CHARTERED PROFESSIONAL ACCOUNTANTS CANADA

Self-Regulation and Unification Discussions in Canada's Accounting Profession

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Unification discussions are taking place within Canada's accounting professions.[1] Specifically, these discussions are taking place between the organizations that represent Canada's Chartered Accountants, Certified General Accountants and Certified Management Accountants. These discussions raise a wide range of issues. One of these is the relationship between unification and the self-regulation of the profession, mostly through the self-regulating organizations that are delegated regulatory authority by provincial law for accountants who practice under each of the accounting designations.

To provide background for the consideration of the relationship between unification and self-regulation, this paper addresses a series of questions about professional self-regulation in general and within the accounting profession in particular. It ends by providing some observations on where unifications discussions "fit" within the self-regulation framework under which the accounting profession operates.

Executive Summary

Accounting is regulated because public policy has determined that the public can be harmed in unacceptable ways if accountants provide services that do not meet regulated standards. Accounting is self-regulating because it is a profession that requires specialized knowledge and skill that is most cost-effectively regulated by those who have the same specialized knowledge and skill. Self-regulation is enabled by provincial or territorial legislation that delegates regulatory responsibility from the state to the "self-regulating organizations" (i.e. accounting associations or Boards) that are usually established by the same legislation to regulate accountants with specified designations. More broadly, the "privilege" of self-regulation rests ultimately on public support for self-regulation, or at least on the absence of strong public demand for a different regulatory model.

To be self-regulating means to be trusted with the authority of the state, i.e. with the authority to administer binding law. The rationale for this trust is always the idea that the interests of the public are served by self-regulation. To be given this trust is to be treated exceptionally, since self-regulation is the exception rather than the rule in regulation generally. The reason is the higher risks it poses of "regulatory capture", where regulators identify and advance the interests of the regulated over the interests of those who were intended to be protected by regulation. Accountants and other self-regulating professions are trusted with exceptional self-regulatory authority precisely because their professional commitment to the public good is thought to counterbalance the inherent vulnerability of self-regulation to regulatory capture.

[1] A Framework for Uniting the Canadian Accounting Profession, online: http://cpacanada.ca/a-framework-for-uniting-the-canadian-accounting-profession/.

It is clear that self-regulation exists to benefit the public, whether or not this is said explicitly by enabling legislation. But self-regulation also provides important benefits to accountants. They are regulated by their peers through a regulatory body that is governed by their profession. This means that their regulated status does not detract from but actually enhances their professional status. Meanwhile, the fact that they are regulated reinforces public trust and confidence, provides competitive advantage and higher compensation than would otherwise be earned.

The role of self-regulating organizations is not however to balance the interests of the public and the interests of accountants. Rather, it is to balance the interest of the public in diligently administered regulation with the interest of the public in affordable accounting services from accountants who can apply their individual knowledge, skill and judgment to best serve their clients[2].

Failure in the protective dimension of the public interest mandate can result in greater state oversight of self-regulation, more direct regulation of accounting by state agencies, or to the loss of self-regulation altogether. Changes in these directions have been made to health professions regulation in a number of countries in the wake of significant failures by professional self-regulators to protect patients. More broadly, professional self-regulation in law and in health care is being absorbed in a number of countries into broader systems of regulation in which state agencies play a significant role. The creation of new processes for the oversight of auditing in Canada, the United States and other countries in the wake of the Enron and World.com scandals is an example of the same process in the regulation of accounting. Compared to other kinds of professional self-regulation in Canada, these broad global trends in professional self-regulation may be especially relevant to accounting self-regulation given that accounting regulation is more essentially global than other kinds of professional regulation.

A unification of the accounting profession that included regulatory unification in each of the provinces and territories would be an opportunity for accounting to strengthen self-regulation by strengthening the capacity of self-regulation to protect and advance the public interest. It could streamline processes for making and adopting the standards that are made inside self-regulation and for influencing and adopting the standards that increasingly are made with or by other regulators or by policy-makers at the national or international level, especially in relation to auditing. It would ensure that Canadians received the same high level of regulatory protection no matter the designation or the province of licensure of their accountant. Unification could also reduce duplication of effort and enable more concentration of regulatory resources and capacity at regulatory priorities that cut across current accounting designations. It could improve the cost-effectiveness of accounting regulation either by reducing the cost of regulation or by enabling the direction of more resources into the regulatory activities that are most

[2] Clients: For the purposes of this paper, the term "clients" (specifying those who receive accounting services for a fee) also refers to customers and internal/external stakeholders receiving expertise from those accountants working in industry.

directly connected to protection of the public. In sum, unification can make the regulation of accounting more comprehensive, integrated, cohesive and consistent.

In these and in other ways, unification could enhance the capacity of self-regulation to do what self-regulation is intended to do: to protect and advance the public interest. In that way, it could also help to ensure that accounting continues to enjoy the privilege of self-regulation that it has enjoyed in the past, while at the same time more effectively extending the influence of that self-regulation beyond the confines of its statutory boundaries.

1. Why do provincial governments delegate responsibility to Self-Regulating Organizations and how is that responsibility transferred?

Individual governments may delegate regulatory responsibility to particular Self-Regulating Organizations (SROs) for a number of immediate reasons that are specific to that government or jurisdiction. The fact that all provincial governments have chosen to regulate the accounting profession by delegating significant regulatory responsibility to the profession (i.e. to SROs, organizations that are governed by the profession), suggests underlying commonalities.

