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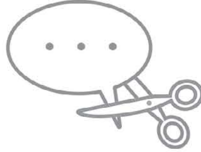

# THE NEW CENSORSHIP

## Regulatory creep, professional regulators, and growing limits on freedom of expression

Christine Van Geyn

August 2024

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# Executive summary | *sommaire*

**There is a concerning trend** emerging in Canada – a kind of "new censorship." We see it in the creeping way that professional regulators are silencing those in regulated professions whom they consider guilty of heterodox speech or ideological non-conformity – even when those making the remarks are off-duty and are talking about things unrelated to their profession. The list of the censured includes lawyers, doctors, accountants, nurses, psychologists, and those in other regulated professions.

But professional regulators do not have unlimited and free-wheeling power to regulate everything their members say. Professional regulators are subject to the *Charter of Rights and Freedoms* when they make their decisions, and they may only regulate off-duty speech when it is in the public interest and when it relates to the profession and the specific professional practice. Regulators must be able to justify their decisions and those decisions must follow a logical chain of reasoning and be balanced. The struggle is that even when the courts review the decisions of professional regulators through a judicial review process, they tend to give wide deference to regulators' decisions. And while regulators may have technical expertise in the specialized knowledge of the profession, they often don't put much value on freedom of expression. The result is that professionals who express unpopular views are disciplined, regulators barely glance at the *Charter*, and courts are deferential when they review that discipline.

This paper considers one of the most infamous cases of professional regulation of off-duty speech in Canada: the dispute between Dr. Jordan Peterson and the College of Psychologists of Ontario. When Peterson took to social media to post his views about various political, social, and cultural issues, members of the public who disagreed with him weaponized the regulatory process and took their complaints to the College. The College sought to send Peterson to a re-education program at his own expense, which Peterson challenged in court, asserting that the punishment infringed upon his constitutional rights. However, the Ontario Divisional Court deferred to the College's decision, emphasizing the mandate to maintain public trust and standards within the profession.

Contrast Peterson's case to that of Carolyn Strom, a nurse who took to Facebook to publicly criticize the care her grandfather received at a nursing home and to advocate

for general improvements in end-of-life care. Some nurses at the facility saw the posts and reported Strom to the Saskatchewan Registered Nurses' Association, which found that her comments violated its code of ethics, which in turn led to disciplinary action. However, the Saskatchewan Court of Appeal overturned this decision, affirming Strom's right to engage in public discourse about health care quality without fear of professional reprisal.

The outcomes in the two cases are very different. In part, this could be because the content of the speech was less subjectively controversial, but part of it could be the standard of review. In *Strom* the court applied a less deferential standard of review. This shows the importance of deference on the outcome of these expression cases.

Other cases where the mainstream acceptability of off-duty political speech was also at issue highlight the difference between *Strom* and *Peterson*. The right to freedom of expression is content neutral, and when someone speaks when they are off-duty and on a topic unrelated to the core mandate of the profession in question, it ought not to elicit discipline. But the practical reality is that regulators are human beings who see speech that is unpleasant or controversial and outside the mainstream as more requiring of discipline. In this paper, we compare the polarizing anti-abortion speech of Canadian nurse and social activist William Whatcott, which led to disciplinary action against him that required an appeal, with an anti-gun-crusading physician's speech, which resulted in complaints that were immediately dismissed as vexatious. One could easily conclude that it was the subject matter of the political expression that influenced the different outcomes and processes in these two cases.

The paper also examines cases of speech by physicians related to COVID-19. The right to freedom of expression is fundamental to democracy, and it is partly through clashes with extreme and mistaken views that truth and the democratic vision remain vigorous and alive. This principle is vital in truth-seeking fields like science, medicine, law, and other professions that thrive on constructive debate and respectful disagreement. The discovery of new ideas would be hampered if professional regulators had the power to police their members' speech for ideological conformity and political correctness. Yet during the pandemic, we saw that very thing transpire – speech that fell somewhere on the spectrum attracted discipline. This paper will consider where the lines are and should be drawn.

Among the challenges in regulating off-duty speech within regulated professions are the inconsistent application of regulatory standards and the insufficient consideration of *Charter* rights in disciplinary proceedings. However, some reforms are possible, including better training in fundamental freedoms for regulators, using the legal system to require that standards of review be more stringent, legislating explicit requirements for there to be a clear link to the profession in cases involving expression, and encouraging cultural shifts that emphasize the idea that freedom of expression is essential to professional integrity and democratic values. **MLI**

***Un phénomène préoccupant se manifeste*** *au Canada – une forme de « nouvelle censure ». On voit cette censure dans la manière dont les organismes professionnels de réglementation réduisent au silence les membres des professions réglementées qu'ils jugent coupables de propos hétérodoxes ou d'excentricité idéologique – même lorsque les auteurs s'expriment en leur nom personnel sur des sujets qui n'ont rien à voir avec leur profession. On trouve parmi eux des avocats et avocates, des médecins, des comptables, des infirmiers et infirmières, des psychologues et des membres d'autres professions réglementées.*

*Cependant, ces organismes professionnels de réglementation ne possèdent pas le pouvoir illimité et indépendant de réglementer tout ce que leurs membres énoncent. Lorsqu'ils font leurs choix, ils sont soumis à la* Charte des droits et libertés *et ne peuvent régir les débats libres que si l'intérêt public est en jeu ou que si les propos sont liés soit à la profession, soit à l'exercice strict de la profession. Il est essentiel que les régulateurs aient à justifier leurs décisions et à veiller à ce que celles-ci respectent une logique de raisonnement et un juste équilibre. Le point de difficulté, c'est que même lorsqu'un tribunal intervient dans le cadre d'un recours judiciaire, il a tendance à respecter l'opinion du régulateur. Et, bien que les régulateurs soient dotés de l'expertise technique et des connaissances spécialisées liées à la profession, ils accordent souvent peu d'importance à la liberté d'expression. En conséquence, les professionnels qui expriment des points de vue impopulaires sont sanctionnés, les régulateurs portent peu d'attention à la* Charte *et les tribunaux font preuve de déférence lorsqu'ils réexaminent les sanctions imposées.*

*Ce document présente l'un des cas les plus tristement connus de réglementation de la profession pour ce qui est des débats libres au Canada : le litige entre le Dr Jordan Peterson et l'Ordre des psychologues de l'Ontario. Lorsque M. Peterson a choisi les médias sociaux pour faire connaître ses opinions sur diverses questions politiques, sociales et culturelles, les abonnés en désaccord ont arsenalisé le processus de réglementation en déposant des plaintes auprès de l'Ordre. M. Peterson a contesté devant le tribunal la tentative de l'Ordre de le forcer à suivre un programme de rééducation à ses frais, ce dernier arguant que cette sanction était contraire à ses droits constitutionnels. Néanmoins, la Cour divisionnaire de l'Ontario s'en est remise à la décision de l'Ordre, en soulignant l'importance de préserver la confiance du public et les normes dans la profession.*

*Comparons le cas de M. Peterson à celui de Carolyn Strom, une infirmière qui a dénoncé sur Facebook les soins donnés à son grand-père dans un centre d'hébergement et plaidé en faveur d'une amélioration globale des soins de fin de vie. Certaines infirmières de l'établissement ont fait un signalement auprès de la* Saskatchewan Registered Nurses' Association*, qui a jugé que les commentaires de Mme Strom étaient en violation à son code de déontologie, ce qui lui a valu des sanctions. Toutefois, la Cour d'appel de la Saskatchewan a annulé cette décision, autorisant ainsi Mme Strom à s'engager dans un discours public sur la qualité des soins de santé sans risquer de représailles professionnelles.*

*Les résultats sont très différents dans les deux situations. Il est possible que cela soit en partie dû au fait que le contenu du discours était moins subjectivement controversé, mais aussi au critère de révision. Dans l'*affaire Strom*, la Cour a utilisé un critère moins strict. Cela démontre à quel point la déférence est importante pour l'issue de ces affaires d'expression.*

*La différence entre* Strom *et* Peterson *est mise en évidence par d'autres affaires sur l'acceptabilité générale d'un discours politique hors des heures de travail. Le droit à l'expression est neutre en matière de contenu, ce qui signifie que lorsqu'une personne s'exprime hors de ses heures de travail sur un sujet exempt de liens avec le rôle principal de sa profession, elle ne devrait pas être sanctionnée. Toutefois, dans les faits, les régulateurs sont aussi des êtres humains qui voient dans les discours dérangeants ou controversés, non conformes au courant dominant, un phénomène à sanctionner davantage. Dans ce document, nous mettons en parallèle le discours clivant contre l'avortement de l'infirmier et activiste social canadien William Whatcott, qui lui a aussi valu des sanctions ayant nécessité un appel, et celui d'un médecin anti-armes à feu, qui a donné lieu à des plaintes immédiatement rejetées, car jugées vexatoires. Il est possible de conclure aisément que c'est le thème politique qui explique pourquoi les résultats et les processus ont différé les uns des autres dans ces deux situations.*

*Le document examine également les paroles de médecins concernant la COVID-19. La démocratie repose sur le droit à la liberté d'expression, et c'est en partie grâce à la confrontation d'opinions extrêmes et erronées que la pensée et la vision démocratique demeurent vives et vigoureuses. Ce concept revêt une importance capitale dans les domaines de la recherche du vrai, comme dans la science, la médecine, le droit et d'autres professions qui s'alimentent de discussions constructives et de désaccords respectueux. La découverte de nouvelles idées serait ralentie si les ordres professionnels pouvaient contrôler le discours de leurs membres afin de garantir qu'il est conforme à l'idéologie et à la rectitude politique. Pourtant, durant la pandémie, c'est précisément ce qui s'est produit : les discours à des points variés du spectre se sont attirés des sanctions. Ce document examine les endroits où tracer les lignes.*

*Il y a des défis inhérents à l'encadrement des débats libres soulevés par les professionnels réglementés : l'application incohérente des normes réglementaires et une insuffisante prise en compte des droits* garantis par la Charte *dans les procédures disciplinaires. Toutefois, certaines réformes sont possibles, notamment en améliorant la formation des régulateurs en matière de libertés fondamentales, en faisant appel au système de justice pour exiger des critères de révision plus rigoureux, en adoptant des lois qui prévoient explicitement un lien clair avec la profession dans les affaires concernant l'expression et en appuyant les changements culturels qui privilégient l'importance de la liberté d'expression pour l'intégrité professionnelle et les valeurs démocratiques.* **MLI**

# Introduction

**Consider for a moment the** image in your mind when you consider the phrase "government censor." You likely think of an anonymous government official sitting in a dark room watching movies, deciding which films are safe for public consumption, and which are too dangerous or unpalatable. Or you may think of Soviet-era Party men, arresting citizens for expressing ideologically impure ideas or for criticizing the political leadership.

