

Manitoba Psychologist

THE PSYCHOLOGICAL ASSOCIATION OF MANITOBA /
L'ASSOCIATION DES PSYCHOLOGUES DU MANITOBA

PAM is legally constituted by the Psychologists Registration Act (R.S.M. 1987) as the regulatory body for the practice of all branches of Psychology in Manitoba.

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Roll out the RIMS: PAM Launches Registration and Renewal Database

Alan Slusky, Ph.D., C.Psych.
PAM Registrar

As the new year begins it gives me great pleasure to speak to you on the launch of PAM's new registry information management system (RIMS). By now all registrants should have received two emails outlining instructions for logging into this new system and updating both your contact information as well as your practice profile. If for some reason you have not received these emails, please notify the PAM office as soon as possible so that we may correct this oversight. Logging into this system and ensuring that your contact information is accurately recorded is important as it will facilitate your ability to take advantage of the online renewal of your PAM membership, which will begin over the next several weeks.

To date I have received feedback from registrants on this new system and the majority have been positive in their comments. We

By now all registrants should have received two emails outlining instructions for logging into this new system and updating both your contact information as well as your practice profile.

have worked through some minor technical glitches together, and I have appreciated your patience through this process.

Some registrants have been challenged by the initial login screen which asks for a password. In order to obtain your password on your first log in, please remember to click on the link

"Register for online access" just below the boxes which ask for your initial login. This will take you to the screen where you will enter your e-mail address and registration number. Thereafter you will receive an e-mail with a link to create that password. Once you have your new RIMS password you may then go back to the original screen and login.

I have also received some expressions of concern from registrants on the issue of online registration renewals. In particular a few are expressing concerns around the security of this process and have expressed a preference for registering through the use of a cheque (as is currently the practice).

Please rest assured that the introduction of the RIMS will be

gradual and will initially allow for the use of cheques to pay your annual registration fee. We are aware that in many cases, organizations remit fees for registrants and as such credit card payment would be impractical. However for the remaining registrants we are hopeful that you will take advantage of the improved efficiency of credit card payments for your PAM dues. As I will detail in a future e-mail to you, the RIMS-based online renewal system will take advantage of the most current security protocols available. It is our intention to use Paypal for these payments and as many of you know this system has proven

itself highly secure and reliable over time.

Finally, the new RIMS system will allow for rapid reporting of your continuing education credits. A tab in your RIMS account labelled Continuing Education Form allows you to record your continuing education activities right in the RIMS database. By recording your activities in this way, the PAM office can then print a hard copy of this form and thus eliminate the need for you to mail it in to us. We do, of course, continue to ask you to retain the original certificates of attendance from these CE activities, to assist in our yearly random CE audit

process. All of this is designed to make the renewal process easier for you and lesser resource intensive for the PAM office.

In conclusion, thank you again for your patience as we launch this new system. It is our hope that the value added components of RIMS will improve the efficiency with which you manage your PAM registration.

Please feel free to contact me with any comments, feedback, or suggestions for improvement in this system.

Happy new year!



Temporary Registration

PAM Executive Council recently received legislative approval to create a category of registration for those wishing to practice in Manitoba for a brief time. Information about requirements for the Temporary Registration category, and application instructions, at:

<http://www.cpmb.ca/documents/Temporary%20Licensure.pdf>

TelePsychology

PAM Executive Council recently voted to adopt the Standards for the Provision of TelePsychology developed by the Association of Canadian Psychology Regulatory Organizations (ACPRO).

