

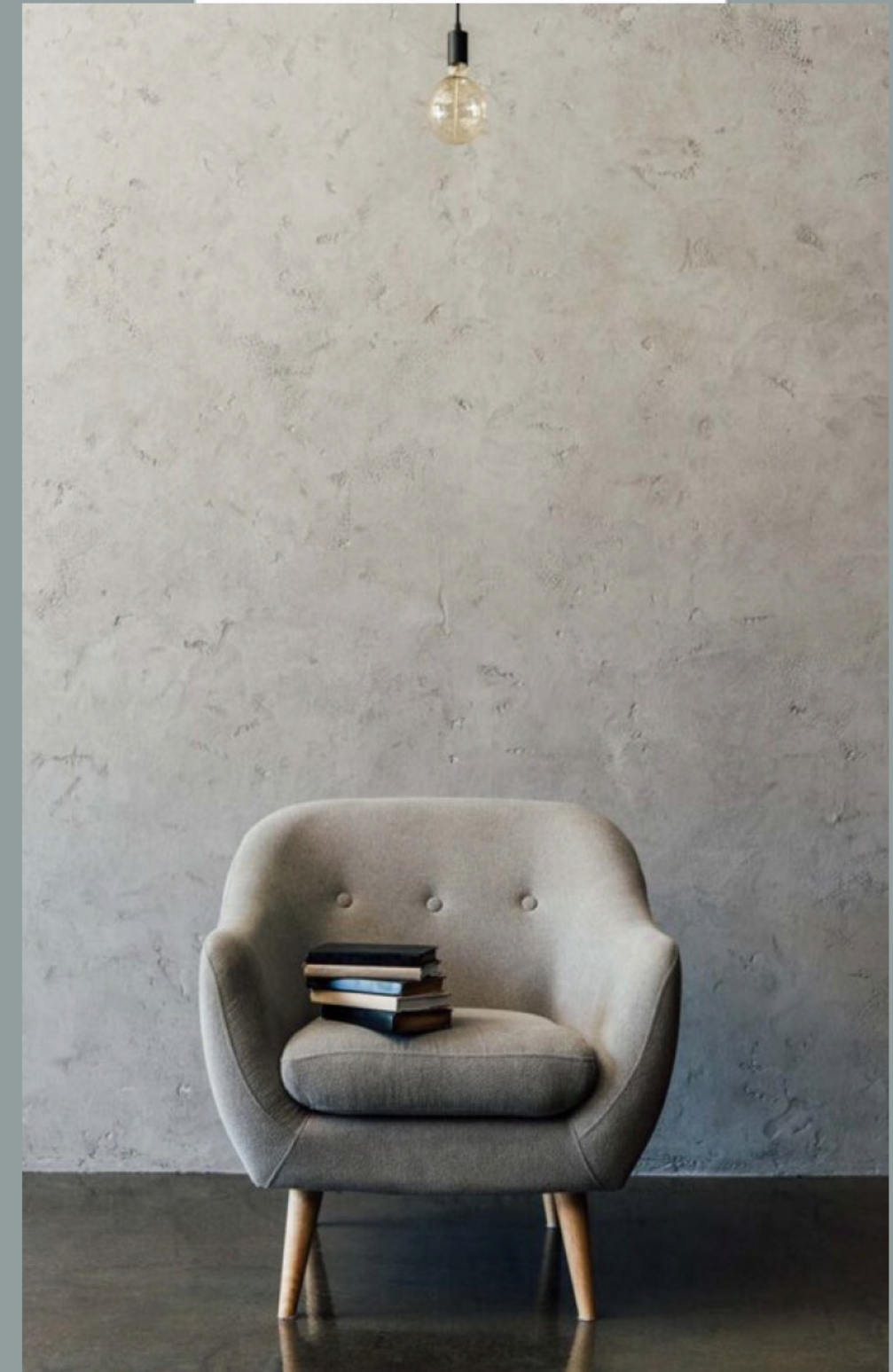
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Sanctioning: Towards a Purpose Driven Approach

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Before We Begin...

