

Understanding Professional Self-Regulation in British Columbia

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Anyone reading the newspaper might be confused by the references to different organizations that represent the same group of professionals. For instance, doctors in British Columbia belong to the BC Medical Association (BCMA) and also to the College of Physicians and Surgeons of BC. Lawyers belong to both the Law Society of BC and the BC Bar Association, while nurses belong to the College of Registered Nurses of BC (CRNBC) and to the BC Nurses Union (BCNU). These and other professions generally have two distinct bodies, an advocacy body and a self-regulating professional body, that are concerned with their work. In some professions, membership in the advocacy body is voluntary while in others, it may be compulsory depending on the employment arena.

An advocacy body, for example the BC Medical Association, the BC Bar Association, and the BC Nurses Union, is concerned with promoting the financial remuneration and working conditions of its members, defending individual members of the profession or negotiating salary and working conditions with an employer or government. A self-regulating professional body, for example, the College of Physicians and Surgeons of BC, the Law Society of BC or the College of Registered Nurses of BC is concerned with licensing members, ensuring the quality of professional competence and acting to discipline members for misconduct. An advocacy body focuses on the welfare of its members while a self-regulatory body is responsible to the public and to the welfare of the profession as a whole. The existence of two separate bodies is made necessary by the potential conflict of interest that can occur when an advocacy group is also entrusted with a public interest mandate.

Defining Self-Regulating Professions

Self-regulating professions or professionals are defined in different ways. Two characterizations are provided below.

Ryan and Cooper (1988), in *Those Who Can, Teach*, pages 477-478, give self-regulating professions the following characteristics.

1. A profession renders a unique, definite and essential service to society – only people in the particular profession render the service and the service rendered must be considered so important that it is available to all people in a society. For example, only lawyers practice law, medical doctors practice medicine and accountants practice accounting.
2. Relies on intellectual skills in the performance of its service.
3. Has a long period of specialized training.
4. Both individual members of the profession and the professional group enjoy a considerable degree of autonomy and decision-making authority. Professional groups regulate their activities rather than having outsiders set policies and enforce adherence to standards.
5. A profession requires its members to accept personal responsibility for their actions and decisions.
6. A profession emphasizes the services rendered by its partners more than their financial rewards.
7. A profession is self-governing and responsible for policing its ranks.

8. A profession has a code of ethics that sets out the acceptable standards of conduct for its members.

Michael Doherty's description of a professional highlights the pact that professionals make with society.

[Professionals are] those who are willing to accept the honour, status and other benefits of the designation [of professional] in exchange for which they agree to place the welfare of those whom they serve foremost and to avoid any conflicting biases of confounding relationships. [Emphasis added.]

Michael Doherty, *Privacy and Access to Information Issues: Self-Governing Professions*, BC Public Interest Advocacy Centre

Each of these characterizations of a self-regulating profession provides a slightly different focus than the other. It appears, however, that there are some core characteristics of what constitutes a "profession." A close read of the different definitions suggests that a recognized profession has the responsibility, legally and morally, to take leadership in the areas of:

- qualifications and competence, both pre-certification and once in practice
- control of those who may enter or remain in the profession
- definition of the nature of the work
- ethical standards and rules of conduct
- accountability of the profession to the public

How Self-Regulating Professions Work

Governments are elected by citizens to carry out the business of a municipality, province or country in the best interest of the citizens. In Canada, provincial governments have the authority to regulate work, including the work of professions. Legislation in British Columbia, such as the *Labour Relations Code*, or the *Employment Standards Act*, directly defines the roles and responsibilities of employees and employers in various situations. However, governments realize that, in order to provide rules and regulations relating to the work of certain professions, they would require detailed theoretical knowledge as well as experience within the profession. The British Columbia Legislature has therefore enacted laws that give dozens of professions the ability to regulate themselves, albeit with some restrictions. Statutes in BC, such as the *Legal Profession Act* and the *Health Professions Act*, describe the extent to which the government gives over its regulating function to the legal, medical and nursing professions. Government accountability to the public is therefore transferred to the self-regulating profession, even though the boards of self-regulating professions are not elected from the public at large.

