

The Evolution of Professional Legislation since the Creation of the Corporation of Professional Social Workers of the Province of Quebec

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Évolution de la législation sur les professions.
Impact sur les ordres professionnels et la
protection du public.

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Introduction

When 44 social workers, social work educators and agency directors persuaded the Quebec government to create the “*Corporation des travailleurs sociaux professionnels de la province de Québec* – Corporation of Professional Social Workers of the Province of Quebec” on February 4th, 1960, the professional system as we know it today did not exist.

The legislation (An Act respecting the Corporation of Professional Social Workers of the Province of Quebec, chapter 178) acknowledged that the public interest justified the proper regulation and control of the profession of social work. It was thirteen years later that the Professional Code was adopted and the structures of the professional system subsequently established.

While a number of professions were already grouped, like social workers, under the auspices of a professional corporation, the catalyst for the adoption of the Professional Code and the creation of a unified professional system

was the Castonguay-Nepveu Commission, which presented its report on the Quebec health system to the Quebec government in 1970. Concluding that existing professional corporations acted without outside control and that their practices were not always consistent, that professionals were increasingly employees with limited autonomy and that the notion of liberal profession was undergoing a major transformation, the Commission recommended a new form of professional organization that was enshrined in the Professional Code (Conseil interprofessionnel du Québec, CIQ, 2007; Dussault and Borgeat, 1974).

At the time it came into force, the Professional Code regulated 38 professions, nine of which were newly created. These bodies represented 112,000 professionals and 4.5% of the active population (CIQ, 2004).

Since that time, the Quebec professional system has evolved dramatically. New professions (including acupuncturists, bailiffs, translators, terminologists, respiratory therapists, interpreters, geologists, midwives, psychoeducators, marriage and family therapists, physical rehabilitation therapists, professional technologists) have been recognized and the organization of the work place has changed for numerous professionals.

Social workers have lived through a number of reforms in health and social services over the past 35 years. The creation of new institutions, the fusion of existing institutions into new models, the establishment of new administrative regions and the development of new models of practice have all had an impact on social work practice.

Government policies have also evolved. For example, with the aging of the work force and a shortage of qualified professionals, the integration of foreign-trained workers and the facilitation of labour mobility within Canada have become important priorities. This too has had an impact on the functioning of professional orders.

Intervention, la revue de l'Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec.
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As we approach the 50th anniversary of the founding of the Corporation, the Quebec professional system is now well established. Professional orders now count more than 318,000 members. In 2006-2007, the revenue of the 45 professional orders amounted to more than \$186 million. A total of 11,447 professionals were inspected at a cost of almost nine million dollars. Six thousand and thirty-four investigations were conducted after the filing of a complaint; 312 complaints were transmitted to disciplinary councils, which treated a total of 461 files and rendered 154 decisions involving a sanction. Control of illegal practice and usurpation of professional title entailed 559 investigations, with 73 complaints resulting in court action (Office des professions du Québec, 2008).

The purpose of this article is to give an overview of the evolution of professional and ancillary legislation in Quebec and its impact on the mandate, role and functioning of professional orders. We shall proceed with an historical review of the legislative framework and its effect on the organization of the professional system and the 45 professional orders that today regulate 51 distinct professions. We shall also pay specific reference to the impact on what is now the *Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec*.

The creation of the modern professional system in Quebec: The adoption and coming into force of the Professional Code (Bill 250)

The goal of the legislation, adopted in 1973, was set out in the explanatory notes accompanying Bill 250:

“The main object of this bill is to establish procedure and rules of discipline to be followed by the professional corporations subject to the Professional Code, to institute a uniform system as regards these corporations for ascertaining the quality of the professional acts done by their members, to constitute a Québec Professions Board (Office des professions du Québec) to see that the professional corporations ensure the protection of the public, and to set up a Québec Interprofessional Council (Conseil interprofessionnel du Québec) which will make recommendations to the Board and to the Government.”

According to René Dussault, first president of the *Office des professions*,

“The new legislation clearly demonstrates the confidence of legislators in the system of the professional corporation. It emphatically upholds the professional self-administrative principle. However, it contains two important modifications: it provides for representation of the public within professional organizations and creation of the Québec Professions Board, whose main function is to make sure professional corporations fulfill their duties” (Dussault, 1974).

