OCCUPATIONAL LICENSING IN TASMANIA

by

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The control of occupation by means of public licenses is by no means a recent phenomenon, but in Australia, unlike the United Kingdom and United States, it has received little examination. A brief perusal of the statutes of the Australian States, however, will reveal that occupational licensing is probably just as prevalent and extensive as in the United Kingdom.[1] The dangers of such wholesale public licensing have been well documented in the United States[2] and serve as a warning to Australian legislatures that the implementation of further occupational licensing schemes may not solve all the problems for which they are ostensibly designed.

THE NATURE OF THE LICENCE

Licensing, in its traditional sense, simply involves a deliberate legislative act to curtail the pursuance of a given occupation which was once able to be freely practised by all who wished to do so. The legislative enactment has placed restrictions upon what might otherwise have been done as a matter of individual choice by prescribing certain standards which all aspiring practitioners must attain before being granted the relevant licence.[3] It then prohibits under penalty an unlicensed person from either pursuing the relevant occupation or holding himself out as a licensed practitioner. The essential element is a stipulation of circumstances under which the licence may be granted, the licence thus ensuring that the practitioner has at least a minimum level of competence.

As such, there is a substantial limitation upon personal freedom, which is usually justified on the ground that the activity controlled by licensing

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1 The Statutes cited in this article are those of the Tasmanian Parliament, but most have their equivalents in other State jurisdictions.

2 See particularly: W. Gellhorn, *Individual Freedom and Governmental Restraints* (1956). B. Shimberg, B. Essex and D. Kruger, *Occupational Licensing, Practices and Policies,* (1973). D. A. Wallace, Occupational Licensing and Certification: Remedies for Denial, (1972), 14 *William and Mary L.R.* 46. H. P. Monaghan, The Constitution and Occupational Licensing in Massachusetts, (1961), 41 *Boston U.L.R.* 157. W. Gellhorn, The Abuse of Occupational Licensing, (1976), 44 *U. of Chicago L.R.* 6.

3 These standards usually relate to education, experience, and the satisfactory passing of prescribed examinations. Of course, these may be set out in the statute itself, but it is common for a discretion to be left in the body granting the licence to establish them; or for them to be established by regulation.

would be socially harmful if left to be carried out by choice. Occupational licensing is essentially a by-product of the modern Welfare State in which a large number of every-day activities are regulated and controlled by government in the public interest. As new problems arise in modern society, so too are licensing schemes proposed and implemented as a method of control by protecting the health and safety of the public at large.

ADVANTAGES OF THE SCHEME

There has been a considerable expansion of occupational licensing schemes in recent years.[4] The major reason for this would appear to be that a licensing scheme is a very effective method of regulating the conduct of the activity in question. Almost invariably, the licensing statute provides for cancellation or suspension of the licence which has been granted, on proof of violation of the prescribed standards of conduct.

Naturally, in most licensed occupations, the licence will be a valuable right, in fact, a right to earn a livelihood.[5] Cancellation or suspension of the licence can have severe economic consequences for the holder of the licence and the threat of such action will, thus, tend to ensure that licensees will abide by the standards. The likelihood of compliance will also increase where the number of licences originally issued is, for economic reasons, limited; especially if the occupation in question is a financially rewarding one. If such licences are transferable there is no doubt that few risks would be taken by the licensed practitioner. In such circumstances, the ideal of protecting the public from fraudulent or dishonest practitioners is usually achieved.

The main advantage of a licensing scheme, however, is that it is a preventive measure; that is, a measure which prevents the public from being victimized in the first place.

The licensing board established by the statute is here concerned, not with the discipline of a licensed practitioner, but rather with the original applicant for licensure. The aspiring, but incompetent practitioner is thus barred from entry into the occupation in the first place. As Schwartz

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4 In Tasmania from 1974 to 1976 numerous statutes involving occupational licensing were passed, the most important being those controlling valuers (*Valuers Registration Act 1974*), commercial agents (*Commercial and Inquiry Agents Act 1974*), podiatrists (*Podiatrists Registration Act 1974*), hairdressers (*Hairdressers Registration Act 1975*) and psychologists (*Psychologists Registration Act 1976*).

