

Mandatory Revocation Provisions and Treatment of Spouses by Regulated Health Professionals: A Jurisprudence Review

Health Professions Regulatory Advisory
Council (HPRAC)



Ontario

Health Professions Regulatory
Advisory Council

Conseil consultatif de
réglementation des professions
de la santé

Treatment of Spouses by Regulated Health Professionals: A Jurisprudence Review

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Objective:

This jurisprudence review explores legal cases in which a regulated health professional's license was sought to be revoked as a result of a sexual relationship which they had with a patient. As per instructions from the Health Professions Regulatory Advisory Council (HPRAC) the review focuses on treatment provided by regulated health professionals to people with whom they were in a spousal relationship or with whom they were living in a conjugal relationship outside of marriage. Furthermore, as per the instructions of HPRAC, of all the regulated health professions in the *Regulated Health Professions Act, 1991 (RHPA)*, this review exclusively focuses on physicians, chiropractors and psychologists.¹

The goal of this review is to better inform efforts to develop alternatives to the Mandatory Revocation Provisions relating to sexual abuse contained in the *RHPA*. Statutes, regulations, codes and standards are not included in this review as they are the subject of a jurisdictional review compiled by HPRAC.

Since certain cases are decided at more than one level of court, this review includes only the decision of the highest level court at which the relevant substantive issues were decided for a particular case. This jurisprudence review was conducted between June 15, 2011 and August 19, 2011.

Search Methodology:

The Legal Services Branch of the Ministry of Health and Long-Term Care searched two legal databases (Quicklaw and CanLII) using a variety of search terms that were employed based on the focus of the review. Searches focused primarily on Canadian case law from every province/ territory except Quebec and case law from six jurisdictions of the United States (specifically California, Texas, Minnesota, New York, Virginia and Florida), the United Kingdom and Australia. Please see Appendix "A" for a description of each legal database that was used. While Quicklaw was used for all jurisdictions, CanLII was only used for Canadian jurisdictions. WestLaw Canada was not used in any searches following consultation with the Ministry of the Attorney General Law Librarian who indicated that its case law content almost entirely overlaps with Quicklaw.

Inclusion and exclusion criteria were assessed by first reading the keywords and headnote of each case, and then the full text. If a case met any of the exclusion criteria it was not included in the review. If a case did not meet any exclusion criteria and met all or almost all of the inclusion criteria it was included in the review.

Inclusion Criteria

During the search process, sets of keywords identified in Appendix "B" were used to search legal databases. Search results were included in the review (deemed relevant) if: i) they involved revocation of a health professional's license to practice, ii) the health professional was a chiropractor, physician or psychologist, iii) the reason for the revocation was for sexual contact with a patient or former patient, and iv) the health professional was in a spousal² or conjugal³ relationship with the patient or former patient.

¹ *Regulated Health Professions Act, 1991*, SO 1991, c 18.

² No consistent definition of 'spouse' appears in the statutes or regulations of Ontario. In section 1(1) of the *Family Law Act*, RSO 1990, c F.3 the definition of spouse is: either of two persons who (a) are married to each other, or (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right. For the purpose of support obligations the definition of spouse in section 29 of the *Family Law Act* also includes either of two persons who are not married to each other and have cohabited, (a) continuously for a period of not less than three years, or (b) in a relationship of some permanence, if they are the natural or adoptive parents of a child. **For the purposes of this review, a relationship was deemed to be spousal if it satisfied any of the aforementioned criteria.**

³ There is no definition of "conjugal relationship" in the statutes or regulations of Ontario. However *Molodowich v Penttinen* (1980), 17 RFL (2d) 376 at para 16, 2 ACWS (2d) 486 (Ont Dist Ct), which dealt with spousal support obligations under the *Family Law Act*, RSO 1990, c F.3, s 1(1), 29. (and was cited with approval in the Supreme Court of Canada case *M v H*, [1999] 2 SCR 3 at para 59, SCJ No 23. states that for a relationship to be considered conjugal, a number of factors must be considered including shelter, sexual and personal behaviour, provision of domestic services to each other, social activities, societal recognition, economic support and involvement of children. As noted in *M v H* the factors do not all

Exclusion Criteria

Search results were excluded from the review if: i) they were issued by a specialized court (ie. tax court) that would not hear the type of matter focused on by this jurisprudence review, ii) the case originated from a jurisdiction other than those of interest, iii) the patient made allegations of sexual assault against the health professional, iv) the health professional had a relationship with a minor, v) the health professional was engaged in multiple sexual relationships with different patients at the same time, and vi) the patient indicated they felt as if they had no choice but to accede to the sexual demands of the health professional.

Limitations

A limitation of the search methodology was that the decisions of administrative boards and tribunals in the United States, United Kingdom, and Australia were not searched as they were unavailable through Quicklaw. Quebec was not included in the jurisprudence review due to difficulties in obtaining legal translations of case law from that province. The decisions of Discipline Committees or similar groups within the governing bodies of each profession examined were not included in the review unless they were available through Quicklaw or CanLII.

Summary of Findings:

Canada

Searches in the above-mentioned databases yielded five unique cases concerning mandatory revocation of a health professional's license due to treatment of their spouse or of someone with whom they were in a conjugal relationship. Summaries of these five cases are provided below.

United States of America

Searches revealed two relevant cases concerning a health professional's treatment of a spouse or someone with whom they were in a conjugal relationship. One case involved mandatory revocation of the health professional's license and the other involved a one year suspension followed by a year of probation. The case involving suspension was still included because of its close fit on other measures of what was being searched for.

Australia

No relevant cases were found using the above-mentioned search databases and the search terms listed in Appendix "B".

United Kingdom

No relevant cases were found using the above-mentioned search databases and the search terms listed in Appendix "B".

have to be present and can exist in varying degrees. **For the purposes of this review, a couple was considered conjugal if they were sexually intimate and at some point shared accommodation.**

