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SELF-GOVERNING PROFESSIONS

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What's New in this Update:

Reported and unreported decisions received by the author up to January 2019 have been included in this update. The following cases are of particular interest:

- *Yates v. Nova Scotia Board of Examiner in Psychology* (N.S.S.C.) — The Board did not articulate or consider its discretion under s. 15(5) of the *Psychologists Act*, but rather fettered its discretion, which did not meet either the reasonableness or correctness standard.
- *College of Optometrists of Ontario et al v. Essilor Group Canada Inc.* (Ont. S.C.J.) — Insofar as Essilor was providing eyewear in Ontario, the regulatory scheme in place in Ontario applied to it.
- *Nguyen v. Chartered Professional Accountants of B.C.* (B.C.S.C.) — Any finding of professional misconduct must conform to the charge as particularized. The foundation of this duty is the right of the member to know the charges against him or her and to be afforded an opportunity to

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respond to those charges. The charges “must give the person charged reasonable notice of the allegations that are made against him so that he may fully and adequately defend himself”.

- *Tran v. College of Physicians and Surgeons of Alberta* (Alta. C.A.) — The Court of Appeal agreed with the Queen’s Bench that the complainant’s standing was limited to issues of procedural unfairness; she was not entitled to seek a review of the reasonableness of the Committee’s decision on the merits.
- *Sanders v. College of Physicians and Surgeons of British Columbia* (B.C.S.C.) — The Board’s finding that the committee conducted an adequate investigation was not patently unreasonable. The Board’s decision fell within a range of reasonable outcomes and was adequately transparent, intelligible, and justifiable.
- *O’Toole v. Law Society of New Brunswick* (N.B.C.A.) — The Panel erred in restricting s. 60(3)’s ambit (awarding costs against the Law Society) to cases where “the prosecution should not have occurred”. It prescribes only one condition precedent to the exercise of a panel’s discretion to order the Law Society to pay costs - a finding of not guilty of conduct deserving sanction.
- *Zuk v. Alberta Dental Association and College* (Alta. C.A.) — The disciplinary hearing attributed too much significance to the alleged breach of undertaking that was not proven, and attached too much weight to the dentist’s failure to respond to a follow-up inquiry while the investigation was stalled.
- *College of Physicians and Surgeons of Ontario v. Peirovy* (Ont. C.A.) — The Legislature gave the Discipline Committee the task of fashioning penalties that would favour the goal of eradicating sexual abuse of patients, while taking into account and balancing other relevant factors. Unlike criminal sentences, self-regulated professions were mandated to make these determinations.