5 Originally, there was a tendency to equate the public occupational licence with a private licence, such as a licence to walk upon another's land which would otherwise have been a trespass; and thus one which could be withdrawn at will by the licensing authority: *Nakkuda Ali* v. *Jayaratne* [1951] A.C. 66; *R.* v. *Metropolitan Police Commissioner*; *Ex parte Parker* [1953] 1 W.L.R. 1150. However, recent cases have taken a more realistic view of the nature of a public licence and have resisted the temptation to import private legal concepts into an area of public law, where licensing serves a much different purpose. See especially *Banks* v. *Transport Regulation Board* (1968) 119 C.L.R. 222; *Fagan* v. *National Coursing Association of S.A. Incorporated* (1974) 8 S.A.S.R. 546.

points out,[6] '[The licensing power] enables the scheme of administrative regulation to be applied, as it were, at the source... Its aim is preventive rather than punitive... it is intended to prevent violation of the statute by denying the opportunity for such violations to those whom the administrative agency deems to be likely to commit such misdeeds'.

For these reasons, occupational licensing schemes grow in favour with legislatures, and more occupations are being subject to this form of restriction, perhaps with insufficient thought being given to the disadvantages of the process.

DISADVANTAGES OF THE SCHEME

The major criticism levelled at these schemes concern the assertion that they tend to protect the members of the licensed group rather than the public at large. It has been argued that the anti competitive aspect of licensing far outweighs the benefits which such a scheme would normally bring to the public at large by protecting their health, safety and welfare.[7]

This monopolistic objective of licensing can be achieved in two ways. First, to protect the economic interests of the existing licensed practitioners, entry into the group may be made time-consuming and expensive and the entrance requirements may be based upon irrelevant factors. The economic benefits of entry into a profitable occupation are restricted to those members already licensed, to the disadvantage of the general public, in the sense that once in, new practitioners tend to support the restrictions. The system thus tends to be self-perpetuating.

Secondly, the licensed group may be protected from within by the licensing board's power to discipline members. Those practitioners who carry out policies contrary to the economic interests of the group as a whole are faced with the threat of suspension or revocation of the licence and consequent loss of livelihood. As Wallace indicates,[8] this provides an effective means for dealing with the price-cutter or any other erring practitioner.

In these respects, modern occupational licensing has some resemblance to the medieval guild system, a fact often noted by writers.[9] That system disappeared naturally when ideas of a man's individual freedom to trade and a philosophy of free competition came to the fore in the seventeenth century. However, today, the expansion of occupational licensing may well tend to provide restraints which inhibit competition in a similar way to those which existed under the guilds, in the sense that access to the group is limited and control is placed in the hands of the group itself.

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6 B. Schwartz, *Introduction to American Administrative Law*, (2nd Ed. 1962) at p. 86.

7 See references in note 2.

8 Wallace, *op. cit.*, n. 2 at p. 49.

9 H. Street, *Freedom, the Individual and the Law*, (3rd Ed. Penguin, 1972) at p. 248. W. Gellhorn, *Individual Freedom and Governmental Restraints*, *op. cit.*, n. 2, at pp. 113-118.

Of course, both methods of control depend upon the possibility of self-regulation of the occupation in question. Where the standards are statutory, then there is less likelihood of such abuse, but where the discretion is left to the relevant licensing board, the composition or membership of that board assumes great importance. The American experience has been that, in many cases, the board or agency concerned with the issue of licences and their enforcement is composed almost completely of members of the occupational group itself.[10] The group is thus able to further its own economic well-being by establishing the criteria necessary for entry into the occupation and by laying down its own regulations as to the code of ethics to be followed by members: the first procedure preventing external competition, the latter internal.

