

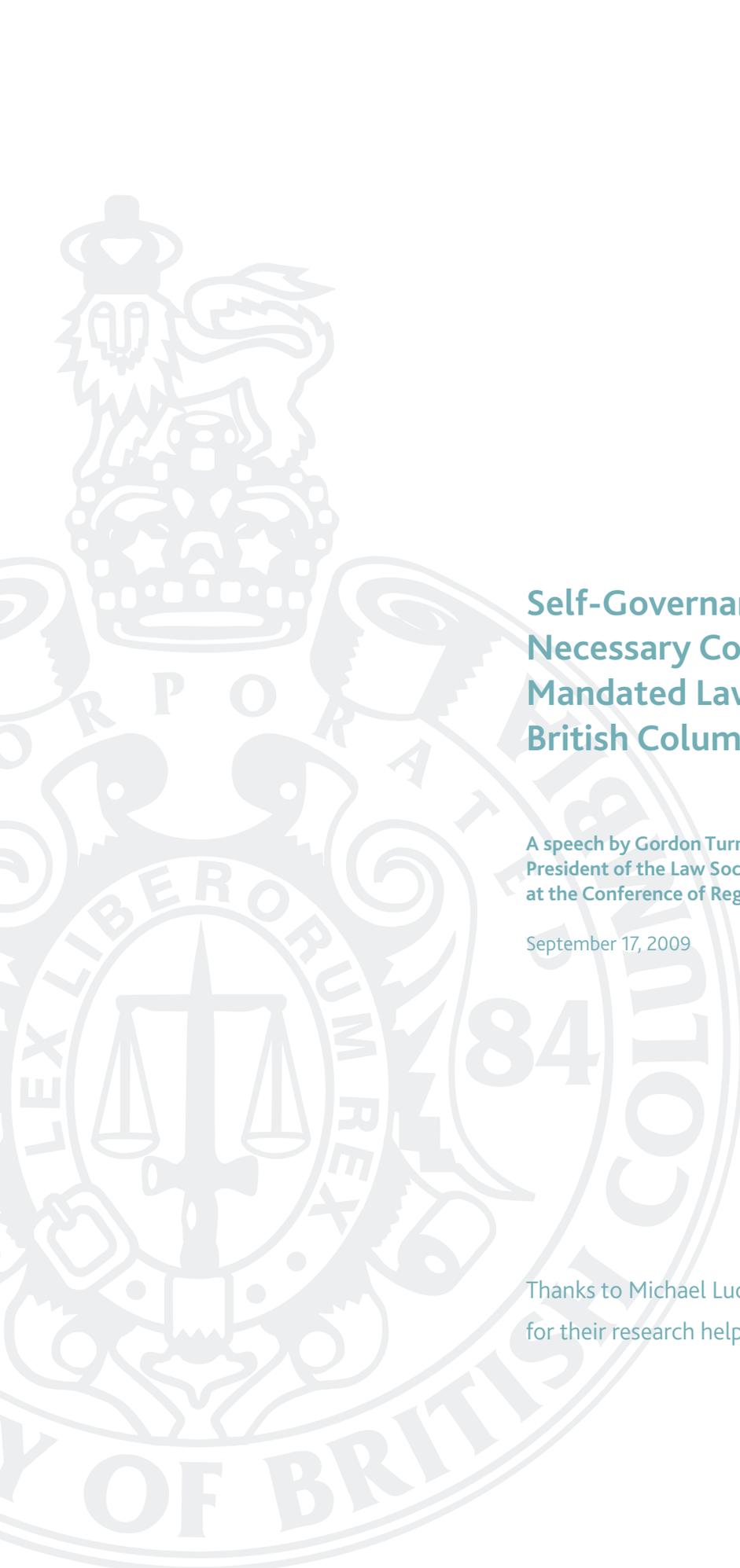


## Self-Governance as a Necessary Condition of Constitutionally Mandated Lawyer Independence in British Columbia

A speech by Gordon Turriff, QC,  
President of the Law Society of British Columbia,  
at the Conference of Regulatory Officers, Perth, Australia

September 17, 2009





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Thanks to Michael Lucas and Colette Souvage  
for their research help



November 20, 2009

Dear Readers:

The Law Society of British Columbia's President, Gordon Turriff, Q.C. has shared his thoughts on self-governance of the legal profession as a necessary condition of lawyer independence in many forums and venues during this 125th anniversary year of the Law Society of British Columbia. The address reproduced here was presented in September 2009 at the Conference of Regulatory Officers in Perth, Australia. President Turriff's speech is essential reading not only for every lawyer and aspiring lawyer in British Columbia, but for every thoughtful citizen who values his freedom in a society governed by the rule of law.

