

 Council on Licensure,
Enforcement and Regulation



2012 Annual Educational Conference - September 6-8
San Francisco, California

**GOOD MORAL
CHARACTER**

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Promoting Regulatory Excellence

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Introduction

1. Why should Regulators care about Good Moral Character?
2. Approaches to policing the issue of Good Moral Character.
3. Enforcement - what are Regulators doing when morally poor conduct comes to the attention of a Regulator?
4. When is evidence of absence of moral character such as to merit disciplinary action and some caselaw.
5. General principles.

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**Why should Regulators care about
Good Moral Character?**

- Not just a lofty aspiration.
- Protect public.
- Reputation of profession.
- Reputation of Regulator.
- Cost.

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Approaches to policing the issue of Good Moral Character

- Self declaration.
- Problems with self declaration.
- 3rd party verification.
- Trained staff.

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Enforcement - what are Regulators doing when morally poor conduct comes to their attention?

- Licensing V Registration.
- First application.
- Renewal applications.
- Implications re burden of proof.

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When is evidence of absence of moral character such as to merit disciplinary action?

- Connection with the profession.
- What is the test?
- Each profession has its own fundamental cornerstones.
- Failure to disclose.
- Leading authority - Marten v RCVS.

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General Principles

- Vigorous policing.
- Connectivity with profession.
- Timing of the conduct.
- Evidence of reform / rehabilitation.
- Natural justice must be afforded.

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GOOD MORAL CHARACTER IN PROFESSIONAL REGULATION

Presenters: Robert Gubbins, MA, LL.B
Director of Admissions,
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Defining “Good Moral Character”

- There is no standard definition of “good moral character” or “good character”.
- Each profession’s definition is based upon the importance placed on particular attributes required to practise the profession.
- Common definitions include terms such as: honesty, integrity, responsibility, maturity, ethical standards, trustworthiness and candour.

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Defining “Good Moral Character” (cont’d)

- ***Institute of Chartered Accountants of Ontario***: “Good character includes, but is not limited to, integrity, candour, honesty, trustworthiness, moral and ethical standards, and such other qualities or combination of qualities as will promote the practise of Chartered Accountancy in the public interest, in accordance with the *Chartered Accountants Act, 2010*, and the object of the Institute.”

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Defining “Good Moral Character” (cont’d)

- ***Ontario’s College of Respiratory Therapists*** has a policy on good character. The policy states in part: “The applicant’s past and present conduct afford reasonable grounds for belief that the applicant,
 - I. Is mentally competent to practise respiratory therapy,
 - II. will practise respiratory therapy with decency, integrity and honesty and in accordance with the law, and
 - III. will display an appropriate professional attitude.”

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Defining “Good Moral Character” (cont’d)

- **The Law Society of Upper Canada:**
“Convocation accepts that character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which undoubtedly include, among others, integrity, candour, empathy, and honesty.”

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Defining “Good Moral Character” (cont’d)

- **The Law Society of Upper Canada:** “Good character comprises at least three elements:
 - I. An appreciation of the difference between right and wrong;
 - II. The moral fibre to do what is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;
 - III. A belief that the law at least so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is upheld.”

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Why Have a Good Moral Character Requirement?

- Regulator perspective:
 - To protect the public interest;
 - To maintain ethical standards of practise; and
 - To create public trust in profession.
- Being of good moral character is the ultimate “motherhood” statement for professions. No profession will deny the need to practise in an ethical manner.

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Statutes, Regulations & Bylaws

- The requirement to be of good moral character is frequently found in statutes and regulations to statutes and bylaws.
- A few examples from Ontario Statutes:
 - *Public Accounting Act, 2004*
 - *Regulated Health Professions Act, 1991*
 - *Architects Act, 1990*
 - *Law Society Act, 1990*
 - *Respiratory Therapy Act, 1991*

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Statutes, Regulations & Bylaws (cont'd)

- For some regulatory bodies, the requirement is found in regulations promulgated under their enabling statute.
- Other professions place their good character requirement in their internal bylaws or regulations made under the authority of the their enabling statute.

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Statutes, Regulations & Bylaws (cont'd)

- For example, the *Chartered Accountants Act, 2010*, does not contain a good character requirement. Instead, Section 11 of the *Act* states: “*The registrar shall admit as a member of the Institute any individual who meets the requirements and qualifications for membership that are established by the council.*”
The Institute’s bylaws contain the good character requirement.

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Statutes, Regulations & Bylaws (cont'd)

- An example of the requirement being in a regulation to a statute is Section 2(1) of Ontario Regulation 865/93 made under the *Medicine Act, 1991*. The regulation states in part:
"It is a non-exemptible standard and qualification for a certificate of registration that the applicant's past and present conduct afford reasonable grounds for belief that the applicant:
 - is mentally competent to practise medicine;*
 - will practise medicine with decency, integrity and honesty and in accordance with the law."*

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Statutes, Regulations & Bylaws (cont'd)

- While this regulation does not use the term good character, it arguably has this effect as will be seen in one of the cases discussed further on in this presentation.

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Statutes, Regulations & Bylaws (cont'd)

- There are a variety of ways to verify whether the applicant is of good character.
- The most common method is self-disclosure of criminal or quasi-criminal convictions on an application form.
- Similarly, some regulatory bodies ask the applicant to disclose whether the applicant has ever been denied membership in another regulated profession.

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Statutes, Regulations & Bylaws (cont'd)

- Alternatively, the Regulatory body may ask if there ever been a finding of incompetence or incapacity by another regulatory body in relation to the applicant.
- Disclosure may trigger the regulatory body's process for determining whether the applicant is of good character. Usually this is some form of hearing before a committee or some other form of enquiry where the applicant is given an opportunity to prove that he or she is of good moral character.

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Statutes, Regulations & Bylaws (cont'd)

- A related topic that is beyond this presentation is professional "ungovernability". A finding of ungovernability may call into question the individual's ability to differentiate right from wrong and raises the question of whether the individual is a danger to the public. Arguably, being ungovernable may provide *prima facie* evidence of not meeting the good moral character requirement.

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Case Law

- *Ryan Jesse Manilla v. Law Society of Upper Canada*, 2010 ONLSHP 92.
- *Kathryn Leah Smithen v. Law Society of Upper Canada*, 2011 ONLSHP 44.
- *Parminder Singh Saini v. Law Society of Upper Canada*, 2010 ONLSHP 5.
- *Chauhan v College of Physicians and Surgeons of Ontario*, 2012 CanLII 40320 (ON HOARB).

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General Principles

- Past conduct is **not an automatic bar** to admission or licensure. Perfection is not expected of applicants.
- A person's character changes with time.
- The regulatory body must be satisfied that on the balance of probabilities, the applicant has established that as of **today**, he or she is of good moral character.
- The burden of proof rests with the applicant to prove good moral character.

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General Principles (cont'd)

- There is no "scientific test" for good moral character. However, broadly speaking, the factors to be considered in determining good character are:
 - The nature and duration of the misconduct.
 - Whether the applicant is truly remorseful.
 - What rehabilitative efforts, if any, have been taken and the success of these efforts.
 - The applicant's conduct since the proven misconduct.

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Conclusion

- Regulators should consider defining good character.
- The definition should be as broad and as encompassing as possible while creating a nexus between the definition and the professional attributes required for practise.
- Don't expect good character to be a precise, fixed or constant thing. "You'll know it when you see it."

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Conclusion (cont'd)

- Remember the principles of “natural justice” and adhere to processes that fit within the legal requirements in your jurisdiction.
- Expect to be challenged - either in the form of an internal appeal (if applicable) or in the courts.

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Questions?

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