



NOVA SCOTIA
BARRISTERS' SOCIETY

Consultation on proposed Regulatory Objectives — Your input is requested

The Nova Scotia Barristers' Society has completed year one of our Strategic Direction to transform regulation and governance in the public interest. Significant progress has been made on many levels:

- Research was completed in 2013 focused on identification of best practices in professional regulation and governance around the world, resulting in Council's approval of a broad framework for development of a principles-based, proactive, proportionate, risk-focused regulatory regime.
- A Working Group of Council and senior staff completed research and development of [draft Regulatory Objectives](#), which are explained below.
- A Working Group of Council and senior staff began research and consideration of the concept of **entity regulation** as part of this new regulatory regime. This included working with Creative Consequences, a consulting team from New South Wales, Australia. This team has produced three reports to date identifying the entity regulation opportunities and options for Nova Scotia, including the development of Proactive Management-Based Regulation principles (PMBR). See <http://nsbs.org/transform-regulation>.
- A wide range of members participated in focus group discussions on May 26 and 27, 2014 about the meaning and benefits of entity regulation and PMBR. The responses were very positive and supportive.

As we move into year two of our work, we continue to focus on our commitment to consult and engage members and stakeholders in the research, design and development phases of this initiative to transform the regulation of lawyers in this province. The purpose of this document is to seek your input on the draft Regulatory Objectives for the Nova Scotia Barristers' Society.

Regulatory Objectives (ROs) have been incorporated into the legislation for modern professional regulators around the world. Examples can be seen in the statutes in England and Wales, New South Wales, India, and to some extent in our own *Legal Profession Act* (s. 4). The purpose for the creation of Regulatory Objectives is set out in the 'purpose' section of the attached document, and can be summarized as follows:

- i. To clearly articulate the purpose of regulation to the public and the regulated;
- ii. To ensure that the regulator aligns all of its functions with the ROs, and can demonstrate compliance with them;
- iii. To define the parameters of the regulator's legislation and of public debate in this regard; and
- iv. To assist the regulator when engaging in debate with government and others about matters which fall within the ROs.

Council is proposing the adoption of six ROs, which it is believed appropriately articulate and encompass the work in which the Society should be engaged in the public interest:

1. *Protect those who use and receive legal services*—Council has yet to confirm whether our purpose is to regulate the 'work' (legal services) and/or the 'worker' (lawyers), and whether this is to include lawyers, law firms, legal services and entities;

2. *Promote the rule of law and the public interest in the justice system*—this recognizes that the profession and the regulator have broader duties to the public beyond clients;
3. *Promote access to legal services and the justice system*—this corresponds with Council’s second Strategic Direction, to enhance access to legal services and the justice system for all Nova Scotians;
4. *Establish required standards for professional responsibility and competence in the delivery of legal services*;
5. *Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system*; and
6. *Regulate in a manner that is efficient, transparent and proportional.*

The format for these ROs is a statement of objective, followed by brief descriptive commentary. The latter remains very much in draft form. Our goal is to ensure that each RO is supported by legislative or common law as it relates to the responsibilities of a professional regulator.

As a stakeholder or an interested observer, with respect to the manner in which the Nova Scotia Barristers’ Society regulates lawyers and the legal profession, your views are important to us. We invite any comments or questions you may have about these proposed Regulatory Objectives.

In reflecting on them, we seek your input on such matters as:

- Do we have them right? Anything missing? Anything that ought not to be there?
- Do the draft commentaries support the RO? Can you identify other sources that would also do so?
- Does the approach of RO supported by commentary make sense?
- Any other comments – in praise or critical – are welcome.

Your comments will be considered by the Regulatory Objectives Working Group in early fall, with the hope that Council will have final recommendations for consideration in November.

Feel free to share this with others who may be interested in our work.

Thus, if we could receive your comments by the end of August that would be most helpful.

