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Thoughts on Transparency

- I've come to learn there is a virtuous cycle to transparency and a very vicious cycle of obfuscation. Jeff Weiner
- We live in a culture of destructive transparency. Tina Brown



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Overview

- Ten legal principles that apply to the transparency and openness debate
- Applying risk management principles to:
 - Complaints decisions
 - Policy development

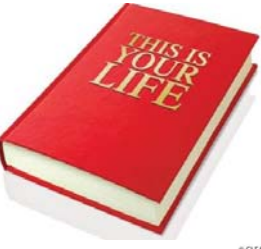


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Principle #1 - Confidentiality

- Statutory duty
 - Usually default position
- Preserve privacy rights of practitioners
- Promote candid policy development
- Prevent disruption of regulatory activities



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Principle #2 - Access to Info

- Exceptions list to confidentiality duty
 - "in connection with the administration of the Act"
- Open meetings / hearings
- Reports
- Circulation duties




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Principle #3 - Process vs. People

- False distinction
- Lots of information about people is public
- Lots of information about regulatory processes are secret
- The confidential / public divide is elsewhere



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Principle #4 - Fairness

- Fair procedure for practitioner
 - E.g., notice, opportunity to respond, impartiality
- Always a balancing act
 - E.g., public hearings
 - E.g., "victim" rights
- E.g., Impact of access on complaints process





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Principle #5 - Substance vs. Form

- Similar rules apply to changes in technology
 - E.g., photocopiers
 - E.g., electronic records
 - E.g., digital signature
- Evolution of registers
- Evolution of on-line harassment laws





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Principle #6 - Impact of Action

- Courts do consider impact of type of access
 - E.g., service of notice of hearing on practitioner
 - E.g., Posting upcoming hearings on reception wall
 - E.g., damages in defamation action





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Principle #7 - Creatures of Statute

- Can only do what statute explicitly or impliedly permits
- Must be consistent with intent of statute
- Concern about enacting policy changes through register by-laws



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Principle #8 - Closely Regulated

- By joining a closely regulated profession, practitioners give up some rights
- Including privacy rights
- E.g., investigations
- E.g., public register



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Principle #9 - Societal Context

- Judges are people
- Courts understand they form part of a larger social organism
- E.g., drinking & driving
- E.g., face coverings
- E.g., end-of-life





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Principle #10 - Public Interest

- Ultimate goal is shared
- Debate is over means
- E.g., is public shaming or peer remediation more effective?
- The whole point of today's discussion



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Risk Management

- Tool for identifying and managing risks and opportunities
- Best used at an organizational level
- Can be used for individual issues




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Risk to What?

Need to identify goals of the regulator:

- Protect the public / serve the public
- Visibly good reputation
- Reasonableness (especially to the members)
- Efficiency




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Risk to Whom?

Whose perspective?

- Harm to Regulator
- Harm to clients
- Harm to broader public
- Harm to individual practitioners
- Harm to the profession as a whole



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Identify Risks

- Gather data
- Ask what could possibly go wrong
- Hazard, Operational, Financial and Strategic risks
- Multiple ways (e.g., research, group work)

The slide features a cartoon illustration of a person sitting in a bathtub. The bathtub is overflowing with water, and a drain plug is visible. The person appears to be looking at the water level. The slide includes the CLEAR logo, the text 'Council on Licensure, Enforcement & Regulation', and the website 'www.clearhq.org'.

Identify Risks - Open Complaints


- Cost and lawsuits
- Remediation less effective
- More procedural fairness
- Less support in profession
- Changed behaviour
- Public can protect selves
- More reports of concerns
- Public confidence/survival

The slide features a sign that reads 'COMPLAINT DEPARTMENT' in a stylized, blocky font. The sign is mounted on a wall. The slide includes the CLEAR logo, the text 'Council on Licensure, Enforcement & Regulation', and the website 'www.clearhq.org'.

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Identify Risks - Transparent Policy Development

- Less candour
- Misconceptions arise
- Use in legal challenges
- More scrutiny
- Skewed participation
- More participation
- More feedback
- More information



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Assess Risks - Open Complaints

- Cost and lawsuits
- Remediation less effective
- More procedural fairness
- Less support in profession
- Changed behaviour
- Public can protect selves
- More reports of concerns
- Public confidence/survival

High Severity Low Frequency	High Severity High Frequency
Low Severity Low Frequency	Low Severity High Frequency

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High Severity Low Frequency	High Severity High Frequency
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Treat Risks - Open Complaints

- Avoid • Only dismiss/refer
- Modify • Explain, explain
- Transfer • Buy insurance
- Retain • Do nothing & wait
- Exploit • Super website

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Treat Risks - Transparent Policy Development

- Avoid • No new policies
- Modify • Train participants
- Transfer • Buy insurance
- Retain • Current approach
- Exploit • Interactive, all media

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Review Risks - Open Complaints

- Implement, monitor, review, begin cycle
- Add to risk register
- Collect data on
 - Hits on website page
 - Increase in reports
 - Recidivism rates
 - Impact surveys



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Review Risks - Transparent Policy Development

- Implement, monitor, review, begin cycle
- Add to risk register
- Collect data on
 - Participation rates
 - Types of participants
 - Media response
 - Quality of decision-making



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Conclusion

- Transparency and openness are complex and multi-faceted
- It is also critical to the relevance / survival of self-regulation
- Use of risk management tools can help



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