Openness and Transparency in Professional Regulation: How Much is too Much?

Toronto, Ontario
March 12, 2015

Openness & Transparency: Can the Public Handle the Truth?
– Bruce G. Matthews, RECO

“A Few Good Regulators”

I want the truth!!!

“A Few Good Regulators”

You can’t handle the truth!!!
Transparency

• No such thing as “too much transparency”
• No downside to the public knowing “how” the regulator does its job
• Plenty of upside - informed participants
• Transparency supports continuous improvement

Transparency con’t

• Transparency is never contrary to the public interest
• Transparency doesn’t create new risks or aggravate existing risks
• Transparency is universal - myriad ways to achieve it - find one that works for you

Openness

• Different story
• Why does most legislation for regulators contain confidentiality provisions?
• How do you determine what is “required in connection with the administration...”?
• Back to basics...
First Principles...

- Why do we regulate?
- Not reasonable to expect the public to assess qualifications of practitioners
- Not in the public interest to allow market forces to weed out substandard players
- Define the problem

Openness con’t

- What “problem” is openness solving?
- How does openness contribute to risk reduction / mitigation?
- Is there a correlation between openness and risk mitigation?
- Openness is not universal

Openness is about Fairness

- Fairness to the applicant or practitioner
- Non-linear scale
- Consider the extreme...
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Transparent but Closed

- 100% transparent - all information about “how” the regulator operates is available
- 0% open - the only information disclosed about specific practitioners is their licence status
- Defensible?

The Openness Spectrum

- Disclose everything, unless there are good reasons not to disclose
- Disclose nothing, unless there are good reasons to disclose
- What constitutes “good reasons” on either side of the coin?

Questions about Reasons

- How might this information assist the public?
- What is the risk that the information will be misinterpreted?
- How might this information be abused?
- Can the information be used unfairly?
Questions about Reasons con’t

• Why does the public want to know?
  - Red herring question
  - The “why” is irrelevant
  - Can’t selectively release information only if it’s being requested for the right reason
  - Information is disclosable or it isn’t - can’t be conditional

“Can” vs. “Should”

• Modern database and network technologies make it easy to make information available
• Just because we can, doesn’t mean we should
• Permitted ≠ Appropriate; Legal ≠ Fair

Consider Push vs. Pull

• Openness can be active or passive
  • Active - the regulator publishes information
  • Passive - the information is only made available on request
Summary

- Be transparent
- Decisions about openness need to be considered very carefully
  - How does it advance your mandate?
  - How does it impact risk / fairness?
  - Document your analysis and rationale

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