President Turriff emphasizes the role of the Law Society as protector of the public interest, and as guarantor of an independent bar that can fearlessly protect the individual. He places the role of lawyers' governing bodies in both a national and global context, and advances the arguments for self-governance thoroughly and persuasively.

His address is educational, providing information about governance of the legal profession in other Canadian provinces, as well as in foreign jurisdictions.

Whether one agrees with everything the President says, he is to be congratulated for articulating so clearly and forcefully the importance of the independent lawyer in our form of constitutional government, identifying the events and attitudes which threaten that independence, and addressing the means by which it can be protected.

After 125 years of self-governance, British Columbia's lawyers can take justifiable pride in their professional body. President Turriff's speech will help all to understand what the Law Society has achieved thus far in setting and maintaining high professional standards, and in providing open processes to ensure lawyer accountability.

I salute Gordon Turriff on his efforts to inform and educate the public on lawyer independence and self-governance, and I commend to you all a careful and reflective reading of what he has said.

A handwritten signature in blue ink, appearing to read "Lance Finch".



As President of the Law Society of British Columbia for 2009, I decided to exercise the very little real power I had by celebrating the Society's 125th anniversary with a tour of communities all over British Columbia. I took to those communities a message about the rule of law as a guarantor of order and a promoter of prosperity for all people; about the role the Law Society plays in protecting the public interest in the administration of justice; about the constitutional imperative of independent lawyers; and about regulation of lawyers by lawyers as a necessary condition of lawyer independence.

Gordon Turriff, QC  
President

Going on tour was an intuitive decision grounded in a little empirical evidence I'd gathered after seven or so years of interviewing articulated students enrolled in the Law Society's admission programme. I had learned from those interviews that as much as the students knew about substantive and procedural law, they knew very little about the Law Society and how and why lawyers are organised and governed as they are. Rightly, as it turned out, I surmised that people in the community who had no legal training at all were likely to know just as little as the students about these important topics. And they are important topics because they lie at the heart of our relations with each other as good citizens. So during 2009 I spoke to people in public libraries, service clubs, high schools, colleges and universities around BC. And I had great fun doing it. I saw all parts of our great province and I met interesting and engaging people in every community I visited. The speech I delivered wherever I went — in its long form at least — was published earlier this year in a lawyer's magazine, *The Advocate*, under the title "The Law Society, the Rule of Law and Independence of Lawyers."

But I also went further afield. I wangled an invitation as a keynote speaker at the annual conference of Australian regulatory officers. These are the people from across Australia who do the regulatory work — credentialling, standard-setting and discipline — that the Law Society does in British Columbia. The Australian regulators met in Perth in September and I joined them for a very interesting two days. The days were interesting for me because the arrangements for lawyer regulation in Australia are very different from what they are in Canada. Starkly different. And, as I argued, not protective of the rule of law. Here is my Australian speech.

A handwritten signature in black ink, appearing to read 'Gordon Turriff'.

Gordon Turriff, QC  
President

## A. INTRODUCTION

My wife and I have three children. In May this year, our younger daughter was a volunteer in Uganda. When she returned home, she brought with her an English language Ugandan newspaper. There, under the road traffic news, was an advertisement placed by an organisation called the African Centre for Treatment and Rehabilitation of Torture Victims. It read: "Are you a victim of torture by security agents or rebels?" What an astonishing thing to see in 2009 in a newspaper from any country. And particularly a country which is another former British colony. But there it was. As if it were the most ordinary thing in the world.

The advertisement troubled me. It told me that the Ugandan government is exercising power arbitrarily or that some of the governed there believe they aren't being treated fairly and believe they have no choice but to act violently. Whatever the case, I learned from the advertisement that Uganda and the rule of law were not matching up very well.

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But why should I care, when I come from a country that feels very comfortable in its rule of law clothing? Well, I care because I believe that the rejection, or death, or even the limitation, anywhere, of the pure form of the rule of law — what I regard as the fundamental societal organising and civilising principle — may lead to the rejection of, or death of, or to limits on, the pure form of the rule of law everywhere.

