

November 19, 2024

Modernizing Professional Regulation is a Worthwhile Goal

By: Collin May

Matter Commented On: Review of Alberta Professional Regulation

Recently, more than one commentator has dismissed the Alberta government's recent promises to reform professional regulation, including our own regulator, the Law Society of Alberta, as little more than grievance politics (see Shaun Fluker's comment, [here](#)). However, the need to modernize Canada's rather dated professional regulatory regime, with its excessive emphasis on self-governance, has been evident to many of us for a while now.

[While the Jordan Peterson case receives much of the media attention](#), there are several cases where Canadian professionals have been harmed by professional regulators going beyond their mandate to protect the public, even leading to harm to both the regulated member and the public interest.

This was the case in Ontario when that province's law society pursued Joseph Groia for his alleged incivility (*Groia v Law Society of Upper Canada*, [2018 SCC 27 \(CanLII\)](#)). It was the case in Saskatchewan when the regulator for registered nurses disciplined [Carolyn Brost Strom](#) for publicly speaking out about the palliative care her grandfather received at a facility in his hometown (*Strom v Saskatchewan Registered Nurses' Association*, [2020 SKCA 112 \(CanLII\)](#)).

It was the case here in Alberta when the College & Association of Registered Nurses of Alberta (CARNA) investigated Rhonda Andrus in 2017. Andrus was an off-duty palliative RN advocating for her father's care following her concerns with his morphine dosing. Ultimately, the mistakes were wrongly blamed on Andrus, resulting in an investigation by CARNA against her. The investigation cleared Andrus and other healthcare providers were eventually subjected to disciplinary action. To its credit, CARNA engaged in a review of its complaints processes that resulted in numerous changes, including the separation of the nursing association from the regulator in light of the conflicting interests between the goals of protecting the profession and regulating in the public interest.

Much of the difficulty stems not so much from protecting free speech itself, but the dual mandate of self-governing regulators in Canada. It is generally assumed that the dominant purpose of professional regulators is the establishment and enforcement of standards for the protection of the public. But as all regulated members know, there is a second mandate – protecting the integrity of the profession – that is regularly cited in the case law.

The problem is that these two mandates can conflict. This was certainly true for both Ms. Strom and Ms. Andrus. In fact, the decision of the Saskatchewan Court of Appeal made this clear when

it stated that Ms. Strom’s public comments were “intended to contribute to public awareness and public discourse.” (*Strom* at para 162)

Similarly, once CARNA realized that its actions had the effect of preventing Ms. Andrus, as a registered nurse, from advocating for a vulnerable family member, it engaged in a wholesale review of its complaints and disciplinary process with an emphasis on protecting the public over shielding the profession. I also note that in both Ms. Strom’s and Ms. Andrus’ cases, it was fellow professionals who initiated the complaints.

In short, the issue of free speech, whether it’s commenting on political issues, highlighting failings in palliative care, or advocating for a dying family member, is directly tied to Canada’s obsession with self-governance and protecting the reputation of the profession. A great deal of harm could be avoided if our professions placed less emphasis on dealing with inappropriate complaints related to the would-be integrity of the profession, and more on the public interest.

As Scott McLeod, CEO of the College of Physicians & Surgeons of Alberta, [recently stated](#) regarding potential changes to the *Health Professions Act*: “Having the freedom to dismiss complaints outside our direct mandate or those unrelated to clinical and patient care would allow us to spend more time on issues impacting the quality of care Albertans received from our regulated members.”

I would suggest that engaging in the review process, rather than mocking it, is a preferable approach. It’s the one I’ve been using since 2017.

Collin May is the brother of Rhonda Andrus, mentioned in this article.

This post may be cited as: Collin May, “Modernizing Professional Regulation is a Worthwhile Goal” (19 November 2024), online: ABlawg, http://ablawg.ca/wp-content/uploads/2024/11/Blog_CM_Modernizing_Regulation.pdf

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