Full text of the standards is at:

<http://www.cpmb.ca/documents/TelepsychologyStandards.4June2011.pdf>



Family Services and Consumer Affairs
 Disability Programs and Employment and Income Assistance
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August 30, 2011

The Psychological Association of Manitoba
 Attn: Dr. John Arnett, President
 162-2025 Corydon Ave., #253
 Winnipeg MB R3P 0N5

Re: Amendments to the Vulnerable Persons Living with a Mental Disability Act

Dear Dr. Arnett:

Manitoba Family Services and Consumer Affairs wishes to advise you of new provisions to protect Manitobans with an intellectual disability. Bill 36, *The Adult Abuse Registry Act and Amendments to The Vulnerable Persons Living with a Mental Disability Act*, received royal assent on June 16, 2011. Amendments in the bill relating to *The Vulnerable Persons Living with a Mental Disability Act* came into force on August 15, 2011. The provisions of this Bill that relate to the Adult Abuse Registry will come into force once the regulations and infrastructure for the registry have been established. The target date for this is spring 2012.

Key amendments to *The Vulnerable Persons Living with a Mental Disability Act* include the following:

- **Abuse or neglect of a vulnerable adult is now prohibited:** The amendment states that no person shall abuse or neglect a vulnerable person. This addresses a previous gap where charges could not be laid under the VPA for acts of abuse or neglect. This amendment does not stop criminal charges under the *Criminal Code* (Canada) from being laid as well.
- **Duty to protect:** A provision has been added requiring service providers, substitute decision makers or committees to take all reasonable steps to protect the vulnerable person from abuse or neglect. Failure to protect a vulnerable person from abuse or neglect is an offense.
- **All persons have a duty to report:** Previously only service providers, substitute decision makers and committees were required to report abuse or neglect. Amendments have expanded the duty to report to all persons who reasonably believe that a vulnerable person is, or is likely to be abused or neglected. All persons have the duty to immediately report to Family Services the belief and the information on which it is based.
- **Protection from liability or adverse employment action:** No action can be taken against a person for reporting in good faith that a vulnerable person is or is likely to be abused or neglected.
- **Reporting to a professional body:** The Family Services executive director may also report to an individual's professional body (if such a body exists in that person's occupation) that the person is suspected of abusing or neglecting a vulnerable adult or if the person failed to report. The professional body must investigate and report any findings/disciplinary action taken against the person to the Family Services executive director.

- **Report to employer:** After an investigation, where the Family Services executive director believes that a vulnerable person has been abused or neglected, the executive director must report the name of the person who abused the vulnerable person to the person's employer where that person's employment duties involve the provision of care, support services or other assistance to a vulnerable person or where the job permits unsupervised access to vulnerable persons.
- **Confidentiality:** A provision assures the confidentiality of a person who reports abuse or neglect unless the person consents or where disclosure is required by another Act, Order of Court or to exercise powers under this act or where disclosure is in the best interests of the vulnerable person.
- **Increase in Penalties:** A person who is guilty of an offence is now liable on summary conviction to a fine of not more than \$50,000 or imprisonment for a term of not more than 24 months, or both. The amendments strengthen the penalty provision to better reflect the seriousness of the offences.
- **Prosecution within two years:** The timeline to launch a prosecution under this Act has been lengthened and begin no later than two years after the alleged offense is committed.

The full legislation, *The Adult Abuse Registry Act and Amendments to The Vulnerable Persons Living with a Mental Disability Act*, may be viewed at <http://web2.gov.mb.ca/laws/statutes/2011/c02611e.php>

Sincerely,



John Leggat
Acting Executive Director
Disability Programs

256 4301
x 5399

Manitoba
spirited energy

CE Audit 2011 and Updated CE FAQs

Dr. Jane Bow, C.Psych., Chair of the Continuing Education Sub-Committee of Standards, recently completed her 2011 audit and recommended updates to the FAQs page on PAM's website to clarify some of the most common problems with documentation provided by members audited.

For example, although members may be entitled to claim supervision as CE under Category B, it is not appropriate to claim time spent supervising staff as a job activity. Another common misunderstanding, she said, was related to CE allowances for presentations, where members inappropriately claimed preparation time for presentation, instead of only the duration of the actual presentation.