The rule of law is a conception, a shared commitment to a set of inter-dependent propositions about how people can live together under arrangements that guarantee fairness in all respects, no matter how different those people might be in any respect.

The rule of law is the keystone for order, and the key to prosperity, in all our communities. The rule of law is a conception, a shared commitment to a set of inter-dependent propositions about how people can live together under arrangements that guarantee fairness in all respects, no matter how different those people might be in any respect. I will state the propositions here:

1. that law, not force, or even the power of a personality, should regulate our lives;
2. that the law that regulates our lives is a body of rules to which at least a majority of us, in any community, has assented, and which are intended, as much as is possible, to balance competing public and individual interests;
3. that no one, including government, is above the law, meaning that, unless expressly excepted, all rules bind all people to whom they could apply;
4. that everyone is equal before the law, meaning that all rules apply the same way to all people;
5. that judges must be impartial and independent, meaning that they must not pre-judge the matters they must decide and that their judgments must result from thoughtful consideration only of the evidence led and arguments made before them;
6. that lawyers must be independent, meaning that they must be free of all influences that might impair their ability to discharge the duty of loyalty they owe each of their clients; and
7. that the confidentiality of communications between lawyers and their clients must be preserved so that clients will be encouraged to lay everything bare, and by doing so ensure that they will get their lawyers' best advice.

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Acceptance by communities of the rule of law as the fundamental organising and civilising principle promotes predictability and contributes to the creation and maintenance of the conditions that allow all of us to go about our complicated lives confidently, efficiently and safely, whether we are business people with grand ideas and limited capital, unhappy tenants, or neighbours needing wills or employment contracts or advice concerning problems with the renovations in the kitchen. And acceptance of the rule of law ensures that we will all be treated fairly in respect of all matters, whether we are members of a minority group, or are badly treated spouses or accused murderers.

The *Canadian Charter of Rights and Freedoms*, one of Canada's almost immutable constitutional instruments, begins with these words:

"Whereas Canada is founded upon principles that recognize...  
the rule of law."

Curiously, the *Charter* and its companion *Constitution Act* guarantee neither judicial nor lawyer independence. But the Supreme Court of Canada, the equivalent of your High Court, has described judicial independence as an "unwritten norm" and has said that that norm fills a gap in the express terms of our constitutional text. In the result, the Court has decided that there is an effective constitutional requirement of independent judges. The Court has also characterised lawyer independence as "an important component of [Canada's] fundamental legal framework" and as "one of the hallmarks of a free society." In Canada, no one ever suggests that we could do without independent judges. But the case for independent lawyers is thought by some to be weaker. I can't see how it can be. If a country is founded upon principles that recognise the rule of law, how could the rule of law prevail unless the country had both independent judges and independent lawyers? Aren't judicial and lawyer independence the two melded sides of the coin of freedom? If judicial independence is an unwritten norm that fills a gap in our constitutional text, how can the same not be said about independence of lawyers? As I see it, proving the constitutional case for independent lawyers is a matter of asking just one question: what useful work could independent judges do if there were no independent lawyers to bring them cases to decide?

Lawyers in British Columbia can practise as barristers, as solicitors or as barristers and solicitors. We have never really had a divided profession. But, practically speaking, in recent decades, few of us have tried to be both. It is an unsafe and inefficient undertaking. And so the population of so-called general practitioners is declining quickly, even in rural communities where limited budgets and vast distances had combined to produce lawyers who did all things. Even though, geographically, British Columbia is only about a third of the size of Western Australia, it is not easy to get around. A few weeks ago I travelled about 450 miles as the crow flies, from Vancouver to a small community up north, to make a seven-minute speech welcoming a new judge. It was a 16-hour day that included travel by plane, bus and ferry.

When prospective lawyers in British Columbia are called to the Bar and admitted as solicitors, as they are in a single ceremony over which a judge of our higher trial court presides (in recognition of the court's power to determine who should have a right of audience), they swear an oath or they affirm that they will "uphold the rule of law." All of British Columbia's lawyers have done so. Undoubtedly, that particular oath or affirmation means more to some than it does to others, usually because those for whom it means less have taken for granted their freedoms and the freedoms of their fellow citizens. But many of those lawyers fill with pride when they are reminded of the special responsibility they have to discharge as the last line of defence against corruption in government and as challengers of unlawful state action.

