

International Regulation rather than National Regulation?

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Commissaire aux plaintes en matière de
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Office
des professions

Québec 



Presentation Outline

- The Office of the Commissioner
- Drivers for internationalization of professions
- Trade agreements and professional regulation
- Current situation of internationalization of professions
- Should all professions go international?
- Mutual recognition agreements

The Office of the Commissioner



Functions-Mandate

1. Receive and examine individual complaints concerning the recognition of competence by the regulatory bodies
2. Verify the mechanisms for recognition of competence (in a more systemic way compared to case-by-case)
3. Monitor the collaboration between the education and the professional systems (re: gap-training/bridging programmes and internships)

Functions-Mandate (cont.)

- Also responsible for overseeing the implementation by regulatory bodies of their obligations under applicable trade, mobility and mutual recognition agreements

Drivers for Internationalization of Professions



An International Profession?



An International Profession?

- International Union of Mountain Guides
 - National associations from 21 countries (5 others interested to join)
 - Representing 6000 mountain guides
- Last meeting in Switzerland in December 2015.

An International Profession?

- Diagnosis of the sector
 - Mountain: emerging international sport and tourism market
 - Increased mobility by tour operator
 - Different technical levels of clients
 - Risks for the guides and their clients
 - Different natural settings, thus training needs
 - No regulation in many countries
 - Pressure to lower the standards

An International Profession?

- The Union decided on a plan for internationalization of the profession
 - Quality and safety standards
 - Harmonization of training
 - Continuing Professional Development
 - Core competencies to allow for mobility of guides from one region to another (skis, avalanches, climbing, high altitude)

An International Profession?



Driver 1:

Internationalization Already at Play

- Evolution of the 'business model' of the sector
- Overall or partial globalization of
 - the client's activities,
 - the services, and
 - the public protection issues.
- Existence of an international forum for the profession
- Regulation, standards and training would need some adaptation and harmonization

Driver 1:

Internationalization Already at Play

- Case study: accounting-auditing
 - Public companies in many jurisdictions
 - Financial and investment markets around the world and all intertwined
 - Need of global standards for financial reporting to avoid fraudulent practices and protect investors
 - International Financial Reporting Standards (IFRS). First standard adopted in 2003

Driver 2:

Universal Good of the Sector

- Universal good inherent to the sector
- Especially when it relates to human beings
 - Ex.: health services and professions
- Internationalization to spread the benefit of quality services around the world
 - Ex.: health is a basic right and dignity of human beings in all countries

Driver 2: Universal Good of the Sector

- WHO agenda
 - Health as part of international development goals
 - Right of populations to the highest attainable standard of health
 - Universal coverage and quality of health services
 - Technical assistance in strengthening of national health systems and health personnel development around the world
 - Regulation, standards and training could be tools

Driver 3:

Trade and Economic Policies

- Agenda for trade liberalization
- Lifting unnecessary barriers to circulation of goods, services and people
- Ideally, one regulation/standard for all ... or none
- Pushed by the private sector, but also by governments

Trade Agreements and Professional Regulation

Are trade agreements
really pushing for
internationalization?



Trade Agreements and Professional Regulation

- Uniform/global standard is not required
 - Except if appropriate (context specific to a profession and the jurisdictions involved)
 - WTO have tried to come up with global disciplines by profession, but process is cumbersome
 - A realistic view
- But lowering transaction costs, harmonization and recognition encouraged

Trade Agreements and Professional Regulation

- The standard/condition at the source of a different treatment must be **justified**
 - Legitimate objective
 - Objective and transparent criteria
 - Requirement based on competency and ability to provide the services
 - No more burdensome than necessary

Trade Agreements and Professional Regulation

- The trade agenda wish list for professional regulation: two options to consider
 1. Uniform or harmonized standards and requirements for practice
 2. Recognition (mutual or unilateral)

Current Situation of Internationalization of Professions



Current situation

- A non-scientific nor exhaustive data collection, but nevertheless interesting
- Based on the 54 professions regulated in Québec (29 in health and social services)

Current situation

- Results:

28 professions (16 health and social services) with some international standard-type or founding documents

- Definition of the profession (10, 5 in health and soc.)
- Standards of practice (17, 8 in health and soc.)
- Code of Ethics (20, 13 in health and soc.)
- Accreditation, training and competency standards (14, 10 in health and soc.)
- Mutual recognition (4, 2 in health and soc.)

