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Professional Self-Regulation and the Public Interest in Canada

Abstract: The regulation of professional groups has often been justified as being in the public interest. In recent decades, policymakers in Anglo-American countries have questioned whether self-regulating professions have truly served the public interest, or whether they have merely acted in their own interests. This paper draws on legislative records and policy reports to explore meanings attached to professional self-regulation and the public interest in Canada by state actors over the past 150 years. The findings point to a shift in the definition of the public interest away from service quality and professional interests, towards efficiency, human rights, consumer choice, and in some contexts business interests. Changing views of the public interest contribute to regulatory change.

Keywords: Professions, public interest, self-regulation, Canada, historical change, state actors.

Over the last 50 years there has been considerable debate amongst Anglo-American policymakers and academics alike about whether professional self-regulation is truly in the public interest (Devlin & Chang, 2010; Rees, 2013; Paton, 2008). Self-regulating professions including medicine and law have been rocked by scandals. Formerly among the most trusted people in society, increasingly the public views lawyers, medical doctors, and other professionals more cynically, as individuals who too often put their own interests above those of their clients (Paton, 2008). The rising costs of professional services, combined with scandals surrounding professional misconduct, have provoked a complete restructuring of professional regulation in law and medicine in the UK (Flood, 2011; Paton, 2008; Dixon-Woods, Yeung, & Bosk, 2011). Here, medical doctors, lawyers, and other professionals are no longer technically self-regulating; while they have a voice in the regulatory process, the majority of people on regulatory boards are non-professionals (Dixon-Woods et al., 2011; Paton, 2008). Australia has recently implemented similar legislative change to reduce self-regulation and enhance government oversight (Rees, 2013; Paton, 2008). Threats to professional self-regulation have also been identified within the US (Paton, 2008). Regulatory change has been justified on the grounds that it is necessary to serve the public interest. Despite these challenges, professional self-regulation persists in Canada (Rees, 2013; Paton, 2008), which some law scholars have labelled “the last bastion of unfettered self-regulation” in the world (Rhode & Woolley, 2012, p. 2774). Legislation regulating professions in Canada charges professional bodies with the responsibility of upholding the public interest.

In debates about professional regulation, many commentators write about the “public interest” as if it is easily and objectively defined; however, the elasticity with which the term is used suggests that it is a social construction and therefore subject to contest and change. Both defenders and challengers of professional self-regulation

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Received:
23 Jan 2016

Accepted:
14 June 2016

make their case on public interest grounds (Paton, 2008). While research has focused on professionals' public interest claims (Saks, 1995a, 1995b), there has been little attention to state actors' views on professions and the public interest. To enhance understandings of the changing nature of professional self-regulation, this study draws on legislative records and policy reports in three Canadian provinces from the 19th century to the present day. The paper explores whether state actors have historically viewed professional self-regulation as serving the public interest, and what public interests self-regulation has been seen to serve.

Professions and the Public Interest

Sociological theories provide contrasting views of professions, regulation, and the public interest. Various scholars from Durkheim (1984) to Freidson (2001) hold that self-regulating professions can serve the public interest. In this vein, Dingwall (2008, p. 74) explains that regulatory legislation establishes a contract between professionals and the state to regulate a field of activity and a group of practitioners for the benefit of society more generally. Self-regulating professions contribute to society not only through the provision of professional services but through their social governance roles. Streeck and Schmitter (1985) see professional associations and other similar groups as one of four institutional bases of social order (along with the community, the market, and the state). Like Durkheim (1984), they believe such associations can occupy a "distinct role between the state and 'civil society'" (Streeck & Schmitter, 1985, p. 16). While professions are private interest groups, their regulatory legislation encourages them to be "responsive to general or public interests" (Streeck & Schmitter, 1985, p. 21). In this manner, professions can contribute to social order and function in the public interest, even as they pursue their private interests (see also Freidson, 2001; Saks, 1995a, 1995b).

In contrast, many scholars writing from a neo-Weberian perspective emphasize professionals' pursuit of social closure to monopolize markets, rewards, and status for themselves (Murphy, 1988; Saks, 2012). For some of these scholars, professional self-regulation is not about the public interest at all—although professionals may claim it is—but rather about the monopolization of rewards for self-gain (Haug, 1980; cf. Saks, 1995a, 2012). Regulatory legislation granting professionals a privileged place in the market is a prize awarded to organized professional groups with connections and status who have managed to convince legislators that they deserve market privileges (Murphy, 1988; Saks, 2012). Through regulatory legislation, professionals restrict access to professional practice and accompanying rewards.