Sincerely,



Darrel I. Pink
Executive Director

June 24, 2014



NOVA SCOTIA
BARRISTERS' SOCIETY

Regulatory Objectives

Draft 2014-05-02

Following the directions of Council, the Regulatory Objectives Working Group has created a series of guiding principles for the Society's work in all areas, using the concept of Regulatory Objectives (ROs) or purposes, to use the language of the *Legal Profession Act* (s. 4(2)). In general, the rationale for ROs can be stated as follows:

ROs set out the purpose of lawyer regulation and its parameters and thus serve as a guide to assist those regulating the legal profession and those being regulated. For those affected by the particular regulation, they clarify the purpose of that regulation and why it is enforced becomes clearer.

ROs assist in ensuring that the function and purpose of the particular legislation is transparent. Thus, when the regulatory body administering the legislation is questioned—for example, about its interpretation of the legislation—the regulatory body can point to the regulatory objectives to demonstrate compliance with their function and purpose.

ROs can also help define the parameters of the legislation and of public debate about proposed legislation.

Finally, ROs may help the legal profession when it is called upon to negotiate with governmental and nongovernmental entities about regulations affecting legal practice. (Adopting Regulatory Objectives for the Legal Profession, *Fordham Law Review*, Volume 80 | Issue 6 Article 14, 2012)

Each rationale above is relevant to the Society as it continues its work on Transforming Regulation and Governance. Once adopted, these ROs will assist in shaping the ultimate regulatory changes that occur. Council has already determined that our approach to regulation will be proactive and principles based. These approaches are specifically addressed in proposed RO 5. Other ROs derive from the legislation, case law and the work of legal scholars, and reflect the work the Society is already doing or the approaches we have brought to our work. In putting them in writing and adopting them, they will become authoritative.

Comments on the proposed ROs are invited, so that the public and the profession have input into the ultimate regulatory regime that will govern the legal profession.

1. Protect those who receive and use legal services

The Society's primary mandate is to protect the public (see LPA. s.4 and 33). Courts have repeatedly emphasized and supported this critical role that law societies fulfil in maintaining independence of the legal profession through the creation and enforcement of standards of practice. (See *SMSS v. NSBS* 2005 NSSC 258; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869; *Law Society of Manitoba and Savino* (1983), 1 DLR (4th) 285.)

These standards are designed primarily to protect clients of lawyers. "Client protection is almost universally recognized as one of the key reasons why lawyer regulation exists." (Terry, *Adopting Regulatory Objectives for the Legal Profession*, p. 2734.)

“Self-regulation is undertaken in the public interest to ensure that legal services are provided to the public ethically and competently by only those persons qualified to do so.” (See Alice Wooley, Richard Devlin, Brent Cotter and John M. Law, *Lawyers’ Ethics and Professional Regulation*, 2nd ed., Markham: Lexis Nexis, 2012, at page 67)

It is important that the Society recognize and protect all those who use or receive legal services, and the many forms in which legal services can now be provided. This goes beyond traditional ‘clients’, and beyond traditional retainers and client meetings in brick-and-mortar law firms.

For purposes of this objective, ‘client’ now extends to those who access legal services in many forms.

The Society has a duty to protect those who receive or use legal services by ensuring the competence and honesty of its members (*Finney v. Barreau du Quebec*, 2004 SCC 36). “Protection” places a significant onus on the Society to establish appropriate and effective standards for practice, to identify measureable outcomes for members with the goal of promoting competent and ethical practice by members, to understand current risks that may create barriers both to members in achieving these objectives and to the Society in fulfilling this key mandate, and to enforce adherence to these standards in the public interest. (See LPA, s. 33.)

This Regulatory Objective requires that the Society, at a minimum, is to set standards and implement measureable mechanisms to achieve the mandate set out in sections 4 and 33 of the LPA for ‘entry and conduct regulation’ (see *Lawyers’ Ethics and Professional Regulation*, p. 76), with a priority on protection of those who use or receive legal services from members. This requires from the Society:

- current knowledge of the legal services marketplace,
- understanding and management of the expectations of those who use or receive legal services,
- commitment to educating and assisting lawyers in achieving the goals of competent and ethical practice, and
- clear and transparent means for enforcing adherence to these standards in the interests of those who use or receive legal services.

Resources

Legal Profession Act, S.N.S. 2004, c 28, as am.

...