Before there is a decision to delegate regulatory responsibility, there is always a decision to regulate. In general, governments regulate only where they determine that regulation is necessary. The reason is that all regulation consumes society's resources while restricting individual choice and the operation of the market. Governments generally determine that occupational regulation is necessary when they decide: (a) a service should be controlled to ensure it does not cause harm and that it does provide the benefits it is supposed to provide; (b) formal regulation (i.e. regulation authorized by legislation) can bring the desired control to bear cost-effectively; and (c) those that use the service cannot otherwise adequately protect themselves. The accounting profession (like other regulated professions) is regulated because governments have determined that: (a) incompetent or unethical conduct by accountants causes unacceptable harm, particularly to their clients but also to society more broadly; (b) regulation of accounting can prevent or mitigate this harm; and (c) those who are vulnerable to being harmed are not able to protect themselves by exercising their freedom of choice as consumers of accounting services.

The key underlining concept is that of specialized knowledge and skill and the information symmetry that goes with it. Accountants, like other professionals, are better able to judge the quantity and quality of services needed by their clients than are their clients. As sellers of accounting services, there is danger that accountants could take advantage of this information asymmetry by providing clients with substandard services or with more services than they need. Given the same information asymmetry, clients may not be able to protect themselves against this vulnerability by directing their business to the accountants who can be relied upon to provide the right service, of the right quality and at the right price.

The interests of third parties are also relevant to the decision to apply formal regulation to the providers of professional services. In the case of accountants, the documents they create and the opinions they express become the basis for decision-making not only by their clients but also by others. This is particularly true of the role of accountants as auditors of financial statements that become the basis of decision-making by investors and others. Such third parties do not have the opportunity that clients have (constrained by information asymmetry as it is) to protect themselves by choosing which accountants they will do business with.

Information asymmetry underlies the decision of government to delegate responsibility for much of the regulation of accounting to the accounting profession. This is because the information asymmetry that exists between individual accountants and their clients also exists between the accounting profession and society more generally. Unless this asymmetry is addressed in how regulations are designed and administered, regulation is likely to either be ineffective in protecting its intended beneficiaries or to be effective only at higher cost by (for example) imposing restrictions on accounting that limit the quality or affordability of the service that is provided to the public.

Regulation of accountants by accountants – through delegation of regulatory responsibility to SROs - is a solution to this problem. It places regulatory authority into the hands of those who are not subject to the same information asymmetry that alternative regulators would be. Moreover, it can be a socially cost-effective solution since the alternative – under which a government regulator or an independent agency established by government would essentially purchase accounting knowledge and expertise on a continuing basis – could cost society more to achieve the same level of regulatory effectiveness.

The mechanism of delegation is the legislation that enables professional self-regulation in each of the provinces and territories. There is much variation in the design and content of such legislation from one jurisdiction to the next, but there is also considerable consistency on core elements. For example, legislation imposes a mode of regulation, called input regulation, which limits the practice of accounting as a member of a designated accounting profession to those who have been licensed, in most jurisdictions by the SRO (usually an Association or Board) of that profession. In addition to this authority over entry (licensing[3]) standards, legislation also typically authorizes each SRO

[3] Licensing: Many professions require a license for certain areas of practice. However, all professional accountants – whether they be CAs, CMAs or CGAs – are all certified by their provincial governing bodies. This comes as a result of meeting the regular pre-certification requirements to become a CA, CMA or CGA. The only work that a professional accountant does that requires a separate license in many provinces is public accounting. This is because the licensed public accountant has an additional responsibility to opine on something that is being relied on by an outside third party. In most provinces there are additional requirements to obtain a public accounting license; the licensed public accountant is required to meet ongoing additional requirements in PD and professional liability insurance, and is subject to practice inspection/review. Some provinces have a separate licensing board (Ontario, Nova Scotia and Newfoundland) while others monitor those who carry out these functions within the provincial accounting body.

to determine and administer the standards of practice and of ethics that their members must maintain as a condition of their licence. It also assigns responsibility to each SRO to monitor the compliance of their members with these standards and to deal appropriately with failures to meet the standards, including through disciplinary action where warranted.

2. What does it mean to be self-regulated?

For the profession, being self-regulated means that the profession itself has been entrusted with the power of the state, and with the responsibility that goes with that power, to regulate itself and its members. At the level of the individual accountant, being self-regulated means being regulated largely if not exclusively by professional peers through a regulatory body (a SRO) that is governed by the profession to which the accountant belongs.

It is worth stressing that to be self-regulated under legislation means to be self-regulated in the public interest. As explained above, the rationale for any regulation of accountancy is that regulation is needed in order to protect those who require the specialized knowledge and skill of accountants. One implication of this is that the institute/association or Board that it is given legislative authority and responsibility to carry out regulatory functions must be thought of as a public body that is accountable to the public. One aspect of this accountability is the applicability to such bodies through judicial review of administrative law, the same law that would apply to the regulation of accountants if it was done directly by government or by a regulatory agency established by government to regulate in place of or with SROs. This accountability under general law of SROs reflects a fundamental premise of the whole system of self-regulation: that it works and is justified because it can combine the special knowledge that the regulator has by being part of the profession with the independent and objective oversight that is core to the effectiveness of all regulation.