Dr. Bow also noted that, while the Psychologists Registration Act states that only activities with clearly psychological content can be counted as CE, in fact members may claim a certain amount of non-psychological content under Category E, with prior approval and where the content is job-related. For example, she said, the CE Committee remained open to pre-approving education about medical conditions, or about teaching, or about cultural issues as CE hours for members.



The updated CE FAQs are at

<http://www.cpmb.ca/documents/PAM%20%20CE%20FAQ%20rev2011.pdf>

When Colleagues Make Mistakes

Stephen A. Ragusea, PsyD, ABPP

June 28, 2011 entry to the Ethics Education and Psychology Blog (www.papsyblog.org)

Reprinted with Permission of the Ethics Committee of the Pennsylvania Psychological Association

At least once a month, I receive a telephone call from a Florida psychologist who tells me that he or she *knows* that a colleague -- or a practitioner of a different profession -- is guilty of committing an ethical violation. The psychologist then typically asks if I agree with their appraisal of the situation and expresses frustration regarding the problem. Finally, they ask what they should do, often expecting that the Florida Psychological Association (FPA) will handle the problem. They often express surprise when I remind them that, according to our Ethical Principles, *their* first responsibility is to have a little talk with the alleged offender.

The American Psychological Association's Ethical Principles of Psychologists and Code of Conduct (2002) suggests that our first obligation in these situations is to first seek an "informal" solution through professional consultation. Specifically, Principle 1.04 states:

1.04 Informal Resolution of Ethical Violations

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved. (See also Standards 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority, and 1.03, Conflicts Between Ethics and Organizational Demands.)

But what happens if the offender isn't willing to change or just pretends to seriously address the problem? Or what happens if they insist the problem doesn't exist? I then explain that it may be necessary for them to report the matter to the appropriate professional board. At that point, we consider Principle 1. If the alleged offender is a psychologist, then the problem would be reported to the Florida Board of Psychology or referred to the APA Ethics Committee. If, however, the practitioner is a member of a different

(Psychologists) often express surprise when I remind them that, according to our Ethical Principles, their first responsibility is to have a little talk with the alleged offender.

profession, then the appropriate professional board must be contacted. However, one must always remember that the ethical standards of the individual's profession are those that apply, not those of the American Psychological Association. Psychology's ethical standards only apply to psychologists. Of course, if the individual isn't a member of any recognized profession, ethical considerations are unenforceable and little can be done as long as the person is functioning within the law.

1.05 Reporting Ethical Violations

If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under Standard 1.04, Informal Resolution of Ethical Violations, or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose professional conduct is in question. (See also Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority.)

For a variety of reasons, psychologists are often unwilling to confront these problems in either way outlined above. For example, sometimes psychologists are afraid of insulting the other professional or sometimes they fear some form of retribution. However, we must all have a little courage and remember that it part of our own ethical duty to address these matters in a productive, professional, and effective manner. We're all in this together and we're all trying to serve humanity well. Don't be afraid to make a constructive intervention; we can *all* do better!



Intervening With an Impaired Colleague

Michael O'Connor, Ph.D.

and the APA Board of
Professional Affairs Advisory
Committee on Colleague
Assistance.

Excerpted with permission. Full text at
[www.apapracticecentral.org/ce/self-care/
intervening.aspx](http://www.apapracticecentral.org/ce/self-care/intervening.aspx)

The article begins:

One of the most difficult challenges a psychologist can face is how to proceed when a colleague appears to be impaired and/or is acting in an unethical manner. Pope (1994) reported that receiving evidence of a colleague's sexual involvement with a client, for example, was one of the most stressful professional events for psychologists.

Why So Stressful?

1. Concern about harm to clients or students, for whom and about whom psychologists often care deeply, can be very disturbing.

