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**What is the Public Interest Demand for Openness and Transparency?**

**Howard Kushner**  
**Kushner Law Group**  
**CLEAR Regional Seminar**  
**Vancouver 2015**

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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**

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### Self-Regulation

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

- The Public
- Applicants
- Registrants
- Government

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### Self-Regulation

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

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### Self-Regulation

Self-Regulation under attack

- member oriented
- member run
- motivated by self-interest
- input regulation, not output regulation

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### 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



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### Public Interest

Transparency provides information - provides a response to these concerns



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### Public Interest

Found in legislation but no definition



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### 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"



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### Public Interest

- One element of Public Interest is due process
- Due Process - has a transparency component
- Transparency -> relates to disclosure of information



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### Transparency

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



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## 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.




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## Transparency

- 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




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## Transparency

- 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.




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## Transparency

- 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.




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## Transparency

### Governance Issues

- The importance of the website




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## Transparency

- Discipline Related Matters
- To publish or not to publish
  - Citations - Yes
  - Complaints - No
  - Investigations - No (?)
  - Consensual Outcomes ?
  - Reprimands ?




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## Transparency

Anonymized Summaries

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




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**KUSHNER**  
LAW GROUP




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