In this regard, it should also be stressed that to be self-regulated is to be treated exceptionally relative to most that are subject to regulatory oversight. While self-regulation is the rule in professional regulation in Canada, it is the exception to the rule within regulation more generally. There is little doubt that the reason for this is that self-regulation is the form of regulation that is most vulnerable to a key concern with all regulation: the problem of regulatory capture. Put simply, this is the dynamic by which regulators come to identify more with the interests of those they regulate than with the interests of those they are responsible for protecting from those they regulate. Although the direct accountability of SROs to those they are mandated to regulate does not mean that this danger of regulatory misdirection is unique to self-regulation, it does mean that concern about this danger is accentuated by self-regulation.

The exceptional nature of self-regulation validates the accuracy of the common expression that "self-regulation is a privilege". At one level, this simply means that governments are not under any obligation to delegate responsibility for regulating accounting to the accounting professions: as explained above, they delegate the

responsibility because of the determination that effective regulation can be most cost-effectively achieved through self-regulation. But at another level, the expression that "self-regulation is a privilege" reflects the reality that to be trusted with the responsibility of self-regulation means to be given a level and kind of trust that is not given to most that are determined to require regulation.

The discussion of trust suggests yet another and perhaps more fundamental understanding of what it means to be self-regulated. It means both to be regarded in law as capable and to be capable in fact of self-regulation. Accountants and other self-regulating professions are regarded as having this capability precisely because they are professions defined not only by specialized knowledge and skill but also by their commitment and adherence to a code of ethics and a broader professional ethos that places the interest of their clients and the broader public interests above and ahead of their own interests. Being self-regulated means living up to these fundamental aspects of professionalism, not only in diligent enforcement of and compliance with formal regulatory standards but even more fundamentally in the practice of accounting in accordance with sound ethics and a fundamental commitment to the interests of clients and of society more broadly. Good professional self-regulation depends upon this broader ethos of professionalism while working actively to support and strengthen it.

This perspective raises the complex question of the relationship between professionalism and the legislation that delegates regulatory responsibility to make professional self-regulation possible. The legislation that confers self-regulatory status is sometimes regarded as part of what differentiates professions from occupations. Empirically, this generally holds true in Canada. But it is equally important to recognize that being and acting like a profession is part of what makes such legislation possible and defensible in the first place and a significant aspect of what makes it effective in operation.

3. Where does the authority originate?

The simple answer is that the authority for self-regulation in the accounting professions originates with legislation enacted by provincial legislatures, the level of government that has constitutional authority to legislate on professions generally. Professional self-regulation under law is differentiated from other forms of self-regulation by the fact that it is compulsory and is enforced through law under the authority of the state. Like other kinds of formal regulation, it is administered by a regulatory body that can make legally binding determinations and take legally binding actions. It is the enabling legislation that makes this possible.

Legislation does not however depend only on the formal law-making powers of government but on the public opinion that governments and legislative bodies respond to in exercising their law-making powers. It may not be possible to conclude that provincial legislatures have generally saw fit to regulate accounting or other professions by delegating regulatory authority to the professions because this is what the public has demanded. The prevailing legislative model more likely reflects the influence of the

professions than of the public. But it probably also reflects at least the absence of any general public demand for a different regulatory model.

This situation cannot be taken for granted. As discussed below, where governments have limited the scope of professional self-regulation or subjected it to new layers of oversight, they have done so after major failures of professional self-regulation undermined public confidence in the professions and their institutions. The most important action that self-regulating professions can take to avoid this scenario is to regulate effectively. Openness and transparency to the public about both the objectives and mechanics of regulation is a critical piece of regulatory effectiveness since it helps to counteract the danger of regulatory capture by ensuring appropriate regulatory diligence. In addition, openness and transparency allows the public the opportunity to see regulation working and to develop some understanding for the inherent complexity of regulation, whether it is done by SROs or by other regulators.

4. Why does self-regulation exist at all – what are the benefits?

As explained above, the core rationale for regulation is to protect the public from a risk of harm that government decides it should and can reduce or minimize through subjecting the activity that creates the harm to regulatory control.

Once government decides that a profession should be regulated, it has three basic models of regulation to choose from.[4] One is to delegate regulatory authority to the profession itself. Another is for government to regulate the profession directly, through legislation that gives regulatory responsibility to a government department. A third is to delegate regulatory authority to a statutory agency that functions at arms-length both from government and from the regulated profession.

The core rationale for professional self-regulation is the idea that it is the model of regulation that best ensures regulation's effectiveness in protecting the consumers of professional services. As explained above, the key premise is that self-regulation overcomes or at least reduces the information asymmetry between regulated and regulator that would exist to a greater degree and that would be more costly to address under each of the alternative regulatory models. An additional supporting premise is that regulators who function within a self-regulatory model are likely to enjoy higher credibility, trust and confidence among the professionals they regulate than would an "external" regulator who functions from outside the profession. They may in consequence have greater influence over those who must be influenced if regulation is to be optimally effective.

If all this is true in practice as well as in theory, the key benefit that flows from self-regulation must surely be that it produces regulation that is effective in protecting the public (the intended beneficiaries of all regulation). The secondary benefit is that it does so at lower cost than would be incurred in trying to produce the same or a greater level of protection using either of the alternative regulatory models. Society benefits in both

[4] Robert Baldwin and Martin Cave, *Understanding Regulation* (Oxford: Oxford University Press, 1999).

directions: from receiving the protection of an effective regulatory process and from paying less than it would have to pay for that effectiveness if it was pursued through other institutional arrangements.