As self-management by the regulated professions is subjected to a form of control by the State, the philosophy underlying the Professional Code can be defined as “a balance of powers: independence, transparency, accountability and monitoring” (CIQ, 2007).

The Professional Code created two distinct types of professions, those of exclusive practice and those of reserved title. As regards exclusive practice, only members of the professional order may practice those activities reserved to the profession and use the title reserved to them. As for professions of reserved title, only the title is reserved to members of the order; activities associated with the practice of the profession can be undertaken by those who are not members of the Order. The Code initially recognized 21 professions of exclusive practice and 17 of reserved title. In spite of recommendations made by the Corporation of Professional Social Workers of the Province of Québec to the Castonguay-Nepveu Commission that exclusive practice was necessary to ensure the protection of the public, the profession of social work was recognized as a profession of reserved title.

Section 36 (d) of the Professional Code reserved the title of social worker or any other title comprising such expression or the equivalent and the use of the initials “P.S.W.” and “T.S.P.” to persons holding a valid permit for that purpose and entered on the roll of the Professional Corporation of Social Workers of Québec.

Section 37 (d) stated that, in addition to those professional activities allowed by law, persons entered on the roll of the Corporation could “assist persons, families, groups or communities with a view to improving their social activity”.

All members in good standing of the Corporation at the time of the coming into force of Bill 250 were entered on the roll of the new Professional Corporation of Social Workers of Québec and issued a permit (s. 219).

The evolution of the Professional Code since its coming into force

The professional system has evolved considerably since its creation and the Professional Code has been amended regularly to reflect these changes. The *Office des professions*, in accordance with its mandate under the Code, has periodically reviewed the professional system and proposed recommendations regarding the legislative and regulatory changes needed to improve it (for example, *Office des professions*, 1976, 1984, 1997). While not all these proposals have been enthusiastically received (CIQ, 1977, Barreau du Québec, 1997), these initiatives have in some cases resulted in amendments to the Code.

Several important changes have occurred within the last ten years. In 1999, the Minister responsible for the application of professional legislation announced an action plan to bring up to date the professional system and created working groups to develop recommendations on how to achieve these goals. In 2002, two working groups presented recommendations to render more flexible the administrative and regulatory process and improve methods of control, notably the organization of professional inspection, the syndic and the disciplinary council. (*Groupe de travail sur l'amélioration du rendement des mécanismes de contrôle de l'inspection professionnelle et de la discipline*, 2002, *Groupe de travail sur la révision de la réglementation et de son processus*, 2002).

The Minister's action plan also led to the creation of the *Groupe de travail ministériel sur les professions de la santé et des relations humaines* (Bernier Committee), which published, in June 2002, a series of recommendations relating to the professions in the realm of health and human relations (*Une vision renouvelée du système professionnel en santé et en relations humaines*). The Professional Code subsequently modified the professional activities of 11 professions in the health field, including doctors, nurses and nursing assistants, to take into

account the reality of professional practice and to ensure continuity of care (Bill 90). The committee also recommended the redefinition of fields of practice and reserved activities for professions in the mental health and human relations field.

In 2004, the *Office des professions* set up a second committee to complete the work of the Bernier Committee, specifically to make recommendations on the definitions of fields of practice, reserved and shared professional activities for these professions, the integration of certain groups into the professional system and the regulation of psychotherapy. The Committee (the Trudeau Committee) delivered its report in November 2005 (*Comité d'experts sur la modernisation de la pratique professionnelle en santé mentale et en relations humaines*, 2005). Legislation incorporating a number of the Committee's recommendations was adopted in June 2009.

Aware of the challenges facing professionals trained abroad, a non-partisan group of elected members of the Quebec National Assembly reviewed their difficulties related to the recognition of their competencies and training. Their recommendations also led to amendments in the Professional Code so that orders now possess the tools to facilitate the integration of foreign-trained professionals into the professional system (*Task Force on Access to Regulated Trades and Professions*, 2005).

The evolution of professional legislation and the impact on professional orders

While the Professional Code has been amended numerous times since it came into force, certain key elements remain unchanged. Perhaps most importantly, no change has been made to section 23 of the Code, which notes that the principal function of each order shall be to ensure the protection of the public, in particular through the supervision of the practice of its members. Neither have the criteria used to determine if a new professional order should be created been modified since this time, the concept of a profession remaining constant for thirty-five years (s. 25). Key elements, such as the role of the syndic, the function of the professional inspection committee and the mandate of the disciplinary council, are still in place. Moreover, public

members, appointed by the *Office des professions*, continue to sit as board members of professional orders.