*A chart titled **Legal Delegation of Authority and Responsibility in Self-Regulating Professions** illustrates the delegation of authority and can be found on the College website at www.bcct.ca.*

In the self-regulating professions, decisions about competence to practice the profession and the conduct that is expected of a professional are made by members of the profession along with members of the public who sit with professionals on a self-regulating board. The reputation of a profession is dependent on how well a professional body exercises the power of admission and removal from the profession. The public expects that those professionals who do not practice competently or who conduct themselves unprofessionally will be dealt

with in a manner that protects the public. How a professional body acts to remove incompetent or irresponsible members is the litmus test of legitimacy for the public.

It is the need to avoid conflicting biases that leads logically to the development of two different bodies that are concerned with the work of professionals, one to care for the individual members and one to care for the public interest. The self-regulating professions must therefore act in the public interest even when that might mean that the action, for example removing a license to practice as an outcome of disciplinary processes, is not necessarily in the best interest of an individual professional. The processes and decisions of self-regulating organizations can be reviewed by the courts. When board members make decisions that affect the ability of individuals to practice a profession, the decisions must be made, and be seen to be made, fairly, impartially, independently and without bias. The courts can overturn decisions of professional boards, and even replace the decisions of the board with their own if they find the decisions are flawed.

The legislation for each profession creates a governing board on which both members of the profession and lay persons serve. Elected members of boards are not intended to be democratically representative of the constituents who place them on the board. Appointed members of a self-regulating board must be independent from government and elected members must also be independent of their constituents. This seems to be antithetical to the notion of elections in a democracy, yet makes sense in light of the role of self-regulating bodies. Even though the public does not vote to elect members to a board, board members must act in ways that represent the public at large. All board members are required to uphold and implement the acts that created them and to do so in ways that are independent of those who elect or appoint them.

Elections and appointments to self-regulating boards are made for a different purpose. Those who are elected from the members of the profession should represent the best of the profession. They should bring to the board table the knowledge of the practice of the profession in all its variations so that the regulation of the profession is informed by the actual work of professionals. When professionals elect a colleague to the board of their respective professional body, they are doing so in order to ensure that experienced and respected members of the profession will be acting on behalf of the profession in the public interest and not on behalf of individual members. Although there is no need for proportional representation, there is a need for representation from a wide variety of practitioners – those who perform different duties within the profession. A professional board charged with regulating lawyers or doctors would not be well served if all the elected members of the board practised in the same branch of the law or medicine such that the Law Society had only real estate lawyers or the College of Physicians and Surgeons had only dermatologists on their boards. Rather, all professional boards benefit from a range of knowledge and perspectives that inform the decisions of the board.

Lay people are appointed to boards to bring the perspectives of the public, particularly as they represent clients who may interact with the profession. While both elected and appointed members of a board must act in the public interest, the professionals may have difficulty in ascertaining when professional interest is not aligned with the public interest. Appointed members of a board help to identify the perspectives and opinions of the public and to hold the profession accountable. Their presence on professional boards is critically important to the confidence that the public has in the profession.

It may be argued that the more a profession interfaces with, and is crucial to, the public, the more public oversight on professional boards is likely needed. Professional foresters interact with the public infrequently. Many members of the public may never work directly with a lawyer. Most of us interact with physicians regularly but infrequently. However, every person in a society has likely been in contact with educators from the time they are five until they graduate at seventeen or eighteen. Society, through parents, hands over its children to the care of educators for six or seven hours a day, five days a week, 40 weeks a year for 13 years. The interest that parents, the community and the public have in the regulation of the teaching profession is far-reaching.

Regulations Governing Self-Regulating Professions

The types of rules that govern different self-regulating professions in BC vary from one self-regulating profession to another, but in general there are similarities. As a method of ensuring the competence and conduct of members, most professions accept complaints directly from the public. Most professions test applicants' knowledge before granting them a license and most provide for a way to monitor the competence of professionals through programs of continuing education and recertification. Further, most programs that educate professionals in BC are accredited through a provincial or federal accrediting agency.

*A summary of the regulations of most of the self-regulating professions in British Columbia can be found at www.bcct.ca, in a chart titled *Comparison of Self-Regulating Professions in British Columbia*.*