Benefits obviously also accrue to the members of self-regulating professions. Legislated self-regulation gives each regulated profession the benefits that come with being regulated, whether under self-regulation or otherwise. These include higher public confidence and trust; reduced competition; and higher levels of compensation. At the same time, the fact that these benefits are obtained through self-regulation means that regulation does not detract from but instead enhances professional status and the social status that comes with professional status. It also means that professional autonomy over key matters such as professional standards is not only maintained under regulation but probably strengthened through its embodiment in legislation that enables self-regulation.

5. What are the responsibilities of self-regulated organizations?

The many responsibilities of SROs fall under one comprehensive responsibility: to administer their enabling statutes so as to achieve or advance the underlying purpose of public protection. The same fundamental responsibility could be stated in less legalistic terms by saying that the core responsibility of SROs is to discharge the trust that is placed in them through the enactment of legislation that confers the privilege of self-regulation.

Either way, what this responsibility means is that SROs must apply their expertise, knowledge and other resources to ensure the effective discharge of their regulatory functions. This starts with effective governance of the SRO itself. It includes the adoption and effective implementation of the regulatory instruments (policies, standards, rules and guidelines) that are required to ensure or advance effective implementation of the enabling legislation. It includes the responsibility of supporting and directing the professional formation (through education, skills development and ethical guidance) that allows members of their profession to effectively regulate themselves in the course of their professional work. It includes diligence and competency in the investigation and where necessary, adjudication of disciplinary matters. It also includes the responsibility to act in accordance with the elevated principles of procedural fairness that the courts routinely say apply to decisions that affect professional status, employment and reputation.

More broadly, the responsibility of SROs goes beyond their responsibility to diligently discharge discreet regulatory functions. Their responsibility is to proactively do what they can (subject to the limits of their legal authority) to ensure their profession is serving the public interest. It can be put this way: the responsibility is not only to regulate but to regulate in such a way as to achieve desirable outcomes. To focus attention on this broader responsibility, a leading American scholar of the "regulatory craft" puts it this way: "the job of regulators is to pick important problems and to fix them".[5] The point of the slogan is that regulators must push themselves to think strategically about how they

[5] Malcolm K. Sparrow, *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance* (Washington: Brookings Institute, 2000).

can use their resources (including their statutory powers and their relationships with others) to incapacitate or disable the systemic conditions that cause the harms that regulators otherwise deal with individually and usually reactively. In professional regulation, an example might be to mandate the use of a certain technology, process or methodology that reduces or eliminates the incidence of a category of errors that routinely produce client complaints that must be individually investigated.

In doing all of these things to ensure protection, SROs have to recognize that the public interest is not unidirectional. The public not only needs accountants to be regulated. It also needs access to accounting services that are affordable from accountants who have the latitude to apply their professional knowledge, skill and judgment in a way that is responsive to each client's situation. Regulatory control that is unnecessary or excessive works against these aspects of the public interest by increasing the regulatory costs that accountants must pass on to clients and by potentially limiting the ability of accountants to use their knowledge, skills and judgment in beneficial ways.[6] This means that SROs must keep regulatory control within limits. These limits are broadly defined on the one hand by the risk and severity of harm that can be caused to the public if individual accountants do not ethically provide quality services. On the other hand, they are defined by the harm that can be caused to the broader public interest if regulation imposes unnecessary costs or reduces accounting to a sub-optimal lowest common denominator.

6. How can organizations achieve a balance between public interests and member interests?

To ask the question in this way suggests a tension between the interests of the two constituencies. It suggests that SROs need to manage this tension (or conflict) by trading one set of interests off against the other in a way that gives some effect to both.

This may not be the appropriate way to think of the relationship between public interest and member interests. The rationale for being given legislative control of your own regulation is that this is the best public policy option for protecting and advancing the public interest that is the basis of the decision to regulate in the first place. On this understanding of the nature of the legislative mandate of SROs, in accounting or in any self-regulating profession, member interests must yield to public interest whenever the two conflict.

This is somewhat simplistic however. It misses the point that there is significant overlap between the interests of the members of a self-regulating profession and the interests of those they serve. For example, both have a common interest in the competency and integrity of each member of the profession. Both interests are therefore served by activities of a SRO that maintain and increase the general professionalism of members of the self-regulating profession. Similarly, both interests are served by regulation that strikes the right balance between relying on the capacity of individual members to

[6] Competition Bureau, *Self-Regulated Professions - Balancing Competition and Regulation* (2007), available online: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/Professions%20study%20final%20E.pdf/$FILE/Professions%20study%20final%20E.pdf.

effectively self-regulate and the need for accountability to a regulatory body when individual self-regulation fails or is in danger of failing. Both interests can also be served when SROs act to ensure public awareness of the value that the public gains from the services provided by their members relative to the non-professional alternatives.

A longer list of examples could be given. The general point is that SROs should probably think of their role as less about balancing public and member interests and more about aligning these interests.

7. What can happen if organizations fail to deliver on their public interest mandate?

The most obvious consequence is that members of the public will be exposed to harm that they would not be exposed to but for the failure. Whether or not this provokes remedial action from government, it will harm the reputation of the profession. It therefore probably will also mean that the public is less willing to place trust in the profession's self-regulation.