How many of you remember that powerful song, "Ohio," written by Neil Young — a Canadian! — and performed by Crosby Stills Nash & Young? "Four Dead in O-h-i-o." The action that song protests was the state action that resulted in the shooting deaths of four students at Kent State University in America. They were killed by U.S. National Guardsmen on May 4, 1970. At that time, I was a very impressionable political science student, so I can tell you exactly where I was and exactly what I was doing when I learned of the shootings. I think that those killings opened my eyes to the reality of the magnitude of the power governments can exercise and propelled me into law school to learn about the rule of law, something my father and some of my professors had sometimes mentioned but which was then a very fuzzy thing to me. I think the killings may explain why I am a rather single-minded rule of law advocate and a trumpeter of the dangers that will result from any kind of intrusion on lawyer independence.

The Court has also characterised lawyer independence as "an important component of [Canada's] fundamental legal framework" and as "one of the hallmarks of a free society."

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## B. APOLOGIA

Here I must tell you that I have not come to your country to suggest that you have it all wrong. Rather, I have come to tell you what arrangements we have in Canada, and particularly in British Columbia, and to say why we think the arrangements we have are the right ones, at least for us, and we hope for others, providing and ensuring as they do what we like to think is a nearly ideal manifestation of lawyer independence. Our arrangements may not be as perfect as the real purists — like me — would like them to be, but we think they are very good and we are striving to make them even better. I will leave it to you to judge for yourselves whether our arrangements or yours are superior.

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One of the interesting questions we are exploring is who should regulate alternative service providers.

## C. SOME BASIC INFORMATION ABOUT LAWYER REGULATION IN CANADA

Canada is a country of nearly 34 million people who live in nine common-law provinces; a civil law and largely French-speaking province, Quebec; and three common-law territories. We have provinces of all shapes and sizes, from Ontario, with a population of about 14 million in which Canada's largest city, Toronto, is located, to Prince Edward Island, a postage-stamp-sized province with about 140,000 inhabitants and around 250 lawyers. (I will just pause to say that there are about 200 lawyers in the building in which I practise in downtown Vancouver.) Saskatchewan, one of our prairie provinces, is about 50 times the size of Montenegro, which is now its own country, but its population is only a third greater. It (Saskatchewan, not Montenegro) is often the butt of jokes by Americans, who display their origins by mis-pronouncing its name. From the air, the province is a pretty quilt of farms. Those farms yield grains of many kinds, but the economy is so shaky that its residents are apt to pack up and leave, at least temporarily, with the result that Tourism Saskatchewan regularly re-welcomes the province's one millionth citizen. One of our three territories, Nunavut, is, geographically, about a fifth the size of Europe, but its population falls a little short of a fifth of Europe's 730 million. Not counting polar bears, Nunavut's population is about 25,000, and it has only 58 resident lawyers.

There are 14 regulators of lawyers in Canada — two in Quebec and one in each of the other provinces and territories. Each of the Canadian regulators is a group of lawyers (or, in Quebec a group of lawyers and a separate group of other lawyers called notaires). Those groups govern the lawyers and the practice of law in the public interest in their jurisdictions. They are variously named. As you have heard, I am a Bencher (meaning board member) and the President of the Law Society of British Columbia. I will say something about Benchers shortly. The Law Society of British Columbia must not be confused with representational groups called "law societies" in other countries. I will return to that point later. We also have the Barristers Society of Nova Scotia which, incongruously, regulates barristers and solicitors, and we have the Law Society of Upper Canada. Until 1840, Upper Canada was that part of a British colony at the *upper* end of the St. Lawrence River. Upper Canada has been called Ontario for 169 years, but the Benchers of the Law Society in Ontario have not yet noticed the change. I am slighting Ontario here because doing so — and, particularly, slighting Toronto, where the Law Society of Upper Canada has its offices — is one of Canada's favourite pastimes, ranking just below ice hockey. Montreal was (and is!) towards the lower end of the St. Lawrence, obviously closer to the sea, and it was part of what used to be called Lower Canada, now Quebec. Quebec's lawyer regulators are called the Barreau du Quebec and the Chambre des notaires. Gloriously, the President of the Barreau du Quebec is called le bâtonnier, if the incumbent is a male, and la bâtonnière, if a female.

