Council on Licensure, Enforcement and Regulation

THIRD INTERNATIONAL

CONGRESS

on Professional and Occupational Regulation

June 27–28, 2013 | Edinburgh, Scotland

Summary of Discussion Groups

One hundred thirty attendees representing Australia, Canada, England, France, Ireland, New Zealand, Northern Ireland, Scotland and the United States, attended CLEAR's Third International Congress on Professional and Occupational Regulation in Edinburgh, June 27–28, to enjoy informative sessions and engaging discussions related to the themes of global mobility and entry to practice, the regulatory continuum and the role of the regulator, and demonstrating continuing competence.

Presentations dealt with topics such as:

- competence from the patient or consumer's perspective.
- the Organisation for Economic Co-operation and Development's Services Trade Regulatory Database.
- development of a single statute to govern all health and social care regulation in the United Kingdom.
- the Québec-France Agreement on the Mutual Recognition of Professional Qualifications.
- lessons from the Mid Staffordshire Public Inquiry.
- Ontario's health regulatory college supervisor appointment process.
- oversight mechanisms to improve registration processes for foreign-trained professionals.
- how competency assessment can serve as a catalyst for professionals to engage in continuing professional development.
- and strategic and operational challenges that arise from the development of a continuing competence program.

Roundtable discussions during the event provided attendees the opportunity to dialog with international colleagues about the challenges and best practices related to the most pressing issues in occupational and professional regulation. Discussion was facilitated around questions related to priorities, challenges, threats and opportunities; increased scrutiny; interaction with stakeholders; cost pressures; and measuring competence. Some recurrent themes, as highlighted in the document, included interjurisdictional mobility; economic pressures driving regulation; discipline of unlicensed practitioners; overlapping and expanding scopes of practice; access to care and underserved geographic areas; media scrutiny and reacting to a crisis; the move toward multi-profession regulation; and increased public expectations. The attached summary from the discussion groups is a living document, and we invite further comments from attendees.

Establishing Priorities, Challenges and Opportunities

1. What are the priorities for regulation generally, and the regulation of your relevant profession or occupation specifically?

Overall Trend or Theme	Specific Examples
▪ Protecting the public interest vs. inspiring public confidence ▪ Addressing public perceptions of regulators ▪ More public involvement, educating and addressing the public regarding expectations	▪ Public's perception and expectation of role of regulator as disciplining bad practitioners
▪ Focus on adequate performance vs. avoiding discipline	
▪ Interjurisdictional mobility	
▪ Educational requirements on entry	
▪ Protection of the public in a flexible, agile, transparent manner	▪ Michael Skolnik Transparency Act in Colorado ▪ Apology legislation in Canada and U.K. ▪ Duty of candor
▪ More collaboration and sharing between regulators	▪ The CLEAR Exchange
▪ Political issues impact whether mobility requirements cause safety concerns.	
▪ New professions don't think they can afford to be regulated.	▪ The ability to be self-funded is challenging when professional fees are frozen or reduced.
▪ Pressures from government to compromise registration standards ▪ Economy drives pressure on regulator to increase supply.	
▪ Dual role (advocacy and regulatory) of some regulators	

2. What are the challenges for regulation generally, and the regulation of your profession or occupation specifically?

Overall Trend or Theme	Specific Examples
▪ Inconsistency in requirements ▪ Dealing with different entry requirements	▪ More emphasis on education and experience requirements than entry level experience
▪ Negative registration—regulation of those who do not meet the requirements	▪ Australia
▪ Discipline for unlicensed practice	▪ U.S. law cannot prevent this. ▪ Canada can charge with unauthorized practice. ▪ Especially prevalent in certain cultural groups
▪ National regulation, development of national databases	