Failure (or perceived failure) to deliver on the public interest mandate can also result in loss of all or parts of the mandate or in the imposition of new kinds of accountability where the mandate is retained. In accounting, the creation in the United States of the Public Company Accounting Oversight Board (PCAOB) followed concerns about the role that insufficiently rigorous auditing had played in the collapses of ENRON and World.com.[7] In parallel, to avoid similar problems in Canada, the Canadian Public Accountability Board (CPAB) was established.[8] The fact that the CPAB includes "provincial audit regulator members" does not change the fact that like the PCAOB, the CPAB represents a new form of external regulation into a domain that was previously more exclusively within the self-regulation mandate of the accounting profession. Currently, concerns about the culpability of the audit profession in the 2008 financial crisis are the basis of discussion around the world about the additional regulatory limitations from outside of the accounting profession that should be placed on auditors. In significant measure, these decisions will be made by external regulators such as the PCAOB or by legislative bodies, not within the regulatory processes of the accounting profession.

Outside Canada, similar developments are unfolding in the regulation of other self-regulating professions, particularly in the health professions and law. These developments are discussed in more detail below. For now, the general point is that in countries such as the United Kingdom, Australia and New Zealand, self-regulating professions have been absorbed to varying degrees into larger systems of regulation in which regulators that are government agencies play a very significant role. Sometimes that role is to supervise the functioning of previously autonomous self-regulating professions. Sometimes it is to take direct responsibility for regulatory functions, such as

[7] Public Company Accounting Oversight Board, *About the PCAOB*, online: http://pcaobus.org/About/Pages/default.aspx.
[8] Canadian Public Accountability Board, *About CPAB*, online: http://www.cpab-ccrc.ca/EN/Pages/about.aspx

discipline, that were previously part of self-regulation. These kinds of changes are bringing professional regulation in these countries closer to the American model, under which both licensing and discipline are generally the responsibility of state licensing bodies that are independent of the professions they license because of the perception that self-regulation in licensing creates an inherent and unacceptable conflict-of-interest.

The changes being made in the allocation of regulatory responsibility in a number of professions in a number of countries have happened for many reasons. But in almost all cases, a significant contributing factor has been high profile failures on the part of the regulators of self-regulating professions to act aggressively to deal with behavior that was causing harm to the consumers of professional services. Another common contributing factor was the failure of self-regulating professions to adjust regulatory structures and approaches to bring them into line with changes in the marketplace for professional services. In healthcare, the issues have included the role of self-regulation as a barrier to appropriate allocation of clinical work among professions. In law, the issue has been the unnecessary restrictions that self-regulation has placed on consumer choice. In both sectors, the issue has been the role of self-regulation as a barrier to jurisdictional mobility of the providers of professional services.

Some clearly think that the institution of professional self-regulation is too strong in Canada for such changes ever to be adopted here. This may be a questionable assumption given the growing tendency of public policy trends to migrate on a global basis, especially in a sector of professional regulation like accounting which is more essentially global than other kinds of professional regulation.

8. Not all provincial legislation is the same. In some cases, the legislation is not explicit to the public interest mandate. How should organizations act in this case?

The public interest mandate of an organization that is given legislative authority to function as a regulator does not depend on the explicit mention of the mandate in the legislation. It depends instead on the functions that are given to the organization. If these functions are explicable in terms of a legislative intent to protect the public interest, then the mandate is a public interest mandate whether or not that mandate is made explicit by specific legislative language.

This conclusion is supported by the many cases in which courts have been called upon to determine the legality of decisions made or actions taken by regulatory bodies in and outside of professional regulation. Courts determine these cases by largely equating legislative intent with legislative purpose. In determining legislative purpose they do of course take into account what legislation explicitly says about legislative purpose. But more fundamentally, the courts determine legislative purpose by concentrating on what the legislation does and on the functions that it assigns to the regulatory body. If the functionality of the legislation implies a public interest mandate (i.e. a mandate to protect the public), such a mandate is found to exist and to be applicable.

Accordingly, regulatory bodies that have functions that are explicable in terms of a mandate of public protection have that mandate whether or not the legislation makes it explicit. The differences that are likely to matter more in terms of understanding the nature and scope of the public interest mandate that is given to one SRO or another are differences in the nature, range and scope of functions (powers) they are given by their respective statutes.

9. What are some of the key trends and developments in Canada and internationally on self-regulation?

Some of the broad trends in professional self-regulation from outside of Canada are reviewed above, in answer to question 7. In institutional terms, there has been a shift away from the traditional model of self-regulation (under which each self-regulating profession enjoys comprehensive regulatory authority and wide autonomy) to a model in which professional regulation is a shared task between self-regulators and state agencies. The job of some of these state agencies is direct regulation, including in regulatory functions historically discharged by SROs. The job of others is to "regulate the regulators" by overseeing SROs. In both cases, a clear motivation of policy-makers has been to address the vulnerability of self-regulation to regulatory capture, both in relation to the limitations it places on the opportunity that others have to compete with regulated providers and in terms of the perceived weakness of SROs in demanding accountability for quality from their own members.

At the operational level, a leading theme internationally has been growing emphasis on continuing competency. Increasingly, licensing (or certification) is not viewed as a one time event that lasts for the duration of professional life. Instead, it is viewed as a continuing process that involves "revalidation" on a predictable schedule throughout professional life.

In Canada, the regulatory model for professional regulation has been more stable. The scope of authority and the autonomy given to SROs within most professions has remained largely unchanged. It is true that self-regulating health professions in Ontario, Alberta, British Columbia and Manitoba, and all self-regulating professions in Quebec, operate under common legislation that gives some oversight and broad advisory functions to a central body that serves a government minister. But viewed in international perspective, these institutions intrude into the each profession's responsibility for its own regulation only modestly. On the other hand, continuing competency has become more important in Canada as in other countries. But the Canadian approach has strongly favoured individual responsibility and educational support and evaluation that functions independently of the licensing process.