Fortunately, these aspects of licensing do not exist to such an extent in Tasmania, although there is a danger of their being overlooked by the legislature in the enactment of future licensing schemes. At the outset, the number of occupations subject to restricted entry by licensing is nowhere near as large as that in the United States.[11] Moreover, in some cases the standards required for entry into the occupation are not left to a licensing board but are established in the statute itself.[12] Again, in some cases the grounds for which disciplinary proceedings (especially those involving suspension or cancellation) may be brought against a licensed practitioner are clearly established by the relevant Act.[13] The usual provision, however, simply states that the licensing board may cancel or suspend a licence on proof that the practitioner has been guilty

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10 See references, note 2. In particular see Holmer, *The Role and Function of State Licensing Agencies*, (1967) 40 *State Gov't.* 34, 35-36, who points out that in forty-four of the American States members of the state boards of nursing are chosen solely from nominees of the state nursing association (cited in Gellhorn, *Abuse of Occupational Licensing, op. cit.*, note 2, at p. 18).

11 For an excellent account of the widespread use of licensing in the U.S. see Wallace, *op. cit.*, note 2. He notes that such diverse occupations as egg-graders, salesmen, watchmakers, photographers and house painters are all subject to licensing in some States. An examination of the Tasmanian statutes reveals a more traditional approach with medical and legal practitioners, pharmacists, dentists, opticians, nurses, auctioneers and estate agents, and land surveyors all being licensed or registered. Yet there has been a more recent surge of legislative activity in which hairdressers, podiatrists, psychologists, plumbers, commercial and inquiry agents and valuers have all come within the umbrella of licensed or registered occupations. See note 4.

12 See, for example, *Physiotherapists Registration Act 1951*, s. 10. However, the usual practice is for the statute to simply require that an applicant for licensure pass the 'prescribed examinations' or possesses 'prescribed qualifications'. See, e.g. *Valuers Registration Act 1974*, s. 11. These are usually left for regulation, and there is no doubt that members of the licensed group would have a major voice in determining the standards. Moreover, even where the standards are statutory or are left to regulation, the statute still often vests a discretion in the licensing board in the sense that an applicant must often satisfy the board that he is of 'good fame and character'. See, e.g. *Architects Act 1929, s. 12; Land Surveyors Act 1909, s. 7; Veteniary Act 1918*, s. 22; *Radiographers Registration Act 1971*, s. 10. And this is so, even if the applicant has satisfied the primary requirements, e.g. *Valuers Registration Act 1974*, s. 11 (4).

13 E.g. *Nurses Registration Act 1952*, s. 14.

of improper conduct in a professional respect[14] and, thus, a discretion is again vested in the board, which may be open to abuse. This defect may be tempered by the fact that a right of appeal to a superior tribunal or to the courts may be given to a person aggrieved by the decision of the board.[15]

The tendency to appoint persons to licensing boards drawn solely from members of the occupation in question is, likewise, not so prevalent in Tasmania, particularly under the more recent licensing statutes.[16] Fortunately, the general legislative scheme establishing the board sometimes tries to balance the interests of the public at large on the one hand, and the interests of the licensed group on the other. Thus the statute generally provides for membership for representatives of the licensed group (usually elected by the group at large) and, at the same time, also provides for outside representation.[17]

This safeguard, however, may at times be more apparent than real; for, often, the outside representation consists of practitioners in a related field, whose interests are similar, but who may not be threatened by the establishment of a monopolistic practice in the licensed group. Moreover, even where outside representation is necessary under the statute, the majority membership is usually in the licensed practitioners themselves.[18]

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14 See *Physiotherapists Registration Act 1957*, s. 14; *Radiographers Registration Act 1971*, s. 11; *Pharmacy Act 1908*, s. 17A. The statute may also list other grounds for disciplinary proceedings, a common provision being for conviction of a criminal offence, and in some cases the crime need not be related to the pursuance of the occupation in question. See, e.g. *Architects Act 1929*, s. 16. However, other statutes link the offence with the occupation, e.g. *Psychologists Registration Act 1976*, s. 22 (drug related offences).