Professional	Physician
Jurisdiction	Ontario, Canada
Title	Mussani v College of Physicians and Surgeons of Ontario
Court	Ontario Court of Appeal
Citation	<i>Mussani v College of Physicians and Surgeons of Ontario</i> , 74 OR (3d) 1, [2004] OJ No. 5176, (Ont CA) Blair JA.
Noted up	Followed - 1; Distinguished - 1; Explained - 2; Mentioned - 13; Cited - 5
Source	Quicklaw - All Canadian Court and Tribunal Case Law; CanLII
Search terms	"sexual abuse" and physician and Ontario and spouse
Link	http://www.canlii.org/en/on/onca/doc/2004/2004canlii48653/2004canlii48653.html
Date last accessed	August 11, 2011
Relevance	An Ontario physician engaged in a sexual relationship with a woman whom he was treating as his patient. The two never lived together though they discussed marriage and professed their love for each other.
Summary	<p>Mussani began treating a woman, A.K. in 1985 as her family physician. This treatment continued until 1994. Over this period of time Mussani and the woman began to meet for coffee and soon developed a sexual relationship. The relationship progressed to the point where Mussani and the woman professed their love for each other and even discussed marriage. At no time did Mussani try to terminate the physician-patient relationship during the time that their sexual relationship was ongoing.</p> <p>The Discipline Committee (Committee) of the College of Physicians and Surgeons of Ontario (CPSO) found that Mussani had engaged in a prolonged sexual relationship with his patient and that by doing so he engaged in conduct that was unacceptable and a disgrace to his profession. The Committee imposed the penalty of mandatory revocation of Mussani's certificate of registration with the College. Mussani's appeal to the Divisional Court was dismissed. He appealed to the Court of Appeal, arguing that the judgments of the Divisional Court and Committee should be set aside, and that the Mandatory Revocation Provisions of the <i>Health Professions Procedural Code (Code)</i> of the <i>Regulated Health Professions Act, 1991 (RHPA)</i> should be declared of no force and effect for violating sections 7 and 12 of the <i>Canadian Charter of Rights and Freedoms (Charter)</i> and for being unable to be saved under section 1 of the <i>Charter</i>.</p> <p>The Court of Appeal explored the history of the sexual abuse provision of the <i>Code</i>. It noted that the provision was enacted based on a number of important factors including for instance the general vulnerability of patients in sexual relationships with health professionals, and the fact that sexual abuse by a health professional tarnishes public trust in his or her entire profession.</p> <p>The Court of Appeal determined that the <i>Charter</i> does not protect one's right to practice a profession and that the <i>Charter</i> does not protect the type of economic interest that would be infringed by mandatory revocation of a health professional's license to practice. Though the Court of Appeal believed that its determination on these matters alone was enough to dispose of Mussani's appeal it continued with further analysis given the possibility it may have erred in its reasoning and given the importance of <i>Charter</i> arguments.</p> <p>Mussani argued that the Mandatory Revocation Provisions of the <i>Code</i> violated his section 7 liberty interests. Specifically, he argued that the provisions interfere with his right to make fundamental personal life choices unimpeded by state action, and that they violate his section 7 security of the person interests because the state-imposed mandatory revocation proceedings imparted psychological stress upon him. The Court of Appeal however, disagreed. It determined the Mandatory Revocation Provisions were in accordance with the principles of fundamental justice, finding that they are not</p>

	<p>unconstitutionally vague or over-broad. The Court of Appeal also determined that the professional disciplinary hearings faced by Mussani did not breach his section 12 <i>Charter</i> rights not to be subjected to any cruel and unusual treatment or punishment.</p> <p>The Court of Appeal dismissed the argument put forward by the Ontario Medical Association which was granted intervenor status in this case, that the Mandatory Revocation Provisions impeded Mussani's section 2(d) <i>Charter</i> rights of freedom of association. It noted that the Mandatory Revocation provisions do not prohibit health professionals from associating with their patients but rather from sexually abusing them.</p> <p>Since no breaches of any <i>Charter</i> rights were identified there was no need for the Court of Appeal to engage in a section 1 analysis to determine if the breaches were justified. However the Court of Appeal did note that if such an analysis were performed the Mandatory Revocation Provisions would be justifiable. The Court of Appeal dismissed Mussani's appeal and upheld the constitutionality of the Mandatory Revocation Provisions of the <i>Code</i>.</p>
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Professional	Physician
Jurisdiction	Ontario, Canada
Title	Lukezich (Re)
Court	Ontario College of Physicians and Surgeons Discipline Committee
Citation	<i>Lukezich (Re)</i> , [2006] OCPD No 16.
Noted up	Cited - 1
Source	Quicklaw - All Canadian Court and Tribunal Case Law
Search terms	relationship /150 physician /150 license /150 patient /150 college and sex!
Link	Not available
Last accessed	August 19, 2011
Relevance	An Ontario physician engaged in a romantic, sexual relationship with a patient of his. At one point during the relationship both parties lived in each others' homes four to five nights per week.
Summary	<p>Lukezich was alleged to have committed two acts of professional misconduct: sexually abusing a patient as per clause 51(1)(b.1) of the <i>Health Professions Procedural Code (Code)</i> and engaging in acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.</p> <p>The patient alleged to have been sexually abused by Lukezich began seeing him in 1979, first for the patient's own care and from time to time for the care of the patient's children. By 2002 the patient was seeing Lukezich for occasional psychotherapy following separation from her husband and the death of her grandparents. In late 2002 Lukezich and the patient began to engage in a seven month personal and sexual relationship during which time the two socialized together, dined with family and friends, took vacations together and slept at each others' homes four to five nights per week. The relationship came to an end in May 2003 and several weeks later the patient made a complaint to the College of Physicians and Surgeons of Ontario (CPSO).</p> <p>The Discipline Committee (Committee) of the CPSO concluded on the basis of evidence provided at a hearing that Lukezich and the patient engaged in a consensual sexual and romantic relationship which included sexual intercourse. The Committee furthermore made a determination that the physician-patient relationship between the two lasted until at least the summer of 2003. These determinations compelled the Committee to conclude that Lukezich had engaged in sexual abuse as defined by the <i>Code</i>.</p> <p>On October 16, 2006 the Committee ordered that Lukezich's certificate of registration be revoked immediately ([2006] OCPD No 24).</p>

Professional	Physician
Jurisdiction	Ontario, Canada
Title	Rosenberg v College of Physicians and Surgeons of Ontario
Court	Ontario Court of Appeal
Citation	<i>Rosenberg v College of Physicians and Surgeons of Ontario</i> , 275 DLR (4th) 275, 216 OAC 357, RJ Sharpe JA.
Noted up	Distinguished -1; Explained - 1; Mentioned - 1
Source	Quicklaw - All Canadian Court and Tribunal Case Law
Search terms	"sexual abuse" and physician and Ontario and spouse
Link	Not available
Date last accessed	August 11, 2011
Relevance	An Ontario physician engaged in a sexual relationship with a woman who was his patient. Both parties lived together at one point and held themselves out to be engaged.
Summary	<p>In 1992 Rosenberg engaged in a sexual relationship with someone whom he had been treating as a patient since 1988. By 1993 the relationship between Rosenberg and the patient had proceeded to a stage where they were living together and planned to marry once Rosenberg obtained a divorce from his then-wife. In 1996 the relationship between Rosenberg and the patient began to deteriorate and the two stopped living together in 1997. Between 1988 and 1998 Rosenberg acted as the primary care physician of the patient. After the relationship ended the patient launched a complaint against Rosenberg with the College of Physicians and Surgeons of Ontario (CPSO).</p> <p>Rosenberg was charged with the offences of "sexual impropriety with a patient", "disgraceful, dishonourable or unprofessional" conduct, and "sexual abuse" under the <i>Regulated Health Professions Act, 1991 (RHPA)</i>. Rosenberg argued that there was a spousal exemption to the "sexual abuse" provision of the <i>RHPA</i> and that therefore he should not be found guilty of sexual abuse against the patient. Rosenberg also argued that the relationship between him and the patient had become spousal in nature before the "sexual abuse" offence came into force and that therefore he also should not be found guilty of the offence for that reason.</p> <p>The Discipline Committee (Committee) of the CPSO found that there was no room to interpret the <i>RHPA</i> as not applying to the conduct of Rosenberg with his patient and rejected the spousal exemption argument. The Committee revoked Rosenberg's certificate of registration with the CPSO, noting that there was no justification for Rosenberg not having transferred the patient's care to another physician once he was in clear breach of the <i>RHPA</i> sexual abuse provisions.</p> <p>Rosenberg appealed the Committee's decision to the Divisional Court in 2005. The Divisional Court found that the appropriate standard of review for it to use in assessing the Committee's decision was that of 'reasonableness'. It noted that meeting the sexual abuse provisions in the <i>RHPA</i> required concurrency of doctor-patient and sexual relationships, and that the decision of the Committee was supported by evidence and reasons which "stand up to probing examination".</p> <p>Rosenberg appealed the Divisional Court Decision to the Court of Appeal. The central issue dealt with by the Court of Appeal was whether Rosenberg's conduct fell out of the scope for the sexual abuse provision of the <i>RHPA</i> given that he had a spousal relationship with the patient by the time the provision was enacted.</p> <p>After exploring the rationale behind the sexual abuse provision of the <i>RHPA</i>, the Court of Appeal addressed the following issues: i) whether the Divisional Court applied the</p>

appropriate standard of review to the decision of the Committee, ii) whether the decision of the Committee to convict Rosenberg of sexual abuse and revoke his license is vulnerable when assessed under the appropriate standard of review determined in (i).

i) Standard of review

The Court of Appeal concluded that the Divisional Court was correct in using 'reasonableness' as its standard of review for the Committee's decision.

ii) Did the Divisional Court err in finding that it was reasonable for the Discipline Committee to conclude that the zero tolerance/ mandatory revocation provisions applied to the appellant?