The truth is that the new censorship is subtler and more pernicious. Today it is most often carried out by individuals who claim independence from the government, but who are in fact empowered by the government through legislation and regulation, and who are just as passionate about stamping down on dissenting viewpoints as the classic commissar.

The new censorship is often implemented by what we refer to as the administrative state: the collection of government agencies, bureaus, commissions, tribunals, and regulatory bodies to which the government has delegated authority. One of the most powerful of these bodies is the professional regulator. Professional regulators, which oversee fields like law, health care, accounting, and teaching, are empowered by the government through legislation. Canadians in regulated professions need the government's permission to do their job, and that permission is granted by the self-regulating professional bodies that have their own systems of rules and discipline.

Every Canadian has a constitutionally guaranteed right to freedom of expression. But a concerning trend is emerging in which individuals who are members of one of these regulated professions are facing discipline for private, off-duty speech that is unrelated to their profession. Their speech is attracting the administrative action of professional regulators for the same reasons that

speech attracts censorship in the most classic cases: because it is heterodox, ideologically non-conforming, politically unpopular, or controversial.

Professional regulators do not have unlimited and free-wheeling power to regulate all their members' speech. While off-duty conduct may in some cases attract the attention and discipline of a regulator, individuals are not required to check their constitutional protections at the door when they enter a regulated profession. Professional regulators may only regulate off-duty speech when it relates directly to the profession and in furtherance of their statutory mandate to regulate in the public interest as it relates to the specific professional practice. Further, decisions by professional regulators must be justified and balanced: the infringement of the right to expression must be proportionate to the public goal being served.

This paper will consider the importance of the right to freedom of expression for individuals and for society, and some of the pitfalls in administrative law that have resulted in professional regulators broadening the type of speech over which they claim authority. It will then consider various cases where we have observed this creep in authority and conclude by presenting a future path that includes more robust protection for freedom of expression.

## Professional regulation

### Delegated authority and the role of professional regulators

A regulated profession is one that has a governing body that is empowered by law to govern or regulate that profession. Governments delegate authority to self-regulating professional bodies through legislation that provides a framework that lays down general principles but leaves the regulator with the task of filling in the details through regulations like codes of ethics and professional standards. The statutes vary by profession and by province, but generally, they give regulators a broad-brush framework to establishing standards of qualification, ethics, competence, and professional practice, and to take action

to ensure that these standards are maintained in the public interest. The "public interest" does not mean the public interest at large – it is limited to the public interest as it relates to the professional practice.

This system of delegated authority is a policy choice that governments have made. Politicians explain this system by saying that the problems to be addressed by administrators and professional regulators are too complex for parliamentarians to deal with. It is better to leave the minutiae to "experts," like those who work for the professional regulator. The upshot is that instead of elected people making laws, the elected people enact empty shells that administrative experts fill with rules (Mancini and Sirota 2024).

The legislative framework also empowers regulators to hold their members accountable for upholding these professional standards including by imposing a variety of disciplinary actions. Generally, the legislation grants the professional regulator broad discretion to determine what constitutes professional misconduct.

## Framework for freedom of expression and regulated professionals

Because professional regulators are empowered by the government, the *Canadian Charter of Rights and Freedoms* applies to their actions and decisions. But members of regulated professions agree to limit their constitutionally guaranteed right to free expression in exchange for the privilege of practicing their profession (Prather, Harding, and Schembri 2021). For example, a doctor may be disciplined for recommending snake-oil, a lawyer may be disciplined for baselessly whipping up contempt for a judge, and an accountant may be disciplined for sexually harassing clients.

Determining what speech can attract sanction from a professional regulator requires an analytical framework. First, professionals retain their right to freedom of expression under the *Charter*. Second, professional regulators only have authority over members' speech where it relates to their core function of regulating professional services in the public interest. And third, within their regulatory authority, professional regulators must ensure that any limits on speech are justified and proportionate to the specific public interest connected to the statutory mandate of the regulator. These elements shape the examination of the case studies that follow later in this paper.

## Framework step 1: Regulated professionals retain their right to freedom of expression

Regulated professionals, like all Canadians, have a fundamental right to freedom of expression. This right fosters human flourishing by permitting individuals to convey their beliefs, thoughts, ideas, and emotions without fear of state-imposed restrictions or reprisals. Freedom of expression goes to our core as individuals and permits the expression of the self. On a societal level, freedom of expression enables democracy to function and encourages the search for truth in diverse fields of inquiry (see *Grant v. Torstar Corp.*, 2009 SCC 61 (CanLII), [2009] 3 S.C.R. 640, at para. 1).

The *Charter*-protected right to expression includes expression that is unpopular, distasteful, or contrary to the mainstream (see *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927, at p. 968). Popular opinions are not the ones subjected to silencing and the pressure to conform – it is the protection of minority or unpopular viewpoints that gives this right its meaning (Moon 2019, 4).

In the landmark Supreme Court of Canada decision *R. v. Keegstra*, [1990] 3 SCR 697 at pp. 765–66, Chief Justice Brian Dickson held "it is partly through clash with extreme and erroneous views that truth and the democratic vision remain vigorous and alive." This principle is vital in truth-seeking fields like science, medicine, law, and other professions that thrive on constructive debate and respectful disagreement. The discovery of new ideas would be chilled if professional regulators were empowered to police their members' speech for ideological conformity and political correctness. One of the very dangers the *Charter's* guarantee of freedom of expression was designed to protect against is the risk that the state will become the arbiter of truth. As the Supreme Court wrote in *R. v. Sharpe*, 2001 SCC 2, at para. 21, the right to freedom of expression is "the best route to truth, individual flourishing, and peaceful coexistence in a heterogeneous society in which people hold divergent and conflicting beliefs."

A professional regulator should not police its members' political opinions. Political expression, including controversial opinions, lies at the core of this freedom. And yet, Canada has some experience with sanctioning (and even expelling) professionals for their political views. In the 1950s, in *Martin v. Law Society of British Columbia,* [1950] 3 D.L.R. 173 (B.C.C.A.), an applicant was refused admission to the legal profession for being a member

of the Labour Progressive Party, a known communist group. Cultural perspectives shift and evolve with time. However, imposing censorship on minority political views under the pretext of preventing "harm" demands restraint lest it improperly silence political dissent and moral disagreement. There are no experts on morality or political righteousness to whom the state can delegate this judgment.

In a case study that will be considered later in this paper, the Saskatchewan Court of Appeal in *Strom v. Saskatchewan Registered Nurses Association* 2020 SKCA 112 found that the public has a pressing interest in hearing critical voices from professionals with relevant experience and expertise, not just voices supportive of the status quo. The court in *Strom* acknowledged that members of a profession, nurses in that case, necessarily agree to certain restrictions on their conduct and speech, but it went on to affirm that "The professional bargain does not require that they fall silent." Likewise, in *Doré v. Barreau du Québec* 2012 SCC 12 the Supreme Court considered the question of the scope of the right to freedom of expression granted when someone is subject to the oversight of professional regulatory bodies. In *Doré*, a case involving a lawyer, the court noted that respect for expressive freedom requires disciplinary bodies to tolerate "a degree of discordant criticism." Expressing oneself on topics that are controversial does not, in itself, constitute professional misconduct. In that case, the court wrote that "lawyers should not be expected to behave like verbal eunuchs."

*While professionals do retain their right to freedom of expression, some of what they say, even while off-duty, can attract discipline.*

On the other hand, while professionals do retain their right to freedom of expression, some of what they say, even while off-duty, can attract discipline. In order to discipline professionals for off-duty speech, the speech must have a nexus to the profession, and the limit on the speech must be justified and proportionate to the public interest. A problem arises, though, when courts are overly deferential to the decisions of the regulators.

