

**GOOD MORAL CHARACTER**

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## Good Moral Character

- There is no standard definition of “good moral character” or “good character”.
- Common definitions include terms such as: honesty, integrity, responsibility, maturity, ethical standards, trustworthiness and candour.

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## Good Moral Character

- Regulator’s perspective on why being of good moral character is important:
  1. To protect the public interest;
  2. To maintain ethical standards of practice;
  3. To foster public trust in the profession.

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## Good Moral Character

- Being of good character is separate and apart from technical proficiency or expertise.
- Arguing that good character is irrelevant to the practice of a profession or admission to a profession, does the concept of being a professional or practising a profession a disservice.

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## Good Moral Character

- Many regulators as part of their enabling statute have a good moral character requirement.
- Regulators may have different ways of expressing the good moral character requirement. For example, there may be a requirement that the person practise with decency, integrity and honesty and in accordance with the law.

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## Determining Good Moral Character

- Past conduct is not an automatic bar to admission or licensure. Perfection is not expected.
- A person's character changes with time.
- Good moral character is determined at a point in time - usually at registration.
- Generally, the burden of proof rests with the applicant.

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## Determining Good Moral Character

- Good Character is not a scientific test. Broadly speaking, the factors to be considered are:
  1. The nature and duration of past misconduct.
  2. Whether the applicant is truly remorseful.
  3. Rehabilitative efforts, if any, and their outcome.
  4. The applicant's conduct since the past misconduct.

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## PROCEDURAL FAIRNESS

- Procedural fairness is triggered whenever an individual's rights, privileges or interests are at issue.
- The duty to act fairly varies depending on a number of factors. **Not all rights, privileges or interests require the same level of procedural fairness.**

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## PROCEDURAL FAIRNESS

Broadly speaking, the level of procedural fairness depends on:

1. The nature of the decision being made and processes followed in making it.
2. The nature of the statutory scheme and the terms of the statute pursuant to which the body operates.
3. The importance of the decision to the individual.
4. The legitimate expectations of the person challenging the decision.
5. The choice of procedure made by the agency itself.

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## PROCEDURAL FAIRNESS

- Given the factors above, the following are generally required:
  - NOTICE:** A person must know the case being made against them and be given sufficient information to provide them with a reasonable opportunity to respond.
  - RIGHT TO BE HEARD:** The individual should be given a right to respond, whether this be in writing or orally. The decision process should allow the parties to communicate their positions in a fair manner.

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## PROCEDURAL FAIRNESS

- 3. REPRESENTATION:** There is no absolute right in all cases to representation. However, whether such a right exists depends on the nature and complexity of the issues and proceedings and whether the proceedings are court-like with witnesses and cross-examinations and the ability generally of the individual to adequately present and defend the case without counsel.
- 4. EVIDENTIARY RULES:** The parties should be able to adduce evidence and to know the case of the opposing party so as to provide an opportunity to address evidence presented by the opposing party that is prejudicial and present evidence to support their own case.

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## PROCEDURAL FAIRNESS

- 5. REASONS FOR DECISION:** In most circumstances, procedural fairness requires that an administrative decision maker provide reasons for his or her decision. Reasons may vary in their level of detail and complexity.

- There are also other considerations such as whether there should be a further right of appeal and how any such appeal should be heard. Not all decisions can or should be appealable.

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### Good Moral Character & The Ungovernable Individual

- Every profession and every regulator has its share of critics and gadflies.
- Being ungovernable is more than just being critical. Some members/licensees or applicants are never satisfied with the state of the profession or its regulator.

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### Good Moral Character & The Ungovernable Individual

- The ungovernable individual is however, a member or applicant that will not demonstrate a willingness to accept the authority of the regulator to regulate.
- The ungovernable individual therefore, will not comply with the regulatory regime in place to govern the profession, often preferring to act outside of the profession's rules or norms.

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### Good Moral Character & The Ungovernable Individual

- Ungovernable behaviour may occur at the point of application for licensure.
- It frequently occurs during a disciplinary investigation or in uncooperative behavior during a practice inspection or quality assurance process.
- The initial signs may be an unwillingness to cooperate or respond to the regulator.

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### Good Moral Character & The Ungovernable Individual

- May also be indicated by previous conduct such as being refused registration by another regulator or expulsion.
- Being ungovernable may have its roots in a medical condition and may also have implications for the capacity to practice.

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### Good Moral Character & The Ungovernable Individual

- Capacity to practice issues and disciplinary issues may overlap in these instances as they may have a medical cause.
- Ideally, regulators should have separate processes to disciplinary matters and capacity matters where they can be separated.

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### Good Moral Character & The Ungovernable Member

- The ungovernable member may ultimately be expelled or have his or her licence revoked because of being ungovernable.
- As with any disciplinary or capacity matter, an individual's interests are at stake so procedural fairness issues arise.

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### Good Moral Character & The Ungovernable Individual

- Procedural fairness issues become even more important when the individual won't or can't cooperate in the decision making process.
- In most instances however, the ungovernable individual will be dealt with as a disciplinary matter and will therefore be afforded the applicable level of procedural fairness.

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### Good Moral Character & The Ungovernable Individual

- Some applicants, candidates or students may at the time of application be found to be ungovernable because of past behaviour. For example, having been denied registration by another regulator.
- Criminal behaviour or other offences are also possible signs of ungovernability.

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### Good Moral Character & The Ungovernable Member.

- If possible, regulators should consider having applicants, candidates or students be subject to the usual rules of professional conduct.
- This allows the regulator an opportunity to ensure the profession's rules are followed and may make ungovernable behaviour a matter of professional conduct and not good moral character.

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## Conclusion

- Good moral character is not easily defined but that does not mean that it should be abandoned by regulators.
- Don't expect perfection from applicants. A person's character changes with time and rehabilitation is possible - even with the ungovernable individual can change.

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## Conclusion

- As with any decision affecting an individual's rights, procedural fairness is paramount.
- This does not mean however, that all decisions attract the same level of procedural fairness. The nature of the decision, the statutory regime, the importance of the decision and personal expectations of the individual as well as the choice of processes are relevant factors.

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