In this view, claiming to serve the public interest is nothing more than a tactic used within professional projects or inter-professional battles. Abbott (1988) documents how professional groups fight for jurisdiction and dominance in their fields of practice. In their conflicts with competitors, they seek to win over key audiences: employers, the public, and the state—with their claims to expertise and authority. For Abbott (1988, p. 60), claims to fulfill social obligations have been less important: "merely paraded in the preambles to codes of professional ethics."

Although scholars differ in the motivations they ascribe to professionals, many hold that professional self-regulation was historically the product of a regulative bargain between professions and the state (Dingwall, 2008; Flood, 2011; Freidson, 2001). Under this bargain, professions were granted autonomy and the ability to manage their own affairs as long as they used their power for the benefit of the public. Historically, models of professional self-regulation in Anglo-American contexts were based on trust (Dingwall, 2008; Brint, 1994). State actors and members of the public trusted that self-regulating professionals like medical doctors and lawyers would "act in the interests of citizens" (Kuhlmann & Saks, 2008, p. 2; Evetts, 2002; Brint, 1994). However, this trust has deteriorated over time, undermined by scandals

and evidence of professional self-interest, negligence, and even crime (Kuhlmann, Allsop, & Saks, 2009; Evetts, 2002; Dixon-Woods et al., 2011). In Brint's (1994) words, by the 1960s and 1970s, professionals' claims to uphold the public interest were harder to sustain since they "obviously served interests defined and even directed by others [and] the idea of occupationally defined contributions to the public good seemed increasingly dubious to a skeptical new generation" (Brint, 1994, p. 9).

Growing skepticism is reflected in legislative change that has reduced or eliminated professional self-regulation. Policy makers in some Anglo-American contexts, especially the UK and Australia, have implemented new forms of regulation—forms that place consumers and state-appointed actors in the positions of regulatory authority (Flood, 2011; Dixon-Woods et al., 2011; Kuhlmann et al., 2009; Rees, 2013). In the UK, self-regulation in medicine and law has largely come to an end (Dixon-Woods et al., 2011; Paton, 2008). In Australia, co-regulation has become more common: professions are regulated by independent government-appointed bodies with input from professionals (Rees, 2013). Further, the principles behind professional regulation have been redefined. For instance, UK legislation regulating the legal profession lists several regulatory objectives: "protecting and promoting the public interest" is only one of eight (Terry, Mark, & Gordon, 2012, p. 2697). Other objectives include improving access to justice, increasing understanding of citizens' legal rights, and promoting competition in legal services. In Australia, regulatory objectives have broadened to include attention to efficiency and assisting clients to make informed choices, but protection of the public and clients is still highlighted (Terry et al., 2012; Legal Profession Uniform Law, 2015).

The decline of professional self-regulation has not eliminated the relevance of public interest claims. Such claims continue to be at the very heart of regulatory debates. An array of professional groups seeks legislative privilege predicated on claims "to serve the wishes, needs, and demands of the citizens and users of their services" (Kuhlmann et al., 2009, p. 513). Public interest claims continue to be valuable weapons for professions involved in inter-professional conflicts and negotiations with state actors (Saks, 1995b). Nevertheless, the term itself is ambiguous. It has rarely been defined and operationalized in sociological research (Saks, 1995a), and it has been variably used by professional groups (Baker, 2005). Further, conceptualizations of the public interest appear to vary across time and place (Kuhlmann et al., 2009). Although studies have explored definitions of the public interest on a theoretical and empirical level (Saks, 1995a; Dingwall, 2008), or as used by professions themselves (Baker, 2005), there is a dearth of research exploring meanings attached to the concept by state actors and policymakers when they regulate professions.

Scattered evidence indicates that the concept is variable, flexible, and complex. It is not simply reducible to consumers' interests, although these are taken into account (Bourgeault, 2006; Kuhlmann et al., 2009). As Freidson (2001, p.127) shows, professionals have traditionally served their clientele not by responding to their demands, but rather by combining professional knowledge with a "commitment to a transcendent value that guides and adjudicates the way that knowledge is employed." These values include health, justice and truth (Freidson, 2001). In a similar vein, Saks (1995b, p. 60) links the public interest with broader social values including justice, general welfare, and freedom. Studies of regulatory change in the UK highlight concerns for public safety (Kuhlmann & Saks, 2008; Dixon-Woods et al., 2011). Studies of the public interest in the realm of law mention "access to justice" (Paton, 2008; Terry et al., 2012). Service cost and access have also been linked to the public interest (Bourgeault, 2006; Adams, 2004).