- If listening by phone:
 - Phone access (Canada): (647) 374 4685 , ID: 886 9106 0885
- Still having trouble hearing? Email Anna at aghakhar@sml-law.com
- Feel free to send questions to us during the session using the CHAT feature, or EMAIL us afterward:
 - erichler@sml-law.com and estair@sml-law.com

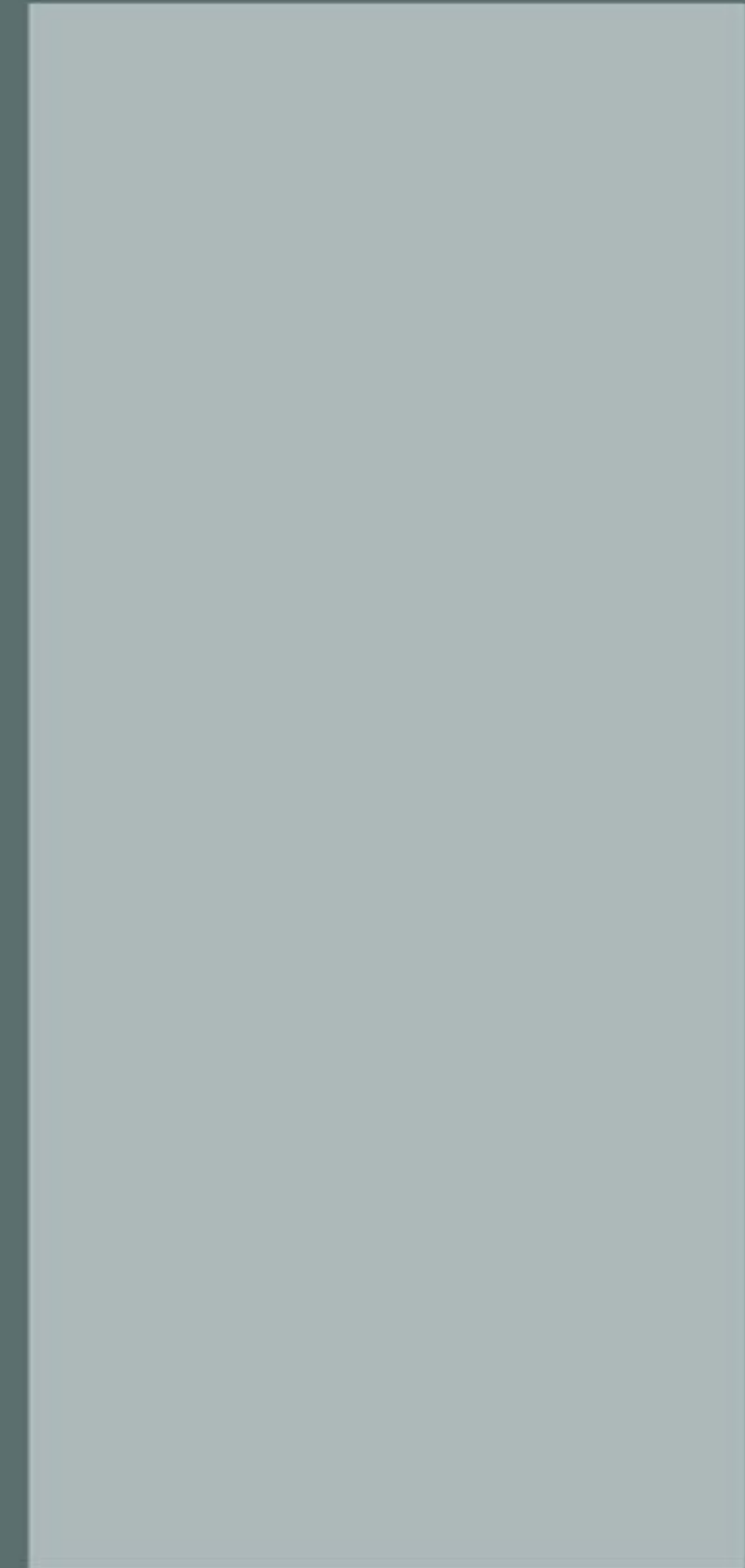
Land Acknowledgment

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.

