

Right-Touch Regulation Around the World

by Bernie LeBlanc
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Now it seems timely to learn again from others' experiences of using right-touch regulation. The varied and interesting papers in this publication set out the interesting and varied ways in which different regulators in different sectors, in different jurisdictions have applied right-touch regulation to their particular problems and challenges.

So begins the just-released publication by the Professional Standards Authority of papers from regulators around the world as to how they have applied the principles of right-touch regulation.¹ Below is our eclectic selection of highlights from some of the papers.

¹ The principles of right-touch regulation are set out as follows at the beginning of the publication:

The principles state that regulation should aim to be:

- Proportionate: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- Consistent: Rules and standards must be joined up and implemented fairly.
- Targeted: Regulation should be focused on the problem, and minimise side effects.
- Transparent: Regulators should be open, and keep regulations simple and user-friendly.
- Accountable: Regulators must be able to justify decisions, and be subject to public scrutiny.
- Agile: Regulation must look forward and be able to adapt to anticipate change.

Australia

Representatives of the Australian Health Practitioner Regulation Agency (AHPRA) noted how the recent nature of their legislation enabled AHPRA to apply the principles of right-touch regulation with a particular focus on risk-management. They said:

One of the guiding principles in our legislation is that regulatory interventions through accreditation, registration, notifications or compliance are only imposed if necessary to ensure health services are provided safely and are of an appropriate quality. This sets a high threshold for regulatory intervention, applying regulatory force only where there is an unmanaged risk to public safety.

The United Kingdom

Rick Borges of the Banking Standards Body (BSB) described how this independent, non-statutory membership body was created after the banking crisis of 2008 to promote professionalism and competence within the sector. The BSB, he writes:

... is neither a trade association nor a regulator. It does not represent the industry, and it has no statutory powers. As a membership body, it takes the regulatory framework as a given

The BSB assesses:

... how far its member firms demonstrate nine characteristics: honesty, respect, openness, accountability, competence, reliability,

FOR MORE INFORMATION

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Grey Areas

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

responsiveness, personal and organisational resilience and shared purpose....

The assessment contains qualitative and quantitative aspects: the BSB Employee Survey [36,000 in 2017], interviews with Executives and Non-Executive Directors, focus groups with junior and middle ranking staff and questions to the firm's board.

The BSB then provides reports to its individual members that enable it to engage in continuing quality improvement.

Ireland

Ginny Hanrahan of the Council and Registration Boards (CORU) set out the origin and context of their rather unique structure. Their Council has a professional member from each regulated occupation and a majority of public members. They also have separate Boards managing the education, registration and continuing education of practitioners.

One of the tensions that underscore this structure is balancing consistency with the uniqueness of each profession. For example, the risk-focus of social workers might be described as social injustice while the risk-focus for the radiology professions is radiation safety. An example of this balancing act is having a common *Code of Professional Conduct and Ethics* for all of the professions with some separate, additional provisions applicable to individual professions, if necessary. Similarly, a consistent approach to the issues of confidentiality and client communications is required.

British Columbia

Cynthia Johansen wrote about the 13-year long journey of the College of Registered Nurses of British Columbia from the time it gave up its advocacy role until it was amalgamated with two other nursing organizations. She outlined how the concept of right-touch regulation, namely: "the use of regulatory forces proportionate to the desired outcome" led to a number of significant changes. One was the triaging of complaints on the basis of risk of harm to the public, resulting in significant resources being devoted to the concerns conveying risk. She also described the development of their quality assurance program for practitioners as being consistent with proportionate regulation.

Ontario

Jan Robinson, Registrar and CEO of the College of Veterinarians of Ontario, reflected on the major themes of regulatory reform in decades past (e.g., 1980's: agility in public policy; 1990's: mobility of practitioners; 2000's: governance and accountability). After describing how her regulatory body applied the principles of right-touch regulation, including proposing changes to its enabling statute, she talked about future developments:

While the Professional Standards Authority does speak often in its writings of public confidence, I wonder if it might turn its mind to the links between the right-touch principles and the elements of trustworthiness as articulated by Onora O'Neill. She speaks of trustworthiness as broken into the components of competence, reliability and honesty. If competence in our role as a regulator is based on a strong focus on solving risk-based

problems relevant to our role and in collaboration with other relevant stakeholders, how might steadfastness to this duty be extended to the concepts of reliability and honesty?

[t-source/publications/thought-paper/right-touch-regulation-in-practice---international-perspectives.pdf?sfvrsn=a5b97520_4](https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-in-practice---international-perspectives.pdf?sfvrsn=a5b97520_4)

Irwin Fefergrad from the Royal College of Dental Surgeons (RCDSO) also wrote a paper. He described the experience of having the Professional Standards Authority conduct a review of the regulation practices of the RCDSO. Perhaps most interesting are two examples of how the RCDSO is using the right-touch principles to identify and measure risk. The first example was the hiring of an epidemiologist:

to study patterns and to understand what they reflect about public thinking, regardless of outcome. The data analysis team did a pilot study to create a taxonomy and is applying those categories to a much broader sample of complaints data. We hope to gain insights on how to conduct better education and to drive more effective communications.

The second example was to gather data on narcotic prescribing practices by dentists in response to the opioid epidemic. The analysis of that data indicated discernable success in the RCDSO's communications on the topic.

Conclusion

Space does not permit the discussion of all of the papers. For example, Andrew Charnock's discussion on how the Maori culture has been included in the regulation of occupational therapists in New Zealand is fascinating. The complete publication can be found at:

[https://www.professionalstandards.org.uk/docs/default](https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-in-practice---international-perspectives.pdf?sfvrsn=a5b97520_4)