2. What are the challenges for regulation generally, and the regulation of your profession or occupation specifically?

Overall Trend or Theme	Specific Examples
▪ Interprofessional collaboration: Where does the responsibility lie? ▪ Overlapping or expanding scopes of practice: When changes occur, the stakeholders have difficulty keeping up.	▪ **Scotland**: Integration of health and social care; regulation of nursing assistants ▪ **U.K. & Ireland**: More independent prescribing
▪ Underserved geographic areas	▪ **Québec**: Uses scholarships. Mandatory placement was struck down by the courts. ▪ **Canada**: Elderly physicians working in isolated areas; lack advanced knowledge as times change; political pressure—"it's better to have a bad doctor than no doctor"
▪ Language competency requirements and exams	▪ **Australia**: All must take language exam. ▪ **New Zealand**: Two language levels—one for program, one for registration
▪ Inspiring engagement vs. forced continuing education	
▪ Knowledge vs. skills vs. judgment: How gaps in each relate to competence	
▪ Influence of unions and trade associations in opposing regulation	
▪ Internships and articling: Lack of standards; who pays for it?	
▪ Addressing technological advances	▪ Online educational programs
▪ Pressure to register international applicants	
▪ Exam challenges	▪ Seen as a barrier to licensure ▪ Cultural challenges ▪ Commonality ▪ Who should administer? ▪ Value of bridging ▪ Credential creep
▪ Legal challenges	▪ To authority ▪ Biased evidence, prosecution
▪ Increased media scrutiny due to an untoward event, giving rise to public skepticism ("protect your own") ▪ Media focus is not always what is best to protect the public.	
▪ When regulation is scandal driven, discipline becomes the focus.	▪ Individual practitioners, Mid Staffs, drug abuse
▪ Increasing access to health care and meeting the demand	▪ U.S. Affordable Care Act

2. What are the challenges for regulation generally, and the regulation of your profession or occupation specifically?

Overall Trend or Theme	Specific Examples
▪ Labour mobility: Competence of an individual coming into a jurisdiction	
▪ Is the legislation which drives the regulator current and reflective of the reality of the day? ▪ It takes time for cultural and system changes to catch up with the law.	
▪ Who regulates a place of care vs. the individual who works within the place?	
▪ Need for more training regarding communication with legislators	
▪ Role and impact of political agenda	
▪ Ability to require educational institutions to teach what is required	
▪ Volume of complaints and the complexity of hearings create huge burden. ▪ Are we concerned with compliance over protection from harm? ▪ Disciplinary role vs. enhancing professional practice and competency	▪ Costs are challenging. ▪ No discretion—all complaints must be investigated.

3. To what extent is the notion of occupational regulation under threat in your jurisdiction or for your profession?

Overall Trend or Theme	Specific Examples
▪ Driven by bad behaviours	
▪ Driven by changing social values	
▪ Mobility appears to be a significant threat.	
▪ Merging multi-professions vs. individual self-regulating bodies	
▪ Greater consistency is the goal.	▪ **Australia**: Shared secretariat dealing with complaints and discipline cases ▪ **EU**: Labour mobility and mutual recognition ▪ Office of the Fairness Commissioner
▪ Influence of government on regulator and availability of resources so regulator can deliver services	▪ Having a well-qualified person knowledgeable about government processes is important—public affairs officer.

4. Some critics suggest occupational regulation entrenches privilege, while others say it restricts supply and increases demand. Are these theories gaining traction in your jurisdiction? If so, what has been the consequence? Are other criticisms being voiced, and if so, what?

Overall Trend or Theme	Specific Examples
▪ Regulation will continue to entrench privilege.	
▪ In some jurisdictions, government has taken position to limit educational requirements so as to increase supply. In other jurisdictions, government takes steps to attract professionals and may make it easier to immigrate. ▪ Tensions exist when professionals are not fully engaged.	
▪ Tensions exist when regulators insist on assessing education, experience or competence, while government wants more professionals and doesn't understand the need for these processes.	
▪ Regulators don't have a great deal of influence on supply and demand. ▪ Major role is setting standards for entry to practice.	

5. What are the opportunities in regulation? Do you conduct research, and if so, around which topics? Is there measurable value that results from occupational regulation that we should be highlighting? Are there examples of team-based regulation in evidence?

