Can a profession lose the privilege of self-regulation?

Claude Balthazard, Ph.D., C.Psych., CHRL
Posted on LinkedIn September 19, 2017

To be clear, that a profession loses the privilege of self-regulation is a very infrequent occurrence, but when it happens it is a dramatic event for the profession.

We need to distinguish between regulation and self-regulation. The reason why the Legislature will regulate a profession is that the practice of the profession poses some risks to the public that need to be managed. The reason why the Legislature will delegate self-regulation authorities to a professional regulatory body comprised of members of the profession is that the Legislature trusts that the profession is capable of putting aside the self-interests of members of the profession and regulate the profession in the public interest.

The Legislature may deregulate a profession when it decides that the practice of the profession is no longer considered to pose any significant risk to the public or that there are better ways of managing the risks to the public than to regulate practitioners. Naturopathy remains one of the only professions ever to be deregulated in Canada. In the 1950s naturopathy was deregulated in the province of Alberta, but re-regulated in 2009. In Ontario, naturopathy was recommended for deregulation in the 1970s and 1980s. As it turned out it was not deregulated but was only included under the Regulated Health Professions Act, 1991, in 2007.

On the other hand, the government will intervene when it loses confidence in the ability or willingness of the professional regulatory body to protect the public interest. In this scenario, it is not that the risks to the public have disappeared, the public is still in need of protection. Sometimes, the Legislature does
not lose confidence in the ability of the profession to regulate itself but in the governance and management in place at the time. In this situation, the government will place the professional regulatory body under trusteeship until it is able to sort out its issues and return to self-regulation. On the other hand, the Legislature may believe that the problems are more structural and intractable. In this situation, the Legislature may place the profession under direct regulation where the government will take over the regulation of the profession.

This why professional regulatory bodies are always concerned with the level of public confidence in their ability or willingness to protect the public interest. It is the visible aspects of regulation that drive the public confidence in a profession and its regulatory body. Although the registration and certification and quality assurance processes likely contribute more to the protection of the public than complaints and discipline, in the eye of the public it is the handling of misbehaviour on the part of regulated professionals that is most salient. Being seen not to do anything (or doing too little) when action was expected seems to get professional regulatory bodies in trouble the most.

Professional regulatory bodies have their work cut out for them. There are many in the public and the media that have little or no confidence in self-regulation believing that professional regulatory bodies will have more concern for preserving the image of the profession and protecting their members than protecting the public. Looking at stories in the media, the following themes come up repeatedly in regards to the failings or perceived failings of professional regulatory bodies:

- ‘being asleep at the switch’—taking a passive approach to regulation, not to go looking for problems, not devoting adequate resources to effectively monitor professionals under regulation;
- ‘turning a blind eye’—not acting when problems surface, looking the other way when there are signs that there may be issues, hoping that the problems will go away on their own,
- ‘sweeping things under the rug’—acting to make problems go away without dealing with them, lacking transparency,
- ‘giving slaps on the wrist,’ ‘going soft’ on members of the profession by being lenient; being reticent to discipline members for serious misconduct.

For professional regulatory bodies, to be seen as promoting and protecting the public interest is nearly as important as promoting and protecting the public interest in the first place. The continued existence of the professional regulatory body may depend on it.

“For professional regulatory bodies, to be seen as promoting and protecting the public interest is nearly as important as promoting and protecting the public interest in the first place.”