The present study explores legislators' and policymakers' views on professional self-regulation and the public interest, with a focus on Canada where professional self-regulation persists. State actors pass the legislation regulating professionals, and hence largely determine regulatory outcomes; however, they are too frequently overlooked in scholarly accounts. Our understanding of trends in professional regulation

may be enhanced by considering state actors' views concerning professions and their ability to serve the public interest. The central research questions driving this study are as follows:

- 1) Have policymakers historically viewed professional self-regulation as serving the public interest? If so, how do they conceptualize the public interest?
- 2) How have state actors' views about professional self-regulation and the public interest changed over time?

Methodology and Data Sources

To explore the meanings attached to professional self-regulation and “the public interest” by legislators, policy makers, and advisers in Canada, this study utilizes historical sociological methods, relying predominantly on legislative records and policy reports. The current study forms part of a broader historical sociological research project on professional self-regulation in Canada exploring who was regulated historically, and why state actors chose to grant self-regulation to some claimants but not others. To answer these questions, I analyzed legislation passed in several Canadian provinces, as well as bills considered and not passed, legislative debates, and policy reports, alongside professional records. I analyzed over 1,000 pieces of legislation, along with scores of draft bills, and hundreds of records on legislative debates. Approximately two dozen policy reports were also analyzed. The term “public interest” emerged frequently in these records, and it became the subject of further analysis. For this present study, records directly mentioning public interest were extracted. This included about 60 pieces of legislation, a dozen policy reports and government commissions, and various records on government debates. These records were reviewed carefully to determine if professional self-regulation was deemed to serve the public interest, and how the public interest was defined in these contexts. The analysis was restricted to Canada's three most populous provinces: Ontario, Quebec, and British Columbia that are home to 75% of the nation's population.

Records available for analysis varied by era. In the 19th century, legislation and newspaper records of legislative debates were the best sources of information about state actors' views on this subject. By the mid-twentieth century, legislation less often explained the rationales underlying it. For this era, legislative debates and government reports provided more information. More recently a number of policy reports on professional self-regulation have been published, and these records proved most helpful for understanding recent conceptualizations of the public interest.

During the analysis, it became clear that conceptualizations of the public interest varied somewhat across time and place. In particular, there was a significant shift in policy discourse, beginning in the 1960s, shaped by both the civil rights movement and the establishment of Medicare. More recently, there appears to be a further shift in the discourse (at least in some provinces), influenced by neo-liberal ideologies, New Public Management, and a continuing concern for the rising cost of health care. In the next section, I present the findings by era, to capture these shifting discourses. Inter-provincial differences also emerged, and these are considered briefly in the discussion.

Before presenting the findings, it is necessary to provide a brief overview of professional regulation in Canada. In this country, professions are regulated at the provincial level, and each of Canada's ten provinces regulates professions slightly differently (Adams, 2009). British Columbia, Ontario, and Quebec regulate approximately 50 professional groups each. Most of these professions are closed (only the licensed or registered may practice), and self-regulating. In the early 1970s, Quebec embraced a regulatory structure that might be more accurately labelled “co-regulation” since regulatory responsibility is shared between professional groups and a

state-appointed body. Professional self-regulation dates from the late 18th and 19th centuries in Canada. Among the first closed and self-regulating professions established were medicine, law, dentistry, pharmacy, and land surveying (Adams, 2009). In the twentieth century, the powers and privileges of self-regulation were extended to many other occupations. Several restricted title professions—in which practice was not closed—were also created (such as, until recently, chartered accounting). Because this type of legislation was often passed to benefit the profession (more than the public), I excluded these professions from the present analysis.

Traditionally self-regulating professionals in Canada were incorporated into regulatory colleges, societies or institutes, governed by a board, which was elected by licensed practitioners. As in other Western countries, beginning around the 1960s the participation of state actors and members of the public on these regulatory boards increased. Regulatory bodies and professional (advocacy) associations are usually separate in the Canadian provinces discussed here, although historically this has not always been the case.

Findings

Legislators in the three provinces frequently (but not always) made reference to the public interest when regulating professions. Meanings attached to the term and the extent to which professional self-regulation was believed to serve the public interest varied across time. Although in each era a variety of opinions were expressed, a dominant view emerged.