2. Personal failings are not often discussed in professional forums, fostering the myth that people who are impaired are a different breed of psychologist, and fostering denial about the real risks and occupational hazards, for the professional, even the colleague we had lunch with last week.
3. In the therapy room, a psychologist's personal concerns or problems are actively suppressed in order to effectively focus on the needs of the client. This ethic of "other's welfare first" is fundamental to the passionate drive of many psychologists to do good in the world — in part by being personally above reproach. Impairment in a colleague is therefore threatening at a personal level, and may cast the concerned psychologist into an uncomfortable and unfamiliar role.
4. Professional activities often entail playing the role of social observer and commentator, whether as an academic or practitioner — someone outside the fray and therefore capable of assistance — intellectual or emotional — to others. Evidence that psychologists are all too human can feel personally threatening.
5. Psychologists tend to value independence of thought and action, making atypical versus inappropriate behavior more difficult to discern in many cases. A desire to see the best in people, and to give others the benefit of the doubt, can also be problematic.
6. Excellence is a prominent goal in all aspects of a psychologist's work, and it is the expectation of the consumer, as well. Consequently, impairment may be hard to accept for the psychologist or concerned colleague.
7. In many instances, psychologists are constrained from acting as a result of regulations protecting the confidentiality of those who use their services.
8. Psychologists may be concerned about how impairment reflects on the profession to which they belong.
9. Psychologists often work in isolation, or without direct supervision, making determination of ethical violations difficult.
10. The concerned psychologist colleague also may fear being misunderstood, maligned or retaliated against in some way. There are potential professional and legal risks, and the risk that the impaired colleague may act irrationally or attempt to disrupt the psychologist's practice, for example.
11. There may be concern about the most effective way to approach the colleague.

These and other factors may result in an avoidance of action, whether intentional or by default. Professionally, this lack of action is not acceptable. Pragmatically, it is not smart.

Psychologists can and do harm those they serve at times, and preventing or halting such behavior quickly can be extremely important.

Ethical Responsibilities

Psychologists bear an ethical responsibility to intervene when a fellow psychologist is thought to be impaired. Impairment, in this context, refers to "... impairment of ability to practice according to acceptable and prevailing standards of care" (Ohio Administrative Code.) Impairment therefore refers to circumstances where professional ability is compromised, and may negatively impact the delivery of professional services by the psychologist.

Impairment, while heightening the risk for ethical violations, does not infer such violations. Nonetheless, psychologists are also responsible to ensure that they are competent to provide the services they offer. Impairment, as defined here, compromises the functioning of the psychologist, and should therefore imply a need for close scrutiny of job-related performance in order to preempt ethical violations.

Regarding Responsibilities of the Distressed or Impaired Psychologist

Under the heading "Boundaries of Competence" Section 2.01 of the APA Code of Conduct requires psychologists practice within the limits of their competence, and Section 2.06a, "Personal Problems and Conflicts" requires that:

Psychologists refrain from undertaking an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

When psychologists become aware of personal problems that may interfere with their performing work-related activities adequately, they take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend or terminate their work-related duties."

Regarding Responsibilities of the Concerned Colleague

Section 1.04 of the code, "Informal Resolution of Ethical Violations," states:

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved.

Section 1.05 of the code, "Reporting Ethical Violations," states:

If the apparent ethical violation has substantially harmed or is likely to harm a person or organization and is not appropriate to informal resolution under Standard 1.04 or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose conduct is in question.

These ethical guidelines are clear in requiring that action be taken by the impaired psychologist and/or by their colleagues in a situation where ethical violations are thought to have occurred. Decisions about the manner of action are largely left to the psychologist to determine. Determination of whether or not an ethical violation is "appropriate" for "informal resolution", for example, is the psychologist's responsibility. Likewise, whether or not an ethical violation is "resolved properly" is also to be determined by the psychologist colleague. These circumstances will require a judgment call. A focus on the suspected professional's behavior, as opposed to attitude or rumors, for example, will therefore be more useful. Because such decisions may have serious consequences, consultation with peers or experts in practice, ethics or the law will

often be wise. These options are further discussed below.

