



Competition Bureau to Examine Canadian Dental Profession

On March 7, 2008, the Competition Bureau announced that it was initiating a "national study" of the practice of dentistry in Canada.

This study is part of the Bureau's ongoing examination of the rules and regulations governing self-regulated professions in Canada. The Bureau released a report in December 2007 which assessed the practices of five professions: accountants; lawyers; optometrists; pharmacists; and real estate agents. The Bureau is now expanding its scrutiny to dentists. Other professions may be added to the list at some later point.

The Bureau is examining self-regulated professions because it considers a competitive service sector to be vital for the future health of the Canadian economy. The Bureau has observed that Canada's professions are subject to more extensive regulation than their counterparts in other countries. In the Bureau's view, this may hamper the productivity and efficiency of Canadian professionals.

The fact that the Bureau has selected the dental profession for study does not mean that it has any specific or particular concerns. That said, the Bureau's decision to study the dental profession is not a surprise either.

For example, the Bureau has been involved recently with issues affecting dentists, specifically its advocacy on behalf of a greater independent

role for dental hygienists. The Bureau also has some familiarity with the profession because of work done in respect of suggested fee schedules. Moreover, as a general matter, the Bureau has expressed an interest in how Canada's "health-care markets" operate. Dentists would fall broadly into this category.

The nature and operation of suggested fee schedules will almost certainly be an area of inquiry for the Bureau in its upcoming study of dentists. In its December 2007 report, the Bureau expressed "unease" with suggested fee schedules, because of its view that they may facilitate price collusion or promote adherence to specified fees.

At the same time, the Bureau acknowledged in its report that suggested fee schedules are perfectly legal when they meet two conditions: (i) the schedules are not compulsory directives, with nothing more than voluntary adherence expected; and (ii) departure from the fee schedules does not result in professionals being disciplined or disadvantaged in any way. The ODA's *Suggested Fee Guides*, for example, are based on these principles (as recognized previously by the Bureau).

The Bureau's December 2007 report also focussed on the following additional topics: restrictions on entering the profession; restrictions on mobility;

restrictions on scope of practice; restrictions on advertising; and restrictions on business structure. Again, it can be expected that these issues will form part of the Bureau's template for its study of dentists, to the extent applicable.

The Bureau is not proposing to use its studies of self-regulated professions as the basis for enforcement action, at least at this initial stage. Rather, the Bureau sees this effort as part of its broader advocacy role to promote the benefits of competition. The Bureau's objective is to identify practices that may restrict competition and to invite responsible bodies — provincial/territorial governments and self-regulating organizations — to consider changing them. As can be seen with respect to suggested fee guides, this may even involve recommendations to change or eliminate policies that are entirely legal. The Bureau also wants responsible bodies to take competition considerations into account whenever formulating and enacting new regulations, rules and policies.

The Bureau is now in the process of drafting questionnaires to be sent to dental professional associations. The Bureau will also consult with other interested parties (such as dental hygienists). The Bureau is not expected to complete its report until the spring of 2009. ■