15 E.g. *Dentist Act 1919*, s. 28. Most occupational licensing statutes in Tasmania provide for such a right of appeal, not only in the case where disciplinary proceedings have been dealt with by the board, but also where an applicant for licensure has been refused the licence. Exceptions occur in the case of second-hand dealers (*Second-Hand Dealers Act 1905*) and pawnbrokers (*Pawnbrokers Act 1857*).

16 In some statutes a licensing board is dispensed with altogether, licence issuance, suspension and cancellation being placed in the hands of a magistrate. A notable instance is the case of commercial and inquiry agents: *Commercial and Inquiry Agents Act 1974*.

17 For a representative sample see: *Podiatrists Registration Act 1974*, s. 3. The Act establishes a Podiatrists Registration Board consisting of the Director-General of Health Services and four other members appointed by the Governor, two of whom are appointed on the nomination of the Australian Association of Chiropodists and two medical practitioners appointed on the nomination of the Minister.
Psychologists Registration Act 1976, s. 3 (five persons appointed by the Governor, two of whom are medical practitioners on nomination of the Minister, and three psychologists).
Opticians Act 1931, s. 11 (two medical practitioners, three certified opticians elected by opticians).
Physiotherapists Registration Act 1951, s. 3 (two medical practitioners, three physiotherapists).
Outside representation is not always the case, however, although it does seem to be a feature of the more recent statutes. For striking examples of cases where almost all control remains in the licensed group, see the *Dentists Act 1919*, where the Board consists of one medical practitioner and five dentists elected by certified dentists (ss. 5-7), and the *Pharmacy Act 1908*, where all members of the board are elected by pharmaceutical chemists (ss. 3-6).

18 See the statutes cited in previous note.

It is conceded that the best qualified persons to govern the practice of the occupation in question are those connected with it, but unless other safeguards are placed in the statute, the possibility still exists for an abuse of self-regulation. It should be possible to ensure, in future licensing statutes, that the proposed scheme is not dominated by the special interests which it is set up to control.

Before examining the alternatives to the licensing process, one other interesting feature of the U.S. experience should be mentioned. It appears that economic control is not the only reason why an occupational group will press the legislature for a licensing scheme.[19] It is claimed that a desire for occupational status can, in fact, be the prime motivation for licensing, even though economic benefits may also accrue.[20] Clearly, speculation as to motives does not assist in determining the policy issues behind the decision whether to license or not, or whether to adopt a lesser form of regulation. The real question is whether the public interest requires regulation. Nonetheless, this desire for professional status in the United States has led to a device known as private certification, where the occupational group has failed to persuade the legislature that licensing is needed, but has adopted a system similar in scope but lacking legislative recognition.

Wallace describes the process thus,[21]

> The fundamental distinction between licensing and certification is that the former is established by private occupational groups. Otherwise the functions of these two institutions are similar. Through the certifying agency, the professional association is able to prescribe educational and ethical qualifications for candidates for certification, administer competitive examinations, and award some hallmark of qualification to the successful. Additionally, the agency always retains jurisdiction to revoke its certificate or diploma for incompetence, 'unprofessional conduct', or other shortcomings. The determinations of the certifying board naturally lack the force of law, but often tend to the same economic and social results as state licensing. The only practical limit on the potential power of the certifying board is its ability to win public acceptance of certification as a mark of quality.

The process described by Wallace, so far, is unknown in Tasmania but it is always a possibility when the State rejects any regulation as a form of control. However, it is clear that the courts will intervene in such circumstances, especially where there has been a breach of the

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19 Wallace, Gellhorn and Monaghan *op. cit.*, note 2, all assert that in the United States the demand for licensing comes from the group itself, and not from the public at large. Thus Monaghan, *op. cit.*, p. 166 'Students of the process unanimously agree that that the prime impetus for the creation of a State board to administer standards for entry into an occupation emanates from the occupational group itself, and not from any widespread public demand. Licensing requirements are not imposed on the group'.