Nineteenth and Early-to-Mid-Twentieth Century Views

Preambles in legislation regulating professions, and recorded debates about the legislation, reveal that, for the most part, state actors believed closed, and self-regulating professions served both the public and the profession. This is most evident in the earliest bills establishing self-regulating professions in the 19th century. For instance, the preambles for Ontario's (1868), Quebec's (1869), and British Columbia's (1886) acts to regulate the dental profession state that such legislation was "expedient for the protection of the public" and further that "certain privileges and protection should be afforded" to dental practitioners (see, for example, *An Act Respecting Dentistry*, 1868). Here, professionals' interests and the public interest were seen to coincide. The public would be protected by enhancing "the standard of qualification" of practitioners (*An Act Respecting Dentistry*, 1868). Justifications for legislation establishing self-regulation in medicine were similar. The Ontario legislators promoting the 1869 Medical bill in parliament said that it was "in the interest of the public and the medical profession" (*The Medical Bill*, 1869, p. 4). One commentator editorialized that the main question surrounding the proposed act was "will the public be benefitted?" He continued to explain that this question could only be answered through another: will the act "tend to elevate the profession?" (*An Allopathic View of the New Medical Bill*, 1869, p. 4). In this view, protections for the profession led to protections for the public.

The public interest in these statements is defined primarily in terms of practitioner qualifications and service quality. A speech by a British Columbia legislator in support of the 1886 Medical Act provided this rationale:

The public were not always in a position to judge the qualifications of a physician and if they discovered incompetency in such persons it was generally at the expense of experience when the mischief had been done. The bill was not to create a monopoly in the medical profession but was to protect the public. (*Medical*, 1886, p. 1)

Regulation would establish qualifications, and prevent those without those qualifications from practicing. Similar statements were found in legislation (and debates) affecting the professions of pharmacy, land surveying, and engineering, and in government reports (see, for example, Harper, 1946). Professional self-regulation was said to benefit the public by advancing the profession and raising entry standards.

Although elevating entry standards was the dominant public interest consideration in the late 19th century, it was not the only one. Legislators also periodically expressed concerns over access to services. For instance, in the 1886 debate on the British Columbia Medical Act, one legislator said that while he supported any measure to protect the public from “quacks,” legislators must also “consider the difficulty of obtaining medical assistance in remote districts,” and another hoped that the bill would not “prevent the medical treatment of Indians and Chinese by their own countrymen” (Medical Bill, 1886, p. 1). In this instance and others, legislators voiced reluctance to restrict practice in such a way that public access to needed services would be curtailed. Legislators also supported consumer choice. For instance, the 1869 Ontario medical act recognized and regulated three branches of medicine: regular, homoeopathic, and eclectic. Both homoeopathic and regular doctors were regulated in Quebec. By the mid-1920s, the British Columbia medical act regulated regular and homoeopathic doctors, as well as osteopaths and chiropractors. Justice Hodgins (1918) who conducted a study of health profession regulation for the Ontario government between 1915 and 1918 also highlighted choice as a component of the public interest: he claimed regulatory decisions should take into account “the point of view of the public,” and must allow “the individual citizen reasonable freedom of action” (Hodgins, 1918, p. 4). The concern with choice, however, was typically tempered by the over-riding concern for competence and qualifications. Consumers were allowed choice amongst skilled and regulated service providers who could meet the prescribed level of qualification.

Most legislation in the 19th and early 20th centuries referred simply to “the public” in a general sense, but some legislation appeared to have a subset of consumers in mind. For example, the preamble to the 1940 Quebec Optometry Act claimed that the legislation was “in the interest of the profession and of all who need to have recourse to it” (Optometry Act, 1940), and the British Columbia land surveyors act of 1905 was passed for the “better protection of the interests of the public who may require their services” (An Act respecting Provincial Land Surveyors, 1905).

Sometimes, however, the public was divided. Such was the case in the 1920s when legislation regulating engineering was sought and passed in British Columbia and Ontario. Mining companies were vociferous in opposing the legislation, arguing it was not in the best interest of the mining industry (Sharp Criticism for Engineers’ Measure, 1920). Their opposition led the British Columbian premier to declare that the bill was not in the public interest because it negatively affected the mining industry, and could prevent the “non-professional man ... from gaining a living” (Sharp Criticism for Engineers’ Measure, 1920, p. 9). Other legislators countered that this was not the case, and further that the legislation would both protect engineers and the public by raising service quality (Speak Good word for Engineers’ Bill, 1920). In the end, the bill passed, with a preamble stating simply that the engineers had requested that “qualifications be established” and the legislature found it “expedient to grant that prayer” (An Act to incorporate the Association of Professional Engineers, 1920).