Until 10 years ago in British Columbia, my predecessors as President were called Master Treasurer. At some past time, there must have been a good reason for that appellation but, as you can imagine, it was terribly confusing, and it went into the recycling box (actually, that's probably an anachronism) without much complaint. I should tell you that the notaires in Quebec perform legal services that have no direct counterpart in the common-law provinces. Quebec notaires are not to be confused with British Columbia's notaries public, about



*Gordon Turriff, QC proposed a speaking tour during the 125th anniversary of the Law Society's incorporation. "I will travel the province this year delivering the public interest, rule of law, independence of lawyers, self-governance message to all who will hear me."*

300 of whom may be found in communities around the province, often where there are no or few local lawyers. Indeed, it was the scarcity of lawyers in remote parts of British Columbia that led to a legislative sanctioning of what are called notarial seals. Holders of the seals are entitled to perform work that would otherwise, in the public interest, be reserved to lawyers. The notaries of whom I speak can, among other relatively straightforward tasks, incorporate companies and draft simple wills. They are self-regulated; are insured; maintain a compensation or fidelity fund for victims of theft from trust funds; and make and enforce their own rules of professional conduct.

My colleagues and I as regulators of the practice of law in British Columbia are satisfied that the notaries are appropriately governed and that it is in the public interest that they be able to do the work they do. Indeed, it would be hard for us to suggest otherwise when we have been working for several years on a project aimed at identifying the work lawyers now do that *must* be reserved to them, such as criminal cases where liberty is at stake, and what work might be done by other providers who might or might not have legal training and who might or might not be required to work under the supervision of someone who does. One of the interesting questions we are exploring is who should regulate alternative service providers. In Ontario, the Law Society regulates the province's certified paralegals, who are skilled but not law-schooled practitioners of some of the more technical aspects of lawyers' work, such as document management, and who can also appear before some courts and tribunals. It is too early to tell how happy the Ontario marriage of lawyers and paralegals will be.

I was indentifying the regulators of lawyers in Canada. I have said that there are 14, but it might be suggested that there are more because in most places (although I can't speak about Quebec, whose civil law confounds me) disputes over lawyers' charges to their own clients are decided by legally trained officers of the superior trial courts. This function, repeated in different forms around the world, is a true vestige of British colonialism. In British Columbia, the Registrar of the Supreme Court of BC, acting in a quasi-judicial capacity, presides over hearings when clients (or, usually former clients) call for them. At these hearings, lawyers have the burden of proving that written fixed price or contingent fee agreements were fairly obtained from the clients and that the terms of the agreements were reasonable, and that their charges were reasonable, having regard to market charges, where no agreement about price had been made. They may also have to defend against claims that they have disentitled themselves to fees because they have withdrawn from their retainers without cause. These hearings are arranged and occur under provisions of British Columbia's *Legal Profession Act*, first introduced in 1895, with language borrowed from an English statute of 1729.

The authority to inquire into and to punish professional misconduct, including misconduct relative to charging, lies exclusively with the Law Society.

Independence is not compromised just because a Court officer has the authority to decide that lawyers cannot charge for work they were not engaged to do or for unusual work where they have not explained to their clients that the work might not advance the clients' interests.



*Audiences have been receptive to Mr. Turriff's message. "The thing that surprises me is that people really are interested in the subjects that I'm taking to them; I wasn't sure whether they would be. But they seem to be very interested in what I'm telling them. And that's good because that's exactly what I'd hoped for."*

British Columbia has a provincial Ombudsperson who can review anything the Law Society does. There were five reviews in 2008, none of which yielded a critical response.

We are working on strategies to encourage our lawyers-in-training and our younger, as yet unestablished lawyers, to consider rural opportunities.

The British Columbia Registrar has no authority to make findings that lawyers have misconducted themselves professionally, even as that conduct might relate to the lawyers' charges, but, curiously, the Registrar can, for example, take a lawyer's discreditable conduct into account when deciding what fees the lawyer should be allowed. The authority to inquire into and to punish professional misconduct, including misconduct relative to charging, lies exclusively with the Law Society. There is no real jurisdictional conflict because, in a Law Society prosecution of an allegation of professional misconduct, a discipline panel of Benchers could find on the evidence that conduct characterised by a Registrar as inappropriate did not amount to professional misconduct, or they could find that conduct that did not attract the attention of the Registrar ought nonetheless to be inquired into. In respect of misconduct, the Benchers are not bound by any of the Registrar's findings.