Protection of public and integrity of profession

33 The purpose of Sections 34 to 53 is to protect the public and preserve the integrity of the legal profession by

- (a) promoting the competent and ethical practice of law by the members of the Society;
- (b) resolving complaints of professional misconduct, conduct unbecoming a lawyer, professional incompetence and incapacity;
- (c) providing for the protection of clients' interests through the appointment of receivers and custodians in appropriate circumstances;
- (d) addressing the circumstances of members of the Society requiring assistance in the practice of law, and in handling or avoiding personal, emotional, medical or substance abuse problems; and
- (e) providing relief to individual clients of members of the Society and promoting the rehabilitation of members.

See Alice Wooley, Richard Devlin, Brent Cotter, and John M. Law, *Lawyers’ Ethics and Professional Regulation*, 2nd ed. (Markham: Lexis Nexis, 2012)

See Adam M. Dodek, *Canadian Legal Ethics: Ready for the Twenty-First Century at Last*, (2008) 46 Osgoode Hall L.J. 1.

Dodek, Adam M. & Jeffrey G. Hoskins, *Canadian Legal Practice: A Guide to the 21st Century*, looseleaf (Markham: LexisNexis, 2009) at Ch. 3

2. Promote the rule of law and the public interest in the justice system

Pearlman v. Manitoba Law Society Judicial Committee, [1991] 2 SCR 869 at 886:

It is appropriate at this juncture to mention the legislative rationale behind making a profession self-governing. The Ministry of the Attorney General of Ontario produced a study paper entitled *The Report of the Professional Organizations Committee* (1980) which, I believe, provides a helpful analysis of this rationale. The following extract from p. 25 is apposite:

In the government of the professions, both public and professional authorities have important roles to play. When the legislature decrees, by statute, that only licensed practitioners may carry on certain functions, it creates valuable rights. As the ultimate source of those rights, the legislature must remain ultimately responsible for the way in which they are conferred and exercised. Furthermore, the very decision to restrict the right to practise in a professional area implies that such a restriction is necessary to protect affected clients or third parties. The regulation of professional practice through the creation and the operation of a licensing system, then, is a matter of public policy: it emanates from the legislature; it involves the creation of valuable rights; and it is directed towards the protection of vulnerable interests.

On the other hand, where the legislature sees fit to delegate some of its authority in these matters of public policy to professional bodies themselves, it must respect the self-governing status of those bodies. Government ought not to prescribe in detail the structures, processes, and policies of professional bodies. The initiative in such matters must rest with the professions themselves, recognizing their particular expertise and sensitivity to the conditions of practice. In brief, professional self-governing bodies must be ultimately accountable to the legislature; but they must have the authority to make, in the first place, the decisions for which they are to be accountable. [Emphasis added.]

The authors noted the particular importance of an autonomous legal profession to a free and democratic society. They said at p. 26:

Stress was rightly laid on the high value that free societies have placed historically on an independent judiciary, free of political interference and influence on its decisions, and an independent bar, free to represent citizens without fear or favour in the protection of individual rights and civil liberties against incursions from any source, including the state.

On this view, the self-governing status of the professions, and of the legal profession in particular, was created in the public interest.

Omineca Enterprises Ltd. V. British Columbia (Minister of Forests) (1993), 85 BCLR (2d) 85 at para. 53:

One of the great and often unrecognized strengths of Canadian society is the existence of an independent bar. Because of that independence, lawyers are available to represent popular and unpopular interests, and to stand fearlessly between the state and its citizens.

Lord Bingham, *The Rule of Law*, (London: Allen Lane, 2010) at pp. 92-93:

Scarcely less important than an independent judiciary is an independent legal profession, fearless in its representation of those who cannot represent themselves, however unpopular or distasteful their case may be.

Code of Professional Conduct (NS), Section 5.6: The Lawyer and the Administration of Justice

Encouraging Respect for the Administration of Justice

5.6-1 A lawyer must encourage public respect for and try to improve the administration of justice.

See Lucinda Vandervort, *Access to Justice and the Public Interest in the Administration of Justice*, 63 U.N.B.L.J. 125 at 125:

The public interest in the administration of justice requires that everyone have access to justice. Access to justice must be "meaningful" access. Meaningful access mandates procedures, processes, and institutional structures that provide judges and other decision-makers with the resources they require to render fully informed and sound decisions.