The Court of Appeal noted that the clear language and rationale underlying the sexual abuse provision of the *RHPA* made it clear that there is little room for interpretation of the provision. The Court of Appeal also noted that it was reasonable for the Committee to decide that the legislation could not be interpreted in such a way as to exempt Rosenberg from its reach. It also noted that there is no consistent definition of spouse available and that if there was a spousal exemption in the provision it would require the Committee to inquire into whether a spousal relationship existed during its sexual abuse hearings – something that does not accord well with the unambiguous approach of the *RHPA*'s zero-tolerance regime.

The Court took time to dismiss Rosenberg's contention that *Mussani* supported his argument that the sexual abuse provision of the *RHPA* contained a spousal exemption.

The Court of Appeal found that given the short duration of the live-in relationship between Rosenberg and the patient, the fact Rosenberg provided the patient with extensive medical treatment following enactment of the sexual abuse provision, the lack of a clear legal definition of spouse and the clear, unambiguous language of the provision, the Committee's decision stands up to the reasonableness standard of review.

The Court of Appeal also addressed the question of whether the Divisional Court erred in refusing to reverse the decision of the Discipline Committee on the ground that it retroactively applied the sexual abuse provisions of the *RHPA* to pre-1994 conduct. The Court of Appeal found that the Discipline Committee judged Rosenberg on the basis of his conduct after the date on which the sexual abuse provisions of the *RHPA* came into force, at which point he was still engaging in both a doctor-patient and sexual relationship with his patient.

The Court of Appeal dismissed the appeal by Rosenberg.

Professional	Chiropractor
Jurisdiction	Ontario, Canada
Title	Leering v College of Chiropractors of Ontario
Court	Ontario Court of Appeal
Citation	<i>Leering v College of Chiropractors of Ontario</i> , 2010 ONCA 87, 98 OR (3d) 561, KN Feldman JA.
Noted up	Mentioned - 2
Source	Quicklaw - All Canadian Court and Tribunal Case Law; CanLII
Search terms	"sexual abuse" and chiropractor and Ontario and spouse
Link	http://www.canlii.org/en/on/onca/doc/2010/2010onca87/2010onca87.html
Date last accessed	August 11, 2011
Relevance	An Ontario chiropractor began treating as a patient a woman with whom he was also in a sexual relationship. Both parties were living together at one point.
Summary	<p>In 2004 Leering met a woman with whom he began a personal and then sexual relationship. In 2005 Leering and the woman moved in together. Shortly after moving in together, the woman transferred her chiropractic treatments from another chiropractor to Leering and received 28 treatments from him between April and October of 2005. The relationship ended in October of 2005 at which point Leering attempted to collect the outstanding balance he was owed from his treatments. When the patient refused to pay the balance, Leering submitted the account to a collections agency at which point the patient complained to the College of Chiropractors (College). After learning that Leering was engaged in concurrent chiropractor-patient and sexual relationship with the patient, the College determined that Leering should be charged with sexual abuse under the <i>Regulated Health Professions Act, 1991 (RHPA)</i>.</p> <p>The Discipline Committee (Committee) of the College dealt with two issues when it considered Leering's case: whether the woman who made a complaint against Leering was his patient, and if so whether the chiropractor-patient relationship overlapped with a sexual relationship between the two. With regard to the first issue, the Committee determined that the woman was indeed a patient of Leering's between April and October of 2005 based on a number of factors including Leering opening a patient file for her which contained a patient history, a written record of treatments, and diagnostic imaging reports. The Committee also determined that a sexual relationship took place between Leering and the woman while she was his patient.</p> <p>The Divisional Court had to determine whether the Committee's decision to find that Leering was guilty of professional misconduct under the <i>Health Professions Procedural Code (Code)</i> was unreasonable given that Leering and the woman were in a sexual relationship before she became his patient. The Divisional Court distinguished the decisions in <i>Mussani</i> and <i>Rosenberg</i> on the basis that they involved circumstances in which the health professionals involved commenced sexual relationships with women who were already their patients. The Divisional Court went on to reason that the Committee's decision was unreasonable because it did not ask whether sexual activity between Leering and the woman arose out of the spousal relationship or out of the health professional-patient relationship. The Divisional Court referred the matter back to the Committee for a new hearing.</p> <p>The Divisional Court decision was appealed to the Court of Appeal which determined that sexual abuse as defined in the <i>Code</i> consists of a concurrence of a sexual relationship and a healthcare professional-patient relationship and that no further inquiries are required once those two factual determinations have been made. The Court of Appeal also noted that the only room for interpretation on the circumstances of a particular case involves whether or not a healthcare professional-patient</p>

	<p>relationship exists given that the term 'patient' is not defined in the <i>Code</i>. The Court of Appeal noted that the Divisional Court erred in law by requiring that the Committee consider whether the sexual relationship between Leering and the woman arose out of the spousal relationship between the two or their doctor patient relationship, to determine if sexual abuse was present. Furthermore the Court of Appeal found that the Committee made no error in its application of the <i>Code</i> and that there was no basis on which to find that its decision was unreasonable.</p> <p>The Court of Appeal set aside the decision of the Divisional Court and restored the decision of the Committee.</p>
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Professional	Physician
Jurisdiction	Prince Edward Island, Canada
Title	AB v College of Physicians and Surgeons of Prince Edward Island
Court	Prince Edward Island Supreme Court-Trial Division
Citation	<i>AB v College of Physicians and Surgeons of Prince Edward Island</i> , 2001 PESCTD 75, 204 DLR (4th) 750, MacDonald CJTD.
Noted up	Mentioned - 1; Distinguished - 1
Source	Quicklaw - All Canadian Court and Tribunal Case Law
Search terms	"sexual abuse" and physician and "Prince Edward Island"
Link	Not available
Last accessed	August 11, 2011
Relevance	A Prince Edward Island medical doctor began a sexual relationship with a former patient. The patient was a well-educated professional person who did not make the complaint and whom at the time of the court case, continued to share a personal relationship with the medical doctor.
Summary	<p>A.B. treated a patient until November, 1991. After having become reacquainted in 1994, A.B. and the former patient began a sexually intimate relationship in 1999. The College of Physicians and Surgeons of Prince Edward Island (College) (and not the former patient) laid a complaint against A.B. in 2000. The complaint was that A.B. committed sexual impropriety in the nature of abuse against the patient, contrary to section 38.1 of the Prince Edward Island (PEI) <i>Medical Act (Act)</i>.</p> <p>A.B. made an application to the PEI Supreme Court – Trial Division (Court) seeking an order declaring that sections of the <i>Act</i> concerning sexual abuse are unenforceable and contrary to the <i>Canadian Charter of Rights and Freedoms (Charter)</i>. A.B. specifically argued that section 7 of the <i>Charter</i> – the right to life, liberty and security of the person – was breached by sections 38.1 to 38.4 of the <i>Act</i> which characterize the relationship between A.B. and his former patient as sexual abuse. A.B. also argued that the impugned provisions were unconstitutional for being overbroad, in violation of the principles of fundamental justice.</p> <p>The Court agreed that section 38.1 of the <i>Act</i> declaring the personal relationship between A.B. and his former patient as abuse infringe upon the right to liberty provided by section 7 of the <i>Charter</i> and that A.B. should be given relief. The Court agreed that section 38.1 of the <i>Act</i> is overbroad in respect of the people it seeks to protect, with respect to the elements of the charge, with respect to the doctor it seeks to charge and punish, and with respect to the penalty imposed. The Court also determined that the impugned sections could not be saved under section 1 of the <i>Charter</i> which allows <i>Charter</i> rights to be subject to reasonable limits.</p> <p>The Court declared as unenforceable sections 38.1(4)(b) and 38.1(4)(c) in conjunction with sections 38.1(1) and 38.1(2) of the <i>Medical Act</i>, and furthermore stayed the disciplinary proceedings against A.B. by the College.</p>