20 See Wallace, *op. cit.*, n. 2, at pp. 49-51, Monaghan, *op. cit.*, note 2, at pp. 167-169.

21 Wallace, *op. cit.*, n. 2 at p. 53.

principles of natural justice. An analogy may be drawn between the situation envisaged and the operations of domestic tribunals in Australia and the United Kingdom. The most striking authority on this point is *Nagle* v. *Fielden*[22] where the Court of Appeal held that a man's right to work at a chosen occupation was a sufficient right to justify the court's intervention where a licence had been refused by the domestic tribunal.[23]

ALTERNATIVES TO LICENSING

There is no doubt that occupational licensing does serve a useful function in society. An obvious example where licensing is needed is in occupations in which the physical or mental health and well-being of the private citizen may be adversely affected.[24] In such circumstances the mere fact that licensing may benefit the occupational group itself does not mean, of course, that licensing should be abandoned as a means of control. Obviously, it is better to prevent avoidable harm than await the consequences and prosecute the culprit (if in fact an offence has been committed) or leave the victim to pursue his remedies in tort or contract.[25]

Nevertheless, there is considerable room for improvement in the enactment of future occupational regulation schemes, even in those cases where licensing is quite clearly necessary. The first question which should be asked, is whether, in fact, licensing is the best method of control. One alternative open to a legislature contemplating such restriction is the device of registration.

Registration may take any one of a number of forms: the simplest form being where the relevant statute provides that a list or register must be maintained of the practitioners engaged in the activity in question, but where no criteria are laid down for the purposes of registration and there

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22 [1966] 2 Q.B. 633.

23 Lord Denning, (ibid.) at p. 646, said as follows: 'We live in days when many trading or professional associations operate "closed shops". No person can work at his trade or profession except by their permission. They can deprive him of his livelihood. When a man is wrongly rejected or ousted by one of these associations, has he a remedy? I think he may well have even though he can show no contract. The Courts have power to grant him a declaration that his rejection and ousting was invalid and an injunction requiring the association to rectify their error'. See also, *Davis* v. *Carew-Pole* [1956] 1 W.L.R. 833; *Pridmore* v. *Reid* [1965] Tas. S.R. 177; *Fagan* v. *National Coursing Association of S.A. Incorporated* (1974) 8 S.A.S.R. 546.

24 In addition to the regulation of dentists, medical practitioners and pharmacists, the Tasmanian statutes also provide for the licensing of those in control of radioactive substances, *Radioactive Substances Act 1954*; and dangerous drugs, *Poisons Act 1971*.

25 See H. Street, *Justice in the Welfare State*, (2nd Ed., 1975) at p. 95. After making a strong criticism of various forms of licensing in the United Kingdom he ends with these words: 'Although I do not favour regulation unless a strong case is made out for it, I accept that great benefits have been conferred on Englishmen by provisions of this kind. If I am critical of some aspects of it, it is simply because I want to make something good even better.'

are no grounds for refusal of registration.[26] Of course, such a scheme would be of little help in guiding a member of the public in his selection of a competent practitioner and would seem to be mainly implemented as a means of collecting revenue.

However, a registration scheme can be more sophisticated than this and is often confused with a licensing scheme.[27] The essential feature of this type of registration is that it does not proceed so far as licensing and, actually stops one step short. The scheme, unlike licensing, does not seek to disbar aspiring practitioners from practising the occupation. The field is, in fact, open for all who wish to participate but a register is kept of those practitioners who have satisfied certain prescribed criteria. In this way, the public interest is protected, not by preventing those who wish to practise (but who cannot satisfy the criteria) from doing so, but merely by ensuring that the public has access to the registration list and by providing a penalty for the unregistered who hold themselves out to be registered.