### Step 2: Regulating speech requires a nexus to the profession

Professional regulators do not have the power to dictate every aspect of the lives or speech of their members. Their ability to regulate off-duty conduct, including speech, requires that there be a clear connection between that specific conduct and the legitimate interest of the profession. The regulator's ability to take administrative action, including discipline, is context specific: its authority will be limited by the enabling legislation and by the type of off-duty conduct. This concept was described in some detail by Justice Slatter in *Yee v. Chartered Professional Accountants of Alberta* 2020 ABCA 98:

> Many factors can be considered to determine if private conduct amounts to professional misconduct. The closer the conduct comes to the activities of the profession, the more possible it is that personal misconduct will amount to professional misconduct.... It is, however, an error for a discipline committee to assume that because certain "events happened" that are in some sense undesirable or improper, that automatically amounts to "professional misconduct". An accountant may, as one member of the Discipline Tribunal put it, be an accountant "from the time you get up until you go to bed at night", but that does not make everything an accountant does a matter of professional discipline.

A professional regulator aiming to restrict its members' speech must demonstrate that the speech it is assessing is directly related to its primary mandate of regulating professional practice. This is a high threshold. Even in cases where the off-duty conduct is severe, professional discipline will only follow if there is a significant link between it and the profession. Courts must reject an unduly expansive approach that would encompass speech that may have a broad impact on the public's perception of the profession as a whole – for example, a professional losing his or her temper at a child's sporting event. No one would lose trust in the profession of accountancy and its capacity to provide tax-related services because an accountant argued – even vitriolically – with a little league umpire. Speech that has no connection to the regulated professional services is outside the remit of the professional regulator and cannot form the basis of a disciplinary decision. The onus is on the professional regulator to demonstrate that a member's speech falls within its core regulatory function.

### Step 3: Limits on speech must be justified and proportionate to the impact on the public interest

Even when there is a link to the profession, where that off-duty conduct involves expression and speech that is protected by the *Charter*, regulators have a heightened duty to ensure that they have given full weight to that constitutional guarantee. The right to freedom of expression is a generous one and the professional regulator must clearly articulate the harm to the public interest; the court in *Doré* explained that constraints must impair the right "as little as reasonably possible."

The further the regulator moves away from regulating professional standards and competence, the more it must demonstrate the existence of an applicable statutory objective to balance against the restriction on *Charter* rights, and the more rigorously the protections of those rights must be upheld.

The *Doré* decision is a significant precedent that guides other administrative law cases, and it stands for a principle that a professional regulator seeking to discipline a member for their speech must engage in a proportionate balancing of the right to freedom of expression against the public interest the regulator is empowered to protect. Further, the "public interest" is not an amorphous or expansive concept. The scope of a professional regulator's authority remains constrained by the specific and technical professional services for which it was created. A regulator cannot refer to a nebulous and unwieldly public interest on broad and general terms to encroach into matters over which it has no authority (Canadian Civil Liberties Association Factum, *Peterson v. Ontario College of Psychologists* (Divisional Court) 2023).

### Review of administrative decisions by the courts and the problem with deference

Courts can review the decisions of professional regulators through a process called judicial review. In a judicial review, a court examines whether an administrative body's decision is fair, reasonable, and lawful. The court applies a certain "standard of review," which is the legal approach to analyzing the decision (Expanatory note, SCC website 2019).

The problem is that the Supreme Court has struggled to provide systematic guidance to administrative decision-makers and reviewing courts in cases that involve *Charter* protected rights. In the case *Canada (Minister of Citizenship and*

*Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court confirmed that there are two standards of review: "reasonableness" and "correctness." These words have very distinct meanings in law, and it is important to know that "reasonableness" is a more deferential standard. A "reasonable" decision is based on a logical chain of reasoning and has to make sense in light of the law and facts. There can be more than one "reasonable" outcome. In contrast, a "correct" decision is the only right answer in light of the law and facts (Explanatory note, SCC website 2019).

When considering *Charter* challenges to administrative decisions, the Supreme Court in *Doré* held that the reviewing court must ask whether the decision reflects a proportionate balance of the decision-maker's statutory mandate with the *Charter* right or value at issue. This balancing is reviewed on a standard of reasonableness, but the court has said that it must nonetheless be robust. The onus is on the administrative decision-maker to ensure that any limit on that protection is minimally impairing. This framework requires the administrative decision-maker to demonstrate that he or she has tried to strike a balance and to explain their rationale or "show their work." A mere nod to free speech should not be enough.

*Vavilov* and *Doré* must be read together. First, under *Doré* there must be a minimal impact on the individual's rights and competing considerations must be balanced. Second, under *Vavilov*, the administrator's decision must be transparent, logical, and provide a coherent chain of reasoning.

However, while the experts who serve as professional regulators may be experts in their technical field (although even this may not be true – see, for example, Sirota and Mancini 2024), the regulators themselves delegate their authority to bureaucrats who undertake the investigation and enforcement. No one involved at this level is likely to be an expert in constitutional guarantees. They may have little if any knowledge about the Constitution or about fundamental rights like the right to freedom of expression. This can create a problem when an administrative decision involves *Charter* rights like freedom of expression, which is then reviewed merely for "reasonableness."

As a result, case studies show that many professional regulators give very minimal consideration to the right to freedom of expression. The result is that administrative decisions often merely glance towards the Constitution; they frequently pay lip service to rights like freedom of expression without analyzing how serious the violation is or the consequences of rights violations. These decisions are then reviewed on a deferential standard.

## Case studies

**This section will consider significant** cases that deal with the creep of the regulation of professions into the regulation of expression. These cases reveal how the approach of various regulators combined with a high level of deference to those regulators by the courts has resulted in unjustified infringements on the right to freedom of expression. When considering these case studies, keep in mind that each professional regulatory body is empowered by its own legislation, with its own standards or ethics and professionalism. Additionally, these cases deal with decisions by the various regulators at various stages of discipline, judicial review by courts and subsequent appeals, and the standard of review by the courts may vary depending on the empowering legislation.

The cases that involve professionals facing discipline or a risk of discipline for their speech generally fall under one of three themes. On one end of the spectrum are cases that directly relate to professional practice. These are not difficult cases because the regulatory body's authority in this area is well grounded. Cases of this sort involve incompetent professional advice or unprofessional or unethical communications with clients or patients.

On the other end of the spectrum are cases that have no connection to professional practice, but rather involve a professional facing some type of administrative action from their regulator as a result of some personal activity. For example, a professional may face discipline for expressing a private opinion about a political or religious topic or engaging in public advocacy or large-scale political organizing. A professional regulator has no authority over these matters (although, as we will see, this has not stopped them from trying to discipline members for such activities).

Lying between these two extremes are the most complex cases, where expression does not fall squarely within professional practice but may still attract interest from the regulatory body if there is a connection to the regulated services, or if membership in a profession is used to bolster a claim. In these "edge cases," limits on expression must still be shown to have a connection to the profession and balance the *Charter* right to expression with the public interest; borderline cases should be resolved in favour of liberty.

### Case 1: *Dr. Jordan Peterson v. College of Psychologists of Ontario*

One of most widely discussed and publicized cases dealing with the creep of professional regulators and freedom of expression involves the dispute between well-known psychologist and author Dr. Jordan Peterson and the professional regulator of psychologists in Ontario, the College of Psychologists of Ontario (the "College"). The formal name for the case is *Dr. Jordan Peterson v. College of Psychologists of Ontario*, 2023 ONSC 4685. Peterson is a highly educated academic, author, and public figure. Though he was registered with the College of Psychologists of Ontario since 1999, he ceased to have a clinical practice in June of 2017. He is a prolific writer, podcaster, and YouTube content producer who maintains an active social media presence. Peterson identifies himself on his X/Twitter profile as a "clinical psychologist" and he also is introduced as a clinical psychologist in media appearances, like on the *Joe Rogan Experience* podcast.

In 2021 and 2022, some members of the public took exception to certain public statements Peterson had made on Twitter and on the *Joe Rogan Experience*. These individuals, who were not patients of Peterson's and had no relationship to him, made complaints to the College. The following public statements were the subject of the complaints and were investigated by the College:

- On the *Joe Rogan Experience* podcast, Peterson described a client who filed a complaint against him as "vindictive" and coming after him with "a pack of lies."
- Later in the podcast, during a discussion about children's deaths from air pollution, he stated, ironically, "it's just poor children, and the world has too many people on it anyways."
- In a tweet, Peterson called Catherine McKenney, an Ottawa City Councillor who uses they/them pronouns, an "appalling self-righteous moralizing thing."
- Peterson tweeted the following about Elliott Page, a transgender actor: "Remember when pride was a sin? And Ellen Page just had her breasts removed by a criminal physician."
- In a tweet, Peterson called Gerald Butts, the then chief aide to Prime Minister Justin Trudeau, a "prik."
- In a tweet in response to a *Sports Illustrated* Swimsuit Edition cover, Peterson tweeted with respect to the featured Yumi Nu, a plus-sized

> model: "Sorry. Not Beautiful. And no amount of authoritarian tolerance is going to change that."

The College's Inquiries, Complaints, and Reports Committee (ICRC) concluded that the overall effect of these public statements could constitute professional misconduct and ordered Peterson to participate, at his own expense, in a remedial "coaching program" about "professionalism in public statements." If Peterson failed to complete the program to the satisfaction of the College or coach, this could amount to professional misconduct leading to the loss of his licence.

The ICRC claimed that this order was not disciplinary, but the practical effect of the re-education is quite punitive. Professor Michael Ilg of the University of Calgary Faculty of Law has argued such orders are in fact disciplinary: they are not about remedial training on the content of psychology or its clinical practice, they are about language used on social media and on podcasts. It's easy to imagine that many professionals would find it humiliating to have it on public record that they were required to undergo remedial training on basic decorum. Apart from intangible social costs, there is also the tangible cost in money and time of having to undertake the required coaching (Ilg 2023).