Professional	Psychologist
Jurisdiction	California, United States of America
Title	Diane S. Poliak v Board of Psychology
Court	Court of Appeal of California, Third Appellate District
Citation	<i>Diane S. Poliak v Board of Psychology</i> , 55 Cal App. 4th 342 (Cal Ct App 1997) (Sparks J).
Noted up	Cited - 17
Source	Quicklaw - International
Search terms	patient /150 license /150 psychologist /150 sex! and California
Link	Not available
Last accessed	August 19, 2011
Relevance	A psychologist engaged in sexual activity with a former client. The relationship between the two progressed to the point where they briefly shared the same residence.
Summary	<p>Poliak, a psychologist in private practice, provided psychotherapy sessions to G.P., her client, beginning in July 1988. Until March 1990, G.P. received nearly weekly sessions with Poliak for issues of professional and social alienation. In March 1990 both Poliak and G.P. agreed that their relationship was becoming more personal in nature and so they agreed to terminate psychotherapy. The two continued to communicate as friends and see each other socially. In late September and early October of 1990 the two went on a trip to Europe and engaged in sexual intercourse. In February of 1991 G.P. moved into Poliak's home though after some time this arrangement ended due to conflict between G.P. and Poliak's daughter. After helping G.P. to move into a new home Poliak terminated the relationship.</p> <p>Following a complaint by G.P. the Board of Psychology (Board) and the Board of Behavioural Science Examiners (BBSE), both entities which oversaw Poliak, decided to charge her with several acts of unprofessional conduct including engaging in sexual relations with a patient, prohibited under the <i>Business and Professions Code</i>. These charges were consolidated for hearing before an Administrative Law Judge who ordered a stayed revocation of Poliak's licenses with the Board and BBSE, and a three year period of probation. The BBSE followed this decision but the Board did not. The Board issued a notice of non-adoption focusing on the issue of whether probation was the appropriate discipline to be imposed. The Board then held another hearing and issued a decision confirming many of the findings of the Administrative Law Judge but concluding that Poliak's conduct warranted a revocation of her licence. It made particular mention of its view that the term 'patient' in the <i>Business and Professions Code</i> includes former patients.</p> <p>Poliak filed a petition for writ of administrative mandamus in superior court. She contended that the penalty imposed by the Board was too harsh and that the Administrative Law Judge's decision was effective, not the Board's. The superior court rejected Poliak's claim and she appealed to the Court of Appeal of California (Court of Appeal).</p> <p>Citing provisions from the <i>Government Code</i>, the Court of Appeal disagreed with Poliak that the Administrative Law Judge's decision was effective and not the Board's. However, the Court of Appeal did agree with Poliak that the term 'patient' in the <i>Business and Professions Code</i> does not include former patients. It noted that the Court of Appeal is required to give effect to statutes according to the ordinary usage of the language used within them, and that the term patient is a common, non-technical word whose ordinary meaning refers to those currently awaiting medical care and treatment. The Court of Appeal rejected submissions from the Board that because some duties to a patient such as confidentiality continue after the formal psychotherapist-patient relationship has ended, there should be a duty not to engage</p>

	<p>in sexual relations with former patients as well. The Court of Appeal stated that merely because some duties continue after the formal end of the relationship does not have bearing on the situation under review. The Court of Appeal also noted that a new statute in the <i>Business and Professions Code</i> was enacted by the California Legislature following the events of Poliak's case. That statute required revocation of a licence where a licensee engaged in an act of sexual contact with a patient or former patient when the relationship was terminated primarily for the purpose of engaging in an act of sexual contact. The Court of Appeal noted that the Legislature would not have distinguished the terms 'patient' and 'former patient' if they were meant to be the same.</p> <p>The Court of Appeal ordered the Board to set aside its decision revoking Poliak's license and ordered it to reconsider the penalty imposed for her actions.</p>
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Professional	Psychologist
Jurisdiction	Florida, United States of America
Title	Glenn R. Caddy v State of Florida, Department of Health, Board of Psychology
Court	Court of Appeal of Florida, First District
Citation	<i>Glenn R. Caddy v State of Florida, Department of Health, Board of Psychology</i> , 764 So 2d 625 (Fla Ct App 2000) (Miner J).
Noted up	Cited - 2
Source	Quicklaw - International
Search terms	patient /150 license /150 psychologist /150 sex! and Florida
Link	Not available
Last accessed	August 19, 2011
Relevance	A psychologist and his former client engaged in a multi-year relationship which involved sexual contact. There were periods during the relationship where the two shared a residence.
Summary	<p>In mid-1986 Caddy was retained by a lawyer representing D.J. in relation to a child custody dispute. Caddy provided his services to D.J. by examining her child. The professional relationship between Caddy and D.J. lasted for a period of one month and no professional contact occurred between the two after October 1986. In September of 1987 Caddy and D.J. began a sexually intimate relationship which continued over the next six years, during which time the two shared a residence at certain points. At the conclusion of the relationship D.J. filed a complaint against Caddy with the Board of Psychology (Board).</p> <p>An Administrative Law Judge was assigned to hear the case against Caddy but the Board sought to remove the case from the judge on the basis that there were no issues of material fact to be decided given that Caddy admitted he had seen D.J. professionally and then started a personal relationship with her. After a hearing by the Board, a decision was issued in which Caddy's license to practice psychology was suspended for one year with a year of probation to follow. The Board's decision cited a provision in the <i>Florida Administrative Code</i> which states that sexual misconduct in the practice of psychology is prohibited, and that sexual misconduct occurs when the psychologist uses the psychologist-client relationship to engage or attempt to engage the client in sexual activity. The provision also contains a clause stating that the psychologist-client relationship is deemed to continue in perpetuity.</p> <p>Caddy appealed the Board's decision to the Court of Appeal of Florida (Court of Appeal). He argued that the perpetuity clause in the <i>Florida Administrative Code</i> violates the Florida Constitution because it is absolute and permits no exceptions. Caddy also argues that he has a reasonable expectation to privacy in his sexual relationships. The Board argued that Caddy has no reasonable expectation of privacy in the area of sexual involvement with a former client and that he waived certain privacy rights when he chose to seek a professional license.</p> <p>In cases involving the right to privacy in Florida, courts follow a particular procedure. First, it must be confirmed that State action was involved. Second, it must be determined whether there is a reasonable right to privacy. Third, if there is a reasonable right to privacy present the State must demonstrate that any infringement must be done to protect a compelling interest. Fourth, the infringement must be done in the least-intrusive manner possible.</p> <p>State action was clearly involved and the Court of Appeal also concluded that psychologists and their clients have a reasonable right to privacy which the <i>Florida Administrative Code</i> provisions around sexual misconduct in psychology infringe upon. The Court of Appeal concluded that the State has a compelling interest in both protecting the mental health of its citizens and in protecting the integrity of the medical</p>