Introduction

- Introduction to sanctions/penalties
- What is the traditional approach to sanctions?
- Is there a move toward a new purpose-driven approach?

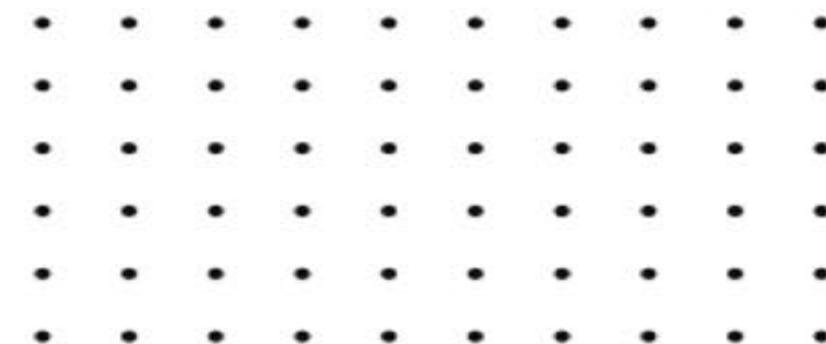


Sanctioning in Disciplinary Proceedings

A sanction is the order imposed by a Discipline Committee after a person is found to have engaged in professional misconduct.

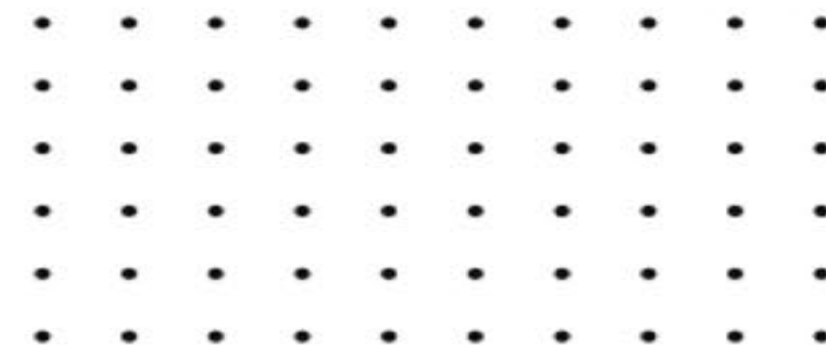
Why does it matter?

- Serves the reactive regulation function
- Upholding professional values
- Protecting the public



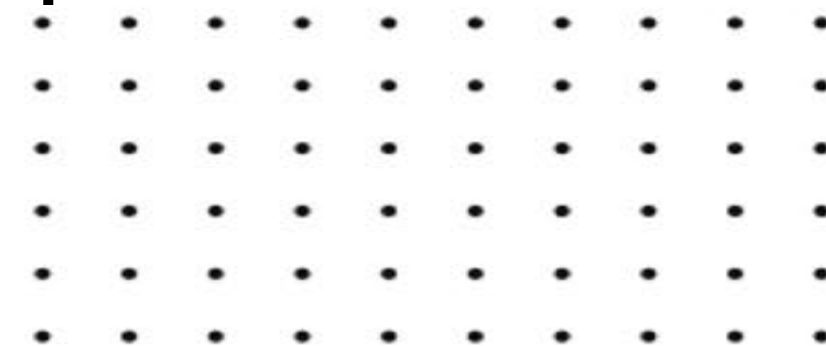
Goals of Sanctioning

1. Public Protection
2. Preserve Public Confidence in the Profession and Regulator
3. Specific and General Deterrence
4. Remediation and Rehabilitation (if appropriate)
5. Denounce the misconduct?