The advantage of registration over licensing is immediately obvious, for it does not withdraw occupational opportunity from anyone. Nor does it signify a return to a complete *caveat emptor* situation, for, like licensing, it recognizes that, in certain circumstances, the public needs to be protected by regulation of certain occupations. However, it does put the onus on the public by giving the individual who requires the services of a practitioner an element of choice. He may either play safe, as it were, and choose a registered practitioner, or take the risk and be content with a person not registered, but whom he believes to be competent.

A further advantage stemming from such a scheme is that the monopolistic aspects of licensing may be avoided. This again depends on whether a degree of self-regulation is given to the registered group, in the sense that the members of the group determine the requisites for registration. One way of avoiding such a situation is (as already mentioned)[28] for the legislature to stipulate in the enabling statute the criteria for registration, so that determining the issue is usually a simple administrative task. However, even if the statute does leave a discretion in an occupational board to prescribe the relevant qualifications, a registration scheme (unlike licensing) must modify the criteria so set. Naturally, if the standards relating to education or experience are unreasonably high or the entrance requirements are based on irrelevant considerations, most practitioners would not seek to become registered, and the public would be forced to

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26 See, for example, *Apiaries Act* 1932.

27 Street, *op. cit.*, at p. 83 points out that 'many an Act speaks of registration and not of licensing, and yet when one reads the act what poses as registration is in fact licensing'. This is true of the Tasmanian situation. Compare, for example, the *Auctioneers and Estate Agents Act 1959* (licensing) with the *Physiotherapists Registration Act 1951* (registration). Both are in fact, licensing schemes, in the terminology employed in this article.

28 See note 12.

deal with the unregistered. It would seen to be inherent in a registration scheme that entrance criteria must be reasonable.[29]

The legislature is therefore faced with a choice when it believes that some activities need to be regulated in the public interest. It would be unfortunate if it did not consider alternatives to licensing as being more appropriate in particular circumstances. The United States experience with licensing has been an unhappy one and without careful thought could well be duplicated in Australia in the future.

Invariably, it will be thought that licensing is the only possibility in some cases. However, the legislature must ask itself whether the activity sought to be controlled is so dangerous to public health and welfare, that it can *only* be carried out by persons skilled and experienced in the particular activity or by those who possess certain educational qualifications. That is, the potential for danger must quite clearly exist and should not be too remote. If the answer to the question is a clear affirmative, then licensing would appear to be the best solution, for it does tend to prevent harm from being done in the first place. The disadvantage of the registration scheme earlier discussed for these kind of activities is that it is not nearly as effective as a prophylatic measure. Of course, most members of the public would seek the registered practitioner and

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29 Of course, if a registration scheme fails for this reason, there is always the danger that the legislature will then utilize the more restrictive practice of licensing.

Another interesting method of control which combines elements of both the schemes of registration here considered and also some aspects of licensing is that proposed by Gellhorn, *op. cit.* The idea is first put forward by Street in *Individual Freedom and Governmental Restraints,* at pp. 149-150, and further pursued in *The Abuse of Occupational Licensing,* at pp. 26-27. It is there referred to as mandatory certification as opposed to permissive certification. Permissive certification is equated with the scheme of registration mentioned in the text above. The basis of this system is that it involves the use of registration as first mentioned, in the sense that those wishing a licence are registered and licence issuance is automatic. However, practising without the relevant license or holding oneself out as possessing the licence would be made an offence. Complaints against licensed practitioners for incompetence or dishonourable conduct would initially come before an agency or board unconnected with the occupational group, which would have power to initiate proceedings for disciplinary reasons in an appropriate court or special tribunal.