At the same time however, it is clear that governments in Canada have like governments elsewhere become more demanding of professional regulation. It is also clear that they have similar motivations: the concern that professional self-regulation is too restrictive of the competition that regulated professionals would otherwise face and too protective of those to whom it applies.

(a) For the professions generally (medicine, law, etc.)

Internationally

In the regulation of health professions, including medicine, there are a number of trends which are fundamentally changing either the scope of self-regulation or the autonomy that goes with self-regulation in a number of countries.[9] In the U.K. self-regulating health professions are now themselves subject to regulation through an arms-length government agency called the Council for Healthcare Regulatory Excellence. This oversight is being applied within a regulatory system that previously consolidated the regulation of nine separate health care professions under one regulatory authority. In New Zealand, the investigation of complaints against all regulated health professionals is now the centralized responsibility of an independent government agency called the Office of the Health and Disability Commissioner. The adjudication of all such complaints that are determined to warrant a hearing is done by an independent quasi-judicial body called the Health Practitioners Disciplinary Tribunal. A similar framework has been adopted in some of the Australian states. More broadly, the regulation of the health professions is being standardized in Australia through a national initiative of the Commonwealth and state governments. The aims include the improvement of the effectiveness of regulation in protecting patient safety while also reducing the barriers that regulation creates to mobility and competition.

Similar kinds of changes are happening in the same countries in the regulation of the legal profession. In both England and Australia, important aspects of the disciplinary process for the legal profession have been reallocated from the profession to state agencies. In England and Wales, the Legal Services Board has been established as the independent oversight regulator for the eight separate bodies named as "Approved Regulators" in the Legal Services Act, 2007.[10] The "Approved Regulators", including the "independent" Solicitors' Regulation Authority and the "independent" Bar Standards Board, are responsible for "direct regulation". They have taken the place in the regulatory process of the traditional self-governing bodies of the legal profession, such as the Law Society (for solicitors) or Bar Council (for Barristers), which are now limited to representing and advocating on behalf of their members.

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[9] Walshe, K., "Regulating Health Professionals" in J. Healy and P. Dugdale, eds., *Patient Safety First: Responsive Regulation in Health Care* (Crows Nest, NSW: Allen & Unwin, 2009); Allsop, J. and Jones K., "Protecting Patients: International Trends in Medical Governance, in E. Kuhlmann and M. Saks, eds., *Rethinking Professional Governance: International Directions in Healthcare*, (Bristol: Policy Press, 2008); Healy. J. *Improving Health Care Safety and Quality: Reluctant Regulators*. (Farnham: Ashgate, 2011); Allsop, J. and Jones, K. *Quality Assurance in Medical Regulation in an International Context: Report for the Department of Health England*. (London: University of Lincoln, 2008).

[10] See the website of the Legal Services Board at http://www.legalservicesboard.org.uk/.

Similar changes have been implemented in Australia. For example, in Victoria, the "independent" Legal Services Board is the "peak" regulator of lawyers.[11] The functions performed by the profession are those delegated to it by and carried out under the oversight of the Board. The investigation of complaints against lawyers is the responsibility of the Legal Services Commissioner, another "independent" body. In New South Wales, the same function is carried out by a state agency called the Office of the Legal Services Commissioner.[12]

The adoption of these kinds of changes in the regulation of lawyers is significant. Lawyers, unlike other self-regulating professions, can argue that their self-regulation is necessary for the perception and the reality of the independence and impartiality of the justice system. The fact that these arguments have not prevailed suggests the strength of the policy trend against the traditional model of professional self-regulation and towards what the Australians call "co-regulation".

A broader international development is the increasing attention being paid to continuing competency. This reflects a growing understanding of the challenges that professionals face in maintaining and expanding their knowledge and skills after licensure, especially in the face of an escalating pace of technological change. It has resulted in a growing investment of regulatory effort into continuing competency. In England at least, this has meant some curtailment of the assumption that licensed professionals are competent unless demonstrated otherwise. Instead, doctors and others now face loss of their right to practice unless they are successfully recertified at periodic intervals.

In Canada

In Canada, the leading trend, at least in comparison, is continuity and stability. The traditional self-regulatory model has largely been retained. In health care, it has been expanded to include many new health professions. High profile regulatory failures, such as in patient safety in Manitoba, Newfoundland and New Brunswick, have not provoked the kind of wholesale restructuring that similar events have triggered in other countries. At the same time however, governments have shown a growing willingness to step beyond their traditional role as the legislative facilitators of self-regulation to use legislation to advance government's own policy objectives on professional regulation. There are indications government interventions into professional regulation could increase in the future.

In health care especially, the persistent concern has been the role that the multiplicity of professional regulators plays in constraining the efficiency, responsiveness and sustainability of the health care system. In Ontario, Alberta, British Columbia and Manitoba, all regulated health professions have been brought under a common legislative

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[11] Legal Services Board (of Victoria), online: http://www.lsb.vic.gov.au/.