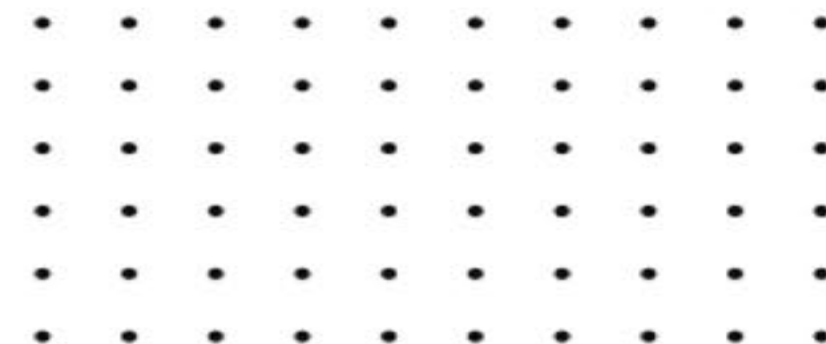
Traditional Approach to Sanctioning

- Based on Criminal Sentencing Principles
 - Identifying a range of penalties
 - Identifying aggravating and mitigating factors
 - Situating conduct within the range
- Criminal law concepts: “Guilt” “penalty” “sentence” “remorse”
- Focused on finding the most suitable punishment for the individual professional without considering the big picture



Why Move Away from Tradition

- Inflexible and rigid
- Different goals than criminal law
 - Punishment vs Public Protection
- Different legal scheme
 - Criminal vs Administrative

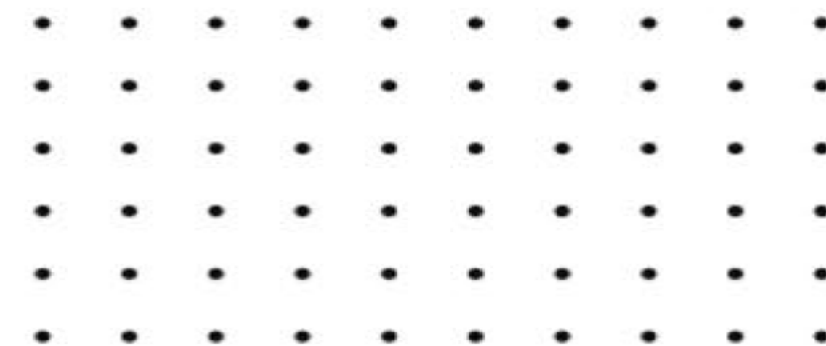


Example of Technical Approach/Rigidity

Lack of remorse \neq aggravating factor
 $=$ absence of a mitigating factor

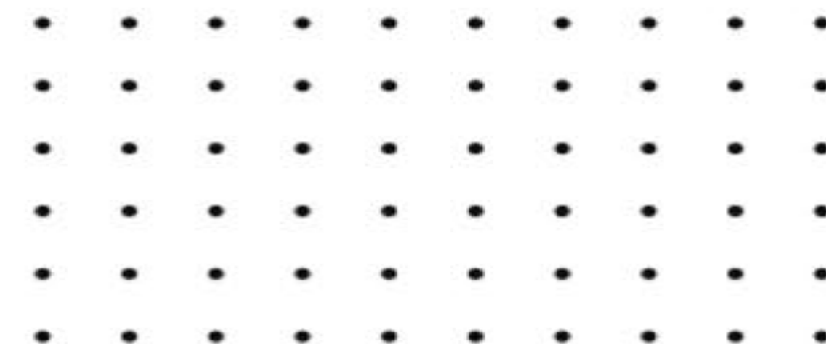
Acknowledgment $=$ mitigating factor

See e.g., *Dr. Jha v CPSO*, [2022 ONSC 769](#) (CanLII)