	<p>profession. However, it also determined that because of the presence of the perpetuity clause the State did not employ the least intrusive means in protecting its compelling interest. It noted that for instance for physicians and psychiatrists a former client may be considered a patient on a case by case basis.</p> <p>After finding that the provision was unconstitutional the Court of Appeal ordered the Board to rescind all sanctions imposed on Caddy.</p>
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Appendix A: Description of Databases

CanLII

CanLII (Canadian Legal Information Institute) is a free, searchable website of Canadian legislation and case law from all Canadian provinces and territories. CanLII is comprehensive, offering access to numerous databases for each Canadian province and territory as well as the federal jurisdiction.⁴

Quicklaw

Quicklaw is a searchable, online service of LexisNexis which provides access to databases containing case law from all Canadian jurisdictions as well as American case law and legislation. Selected case law and legislation is also available from certain Commonwealth countries as well.⁵

⁴ CanLII, *Scope of Databases*, online: Canadian Legal Information Institute <<http://www.canlii.org/en/databases.html>>.

⁵ LSUC, *Databases and Article Searching*, online: Law Society of Upper Canada <http://rc.lsuc.on.ca/library/research_databases.htm>.

Appendix B: Search Results:

Quicklaw

Canada

Quicklaw was searched using the “All Canadian Court and Tribunal Case Law” feature, which contains all available reported and unreported full text judgments from Canadian courts and tribunals as well as LexisNexis case law summaries. In the tables below the date of the most recent search conducted was recorded. Counts of multiple relevant hits may include duplicates of the same case or decisions regarding the same case which took place at various levels of court.

Table 1. Quicklaw search results Canada - Chiropractors

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
Non-Jurisdiction-specific searches			
22/08/2011	college and chiropractor and "sexual abuse" and patient and licen*e	7	2
22/08/2011	relationship and chiropractor and licen*e and patient and college and sex!	11	2
16/08/2011	sex! /150 patient /150 chiropractor and spouse	11	4
Ontario-specific searches			
28/06/2011	"sexual abuse" and chiropractor and Ontario	43	0
29/06/2011	"sexual abuse" and chiropractor and Ontario and spouse	15	2
British Columbia-specific searches			
18/07/2011	"sexual abuse" and chiropractor and "British Columbia" ¹	39	0
18/07/2011	"sexual abuse" and chiropractor and "British Columbia" and spouse ¹	8	0
18/07/2011	sex and "British Columbia" and chiropractor and patient ¹	81	0
Alberta-specific searches			
18/07/2011	"sexual abuse" and chiropractor and Alberta	20	0
15/07/2011	"sexual abuse" and chiropractor and Alberta and spouse	3	0
Saskatchewan-specific searches			
18/07/2011	"sexual abuse" and chiropractor and Saskatchewan	12	0
18/07/2011	"sexual abuse" and chiropractor and Saskatchewan and spouse	4	0
Manitoba-specific searches			
18/07/2011	"sexual abuse" and chiropractor and Manitoba	11	0
20/07/2011	"sexual abuse" and chiropractor and Manitoba and spouse	3	0
New Brunswick- specific searches			
20/07/2011	"sexual abuse" and chiropractor and "New Brunswick"	8	0
20/07/2011	"sexual abuse" and chiropractor and "New Brunswick" and spouse	3	0
Nova Scotia- specific searches			
20/07/2011	"sexual abuse" and chiropractor and "Nova Scotia"	8	0
20/07/2011	"sexual abuse" and chiropractor and "Nova Scotia" and spouse	3	0
Prince Edward Island-specific searches			
20/07/2011	"sexual abuse" and chiropractor and "Prince Edward Island"	2	0
20/07/2011	"sexual abuse" and chiropractor and "Prince Edward Island" and spouse	2	0
Newfoundland-specific searches			
20/07/2011	"sexual abuse" and chiropractor and Newfoundland	5	0
20/07/2011	"sexual abuse" and chiropractor and Newfoundland and spouse	2	0
Yukon-specific searches			
20/07/2011	"sexual abuse" and chiropractor and Yukon	0	0
20/07/2011	"sexual abuse" and chiropractor and Yukon and spouse	0	0
Northwest Territories-specific searches			
20/07/2011	"sexual abuse" and chiropractor and "Northwest Territories" and spouse	1	0
Nunavut-specific searches			
20/07/2011	"sexual abuse" and chiropractor and Nunavut	0	0
20/07/2011	"sexual abuse" and chiropractor and Nunavut and spouse	0	0

¹All Canadian Court Cases searched only
Not all hits exclusive

Table 2. Quicklaw search results Canada - Physicians

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
Non-Jurisdiction-specific searches			
22/08/2011	college and physician and "sexual abuse" and patient and licen*e	175	-
22/08/2011	relationship /150 physician /150 licen*e /150 patient /150 college and sex!	8	0
Ontario-specific searches			
28/06/2011	"sexual abuse" and physician and Ontario	1248	-
29/06/2011	"sexual abuse" and physician and Ontario and spouse	247	12
British Columbia-specific searches			
18/07/2011	sexual abuse and "British Columbia" and physician ¹	695	-
15/07/2011	sexual abuse and "British Columbia" and physician and spouse ¹	135	-
16/08/2011	sex! /150 patient /150 physician /150 "British Columbia" and spouse	20	0
Alberta-specific searches			
15/07/2011	"sexual abuse" and physician and Alberta	322	-
18/07/2011	"sexual abuse" and physician and Alberta and spouse	79	0
Saskatchewan-specific searches			
18/07/2011	"sexual abuse" and physician and Saskatchewan	289	0
18/07/2011	"sexual abuse" and physician and Saskatchewan and spouse	76	0
Manitoba-specific searches			
20/07/2011	"sexual abuse" and physician and Manitoba	162	0
20/07/2011	"sexual abuse" and physician and Manitoba and spouse	45	0
New Brunswick- specific searches			
20/07/2011	"sexual abuse" and physician and "New Brunswick"	170	0
20/07/2011	"sexual abuse" and physician and "New Brunswick" and spouse	55	0
Nova Scotia- specific searches			
20/07/2011	"sexual abuse" and physician and "Nova Scotia"	230	0
20/07/2011	"sexual abuse" and physician and "Nova Scotia" and spouse	65	0
Prince Edward Island-specific searches			
20/07/2011	"sexual abuse" and physician and "Prince Edward Island"	49	1
20/07/2011	"sexual abuse" and physician and "Prince Edward Island" and spouse	15	0
Newfoundland-specific searches			
20/07/2011	"sexual abuse" and physician and Newfoundland	134	0
20/07/2011	"sexual abuse" and physician and Newfoundland and spouse	37	0
Yukon-specific searches			
20/07/2011	"sexual abuse" and physician and Yukon	40	0
20/07/2011	"sexual abuse" and physician and Yukon and spouse	15	0
Northwest Territories-specific searches			
20/07/2011	"sexual abuse" and physician and "Northwest Territories"	23	0
20/07/2011	"sexual abuse" and physician and "Northwest Territories" and spouse	7	0
Nunavut-specific searches			
20/07/2011	"sexual abuse" and physician and Nunavut	2	0
20/07/2011	"sexual abuse" and physician and Nunavut and spouse	1	0

