

Note on the Manitoba Law Reform Commission's *Regulating Professions and Occupations*

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THIS DOCUMENT PRESENTS SUGGESTIONS for change which, if implemented, will affect profoundly the way in which "professions" function in the province of Manitoba. Some of the initial concerns of the report are well founded. The choice of which groups may call themselves professions and the manner of their governance is important. The report suggests that regulation should be designed and implemented solely in the best interests of the consumers. Since that is the acknowledged concept under which the old "professions" functioned (especially protection of the public), no one can criticize such a comment. However, one may well question whether the commission's interpretation of "best interests" is complete.

Certainly, it is appropriate for governments to consider the cost/benefit ratio of regulation. However, this document does seem to dwell too heavily on the "cost" aspect from a purely financial aspect. What it fails to acknowledge is the way in which the suggested new concepts may detract from the quality of service produced and the dedication of the individuals involved. I have four main concerns.

First, the concept of task based occupations rather than professions may be unwise. The report suggests that the established professions exist primarily to further their own interests. While some aspects of this certainly do exist, it is insulting and detrimental to the large number of professionals who are proud of their quality of public service in the professions and who give of themselves and their time far in excess of the financial remuneration they receive. The suggested task based approach relegates this dedication to the scrap heap, suggesting that such a concept is outmoded and undesirable. Only time will tell whether this is the case or not, but several centuries of past service will be rejected if this occurs.

Moreover, the concept of task based occupations raises specific questions for those presently, established professions which contain within their body of knowl-

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edge several overlapping tasks. The report suggests that certain tasks may be united under one controlling regulatory body if the approach of different groups of practitioners to the performance of these tasks is similar. If the approach differs, the regulation may also be diversified. What will be crucial here, will be the determination of responsibility for standards of practice. The report seems to suggest initially that a task may be performed by anyone demonstrating adequate training and ability for that task. Yet the report also suggests that different groups may still be permitted to exist and perform these tasks. This needs clarification. What will happen and who will decide what to do, if two of these groups suggest diametrically opposing philosophies and techniques to achieve the same end? In my own profession, I can foresee different groups suggesting opposing therapies for the same health care concern, where each group's suggestions may be considered inappropriate or even harmful by another. The umbrella committee approving the standards of performance practice for these tasks may have some difficulty permitting both courses of action.

The question remains: who will take responsibility for these decisions? Will it be the committee or the government who appoints them? If there are bad outcomes — who will be liable? These rather taxing questions must be addressed.

Second, the issue of public accountability is critical. I certainly support the increasing involvement of public representatives in the decision making processes of the various organizations. By their very presence, they alter the way in which decisions are made and bring an important new perspective to future directions. What is crucial here is the need for public accountability to be more than mere tokenism. The report suggests a central governing body to ensure safety of the public, open annual reports, public meetings, etc. If this governing body becomes simply another bureaucracy, its value will be lost in the sheer volume of responsibility.

There also needs to be a more complete description of the concerns underlying the recommendations for accountability before these concerns can be faced and answered.

Third, while the suggestions that Complaints committees have one-third public representatives is easily accomplished, the requirement for resolution within 90 days may be somewhat unrealistic. Many of these situations involve legal counsel for the recipient of the complaint who often prolong the situation well beyond this time period. There are likely to be many requests to the central committee to prolong resolution time. This can make a mockery of the requirement.

Fourth, there must also be a much greater delineation of the extent to which government will involve itself in this process. The degree of government involvement is unclear; that is whether the legislature will only set general requirements or whether it will involve itself in some responsibility for specific day to day activities. If governmental policy is forced on the organizations without regard for the

acknowledged standards of performance suggested by these organizations, the value of independence may no longer exist and ministries may find that there is no longer a desire for self-regulation. The direct costs for government and the public will certainly escalate if lawyers or physicians (for example) then decide they are not interested in self-government and the costs fall back onto the province. What an irony that would be!