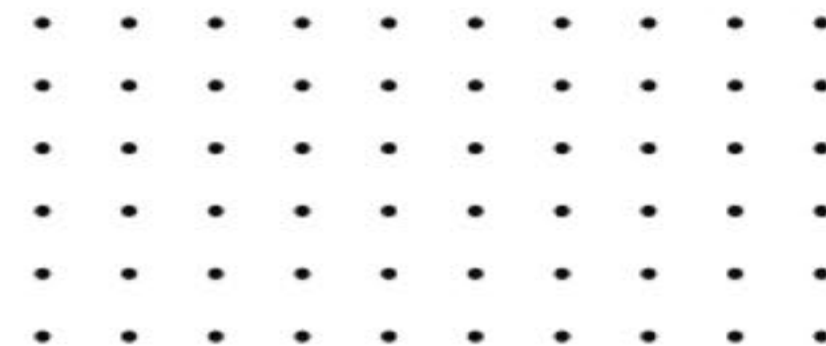
Purpose-Driven Approach

- Crafting a penalty that best meets the goals of sanctioning in the circumstances of the case
- Contextual and less rigid
- Non-punitive
 - *Ritchot v The Law Society of Manitoba*, [2010 MBCA 13](#) (CanLII)
 - *Charkhandeh v College of Dental Surgeons of Alberta*, [2025 ABCA 258](#) (CanLII)



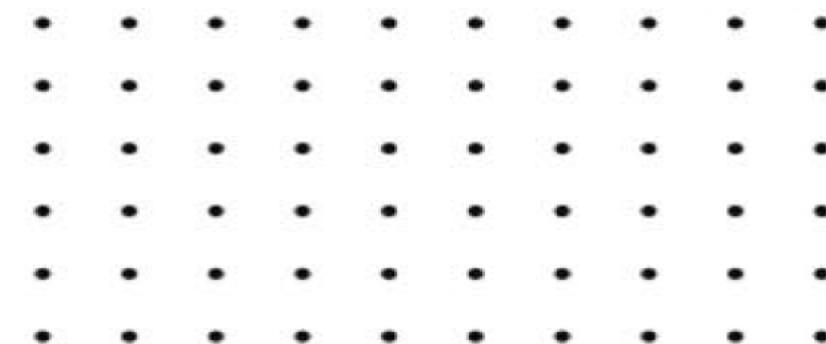
Purpose-Driven Approach in Action

- Goals
- Contextual analysis of all relevant factors
 - Characteristics of the conduct
 - Characteristics of the professional
- Final check for proportionality



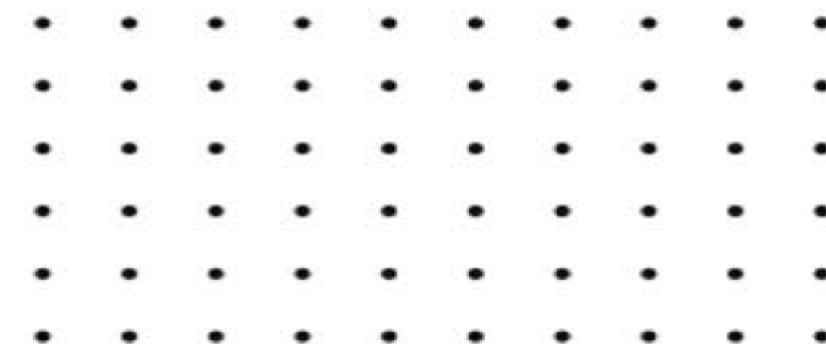
Example of Purpose-Driven Approach in Practice: Degree of Insight

- A principled approach
- Considers the registrant's attitude towards the conduct and their professional responsibilities
- Not a punishment for the registrant's response to allegations, but focus on how insight (or lack thereof) impacts public protection, public confidence and future behaviour
- Examples:
 - UK decision: *Higgins v General Medical Council*, [\[2024\] EWHC 1906 Admin](#)
 - *Massiah v Justices of the Peace Review Council*, [2016 ONSC 6191](#) (CanLII)



Support for a Purpose Driven Approach

- *Law Society (Manitoba) v Ritchot*, [2010 MBCA 13](#)
- *Charkhandeh v College of Dental Surgeons of Alberta*, [2025 ABCA 258](#)
- But there is not one definitive list of goals/purposes:
 - *Ontario (College of Physicians and Surgeons of Ontario) v. Lee*, [2019 ONSC 4294](#) (CanLII)
 - *Law Society of Saskatchewan v. Abrametz*, [2022 SCC 29](#) (CanLII)



Conclusion

- Purpose-driven approach recognizes how disciplinary proceedings are distinct from criminal proceedings
- Provides flexibility
- Ultimately goal is to craft orders that protect the public



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THANK YOU

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