¹All Canadian Court Cases searched only

Not all hits exclusive

"-" signifies that there were too many results to investigate and a narrower search was relied upon

Table 3. Quicklaw search results Canada - Psychologists

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
Non-Jurisdiction-specific searches			
22/08/2011	college and psychologist and "sexual abuse" and patient and licen*e	71	3
22/08/2011	relationship /150 psychologist /150 licen*e /150 patient /150 college /150 sex!	1	0
Ontario-specific searches			
28/06/2011	"sexual abuse" and psychologist and Ontario	1200	-
29/06/2011	"sexual abuse" and psychologist and Ontario and spouse	265	0
British Columbia-specific searches			
15/07/2011	sexual abuse and "British Columbia" and psychologist ¹	967	-
15/07/2011	sexual abuse and "British Columbia" and psychologist and spouse ¹	236	-
16/08/2011	sex! /150 patient /150 psychologist /150 "British Columbia" /150 spouse	2	0
Alberta-specific searches			
15/07/2011	"sexual abuse" and psychologist and Alberta	564	-
18/07/2011	"sexual abuse" and psychologist and Alberta and spouse	153	0
Saskatchewan-specific searches			
18/07/2011	"sexual abuse" and psychologist and Saskatchewan	422	-
20/07/2011	"sexual abuse" and psychologist and Saskatchewan and spouse	127	0
Manitoba-specific searches			
20/07/2011	"sexual abuse" and psychologist and Manitoba	260	0
20/07/2011	"sexual abuse" and psychologist and Manitoba and spouse	67	0
New Brunswick- specific searches			
20/07/2011	"sexual abuse" and psychologist and "New Brunswick"	235	0
15/07/2011	"sexual abuse" and psychologist and "New Brunswick" and spouse	71	0
Nova Scotia- specific searches			
20/07/2011	"sexual abuse" and psychologist and "Nova Scotia"	314	0
20/07/2011	"sexual abuse" and psychologist and "Nova Scotia" and spouse	87	0
Prince Edward Island-specific searches			
20/07/2011	"sexual abuse" and psychologist and "Prince Edward Island"	49	0
20/07/2011	"sexual abuse" and psychologist and "Prince Edward Island" and spouse	15	0
Newfoundland-specific searches			
20/07/2011	"sexual abuse" and psychologist and Newfoundland	145	0
20/07/2011	"sexual abuse" and psychologist and Newfoundland and spouse	51	0
Yukon-specific searches			
20/07/2011	"sexual abuse" and psychologist and Yukon	69	0
20/07/2011	"sexual abuse" and psychologist and Yukon and spouse	25	0
Northwest Territories-specific searches			
20/07/2011	"sexual abuse" and psychologist and "Northwest Territories"	40	0
20/07/2011	"sexual abuse" and psychologist and "Northwest Territories" and spouse	12	0
Nunavut-specific searches			
20/07/2011	"sexual abuse" and psychologist and Nunavut	12	0
20/07/2011	"sexual abuse" and psychologist and Nunavut and spouse	6	0

¹All Canadian Court Cases searched only

Not all hits exclusive

"-" signifies that there were too many results to investigate and a narrower search was relied upon

United States

Jurisprudence from six U.S. states was searched using the International Cases feature of Quicklaw. For each U.S. state of interest a set of databases was identified and then searched using sets of terms identified in tables 4, 5 and 6 below.

California

The International Cases feature of Quicklaw was used to search for relevant cases from the state of California using the following databases: 9th Circuit - Federal & State Cases, Combined; 9th Circuit - US Court of Appeals Cases; 9th Circuit - US Court of Appeals, District & Bankruptcy Cases, Combined; 9th Circuit - US District Court Cases; CA Courts of Appeal Cases from 1905; CA Federal & State Cases, Combined; CA Federal District & State Courts, Combined; CA Federal District Courts; CA Published Cases, Combined; CA State Cases, Combined; CA Supreme Court Cases from 1850; Published CA Court of Appeal Cases; State Cases - States Within the Federal 9th Circuit; and Unpublished CA Court of Appeal Cases.

Texas

The International Cases feature of Quicklaw was used to search for relevant cases from the state of Texas using the following databases: 11th & Former 5th Circuits - Federal & State Cases, Combined; 5th Circuit - Federal & State Cases, Combined; 5th Circuit - US Court of Appeals Cases; 5th Circuit - US Court of Appeals, District & Bankruptcy Cases, Combined; 5th Circuit - US District Court Cases; State Cases - States within the Federal 5th Circuit; TX Court of Appeals and Court of Civil Appeals Cases from 1892; TX Court of Criminal Appeals Cases from 1879; TX Federal & State Cases, Combined; TX Federal District & State Courts, Combined; TX Federal District Courts; TX State Cases, Combined; and TX Supreme Court Cases from 1840.

Minnesota

The International Cases feature of Quicklaw was used to search for relevant cases from the state of Minnesota using the following databases: 8th Circuit - Federal & State Cases, Combined; 8th Circuit - US Court of Appeals Cases; 8th Circuit - US Court of Appeals, District & Bankruptcy Cases, Combined; 8th Circuit - US District Court Cases; MN Appeals Court Cases from 1983; MN Federal & State Cases, Combined; MN Federal District & State Courts, Combined; MN Federal District Courts; MN State Cases, Combined; MN Supreme Court Cases from 1861; State Cases - States within the Federal 8th Circuit; and State Tort Law Cases.

New York

The International Cases feature of Quicklaw was used to search for relevant cases from the state of New York using the following databases: 2nd Circuit - Federal & State Cases, Combined; 2nd Circuit - US Court of Appeals Cases; 2nd Circuit - US Court of Appeals, District & Bankruptcy Cases, Combined; 2nd Circuit - US District Court Cases; NY Court of Appeals and Supreme Court - Appellate Division Cases, Combined; NY Court of Appeals Cases from 1794; NY Federal & State Cases, Combined; NY Federal District & State Courts, Combined; NY Federal District Courts; NY Lower Court Cases from 1851; NY State Cases, Combined; NY Supreme Court Cases - Appellate Division from 1875; and State Cases - States within the Federal 2nd Circuit.

Virginia

The International Cases feature of Quicklaw was used to search for relevant cases from the state of Virginia using the following databases: 4th Circuit - Federal & State Cases, Combined; 4th Circuit - US Court of Appeals Cases; 4th Circuit - US Court of Appeals, District & Bankruptcy Cases, Combined; 4th Circuit - US District Court Cases; State Cases - States within the Federal 4th Circuit; VA Circuit Court Cases from 1855; VA Court of Appeals Cases from 1985; VA Federal & State Cases, Combined; VA Federal District & State Courts, Combined; VA Federal District Courts; VA State Cases, Combined; and VA Supreme Court Cases from 1730.

