

## Modernization of Health Professional Regulation

### Submission of the Society for Canadians Studying Medicine Abroad

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#### **This submission is by the Society for Canadians Studying Medicine Abroad (SOCASMA).**

The purpose of SOCASMA is to support Canadians who are attending or graduated from international medical schools to return to Canada to practice medicine. This includes working to eliminate the unfair barrier barriers to postgraduate medical training (residency training) which prevents these Canadians from returning to work as physicians in Canada. Currently access to residency training is not competence-based, but founded on protection of graduates from Canadian and American medical schools which operates to exclude citizens and permanent residents of Canada who studied medicine outside Canada or the USA.

We seek competence-based selection for access to residency training and to the medical profession which is consistent with principles of administrative law, the Canadian Charter of Rights, and international covenants signed by the Canadian government related to the principles of inclusion, equality, and competence-based entry to higher education and the professions. In addition to supporting Canadians who attend(ed) international medical schools, we research and advocate for better access to health care.

SOCASMA has a deep knowledge base in respect to the medical profession and the short-comings of the legislation, bylaws, and policies of the College of Physicians and Surgeons especially as it relates to international medical graduates and the public interest. B.C. has never been able to educate sufficient medical graduates to meet its physicians needs. While international medical graduates are necessary to meet the health care needs of B.C., they face prejudice and unfair and often insurmountable barriers to the medical profession. The current policy is to recruit foreigners to meet physician shortages rather than bring down the barriers which would allow Canadians who graduated from international medical schools to come home to practice medicine.

The College has failed in its duty to oversee that access to the medical profession is competence-based. It has allowed Canadian medical school graduates to work as resident physicians even if they have failed the MCCQE<sup>1</sup> examination which sets the standard of knowledge expected of a medical graduate for safe and effective practice in Canada, while only allowing international medical graduates to compete for resident physician positions in limited numbers and only if they have outstanding (not just a pass or average) scores in the MCCQE1.

#### **This submission is intended to address the following objectives of the Committee and SOCASMA:**

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<sup>1</sup> The Medical Council of Canada Qualifying Examination Part 1 (MCCQE1) is the examination which must be taken by all medical school graduates regardless of place of education. The examination is designed to assess the critical medical knowledge and clinical decision-making ability of a candidate at a level expected of a Canadian medical school graduate.

1. Improve patient safety and public protection including enforcing competence-based admission.
2. Improve efficiency and effectiveness of the regulatory framework including education with respect to the fundamental purpose and role of self-regulating authorities.
3. Increase public confidence through transparent, objective, impartial, and fair policies, and through accountability. Accountability requires an oversight body which has investigative and enforcement powers including the power to (a) address individual cases, and to (b) design and force systemic changes to ensure colleges and their administrators act only within the purposes for which they were legislated in a transparent, objective, impartial, and fair manner. The creation of an oversight body is very important.

Q3(a). Do you support the creation of an oversight body? Yes.

Q3b. Do you agree with the functions listed above? We agree subject to the concerns we will state and explain below.

Q3c. Do you have any concerns and if so, what are they? Our concern is that without teeth and the power to force systemic change, the public will get little substantive value from the cost of creating such a body. The new oversight body must have enforcement powers with respect to reviews and investigations, policy, ethical standards, model bylaws and board composition in addition to what is enumerated in paragraphs 1 to 13 on page 13 to 15 of the consultation report, i.e., making recommendations, conducting audits, reporting, reviewing, guiding, and providing oversight and other soft powers

#### **REQUESTS/RECOMMENDATIONS**

1. The purposes and objectives of regulation should be clearly stated in the empowering legislation.
2. The legislation should state that the regulatory authorities can only use the powers for the purposes and objectives set out in the legislation.
3. The purposes and objectives set out in the empowering legislation for all regulatory bodies should include:
  - a. To serve, protect, and exercise its powers in the public interest;
  - b. To set standards and conditions for admission to professional practice including standards for admission to postgraduate training when mandated by the college;
  - c. To guard against the powers conferred by the enabling legislation from being used for purposes other than establishing and preserving standards of character, competence and skill of the individual;
  - d. To ensure that access to the profession is inclusive and competence-based including:

- i. the college will ensure that there are no impediments to access to the profession other than those founded on meeting standards of character, competence and skill of the individual relevant to practice of the profession;
  - ii. the college will establish a universal method of examining all applicants seeking registration to ensure they meet the competence standards of the college, or alternatively, a method or methods of demonstrating substantial equivalency of education for those educated outside British Columbia,
  - iii. the college will ensure that upon an individual demonstrating substantial equivalency that there will be no discrimination based on place of education for access to any class of registrant recognized by the college;
  - iv. the college will not discriminate, segregate, alienate, or burden one segment of society seeking access to a profession for the purpose of advantaging another at any level including pre-conditions to registration, and will ensure that its policies and conduct are consistent with the values of the Human Rights Code, the Canadian Charter of Rights, and international conventions and treaties relevant to the fostering an inclusive society which promotes a climate of understanding and mutual respect where all are equal in dignity and rights.
  - v. the college will act as a gatekeeper to ensure that universities and administrators of programs which are pre-conditions to registration with the college will not discriminate, segregate, alienate, or burden one segment of society seeking access to a profession for the purpose of advantaging another. This includes ensuring that these administrators of pre-conditions have admissions policies which are consistent with the values of the Human Rights Code, the Canadian Charter of Rights, and international conventions and treaties relevant to the fostering of an inclusive society which promotes a climate of understanding and mutual respect where all are equal in dignity and rights.
- e. To establish and ensure that the regulation of the profession is transparent, objective, impartial, and fair including:

- i. Being open to the general public and prospective registrants to answer questions and provide *responsive* information related to all matters under the jurisdiction of the college; and
- ii. Informing individuals of their rights under the enabling legislation and the Freedom of Information and Protection of Privacy Act.
- iii. Creating a Fair Registration Practice Office<sup>2</sup> or a Fairness Commissioner which has oversight and enforcement powers over the college and administrators of its registration pre-conditions to ensure registration practices are transparent, objective, impartial and fair.

## **Additional Background Information, Rationale and References**

### Overview

The concern of regulatory authorities losing their way from the purpose for which they were legislatively engineered is not new. McRuer Royal Commission Reports<sup>3</sup> reported on this almost 50 years ago. This report should be reviewed with the goal of “modernizing” regulation of the health professions. A copy of excerpts from this report is attached in Appendix A at the end of this submission.

1.The purposes and objectives of regulation should be clearly stated in the empowering legislation.

2.The legislation should state that the regulatory authorities can only use the powers for the purposes and objectives set out in the legislation.

To avoid the abuse of power by regulatory professions, it is vital to set out the purposes and to warn colleges of the limits of their powers. Boards do look to their empowering legislation, but are not necessarily aware of the principles of administrative law which govern them. Setting out the purposes and objectives in the legislation is a simple way of ensuring easy access to the guiding lights and limits of power.

3a. To serve, protect, and exercise its powers in the public interest.

As stated by the McRuer Commission, the public has an interest in ensuring that all individuals who meet the standards of the regulating authority be allowed to practice. This

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<sup>2</sup> Fair Registration Practices Act. <https://www.alberta.ca/fair-registration-practices-act.aspx>

<sup>3</sup> Ontario, Royal Commission Inquiry into Civil Rights, Commissioner: James Chalmer McRuer (Toronto: Queen’s Printer, 1968-1971)

ensures a free market, competition, choice, diversity, and respects the rights of individuals who invested their time and money.

3b. To set standards and conditions for admission to professional practice, including standards for admission to postgraduate training when mandated by the college.

3c. To guard against the powers conferred by the enabling legislation from being used for purposes other than establishing and preserving standards of character, competence and skill of the individual;

The purpose of regulation is to ensure public safety and public interest, i.e., to ensure that those who hold themselves out to be a particular type of professional meet the competency standards necessary to protect the public. Legislation establishing self-regulating colleges is founded on the presumption that those in a particular profession are in the best position to set the standards and conditions necessary to ensure public safety and the public interest.

It is important that the colleges recognize that it is them and only them who can set the standards for entry into the profession. Public interest and safety require that the colleges set the admission standards for all who provide professional services to the public. Postgraduate trainees practice their profession and serve the public. Therefore, the legislative theory and framework require the colleges to set the standards for access to postgraduate training.

Fairness and public interest dictate that standards be directly tied to character, competence and skill of the individual, without making presumptions about any individual related to the groups to which the individual belongs or where they received their education and/or training.