The ICRC's decision was troubling for a number of reasons. First, the decision gave very little consideration to Peterson's right to freedom of expression. Even after stating that it "recognize[d] Dr. Peterson's constitutional right to freedom of expression," the panel still imposed the re-education requirement.

Peterson sought a judicial review of the ICRC decision ordering this re-education from the Ontario Divisional Court. He argued that the decision was disciplinary in nature and that it was unreasonable as a matter of both administrative and constitutional law. He argued at divisional court that the panel had failed to conduct the mandatory, proportionality-focused balancing required by the Supreme Court's decisions in *Doré*, and that the panel's cursory analysis of the comments at issue fails *Vavilov*'s standards of "justification, transparency, and intelligibility"

On the balancing of expression and public interest, Peterson argued that the ICRC was required to strike a proportionate balance between its statutory objectives and his *Charter* right to freedom of expression, thereby infringing the right "as little as reasonably possible." Instead, he argued, the ICRC barely

considered his right to freedom of expression, mentioning the right in its reasons only once. There was no meaningful engagement with the breadth and depth of this right, and instead, the interpretation of the statutory objectives of the regulator was overly broad. He argued that in deciding to police his "off-duty" political expression, the College was operating at the very margins of its mandate. The College's *Code of Ethics* applies to off-duty conduct only when "public trust in the discipline as a whole" is at stake. Moreover, the *Code* itself recognizes freedom for debate (*Canadian Code of Ethics for Psychologists*, Ottawa: Canadian Psychological Association, 2017 p. 31 and 32).

> *The College's* Code of Ethics *applies to off-duty conduct only when "public trust in the discipline as a whole" is at stake.*

Peterson also argued that the panel's cursory analysis of the comments at issue fails *Vavilov*'s standards of "justification, transparency, and intelligibility." The panel did not interpret the comments in their full context, he maintained: some were sarcastic jokes; others were made in spicy exchanges; and others needed to be read together with his fuller explanations of them. He argued that many of the comments were made on Twitter, which is an environment that does not allow for nuanced exposition. The ICRC ought to have considered his comments in this context. Instead, it made generalized, conclusory findings about the supposed risk of harm to the public, including that the comments risked undermining public trust in the College's ability to regulate the profession.

The divisional court rejected Peterson's arguments. First, it found that per *Doré,* the panel had proportionately balanced the right to freedom of expression with the College's statutory objective. The Court held that it was clear from the "history and context" of the proceedings that the panel was well aware of the importance of the value of freedom of expression and Peterson's position respecting it, and that the balance was appropriate.

The Court found that the decision satisfied the required standard of reasoning set by *Vavilov.* The ICRC identified language that Peterson used that it was concerned was degrading or demeaning or otherwise unprofessional. The approach taken by the divisional court in *Peterson* is in tension with the

reasons-first approach of *Vavilov*, which requires the decision maker to show a logical chain of reasoning. While some have argued that *Vavilov* improved the state of administrative law in Canada (see Mancini and Sirota 2023; Sirota and Mancini 2024), it is far from a guarantee that judicial review will always result in a reasons-first approach. At this point, deference now seems to be hard-coded into the judicial review process. Indeed, the court found that the ICRC's concern about Peterson's language was entitled to deference, dismissed the judicial review, and ordered Peterson to pay $25,000 in costs.

This case shows how a deferential standard of review that requires minimal weighing of *Charter* rights can result in the censuring of controversial speech made when a professional is off-duty. It also reveals how regulators are often overly generous about the scope of their statutory objectives, which leads to the over regulation of off-duty speech. Judicial review is no guarantee that an overly expansive approach to regulating speech by professionals will be corrected, especially since judicial review can be unduly deferential under a "reasonableness" standard. As we will see in the next case, when the standard of review is "correctness," the judicial review can be far more rigorous.

### Case 2: *Carolyn Strom v. Saskatchewan Registered Nurses' Association*

Carolyn Strom was a registered nurse who lived in Saskatchewan and had been practicing nursing for over 13 years. On February 25, 2015, Strom posted comments on her personal Facebook page about the care her grandfather had received in his last days at St. Joseph's Health Centre. Her initial post also included a link to a newspaper article about end-of-life care. She then used Twitter to tweet the posts to Saskatchewan's minister of health and Saskatchewan's opposition leader.

The content of the posts was central to the case. Strom reposted a *Vancouver Province* newspaper article titled "We Have Right to Die But Not to Quality Palliative Care" (Chochinov 2015), which criticized the palliative care training provided to and knowledge of Canadian physicians. Strom's initial post said, among other things:

> [...] it is evident that Not Everyone is "up to speed" on how to approach end of life care ... Or how to help maintain an Ageing Senior's Dignity [...]

> Don’t get me wrong, “some” people have provided excellent care so I thank you so very much for YOUR efforts, but to those who made Grandpa’s last years less than desirable, Please Do Better Next Time! [...]
>
> And a caution to anyone that has loved ones at the facility mentioned above: keep an eye on things and report anything you Do Not Like! That’s the only way to get some things to change. [...]

The posts came to the attention of staff at St. Joseph’s, and a registered nurse practicing at the facility reported the matter to the Saskatchewan Registered Nurses Association (SRNA). The nursing regulator investigated and found these posts contravened the relevant code of ethics and therefore were considered professional misconduct. Strom was reprimanded, fined $1,000, required to submit two self-reflective essays, and ordered to pay $25,000 in costs.

Strom appealed the nursing regulator’s decision and the Saskatchewan Court of Appeal overturned the discipline in *Strom v. Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112. The Court of Appeal found that the panel had given insufficient weight to Strom’s right to free expression. The Court observed that “the right to participate in social and political discourse is an important aspect of personal autonomy and free speech and is at the heart of a liberal democracy.” The Court found the regulator’s decision ignored context and was “one dimensional” (*Strom* at para 128). The regulator had only briefly considered Strom’s *Charter* right and failed to weigh important criteria that governed the exercise of their discretion (*Strom* at para 128). The Court held that the correct approach required the regulator to account for the unique circumstances of each case, which included deciphering why and how Strom’s exercise of her *Charter* right contributed to public dialogue, public awareness, and public discourse (*Strom* at paras 155–156 and 162).

The Court identified the panel’s objective as “protecting the public interest and the standing of the profession by setting and enforcing standards as to public speech by registered nurses relating to healthcare.” However, it ruled that the panel failed to balance this objective against freedom of expression, “fail[ing] to recognize that her comments were not only both critical and laudatory but were self-evidently intended to contribute to public awareness and public discourse.”

The Court held that disciplining such expression would have a chilling effect on the speech that the *Charter* seeks to protect and preclude registered nurses "from using their unique knowledge and professional credibility to publicly advance important issues." This strikes at the heart of the reason why the *Charter* protects expression – the free exchange of ideas and pursuit of truth. Regulated professions are entrusted with specialized knowledge and skills (Canadian Civil Liberties Association Factum, *Peterson v. Ontario College of Psychologists* (Divisional Court) 2023). It is in the public interest to encourage the refinement of this knowledge and the improvement of public institutions, including through vigorous criticism (Canadian Civil Liberties Association Factum, *Peterson v. Ontario College of Psychologists* (Divisional Court) 2023). Freedom of expression underpins most other constitutional rights – it is how we define the contours of our other rights. It allows citizens to hold those in power to account. Nurses must be free to debate the quality of our health care system, and this kind of expression should not merely be tolerated; it should be protected from unjustified state or regulatory intrusion.

The *Strom* decision is an important one because it emphasizes that regulated professions retain their right to freedom of expression, and this includes the right to criticize their profession, industry, or the system of which they are a part. The right to criticize public services is an essential aspect of the "linchpin" connection between freedom of expression and democracy (*R. v. Keegstra*, [1990] 3 SCR 697). The court wrote that "the fact that public confidence in aspects of the health care system may suffer as a result of fair criticism can itself result in positive change. Such is the messy business of democracy."

It is also noteworthy that *Strom* was a statutory appeal, so under *Vavilov* the standard of review was correctness, rather than reasonableness. This is a less deferential standard than was applied by the court in *Peterson*, where reasonableness was the standard of review. The case shows the importance of the standard of review, and that it could indeed be determinative of the outcome in a judicial review by the courts.

### Case 3: Cases of doctors making political statements about the Ontario Medical Association

We next examine a fascinating series of cases involving Ontario physicians upset over government fee negotiations; their statements related to those negotiations resulted in findings of professional misconduct.

The political and economic interests of physicians are represented in Ontario by a group called the Ontario Medical Association (OMA). This is a professional association that bargains with the government for fee schedules for physician services. In 2016, OMA president Dr. Virginia Walley and the OMA reached a tentative agreement dealing with government for fees.

The negotiations had been contentious, and the proposed agreement was unpopular with many physicians. Some physicians expressed this dissatisfaction to Walley by sending angry emails to her personal email address and to her official OMA email address, which is checked by OMA staff.

For example, Brampton cardiologist Dr. Michael Tjandrawidjaja sent one email to Walley about the OMA agreement saying, "you are a turd," and a second email saying "Virginia, How much are the liberals bribing you? It will likely come out at some point" (*College of Physicians and Surgeons of Ontario v. Tjandrawidjaja*, 2018 ONCPSD 39). Dr. Troy "Chris" Drone, a Kitchener-based anesthesiologist, sent several profanity laden emails to Walley saying things like "do your paid job and stop letting this horrible government [expletive] us around!!! Enough already!! Listen to everyone!!", followed by a torrent of profanity, the worst of which was calling Walley a four-letter expletive based on female genitalia (*Ontario (College of Physicians and Surgeons of Ontario) v. Drone*., 2018 ONCPSD 38 (CanLII)).