Overall Trend or Theme	Specific Examples
▪ Focus on internship and articling as a means to create early engagement and reinforce competence.	
▪ OECD researching: How much protection do people need?	
▪ Some professions are doing customer satisfaction surveys.	
▪ Make examinations and entry requirements more competency-based.	▪ More global approach to requirements (moving away from a laundry list approach to entry)
▪ A more dynamic environment in regulation offers opportunities.	▪ More public involvement and input
▪ Embrace technology.	▪ Online courses of study
▪ Increased communication	
▪ Break down silos.	
▪ With mobility, there is a need to deal with cultural, ethical and attitudinal gaps.	▪ **Scotland social workers**: Note areas where there are deficiencies; advise government, which implements changes in education, so new graduates have appropriate training. ▪ **New Zealand**: Midwives research a number of professional needs and inform government; hope to affect immigration policies.

6. What will regulation look like in 2023?

Overall Trend or Theme	Specific Examples
▪ Move towards the multi-profession regulator ▪ Sustainability is an issue for small bodies.	▪ Many professions do not have the numbers to support individual regulatory bodies. ▪ Benefit from sharing results of competence and conduct hearings ▪ Development of a central knowledge base that reflects regulation vs. a single profession
▪ Transparency ▪ More knowledgeable public increases expectations and pressure on regulators	▪ Move away from the perception that a profession will protect its own.
▪ Economics and demographics will drive regulation.	
▪ Pressures from workforce shortages will lead to the notion that everyone can do everything—multiprofessional scopes of practice.	
▪ Regulators are encouraged to partner with other professional regulators.	
▪ Need to be based on system care—system regulation vs. professional regulation ▪ Need to be outcome driven	
▪ Assumption of safety by the public because of occupational regulation	
▪ More use of alternative dispute resolution and mediation in complaints and discipline ▪ Fitness to practice	
▪ Media influence on government will put pressure on regulatory frameworks resulting in less influence for the profession on regulatory governance.	
▪ Revalidation will be more prominent.	
▪ Monitoring will be more risk-based.	
▪ Regulatory standards that cross geographic boundaries	
▪ Speed of change (or lack thereof) depending on government will and political cycle	
▪ Regulation will be in the news—impact of social media.	
▪ Concept of self-regulation as a privilege needs to continue to be recognized by professionals.	
▪ More lay and professional members on boards and councils	
▪ More focus on professional standards, competency and making the profession better	

Global Mobility and Entry to Practice

1. To what extent are regulators operating under increased scrutiny? Are there examples that could add to the list of government, economists, fairness commissioners and, arguably, the press?

Overall Trend or Theme	Specific Examples
▪ Decrease in union authority	
▪ Direct government involvement in operational matters	▪ **New Zealand**: Government may license occupational therapists.
▪ Extent of scrutiny varies with the risk associated with the procedure or process that is regulated.	
▪ Driven by changing societal criteria, the public demands increased transparency.	
▪ Media taking up the challenge to demand response from the regulator	

2. What is the best response to increased scrutiny on the part of regulators? Will the trend continue? How can regulators be proactive, rather than reactive, in this area?

Overall Trend or Theme	Specific Examples
▪ Best response—be proactive vs. reactive	▪ Royal College of Dental Surgeons of Ontario has redeveloped their website to be more transparent, educative and informative with the public and their members.
▪ Are regulators self-responding to their perceived need to respond?	

3. What are the challenges demonstrating and measuring substantial equivalence of qualifications?

Overall Trend or Theme	Specific Examples
▪ Development of one point of entry per profession per country	
▪ Impact of "poaching" professionals from one country to another	
▪ Cultural competence	▪ Treatment and protection of indigenous peoples
▪ Labour mobility and freedom of movement ... different approaches within the same profession	▪ **Eastern Europe**: Dentists remove damaged teeth. ▪ **U.K.**: Dentists restore damaged teeth.
▪ Barrier is the belief in the superiority of our standards, regardless of profession or country.	

3. What are the challenges demonstrating and measuring substantial equivalence of qualifications?

Overall Trend or Theme	Specific Examples
▪ Professionals moving away, need to share recognition information	
▪ Language assessment ▪ Communication is more than language	▪ Common language and culture makes mobility easier. ▪ Interaction with other service providers (health care team) is critical to practice safety.
▪ Mechanisms to facilitate mobility	▪ Register and license with restrictions ▪ Jurisprudence exams: Specific jurisdictional knowledge of laws, standards, etc. ▪ Need evidence to support requirements for hours ▪ **EU**: Period of adaptation—If standards of proficiency have not been met, the applicant is obliged to find a pathway to meeting standard.