Access to Family and Civil Justice, A Roadmap for Change, National Action Committee on Access to Civil and Family Justice, Thomas A. Cromwell, Oct. 2013, p.15

Courts and Tribunals Must Be Accessible to and Reflective of the Society they Serve

The Canadian justice system is currently served by excellent lawyers, judges, courts and tribunals. The problem is not their quality, but rather their accessibility. While many of the goals and recommendations considered elsewhere in this report focus on the parts of the justice system that lie outside of formal dispute resolution processes (see e.g. Fig. 1), there is still a central role for robust and accessible public dispute resolution venues. Justice — including a robust court and tribunal system — is very much a central part of any access to justice discussion. However, to make courts and tribunals more accessible to more people and more cases, they must be significantly reformed with the user centrally in mind.

While maintaining their constitutional and administrative importance in the context of a democracy governed by the rule of law, courts and tribunals must become much more accessible to and reflective of the needs of the society they serve. Put simply, just, creative and proportional processes should be available for all legal problems that need dispute resolution assistance

3. Promote access to legal services and the justice system

Canada (AG) v. Law Society (BC), [1982] 2 SCR 307 at 335-336:

The independence of the Bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally. The uniqueness of position of the barrister and solicitor in the community may well have led the province to select self-administration as the mode for administrative control over the supply of legal services throughout the community.

See Justice T. Cromwell, *Access to Civil & Family Justice: A Roadmap for Change* (October 2013) at Part 3, pages 14 and 15.

Nova Scotia Legal Aid Commission

The mandate of the Nova Scotia Legal Aid Commission, in so far as Government funding permits, is:

- (a) To deliver quality legal services [this means information, advice, partial representation and full-service representation – but not to spelled out herein] to qualified applicants with priority for matters involving the liberty and civil rights of individual clients and for matters involving the integrity and protection of an individual's family;
- (b) Such other legal services as Government may contract with the Commission to provide to individuals or groups.

***Code of Professional Conduct (NS)*, Section 4.1: Making Legal Services Available**

Making Legal Services Available

4.1-1 A lawyer must make legal services available to the public efficiently and conveniently and, subject to rule 4.1-2, may offer legal services to a prospective client by any means.

Commentary

[1] A lawyer may assist in making legal services available by participating in Legal Aid and lawyer referral services and by engaging in programs of public information, education or advice concerning legal matters.

[2] As a matter of access to justice, it is in keeping with the best traditions of the legal profession to provide services pro bono and to reduce or waive a fee when there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. The Society encourages lawyers to provide public interest legal services and to support organizations that provide services to persons of limited means.

...

See Competition Bureau Report, *Self-regulated professions: Balancing competition and regulation* (2007), pages 61-79

See E. Iacobucci and M. Trebilcock, *Self-Regulation and Competition in Ontario's Legal Services Sector: An Evaluation of the Competition Bureau's Report on Competition and Self-Regulation in Canadian Professions*, (September 15, 2008)

See Brent Cotter, *Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada*, (2012) 63 U.N.B.L.J. 54 at p. 67:

Absent access to justice, law appears to be available for only the powerful or the wealthy. We live in a country where the rule of law is fundamental to our belief in a civilized society. Where citizens have little or no access to law to enable them to understand and, if necessary, advance our rights, their confidence in a just society based on law will be eroded.

Adam Dodek, *Canadian Legal Ethics: Ready for the Twenty-First Century at Last*, (2008) 46 Osgoode Hall L.J. 1.