Florida

The International Cases feature of Quicklaw was used to search for relevant cases from the state of Florida using the following databases: 11th & Former 5th Circuits - Federal & State Cases, Combined; 11th Circuit - US Court of Appeals Cases; 11th Circuit - US Court of Appeals, District & Bankruptcy Cases, Combined; 11th Circuit - US District Court Cases; FL Courts of Appeal Cases from 1957; FL Federal & State Cases, Combined; FL Federal District & State Courts, Combined; FL Federal District Courts; FL State Cases, Combined; FL Supreme Court Cases from 1846 and State Cases - States within the Federal 11th Circuit.

Table 4. Quicklaw search results United States - Chiropractors

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
California-specific searches			
16/08/2011	patient /150 license /150 chiropractor /150 sex! and California	13	0
Texas-specific searches			
16/08/2011	patient /150 license /150 chiropractor /150 sex! and Texas	3	0
Minnesota-specific searches			
16/08/2011	patient /150 license /150 chiropractor /150 sex! and Minnesota	12	0
New York-specific searches			
16/08/2011	patient /150 license /150 chiropractor /150 sex! and "New York"	8	0
Virginia-specific searches			
16/08/2011	patient /150 license /150 chiropractor /150 sex! and Virginia	1	0
Florida-specific searches			
16/08/2011	patient /150 license /150 chiropractor /150 sex! and Florida	4	0

Not all hits exclusive

Table 5. Quicklaw search results United States - Physicians

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
California-specific searches			
17/08/2011	patient /150 license /150 physician /150 sex! and California	118	-
17/08/2011	patient /50 license /50 physician /50 sex! and California	60	-
Texas-specific searches			
17/08/2011	patient /150 license /150 physician /150 sex! and Texas	17	0
04/08/2011	occupations code /20 (164.052 or 164.053)	7	0
Minnesota-specific searches			
17/08/2011	patient /150 license /150 physician /150 sex! and Minnesota	61	0
New York-specific searches			
17/08/2011	patient /150 license /150 physician /150 sex! and "New York"	177	-
17/08/2011	patient /50 license /50 physician /50 sex! and "New York"	109	0
Virginia-specific searches			
17/08/2011	patient /150 license /150 physician /150 sex! and Virginia	33	0
Florida-specific searches			
17/08/2011	patient /150 license /150 physician /150 sex! and Florida	28	0

Not all hits exclusive

Table 6. Quicklaw search results United States - Psychologists

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
California-specific searches			
18/08/2011	patient /150 license /150 psychologist /150 sex! and California	39	1
Texas-specific searches			
18/08/2011	patient /150 license /150 psychologist /150 sex! and Texas	3	0
Minnesota-specific searches			
18/08/2011	patient /150 license /150 psychologist /150 sex! and Minnesota	19	0
New York-specific searches			
18/08/2011	patient /150 license /150 psychologist /150 sex! and "New York"	20	0
Virginia-specific searches			
18/08/2011	patient /150 license /150 psychologist /150 sex! and Virginia	2	0
Florida-specific searches			
18/08/2011	patient /150 license /150 psychologist /150 sex! and Florida	8	1

Not all hits exclusive

United Kingdom

Jurisprudence from the United Kingdom was searched using the International Cases feature of Quicklaw. The following databases were identified and then searched using sets of terms identified in tables 7, 8 and 9 below: All England Law Reports; All England Law Reports European Cases; All England Reporter; All ER Reprints; All ER Reprints Extension; All UK Cases; Butterworths Local Government Reports; Butterworths Medico-Legal Reports; CaseSearch; Criminal Appeal Cases; CSR Case Reports; English and Wales Cases: 1558-2010; EPO Boards of Appeal Decisions 1979 to present; General Case Digest; ICLR: Appeal Cases; ICLR: Chancery Appeal; ICLR: Chancery Division; ICLR: Common Pleas; ICLR: Crown Cases Reserved; ICLR: Equity Cases; ICLR: Exchequer; ICLR: House of Lords; ICLR: King's/Queen's Bench Division; ICLR: Privy Council; ICLR: Probate/Family; ICLR: Scotch & Divorce Appeal; ICLR: Search All ICLR Sources; Justice of the Peace Law Reports; Law Reports of the Commonwealth; Northern Ireland Law Reports; Northern Ireland Unreported Judgments; OHIM Decisions 1998 to Present; Personal Injuries Quantum Database; Scottish Case Digests; Scottish Civil Law Reports; Scottish Court Opinions; Scottish Criminal Case Reports and Times Law Reports.

Table 7. Quicklaw search results United Kingdom - Chiropractors

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
19/08/2011	sex! /150 patient /150 chiropractor /150 licen*e	0	0
19/08/2011	sex! /p patient /p chiropractor /p licen*e	0	0

Not all hits exclusive

Table 8. Quicklaw search results United Kingdom - Physicians

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
19/08/2011	sex! /150 patient /150 physician /150 licen*e	3	0
19/08/2011	sex! /p patient /p physician /p licen*e	3	0

Not all hits exclusive

Table 9. Quicklaw search results United Kingdom - Psychologists

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
19/08/2011	sex! /150 patient /150 psychologist /150 licen*e	0	0
19/08/2011	sex! /p patient /p psychologist /p licen*e	3	0

Not all hits exclusive

Australia

Jurisprudence from Australia was searched using the International Cases feature of Quicklaw. The following databases were identified and then searched using sets of terms identified in tables 10, 11 and 12 below: Administrative Law Decisions; Australian Capital Territory Reports; Australian Law Reports; CaseBase Cases; Northern Territory Reports; Queensland Crown Lands Law Reports; Queensland Land Court Reports; Unreported Judgments ACT; Unreported Judgments Federal Court of Australia; Unreported Judgments High Court of Australia; Unreported Judgments NSW; Unreported Judgments NT; Unreported Judgments Qld; Unreported Judgments SA; Unreported Judgments Takeovers Panel; Unreported Judgments Tas; Unreported Judgments Vic; Unreported Judgments WA and Victorian Reports.

Table 10. Quicklaw search results Australia - Chiropractors

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
19/08/2011	sex! /p patient /p chiropractor /p licen*e	0	0
19/08/2011	sex! /150 patient /150 chiropractor /150 licen*e	0	0

Not all hits exclusive

Table 11. Quicklaw search results Australia - Physicians

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
19/08/2011	sex! /p patient /p physician /p licen*e	0	0
19/08/2011	sex! /150 patient /150 physician /150 licen*e	0	0

Not all hits exclusive

Table 12. Quicklaw search results Australia - Psychologists

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
19/08/2011	sex! /p patient /p psychologist /p licen*e	0	0
19/08/2011	sex! /150 patient /150 psychologist /150 licen*e	1	0

Not all hits exclusive

Canadian Legal Information Institute (CanLii)

Canada

CanLii may be accessed on the Internet. Its coverage, which includes select decisions of the Health Professions Appeal and Review Board (HPARB) as well as Canadian courts, is described on the following web page: <http://www.canlii.org/en/databases.html>. In all CanLII searches the “Courts” and “Boards and Tribunals” options were selected.