A Model for Intervention

VandenBos and Duthie (1986) have outlined a six-step process for confronting and supporting distressed colleagues.

1. *Evaluate the information:* This step involves collecting and evaluating information related to the colleague's behaviors of concern. The authors suggest making a list of "behaviors and events" that are of concern, as well as the meaning of these occurrences to you.
2. *Decide who should confront the individual:* This step is designed to ensure the appropriate level of intervention with the impaired colleague. The authors note that those closest to the individual may be the most effective, or that group intervention may be useful where the individual in question is highly resistant or in denial. A third party may be more likely to succeed where there is already conflict, and where services to the public are seriously impacted, a supervisor may be the most appropriate intervener. The authors advise caution where there is an imbalance of power, particularly where the impaired colleague is a supervisor or boss: they argue that in this case, the concerned psychologist should approach an individual equal in power to the impaired colleague given that a supervisee is inherently vulnerable to a negative reaction from their supervisor.
3. *Prepare before the meeting:* The authors advise concerned colleagues organize themselves before approaching the impaired colleague by making a list of the two to three issues of greatest concern, looking for patterns in behavior that can be identified, and dealing ahead of time with their own emotions toward the colleague and the task. Consultation with peers or experts may be a good idea, and

consideration in advance of inherent "dual role" in the situation should be considered, and social aspects of the circumstances anticipated so as not to distract from the matter at hand.

4. *Consider how you will approach your colleague:* The authors advise that one use simple sentences and "stick to specifics" when first broaching the topic with an impaired colleague. Describe the evidence and why it is important. Empathy and compassion is essential but must be balanced with clarity and facts.
5. *Speak, listen and discuss:* Once the case is made, the psychologist should be prepared to listen compassionately and to consider any additional evidence the colleague may present.

The authors advise that one should be prepared to admit that you may be in error, but you should also ask for explanations of discrepancies or evasions. Acknowledging the likely discomfort of the colleague will be helpful, as will reminding him or her that you wish to help.

Many of the skills of a good therapist will be useful in this phase, but it is important to remember that you are not acting in the role of a therapist.

6. *Follow-up:* Here, the authors suggest that one document the meeting and any agreement reached with the impaired colleague, at least briefly. These notes will provide future reference for contact with the colleague, and in the event that the colleague's behavior deteriorates further, will provide documentation for contact with an ethics board or other authority.

The article continues with discussion of additional considerations including Confidentiality and local reporting requirements, circumstances that may be too risky to allow and which may require direct and immediate action instead of the stepwise approach suggested above (for instance, risk of significant harm to an impaired psychologist's clients, or risk of the psychologist harming himself or herself. The full article discusses risk of violence, retaliation or other threat against the concerned colleague by an impaired psychologist, the need for consultation with peers, supervisors and/or

experts, and reviews issues involving power differential and interpersonal political climate, and what to do when intervention fails. The full text includes thoughts about prevention and self-care.

References:

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Record Keeping

Canadian Psychology/Psychologie canadienne (July 25, 2011) includes a paper entitled, "Ethical and Legal Considerations of Record Keeping: An Updated Account of the Ethical and Legal Considerations of Record Keeping, by Taryn B. Bemister and Keith S. Dobson. Here's the abstract:



The Canadian literature is void of contemporary guidelines for clinical record keeping for psychologists, as the most recent article was published more than two decades ago (Eberlein, 1990). However, the techniques used in record keeping have greatly advanced, specifically with regard to the role of computers and the use of electronic documents. Furthermore, new legislation and guidelines have been developed in response to these technological advancements. The purpose of this article is to provide a concise, accessible, and up-to-date set of guidelines on record keeping in psychology. The professional and legal requirements of psychologists are discussed with regard to the use, content, access, ownership, and retention of records with special consideration given to electronic documents. Recommendations are made for Canadian psychologists that are consistent with the current legal and professional standards of the field.