However, amendments to the Professional Code and the coming into force of ancillary legislation indicate several trends:

- (1) Provisions aimed at better protecting the public have come into place over the years.
- (2) The internal functioning of orders has become somewhat more flexible.
- (3) Professional orders have become increasingly accountable to government bodies.
- (4) The operations of professional orders have also become more transparent.
- (5) In recognition of new realities, the Professional Code has, in recent years, been amended to provide a new legal framework for professions in the realm of health and human relations.
- (6) As instruments of government policy, orders have been equipped with new tools to facilitate the integration of foreign trained professionals and to improve labour mobility.

Increased protection of the public

Over the years, the Professional Code has evolved to include new measures to better ensure the protection of the public. While it is not possible, in this text, to give a detailed historical analysis of every amendment, the following examples indicate the continued emphasis on the *raison d'être* of the professional system.

Certain information about the membership has become public. This allows members of the public to better inform themselves about the history of a member of the profession. Since 2006, the name, sex, employer and professional domicile of the professional are considered public information. Moreover, the professional's history is also public: the year he was first entered on the membership roll and the year of every subsequent entry on the roll, in addition to any decision pertaining to a restriction or limitation of practice. This allows the public to trace the professional history of the professional. (s. 46.1)

The board of directors can order a medical examination of a member or a person applying for admission where it has reason to believe his physical or mental condition is incompatible with the practice of his profession (s. 48). This

process, which originally necessitated the intervention of three physicians, was rendered more flexible in 2008, so as to allow a single physician to carry out the examination with the consent of the board of directors and the individual.

In 1987, the Code was amended to allow orders to require their members to take out professional liability insurance so that clients or others harmed by professional malpractice would be fully indemnified.

In 1990, public protection was increased as the Code regulated the type of advertising permitted by professionals, targeting specifically false representations and claims (ss. 60.1, 60.2, 60.3).

Extra safeguards were added in 1994, with the inclusion in the Code of acts deemed derogatory to the dignity of the profession. A professional taking advantage of his professional relationship with a person to whom he is providing services, to have sexual relations with that person during that relationship, or to make improper gestures or remarks of a sexual nature, would commit such an act and be subject to disciplinary sanctions (s. 59.1). Moreover, since 1994, a candidate for membership has had to inform the Order of any criminal conviction (unless a pardon has been obtained). The board of directors can refuse to issue a permit or to enter the person on the roll if, in its reasoned opinion, the criminal offence is related to the practice of the profession. In 2008, the Code was amended to permit orders to conduct criminal record checks of candidates for admission.

These examples indicate how the Professional Code has evolved since its adoption to better protect the public.

Better and easier governance

In 2008, the Professional Code was amended to render more flexible the governance and regulatory framework of orders. The legislation facilitated the circulation of information within the Order and permitted the board of directors to delegate certain decisions to committees. The board could also proceed by simple board resolution rather than by regulation in some areas related to its internal operations. For example, rather than waiting for up to a year to amend a regulation enabling the board of directors to

meet by conference call or videoconference, the board could simply adopt a resolution to this effect at one of its meetings.

Increased accountability and control

Over time, orders have become increasingly subject to control by outside bodies. Bill 250 gave the *Office des professions* broad responsibilities to ensure that professional orders respected their obligations under the Professional Code. These powers have grown over time. In 1994, the Code was amended to give the Office, on the authorization of the Minister, power to investigate orders that do not respect the law. In 2008, the Office was granted the power to propose a course of action or measures to be taken by an order in situations in which it considers it necessary for the protection of the public.

In 2002, ironically for bodies created by the state with a mandate of public protection defined by the Code, orders were defined as lobbyists by the Lobbying Transparency and Ethics Act (R.S.Q., c. T-11.011), required to register with the *Commissaire au lobbyisme* and register any activities that were defined as lobbying by the new legislation.

In 2006, orders became subject to access to information legislation, enabling the public to obtain information on activities regarding the supervision of the practice of the profession.

