

SML

November 29, 2023

2023 Year in Review

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Before we begin...

- If listening by phone:
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- Still having trouble hearing? Email our IT consultant for assistance: achomatas@ace-its.ca
- Feel free to send questions to us during the session using the CHAT feature, or EMAIL us afterwards:
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Land Acknowledgment

- We acknowledge that the land our office is on is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg and the Chippewa, and is now home to many diverse First Nations, Inuit and Métis peoples. We also acknowledge that Toronto is covered by Treaty 13 with the Mississaugas of the Credit.
- We encourage you to acknowledge the land where you are located and to reflect on ways in which you can support the process of reconciliation.



LEGISLATIVE DEVELOPMENTS

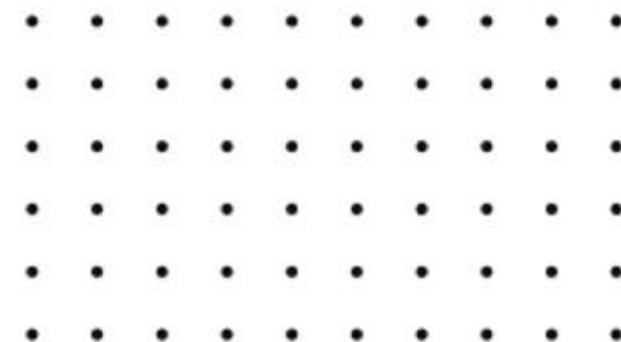
British Columbia

- *Health Professions and Occupations Act* enacted one year ago (November 2022)
- Not yet in force
- End of self-regulation of health professions in B.C.
 - Equal public and professional Board members
 - End of elections by “members”
 - Discipline function removed from regulatory college



British Columbia

- Combatting discrimination is a central focus of legislation
 - Regulators must act in accordance with the principle to “protect the public from harm and discrimination”
 - Significant steps taken in advance of proclamation of *HPOA* to address Indigenous-specific racism



Nova Scotia

- *New Regulated Health Professions Act*
 - Introduction of umbrella legislation for health regulatory colleges
 - Introduced October 12, 2023
 - Royal Assent November 9, 2023
 - Will require development of regulations

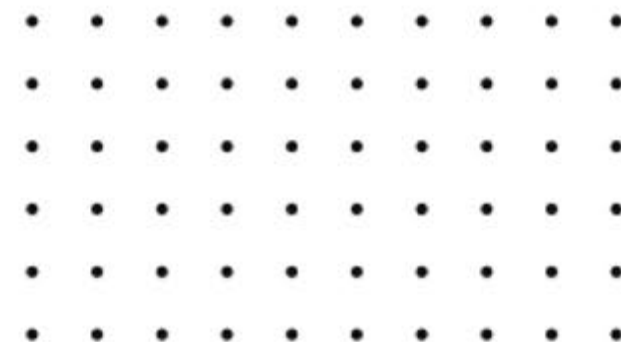




REGULATING SPEECH AND PRIVATE CONDUCT

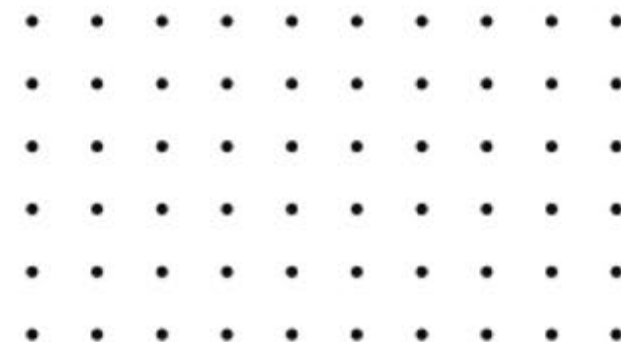
Speech – *Peterson v College of Psychologists of Ontario*

- Made comments on social media that the CPO conduct screening committee believed were “transphobic, sexist, racist and not in keeping with any understanding of mental health”
- ICRC order a specified continuing education or remediation program (“SCERP”) requiring him to undergo coaching to review, reflect on and ameliorate his professionalism in public statements



Peterson v College of Psychologists of Ontario

- Divisional Court upheld decision
 - Regulated professionals do not lose right to free expression, but regulators may moderate that expression
 - Statements risked harm by undermining public trust in profession and raised concerns re: ability to carry out professional responsibilities
 - Comments made “off duty“, but represented himself as psychologist; role lent credibility and increased public trust



Lauzon v Ontario

- Justice of the Peace (“JP”) wrote newspaper article published in the *National Post* criticizing operation of bail court and conduct of some Crown prosecutors
- Three Crowns complained to the JP Review Council
- Following a hearing, JP found to have engaged in judicial misconduct



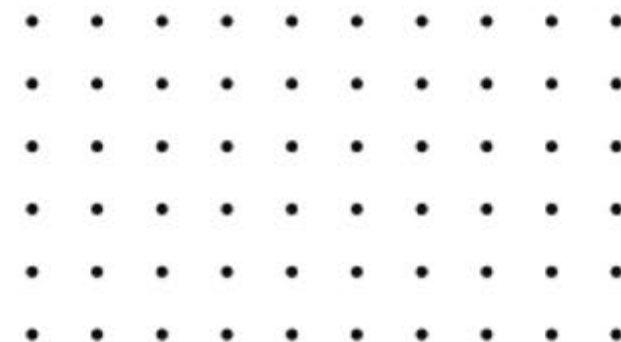
Lauzon v Ontario

- Appeal allowed in part – merits upheld, sanction was unreasonable
 - Correctly identified need to balance right to free expression against public interest but failed to engage in robust proportionality review
 - Reasons must take “fully contextual approach”
 - Did not place sufficient weight on positive motivation for article
 - Improper to view assertion of defence as an aggravating factor



Takeaways

- Be cautious of language such as: “The investigated member refused to acknowledge any wrongdoing.”
- *Peterson* and *Lauzon* demonstrate continuing challenges finding appropriate balance between freedom of expression and regulatory restrictions.
- In social media/freedom of expression cases remember: Charter protections are to be limited no more than is necessary given the applicable statutory objectives.



