




PHILADELPHIA 2018
CLEAR's Annual Educational Conference
September 26-29, 2018

**No Longer Fit for Purpose:
Changing the Regulation of Professions in Canada**



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Major Themes of Change


- Regulatory oversight
- Governance
- Transparency






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Lots Happening Across Canada



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Evidence Brief

Modernizing the Oversight of the Health Workforce in Ontario

21 September 2017

Dialogue Summary

Modernizing the Oversight of the Health Workforce in Ontario

21 September 2017




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PROFESSIONAL RELIANCE REVIEW
The Final Report of the Review of Professional Reliance in Natural Resource Decision-Making





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A legislation and governance review conducted for Engineers and Geoscientists British Columbia

June 2018

professional standards authority

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**REPORT of the
INDEPENDENT ADVISORY GROUP**
On Conduct and Practices in the *Real Estate Industry* in British Columbia
// JUNE 2016




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Final Report: 


**A vision
for the
future**

Leading in Regulatory
Governance
Task Force



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EDMONTON JOURNAL NEWS OPINION SPORTS BUSINESS ARTS LIFE CAREERS OBITIS

Alberta doctors who commit sexual abuse to face tougher sanctions

KEITH GEREIN Updated: May 28, 2018



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Other Reports - Too Numerous to Mention

- Sexual Abuse Task Force (SATF) report in Ontario
- Québec review of the Ordre regulating professional engineers
- Dodek and Alderson paper on Risk Regulation for the Legal Profession

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Regulatory Oversight

- In addition to Ministry, courts, appeal tribunals & Fairness Commissioner
 - NB Ontario already has Delegated Administrative Authorities
- McMaster:
 - Structure: Combine regulatory bodies
 - Who: Independent agency like the Professional Standards Authority
 - Criteria: Risk-based, competencies, performance measures (Darrel to address)



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Regulatory Oversight

BC Reliance Review:

- Greater government involvement in defining public interest & setting standards
- Regulatory initiatives should not require membership approvals
- Natural resources regulators should have one oversight body and should report through one Ministry



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Regulatory Oversight

BC Independent Advisory Group:

- Independent oversight office that can review individual decisions and conduct an annual effectiveness assessment



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Regulatory Oversight


SATF:

- Remove sexual abuse matters from regulators, use centralized, independent agency
- Resulting amendments permit government to “clarify” how the regulator is required to perform its functions related to sexual abuse




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Regulatory Oversight



News · Canada

The 'radical paradigm shift' that's changing Ontario's oversight system for health professionals

There have long been calls for major reform of Ontario's oversight system for health professionals. Now some of the loudest calls are coming from those inside the system.



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Governance

McMaster:

- Combining regulatory bodies (implies no longer majority professional control)
- Greater involvement of citizens, including content of competencies
- Silent on structure and selection of governing Boards



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Governance

BC Reliance Review:

- Merit based selection
- Mandatory Board training
- Significant proportion of public members



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Governance

BC / PSA Review:

- Public members should be 50% on Board (and higher on committees)
- Reduce Board from 17 to a more manageable number
- Rigorous merit-based selection process
 - Ensuring a mix of skills and experience
- Enforceable Code of Conduct



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Regulatory Oversight

BC Independent Advisory Group:

- Board have 50% public representations
 - Public members be selected on basis of merit
- Elected Board members eligible for a second term



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Governance

CNO Vision 20/20:

- Reduce Council from 37 to 12
- Half would be public members
- Selection based on experience, knowledge, and skill (by regulator)
- Boot camp for candidates
- Use of advisory bodies
- External, public evaluation every three years



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Governance

SATF:

- Resulting amendments permit government to make regulations re committee structure
- Board structure still “under consideration”



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Governance

the star.com

News · Canada

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Transparency

The three “P’s” of transparency:

- Practitioners
- Process
- Public inclusion in decision making



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Transparency

McMaster:

- Focused on citizen participation in developing competencies and performance measures
- Including public access to them



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Transparency

BC Reliance Review:

- Also supported citizen participation in developing competencies and performance measures
- Including public access to them
- Notes that Freedom of Information approach is unwieldy and urged greater use of online information



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Transparency

BC / PSA Review:

- Generally commended the EGBC for its transparency but recommended that Board minutes include not just the decisions, but also some details of the discussion



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Transparency

BC Independent Advisory Group:

- Public education on professional expectations
- More information about complaints and discipline process and outcomes be placed on website



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MEDICAL DISORDER, PART 2

CANADA'S MEDICAL WATCHDOGS KNOW MORE ABOUT BAD DOCTORS THAN THEY ARE TELLING YOU

The Star had to go to Washington state to find out why a doctor was sanctioned in Ontario.

By Rachel Mendleson, Diana Ziomisic, Robert Cribb and Marco Chown Oved

Data Analysis by Andrew Bailey

May 2, 2018



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What Does the Future Hold?



