As with many important terms, legislation does not provide exact definitions. For instance, the Registered Human Resources Professionals Act, 2013, does specify what governing and regulating the practice of members and firms must include—it must include the establishing, maintaining, developing and enforcing standards of qualification, standards of practice, standards of professional ethics, and standards of knowledge, skill and proficiency regulating the practice, competence and professional conduct of members of the Association and firms, but what else does it include? And are there any activities that are excluded?

Alternately, one could define professional regulation as any activity which involves the exercise of authorities delegated by law, but this definition would be too narrow as there are many things that professional regulatory bodies do that do not involve the exercise of authorities delegated by law.

One issue is that, despite the specific activities listed in the objects and specific authorities delegated by law, what defines regulation is the intent or objective rather than specific activities. One could offer the following definition of professional regulation: “Anything and everything that is done with the genuine intent of promoting and protecting the public interest by reducing, suppressing, mitigating or eliminating harms or potential harms stemming from the practice of a profession.”

What makes the picture complicated is that some activities or initiatives undertaken with the genuine intent of promoting and protecting the public interest can also be undertaken with other purposes or intents in mind. Consider the simple webinar, for example.

A professional regulatory body could offer a webinar because it had identified a specific risk to the public and believed that an education initiative was the best approach in this instance to reduce the risk
of harm to the public. A professional association could offer a webinar as a service to its members. A firm offering services to the profession could offer a webinar as part of its marketing efforts. A for-profit training firm could offer a webinar as a profit generating part of their business. All webinars but with different intents.

Is conducting a webinar a regulatory activity? Can be, depending on the intent. There are many other activities such as certification that could be regulatory or not depending on the intent.

“But any definition based on intent introduces a certain ambiguity as to the true intent. A report published by the Institute of Chartered Accountants of England and Wales (ICAEW) put it as follows:

“Indeed, there is academic evidence to support a presumption that invoking the public interest is a smokescreen to disguise self-interested action, whether deliberately or subconsciously. 1”

The idea being that professional regulatory bodies could at times claim to be doing something in the public interest when, in fact, the true intent of motivation is something different. As noted above, this is not always conscious intentional deception. The classic example here is regulatory capture, where a professional regulatory body begins to act in the interests of the regulated professionals instead of the public interest.

The blurriness comes from the fact that activities undertaken with the intent of promoting and protecting the public interest may have beneficial impacts for members; it is also the case that an activity undertaken for the benefit of members can have beneficial impacts for the public.

To some extent, a definition of professional regulation based on intent places the matter in the eye of the beholder—what many call ‘the sniff test.’ Professional regulatory bodies need to be extra careful when a policy, decision, or action is widely seen to be either self-serving or in the interests of the members rather than in the interests of the public.

So a definition of professional regulation based on intent does have some ambiguities and may be open to either intentional or unintentional manipulation, but it does work better than a definition based on a hard and fast list of things that professional regulatory bodies do and don’t do. Of course, there are things that professional regulatory bodies must do, as specified in enabling legislation, and there are things that professional regulatory bodies should not do, such as anything that falls outside the statutory objects of the organization, but there are other activities that a professional regulatory body could or even should do that are in between.

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The key here is that intent of promoting and protecting the public interest by reducing, suppressing, mitigating or eliminating harms or potential harms stemming from the practice of a profession be genuine and demonstrably so.