These emails resulted in complaints to the Ontario College of Physicians and Surgeons, which led to disciplinary hearings for both physicians. Both Drone and Tjandrawidjaja admitted that their emails amounted to professional misconduct. A disciplinary committee ordered Tjandrawidjaja to appear to be reprimanded, and to pay $6,000. Drone was likewise ordered to appear to be reprimanded, ordered to pay $6,000 in costs, and additionally suspended from practicing medicine for one month.

The disciplinary committees in both cases pointed to the College policy on "Physician Behaviour in the Professional Environment," which states, "Physicians are expected to act in a respectful, courteous, and civil manner

toward their patients, colleagues, and others involved in the provision of health care," and "behaviour that is unprofessional and/or disruptive undermines medical professionalism and the trust of the public." The committees also pointed to the College's social media policy which states that physicians are expected to "maintain professional and respectful relationships with patients, colleagues and other members of the health care team," and "protect their own reputation, the reputation of the profession, and the public trust by not posting content that could be viewed as unprofessional."

The College prosecutor in both cases, Ruth Ainsworth, called Tjandrawidjaja's emails "bullying and harassing behaviour" (Boyle 2018). The committee in his case called his language "outrageous" and held that "To debase the debate by *ad hominem*, bullying, juvenile, and utterly disrespectful comments, not only brings Dr. Tjandrawidjaja into disrepute, but negatively impacts the respect the society has for the entire profession," and that "these behaviours can negatively impact both the delivery of quality health care, and patient safety and outcomes."

Drone received a more serious penalty of having his medical licence temporarily suspended. Ainsworth took particular exception to Drone's language, arguing that "to insult a woman by calling her names based on female genitalia is hateful and demeaning" and "deserving of an especially strong censure" (Boyle 2018). Delivering a reprimand on behalf of the panel, Dr. Pierre Giroux said, "either you were ignorant or willfully blind about the way you should have interacted," and that the "abusive, bullying tone, and sexual connotation" of the emails "brought the profession into disrepute and undermined the public's trust."

The Discipline Committee of the College of Physicians and Surgeons of Ontario decided both cases; they were never subject to any administrative appeal or judicial review. Both Drone and Tjandrawidjaja accepted that their conduct amounted to professional misconduct, so there was no analysis of whether a link to the profession existed or if their right to freedom of expression was outweighed by regulating in the public interest.

Had such an analysis been done, it is unlikely a true connection would have been found. Although both Tjandrawidjaja and Drone were interacting with another physician, Walley, they were quite clearly communicating about a political issue, not about the practice of medicine. The communications were also not public, so it is difficult to understand how they could undermine public

safety or negatively effect the public perception of doctors. At most, some emails were accessible to some OMA staff. The claim that Tjandrawidjaja's language was "outrageous" when he called Walley a "turd" and accused her of accepting a political "bribe" is tone policing and exaggerated shock. This type of language is ubiquitous in society. It is less offensive than something one would hear on HBO or while playing video games. Further, had there been any balancing of the right to freedom of expression, it ought to have weighed in favour of the expression. These cases are similar to the *Strom* decision where the court of appeal found that criticism of the public health care system can actually improve the system.

### Case 4: Cases of political statements about political issues by medical workers

There is an excellent juxtaposition of two cases with very different outcomes involving medical workers and political speech. Reading these two cases, one gets the sense that it is the political content of the speech that explains the different treatment of the two professionals. One case involves speech by polarizing anti-abortion activist William Whatcott[1] for his activism against Planned Parenthood while he was a practicing nurse. The other involves a complaint about anti-firearms activism by an Ontario physician.

In 2002, Whatcott picketed in front of the offices of Planned Parenthood Regina five times. At the protests, Whatcott carried signs with graphic images of fetuses and captions saying, "Planned Parenthood Aborts Babies." He shouted such phrases as "Planned Parenthood will give you AIDS," "This place is the world's biggest baby killer," "Don't let Planned Parenthood corrupt you," and "Planned Parenthood murders innocent babies"; he also stated that "fornicators will not inherit the kingdom of heaven."

Planned Parenthood Regina filed a complaint with the Saskatchewan Association of Licensed Practical Nurses (SALPN), which led to an investigation and hearing by the discipline committee (described in *Whatcott v. Saskatchewan Association of Licensed Practical Nurses*, 2006 SKQB 325 6 (CanLII)). The committee found Whatcott guilty of professional misconduct, imposed a $15,000 fine, and suspended his licence until the fine was paid. Without even mentioning the *Charter*, the committee found that "the manner [in] which he conducts himself while picketing may constitute professional misconduct." It

found that his statements about AIDS, and Planned Parenthood being "baby killers" and "corrupting young people" were blatantly false, and that "Lying and uttering defamatory comments are unprofessional activities in that they harm the standing of the profession and bring members into disrespect. Such actions are also contrary to the Code of Ethics."

Whatcott appealed to the Saskatchewan Court of Appeal in *Whatcott v. Saskatchewan Association of Licensed Practical Nurses*, 2008 SKCA 6 (CanLII) where the Court set aside the disciplinary decision. The Court of Appeal considered the administrative decision on the standard of review of correctness (this case was pre-*Vavilov* and pre-*Doré*) and asked if the decision infringed on Whatcott's *Charter* right to freedom of expression. The Court said notwithstanding the assertion that Whatcott's statements could be considered hateful and false, it is expression under the "traditional application" of the right protected by the *Charter*, and the disciplinary decision infringed on this right (*Whatcott,* para. 45).

The Court of Appeal found that the discipline committee's decision was not rationally connected to the objective of ensuring respect for and standing of the licenced practical nurse. There was no evidence that any member of the public thinks or will think less of nurses because of Whatcott's behaviour, and no suggestion that Whatcott identified himself as a licenced practical nurse while picketing. There was no connection to the profession of nursing. To draw a link between his off-duty time and his profession, one must find the connection based on the fact that abortions are medical procedures or that some of the employees at Planned Parenthood are medical officers, which the court said is tangential at best. A professional regulator has no regulatory authority to police a professional's expressive activity on topics that have no connection to the profession, whether it be expressing an opinion privately, engaging in public advocacy or large-scale political organizing, including if the language used is controversial, offensive, or even repugnant. The court added that the decision was not proportionate or balanced in its effect on Whatcott's right to freedom of expression, and as a result, the discipline was set aside.

Compare the *Whatcott* case to a case called *M.R.M. v. N.A.A.*, 2020 CanLII 22968 at the Health Professions Appeal and Review Board in Ontario. Like *Whatcott*, this case dealt with political expression that was only tangentially connected to the medical field. However, unlike *Whatcott*, this case got no further than the Health Professions Appeal and Review Board.

The case involves Dr. Najma Ahmed,[2] a trauma surgeon and the founder of Canadian Doctors for Protection from Guns, a public advocacy group that calls for gun bans and that considers gun control a public health issue. Ahmed expressed her opinions in the media and on social media, and as a result nearly 70 complaints were filed with the College of Physicians and Surgeons alleging that Ahmed's advocacy for gun control constituted immoral and unprofessional behaviour. A Canadian gun lobby group, the Canadian Coalition for Firearm Rights, had encouraged its supporters to file these complaints (Stanbrook 2019).

The complaints were considered by the Inquiries, Complaints, and Reports Committee, which investigated the complaints and determined to take no action, calling the complaints frivolous and vexatious (*M.R.M. v. N.A.A.*, 2020 CanLII 22968 (ON HPARB)). As a matter of political expression without a real link to the profession, this was the correct outcome. The committee communicated its decision in a letter that was reported on by Canadian Press (Stanbrook 2019). The letter described the complaints as an abuse of process and said the College's procedures should not be abused to advance a political agenda or "silence or intimidate physicians." The letter added that using the process for political purposes is inappropriate; "it is concerning to the committee that the respondent has been subjected to what appears to be a campaign to dissuade her from voicing her views," and that "The college has no role in regulating this political debate" (Stanbrook 2019). The decision to take no action was upheld by the Health Professions Appeal and Review Board (*M.R.M. v. N.A.A.* 2020).

This was clearly the right conclusion based on the facts and the law. But it is noteworthy that in Whatcott's case, his political expression resulted in discipline that was appealed all the way to the Court of Appeal until it was finally overturned. Whatcott would have incurred significant costs associated with these appeals, and many others in his situation would have given up. Despite the similarity in the cases, which both dealt with pure political expression, the initial outcome and the process in Whatcott's case were an immense burden on him, compared to the immediate rejection of the complaints in Ahmed's case. One can't help but conclude it was the subject matter of the political expression that influenced these different outcomes and processes.

### Case 5: COVID-19 and the medical field

There are a great number of cases of medical professionals who made public statements during the pandemic and were disciplined for expressing their views. Since these cases relate to the expression of viewpoints on public health measures, there is a connection to the profession. But even in these cases, the expression falls along a spectrum. On one end are cases like *Pitter*, *Alviano,* and *Trozzi* that involve the public expression by nurses and a physician about public health measures where the statements are clearly contrary to public health guidance and frankly conspiratorial. On the other end are more ambiguous statements, like those made by the physician Dr. Kulvinder Kaur Gill (see *Gill v. Health Professions Appeal and Review Board*, 2024 ONSC 2588). And finally, there are cases like *Polidoulis v. Vikis* 2023 CanLII 23709 where the statements offered religious viewpoints but still led to action by the administrator.