4. How and where does the measurement of quality and outcomes fit into this discussion?

Overall Trend or Theme	Specific Examples
▪ Sharing information across jurisdictions is needed to protect the public.	▪ **New Zealand**: Police clearance required from other jurisdiction. ▪ Voluntary removal from register when leaving jurisdiction

5. To what extent is locally-based (at state, provincial or national level) standard setting really possible at a time of national, international and intercontinental trade accords? Or can some regulatory functions be controlled at a national or international level while others are undertaken locally? What are you seeing in this area?

Overall Trend or Theme	Specific Examples
▪ Will labour mobility, recognition and reciprocity be worldwide (e.g. a professional passport that allows you to work anywhere)?	▪ Seafarers
▪ Need to be thinking beyond our well-resourced borders	
▪ Telemedicine will challenge accountability and jurisdiction.	

The Regulatory Continuum and the Role of the Regulator

1. Is the way regulators interact with government or other key stakeholders changing and evolving? If so, in what way?

Overall Trend or Theme	Specific Examples
▪ Important to build communities of practice	
▪ Interaction with government is a reaction to bad events and enhanced by the media.	▪ Regulators need to do more than generate an annual report.
▪ Interaction with the public is a catalyst to government. The public's increased expectations and burgeoning need for information encourage greater government involvement.	
▪ Regulators need to interact with the public more on a wider range of issues.	
▪ Governments experience frustration if a problem is identified and a regulator states that he or she doesn't have the power to act. Does this require a change in the system?	▪ Regulators need to be more introspective in discussion as to what they actually can do.
▪ The professions have abdicated their role as protector of the profession to the regulator.	
▪ Does the number of public members on a board vs. professionals really make a difference? Quality of public members should be evaluated. Professional members are usually harder on peers. Is government appointment of public members appropriate? Are they on the board for the right reasons? ▪	▪ Need defined criteria for selection of good public members. Ensuring there is a robust pool of willing and able public members who are not politically aligned would allow for more reliable numbers for appointment in times of minority governments. ▪ **Ontario**: If council is not properly constituted, statutory committees cannot operate.
▪ More emphasis on attracting international candidates	▪ Government provides funding for online self-assessment. ▪ **Ireland**: Thirty-five percent of medical doctor registrants are international candidates. Act was changed to fast-track their registration. Government brought candidates into country, tested doctors in areas of practice and granted provisional licenses. Many different specialist exams were created, and on-going supervisory requirements developed. ▪ **New Zealand**: How much time is required to appraise applicants? An effort to amalgamate all health boards and combine administrative support has stalled.

2. Are regulators suffering from mission creep (becoming involved in ever wider areas, often around notions of good character)? If so, what are the examples from your professions or jurisdiction?

Overall Trend or Theme	Specific Examples
▪ Good character and suitability requirements	▪ Good moral character ▪ Criminal record checks ▪ Some U.S. states require professionals to be up-to-date on child support payments. ▪ Criminal record checks on board members (including government appointees) ▪ **British Columbia**: Dentists are required to get a criminal background check every five years. ▪ Annual declaration that no change in criminal questions from application
▪ Good character subject to wider definitions; can be misleading and of questionable relevance	▪
▪ Broader areas of regulation could present resource challenges.	▪ Cooperative ventures with government, other regulatory bodies or federations assist with resources
▪ Legislation requires a focus on compliance, but today's problem solving requires a creep of mission.	
▪ Unintended consequences of legislation and government intrusion	▪ If self-funded, small groups must be careful what they request. ▪ **General Social Care Council** (U.K.): Direct government support (staff) to assist in time of pressure on the regulator ▪ **U.K.**: Government might react to media pressure and direct regulators the way we saw happen in Ontario. ▪ **Queensland, Australia**: Medical Council is more vulnerable as a result of government intervention. Problems that pre-dated the national regulatory scheme include examples of competing agendas when moving to a national model of regulation
▪ Access to care, remote areas	▪ **Australia**: Added to regulators' mandate. Does this change standards to ensure health care services available to rural, remote areas? The national law is broad to allow added practice roles in such circumstances. ▪ **Ontario**: Delegation of controlled acts allows for some professions to work outside scope in remote areas under delegation protocols or medical directives. ▪ **British Columbia**: Extended practice professions who can do more. ▪ **Alberta**: Delegation of controlled acts is not permitted. ▪ **Ireland** : Not delegation, but stages supervision. Professionals may be sent into rural areas as needed.