Because the Registrar must measure the reasonableness of lawyers' charges against market charges, it could not be said that the Registrar has any power to dictate how lawyers should carry out their retainers and, therefore, any capacity to interfere with lawyer independence. Independence is not compromised just because a Court officer has the authority to decide that lawyers cannot charge for work they were not engaged to do or for unusual work where they have not explained to their clients that the work might not advance the clients' interests.

It might also be said that the court in British Columbia regulates lawyers because it has the power to order lawyers personally to pay wasted costs of proceedings on which they have been engaged. But the regulatory authority is very limited because the Supreme Court of Canada has decided that the power can only be exercised in respect of what you would call solicitors' work, where lawyers have acted in contempt of court (a power exercisable against anyone) or where they have abused a court's process. The Court has specifically recognised the need to take care to ensure that wasted costs orders do not affect lawyers' judgements about how their clients' case should be framed.

British Columbia has a provincial Ombudsperson who can review anything the Law Society does. There were five reviews in 2008, none of which yielded a critical response. But because the Ombudsperson is a true ombudsperson with the power to report but no power to compel the Law Society to do anything, it could not be said that the Ombudsperson has even indirect regulatory authority. I will say a little more about the Ombudsperson later.

## D. THE BRITISH COLUMBIA LEGAL SCENE

British Columbia has a population of about 4.4 million people. Most of them live in what is called the Lower Mainland, a group of cities and suburbs including, and extending 80 kilometres or so east of, Vancouver, the province's largest city and its commercial hub. There are about 12,000 lawyers in British Columbia. Over 80 per cent of them practise in the Lower Mainland. About 7,800 are in private practice. While some lawyers practise in the Vancouver offices of national and international firms of 400 or more lawyers, most BC lawyers practise in groups of four or fewer people and about 2,300 are sole practitioners. There are only 66 lawyers in Prince Rupert County which, geographically, covers about a third of the province, and there are only about 125 lawyers in Kootenay County, a mountainous triangle in the province's southeastern corner. These and other rural areas are under-served by lawyers. This is a challenge for the Law Society because its mandate is to supply enough lawyers to serve every community's needs. We are working on strategies to encourage our lawyers-in-training and our younger, as yet unestablished lawyers, to consider rural opportunities. Earlier this month, when I spoke to the new first-year classes in the faculties of law at the University of British Columbia and at the University of Victoria (every Commonwealth country has a Victoria!), I stressed the high quality of life and the affordability of small communities throughout the province and I cited examples of highly regarded lawyers who had chosen, or had fallen onto, the rural path and who, 30 or more years later, all said it had proved to be just the right course for them.

British Columbia's lawyers are the third largest agglomeration of lawyers in the country, after the lawyers of Ontario and of Quebec. The province of Alberta, which has been riding what we call the oil patch economy for many years — although the ride is now a lot bumpier than it used to be — comes in fourth. Then there is a significant falling off to Nova Scotia, a much, much smaller province in all ways than the others I have just mentioned, but, nonetheless, a focal point for the economies of our four Atlantic provinces.

Lawyers in British Columbia are allowed to incorporate privately and they do so largely for the tax advantages that incorporation produces. I am the principal, for example, of The Costs Law Corporation. We cannot use incorporation to avoid liability for damages for breach of contract or for negligence or to avoid fiduciary, ethical or professional responsibilities. The Law Society regulates lawyers, not lawyers and firms, even though there are roughly 3,400 firms of lawyers in the province. As others here have pointed out, there may be a public interest in regulating firms, because firms have cultures and ways of doing things that firm members are expected to respect, and the firms, therefore, can influence lawyer conduct. We are exploring means by which firms can be drawn under the regulatory umbrella.