Related issues are addressed in PAM's forthcoming Code of Conduct publication.

“Good Character” in Professional Registration

Lisa C. Fong, LL.B.

Originally published in *suite210*, April 29, 2011

An Ng Ariss Fong Law Blog (www.ngariss.com)

Regulatory bodies typically require that applicants for registration have “good character” as an element of their fitness to practice. An applicant bears the overall burden of proving he or she meets all registration requirements. Various law society cases establish, however, applicants are entitled to a *presumption* of good character, leaving them to prove that they are fit in other respects. Regulators accordingly bear the initial burden of proving an applicant has previously acted in a way which demonstrates he or she was then *lacking* in good character. Only when this occurs must an applicant go on to prove he or she is *presently* of good character, despite such proven misconduct in the past. The question becomes, what kind of past conduct must a College prove, in order to show a lack of good character?

Character requirements unique to each profession:

The kind of good character necessary for an applicant to practice may vary between professions. For example, a propensity to engage in sexual contact with a past or present client or patient is more likely to be of preeminent importance to the health professions than the legal or financial professions, for example. In contrast, dishonesty may be of greater concern to the legal and financial professions than to the health professions. Different professions may act in concert, however, to infer a lack of good character where an applicant demonstrates through serious

misbehaviour that he cannot be trusted to govern himself in accordance with ethical and legal requirements.

Character as reflected in criminal activity:

The commission of a crime may be, but is not necessarily, a basis for a Registration Committee to infer a lack of requisite good character. For example, the B.C. *Health Professions Act* stipulates that while a Registration Committee can impose limits or conditions (or refuse to grant registration) where an applicant has committed an indictable offence (i.e., something more serious than a summary conviction offence), the Registration Committee must be “satisfied that the nature of the offence or the circumstances under which it was committed give rise to concerns about the person’s competence or fitness to practise the designated health profession.” (HPA s.20 (2.2)) Accordingly, a person may have good character despite past “wrongful” behaviour, e.g., if it is unrelated to whatever character a particular profession requires, or if the conduct was exceptional and did not truly reflect the character of the applicant.

Character as reflected in “illegal” activity:

Matters become more uncertain in relation to illegal but non-criminal breaches of law. For example, does an applicant’s breach of a spousal or child support court order indicate a lack of the

good character necessary for an applicant to be a member of a profession? That uncertainty increases in relation to acts that may be legal, but nonetheless immoral (e.g., dishonest), or which run counter to the grain of a profession’s core values. For example, the College of Physicians and Surgeons of Ontario was not satisfied an applicant would practice “according to the law” where the applicant “breached” a contract with the Government of Quebec requiring him to practice medicine in a particular region, even though the contract set out a financial alternative (i.e., reimbursing the province \$200,000) in *Mobayed MD v. College of Physicians and Surgeons of Ontario*, HPARB File No. R-1057H (August 3, 2001).

Character as reflected in legal activity:

The question of good character is perhaps most challenging where conduct is legal, and some dispute exists, either within the profession or within broader society, as to whether particular conduct reflects bad character. Disputes about the undesirability of certain character traits may be further complicated by legal restrictions on regulators inferring bad character from conduct protected by fundamental rights, like the right to free speech. A profession is free, but only to an extent, to define the kinds of conduct and character it requires of its members. Discipline cases may be instructive on the tension between the power to set character requirements, on the one hand, and applicant liberty on the other hand,

since a profession's power to classify an act as misconduct will also reflect its power to treat an act as evidence of bad character.