Dodek, Adam M. & Jeffrey G. Hoskins, *Canadian Legal Practice: A Guide to the 21st Century*, looseleaf (Markham: LexisNexis, 2009) at Ch. 22

Alice Wooley, *Imperfect Duty: Lawyers' Obligation to Foster Access to Justice*, (2008) 45:5 Alberta L. Rev. 107

4. **Establish required standards for professional responsibility and competence in the delivery of legal services**

Skogstad v. The Law Society of British Columbia, 2007 BCCA 310

...
[8] The Law Society draws the connection between the protection of solicitor-client privilege and the fundamental importance to our legal system of the independence of the legal profession from state interference (*Andrews v. Law Society of British Columbia*, [1989 CanLII 2 \(SCC\)](#), [1989] 1 S.C.R. 143 at 187-88, *per* McIntyre J. dissenting in part; *Canada (Attorney General) v. Law Society of British Columbia*, [1982 CanLII 29 \(SCC\)](#), [1982] 2 S.C.R. 307 at 335-36). It makes the point that if lawyers were subject to regulation by the state and the state had access to privileged information during an investigation of a lawyer, solicitor-client privilege would be a hollow right. The independence of the legal profession is in turn protected by self-regulation. (*Finney v. Barreau du Québec*, [2004 SCC 36 \(CanLII\)](#), [2004] 2 S.C.R. 17, 2004 SCC 36). Proper regulation by the Law Society of the competence and integrity of lawyers requires access to confidential, and occasionally, privileged information, such as client instructions.

[9] Over the years courts have examined the need to balance the competing values of protecting solicitor-client privilege, to enable clients to communicate freely with legal advisors and the need to ensure the integrity of the legal profession, which is a self-regulated body requiring public confidence.

...

Fortin v. Chrétien, 2001 SCC 45

17 The special rules governing the practice of the legal profession are justified by the importance of the acts that advocates engage in, the vulnerability of the litigants who entrust their rights to them, and the need to preserve the relationship of trust between advocates and their clients. In *Attorney General of Canada v. Law Society of British Columbia*, [1982 CanLII 29 \(SCC\)](#), [1982] 2 S.C.R. 307, at p. 335, Estey J. explained as follows the need to regulate the professional activity of members of the Bar (cited with approval in *Pearlman v. Manitoba Law Society Judicial Committee*, [1991 CanLII 26 \(SCC\)](#), [1991] 2 S.C.R. 869, at p. 888) as follows:

There are many reasons why a province might well turn its legislative action towards the regulation of members of the law profession. These members are officers of the provincially-organized courts; they are the object of public trust daily; the nature of the services they bring to the public makes the valuation of those services by the unskilled public difficult; the quality of service is the most sensitive area of service regulation and the quality of legal services is a matter difficult of judgment.

As persons in whom public trust is invested, advocates play a very special role in the community when they perform these acts reserved to them (see *R. v. McClure*, [2001 SCC 14 \(CanLII\)](#), [2001] 1 S.C.R. 445, 2001 SCC 14, at paras. 2 and 31). It is the vocation of the Barreau, which, so to speak, makes up for litigants' lack of knowledge and oversees the quality of the professional services provided, to preserve this relationship of trust.

18 In doing this, the Barreau tends to protect the public not only against improper acts by its members, but also against non-members who provide no assurance of competence, integrity, confidentiality or independence. The [Code of ethics of advocates](#) and the provisions relating to

fees or defalcation of amounts of money and to the management of complaints by the committee on discipline apply only to members of the Barreau. That is why it is important to deter others from performing acts that are reserved for advocates, by applying penalties...

Legal Profession Act, S.N.S. 2004, c 28, as am.

...

Purpose of Society

4 (1) The purpose of the Society is to uphold and protect the public interest in the practice of law.

(2) In pursuing its purpose, the Society shall

- (a) establish standards for the qualifications of those seeking the privilege of membership in the Society;
- (b) establish standards for the professional responsibility and competence of members in the Society;
- (c) regulate the practice of law in the Province; and
- (d) seek to improve the administration of justice in the Province by
 - (i) regularly consulting with organizations and communities in the Province having an interest in the Society's purpose, including, but not limited to, organizations and communities reflecting the economic, ethnic, racial, sexual and linguistic diversity of the Province, and
 - (ii) engaging in such other relevant activities as approved by the Council

Gavin MacKenzie, *Regulating Lawyer Competence and Quality of Service*, (2008) 45:5 Alberta L. Rev. 143.

Laurel S. Terry, *Trends in Global and Canadian Lawyer Regulation*, (2013) 76 Sask. L. Rev. 145.