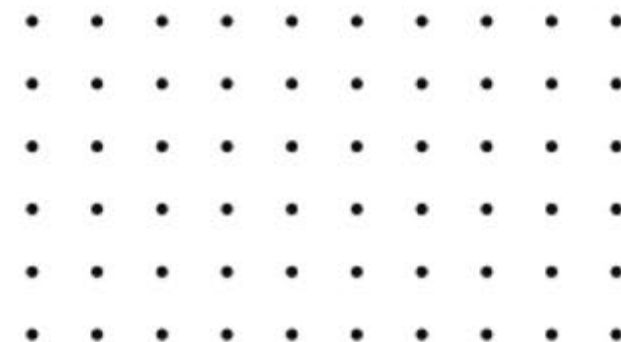
Off Duty Conduct – Intimate Partner Violence: *Leontowicz v College of Physicians and Surgeons of Saskatchewan*

- Fourth year medical student engaged in sexual intercourse with a woman without a condom, against her expressed wishes. Also hit her several times without her consent.
- Woman was not his patient
- Lower Court set aside DC finding of conduct unbecoming



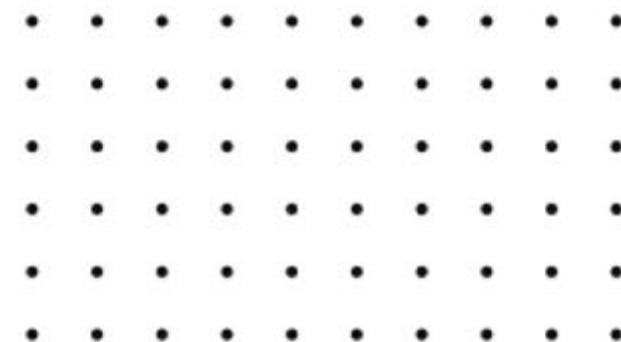
Leontowicz v College of Physicians and Surgeons of Saskatchewan

- Court of Appeal overturned lower court decision
 - conduct unbecoming not limited to descriptions of professional misconduct in by-laws
 - It was open to the discipline tribunal in this context to make inferences about reputational harm



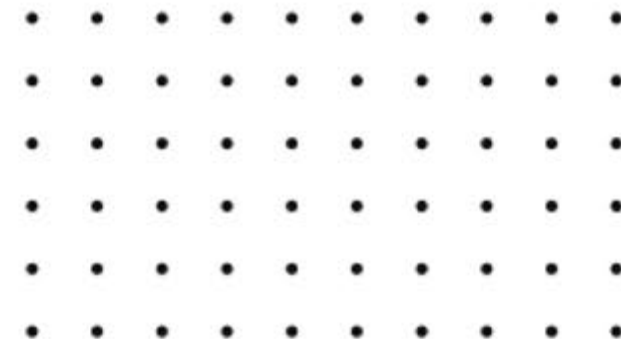
Leontowicz v College of Physicians and Surgeons of Saskatchewan

- sufficient nexus between the personal conduct and the profession to engage regulator's obligation to promote and protect the public interest
- sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession to constitute misconduct
- reasonable for tribunal to decide that the private misconduct affected doctor's ability to practise the profession



Off Duty Conduct - Takeaways

- Regulators' role difficult to define
- Contextual analysis of circumstances surrounding conduct and impact on practice/reputation



Off Duty Conduct - Trends

- Covid cases – 2022
 - Continue to work their way through the Courts
- Off duty conduct and free speech – 2023
- What's next?
 - Conflict in Israel-Gaza



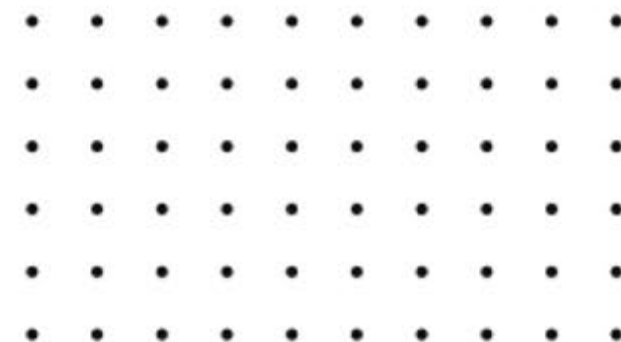
Current Events and the “Good Character” Question

- Already seeing this bubbling up in various contexts:
 - Impact on hiring, complaints to regulator
 - Disciplinary action for statements and social media posts
 - LinkedIn posts: shift in content



Current Events and the “Good Character” Question

- What is “good character”?
- What does a contextual analysis look like, and how do regulators draw the line?
- What speech is acceptable, what is not?
 - Remains an open question



The logo consists of the letters 'SML' in a bold, purple, sans-serif font, centered within a white rectangular box. The background of the slide features a photograph of a modern interior with a wooden dining table, blue chairs, a large grey lamp, and a bookshelf filled with books and decorative items.

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THANK YOU

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