Each year, about 350 new lawyers are called to the Bar and admitted as solicitors in British Columbia. Almost as many lawyers are retiring from practice so the net annual gain in numbers is very small. While increasing numbers of lawyers are transferring from other provinces under inter-provincial and territorial mobility arrangements orchestrated by the Federation of Law Societies of Canada (I will tell you more about the Federation later), most applicants for call and admission are recent graduates of Canadian law schools, more women than men, and most have articulated in British Columbia. This means that they have worked for nearly a year in the office of what we call their principal, a lawyer with at least seven years' practice experience and no significant discipline or practice standards record (more on discipline and practice standards to come). Principals commit to assist students to acquire some of the practical knowledge lawyers need in order to serve their communities and to give the students experience so that advantage can be taken of the osmotic part of skills acquisition, allowing them to begin to learn how to practise law efficiently and effectively for the benefit of clients and the community at large. It is the case that work done for individual clients benefits the public generally because the aggregation of assistance given by lawyers every day in thousands of individual cases yields a community of people that is better able to work towards the common good. Principals also importantly assess their students' integrity, and occasionally report that they cannot recommend Law Society membership. Articling in British Columbia also entails successful completion of the Law Society's Professional Legal Training Course, an intensive 10-week residential course of skills training, emphasising professionalism, ethical conduct, client care, communications, advocacy and drafting. Articling require-

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The need for independent lawyers is most acute and independent lawyers are most vulnerable at times of crisis, when government is most likely to want to control opposition to the actions it perceives have to be taken.

ments vary widely across Canada. The provinces of Manitoba, Saskatchewan and Alberta require periods of work in lawyers' offices, but their formal skills training consists of a largely on-line programme. Ontario has recently revamped its articling programme and has chosen a variation of an American examination-based model for establishing initial competency.

## E. THE LAW SOCIETY OF BRITISH COLUMBIA

The mandate of the Law Society of British Columbia is to uphold and protect the public interest in the administration of justice and to defend independence of lawyers. That mandate is declared in the province's *Legal Profession Act* but it is a mandate the society would seek to discharge whether the statute had been enacted or not. The staunchest independence champions maintain that the statute does not *give* lawyers independence and does not extend them the *privilege* of self-governance. Rather, we say that the statute was enacted to aid us in acting independently and as a recognition of self-governance as a necessary condition of independence. If independence were a gift of the legislature, not a constitutional imperative, it would be a gift that could be taken back by legislators who were unhappy with challenges lawyers made to state action, and if self-governance were a privilege, it would be a privilege that could be revoked if the self-governors offended the state.

The need for independent lawyers is most acute and independent lawyers are most vulnerable at times of crisis, when government is most likely to want to control opposition to the actions it perceives have to be taken. In Canada, in 1970, we faced a crisis. Members of the Front de Libération du Québec, a Quebecois nationalist organisation, kidnapped a Quebec politician and a British diplomat. With the intention of ensuring public safety, our Prime Minister Pierre Trudeau, invoked the *War Measures Act*, whose sweeping provisions very significantly limited basic freedom. Arrests were made without charge. It was asked at the time, and Canadians ask now: "Were [those powers more] a threat to the society they sought to serve than [the] the danger they sought to exorcise?"

Interestingly, 12 years later, Prime Minister Trudeau almost single-handedly stickhandled the acceptance by all provinces of the *Charter of Rights and Freedoms*. (You may not know that verb "to stickhandle." It is a Canadianism, as are "toque," a woollen hat worn snugly over the head and ears; "skookum," meaning strong; and "eh," used in many ways, commonly by speakers who seek their listeners' assent to a proposed course of action, as in, "Let's go for a walk, eh?")

Governments do not act badly only in times of crisis. In one notable example, the government of British Columbia repudiated an agreement it had made with a local lumber company. It did so in order to make what it believed was a more important agreement — politically at least — with an aboriginal First Nation. But for the persistence of an independent lawyer for the wronged company, damning documents which the government had held back would not have been produced and the government's wrongdoing might have gone unremedied.

I have said that the mandate of the Law Society of British Columbia is a public interest mandate. The public interest permeates every question the Society has to answer; every policy the Society promotes; every step the Society takes. I emphasise the public interest because the Law Society is the regulator of lawyers and is not, and never has been, directly or indirectly, a representative of their interests. There are other groups of lawyers who function as lawyer interest or lawyer advocacy groups, notably the Canadian Bar Association and the Trial Lawyers' Association of BC. These are groups of lawyers *for* lawyers who promote lawyers' interests. I always say that I speak *about* lawyers, not *for* them.