Current situation

- Variation in level of detail and scope of these documents
- Documents not really enforceable
 - Very few talk about endorsement
 - Terminology: guidelines, model, policy, policy statement, framework, initiative
 - Sensitivity in light of different capacities and development levels in the membership
 - The decision often lies with governments and their regulatory functions (political sensitivity)

Current situation

- What about regulators?
 - The missing link in the internationalization of professions
 - Very few international professional entities have regulators in their membership

Current situation

- What about regulators? (cont.)
 - Possible explanation
 - Not all countries have professional regulation or regulate in the same way
 - Regulatory functions in many countries lie with government entities
 - Regulators are focused on the work in their own jurisdiction
 - Regulators are not always in a position to form or participate in an international association or forum

Should all Professions go International?



Go International?

- Not an obligation, and it depends on
 1. The level of globalization of the clients' activities, the services and the public protection issues
 - Ex.: accounting-auditing,
 - Still some legitimate local aspects that the regulation should take into account

Go International?

- It depends on (cont.)
 2. The nature of the competencies for the profession
 - More similarities and global resonance if the profession is based on a universal scientific discipline
 - Ex.: World health workforce
 - Less when a social, cultural or even spiritual construct is involved
 - Ex: Social sciences, Law

Go International?

- It depends on (cont.)
 3. The level of migration in the profession
 - Beyond immigration, migration
 - In-ward and out-ward, circular

Go International?

- If yes, then who sets the standards?
 - Accreditation entities?
 - Professional associations?
 - Regulators?
- No one holds the key
- They all must be involved and contribute
 - Training must meet the needs of the practice in the field, especially on issues of public protection

Go International?

- If yes, then **which** regulatory system or standard?
 - Risk of a battle between leading regulatory or professional traditions to ‘win’ the international standard
 - Caution about different cultures and traditions in training, regulation and professional practice (humility and respect)
 - Caution about the developing countries and the need to help them meet the new standard

Go International?

- What then for the regulatory systems?
 - It's not the end of national and subnational regulation
 - Globalization/internationalization could vary in format and intensity from one profession to another
 - Information sharing, co-operation, harmonization, standardization and else

Go International?

Key messages:

1. You're not 'in default' or 'behind the parade' if your profession is not international or global.
2. If you go international, establish a dialogue between the different stakeholders in your profession.

Mutual Recognition Agreements (MRA)



MRA

- Mentioned in some trade agreements
 - GATS, ASEAN, CARICOM
 - Weak implementation
 - Limited scope, often for temporary movement, under supervision and for more experienced practitioners
- The Quebec-France Agreement (2008)
 - Umbrella agreement for MRAs for all regulated professions and trades
 - Structured, government supervised, common process of negotiating MRAs
 - Aiming at full licence recognition, with set compensatory measures, where justified

MRA

- Appearing in the trade agreements under negotiation
 - CETA (based on the Québec-France Agreement), TTIP, TPP
 - Elaborate provisions, greater expectations and wider scope

MRA

- The case of Europe
 - Strong in the institutions and in the decision-making process
 - More than a trade agreement, a common market with political and legal frameworks
 - Set of treaties and directives
 - A number of professions under mutual recognition
 - But implementation is not up to expectations
 - Left to member states with some ‘flexibility’
 - Not all compliant
 - Under review and scrutiny

Lessons Learned from MRA

- Better results when partners are compatible
 - Easier to generate a core set of requirements to work with, and reach harmonization and/or recognition
 - Education systems (training standards and quality)
 - Professional practice contexts
 - Regulation schemes (scope of practice, assessment, professional conduct, ethics and development)
 - Legal systems
 - Economies (comparable and/or complementary)
 - Cultural aspects

Lessons Learned from MRA

- Better results when partners are compatible (cont.)
 - Otherwise, very broad principles and standards
 - Low and less rigorous common denominator
 - Nice to have, but no real practical use to base a recognition and migration scheme in the field
- Process facilitated when a forum is already in place
 - Ex.: EU, regional or multilateral forum, international association
 - An advantage, but not a prerequisite
 - Countries' sovereignty or constitutional principles

Lessons Learned from MRA

- Prioritize according to reality
 - Geography and else
 - More relevance and incentives where sizeable economic ties and migration flows exist
- It takes time to
 - Understand the different contexts
 - Assess the impact, positive and negative
 - Get the buy-in from stakeholders
 - Negotiate and ratify
 - Implement

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