting a procedure below the dermis) were identified, to be shared by a variety of professions, instead of granting groups exclusive scopes

of practice. As legislation shifted to cover a wide range of practitioners who might engage in such acts during the course of their work, there was opportunity to extend regulation. The latter shift was intended to facilitate "flexibility" in order to ensure that "health services are delivered with maximum efficiency" (HPLR 1989, p.2).

In British Columbia, after a review by a government-appointed body, the Health Professions Council, the *Health Professions Act* (1990) provided a mechanism "to establish self-governing powers for a variety of health professions", that had up until then been unregulated. Legislators argued that the act would allow "more efficient" means of regulation, and improve standardization and government oversight (BC Hansard 1990). Such legislation reflects continuing emphasis on efficiency within social and government discourse. In subsequent years the act was expanded to bring existing professions that had previously had separate acts under the legislation.

The Regulated Health Professions Act recognized and regulated 22 health professions in Ontario, and was the result of extensive consultation with a wide variety of stakeholders. All regulatory councils had public members and were subject to oversight from the Ministry of Health and a Health Professions Review and Appeal Board, which monitors complaints and discipline, as well as other processes. Mechanisms were set in place for groups that might seek professional status in the future. In Ontario the Health Professions Regulatory Advisory Committee (HPRAC) was established to conduct investigations and advise the Ministry (it was disbanded in 2021). HPRAC served a similar function to British Columbia's Health Professions Council (1991-2002) – investigating aspiring professional groups' requests for self-regulation, and advising the Minister of Health.

This was a period of considerable reform, in which the entire regulatory system was up for review, in response to inter-professional conflict and dissatisfaction with prevailing practices. Regulatory changes impacted not only interprofessional relations (between professionalism), but also the place of professions in society (beyond professionalism). However, key stakeholders continued to support principles of self-regulation. For instance, the HPLR (1989, p.13) report stated that "The complex and specialised nature of professional work demands that professionals play a role in their own regulation …. Self-regulation is the regulatory system of choice for Ontario". At the same time the review asserted –like many of those that preceded it– that oversight was required to "safeguard the public interest". The Professions Organization Committee (1979) arrived at a similar conclusion, but cautioned that self-regulation should be rare and "justified only by the most compelling circumstances" (Trebilcock et al. 1979, p.20). The Health Professions Council (2002), and British Columbia legislators (Hansard 1990) also affirmed their commitment to self-regulation, while arguing that changes to traditional structures and enhanced oversight were necessary.

### 5.3 Early 2000s

After decades of reviews and legislative reform, including a complete restructuring and expansion of health profession regulation in Ontario and British Columbia, there were very few new professions regulated during the early 2000s. In British Columbia, applied biology acquired a restricted title, as did human resources professionals in Ontario in 2011. Nonetheless, there has been meaningful legislative change. First, there has been a trend towards regulatory reform, only nascent in the early 2000s, but picking up speed at the time of writing. British Columbia expanded the coverage of the *Health Professions Act* to encompass all self-regulating health professions, including a focus on controlled acts. These changes continued the practice of self-regulation, but regulatory failures in the teaching profession in British Columbia led to the removal of self-regulation from that profession in 2011 (Glegg 2013). Teacher regulation came to be handled by a government-appointed council (which does include teachers), within the Ministry of Education and subject to its oversight. Ontario passed the *Fair Access to Regulated Professions* act in 2006, which established the office of the Fairness Commissioner, originally reporting to the Minister of Citizenship and Immigration, to oversee the registration practices of all regulated professions, occupations and skilled trades, and to ensure that entry-to-practice is "transparent, objective, impartial and fair" – especially towards the internationally educated (for more on entry into professions among the internationally educated see Chapter 7). Under the act, all regulators are required to regularly review their registration practices for fairness and efficiency, and report to the Fairness Commissioner (and the public) regarding their practices; they are also subject to periodic audits.

Second, there has been evidence of enhanced amalgamation and co-ordination. Umbrella legislation in healthcare has brought the various regulators into more regular communication with each other, and there are signs of enhanced co-operation between them. Groups such as BC Health Regulators and, in Ontario, HPRO (Health Profession Regulators of Ontario) provide forums for discussion, exchange of best practices, and information-sharing, encouraging collaboration. Such collaboration may facilitate regulator amalgamation occurring in several provinces. The accounting professions experienced their own amalgamation, with the national associations merging in 2013-14, and regulatory legislation establishing a single Chartered Professional Accountant (CPA) profession, bringing previously distinct accounting professionals together in British Columbia between 2013 and 2015, and in Ontario between 2012 and 2017 (CPA Ontario 2017). The rationales for such mergers include public protection, reduction of market confusion, facilitation of inter-professional mobility, and global trends in the profession (CPAA 2021).

All these trends have recently intensified, with the expansion of regulator amalgamation especially in British Columbia, an increased emphasis both on oversight and on collaboration among professionals (collaboration with state leaders is variable). The trend until recently, however, has been for self-regulation to persist, along with more oversight and checks and balances (for more on closer oversight of professionals see Chapter 6). Regulatory change increases apace.

## 6. Conclusion

Professional regulation both reflects and shapes relations between professions and society (beyond professionalism), as well as relations between and among professionals (within and between professionalism). In the fifty-year period between 1960 and 2010, professional regulation was revised, but not transformed, in the Canadian provinces of Ontario and British Columbia, as states and professions redefined their relationships with each other. Regulatory change was shaped by multiple stakeholders –consumers, state actors, employers and other experts– seeking to redefine the place of professionals in society. Guiding regulatory change was the overarching principle of the public interest. By the mid-to-late twentieth century in Canada, as elsewhere, consumers and other stakeholders were becoming cynical about professions, seeing them as elitist and self-interested. Professions' claims to serve the public interest were viewed with scepticism. However, despite rising distrust, state actors and the commissioners they appointed to inform policy-making in this area continued to endorse self-regulation for professions in the two provinces. Their recommended reforms sought to increase regulatory bodies' accountability to the state and the public, but not to change them fundamentally.

Reform in the two provinces was gradual during this period. Changes reflected not only declining public trust in professionals, but also the emergence of new values guiding regulation, including fairness, accountability, and a continuing commitment to the public interest. Less common initially, but mentioned more often over time were principles of transparency, efficiency, standardization, and collaboration. By the end of the period, professionals were pursuing additional reforms to win back public trust and forge a new relationship with society. Regulators were forced to demonstrate that they were working to serve the public, or they otherwise risked deregulation.

Theoretically, this chapter finds evidence of the countervailing powers identified by Light (1995). Interprofessional conflict within the ecology of professions shaped regulatory change, as legislators expanded the number of professions and tried to put them on equal footing – despite recommendations by commissions that the privileges of self-regulation should not be extended too far. Principles of fairness encouraged this expansion. The number of commissions set up throughout this era and the sheer volume of legislation passed regarding professional regulation provide evidence of the importance of professions and regulation for Canadian states and society. States and professions are overlapping ecologies, and the interplay between these ecologies continues to have important implications for individuals and organisations. Regulatory change continues to occur in Canada, and there are signs that it is intensifying. Regulated professions remain an important force in Canadian society, but their relationship with the state, consumers and other stakeholders continues to evolve. What is clear, however, is that the impact of Canadian professions extends *beyond professionalism*, to society and social institutions more generally.

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