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Links to Reports

- <https://www.mcmasterforum.org/find-evidence/products/project/modernizing-the-oversight-of-the-ontario-health-workforce>
- https://engage.gov.bc.ca/app/uploads/sites/272/2018/06/Professional_Reliance_Review_Final_Report.pdf
- [https://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-legislation-and-governance-for-engineers-and-geoscientists-in-british-columbia-\(june-2018\).pdf?sfvrsn=b2d7220_5](https://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-legislation-and-governance-for-engineers-and-geoscientists-in-british-columbia-(june-2018).pdf?sfvrsn=b2d7220_5)



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Links to Reports

- https://issuu.com/realestatecouncilofbc/docs/iagreport_june2016?e=26447547/42259717
- <http://www.cno.org/globalassets/1-whatiscno/governance/final-report---leading-in-regulatory-governance-task-force.pdf>



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Where do we go from here? The Regulatory Roundabout



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Lessons from a long time legal regulator



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Competing and Conflicting Demands

- Public expectations
- Threats from government
- Member dissatisfaction
- Governance issues including a decline in member participation
- Technology
- Failure to collect and use data




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McMaster University | McMaster HEALTH FORUM

EVIDENCE >> INSIGHT >> ACTION



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The Existential Threat

- For those who rest on their laurels of past success
- Coming from inside and outside
- From members of the profession, scholars and governments
- Concerns about the 'who, what, when, where and how' of regulation



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The Purpose of Regulation



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Regulatory Objectives

1. Act with independence and integrity
2. Maintain proper standards of work
3. Act in the best interests of their clients
4. Comply with their duty to the court to act with independence in the interests of justice
5. Keep affairs of clients confidential

-Solicitors' Regulation Authority



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Triple P Regulation

- **Proactive. Principled and Proportionate**

- Address matters **before** they become problems
- Focus on **outcomes** rather than actions that must or must not be taken.
- Become involved only in those areas where there is a demonstrable proof the regulation will benefit the public.



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Poll Question - Proactive Regulation

Identify the most significant proactive initiative you have in your regulatory toolkit.

'None' is an acceptable answer



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Regulation and RISK

- Rules often have little to do with the real reasons for regulation
- Rules, codes and standards were generally not designed to minimize harm to the public
- Many rules are hierarchical, often class and gender-biased, and designed to preserve a status quo.



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RISK BASED APPROACH TO REGULATION

1. Clarify the risks to achieving regulatory objectives and the exposure to them.
2. Demonstrate the most significant risks, what controls can address them, and that these actions are proportionate and effective
3. Governance is in place to escalate risks as appropriate and effective management of risk.

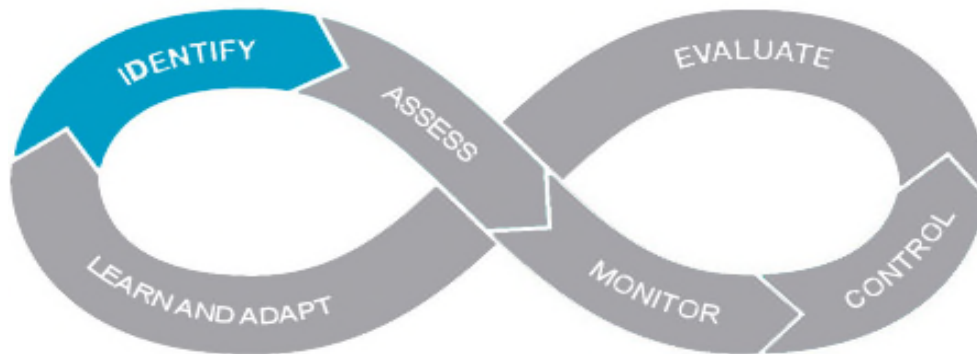


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The Continuum of Risk Analysis



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Risk Approaches

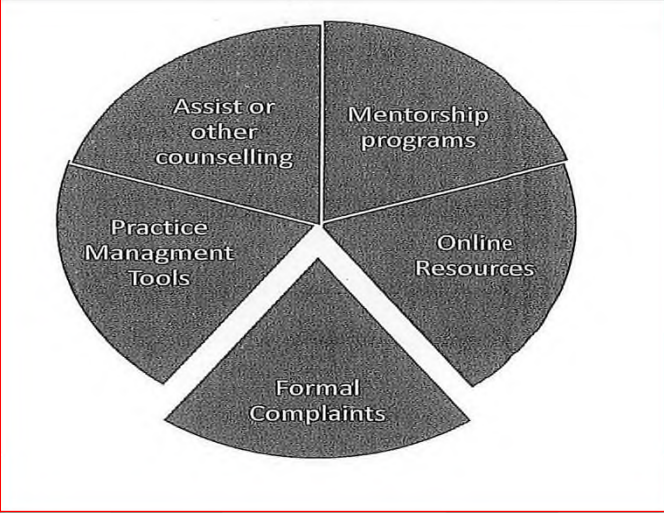
- Use a wide range of data to shape an appropriate response to information coming to the regulator's attention
- Move from traditional hard nosed approach
- Empower staff for early decision making
- Bring flexible and proportionate responses to the file






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Given that most complaints raise quality of service or minor behavioral issues, this risk approach allows for a purposive and focused remedial or rehabilitative approach.