In this case and several others, it is not entirely clear the bills passed were truly accepted as being in the public interest. The preamble to the 1920 British Columbia architecture act was identical to the engineers’, identifying only professional interests behind the bill. In a similar vein, the 1945 Quebec Act amending the regulation of Veterinarians in the province was passed “to allow the said corporation [regulatory body] to achieve its object and the purpose for which it was formed” (An Act to amend the Veterinary Surgeons Act, 1945). In one instance, the British Columbia

legislature passed a bill—the 1936 act to regulate Naturopathy—even though the premier had publicly stated that he did not believe it served the public interest; he and many other legislators voted for it regardless (Naturopaths Bill, 1936). In this instance, and a few others in this era, it appears that gains for professionals and their clientele were sufficient for the legislature to regulate the field.

By and large, from the 1860s through the 1950s, most legislation establishing self-regulating professions was viewed as being in the public interest, because it raised the quality of services provided. Here, the public interest was defined primarily in terms of practitioner qualifications, so the public's interest and professionals' interests were seen to go hand-in-hand. The emphasis on qualifications was accompanied by occasional concerns over access to services and consumer choice. These attitudes persisted into the late twentieth century, but by the 1960s social attitudes and legislative approaches to professional regulation began to change.

1960s-1990s

Legislators and policy advisers increasingly challenged the prevailing system of professional regulation from the 1960s on. The view that emerged can be summarized as follows: while professional self-regulation has many advantages, professionals cannot be trusted to put the public interest above their own; as a result, there needs to be more government oversight to restrict professionals' excesses. Although some legislators had accused professions of being self-interested since the 19th century, beginning in the 1960s, this view came to be the dominant one. Also in this era, shifts in the definition of the public interest became apparent. While a concern for service quality and practitioner competence persisted, the discourse shifted to include a consideration of efficiency and cost effectiveness.

These views became more evident in legislative debates. For instance, in a 1966 debate on a bill to amend the Law Society Act, several Ontario legislators criticized the Law Society for requesting too much power, saying the regulatory body had become too insular and not “responsive to public opinion” (Ontario Legislature 1966, p.1085). According to government commissions, the rise of new professional groups, turf battles amongst professions in neighboring jurisdictions, and media attention to abuses of professional privilege resulted in a decline in the public's trust (McRuer, 1968). The broader civil rights movement highlighted inequalities inherent in professions and barriers to entry to practice (McRuer, 1968). These concerns, combined with discussions over the implementation of Medicare, led state actors in several provinces to establish commissions to investigate and critically evaluate professional regulation and health services beginning in the mid-1960s (Committee on the Healing Arts, 1970; McRuer, 1968; Castonguay-Nepveau Commission, 1970; Foulkes, 1973). Debates over professional regulation continued for several decades as these commissions were soon followed by others (Health Professions Legislative Review [HPLR] 1989; Royal Commission on Health Care 1991; Trebilcock, Tuohy, & Wolfson, 1979). These commissions and their reports captured the shift in meanings attached to professional self-regulation and the public interest in this era best—although the same trends were evident in legislative debates and new legislation passed. While the commissions endorsed self-regulation for professions, they argued that provincial state actors had to take a much more active, hands-on approach in regulating professions to protect the public interest.

Ontario's Committee on the Healing Arts conducted an extensive study of health professions in the province. The committee's 3-volume final report made 354 separate recommendations to the Ontario government about the regulation of health professions in the province. Throughout it all, the committee reported, its “overriding concern has been to point the way towards what may be ‘best’ for patients and for the public interest,” although it also considered “what would be ‘best’ for physicians, dentists, nurses, and other practitioners” (Committee on the Healing Arts, 1970a, p.

1). The committee did not define exactly what it meant by the public interest, but it did specify the factors that should “characterize a sound and socially acceptable health system” (Committee on the Healing Arts, 1970a, p. 9). These factors appear to reflect the committee’s assessment of the public interest in health care: quality services (protecting the public against the incompetent), accessibility, co-ordination of services, flexibility, economy, complementarity of services, and “a maximum degree of freedom of choice consistent with public safety” (Committee on the Healing Arts, 1970a, p. 9). For committee members, the prevailing system of professional self-regulation had protected the public by ensuring practitioner competence, but it was not economical or efficient, and there were problems with accessibility, co-ordination, flexibility, and complementarity. The current system encouraged professional groups to pursue their own interests (see also McRuer, 1968); the result was insufficient co-ordination of services. As the government would increasingly have to be concerned with the costs of health care, it was time to make the system more efficient, and to ensure that less costly care providers were utilized whenever possible (Committee on the Healing Arts, 1970a, pp. 5, 11-12, 109-110).