In its 1994 Report, the Law Reform Commission of Manitoba<sup>4</sup> explained that in the public interest of being protected from improper performance of the professional service, entry standards should not contain superfluous requirements, tests must be carefully designed to correspond to the qualities needed to provide a service properly, and entry standards must be set at levels that are neither too low nor excessively high.

3d. To ensure that access to the profession is inclusive and competence-based including:

- i. the college will ensure that there are no impediments to access to the profession other than those founded on meeting standards of character, competence and skill of the individual relevant to practice of the profession;
- ii. the college will establish a universal method of examining all applicants seeking registration to ensure they meet the competence standards of the college, or alternatively, a method or methods of demonstrating substantial equivalency of education for those educated outside British Columbia,

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<sup>4</sup> Ibid.

- iii. the college will ensure that upon an individual demonstrating substantial equivalency that there will be no discrimination based on place of education for access to any class of registrant recognized by the college;
- iv. the college will not discriminate, segregate, alienate, or burden one segment of society seeking access to a profession for the purpose of advantaging another at any level including pre-conditions to registration, and will ensure that its policies and conduct are consistent with the values of the Human Rights Code, the Canadian Charter of Rights, and international conventions and treaties relevant to the fostering an inclusive society which promotes a climate of understanding and mutual respect where all are equal in dignity and rights.
- v. the college will act as a gatekeeper to ensure that universities and administrators of programs which are pre-conditions to registration with the college will not discriminate, segregate, alienate, or burden one segment of society seeking access to a profession for the purpose of advantaging another. This includes ensuring that these administrators of pre-conditions have admissions policies which are consistent with the values of the Human Rights Code, the Canadian Charter of Rights, and international conventions and treaties relevant to the fostering an inclusive society which promotes a climate of understanding and mutual respect where all are equal in dignity and rights.

Despite rhetoric about equality, the reality is that persons who seek registration with regulatory authorities face barriers to the profession in which they are educated and trained. The reality is that prejudice exists and whether consciously or unconsciously, this results in almost insurmountable barriers that are put in place by regulators and their administrators which prevent the public from having the benefit of access and/or choice to the health professionals it needs.

In addition, British Columbia's image as a non-discriminating, multicultural province is being tarnished by policies which impede immigrants' and other Canadians with international degrees entry into regulated professions, especially since these Canadians often belong to visible minorities where prejudice plays a role.<sup>5</sup> This is illustrated by the fact that members of a visible minority who are internationally educated are less likely to be working in their credentialed profession in health professions.<sup>6</sup>

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<sup>5</sup> Gomez, R., Gunderson, M., Huang, X., and Zhang, T. 2015. "Do Immigrants Gain or Lose by Occupational Licensing?" *Canadian Public Policy/Analyse de politiques*, 41: S80-S97

<sup>6</sup> Owusu, Yaw and Arthur Sweetman. 2015. "Regulated Health Professions: Outcomes by place of birth and training" *Canadian Public Policy* 41 (S1): 98-115.  
[https://www.researchgate.net/publication/282390552\\_Regulated\\_Health\\_Professions\\_Outcomes\\_by\\_Place\\_of\\_Birth\\_and\\_Training](https://www.researchgate.net/publication/282390552_Regulated_Health_Professions_Outcomes_by_Place_of_Birth_and_Training)

“Who is Succeeding in the Canadian Labour Market?”, a 2019 report of World Education Services (WES) which provides credential evaluations for international students and immigrants planning to study or work in the U.S. and Canada., found that of 6,402 skilled immigrants only 39.1 per cent had positions with duties similar to what they had before immigration.

<https://knowledge.wes.org/canada-report-who-is-succeeding-in-the-canadian-labour-market.html>

Many reports and studies speak to the issues and the problems of prejudice, exclusion, and marginalization of international graduates in accessing their professions in BC and other provinces<sup>7</sup>.

In the field of medicine, the discrimination against international medical graduates is patent and institutionalized.