An instructive example is the case of *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327, where a member was disciplined for public statements expressing his negative views on homosexuality, which statements were found to be discriminatory and inconsistent with the standards of the teaching profession. The reasoning in *Kempling* gives rise to the question of whether an applicant who has expressed discriminatory beliefs, or beliefs not in accord with a particular profession – even if in accord with the views of some circles of society – may be refused entry into that profession. In *Kempling*, an expressed, negative view on homosexuality was unprofessional, and discipline for the expressing of such views justifiable, where those beliefs were likely to inform the member's actions as a professional, and in the words of the Court of Appeal, "undermine access to a discrimination-free education environment."

The views of the profession alone may not, however, be determinative of bad character. A demanding and intrusive character requirement may, like a conduct requirement, infringe fundamental rights, and be struck out where insufficiently connected to the legitimate goals of the profession. For example, in *Whatcott v. Saskatchewan Association of Licensed Practical Nurses*, 2008 SKCA 6, a member was disciplined for picketing Planned Parenthood, carrying signs with pictures of fetuses, and shouting comments claiming that Planned Parenthood provided abortions, murdered babies and could give people AIDS. Although the lower court affirmed discipline on the basis the member's conduct showed a lack of respect for the physical and emotional health of Planned Parenthood's patients, the Saskatchewan Court of Appeal found that infringement of the member's right to free speech was not justifiable. On the basis of the goal of the prohibition being to ensure respect for the

status and standing of the licensed practical nurse, the Court of Appeal found that the prohibition against the member's conduct was not rationally connected to ensuring the public standing of the profession, as no evidence established any member of the public would think less of nurses because of the member's behaviour. This case implies that inferring bad character from conduct that impacts patients, but is nonetheless an exercise of a right of free-speech, may be subject to intense scrutiny.

Character versus practice:

The question of good character may also be especially challenging in regard to conduct that might reflect character, but might also merely reflect habit or circumstance. Take, for example, uncivil behaviour. Currently the Law Society of Upper Canada has been investigating lawyers who are alleged to have made rude remarks to clients, other lawyers, and judges. Could a pattern of incivility or bad-tempered remarks be taken to reflect a character issue and constitute a bar to an applicant entering a profession? Or is incivility merely a conduct issue?

Character versus involuntary behaviour:

An assessment of good character may also entail an assessment of culpability in a particular case. For example, even if conduct would *generally* reflect a lack of good character, where an applicant suffers any form of physical or mental disability, including addictions, a Registration Committee should consider human rights implications, including if or to what extent the applicant should be held culpable for conduct for which the disability itself may have been a contributing factor.

Problems of definition:

An assessment of good character can be difficult simply because the concept is amorphous. How is a regulatory body to decide upon and articulate the kinds of character traits that no applicant can be without? Once such traits are identified, how are such traits to be measured or

assessed consistently? And how will applicants who have been found lacking in character know how to remediate themselves, in order to meet minimum standards of good character?

The mutability of character:

Finally, a registration committee must go beyond the question of whether past conduct (which has been proven) demonstrates a lack of good character in the particular case. Since character is mutable, and can change over time, any applicant may also prove that despite past misconduct, he or she has reformed and is of good character, as of the time of the hearing.

To illustrate the range of the inquiry open to a registration committee, a panel of the Law Society of British Columbia set out factors it deemed right to consider in assessing *present* good character:

[83] There is no rigid formula in assessing whether assaultive behaviour will bar admission as an articulated student. Instead, the Panel should consider all surrounding circumstances including, but not limited to:

- a. applicant's age at the time of the conduct;
- b. recency of the conduct;
- c. reliability of the information;
- d. seriousness of the conduct;
- e. factors underlying the conduct;
- f. cumulative effect of the conduct;
- g. evidence of rehabilitation;
- h. applicant's positive social contribution since the conduct;
- i. applicant's candour in the admissions process; and
- j. materiality of any omissions or misrepresentation.

See *Re Lee*, 2009 LSBC 22 (L.S.B.C.).



Committees

THE PSYCHOLOGICAL ASSOCIATION OF MANITOBA / L'ASSOCIATION DES PSYCHOLOGUES DU MANITOBA

Executive Council

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