

## A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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### Competition Bureau – The Sequel

Most sequels don't have the impact and novelty of the first episode. The same is true of the Competition Bureau's Post-Study Assessment of its 2007 report on Self-Regulated Professions. The Post-Study Assessment was released earlier this month.

The 2007 report raised more than a few eyebrows, not only because of the questionable jurisdictional role of the federal Competition Bureau in provincially regulated professions, but because of its hard hitting comments. The 2007 report focused on five self-regulating professions (accountants, lawyers, optometrists, pharmacists and real estate agents). It expressed significant concerns about a number of regulatory activities that the Competition Bureau felt were uncompetitive, including the following:

- creating unnecessary entry restrictions through the establishment of excessive educational, training or other requirements for supplying a professional service, or directly or indirectly limiting the number of persons that can enter a profession;

- unnecessarily restricting the inter-jurisdictional mobility of members of professions;
- excluding from the scope of practice for members of a profession or occupation, the supply of services that they are qualified to provide;
- unnecessarily restricting the advertising or marketing of professional services;
- regulating or encouraging the use of specific fee or compensation structures; and
- unnecessarily restricting the business structures available to members of a profession.

The Competition Bureau made a number of recommendations in these areas.

In reviewing progress since 2007, the Competition Bureau noted an increase in awareness of competition issues among the five professions, along with a number of other professions as well. The Competition Bureau noted progress in a number of areas including the following:

- Mobility of professions within Canada has been significantly enhanced by the amendments to the Agreement in Internal Trade. The Competition

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### FOR MORE INFORMATION

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Bureau noted two exceptions in its view, public accounting in Ontario and the legal profession in respect of common law and civil law (i.e., Quebec) jurisdictions.

- Advertising restrictions on accountants and lawyers have been relaxed.
- In a number of jurisdictions optometrists have been given the authority to prescribe drugs for some eye conditions.
- Opticians in British Columbia are permitted to perform eye tests.
- Pharmacy technicians have been given an expanded scope of practice in a number of jurisdictions.

The Competition Bureau indicates that much needs to be done and that in some areas advances cannot be made without legislative amendments to enabling legislation.

In addition, many pro-competitive advances can be made through the interpretation of existing provisions by self-regulating professions. The Competition Bureau did not review those activities as a part of the Post-Study Assessment.

The Competition Bureau concluded as follows:

Access to innovative, low cost and high-quality professional services is important for the welfare of all Canadians. Competition among members of professions and, to the extent feasible, between professions, is an important driver for the supply of these services. Accordingly, any restrictions on the competitive supply of professional services should be avoided unless they are clearly required to achieve a legitimate public policy objective.

The tone of this report was less critical of self-regulating professions than its earlier one. This report, along with gossip that the Competition Bureau has taken a behind the scenes approach about complaints against self-regulating professions since 2007, and the very public Competition Bureau actions against non-regulatory bodies (e.g., multiple listing services in the real estate industry) appear to be sending a message. The Competition Bureau wants to work with regulators and save its rhetoric and enforcement activities for the non-regulatory representatives of professions.

The Post-Study Assessment can be found at: [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).