Access to the medical profession is determined by place of education and not by competence of the individual. Access to the medical profession in British Columbia currently:

- a. places a quota on the number of Canadian international graduates (citizens and permanent residents) who can compete for residency positions. Only 300 international medical graduates are allowed to compete in BC. There is no similar limitation on Canadian and American graduates where approximately 2000 Canadian and American applicants are considered each year,
- b. places a limit on the number of residency positions for which Canadians who are international graduates can compete. They are restricted to 58 positions, of which 52 are in family medicine, 3 in internal medicine, 2 in psychiatry, and 1 in pediatrics. By contrast, Canadian medical school graduates can compete for 289 positions of which 117 are in family medicine and 171 specialty positions with positions being

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<sup>7</sup> “Solutions for access: A report on the access to licensure in regulated professions for internationally trained professionals in British Columbia”, MOSAIC, 2006 <https://www.mosaicbc.org/wp-content/uploads/2017/01/Improving-Access-to-Licensure.pdf>

“Report on Removing Barriers for International Medical Doctors” Prepared for the Minister of Health and Long Term Care of Ontario, 2008 <https://muskoka.civicweb.net/document/22588>

“The underutilization of international medical graduates in Ontario and Canada: A selective review of the existing literature on the experiences of international medical graduates in the context of Canadian health care policies”, Sahar Taghizadegan, 2013, Immigration and Settlement Studies, Ryerson University

“Moving beyond orientations: a multiple case study of the residency experiences of Canadian-born and immigrant international medical graduates” Umberin Najeeb <https://www.ncbi.nlm.nih.gov/pubmed/30259266>

- available in all 29 base specialties. There are more positions for Canadian medical school graduates in BC than there are UBC graduates in any given year,
- c. limits Canadians who are international medical graduates to working in 4 College-recognized medical disciplines,
  - d. prevents Canadians who are international medical graduates from training as subspecialists. There are approximately 70 College-recognized medical disciplines including subspecialties,
  - e. forces Canadians who are international medical graduates to work in geographic regions where Canadian medical school graduates do not want to work (with a penalty as high as \$897,581 should they fail to work where they are directed for the requisite period),
  - f. allows Canadian and American medical school graduates to take the MCCQE1 examination after they have secured a residency position, and allows them to work as resident physicians despite having failed the MCCQE1. By contrast, Canadian international graduates must pass the MCCQE1 to be allowed to compete for residency positions and only a few with outstanding scores will get a residency position,
  - g. allows the universities to sell residency positions to Saudi Arabians and other Gulf State foreigners and to work as resident physicians, treating British Columbians, without requiring them to take the MCCQE1 at all.

Discrimination against international medical graduates by:

- a. Legislatively recognizing and endowing powers commensurate with the gatekeeper functions of a college,
- b. Oversight over the composition of the Board of Directors, and
- c. Ensuring admission to the medical profession is competence-based by ensuring a universal standard.

Gatekeeper

In most professions where self-regulating authorities mandate postgraduate training, the self-regulating authorities regulate and oversee it. This is as it should be considering that postgraduate trainees provide professional services to the public.

Originally, the College of Physicians and Surgeons did regulate and oversee postgraduate medical training, but that is no longer the case. This lack of oversight was a function of abrogation of responsibility by the College's actions, not legislative change.

The college is the gatekeeper to the profession. It is an important function. If universities or other administrators of programs which are necessary for admission to the profession have discriminatory and other unfair practices, it has the same exclusionary effect as if the college itself discriminated: the sector of the population which faces that discrimination will be unable to access the profession.



The college must be a vigilant gatekeeper of the educators and administrators of programs it mandates as a condition of registration to ensure that individuals are not hindered in accessing a profession due to discrimination and contravention of legislation and covenants established to protect equal opportunity based on individual merit including:

- a. The Human Rights Code which expressly seeks to “foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia”, “to promote a climate of understanding and mutual respect where all are equal in dignity and rights”, and “to prevent discrimination”.
- b. The Canadian Charter of Rights which expressly protects:
  - i. Freedom;
  - ii. Equality; and
  - iii. Mobility.
- c. International Treaties such as:
  - i. United Nations Declaration of Human Rights and in particular sections 22, 23, and 26 which require non-discriminatory, merit-based advancement.
  - ii. Lisbon Recognition Convention. “The purpose of the LRC is to facilitate the mobility of individuals through the recognition of academic credentials issued in and outside Canada, and to improve access by other countries and individuals to information about the education systems in Canada.”
  - iii. International Covenant on Economic, Social and Cultural Rights which sets out to guarantee equal access to education and work for all individuals.
  - iv. International Covenant on Civil and Political Rights which sets out to guarantee freedom, equality and mobility for all individuals.
  - v. Convention relating to the status of Refugees (the “Refugee Convention”). This convention provides that if a person is denied access to education or practice a profession in keeping with their education in their country, then that person meets the definition of a refugee within Canadian law. It is nothing short of hypocritical that we as a nation will grant these people refugee status on this basis and then prevent them and our own citizens and permanent residents from practicing their profession through a myriad of regulatory obstacles.