The Committee on the Healing Arts (1970b, p. 55) criticized self-regulating professions arguing that they were unable “to be objective in discerning the public interest as opposed to professional interest,” assuming “that the two interests coincide because the profession is public-spirited.” In the opinion of the committee, professional interests and the public interest did not coincide, but were often in direct conflict (Committee on the Healing Arts, 1970a, pp. 141, 77). As a result, the committee recommended that no new professions be granted self-regulation without compelling reasons, consistent with the public interest (Committee on the Healing Arts, 1970b, p. 79), and further that self-regulation be curtailed by increased government oversight of regulatory bodies, lay representation on regulatory bodies, and through the removal of some of the professions’ regulatory privileges, especially the right to determine entry to practice. Ultimately though, the Committee on the Healing Arts supported professional self-regulation (with enhanced government control), arguing that it functioned to ensure practitioner quality. The Committee’s report and other similar reports concluded that self-regulating professions could be trusted to govern in the public interest, as long as there were “effective mechanisms” in place for accountability and supervision (McRuer, 1968, p. 1166; Trebilcock et al., 1979).

Two later reports reached similar conclusions but advanced slightly different definitions of the public interest. Ontario’s Health Professions Legislative Review (1989, p. 2) claimed its recommendations sought to advance the public interest in four ways: (1) protect the public from unqualified and incompetent health care providers; (2) develop mechanisms to ensure high-quality care; (3) permit the public freedom of choice “within a range of safe options”; (4) promote evolution in the roles played by professions and flexibility in how professions were utilized, so that “health services are delivered with maximum efficiency.” Like the Committee on the Healing Arts, then, the Health Professions Legislative Review emphasized both quality care, consumer choice, and efficiency. In contrast, a report for The Professional Organizations Committee (on non-health professions) argued that there were several components to the public interest: 1) professionals’ interests; 2) clients’ and employers’ interests; 3) “affected third parties and citizens at large” (Trebilcock et al., 1979, p. 33). The latter included people who were indirectly affected by the provision of professional services, such as public users of the buildings and bridges that architects and engineers designed, and those who, as citizens, might “benefit from ...[professions’] functioning in a manner that is fair and equitable, civilized and humane” (Trebilcock et al., 1979, pp. 39-40). The report’s authors noted that there was general agreement that the interests of consumers, third parties and citizens should be granted the most weight, but that the cost and feasibility of policies, and service providers’ interests (especially relating to fair treatment) also deserved consideration. While the latter group differed from others in including the interests of

professionals, they too highlighted fairness, cost, and consumers' interests.

Overall, in Ontario definitions of the public interest shifted significantly between the 1960s and 1990s. Government reports resulted in significant legislative change that brought more lay membership to professional boards and implemented mechanisms to make professional bodies more accountable.

Quebec's Castonguay-Nepveu Commission (1970, p. 9) also prioritized the public interest, contending that through its investigations it "sought to reconcile the public interest with the incontestable advantages of a certain autonomy of the professions with regard to public authority." That is, "the Commission was guided above all by its wish to assure, as effectively as possible, the protection of the public without, however, abolishing what is valid in the present institutions, and to propose a flexible framework which allows the adaptation necessary in a constantly changing society" (p. 9).

The Castonguay-Nepveu Commission (1970, p.17) found that professional regulatory bodies in Quebec had two functions: they promoted professional interests and they "assumed a public role in the functioning of the state." The Commission declared these roles incompatible (p.18) and recommended a clearer separation in roles between professions' regulatory bodies which would serve the public interest, and professional associations. The commission also found the current system "incoherent" (p.23), inflexible, lacking in co-ordination, rife with discrimination, and unable to meet the needs of a rapidly changing society.

The solution proposed by Castonguay-Nepveu (1970) was a different regulatory framework in which the state took an active role, and professional bodies were subordinate to it. All professions were to be placed on an equal footing, have identical status, and regulatory bodies would be charged with serving the public, not the professions (p. 32). They would be governed by overarching legislation, The Professional Code, and a state bureau established specifically for this purpose. Professional regulatory bodies could continue, but they would be more closely regulated by the state than ever before, to protect the public interest and to ensure that the government did not abdicate its responsibility to govern society effectively. The resulting 1973 legislation altered the structure of professional regulation in Quebec.