#### *Pitter v. College of Nurses of Ontario, Alviano v. College of Nurses of Ontario,* and *College of Physicians and Surgeons of Ontario v. Trozzi*

The cases of *Pitter v. College of Nurses of Ontario and Alviano v. College of Nurses of Ontario, 2022 ONSC 5513* and *College of Physicians and Surgeons of Ontario v. Trozzi* 2024 ONPSDT 2 (CanLII) all involved public statements by nurses (Pitter and Alviano) or a physician (Trozzi) who made public comments about COVID-19 that opposed public health measures such as gathering limits, masking, and vaccines. In their statements, Pitter, Alviano, and Trozzi all identified themselves publicly as nurses or physicians.

In each of these cases, their public statements were conspiratorial. For example, Pitter reposted an article that claimed, "Bill Gates Explains that the COVID Vaccine Will Use Experimental Technology and Permanently Alter Your DNA" (*Pitter v. College of Nurses and Alviano v. College of Nurses of Ontario*, para 3). Likewise, Alviano posted statements including "Cancer came, actually start to come, after they start vaccinate [sic] our children" and "This current vaccine is just a RNA vaccine, see and educate yourself what does that mean, how it will change our body, our kids' body. Our kids will not have kids, therefore the main agenda, Bill Gates… to decrease population, with his wicked rich wife" (*Pitter v. College of Nurses and Alviano v. College of Nurses of Ontario*, para 3). Trozzi's statements included claims that COVID-19 vaccines contain secret and sinister technology, that they are dangerous genetic injections with undisclosed mystery ingredients that qualify as "bio-weapons." He claimed,

among other things, that the vaccines are "suspected by some to facilitate the ability to use 5G to influence or control the subjects", that "children are up to 100 times more likely to die within 8 months after one injection [...] this is not by mistake. This is a mass crime against humanity" (*College of Physicians and Surgeons of Ontario v. Trozzi*, 2023 ONPSDT 22).

The College of Nurses' Inquiries, Complaints and Reports Committee (ICRC) ordered nurses Pitter and Alviano to be cautioned and attend remedial education. The panel declined to refer the matter to the disciplinary committee where there could have been a finding of professional misconduct. On judicial review, the divisional court upheld the cautions against Pitter and Alviano, and held that given its statutory mandate, it was reasonable for the ICRC to be concerned about their statements. Both Pitter and Alviano had publicly identified themselves as health professionals. The court held this not only put the public at risk of being guided by false information, but also risked having an adverse impact on the reputation of the profession. The court held that the ICRC appropriately considered the relevant statutory objective and reasonably determined that the remedial actions it took were proportionate to their right to freedom of expression.

In Trozzi's case, the Ontario Physicians and Surgeons Discipline Tribunal concluded that Trozzi had engaged in professional misconduct and that he was incompetent in his understanding of the principles of informed consent. At a separate penalty hearing, the tribunal revoked Trozzi's licence (the most serious penalty) and ordered him to pay costs to the College of nearly $95,000 (*College of Physicians and Surgeons of Ontario v. Trozzi*, 2024 ONPSDT 2 (CanLII)).

Trozzi had defended himself by arguing that the College's prosecution violated his right to freedom of expression and that the College could not justify limiting his expression in relation to COVID-19 because the science was "not settled" on the existence of a pandemic or the safety or efficacy of the COVID-19 vaccines. The tribunal heard expert evidence on vaccines, including experts provided by Trozzi, and concluded that there was no reason to doubt the overwhelming consensus from well-known, reputable, and authoritative sources that the COVID-19 vaccines are safe and effective. In claiming they are "dangerous," "experimental," "designed" to cause disease and death, and constitute "bio-weapons," among other things, the tribunal concluded that Trozzi was spreading misinformation. It is a reasonable expectation of an

ordinary, competent physician that they refrain from spreading misinformation and conspiracy theories intended to undermine public health measures.

The tribunal concluded that the statutory objectives achieved by revoking Trozzi's licence outweighed his *Charter* rights. In this case, those statutory objectives were to protect the public interest during the pandemic by preventing the spread of harmful misinformation, and to maintain the integrity and reputation of the profession and promote trust in the profession by rejecting unprofessional and uncivil discourse.

The tribunal considered the chilling effect that revoking Trozzi's licence would have on the rights of physicians to express themselves freely. It noted that the findings of professional misconduct and penalties associated with it do not affect the rights of physicians to engage in debate, even heated debate, about public health measures and the science underlying those measures. Rather, the findings and associated penalties are aimed at addressing misleading, inflammatory speech that contributed to harm to the public during a public health emergency.

Ultimately, the tribunal concluded that Trozzi was ungovernable. Revoking his licence would maintain public confidence in the profession and the College's ability to regulate in the public interest. The tribunal also reasoned that revocation would ensure that Dr. Trozzi could not use his status as a licenced physician to bolster the credibility of his COVID-19 communications, thereby protecting the public from the harm of misinformation cloaked in the guise of authority.

As described at the outset, cases dealing with speech by those in regulated professions fall along a spectrum. Some cases deal with speech with an obvious connection to the profession, others where the speech is clearly unrelated, and others that are the complex "edge" cases. The cases of Trozzi, Pitter, and Alviano fall on the end of the spectrum where there is an obvious nexus to the profession and a clear engagement of the statutory objectives of the regulators. In the *Trozzi* case in particular, the tribunal attempted to balance his *Charter* rights with those statutory objectives. A health regulator is entitled to set the outer limits of good faith disagreement on what treatment options are supported by evidence. But this is not the same as policing the boundaries of acceptable moral or political opinion – something the regulator lacks both the competence and statutory mandate to do. There are no experts on morality or political righteousness to whom the state can delegate this judgment. As we

will see in other cases, some discipline panels do not constrain themselves to technical statements related to the specific profession they regulate, but rather, wander into disciplining moral and political viewpoints.

### *Polidoulis v. Vikis*

The case *Polidoulis v. Vikis* 2023 CanLII 23709 (ON HPARB) highlights the other end of the spectrum: medical professionals facing disciplined for speech even when there is no connection between that speech and their profession. Dr. Polidoulis is a physician based in Toronto, and a member of the Greek Orthodox church. In response to COVID-19, her church took health measures that included changes to the centuries-old ritual of Holy Communion. Polidoulis publicly objected to those changes, and this resulted in a complaint to the physician regulator by a member of the public. The College investigated and imposed a caution, even though Polidoulis' statements were theological, not medical.

The Greek Orthodox Church practice of Holy Communion involves a communal spoon and chalice. All those taking communion receive communion wine from a priest using one spoon. According to the tenets of the Greek Orthodox faith, it is impossible for disease to spread through communion wine. In July 2020, Polidoulis' church adopted a new COVID-19 policy of using multiple communion spoons.

Polidoulis, a family physician in Ontario, objected to this change on theological grounds. She had a verbal exchange with a priest while attending a service at the church about the new multiple spoon policy, and then published an open letter to the Greek Orthodox Archbishop of Canada in Greek newspapers and wrote online articles and posts expressing her opposition to the new spoon policy.

Polidoulis's statements were theological in nature. However, because she was known by some to be a practicing physician, another congregant, named Andrea Vikis, filed a complaint with the college. Vikis alleged that Polidoulis' exchange with the priest was a "verbal attack" and that the open letter had referred to the multiple communion spoons as a "conspiracy," and the letter did not refer to any medical evidence about COVID-19. Vikis alleged that Polidoulis had failed in her duty as a doctor by not warning people about the risks of using one communion spoon. Vikis was not one of Polidoulis's patients – and in fact was not at the church when Polidoulis had the exchange with the priest.

Polidoulis defended herself by arguing that she is entitled to express her opinions with respect to her religious beliefs, that she was not engaged in the practice of medicine when she expressed her personal opinions to the priest or in her subsequent letter, that Vikis was using the complaints process to advance a political and religious grievance unrelated to the practice of medicine, and that permitting this complaint to proceed would be a misuse of the process in order to muzzle freedom of religious expression. Polidoulis argued that the complaint had the hallmarks of a vexatious proceeding.

*“Polidoulis defended herself by arguing that she is entitled to express her opinions with respect to her religious beliefs.*

Despite her assertions the College proceeded with an investigation, which ultimately led to a decision by the Inquiries, Complaints, and Reports Committee (ICRC) to issue a caution. Polidoulis said that she had done everything possible within the scope of her practice, including risking her own health and safety, to protect patients from the lethal nature of COVID-19. The point she was trying to make on behalf of many members of the Greek Orthodox Church was that they would rather have “one spoon or no spoon,” not the “multiple spoons,” which she said compromises the integrity, theology, and dogmas of a 2,000-year-old faith. Her disagreements with the archbishop and the priest were not medical disagreements – they were objections to arbitrary violations of internal regulations of the Greek Orthodox Church.

Nevertheless, after its investigation the ICRC decided to issue a caution. The ICRC found that while Polidoulis’s objections were theological, not medical, the statements were open to interpretation and her intentions were not clear in her open letter to the archbishop. The ICRC disagreed with Polidoulis’ assertion that she was expressing her religious beliefs and that this did not have anything to do with the practice of medicine. The ICRC explained that the applicant’s status as a physician was known during the verbal exchange in the church and she identified herself as a physician in her online articles and posts, and these factors may have given particular weight to her comments.