### Composition of Board of Directors

The College of Physicians and Surgeons of BC's Board is comprised of physicians primarily, most of which are associated with UBC.

Perhaps the fact that university affiliated physicians who are in a clear conflict of interest, dominate the College's Board may explain why the College has allowed selection on the basis of place of graduation rather than on the basis of competence and why the College has allowed the discriminatory practices which exclude Canadians who are international medical graduates from the medical profession to go unchecked.

Oversight and restructuring of Board composition to avoid the conflict of interest that university-affiliated physicians bring to the Board which results in this type of institutional nepotism which in turn breeds prejudice is vital.

### Competency-based Standards

Each college regulator should have a substantial equivalency examination or other method(s) for determining substantial equivalence. Once substantial equivalence has been established there can be no justification for placing additional barriers or conditions on those whose education is from another country.

In addition, colleges should not assume that graduates of local educational institutions meet the standards any more than they should make assumptions about those who are educated internationally. Colleges must be diligent and proactive to ensure that both international professional graduates and local school graduates have the necessary knowledge and skills to meet the standards set by the college.

Ensuring that all professional graduates meet the standard deemed necessary by the college, can be accomplished by administration of standardized examinations or assessments for every person seeking registration regardless of place of education.

The American system of access to postgraduate medical training is a good example of a system which evolved from substantial equivalency examinations for international graduates only to universal examinations for all graduates regardless of place of education. The USMLEs (US Medical Licensing Examinations) are taken by everyone seeking residency training positions in the same time frame regardless of place of education.

After the move to universal examinations, it was found that between 3-9% of American medical graduates failed the examinations which were designed to demonstrate that the graduate has the minimum expected knowledge expected of an American medical graduate.

In the Canadian system, the MCCQE1 is the examination which must be taken by all medical school graduates regardless of place of education. As indicated above, the examination is designed to assess the critical medical knowledge and clinical decision-making ability of a candidate at a level expected of a Canadian medical school graduate.

The MCCQE1 is used in a discriminatory and unfair way.

Canadian citizens studying medicine at an international medical school must take and pass the MCCQE1 before they begin their last year of medical school (for British Columbia) or in September of their last year of medical school (for most other provinces) to be eligible to compete for residency positions. Thus, Canadians who are international students must demonstrate they have the knowledge and skills expected of a Canadian medical school graduate when they are 75% of the way through medical school.<sup>8</sup>

In practice to successfully obtain a residency position, Canadians from an international medical school must ace the MCCQE1.

By contrast, Canadian medical school students do not have to take the MCCQE1 to be eligible to compete for residency positions. They take the MCCQE1 at the end of medical school after they have already received a residency position. Approximately 140 Canadian medical school graduates (about 5%) every year fail the MCCQE1. These Canadian medical school graduates are allowed to work in British Columbia as resident physicians despite having demonstrated that they do not have the knowledge and skill expected of a Canadian medical graduate.

As early as 1952 the Medical Council of Canada recognized that the universities were in a conflict of interest in that their allegiance was to their students as opposed to protecting the public interest. Since then the Association of Faculties of Medicine gained strength, grading became pass/fail in Canadian and American medical schools, supports for weak students increased, and reluctance to fail a student increased to the point where almost no medical student fails in a Canadian or American medical school.

The Medical Council of Canada stated in its report entitled “Recalibrating for the 21st Century: Report of the Assessment Review Task Force”, 2011 that the regulatory authorities of Canada see a need for the assessment and uniform measurement of knowledge and performance of domestic graduates and those graduating from schools accredited by the LCME. They also feel that the results of the measurement should be made available to them (page 11 of the report).

At page 15 the report states that such a national process could overcome the potential conflict of interest that “universities face when trying remedial activities for the poorly performing student.”