[12] The website for the Legal Services Commissioner of New South Wales is at: http://www.lawlink.nsw.gov.au/olsc. A Background paper on lawyer regulation is Australia, in which the changes being made are described as a movement from self-regulation to "co-regulation", can be found at: http://www.lsb.vic.gov.au/.

framework.[13] This framework substitutes descriptive for exclusive scopes of practice and establishes an advisory body that serves the minister of health by reporting on the functioning of health professional regulation and providing advice to the minister on policy issues. In Quebec, the health care professions are covered by a similar legislative framework that applies more broadly to all self-regulating professions. The concern for a regulatory framework that is more flexible continues to drive change. For example, the scopes of practice of multiple health care professions were recently expanded by the Ontario legislature on the basis of a multi-year analysis of mechanisms for enabling interprofessional collaboration completed by the Health Professions Regulatory Advisory Council at the request of Ontario's Minister of Health.[14]

The growing importance attached by governments to professional mobility within Canada and between Canada and other countries has been a related but distinct theme. It applies to the health professions but also to self-regulated professions generally. Interprovincial mobility was provided for in the Agreement on Internal Trade that was negotiated in the 1990s, but for a decade or more, governments left implementation largely to regulatory bodies. More recently however, governments have agreed to more detailed rules and to more aggressive implementation. In a number of provinces, legislation now empowers a "fairness commissioner" to review the registration practices of self-regulating bodies. On a limited scale, this introduces the idea of centralized oversight of the functioning of SROs that has been more broadly adopted in other countries.[15]

Another area of broad change in Canada has been in the internal governance of SROs. One change in this area is to create structural and functional separations between the general governance and disciplinary and competency processes and between the investigative and adjudicative stages of the disciplinary process. Another change is the expanded participation of public representatives in both the general governance of SROs and in the various committees that carry out core regulatory functions, such as discipline. This is an attempt to address concerns about regulatory capture through internal reform of SROs instead of through regulatory oversight or through the reallocation of regulatory functions to state agencies. In health care at least, these changes lead some to say that Canada has evolved from professional self-regulation to profession-led regulation.

As in other countries, there has been growing emphasis on continuing competency and the role that regulation plays in ensuring continuing competency. Unlike in some other countries, Canada has not adopted time-limited certification (or licensing) as a means of dealing with this issue and has instead relied on continuing education and self-evaluation. Some regulators are however becoming more demanding: for example, doctors in Alberta and Nova Scotia now undergo externally administered 360° evaluations every three years. This process is explicitly non-punitive and it is not connected to licensure. It does

[13] Most of the relevant legislation can be accessed through the web page of the British Columbia Ministry of Health at http://www.health.gov.bc.ca/professional-regulation/.
[14] A summary of the Regulated Health Professions Statutory Amendment Act, 2009, is available at: http://www.health.gov.on.ca/english/public/legislation/regulated/compendium_regulated_health.pdf.
[15] As an example, see Nova Scotia's *Fair Registration Practices Act*, S.N.S., 2008, c. 38, online: http://nslegislature.ca/legc/bills/60th_2nd/3rd_read/b211.htm.

however identify problems or areas for improvement that the regulator can require doctors to address and that doctors have an obvious incentive to address once they have been externally identified.

(b) For accounting

One of the major trends in the regulation of accounting is the increasing reliance on external regulation of "public accounting", in particular, the auditing of public companies. In the U.K., the regulation of accountants in relation to their role as auditors remains with their respective accrediting bodies. But this regulation is subject to oversight by the Professional Oversight Board which is part of the Financial Reporting Council.[16] In Australia, the regulation of auditing is largely under the Corporations Act as applied by the Australian Securities and Investment Commission, "supplemented by the professional conduct rules applying to members of the three main professional accounting bodies (CPA Australia, The Institute of Chartered Accountants in Australia (ICAA) and the National Institute of Accountants (NIA))".[17] More broadly, the International Federation of Accountants (IFAC) says, "External regulation of the market for audits of PIEs (i.e. public interest entities)" is one of the most significant changes in the last decade "to the regulatory environment for the accountancy profession".[18]

This trend includes the formation of the PCAOB in the United States and of the CPAB in Canada. It has of course been driven by the role of auditing in the financial scandals of the late 1990's and in the financial crisis of 2008. But it can also be seen as part of a broader pattern of governmental reaction to the real or perceived ineffectiveness of professional regulation in preventing regulated professionals from causing or failing to prevent events that have caused widespread and significant public harm. Whether in health care or in accounting, the reaction in many countries has been broadly similar: to bring professional self-regulation under oversight or to remove key regulatory functions from professional self-regulation. The similarity may be explained at least in part by the influence among policy-makers of an underlying apprehension about the vulnerability of self-regulation to regulatory capture.

The pattern is less pronounced across the field of professional regulation in Canada than it is in other countries, showing the important role that local policy conditions (and perhaps Canada's federalism) can play in facilitating or blocking policy diffusion. It should however be noted that the domestic regulation of public accounting is more integrated into an international system of regulation than is the case with many or perhaps all other professions. This may set the stage for more convergence between Canada and other countries on the regulation of accounting than is likely in other fields of professional regulation.

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[16] The web site of the Professional Oversight Board is at: http://www.frc.org.uk/pob/.
[17] See Audit Quality in Australia – A Strategic Review, online at: http://www.treasury.gov.au/documents/1745/PDF/Audit_Quality_in_Australia.pdf.
[18] *IFAC Policy Position 1: Regulation of the Accountancy Profession*, online: http://www.ifac.org/sites/default/files/publications/files/PPP1%20Regulation%20of%20the%20Accountancy%20Profession%20_0.pdf.

This perspective links to the other developments which IFAC identifies as significant in the regulation of accounting: first, the wide adoption of high-quality standards that are developed at the global level and second, the development by IFAC and the adoption by accounting regulators of statements of the obligations of accounting regulators in key areas of regulatory responsibility. Both points serve to emphasize that while there are multi-country international trends in the regulation of other self-regulating professions, the regulation of accounting is becoming more international (global) in its substance. This makes sense given the global dimensions of the markets in which accountants make their contributions as auditors.

