



GREY AREAS NEWSLETTER

A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

sml-law.com/resources/grey-areas/

Purpose-Driven Sanctions

Anastasia-Maria Hountalas

December 2024 - No. 297

The time has come to break away from criminal sentencing concepts when determining the appropriate sanction in a discipline matter. In the [October](#) and [November](#) issues of Grey Areas, my colleague Natasha Danson discussed how a registrant's degree of insight should be adopted as the guiding factor in sanction over the perceived remorse, or lack thereof, of a registrant.

However, that is just one aspect of sanction choice. For some time, courts have tried to distinguish sanctions in the discipline process from criminal sentencing. Three decades ago, British Columbia's highest court urged that a risk-assessment approach be adopted in [McKee v. College of Psychologists of British Columbia](#), 1994 CanLII 1404 (BC CA):

In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary

process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science. It was very much a question within the competence of the Board of Psychologists to decide whether the respondent could safely be held out to the public as a registered psychologist, and a person in whom the public could confidently place its trust. So, I respectfully disagree with the learned chambers judge when he likened the imposition of a penalty to a sentencing process....

More recently, courts have focussed on three goals of disciplinary sanctions. In [Ritchot v. The Law Society of Manitoba](#), 2010 MBCA 13 (CanLII), the Court said:

The goals of the Society’s disciplinary process are non-punitive and are “intended to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.”

That general approach was more recently reaffirmed in [Ontario \(College of Physicians and Surgeons of Ontario\) v. Lee](#), 2019 ONSC 4294 (CanLII).

Despite this guidance, courts frequently slip into criminal language and concepts when reviewing sanctions. As my colleague Natasha Danson points out, doing so creates the risk of technical rules detracting from achievement of the regulator’s goals.

A recent appeal decision in Ireland predominately reflects the purpose-driven approach to disciplinary sanctions. In [William McCartney v. The Veterinary Council of Ireland](#) ([2024] IEHC 411), a veterinarian was found to have performed surgery on a different leg of a dog than agreed upon and failed to communicate appropriately with the client afterwards. More serious allegations, such as mistakenly operating on the wrong leg of the dog, were dismissed. The veterinarian unilaterally concluded, once in the surgical theatre, that operating on the dog’s other leg first was clinically indicated. A two-month suspension was imposed.

On the appeal of sanction, the Court considered the regulator’s “clear and helpful” sanctioning guideline. The document identified three goals of disciplinary sanctions as follows:

- (a) Protect and promote the health and welfare of animals and to protect public health.

- (b) Promote and maintain public confidence in veterinary provision and the delivery of veterinary services.

- (c) Promote and maintain proper professional standards and conduct for the members of the profession”.

Those goals are virtually identical to those formulated in the *Ritchot* decision.

Secondly, the guideline includes a lengthy menu of circumstances and considerations that could facilitate a particular sanction to best achieve the goals. In this case, the considerations that favoured a suspension included the seriousness of the conduct, that it undermined confidence in the profession, and that a message should be sent to the profession and the public that such conduct was unacceptable.

Considerations that favoured a lesser sanction (such as advice, a warning, or censure), included that the lapse was isolated, there was a low risk of recurrence, the veterinarian had shown some insight, and had already taken remedial action. In terms of insight, the Court found that, while the veterinarian had defended against the allegations, arguing they did not amount to misconduct, this was done in the context of facing more serious allegations that were ultimately not proved and the veterinarian had accepted responsibility once the finding was made (including not appealing the finding).

On balance the Court found that the regulator was justified in seeking a suspension.

The Court then applied the third step in the sanctioning guideline, selecting a sanction that was proportionate to the circumstances and considerations. The Court concluded that a two-month suspension was disproportionate. The Court identified additional circumstances, including one that the regulator had not properly considered, namely that the veterinarian had been called

away on a family emergency immediately after the surgery that prevented him from communicating with the client to explain what he had done and why. The Court concluded that a proportionate sanction would be a one-month suspension.

Some of the language in this Irish sanctioning guideline harkens back to criminal sentencing. For example, reference was made to aggravating and mitigating factors rather than to circumstances and considerations that applied to the sanctioning goals. Nevertheless, the guidelines and their application by the Court in this decision reflect a purpose-driven approach to discipline sanctions.

Canadian regulators may wish to develop their own sanctioning guidelines that take a purpose-driven approach. The guidelines could:

1. Reiterate the goals of discipline sanctions;
2. Specify the kinds of circumstances and considerations that would tend to attract various sanctions; and
3. Suggest a proportionate selection of sanctions in individual decisions that would achieve the goals.

Even without published guidelines, regulators could adopt a purpose-driven sanctioning approach in discipline cases.

This article was originally published by Law360 Canada, part of [LexisNexis Canada Inc.](#)

FOR MORE INFORMATION

This newsletter is published by Steinecke Maciura LeBlanc, a law firm practising in the field of professional regulation. If you are not receiving a copy and would like one, please visit our website to subscribe: <https://sml-law.com/resources/grey-areas/>

WANT TO REPRINT AN ARTICLE?

A number of readers have asked to reprint articles in their own newsletters. Our policy is that readers may reprint an article as long as credit is given to both the newsletter and the firm. Please send us a copy of the issue of the newsletter which contains a reprint from Grey Areas.