Alice Wooley, Richard Devlin, Brent Cotter, and John M. Law, *Lawyers' Ethics and Professional Regulation*, 2nd ed. (Markham: Lexis Nexis, 2012)

Dodek, Adam M. & Jeffrey G. Hoskins, *Canadian Legal Practice: A Guide to the 21st Century*, looseleaf (Markham: LexisNexis, 2009) at Chs. 2 & 3

MacKenzie, Gavin, *Lawyers and ethics : professional responsibility and discipline*, 3d ed. (Toronto: Thomson Carswell, 2001) at Part IV

5. **Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system**

Law Society of Upper Canada v. Selwyn Milan McSween, 2012 ONLSAP 3
[dissenting reasons for decision]

[78] We are not absolved of our responsibility to address these issues simply because we have chosen not to make ourselves aware of the extent of this problem or its causes. Examining race as a potentially mitigating factor is of particular importance for Law Society disciplinary hearings, because we have no institutional information to assure us that inequality has not impacted the regulatory process.

[79] There is evidence in the record to show that Mr. McSween faced challenges typically associated with racism, which is unfortunately typical of the experience of some black law students and lawyers. See paras. 6, 35, *supra*.

ANALYSIS

[80] The hearing panel erred by failing to give sufficient weight to the systemic disadvantage experienced by Mr. McSween as a lawyer of Afro-Caribbean descent. His employment and articling history of repeated rejection despite his impressive academic achievement signal this and

can hardly be explained except on the basis of racial and age discrimination. The hearing panel failed to recognize this disadvantage as a mitigating factor.

[81] In its Reasons [2010 ONLSHP 111 \(CanLII\)](#), [2010 ONLSHP 111], the hearing panel stated at para. 19:

The Panel found, following a contested hearing, that Mr. McSween was a knowing participant in fraudulent activities that occurred over several months. While we have no doubt that Mr. McSween is remorseful, his case does not raise circumstances that would allow us to simply permit him to surrender his licence. Mr. McSween contested the hearing, blamed others, and continues, to an extent, to try to deflect blame for his actions. While we have given weight to his character references, the letters provided were from people who had not been given our earlier Reasons. The mitigating factors put forward by Mr. McSween are, quite simply, not exceptional or extraordinary enough to justify deviating from the presumptive penalty, revocation.

[82] Simply put, this is an error. Mitigating factors such as inequality need not be “exceptional”; indeed, they are commonplace. Nor must the effect of inequality be “extraordinary” in any degree: any effect of inequality must be weighed unless it is trivial or insubstantial. The hearing panel did not take into account the difficulties facing Afro-Caribbean Canadian lawyers and this particular lawyer. Nor does the panel weigh the effects of structural inequality on the lives of black lawyers, or on Mr. McSween.

[83] Taking into account all the mitigating factors in this case (including the unique difficulties faced by those who join the profession when they are older), it is appropriate to allow Mr. McSween to surrender his licence to practise law.

[84] Like sentencing judges, our hearing panels determine which disposition options are appropriate and just, and they should, where possible, use those “which will play perhaps a stronger role in restoring a sense of balance to the offender, victim, and community, and in preventing future crime.” *Gladue, supra* at para. 65. It is only right that, with a proper evidentiary foundation, we give mitigating effect to systemic discrimination when it impacts the misconduct and influences the solicitor’s actions.

Gichuru v. Law Society (British Columbia), 2011 BCHRT 185

219 I think it is fair to take notice that there remains a significant level of racial discrimination within Canadian society as a whole. Further, given the extent of the research and writing on this issue by Law Societies across Canada, and by the Canadian Bar Association, it is fair to take notice that there remains a significant level of racial discrimination within the legal profession. As highlighted in a number of the reports relied on by Mr. Gichuru, discrimination of this nature can be distinguished from outright racism and is much more likely to be subtle and systemic, premised on the notion of “fit” or appropriateness. This reality makes it more difficult for the issues to be addressed in the context of a human rights complaint, a reality which has frequently been recognized by the Tribunal: see, for example, [Pinazo v. Neverblue Media Inc., 2007 BCHRT 4](#), paras. 20-22; [Monsson v. Nacel Properties Ltd., 2006 BCHRT 543](#) (B.C. Human Rights Trib.), paras. 28-30.