3. Are regulators inevitably reactive in nature (responding to the latest crisis)? Or can they take steps to become more purposeful and intentional?

Overall Trend or Theme	Specific Examples
▪ Reactive and proactive—good regulators are a bit of both.	▪ Some thought proactive regulation sounded scary.
▪ Being proactive requires good governance and good strategies; otherwise, you fall into mission creep.	
▪ Use reactive outcomes (discipline) to inform members of good conduct.	
▪ Some programs are already in place.	▪ Patient relations (sexual abuse prevention plan) ▪ Issuance of guidelines for recordkeeping ▪ Interpretations (i.e. advertising)
▪ Importance of being on-site to actually see what is happening	▪ Issues around lack of inspections for sole proprietor type of practitioners (i.e. physiotherapists)
▪ Compliance	▪ **Ontario**: College of Denturists of Ontario use PricewaterhouseCoopers report as a compliance checklist.
▪ Reaction to a crisis or to legislation that must be implemented	▪ **Ireland**: New registration structure was a reaction to a crisis; however, a report discussing issues in the medical workforce is now being written. ▪ **Québec**: Dentists are looking at physical facilities and professional liability insurance that may prevent the public from receiving dental care, even when it is free.

4. To what extent are cost pressures dictating regulatory practice and roles in your profession or jurisdiction? What is the effect on your relationship with registrants or licensees and other key stakeholders?

Overall Trend or Theme	Specific Examples
▪ Cost of health care will push change for regulators.	▪ Collaborative regulation between professions
▪ Large pressure on regulator to comply with new requirements.	▪ All revenue must be raised through member registration fees. Some regulators don't have the membership base or the income level to support the fee structure. ▪ Fairness Commissioner ▪ Investigation of all complaints ▪ **Québec**: Over the last two years, dentists have paid a $250 increase in fees to deal with more expenses for discipline and preparing reports required by government.
▪ Government lowering registration fees is having an impact on the ability to fulfill the mandate.	
▪ Regulators feeling constrained by what the members earn	▪ Make QA accessible; adapt program; make continuing competence affordable

4. To what extent are cost pressures dictating regulatory practice and roles in your profession or jurisdiction? What is the effect on your relationship with registrants or licensees and other key stakeholders?

Overall Trend or Theme	Specific Examples
▪ Professional liability insurance	▪ **Ontario**: Royal College of Dental Surgeons administers its own PLI schemes. Is this the role of the regulator? It is run as two separate systems with different staff and computer systems. Physiotherapists may adopt this model to ensure PT's are covered. ▪ **Australia**: Sets standards of PLI requirements and expects registrants to get it.

5. How will the role of the regulator change in the next five years?

Overall Trend or Theme	Specific Examples
▪ Social media	▪ Should regulators ask for access to registrants' social media pages?
▪ Workforce issues	▪ Must find a balance to protect public
▪ Commonalities around codes	
▪ Increased public representation on boards	
▪ More challenges for small professions leading to a consolidation of smaller professions	▪ Trend to a general council approach for small bodies or those with overlapping or related scopes
▪ Movement of the use of the unregulated professional and the relationship between the two	
▪ Role of the regulator as being the whistle blower around systemic issues	
▪ More government intervention	
▪ Would other models be sufficient?	▪ Barred list ▪ **England**: If a school reports that a teacher has been dismissed after going through a process of review, the teacher can be prohibited from teaching. Department of Education issues standards and bears the cost of investigating a complaint.
▪ Is regulation aimed at enhancing professional credibility? Is this an appropriate goal?	
▪ Do we have too many regulators? Is this making it confusing for public?	▪ Polling research suggests the public is unaware of who regulates individual professionals.
▪ Are public awareness initiatives an appropriate use of regulatory resources? Public should be able to expect that regulation positively influences quality.	