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Risk Approaches

- Use a wide range of data to shape an appropriate response to information coming to the regulator's attention
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Outcomes Focused Regulation

- Demonstration of the nature and quality of regulation - Ties to the objectives for regulation
- How it works
- What it achieves



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Why measure ?

... most research does not find that licensing improves quality or public health and safety.

- *OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS* - July 2015 -
The White House



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Why measure?

Policymakers, scholars and opinion leaders left, right and center are increasingly recognizing that licensing comes with high costs—fewer job opportunities and steeper prices— and does little to improve quality or protect consumers.

- - License to Work, A National Study of Burdens from Occupational Liscensing, 2nd ed



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Poll Question - Outcomes measurement

You have in place an effective means to measure and report on the impact of your professional regulation

1. Yes
2. No



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Legal Services Regulation Outcomes

Lawyers and legal entities:

- provide competent legal services.
- provide ethical legal services.
- safeguard client trust money and property.
- provide legal services in a manner that respects and promotes diversity, inclusion, substantive equality and freedom from discrimination.
- provide enhanced access to legal services.



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Outcome Focused Regulation(OFR)

Designed to enable regulated professionals to:

- put clients first, where this doesn't prejudice the
- public interest
- achieve the right outcomes for clients

OFR requires flexibility in regulation

OFR is a move away from prescriptive rules wherever appropriate



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**The regulator, while
remaining an enforcer, is less
of a police officer and more of
a traffic cop!**



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Conclusion



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**No Longer Fit for Purpose:
Changing the Regulation of Professions in Canada - What is the role of government?**



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Regulating in the Public Interest

- Regulation is only legitimate if it serves the public interest
- Government has a central role in determining the public interest and ensuring regulators are meeting it





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Evolving Legislation

- **Pre-1990's: The *Health Disciplines Act***
 - Monopolistic and profession-driven
 - Limited role for government
- **1990's: *Regulated Health Professions Act (RHPA)***
 - Delineates roles for the Minister and rights of patients
 - Gives the public a direct but minority role through the appointment of public members to councils
 - Grants broad powers to the Minister to intervene in regulatory affairs to protect the public interest

Progress...



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Reactionary Approach to Oversight

- Role of Colleges has been delegated by government, yet regulators have been perceived as independent
- Government has rarely intervened in college affairs
 - Ministerial powers to request information or compel action have been used infrequently, usually during or in the aftermath of a crisis
 - Reliance on regulators to voluntarily provide information but they are shielded by a 'cone of silence'



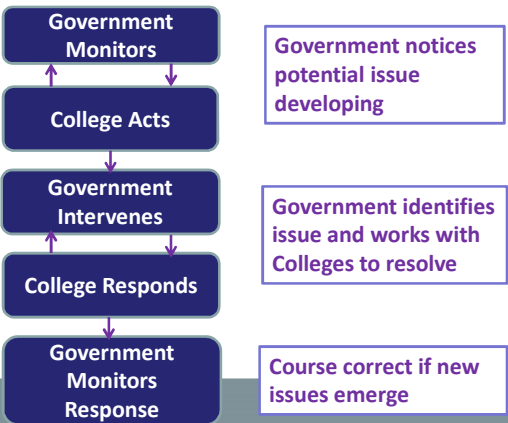
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From Reactive to Proactive

Proactive Approach:




- Government is ultimately accountable for province's system of professional regulation
- The government should be actively mediating between the potential competing interests of professionals and the public




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Why Should Government Have a Role?

- Regulation in the public interest is based on both evidence (what is objectively true) and societal values
- As the representative for the public, the government is vital to determining and achieving balance between evidence and values
- Responsive (not more) regulation.



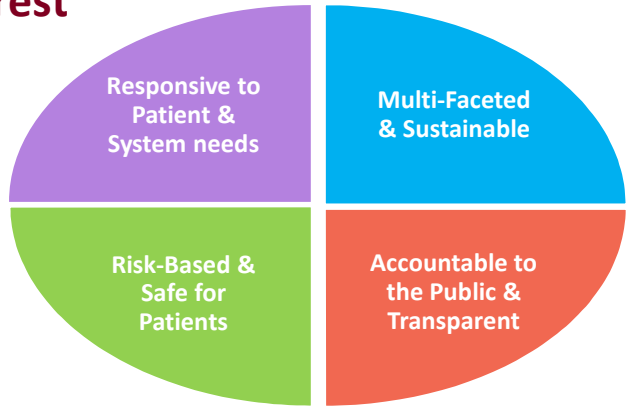
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(Re)Defining The Public Interest

- Government is using the tools at its disposal to determine the public interest (e.g McMaster Health Forum)



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(Re)Defining The Public Interest

- Ontario is moving toward greater use of performance measurement and management to ensure the public interest values is being met



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Conclusion

- Ensuring that regulation in the public interest is the responsibility of government as the representative of the people
- Government is accountable if regulators are not acting in the public interest
- It is necessary to have a clear definition of the public interest and measures of performance



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