Further, the committee was concerned that while her comments engaged her religious faith and were made within her faith community, they were still public comments made about the transmission of infectious disease, and in some cases associated directly with her identity as a physician.

The ICRC wrote that as a physician, Polidoulis holds a unique position of trust in society and for this reason she must recognize that her role as a physician has an authoritative impact on listeners and readers when she speaks publicly on public health-related matters. The ICRC concluded that Polidoulis should appear before them to be cautioned to be mindful of her tone and clarity in conveying public health-related information, and the impact on her audience of her status and position of trust as a physician and the responsibility it entails. A caution is the highest level of sanction this ICRC can order short of sending the matter to a disciplinary hearing. A caution is circulated to every hospital and virtually every medical regulatory institution, and while perhaps not technically punitive, it is punitive in its effect.

Polidoulis sought a review of the ICRC's decision from the Health Professions Appeal and Review Board. The board found that the decision to issue a caution was reasonable and that the decision did not deny Polidoulis' right to freedom of expression. The board stated, without much further expansion, that while Polidoulis has a right to freedom of expression and freedom of thought and belief, these are subject to reasonable limits under section 1 of the *Charter*. The board cited *Doré* for the proposition that there must be a proportionate balancing of the statutory mandate and the *Charter* right to freedom of expression. The board found that the College's decision to issue a caution reflected its goal of promoting a relationship between physicians and the public that reflect the fact that in his or her role, a physician has an authoritative impact on readers and listeners when speaking publicly on public health-related matters.

Polidoulis said that the board should adopt the approach from *Strom*, but the board dismissed this argument out of hand without analyzing the *Strom* decision, merely stating that *Strom* is not binding. The board also underscored that the caution does not prevent Polidoulis from expressing her religious beliefs, just that if she is identified as a physician when she expresses her religious beliefs it could lead to confusion. The board seemed particularly concerned by a headline published by one news outlet, "Orthodox MD Argues the Communion Spoon is Safe" (Orthodox Reflections 2020).

This case was never judicially reviewed. It should have been. The reasoning is clearly deficient when judged against *Vavilov*'s requirements of justification, intelligibility, and transparency. Polidoulis's statements were theological in nature; they were not medical advice. The link to the profession was tangential, she did not use her position as a physician to bolster her views, or even describe herself as a physician when making her comments – she is merely identifiable as a physician through public records. Physicians must be entitled to practice their faith and make public statements about their religious beliefs without fearing that their regulator may discipline them for expressing their religion. The board barely mentioned Polidoulis's right to religious freedom other than to cite that it may be limited under section 1 of the *Charter*. This is not the required balancing under *Doré*, but rather a bare acknowledgment that such a balancing should take place.

### *Gill v. Health Professions Appeal and Review Board*

Between these two ends of the spectrum is the fascinating "edge" case involves Dr. Kaulvinder Kaur Gill, a physician in Ontario specializing in allergy, asthma, and clinical immunology. Gill was subject to discipline for her comments on COVID-19: she was an outspoken critic of prevailing public health advice on COVID-19, and she used social media platforms including Twitter to disseminate her views. The following comments she made were the subject of the College investigation:

- "Current status of #COVID-19 99.9% Politics, Power, Greed & Fear 0.1% Science & Medicine";
- "There is absolutely no medical or scientific reason for this prolonged, harmful and illogical lockdown";
- "If you have not yet figured out that we don't need a vaccine, you are not paying attention"; and
- A message that strongly implied that hydroxychloroquine (HCQ) could "prevent, cure and treat early COVID-19" but that the federal government was withholding this treatment from the Canadian public for vague but sinister reasons.

These comments were the subject of complaints to the College by members of the public. The College's Inquiries, Complaints and Reports Committee (ICRC) issued seven decisions arising out of the public

complaints, two of which ordered cautions – related to the "lockdown" tweet and the "vaccine tweet."[3] Gill appealed the order for cautions to the Health Professions Appeal and Review Board, where they were upheld, and she then sought a judicial review by the Divisional Court.

Gill argued that these orders for cautions and the decision upholding them were unreasonable in their failure to proportionately balance her *Charter*-protected right to freedom of expression, and they lacked reasonableness and procedural fairness.

Gill, represented by lawyer Lisa Bildy, argued that there was no mention of the *Charter* in the ICRC decisions, despite her making submissions about her right to freedom of expression. The closest thing that the ICRC said was: "The Committee has no interest in shutting down free speech or in preventing physicians from expressing criticism of public health policy." It then proceeded to do exactly that. As Bildy argued in the judicial review, the *Doré* framework requires an actual effort on the part of administrative decision-maker to strike a balance and to "show their work." And *Vavilov* now requires an overall "culture of justification" from administrative decision-makers, focusing the reviewing court on the decision-maker's actual decision, including both the decision-maker's reasoning process and the outcome. After all, *Vavilov* explains that "reasoned decision-making is the lynchpin of institutional legitimacy" (*Vavilov* para 74).

A mere nod to free speech is not sufficient. Yet in this case, there was no consideration of the negative impacts and collateral effects on Gill's rights, and there was little consideration of the public good, beyond the paternalistic concern that some members of the public might not follow public health measures if they listened to Gill. The ICRC only paid lip service to there being a "range of views" about lockdowns, and that it is "valid to question whether the benefits outweigh the negative aspects," but then proceeded to say that her statement did not align with the information coming out of public health (*Gill v. Hauschel*, 2023 CanLII 22235 (ON HPARB)).

In May 2024 the Ontario Divisional Court dismissed Gill's judicial review, upholding the order for cautions in *Gill v. Health Professions Appeal and Review Board*, 2024 ONSC 2588. The court found that the College's actions were reasonable and proportionate. The case shows the problem with regulatory bodies made up of technical experts in their professional field, but who lack knowledge about constitutional rights. Physicians

may be skilled and accustomed to applying medical standards but lack experience in weighing broader social goals and individual *Charter* rights. Yet this is the role of a professional regulator, and this lack of expertise and knowledge about the *Charter* becomes increasingly problematic as regulators stretch their mandates into regulating members' speech. As Bildy argued in the judicial review, the onus is on the regulator to engage in this robust analysis, and if they fail to do so, deference should not be assumed or granted. Dr. Gill has sought leave to appeal the Divisional Court decision.

### *Hamza v. Law Society of Ontario*

Many of the cases we have considered have involved an administrative tribunal giving little weight to the right to freedom of expression and taking administrative action against regulated professionals even in cases where the nexus between the speech and the profession was questionable. And even when these cases were judicially reviewed, the administrative action was often upheld when the reviewing court deferentially asked if the decision was merely "reasonable."

However, one outlier case involved an Ontario lawyer named Oussama Djalaledine Hamza and a decision by the Law Society tribunal in *Law Society of Ontario v. Hamza*, 2024 ONLSTH 27. Hamza was a lawyer with a solo practice in London, Ontario. Beginning in August 2020, the Law Society received many complaints about his conduct,[4] but for the purposes of this analysis, it is the posts that Hamza made on his website and on social media that are relevant.

The posts were about two distinct issues. One issue was about a prospective law student at Ryerson University (now Toronto Metropolitan University) and the other was about a University of Ottawa School of Law project about women's experiences with COVID-19.

The prospective Ryerson student had been featured in the media because of his life story. He was an immigrant to Canada from Nigeria who had fallen into a life of crime as a young man. He then changed his ways and was accepted into Ryerson University's Faculty of Law, despite not having an undergraduate degree or what was perceived by many as a sufficiently high LSAT score. He began crowdfunding to finance his education and posted about this on LinkedIn. This led to some criticism, including by Hamza (*Law Society of Ontario v. Hamza*, 2024 ONLSTH 27, para. 259):

> You could make it, like deserving law students, if you spent your youth working instead of selling drugs and disobeying your parents. Then you'd get scholarships for actually succeeding academically, rather than begging for charity. Ryerson law school is worst [sic] than clown school. Even clown schools don't admit uneducated criminals. This is the beginning of Canada becoming a corrupt third world country.

Hamza had made even more inflammatory statements about the Ryerson student on his website, including comments that were racist towards the student and his family, calling the student a "slave," among other things.

Hamza also posted a response to a LinkedIn post by another lawyer promoting a University of Ottawa project seeking content from women about their experiences during the COVID-19 pandemic. Hamza responded in a post calling the project "discriminatory" and saying, "The initiative implies the paucity of a female record is the product of patriarchal oppression, which is absolutely not the case." Hamza went further, to say "If anything, patriarchy provides women with the leisure to write history, since men fight, build and provide for them. In fact, women didn't write their histories because they didn't care to do so," and "As proof that women just don't care about history or philosophy, women don't generally consider being a philosopher or historian 'sexy.' It's just not something they traditionally value" *(Law Society of Ontario v. Hamza*, 2024 ONLSTH 27, para. 129).

The Law Society alleged that the statements on Hamza's website amounted to professional misconduct, and the posts on LinkedIn were conduct unbecoming. The website, which is registered with the Law Society, is where Hamza sells his legal services. When Hamza posts on his law firm website he is operating as a lawyer. When he is posting on social media, his conduct is "off-duty," so the allegation regarding the LinkedIn posts was alleged to be conduct unbecoming rather than misconduct.

The Law Society tribunal agreed that Hamza's posts on his website were professional misconduct.[5] However, the tribunal concluded that Hamza's social media posts were not conduct unbecoming.