The Medical Council of Canada’s voiced concerns have been successfully resisted by the universities who control access to residency training jobs. The regulatory authorities who have a duty to ensure competence to protect the public interest have done nothing despite their legislative duty. The reason given by the College of Physicians and Surgeons of BC is that it does not control the standards to access to postgraduate medical training. Realistically, if the College of Physicians and Surgeons does not have control over competence in admission to

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<sup>8</sup> In the American system, to be eligible to compete for residency training all medical students, regardless of where they are studying, take the same exams at the same time.

residency training positions, it does not have control over competence nor admission to the profession.

The graduation and promotion of incompetent medical graduates is a concern in both Canada and the United States which are the only two countries where the universities control and run postgraduate medical training. In all other countries the regulating authorities retain complete control of postgraduate medical training.

The New England Journal of Medicine in December of 2019 sets out the various factors that push graduation of weak medical students. The authors summarize the problem in the following terms:

“Every spring, U.S. medical schools graduate some students who should not be allowed to become doctors. Despite multiple incentives for promoting, and barriers to dismissing, problematic students, medical schools have a responsibility to patients and the profession.” “Kicking the Can Down the Road — When Medical Schools Fail to Self-Regulate”, Santen, Christner, Mejicano, and Hemphill, *N Engl J Med* 2019; 381:2287-2289

UBC’s empowering legislation does not expressly provide it with any duty related to patients and the profession. While the university’s lack of legislative duty to patients and profession is inconsequential in most health professions because no college other than the College of Physician and Surgeons allows the universities to control admission to postgraduate professional training (and hence the profession), there are harmful consequences that flow from the College of Physicians and Surgeon’s failure to control access to the medical profession by allowing a university to set up a barrier which excludes international graduates.

Not only is there wrongful exclusion of Canadian international medical graduates from the medical profession which devastates so many immigrants and Canadians who chose to study abroad, but the system of exclusion provides a platform from which prejudice against international graduates can continue to thrive and grow. The public reasonably assumes that the barriers to international medical graduates are a function of inferiority as the average Canadian would not believe that this type of discriminatory system could exist in the context of Canadian laws and values without a concern about competency. The systemic discrimination also gives rise to data which “support” the prejudice against international medical graduates. Data will demonstrate that on average Canadian medical school graduates do better in the MCCQE1 than international graduates, but few people will realize that Canadians studying at international schools must take the exam one year prior to graduation while Canadian medical school students take it at the end of medical school.

Public interest demands that more be done to ensure that colleges are forced to have universal competence determination which does not discriminate against international graduates.

3e. To establish and ensure that the regulation of the profession is transparent, objective, impartial, and fair including:

- i. Being open to the general public and prospective registrants to answer questions and provide *responsive* information related to all matters under the jurisdiction of the college; and
- ii. Informing individuals of their rights under the enabling legislation and the Freedom of Information and Protection of Privacy Act.

Many international graduates who deal with the College of Physicians and Surgeons become frustrated and discouraged. It is difficult to obtain clear responsive answers in respect to the details of registration which impedes a person's ability to take the necessary steps to register with minimum loss of time and income.

3e (iii) Creating a Fair Registration Practice Office<sup>9</sup> or a Fairness Commissioner which has oversight and enforcement powers over the college and administrators of its registration pre-conditions registration to ensure registration practices are transparent, objective, impartial and fair.

Several provinces have taken steps that focus on removing barriers which are preventing internationally-trained professionals from fully contributing to Canada's prosperity. They have enacted Fair Access to Regulated Professions or Fair Registration Practices legislation and appointed Fairness Commissioners or set up a Fair Registration Practice office. This systemic approach is needed in BC to reduce and remove unnecessary barriers that stand in the way of all of the public benefiting from the skills, experience and education that newcomers bring and want to contribute to Canada.

"Discussion Paper Exploring the Removal of Barriers for Internationally Educated Professionals", by Sandra Berman and Joan Anderson (2018) reviews the need for oversight by an independent "Fairness" body in British Columbia. It also offers information on the effectiveness and limitations of the legislation in the various provinces. A copy of this Discussion Paper is attached to this submission.

It is apparent that the legislation in the other provinces is flawed in its failure to provide enforcement provisions.

It is vital that the body created to provide oversight has teeth to not only identify and investigate failings, but to force compliance in individual cases, and to design and impose systemic change. Without investigative **and** enforcement powers, Fairness bodies run the risk of becoming nothing more than window-dressing. Without enforcement powers this body cannot achieve substantive fairness.