Orders are also increasingly subject to reporting mechanisms. Annual reports have become so detailed that, in November 2007, the *Office des professions* sent a 39-page guide to orders on how to complete them. In the near future, we can anticipate a Quebec government regulation specifying which information must be available on the Internet site of professional orders.

Particular emphasis has been placed on the admissions process to ensure that the registration practices are fair, objective and impartial. In June 2009, the Minister introduced a bill to create the office of Commissioner for complaints about the recognition mechanisms of professional competence. The Commissioner, situated within the structure of the *Office des professions*, would have the mandate to examine complaints against professional orders regarding mechanisms for the recognition of professional competence, monitor the operation of

these mechanisms and take measures to ensure that additional training required by orders is offered by an educational institution (Bill 53, An Act to create the office of Commissioner for complaints concerning mechanisms for the recognition of professional competence).

Transparency

Hand in hand with accountability, the practices of orders related to the control of the profession have become increasingly transparent over the years. Hearings of the disciplinary council were originally held behind closed doors. However, since 1988, hearings have been open to the public, unless the council decides it is in the general interest or in the interest of public order, in particular to preserve professional secrecy or to protect a person's privacy or reputation (s. 142).

Moreover, a person may have access to the hearing roll and record of the disciplinary council (s. 120.2).

While much information was already available to members and the public, the subjecting of orders, in 2006, to access to information legislation has also increased the duty of transparency. A broad range of information is now accessible, including documents related to professional training, admissions, the issue of permits and special authorizations. The legislation also covers documents related to discipline, the conciliation and arbitration of accounts, the supervision of the practice of the profession and professional inspection (s. 108.1).

Resolutions striking a member off the roll or suspending his right to engage in professional activities are public, as is the name of a member subject to disciplinary proceedings (s. 108.7). Moreover, a person may have access to the annual report of the professional liability insurance fund, the professional liability group insurance plan contract and any portion of the minutes of the annual general meeting or a special general meeting concerning the supervision of the practice of the profession (s. 108.9).

These legislative changes have obliged orders to develop new internal structures to meet their responsibilities. In 1994, the Professional Code was amended to provide for the establishment of a committee to review, at the request of the

person seeking an inquiry, the decision of the syndic not to lodge a complaint with the disciplinary council (s. 123.3). In 2006, the board of directors was obliged, by regulation, to set up a independent review process for candidates whose application for recognition of an equivalency was denied (s. 93, c.1).

The role of professional orders as instruments of government policy in the recognition of foreign-trained professionals

As successive Quebec governments have put a focus on the integration of foreign trained professionals into the labour force and on labour mobility between Canadian provinces, several initiatives have had an impact on the way orders regulate access to the profession. The Professional Code has been amended to facilitate the responsibilities of orders, which have essentially become tools of government policy in this area. The principle of self-regulation has on occasion been mitigated as orders adjust their practices to harmonize with government policy.

Orders traditionally issued a permit based on the university degree or college-level diploma recognizing the necessary competencies for professional practice. However, the Code was amended in 1994 to oblige orders to pass a regulation on training equivalences, thus enabling candidates without the designated degree or diploma to apply for membership.

In 2005, the Task Force on Access to Regulated Trades and Professions, composed of members of the National Assembly from different Quebec political parties, tabled a series of recommendations aimed at facilitating access to the regulated trades and professions (Task Force, 2005). As a result of these recommendations, the Professional Code was amended to allow orders to deliver temporary restrictive permits, facilitating the rapid integration into the labour force of candidates whose training is partially equivalent, and, as a simple solution, to draw up a list of foreign and Canadian orders whose members would be automatically admitted to the profession.

In November 2008, the Quebec and French governments signed an Agreement on the Recognition of Professional Qualifications so as to facilitate the mobility of professionals and

workers between these two jurisdictions. Professional orders were required to initiate proceedings with a view to concluding reciprocity arrangements with their French counterparts in accordance with the agreement signed by their respective governments.

In June 2009, the government adopted legislation to provide for the implementation of the Agreement between France and Quebec. The law amended the Professional Code to authorize the issue of a permit to a person who meets the conditions required to give effect to an agreement for mutual recognition of professional competence entered into between the Quebec government and another government (An Act to provide for the implementation of the *Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles* and similar agreements, 2009, c. 16).