Table 13. CanLII search results Canada - Chiropractors

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
Ontario-specific searches			
28/06/2011	"sexual abuse" and chiropractor and Ontario	10	-
29/06/2011	"sexual abuse" and chiropractor and Ontario and spouse	3	1
British Columbia-specific searches			
18/07/2011	"sexual abuse" and chiropractor and "British Columbia"	2	0
18/07/2011	"sexual abuse" and chiropractor and "British Columbia" and spouse	0	0
Alberta-specific searches			
18/07/2011	"sexual abuse" and chiropractor and Alberta	1	0
18/07/2011	"sexual abuse" and chiropractor and Alberta and spouse	0	0
Saskatchewan-specific searches			
20/07/2011	"sexual abuse" and chiropractor and Saskatchewan	0	0
20/07/2011	"sexual abuse" and chiropractor and Saskatchewan and spouse	0	0
Manitoba-specific searches			
20/07/2011	"sexual abuse" and chiropractor and Manitoba	0	0
20/07/2011	"sexual abuse" and chiropractor and Manitoba and spouse	0	0
New Brunswick- specific searches			
20/07/2011	"sexual abuse" and chiropractor and "New Brunswick"	1	0
20/07/2011	"sexual abuse" and chiropractor and "New Brunswick" and spouse	0	0
Nova Scotia- specific searches			
20/07/2011	"sexual abuse" and chiropractor and "Nova Scotia"	1	0
20/07/2011	"sexual abuse" and chiropractor and "Nova Scotia" and spouse	0	0
Prince Edward Island-specific searches			
20/07/2011	"sexual abuse" and chiropractor and "Prince Edward Island"	0	0
15/07/2011	"sexual abuse" and chiropractor and "Prince Edward Island" and spouse	0	0
Newfoundland and Labrador -specific searches			
15/07/2011	"sexual abuse" and chiropractor and Newfoundland	0	0
15/07/2011	"sexual abuse" and chiropractor and Newfoundland and spouse	0	0
Yukon-specific searches			
15/07/2011	"sexual abuse" and chiropractor and Yukon	0	0
15/07/2011	"sexual abuse" and chiropractor and Yukon and spouse	0	0
Northwest Territories-specific searches			
15/07/2011	"sexual abuse" and chiropractor and "Northwest Territories"	0	0
15/07/2011	"sexual abuse" and chiropractor and "Northwest Territories" and spouse	0	0
Nunavut-specific searches			
15/07/2011	"sexual abuse" and chiropractor and Nunavut	0	0
15/07/2011	"sexual abuse" and chiropractor and Nunavut and spouse	0	0

Not all hits exclusive

"-" signifies that there were too many results to investigate and a narrower search was relied upon

Table 14. CanLII search results Canada - Physicians

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
Ontario-specific searches			
28/06/2011	"sexual abuse" and physician and Ontario	144	-
29/06/2011	"sexual abuse" and physician and Ontario and spouse	24	0
British Columbia-specific searches			
18/07/2011	sexual abuse and "British Columbia" and physician	41	0
18/07/2011	sexual abuse and "British Columbia" and physician and spouse	9	0
Alberta-specific searches			
18/07/2011	"sexual abuse" and physician and Alberta	28	0
18/07/2011	"sexual abuse" and physician and Alberta and spouse	4	0
Saskatchewan-specific searches			
20/07/2011	"sexual abuse" and physician and Saskatchewan	10	0
20/07/2011	"sexual abuse" and physician and Saskatchewan and spouse	2	0
Manitoba-specific searches			
20/07/2011	"sexual abuse" and physician and Manitoba	7	0
20/07/2011	"sexual abuse" and physician and Manitoba and spouse	1	0
New Brunswick- specific searches			
20/07/2011	"sexual abuse" and physician and "New Brunswick"	2	0
20/07/2011	"sexual abuse" and physician and "New Brunswick" and spouse	0	0
Nova Scotia- specific searches			
20/07/2011	"sexual abuse" and physician and "Nova Scotia"	13	0
20/07/2011	"sexual abuse" and physician and "Nova Scotia" and spouse	3	0
Prince Edward Island-specific searches			
20/07/2011	"sexual abuse" and physician and "Prince Edward Island"	3	0
15/07/2011	"sexual abuse" and physician and "Prince Edward Island" and spouse	0	0
Newfoundland and Labrador -specific searches			
15/07/2011	"sexual abuse" and physician and Newfoundland	11	0
15/07/2011	"sexual abuse" and physician and Newfoundland and spouse	2	0
Yukon-specific searches			
15/07/2011	"sexual abuse" and physician and Yukon	2	0
15/07/2011	"sexual abuse" and physician and Yukon and spouse	0	0
Northwest Territories-specific searches			
15/07/2011	"sexual abuse" and physician and "Northwest Territories"	0	0
15/07/2011	"sexual abuse" and physician and "Northwest Territories" and spouse	0	0
Nunavut-specific searches			
15/07/2011	"sexual abuse" and physician and Nunavut	0	0
15/07/2011	"sexual abuse" and physician and Nunavut and spouse	0	0

Not all hits exclusive

"-" signifies that there were too many results to investigate and a narrower search was relied upon

Table 15. CanLII search results Canada - Psychologists

Date of Most Recent Search (DD/MM/YYYY)	Phrase Searched	Total Hits	Total Relevant Hits
Ontario-specific searches			
28/06/2011	"sexual abuse" and psychologist and Ontario	67	-
29/06/2011	"sexual abuse" and psychologist and Ontario and spouse	11	0
British Columbia-specific searches			
15/07/2011	"sexual abuse" and "British Columbia" and psychologist	29	0
18/07/2011	"sexual abuse" and "British Columbia" and psychologist and spouse	7	0
Alberta-specific searches			
18/07/2011	"sexual abuse" and psychologist and Alberta	14	0
18/07/2011	"sexual abuse" and psychologist and Alberta and spouse	0	0
Saskatchewan-specific searches			
20/07/2011	"sexual abuse" and psychologist and Saskatchewan	4	0
20/07/2011	"sexual abuse" and psychologist and Saskatchewan and spouse	1	0
Manitoba-specific searches			
20/07/2011	"sexual abuse" and psychologist and Manitoba	5	0
20/07/2011	"sexual abuse" and psychologist and Manitoba and spouse	0	0
New Brunswick- specific searches			
20/07/2011	"sexual abuse" and psychologist and "New Brunswick"	3	0
20/07/2011	"sexual abuse" and psychologist and "New Brunswick" and spouse	0	0
Nova Scotia- specific searches			
20/07/2011	"sexual abuse" and psychologist and "Nova Scotia"	13	0
20/07/2011	"sexual abuse" and psychologist and "Nova Scotia" and spouse	2	0
Prince Edward Island-specific searches			
20/07/2011	"sexual abuse" and psychologist and "Prince Edward Island"	3	0
15/07/2011	"sexual abuse" and psychologist and "Prince Edward Island" and spouse	0	0
Newfoundland and Labrador-specific searches			
15/07/2011	"sexual abuse" and psychologist and Newfoundland	8	0
15/07/2011	"sexual abuse" and psychologist and Newfoundland and spouse	0	0
Yukon-specific searches			
15/07/2011	"sexual abuse" and psychologist and Yukon	1	0
15/07/2011	"sexual abuse" and psychologist and Yukon and spouse	0	0
Northwest Territories-specific searches			
15/07/2011	"sexual abuse" and psychologist and "Northwest Territories"	0	0
15/07/2011	"sexual abuse" and psychologist and "Northwest Territories" and spouse	0	0
Nunavut-specific searches			
15/07/2011	"sexual abuse" and psychologist and Nunavut	0	0
15/07/2011	"sexual abuse" and psychologist and Nunavut and spouse	0	0

Not all hits exclusive

"-" signifies that that there were too many results to investigate and a narrower search was relied upon

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Ontario

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Advisory Council

Conseil consultatif de
réglementation des professions
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