This may on its surface seem surprising given the track record of most administrative tribunals and given the inflammatory and offensive nature of Hamza's social media comments. However, this is the correct outcome. Posts

on social media, including rude and inflammatory posts, do not come under the remit of the Law Society's regulatory authority unless there is a very clear connection to the profession, and even then, the right to freedom of expression must be balanced against the public interest of silencing the speech through regulation. Additionally, the test for conduct unbecoming grants more leeway to expression than a charge of professional misconduct. The Law Society has more authority to regulate posts on Hamza's law firm website than it does to regulate his speech on social media.

The tribunal held that calling Ryerson a "clown school" on LinkedIn may be offensive and patronizing to the point of disparagement but does not cross the threshold of conduct unbecoming. It wrote that while "comparing a law school to a clown school is certainly offensive, it does not amount to a comment that, in itself, warrants disciplinary action, absent a relevant nexus, where 'the closer the conduct comes to the activities of the profession, the more possible it is that personal misconduct will come to professional misconduct.'" The tribunal emphasized the need to take Hamza's right to freedom of expression into account, and that "In a free and democratic society that provides constitutional protection to expressive freedom, foolish or ill-advised lawful expression, even offensive expression, that is made in a purely personal or private capacity will not tend to bring discredit on the legal profession because reasonable people will understand the importance of expressive freedom" (*Law Society of Ontario v. Hamza*, 2024 ONLSTH 27, para. 262–263).

With respect to Hamza's comments on the University of Ottawa project, the tribunal held that reasonable observers might well take offense to this commentary and the tone in which it was expressed, but that these statements, however provocative or reprehensible, are not sufficiently close to the practice of law to have the requisite nexus required to constitute conduct unbecoming.

It is very noteworthy that despite how provocative and frankly awful Hamza's statements were, the tribunal did not consider that they rose to the level of conduct unbecoming. Ultimately, although Hamza was not disciplined for his social media posts, his other outrageous conduct (including his conduct when he was acting as opposing counsel and the racist posts on his website) led the tribunal to conclude he was ungovernable and imposed the most serious penalty possible – revocation of his licence, as well as an order for $68,400 in costs (see the penalties decision in *Law Society of Ontario v. Hamza*, 2024 ONLSTH 50).

The important thing to take away from the *Hamza* case is the Law Society tribunal's finding that the regulator does not have free-wheeling powers to police speech, and it is vital that regulators understand and respect the *Charter*-protected right to freedom of expression. The powers of professional regulators come from the legislation that empowers them, and regulating speech requires the speech to have a connection to the profession balanced against the right to freedom of expression. When regulators understand this, it can result in very different outcomes, as in the *Hamza* case.

## The path ahead

**Mediating between righteous and immoral speech** is not the role of professional regulators, or the government. Forcing professionals into rigid ideological conformity will do more to undermine the pursuit of truth that their professions are aimed at than allowing them to express themselves freely. The guarantee of freedom of expression is necessary for individual self fulfillment, as a means of attaining the truth, to secure participation by the members of society in social – including political – decision-making, and to maintain the balance between stability and change in society (*Ford v. Quebec AG*, [1998] 2 SCR 712, para. 56).

The right to free expression is guaranteed not just to protect the individual, but also to protect a public good (Raz 1991, 305). As the scope of authority of professional regulators expands to regulate off-duty speech untethered to the profession itself, this public good is undermined. In *Doré* the Supreme Court noted that respect for expressive freedom requires disciplinary bodies to tolerate "a degree of discordant criticism." Enforcing viewpoint-based restrictions on speech would chill the speech of regulated professionals. It would silence their ability to share their knowledge and skills, both within their profession and more broadly as citizens.

The balance between the statutory goals of professional regulators and the constitutionally guaranteed right to freedom of expression is delicate and crucial. And as the case studies reveal, regulators have done an inconsistent job ensuring that this balance is maintained. This is detrimental to the pursuit of

truth in which regulated professions ought to be engaged. In the case studies we saw the silencing of political criticism of their professional representatives in *Tjandrawidjaja* and *Drone*. We saw attempts to silence off-duty political speech in *Peterson*, *Whatcott*, and *M.R.M. v. N.A.A*, but with very different outcomes in each case. We saw COVID-19-era clampdowns on speech along a spectrum, with warranted sanctions being rendered in cases like *Trozzi,* but far more questionable sanctions in cases like *Gill*. Perhaps worst among the COVID-19 speech cases, *Polidoulis* appeared to sanction a physician for sharing a religious theological viewpoint.

In some of these cases, like *Peterson* and *Gill*, the professional facing sanction has the resources to fight back. Peterson is famous and wealthy. Gill's legal challenge was supported by Elon Musk (Canadian Press 2024). But most professionals do not have bottomless pockets. For most facing discipline, the process becomes the punishment, and we may see many pre-emptively choose not to speak openly about their views if they do not conform to mainstream narratives. This would be a loss not only to their individual freedom, but also to the noble public goals achieved by the open debate of ideas both within regulated professions and more broadly as a society.

> *Most professionals do not have bottomless pockets. For most facing discipline, the process becomes the punishment.*

But there are tangible steps that can be taken to ensure that cases of freedom of expression within regulated professions are resolved in favour of liberty and that regulators do not unduly chill speech.

First, regulators should receive comprehensive training in constitutional protections, particularly in the context of freedom of expression. While regulators may possess technical expertise in their respective fields, many lack the necessary knowledge about constitutional rights. This training would equip them with the understanding they need to appropriately balance regulatory goals with the fundamental right to freedom of expression.

In a number of case studies included in this paper the regulator barely acknowledged the right to freedom of expression, like *Peterson, Drone, Tjandrawidjaja,* and *Polidoulis*. In contrast, the *Hamza* case involved a tribunal before the Law Society made up of a panel that was well informed of constitutional protections. This may explain, in part, why the *Hamza* case was an outlier in preserving protections.

Second, legislatures could codify the standard of review. When courts review regulators' decisions, they often do so by using a deferential standard of review that merely requires the decision of the regulator to be "reasonable," not "correct." We have seen in cases like *Strom* and *Whatcott* that when the standard of review is correctness, courts have overturned discipline for failing to take proper account of the constitutional rights of individuals in regulated professions. Legislating a "correctness" standard of review for cases that engage the right to freedom of expression would ensure more robust protections for this right.

Third, legislatures could amend existing statutes to require that regulators find a significant connection to the profession when addressing issues related to off-duty speech. Although case law requires this nexus, there have been inconsistencies in its application as seen in cases like *Polidoulis, Whatcott, Tjandrawidjaja, Drone,* and *Peterson*. These cases highlight the need for statutory clarity. Codifying this requirement would help prevent regulators from overreaching and infringing on freedom of expression without a substantial connection to professional conduct.

Finally, there is a need for public advocacy to foster a cultural shift that would elevate the perceived value of freedom of expression. The current trend of "cancel culture" poses a threat to open debate and the exploration of diverse viewpoints, both within and beyond regulated professions. It is essential that Canadians advocate for societal change that recognizes and upholds freedom of expression as a vital component of truth-seeking and democratic discourse. This cultural shift will then be internalized within the values of professional regulators and the individuals who make up these regulatory bodies.

Protecting freedom of expression in the context of professional regulation requires targeted training, legislative reforms, and a broad cultural shift. By implementing these recommendations, Canada can better ensure that the right to freedom of expression is respected and upheld within regulated professions, thereby strengthening the overall commitment to constitutional rights. MLI

## About the author

**Christine Van Geyn** is the litigation director of the Canadian Constitution Foundation, a legal charity that advocates for fundamental freedoms through litigation and education. Van Geyn is also a bestselling author and host of the national broadcast television program *Canadian Justice*. Van Geyn earned her undergraduate degree in Political Science and Ethics, Society, and Law at the University of Toronto, Trinity College. She earned her J.D. at Osgoode Hall Law school and studied at New York University School of Law. She was called to the bar in Ontario in 2012. Before joining CCF, Van Geyn practiced commercial litigation, and then was the Ontario director of a national non-profit where she was involved in several high-profile constitutional challenges. MLI

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## Endnotes

1 William Whatcott later went on to face provincial hate speech sanctions for anti-gay flyers he had distributed in Saskatchewan. That case went to the Supreme Court of Canada and is a leading case on the constitutionality of hate speech prohibitions in human rights legislation. See Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11.

2 While the case is reported under initials for anonymity as M.R.M. v. N.A.A., CBC News and the Globe and Mail both reported that the surgeon who was the subject of these complaints was Dr. Najma Ahmed (see Weeks 2019 and Canadian Press 2019).

3 It is worth emphasizing that Gill received three separate caution orders for the same two tweets.

4 The law society also alleged that Hamza was unprofessional in his conduct as opposing counsel in an estate matter, that he failed to cooperate with the law society in their investigation into his behaviour, and that he had engaged in retaliation against the individuals who had submitted complaints.

5 They also held that his conduct as opposing counsel in an estate matter were professional misconduct, as was other conduct, including retaliation against those who complained about him, the language in his court filings, and his failure to cooperate with the Law Society investigation.

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I commend Brian Crowley and the team at **MLI** for your laudable work as one of the leading policy think tanks in our nation's capital. The Institute has distinguished itself as a thoughtful, empirically based and non-partisan contributor to our national public discourse.

– The Right Honourable **Stephen Harper**

May I congratulate **MLI** for a decade of exemplary leadership on national and international issues. Through high-quality research and analysis, **MLI** has made a significant contribution to Canadian public discourse and policy development. With the global resurgence of authoritarianism and illiberal populism, such work is as timely as it is important. I wish you continued success in the years to come.

– The Honourable **Irwin Cotler**

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