

## Regulation Rethought

by Bernie LeBlanc  
October 2016 - No. 210

With the publication of its paper on Right Touch Regulation in 2010, the United Kingdom's Professional Standards Authority (PSA) leapt to the forefront of international thinking on professional regulation. The PSA updated that paper in 2015 as well as publishing another paper entitled Rethinking Regulation that called for a radical overhaul of the regulation of the health and social service professions in the UK.

Last week the PSA published two more papers that advance and apply the earlier ones. The main paper, entitled Regulation Rethought, "suggest[s] how the ideas in its earlier paper Rethinking regulation could put into practice."

### Complaints and Discipline

For example, the PSA observed that a complaints and discipline system that focused primarily on whether a complaint should be referred to discipline would naturally result in mostly "take no action" dispositions. This sort of complaints system is designed to frustrate complainants who expend trouble and energy to make a complaint.

However, the PSA thought the complaints system "should not become a complaints process with the focus on redress or other remedies for people who complain" either. Rather,

Regulators should continue to move towards shorter, less costly and more consensual ways

to close cases. Regulators also need to identify trends, correlations with organisational and human factors and potential risks of harm that should be brought to the attention of healthcare providers, other regulators and improvement bodies to contribute to reducing harms.

To achieve this, the PSA made a number of suggestions including having more complaints addressed at the "local level" by employers, the practitioners themselves and any mediation services available. [In passing, it should be noted that one of the complaints about the regulation of real estate professionals in British Columbia was that the diversion of complaints to local real estate boards was managed by professional self-interest bodies. So any local resolution needs to be carefully structured.]

The main PSA recommendation about revising the complaints process was to make it less adversarial in nature:

We believe that under new legislation there should be a change from the current adversarial approach in [complaints matters] to one which is more inquisitorial, in other words, based more on inquiring into the circumstances of a case. The process should allow for non-confrontational exploration of the circumstances in which alleged misconduct occurred, with opportunities for resolving a case through discussion and agreement, without the need for a formal hearing.

---

#### FOR MORE INFORMATION

This newsletter is published by Steinecke Maciura LeBlanc, a law firm practising in the field of professional regulation. If you are not receiving a copy and would like one, please contact: Richard Steinecke, Steinecke Maciura LeBlanc, 401 Bay Street, Suite 2308, P.O. Box 23, Toronto, ON M5H 2Y4, Telephone: 416-626-6897 Facsimile: 416-593-7867, E-Mail: [rsteinecke@sml-law.com](mailto:rsteinecke@sml-law.com)

#### WANT TO REPRINT AN ARTICLE

A number of readers have asked to reprint articles in their own newsletters. Our policy is that readers may reprint an article as long as credit is given to both the newsletter and the firm. Please send us a copy of the issue of the newsletter which contains a reprint from Grey Areas.

# Grey Areas

## A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

The result could be more remedial resolutions or the imposition of sanctions that did not require a contested discipline hearing.

Perhaps the most radical proposal is to establish a unified adjudicative agency:

There would be particular benefits from shared adjudication across all professions, by a separate tribunal service.... This would reduce variability and would potentially generate cost savings from economies of scale. There would be other benefits such as more straightforward monitoring of performance and statistics, and the opportunity to develop greater expertise of hearing panellists.

Of course, self-regulation no longer exists in the UK, so the implementation of this proposal would be easier there. The professional “buy in” that exists under the self-regulation model has already been removed.

The PSA paper comes on the heels of the Sexual Abuse Task Force report recommending a single adjudicative body for sexual abuse matters for all health professions in Ontario. However, one might question how such a tribunal can assess professional standards and evaluate the nuances of the practice context for multiple professions without descending into a “battle of the experts”. An alternative worth considering is having a common pool of trained (both legally and on recurring issues like sexual abuse) adjudicative chairs available for all Discipline Committees.

### **Public Register and Core Standards**

The PSA recommends that all health and social service professions be included in a single public register managed by one “assurance” body. This public register would include all categories of practitioners who are regulated in any way, including:

- Practitioners who are signed up to be registered upon promising to comply with a core set of standards;
- Practitioners who are accredited through a certification process involving a voluntary body, but are not statutorily regulated; and
- Practitioners who are regulated under a statute.

The PSA described the benefits as follows:

This will make it easier for the public and employers to access and to understand, and together with shared professional standards, should support multi-disciplinary working, individual and collective accountability and team-based regulation. A single register, or initially a single portal, will provide a simple means for the public, employers, commissioners and others to find every registered practitioner, and check that they are licensed.

There is much to be said for having a common public register for all health and social service professions.

The public register would be combined with unified core standards applicable to all practitioners of all health and social service professions:

# Grey Areas

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

We propose that under this arrangement becoming registered would involve signing up to a statement of professional practice, a shared set of core standards that would apply to all health and care practitioners on the single register. The statement of professional practice would define the standards of conduct, behaviour and ethics required of all registrants, irrespective of their profession or occupation.

To read more about these and other recommendations, go to:

[www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)