In the context of inter-Canadian labour mobility, an Agreement on Internal Trade was concluded by the federal, provincial and territorial governments in 1994. Regulatory bodies across the country were required to conclude Mutual Recognition Agreements to recognize the qualifications of professionals regulated in other provinces. When these Mutual Recognition Agreements did not, in the eyes of governments, provide for sufficient recognition, the Agreement on Internal Trade was modified in 2008 to impose mutual recognition by default, so undermining the prerogatives of orders to set their own standards for access to the profession

Recognition of evolving professional practice

Today's Professional Code recognizes that Quebec society and the professional world are in constant evolution. New professions have been created since the Code came into force. Amendments have been made to take into account new professional realities in a changing world. For example, professional orders may now authorize their members to carry on their professional activities within a limited liability partnership or a joint-stock company.

In the realm of the health care and human relations professions, the legislative amendments recommended by the Bernier and Trudeau committees proposed concrete solutions to take into account changing professional practice.

For professions of reserved title in the field of human relations, the activities reserved to members by amendments adopted in June 2009 represent perhaps the most significant developments in professional legislation since the adoption of the Code in 1973.

Impact of changes specifically on the *Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec* and the professions regulated by the Order

In addition to the more general changes outlined above, the evolution of the professional system has had a specific impact on the Order, particularly in recent years. In November 2001, after many years of discussion, the government recognized the profession of marriage and family therapist and integrated these professionals into the Order. Since this time, the Order has been regulating two distinct professions.

The decree that recognized this new profession defined their professional activities and redefined the professional activities of social workers.

In April 2009, subsequent to the Agreement between the French and Quebec governments, the Order signed a mutual recognition agreement with the *Ministère du travail, des relations sociales, de la famille, de la solidarité et de la ville* of France to recognize the qualifications of social work professionals trained in France and Quebec and facilitate their labour mobility.

Perhaps most significant for the future of the two professions regulated by the Order was the adoption in June 2009 of Bill 21 (An Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations, 2009, c. 28). Integrating many of the recommendations of the Trudeau Committee, the legislation provided a new definition of professional activities for social workers and marriage and family therapists and specified a list of reserved activities for the two professions, notably where there is a risk of harm to those who receive these services. As a result, many employees in the public health and social services system who are eligible for membership but chose not to become members will be required to register with the Order. The legislation also gives the Order the power to

regulate those who already exercise these activities but are not eligible for membership.

Also in June 2009, the government adopted legislation (Bill 46), which amended the title of the Order to the *Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec* to recognize, at the request of the Order, the two distinct professions regulated under the Order's auspices (2009, c. 35).

Conclusion

The continuing evolution of the professional system over the next few years is inevitable. If the past is any guide, it is likely that new professions will be recognized and that orders will continue to have the flexibility to administer their internal affairs. At the same time, trends indicate that professional orders will continue to become increasingly accountable to government and to the *Office des professions* on other issues. These responsibilities place increasing demands on their human and financial resources.

This situation is not unique to Quebec. In Ontario, the Office of the Fairness Commissioner was created by the Fair Access to Regulated Professions Act in 2007. In 2007-2008, the Fairness Commissioner conducted a review of registration practices of Ontario's regulated professions to understand their registration practices, establish baseline data and measure progress. In May 2009, the Commissioner announced that it would survey people who had applied to regulated professions in Ontario (Office of the Fairness Commissioner, 2009). At least one commentator has questioned the commitment of the Ontario government to self-regulation (Steinecke Maciura Leblanc, 2009).

What has become clear is that if professional orders do not implement what is required by government policy, solutions will be imposed. As amendments to the Agreement on Internal Trade indicate, regulatory bodies no longer have the last word on establishing the standards for access to the profession, thus undermining their principal mandate of public protection. Only the future will determine if the independence of professional orders in Quebec will be further put into question.

Descripteurs :

Code des professions - Québec (Province) //
Travailleurs sociaux - Associations // Services
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Professional Code - Quebec (Province) // Social
workers - Associations // Human services -
Government policy - Quebec (Province) - History //
Public protection

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- Professional Code, R.S.Q., c. C-26, as amended.
- We draw your attention particularly to:
- An Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations (2009, c. 28).
- An Act to provide for the implementation of the *Entente entre le Québec et la France en matière de reconnaissance mutuelle des qualifications professionnelles* and similar agreements (2009, c. 16).
- An Act to amend the Professional Code and other legislative provisions (2009, c. 35).