What is the Public Interest Demand for Openness and Transparency?

Howard Kushner
Kushner Law Group
CLEAR Regional Seminar
Vancouver 2015

The aim of professional licensing and regulatory legislation is to let the public pick a doctor, a lawyer, an accountant et al. without having to fear an imposter, quack, fake, crook, incompetent, predator, uncooperative person or persistent non-performer. Even an astute member of the public has no means to investigate such things.

Zakhary v College of Physicians and Surgeons of Alberta
2013 ABCA 336
Openness & Transparency: How Much is Too Much? – Howard Kushner

Vancouver, British Columbia
May 14, 2015

Self-Regulation

Openness and Transparency is important to a number of interested parties:

- The Public
- Applicants
- Registrants
- Government

Self-Regulation

The Public Interest must not only be protected but seen to be protected

Self-Regulation

Self-Regulation under attack
- member oriented
- member run
- motivated by self-interest
- input regulation, not output regulation
Openness & Transparency: How Much is Too Much? – Howard Kushner

Vancouver, British Columbia
May 14, 2015

Self-Regulation

Sense of community
- set high standard of competence re ethical conduct
- protect the image of the occupational community

True Discipline or Disciplinary Symbolism

Public Interest

Transparency provides information - provides a response to these concerns

Public Interest

Found in legislation but no definition
**Public Interest**

- What a person would choose if they saw clearly, thought rationally, acted disinterestedly and benevolently
  
  Walter Lippmann

- Considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens
  
  Ombudsman, New South Wales, Australia

- Not synonymous with “whatever interests the public”

---

**Transparency**

- The Transparency Train:
  - engineer
  - passenger
  - trapped on the tracks
Transparency

1. The mandate of regulators is public protection and safety. The public needs access to appropriate information in order to trust that this system of self-regulation works effectively.

2. Providing more information to the public has benefits, including improved patient choice and increased accountability for regulators.

3. Any information provided should enhance the public’s ability to make decisions or to hold the regulator accountable. This information needs to be relevant, credible and accurate.

4. In order for information to be helpful to the public, it must be timely, easy to find and understand include context and explanation

5. Certain regulatory processes intended to improve competence may lead to better outcomes for the public if they happen confidentially.

6. Transparency discussions should balance the principles of public protection and accountability with fairness and privacy.
7. The greater the potential risk to the public, the more important transparency becomes.

8. Information available from colleges about members and processes should be similar.

Transparency

Governance Issues

- The importance of the website

Transparency

Discipline Related Matters

- To publish or not to publish
- Citations - Yes
- Complaints - No
- Investigations - No (?)
- Consensual Outcomes?
- Reprimands?
Openness & Transparency: How Much is Too Much? – Howard Kushner

Vancouver, British Columbia
May 14, 2015

Transparency

Anonymized Summaries

- Law Society of BC
- College of Dental Surgeons of BC

Speaker Contact Information

Howard Kushner
Kushner Law Group
hkushner@kushnerlaw.ca
604-259-2288 x 806