“Fostering Employment Equity and Diversity in the Nova Scotia Legal Profession”: 2000, Employment Equity Guidelines Committee Report

Code of Professional Conduct (NS), Section 6.3: Equality, Harassment and Discrimination

Nova Scotia Human Rights Act, RSNS 1989, c 214

...

Purpose of Act

- 2** The purpose of this Act is to
- a. recognize the inherent dignity and the equal and inalienable rights of all members of the human family;
 - b. proclaim a common standard for achievement of basic human rights by all Nova Scotians;
 - c. recognize that human rights must be protected by the rule of law;
 - d. affirm the principle that every person is free and equal in dignity and rights
 - e. recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and
 - f. extend the statute law relating to human rights and provide for its effective administration.

...

Alice Wooley, Richard Devlin, Brent Cotter, and John M. Law, *Lawyers' Ethics and Professional Regulation*, 2nd ed. (Markham: Lexis Nexis, 2012) at pp. 165-185

See Lucinda Vandervort, *Access to Justice and the Public Interest in the Administration of Justice*, 63 U.N.B.L.J. 125 at 129:

The specific outcome in a case may affect their interests, the ruling in the case may entail reinterpretation of a law of general applicability and affect them because they are similarly situated, or the case may be relied on as a case precedent in a subsequent case to which they are a party. Thus, the effects of lack of representation of one or more parties in one case may have a broad societal impact. Moreover, where the members of an identifiable group in Canadian society are disproportionately unrepresented or under-represented before the courts, laws regulating activities and issues affecting members of that group will often be interpreted and applied without the benefit of rigorous analysis in an adversarial process. This appears to describe the circumstances of a number of identifiable groups in Canada, is contrary to the collective public interest, and raises equality issues under s. 15 of the Charter and international human rights conventions. The failure of government to ensure that adequate legal aid or other forms of legal representation are available to women, children, aboriginal persons, and members of other vulnerable groups in Canada for the purpose of protecting and enforcing their legal rights continues to be the subject of negative comment by the Committee on the Elimination of Discrimination Against Women.

6. Regulate in a manner that is efficient, transparent, consistent, focused and proportional

Charles Wolfram, *Modern Legal Ethics* (St. Paul, MN: West Publishing, 1986) at 79:

Courts assert that the underlying purpose of disciplining lawyers is a broadly social one. The purpose is not to punish offending lawyers but to protect the public, the bar, and legal institutions against lawyers who have demonstrated an unwillingness to comply with minimal professional standards. There is reason to think, however, that a strong motivation for lawyer discipline is to reassure a doubtful public that notorious instances of lawyer depredation are being handled appropriately.

Pierce v. B.C. (The Law Society of), 1993 CanLII 765 (BC SC)

In my view the public interest or the best interest of the public is capable of being given a constant, settled or workable meaning. When the definition of conduct unbecoming is read in context, the best interest of the public clearly refers to the interest of the public in matters of conduct and competence. There are in existence guidelines on the question of what constitutes the public interest. The guidelines discussed provide a basis for legal debate within which the benchers are able

to balance competing interests. It follows that the phrase "best interest of the public" is not impermissibly vague. The benchers are not entitled, as suggested by the petitioner, to pursue their "personal predilections". Legal debate can occur within the framework of the guidelines defining the public interest. There is no danger of a "standardless sweep" when the benchers consider whether the conduct of a member is contrary to the best interests of the public. The same framework also provides guidance for legal debate when considering the definition of "conduct unbecoming" in its broader aspects.

Alice Wooley, Richard Devlin, Brent Cotter, and John M. Law, *Lawyers' Ethics and Professional Regulation*, 2nd ed. (Markham: Lexis Nexis, 2012) at Ch. 13

See H.W. Arthurs, *The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?*, (1995) 33 Alberta L. Rev. 800.

Dodek, Adam M. & Jeffrey G. Hoskins, *Canadian Legal Practice: A Guide to the 21st Century*, looseleaf (Markham: LexisNexis, 2009) at Chpts. 3 & 6

MacKenzie, Gavin, *Lawyers and ethics: professional responsibility and discipline*, 3d ed. (Toronto: Thomson Carswell, 2001) at Part IV