Gellhorn asserts the advantages of such a system as follows: 'A plan of this nature, would, I believe, end the present abuse of licensure that serves selfish interests by constricting occupational freedom. It would recapture the public power now delegated to multiple licensing boards whose members are drawn from and owe allegiance to the occupation they supposedly regulate in the public interest. It would require that licensees be subject to stern discipline, but only after carefully formulated charges, fair hearings, and impartial determinations, untainted by suspicion that the determiners' self-interest has influenced their judgment. It would take away the eligibility of those whose occupational unworthiness could be demonstrated, but would not, as so many licensing laws now do, place artificial roadblocks in the path of work opportunities or squelch career aspirations by treating predictive opinions as final judgments.' *The Abuse of Occupational Licensing,* ibid., at p. 27.

prefer to lessen the risk, but it does not prevent the unskilled or inexperienced from carrying out dangerous occupations.[30]

If licensing is deemed necessary for this reason, then care should be taken in the formulation of licensing statutes to avoid the disadvantages mentioned earlier (as much as possible). First, the statute should provide for outside representation on the licensing board. Secondly, the possibility of abuse of self-regulation could be reduced if the statute itself established the entrance criteria, rather than leaving a discretion in the board or leaving the criteria to be fixed by regulation either by the board or some other agency.[31] It is admitted that this ideal is sometimes difficult to achieve, especially in times of specialization and technological advance. Moreover, it may be administratively more convenient to leave a discretion in the relevant board to modify standards as required. It is also admitted that this would remove from the board the necessity of determining the issue, which could just as easily be performed, say, by a magistrate.[32] It is suggested, however, that administrative convenience is far outweighed by the more important principle that an applicant for a license should not be prejudiced by unfair or unreasonably high admission standards established by an occupational group aimed at protecting its own economic interests.

Thirdly, and dependent upon the foregoing, the statute itself should avoid any tendency to place restrictions upon entry unrelated to the primary question of competence. The determination of value judgments (for example, those relating to character) is always a difficult process and puts the individual very much at the mercy of the determining body, be it a licensing board or a magistrate. Finally, in all cases, a right of appeal to a superior tribunal or the courts from any decision of the board should be given. Fortunately, most modern statutes contain this safeguard.[33] It is suggested that where licensing is deemed necessary, the consequent disadvantages of that process could be minimised if the above factors were taken into account when drafting the licensing statute.

But what of those occupations which do not relate so directly to the public welfare? The first question is whether any regulation is needed at all, and whether the existing civil and criminal law is adequate to protect the public.[34] If the link between the occupation and the public

30 The scheme advanced by Gellhorn, ibid., is inapplicable here for the same reason. This is recognized by Gellhorn who would reserve licensing only for special cases, with mandatory registration or permissive certification operating in activities less injurious to the public. *The Abuse of Occupational Licensing, op. cit.*, n. 2, at p. 25.

31 For example, see n. 12. *Supra.*

32 For example, see n. 16. *Supra.*

33 See n. 15. *Supra.*

34 Glanville Williams, *Control by Licensing,* (1967) 20 *C.L.P.* 81, at p. 102, makes the pertinent point that licensing does not avoid the use of the criminal law. He states: 'It means only that the law has to be used at one remove from the objectionable conduct. Instead of prosecuting for the real evil, the authority prosecutes for what may seem on the face to be the mere technicality of failing to procure a licence.'

welfare is fairly tenuous, then it may well be argued that it would be sufficient to leave well alone and avoid the administrative complexities that regulation (be it by licensing or registration) entails. There may be over-reaction to a few instances of abuse and the imposition of a regulation system may amount to over-protection. It is conceded, however, that in some occupations, there may be a persistent pattern of abuse over a period of time and some regulation is necessary, even though the factors which justify licensing are not present. In these circumstances, the legislature could well look at the alternative of registration schemes as a means of control.

It has been argued that licensing does protect the public in certain circumstances, but it is quite clear that less restrictive forms of regulation can achieve the same purpose without the consequent restraint on occupational opportunity. The tendency to impose licensing may well be the result of an attitude of licensing or nothing. But a real choice clearly exists between licensing and lesser forms of regulation.