Demonstrating Continuing Competence

1. Do you measure input (hours) or outcomes in your continuing competence program? Or a blend of the two? What are the trends?

Overall Trend or Theme	Specific Examples
■ There is no literature to support a minimum number of practice hours.	■ Most still have a number of hours or courses as the base. ■ **Alberta**: Engineer techs continuing competence program is not based on hours, but on activities. ■ **New Zealand**: Midwifery has a very extensive program; license can be withdrawn. There are different values for types of education. A peer review is required every two years. ■ **New Zealand**: A paper-based continuing professional development log is required. Number of hours of CPD is reduced. Competence assessment is required every five years. ■ **Australia**: Ninety percent are consistently compliant. How can the other ten percent become consistently compliant? Managers often not assessing competence, as they are not of the same profession. ■ **Alberta**: Certified accountants have practice inspections every three years. If risk indicators are high, inspections are more frequent. ■ **British Columbia**: Dentists input based 90 hours CPD in approved courses; 900 practice hours every three years ■ **British Columbia**: Foresters are assessed every eight years. ■ **British Columbia**: Hygienists have to be recertified every few years.
■ U.S. behavioural therapists are creating a database that encompasses several countries for comparative purposes.	
■ Need to engage members and licensees in this	■ Some have online courses and tests ■ Some have professional portfolios (common in Canada) ■ On-site assessments ■ Voluntary assessments (physiotherapists in Ontario)
■ Audit: Does the benefit justify the costs?	
■ Developing a culture of lifelong learning	
■ Measure both input and outcomes	■ **Ontario**: Royal College of Dental Surgeons are tested on five basic competencies to identify shortfalls. Tech aspects of practice and communication skills are not addressed. HPRAC mandated that there be no linkage to discipline. If not successful, remedial programs through university are required. ■ **British Columbia**: Physiotherapists are given an essential competency profile, patient care reflection tool and audited for compliance and coherence. If the physiotherapist does not pass after two tries, remedial action is required.

2. To what extent are professional associations, societies or unions willing partners with continuing competence programs?

Overall Trend or Theme	Specific Examples
▪ All bodies support the respective regulatory bodies in providing courses, opportunities, etc. for the member to be compliant.	
▪ **Québec**: Regulator offers CPD for dentists. ▪ **Alberta**: The association of lawyers was made an independent body to provide CPD. ▪ **Ireland**: Independent post-training bodies offer CPD for doctors; however, they do not quality assure presentations. The expectation is that presentations will deal with standards. ▪ **British Columbia**: Dentists look at every course and determine whether to give credit. ▪ Midwifery accredits each course; the association is asked to provide courses.	

3. Are continuing competence requirements ever seen as another barrier to trade or legitimate practice?

Overall Trend or Theme	Specific Examples
▪ Programs can be costly, but needed—not a barrier.	
▪ Shouldn't pose a barrier if these requirements are in place to protect the public.	
▪ Continuing competence, after educating the respective groups, is not deemed a barrier.	
▪ Barriers when very different requirements cannot demonstrate competence.	

4. What is the tolerance for cost associated with continuing competence programs, either on the part of licensees or registrants or regulatory organizations?

Overall Trend or Theme	Specific Examples
▪ Audit: Does the benefit justify the costs?	
▪ Costs will drive the type of continuing competency program that is implemented.	
▪ Revenue stream for regulator	
▪ Lower earning professionals may have more pushback.	

5. How are continuing competence requirements communicated to the public? Are there examples of good practice?

Overall Trend or Theme	Specific Examples
▪ Need to be aware that, like airline pilots, the public expects practitioners to be competent on an on-going basis and expects the regulator to assure this.	
▪ Public generally unaware of regulator's activities. More work is needed here.	
▪ Interviews, articles, websites, annual reports	