10. Where do unification discussions fit within the self-regulation framework?

Currently, self-regulation in accounting largely means self-regulation within each accounting designation. In other words, it is not accounting as a unified whole that is self-regulating but CAs, CMAs and CGAs who are self-regulating. Under unification as proposed, this would change. There would be one SRO in each participating province for all three accounting designations, as well as in Bermuda, which participates in Canada's national accounting associations. This would reduce the number of SROs that are part of the Canadian accounting profession (including Bermuda) from 37 to 13. Moreover, each of these unified SROs would be established by and function under a more standardized statutory framework, probably subject to some variation to reflect the particular circumstances or legislative process of individual jurisdictions. This common statutory framework would include commonly defined organizational structures and governance processes and consistently structured regulatory processes, including in core areas of regulatory responsibility, like professional discipline. Educational requirements, both for entry into the accounting profession and for continuing education, would be consistent across the country. Unified SROs would discharge their consistently defined statutory mandates to ensure adherence to common standards of professional conduct.

Under such a framework, the structure and processes of self-regulation in accounting would become the foundation for unification and for the achievement of its ultimate objective – the creation of a profession that is unified on a national basis but that continues to be regulated on a provincial (or territorial) basis. Implementation will depend on a high level of coordinated action among fourteen independent governmental and legislative processes that will be challenging to achieve. But once achieved, the resulting unification and standardization of regulatory institutions and processes will make the development, adoption and implementation of nationally determined accounting standards much easier and efficient than it currently is. It should also streamline and otherwise improve Canada-wide adoption by accounting regulators of standards that are determined either nationally or internationally in venues that bring accounting regulators together with financial regulators, such as Canada's securities commissions.

At the same time, regulatory unification will help to ensure that Canada's accounting regulators speak in these broader decision-making forums with a common and thus stronger voice. In this way, unification could extend the knowledge and skill that the

profession brings to its own regulation to the other processes of regulation that increasingly overlap with accounting self-regulation. The result within Canada can be greater influence for accounting in the establishment of standards - and in other kinds of decisions - that accounting regulators are expected to implement or that get applied to accounting by other kinds of regulators. If this improves the overall regulatory and broader policy process in Canada, it could also contribute to Canada's influence in the standards-setting process that now is fundamentally international. The result can be greater influence for Canada in the continuing development of a regulatory framework that will in fundamental ways be more global than it has been in the past.

Unification as described here should benefit the public in some very practical ways. Canadians will more confidently be able to expect consistent protection from the regulatory system no matter the designation of their accountant or the province or territory of his or her licensure. There could be a reduction in the overhead cost of regulation that is associated with multiple regulatory bodies maintaining and administering distinct and highly variable regulatory systems in each province or territory. Unification would enable a combining of regulatory resources, expertise and capacity. In turn, this could mean that all regulatory bodies have more resources to concentrate on work that goes directly to protecting the public. In addition, the streamlining of the process by which Canada's accounting regulators adopt new accounting standards, including those that are either shaped or determined by external regulators such as those that now oversee auditors alongside accounting self-regulators at both the national and international level, would help to ensure that Canadians more quickly and comprehensively benefit from these evolving standards. It could also reinforce Canada's standing as a jurisdiction in which solid financial regulation prevails, including because of the improved responsiveness of its accounting regulators to changing circumstances and standards. In addition, the public will benefit from an accounting profession that enjoys greater influence because of the stronger voice for accounting that unification may create if that influence is used to push for standards and other decisions that are truly in the best interests of the public.

Of course, whether or not Canadians actually benefit from more uniformity in accounting standards and from the faster adoption of evolving standards will depend on many factors, including the substance of those standards, the success of the unified process in making decisions in a timely way and the effectiveness with which uniform standards are not only formally adopted but effectively implemented in each province. Similarly, Canadians will only benefit from accounting regulators that enjoy greater influence with other decision-makers and other regulators if that influence is used to push an agenda that is rigorously dedicated to protection of the public interest. Care will therefore be needed to ensure that unification creates not only the possibility but also the reality of improved regulation. In particular, it will be important to ensure that a unified regulatory system has the ability to make good decisions on a timely basis as well as the capacity to get them quickly adopted and implemented once they are made. There will be a need, in other words, to ensure that unification does not mean the bureaucratization of regulation. Further, as the number of SROs is reduced and the mandate and membership of SROs correspondingly expands, it will also be important to ensure that regulation continues to

be perceived and experienced by accountants as self-regulation. This is important if the regulation of accounting is to continue to be based not only on the technical knowledge, skill and statutory authority of SROs but also on the influence SROs enjoy with accountants by being viewed by accountants as part of their profession.

These are not arguments against a process of unification that encompasses self-regulation. Rather, they are simply points that must be addressed in the design and implementation of unification if it is to make self-regulation better at what self-regulation is intended to do: protecting and advancing the public interest. Moreover, the capacity of the regulatory system as currently configured to protect the public interest by responding effectively in a timely and comprehensive way to the changes facing accounting regulators has to be questioned. If unification is done properly, accounting self-regulation will be better positioned to meet new challenges while retaining its traditional strengths. In that way, it will benefit the public and thereby help to ensure that accounting continues to enjoy the privilege of self-regulation that it has enjoyed in the past while gaining greater influence in the broader processes of financial regulation to which accounting self-regulation must contribute and support.

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