In British Columbia there were two commissions during this era focusing on health care services; both briefly touched on professions and professional regulation. In 1973, Richard G. Foulkes' sweeping report declared the "day of absolute 'professional autonomy'" to be over (p. III-5-8). Further, he called for greater oversight of professions, more accountability, and a greater focus on the needs of consumers. The goal, moving forward, he claimed was to "establish a framework of operation under which the professions will be able to accept public regulation and accountability without crushing their professional autonomy and pride, and without diminishing professional standards of quality which are so essential to the public interest" (Foulkes, 1973, p. III-5-8). Neither Foulkes nor a 1991 commission explicitly defined the public interest; however, the latter commission emphasized public safety, practitioner competence, as well as service flexibility (Royal Commission on Health Care, 1991). These commissions encouraged legislative changes that brought more accountability for professions in the province. However, these changes were implemented slowly, and were hotly debated by legislators in the 1970s and beyond (see, for instance, British Columbia Legislature, 1976). In direct contrast to Quebec, British Columbia legislators upheld a commitment to autonomy for professional groups, arguing that the government should not tell "professions how they should and should not practice" as long as "they have provisions ... which protect the public as well as their own interest" (Mazari, 1987, p. 1951).

Overall, we can see that from the 1960s to the 1990s, policy advisers and provincial leaders supported professional self-regulation, but they argued that professions needed greater oversight to ensure that they acted in the public interest. Although not every commission formally defined the public interest, there was continued the

emphasis on service quality and consumer choice, and new emphasis on fairness, efficiency, accountability, and cost.

The Twenty-First Century

Recently, there are signs that state actors' definitions of the public interest are shifting. In this era shaped by neo-liberalism and New Public Management, governments increasingly applied private sector business models to the public sector. In doing so, they expressed concern over the cost of regulation and sought ways to be more efficient and cost-effective (Hawkins, 2002; Ontario, 2012). There has been less emphasis on qualifications as essential to service quality, but rather a growing tendency to see entry restrictions as barriers to business and the foreign-trained. In Ontario, especially, the public interest is increasingly discussed in the context of business interests and money. This shifting definition has led Ontario policy advisers to question whether professional self-regulation is in the public interest. Similar developments are less evident in British Columbia and Quebec.

A catch-phrase used by the Ontario (2012) government is telling: Ontario is "open for business." This phrase and several variations have crept into policy discourse about professions and professional regulation. For example, referencing engineers, one legislator in 2010 explained that her government recognizes "that we can do more to protect the public interest without creating unnecessary barriers to business" (Pupatello, 2010). Self-regulating professions are criticized for erecting barriers for entry to practice, inhibiting competition, and restricting consumer choice (Ontario, 2012, p. 26; Competition Bureau, 2007). In some policy statements, the public interest remains pertinent, but when it is mentioned, it is combined with another goal like economic growth or efficiency. Documents mention reducing barriers and increasing efficiency in order to realize financial savings, while protecting the public interest (Ontario, 2012; Hawkins, 2002). While policy advisers between the 1970s and 1990s argued that the public interest had to come first, in more recent policy documents the emphasis is placed on fiscal goals and efficiency. Now policy makers are "focused on finding a balance between protection of the public and facilitating efficient market activity" (Ontario, 2012, p. 9). They seek to "protect the public interest and support economic progress" (Ontario, 2011, pp. 9, 14). Policy advisers increasingly emphasize efficiency although they are willing to acknowledge that "there may be legitimate public interests other than the efficient allocation of resources" (Competition Bureau, 2007, p. viii).

In this new usage of the term public interest, there is a blending of old and new meanings. The term appears to retain its meaning respecting public safety. Consumer choice and access are still mentioned as concerns especially in health professional regulation (Ontario, 2012). However, these goals are balanced with a concern for efficiency, flexibility, and business growth. Service quality is not entirely forgotten, but it is not central to discussions and debates either. Practitioner qualifications are portrayed as barriers, more than as standards that protect the public.

This emphasis on being "open for business," reducing barriers, increasing market competition, and maintaining consumer choice could pose a threat to professional self-regulation, and legislators are increasingly exploring regulatory alternatives. Policy advisers are considering whether alternate regulatory strategies such as those adopted in Australia and the UK are suitable for Canada (Ontario, 2012, 2011; Rees, 2013; Devlin & Cheng, 2010). It is believed that these systems may do a better job of balancing the public interest with economic goals. However, alternate regulatory systems bring extra costs, which the Ontario government is reluctant to absorb (Ontario, 2012, p. 6).

In contrast, Quebec's system of professional regulation continues to place the public interest at its heart. In the 1970s, Quebec moved to a system where a state-appointed body oversees self-managing professional "orders" (Code des professions,

1973; Conseil Interprofessionnel du Quebec [CIQ], 2016). Although the core value of professional regulation in Quebec is the protection of the public, the meaning of the public interest is guided by fundamental rights defined in the province's Charter of Human Rights and Freedoms (CIQ, 2016). These rights include the following: (1) "the right to physical and psychological integrity"; (2) "the rights to professional secrecy and privacy"; and (3) "the right to safeguard personal property" (CIQ, 2016). Quebec policy debates and materials do not reference "business interests" to the extent that their Ontario counterparts do. In fact, recent legislative change continues to emphasize high quality service ("pour offrir un niveau toujours plus élevé de services de qualité aux citoyens"), and ensuring that disciplinary procedures are fair and effective (Dupuis, 2008).

