

By James Casey

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Self-governance is a privilege delegated to certain professions by the provincial legislature. Members then have the opportunity to control the destiny of their own profession. In return, professions are expected and required to act in the public interest in all regulatory areas, including registration of new members, setting professional standards and disciplining the membership.

For many members of professions, the disciplinary process remains a confusing and vaguely threatening spectre. Some members may ask why the College should invest the significant amounts of time and resources necessary for a disciplinary process. There are two reasons: firstly, the legislation governing psychologists requires that the College maintain a disciplinary process, and secondly, the disciplinary process is one of the pillars of effective self-governance.

Professional disciplinary hearings involve a system of peer review because the individual member of the profession is best qualified to establish standards and review the conduct of fellow practitioners. As stated by one court: “One of the essential indicia of self-governing profession is the power of self-discipline. That authority is embodied in the legislation pertaining to the profession. The power of self-discipline perpetuated in the enabling legislation must be based on the principle that members of the profession are uniquely and best qualified to establish the standard of professional conduct. Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are deemed to have and, indeed they must have, special knowledge, training and skill that particularly adapts them to formulate their own professional standards and to judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.”

There are three groups that have an interest in the effectiveness and the fairness of the discipline process of self-governing of professions: the public, the profession itself and individual members of the profession who are subject to regulation and, potentially, discipline.

The **public’s** interest is clear. The primary purpose of establishing self-governing professions is to protect the public by ensuring that only the qualified and competent are permitted to practice, and that members of the profession conform to appropriate standards of professional conduct. The disciplinary process provides a mechanism for controlling inappropriate professional conduct.

Members of the **profession itself** have an interest in the proper functioning of their organization. The downfall of one individual is said to diminish all members of the profession. Clearly, there is an interest in ridding the profession of the incompetent and the unethical.

Further, if the public perceives that a profession is not properly functioning in the public's interest, then there will be pressure on the government to either re-examine or revoke a profession's self-governing status. Members of a profession have an interest in ensuring that their profession is operating in the public interest and that the public perceives this to be the case.

Finally, **members of the profession who may be subject to discipline** have a crucial interest in the proper functioning of the self-governing process. Disciplinary sanctions can lead to the loss of one's profession, the loss of one's work. The Supreme Court of Canada describes the importance of work as follows:

"Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in Society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being."

A disciplinary tribunal has tremendous power. It has the capability of destroying a person's professional life. The results of a tribunal can affect, in a grave and sometimes irretrievable way, not only the member being disciplined but also his or her colleagues, family members, and patients or clients. As stated by the British Columbia Court of Appeal:

"Disciplinary proceedings expose a member of the Society to a range of punishments which include suspension of the right to practice and even disbarment. In addition, irrespective of their outcome, the very nature of the proceedings can have a devastating effect on a member's reputation, the single most valuable asset which any professional can possess."

The McRuer Report includes this statement about the far-reaching effect of professional sanctions and the importance of procedural safeguards in the disciplinary process:

"The most obvious feature of the power of a self-governing body to discipline its members is that it is clearly a judicial power within the meaning we have given to that term, i.e., it consists of the independent and impartial application of pre-determined rules and standards; no element of policy should be present in the exercise of this power. It is a power whose exercise may have the most far-reaching effects upon the individual who is disciplined. The sanction imposed upon one who has been found guilty of professional misconduct may be anything from a reprimand to expulsion from the profession. Where a conviction may result in what has aptly and justifiably been termed 'economic death,' it is vital that procedural safeguards to ensure fairness be clearly established and rigorously observed."

In exchange for the privilege of self-governance, professions such as the College of Alberta Psychologists have an obligation to establish and maintain an efficient and fair discipline process which effectively protects the public's interests. The College's disciplinary process must seek to strike an appropriate balance between the sometimes-competing interests of the public, the membership and individuals charged with misconduct. There is no greater challenge for any self-governing profession today.

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