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<sup>9</sup> Fair Registration Practices Act. <https://www.alberta.ca/fair-registration-practices-act.aspx>

## **Appendix A: McRuer Commission Report**

### Excerpts from McRuer Royal Commission Reports.<sup>10</sup>

In the 1960s and 1970s, the question arose across Canada, whether the rights of individuals were adequately protected in the self-governing model.

As a result, commissions were established to study this issue across the country. The McRuer Commission's findings have often been quoted in authoritative literature and in the courts, including the Supreme Court of Canada.

The McRuer Commission sums up the responsibility in the following terms:

“The power of self-government is essentially the power to decide who shall be permitted to earn his living by the pursuit of a particular calling.” (p. 1163 of the report. Quoted in Regulations of Professions in Canada, Casey. Page 1-1.)

The McRuer conclusion was that self-regulation was a viable model but that there must be vigilance in respect to the following:

- a. The primary purpose of a self-regulating authority is the protection of the public;
- b. Members of the profession have an interest in ensuring that the profession is operating in accord with public interest and that the public perceives this to be the case; and
- c. The importance of *proper* regulation cannot be overstated as it is vital to the public safety and interest. This includes fairness of access to and continued membership in the profession because work is so important to the individual and to the functioning of society and the principles upon which society is based.

The McRuer Royal Commission Report's description of the public interest in the admission of candidates into a profession:

“We have made it clear that the power to admit a licensee is not conferred to protect the economic welfare of the profession or occupation. Those professions or occupations which have been granted self-governing status are charged with a responsibility not only to see that persons licensed are qualified, but that all qualified applicants are licensed. The public has a genuine and very real interest in knowing that the members of the self-governing bodies are properly trained and have good ethical standards. The technical nature of the services performed by the members of such

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<sup>10</sup> Ontario, Royal Commission Inquiry into Civil Rights, Commissioner: James Chalmer McRuer (Toronto: Queen's Printer, 1968-1971)

bodies makes it very difficult for the layman to assess the competence of the practitioner and gauge the value of the services he has received. The public must be able to rely on the judgment of those who are empowered to decide that persons licensed to practise a profession or engage in a self-governing occupation are qualified. That being so, the responsible and experienced members of a profession or occupation on whom the power of self-government is conferred should be in the best position to set the standards to be met and the qualifications of anyone who aspires to enter the profession or occupation. But it must be recognized that each of the self-governing bodies has been given a statutory monopoly through its licensing powers. What has to be guarded against is the use of the power to license for purposes other than establishing and preserving standards of character, competence and skill." (Emphasis added.)

[Thus the purpose of the delegation of the power to license is to establish and preserve the standards of:

- a. Character;
- b. Competence; and
- c. Skill.

The use of the power to license for any other purpose must be guarded against. Subject to principles of administrative fairness, the protection of other interests is not to be tolerated. ]

In respect to societal inclusion, McRuer gives the example of the requirement of a degree equal to University of Toronto's degree in pharmacy. To meet this requirement, it is not necessary to have a degree from the University of Toronto; one may prove the requisite knowledge by passing the examinations required by the regulatory body. P. 1179

"Questions of immigration are entirely separate from the exercise of powers conferred on self-governing bodies. The only relevant question, apart from non-educational requirements, to be asked of any applicant for admission, no matter what his place of origin and no matter where he took his training, is whether he has met the required educational standards established in the province. This question can only be answered by comparing the applicant's training with the established standards. Such an inquiry admits of only one of two possible conclusions: either the standards have been attained by the applicant or they have not." Emphasis added.

At page 1174 the McRuer Commission gives an example of attempts to limit the numbers of people from other jurisdictions being admitted into the profession. The Commission underscores that this is outside the objectives of regulatory legislation:

"Under the regulations passed under the Pharmacy Act, applicants for registration who have qualified outside Ontario shall not be registered in Ontario in numbers exceeding

one per cent of the total registered membership of Pharmaceutical Chemists in Ontario in the same year. These restrictions serve to alert the public that the power of self-government has real monopolistic attributes."

"In any case, there should be adequate safeguards against standards of admission being employed as regulatory devices to limit the number of those entering the profession or occupation."

At page 1184, the McRuer Commission speaks out against provinces entering into reciprocal arrangements with others which have the effect of excluding qualified applicants:

"It is recommended that there should be no legislative recognition of a power to exclude qualified applicants for admission who come from outside the Province on any principle dependent on reciprocal arrangements."