In British Columbia, reports reaffirm a commitment to professional self-regulation (with government oversight) and see it as serving the public interest (Health Profession Council, 2001). Recent uses of the term public interest pay some attention to access to services and efficiency (Hawkins, 2002), but there is little mention of restricting competition. In British Columbia (as in Ontario) there is some evidence that professional self-regulation has been recently extended in the legal services and health services fields (Paton, 2008).

Overall, policy makers in all three provinces have continued to endorse professional self-regulation and link it with the public interest in recent years, despite the significant regulatory change in the UK. Definitions of the public interest have shifted slightly over time, especially in Ontario (and to a lesser extent British Columbia) where there is increasing emphasis on reducing barriers to business, and service costs, while enhancing consumer choice. In Quebec, such changes are less evident; service quality and the rights of professionals are still identified as important values.

Concluding Remarks

This look at professional self-regulation and the public interest in Canada has shown that state actors' and policymakers' perceptions of the public interest have changed over time, and currently appear to vary across the province. Historically, professional self-regulation was believed to meet both professionals' interests and the public interest, since raising the quality of services benefited all. Concern for access to services and consumer choice was also demonstrated by early state actors. Since the 1960s and 1970s, state actors have emphasized professional accountability, costs, and service co-ordination. The public interest became tied to efficient provision of services, and restrictions on professional autonomy. These principles were still seen as compatible with professional self-regulation in all three provinces considered here, although the province of Quebec restricted professional powers significantly. More recently, Ontario has begun to link the public interest with business interests and more open competition. As in the United Kingdom, competition is seen as best for consumers and therefore the public. This belief has encouraged the Ontario government to consider alternate regulatory forms, but the province is reluctant to make changes for financial reasons. Professional self-regulation is an economic bargain for the government since professionals support regulatory bodies through their annual registration fees.

Inter-provincial differences in definitions of the public interest have emerged over time. Business-oriented conceptualizations are less evident in British Columbia than in Ontario, and not evident in Quebec where public protection has been tied with human rights, including the rights of professionals. Although there is not space in this paper to explore such differences in depth, they are likely linked with the history of professions in each province as well as differing political cultures. Professional self-regulation in Quebec has long been linked with civil rights movements.

In contrast, in Ontario and to a lesser extent British Columbia, self-regulation historically entrenched the position of elites. Moreover, political scientists have argued that Ontario's political culture has tended to privilege business interests, economic success, and efficiency (Wiseman, 2007, p. 118). In contrast, Quebec's political culture emphasizes "universal values" (Wiseman, 2007, p. 163), while British Columbia politics have had a more radical character, which has encouraged the emergence of a large number of self-regulating professions. Such differences across locale—both in Canada and internationally—are worthy of future consideration.

Previous research and theorizing on professional self-regulation has emphasized a regulatory bargain between the state and the public, whereby the state grants professions privileges as long as they act in the public interest (Dingwall, 2008; Freidson, 2001). Scholars contend that self-regulating professions' inability to serve the public interest has provoked regulatory change (Dixon-Woods et al., 2011; Paton, 2008). In contrast, this study suggests that regulatory change is actually linked to changing conceptualizations of the public interest. When professions' interests and the public interest were viewed as compatible, granting professions self-regulation and considerable autonomy made sense. In the 1960s and 1970s when state (and social) discourses tied the public interest with human rights (McRuer, 1968; CNC, 1970), and cost (CHA, 1970; CNC, 1970), professional self-regulation in Canada was altered to bring about more accountability. In Quebec, today, the public interest is still tied with human rights, and hence self-regulation persists in modified form. It is in Ontario, with its increasingly business-focused definition of the public interest, that alternate regulatory forms are being explored. An emphasis on open markets and competition does not appear to be compatible with professional self-regulation. Thus, this analysis suggests, it is not so much professions' inability to serve the public interest, but the changing definition of the public interest away from service quality and towards open competition and cost reduction, that contributes to the decline of self-regulating professions. The persistence of more traditional definitions of the public interest in some parts of Canada may help explain the persistence of self-regulation in this country, despite its decline elsewhere in the world. Future research should explore this proposition further, across national contexts, to enhance our understanding of the changing nature of professional regulation.

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