

From: Robert Mysicka

To: Canada's Premiers

Date: August 20, 2020

Re: **PROTECTING CONSUMERS AGAINST COSTS OF INCREASED PROFESSIONAL REGULATION**

Amid the economic toll of the COVID-19 pandemic, it's easy to overlook the hidden costs to consumers from the increase in the regulation of occupations.

The economic rationales for increasing occupational regulation, in many cases, can be outweighed by the potential harm to new entrants as well as to consumers of the services offered by a range of regulated professionals.

In my recent C.D. Howe Institute [Commentary](#) with Tingting Zhang and Lucas Cutler, we show that one major problem is the risk that certain occupations – regulated or becoming regulated – engage in self-dealing at a cost to consumers.

This cost is reflected in the higher prices that come from reduced competition or limits to service offerings or methods of engaging in business. This is particularly concerning in situations where a new or existing profession is granted the right to self-regulate and to develop its own rules and standards for the delivery of its services to the public.

In many cases, such professions have the ability to create market entry restrictions – limiting the pool of qualified service providers to those with licences – and to reduce or limit competition among the service providers by creating market conduct restrictions. These can include rules around how professionals do business, for example, advertising to the public or the methods in which they can be paid or hired to do work.

Physicians and lawyers have long had the privilege to self-regulate their professions and, in many cases, this has resulted in domains of exclusivity where only a licenced practitioner of either law or medicine has the ability to provide a service to the public (in the case of medicine, the ability to prescribe regulated substances or in the case of law the exclusive right to transfer land).

In our [Commentary](#), we manually reviewed provincial statutory regimes with a focus on identifying those occupations that have become the subject of legislation. We manually matched the four-digit National Occupational Classification (NOC) used in Statistics Canada's Labour Force Survey with information from the legislative record of occupational licensing status based on the province and the year of enactment.

We found that there has been an increase in regulated occupations since 1996 and that there is a pay premium for workers with an occupational licence compared to those without a licence. Our review and concerns about regulation creating a wage surplus to professions and associated cost to consumers has been echoed in the United States where the University of Minnesota's Morris Kleiner has found that occupational licensing leads to a significant reallocation of income from consumers to licenced professionals.

What can be done to protect consumers and ensure that competition in the professions flourishes?

We have put two tasks to governments: one for the provinces and one for the federal government.

Provinces, who hold primary responsibility for enacting legislation that creates mandatory licencing regimes for a variety of professions and para-professionals, need to be more focused on eliminating market conduct regulations that have little or no connection to consumer protection and instead serve the interest of the regulated. These include restrictions on advertising, exclusivity rights to information or databases and other carved out domains of exclusivity. The starting point is to examine practices where current or contemplated law demands exclusivity and to see if alternatives are available that better promote consumer choice and competition. In effect, provinces should be seeking to enact legislation that is only minimally restrictive to competition while also ensuring that consumers are not put at risk.

The federal government on the other hand, should be focusing on strengthening competition laws to clarify their application in the face of provincial regimes that directly interfere with their purpose and intent.

In an earlier [Commentary](#), I argued that judicial interpretations of competition laws that give provinces a "get out jail free" card give too much leeway to regulated activities without consideration to the impact such regulation has on consumers in many sectors of the economy, from agricultural marketing, to retail sales of beer and alcohol and even legal services.

Governments at all levels need to provide some oversight of self-regulated bodies, particularly on newly created rules that can have anti-competitive effects. Canadian governments need to consider the interests of consumers and not just the occupations seeking regulated status. This requires coordination at both the federal and provincial levels.

Robert Mysicka is a commercial litigation lawyer practicing in Ottawa and Toronto.

To send a comment or leave feedback, email us at blog@cdhowe.org.

The views expressed here are those of the author. The C.D. Howe Institute does not take corporate positions on policy matters.