

# Competition Bureau Study of the Professions

## BACKGROUND

- In May 2006, the Competition Bureau announced that it would place a priority focus on anti-competitive aspects of the professions. The Bureau is looking at the extent to which professions use restrictive practices to control entry into the profession or to control the conduct of members. They will “shine a bright light” on restrictions in each profession with the initial goal of voluntary removal of unnecessary restrictions.
- The focus is motivated by increased globalization and movement of labour between countries and provinces, an increased percentage of GDP generated from the “licensed sector”, and recent reviews in the EU, UK and Ireland.
- At the same time, the Bureau is actively looking for cases to test their mandate vis-à-vis regulated conduct. They admit that there are grey areas that litigation may help to clarify.
- In July 2006, the Bureau asked organizations from five targeted groups (accountants, lawyers, optometrists/opticians, pharmacists and real estate brokers) to complete a survey. Dentists and dental hygienists have also been subject to scrutiny in the context of three provinces moving to regulate hygienists. Each year, the Bureau will add another profession to the list.
- The Bureau’s intent was to evaluate the effect of the restrictions on users of the services, any consumer benefits claimed for the restrictions, and whether the restrictions are proportionate to the benefits. The survey sought to identify potential or actual restrictions on competition, including:
  - entry, accreditation and mobility
  - scope of practice — restrictions on the ability of related professions to offer similar or identical services
  - business structures
  - fee schedules; and
  - advertising
- CBA declined to complete the survey, in that it sought particulars on regulation of the profession more appropriately within the mandate of the law societies. The Federation of Law Societies coordinated a response from the law societies.
- CBA Executive Officers constituted a CBA task team to monitor the issue, report developments to the Board of Directors and recommend strategies and positions. Chair of Task Team is Warren Grover, a former Chair of the Competition Law Section.
- Bureau report, *Self-Regulated Professions – Balancing Competition and Regulation*, issued December 2007. Sixteen recommendations were directed to the legal profession.
- Then-CBA President Bernard Amyot responded to the report in a February 2008 letter to Competition Commissioner Sheridan Scott. CBA noted that legitimate public interests other than competition must come into play in the regulation of the legal profession. “The legal

profession has changed dramatically in the recent past. ... We are confident that upon further reasoned analysis, using appropriate methodologies and with due consideration of Canada's juridical, linguistic, geographical, social, economic and other diversities, the conclusion will be that Canadian clients and the public are generally well served."

## **CURRENT STATUS**

- Competition Bureau indicated plan to review in two years whether the professions have addressed the recommendations in its study. December 2009 letter requested report on progress.
- In September 2011, the Bureau released its post-study assessment of the self-regulated professions study. The assessment found significant progress toward eliminating unnecessary restrictions on competition, most notably inter-provincial mobility of lawyers and advertising and marketing of legal services. The Bureau also concluded that more can be done by professional regulatory bodies and the relevant government authorities to ensure an appropriate balance between competition and regulation.
- In the period between the initial report and the post-study assessment, the Competition Bureau's approach from shifted from advocacy through studies to more aggressive enforcement.

## **NEXT STEPS**

- CBA will continue to work with Federation of Law Societies and other stakeholders in the legal system, through the task team and Officers, to ensure that the delivery of legal services continues to evolve.