The Benchers so jealously guard their public interest mandate that they have a policy that prohibits any Bencher from participating as a policy-maker in the affairs of any organisation whose objects may conflict with the work the Law Society does. This means that no Bencher should involve himself or herself in decision-making by any lawyer interest or advocacy group, although mere membership in such an organisation is not proscribed. When my term as Bencher began on January 1, 2002, I immediately gave up the Canadian Bar Association lawyer advocacy work I had been doing for many, many years. One of my friends, a BC lawyer who later became the national President of the Canadian Bar Association, said that I had

I always say that the lawyers who elected me as a Bencher were electors, not constituents. My constituency is the members of the public whom I committed to serve. For almost eight years, I have been part of an immense and intense volunteer effort by lawyers, acting as regulators, who stand to gain nothing other than the satisfaction they can appropriately feel from having contributed to the public welfare.

The Society receives no money from government and would not accept it were it offered.

Neither the Law Society nor the Benchers has anything to do with the selection of the public directors, and we would not want to be involved in the selection process.

gone over to the dark side. You can see from that remark that Benchers in British Columbia are regarded by those they govern as acting in the public interest. I always say that the lawyers who elected me as a Bencher were electors, not constituents. My constituency is the members of the public whom I committed to serve. For almost eight years, I have been part of an immense and intense volunteer effort by lawyers, acting as regulators, who stand to gain nothing other than the satisfaction they can appropriately feel from having contributed to the public welfare.

The Law Society of British Columbia employs about 175 people, including about 40 lawyers. They work in one of two commercial buildings the Law Society owns on the edge of a fashionable part of downtown Vancouver. The work the Law Society does is funded almost entirely from fees collected from the lawyers of British Columbia, who are the Society's only members. The Society receives no money from government and would not accept it were it offered. The only money the Society gets otherwise than from its members is money the Law Foundation of British Columbia provides to defray our costs of operating the Professional Legal Training Course, which I described earlier. With this money from the Foundation, whose revenue comes chiefly from interest earned on lawyers' pooled trust accounts, we can make the PLTC fees almost affordable for the articulated students who have no option but to attend the course as one condition of achieving Law Society membership.

As President of the Law Society — the 70th in its 125 years of service in the public interest — I am the Chair of a board of directors comprised of 32 Benchers. One of them is the Attorney General for British Columbia, although he or she (it is a he for now) does not play — and in no one's memory has ever played — an active role. Twenty-five of the Benchers are lawyers elected by other lawyers county-by-county throughout the province. The other six Benchers are non-lawyers appointed by the provincial government from all walks of life. Currently, we have a retired accountant; a community worker; the president of an airline company; a consultant for aboriginal people who happens to be aboriginal himself, a young fellow who is entrepreneur-in-residence in the business faculty of one of our universities, and a psychiatrist (we often wonder whether this last one is a mere coincidence).

Neither the Law Society nor the Benchers has anything to do with the selection of the public directors, and we would not want to be involved in the selection process. We do tell government the skill-set it would be desirable for appointees to have, but the choice of who to appoint is left entirely to government. We do not want anyone to be able to suggest that we had hand-picked people who would share and parrot our conception of what the public interest requires. For this reason, even though the government asks us to do so, we refuse to say whether any particular appointment should be renewed. We welcome whomever the government may send to help us. We have had this help for over 20 years and, fortunately, with only one or two exceptions, the quality of the appointments has been very high. There is a steep learning curve for these government appointees, but it is rare for any of them to feel overwhelmed and they are never under-used. They certainly do not consider themselves to be mere window-dressing. We embrace the public directors fully — they do exactly what the lawyer Benchers do (except chair discipline hearing panels) — and we benefit immeasurably from the contributions they make to the Society's work. Among their other valuable contributions, they help us to understand what the public interest requires and they remind us repeatedly that it is not necessary to answer every question by thinking like lawyers. As I have suggested, the appointed Benchers are fully integrated in our work, so fully integrated that it would be impossible for an outside observer who attended any of the ten or so day-long policy meetings we have each year, or any of our innumerable committee meetings, to distinguish the appointed Benchers from the lawyer Benchers. And, as it happens, in discipline matters, to which I will turn generally in a moment, the appointed Benchers are no harder and no softer than their lawyer counterparts.

The Law Society in British Columbia has three principal regulatory functions, credentialing, practice standards and discipline. The Benchers, with help from committees to which they delegate some of their work, decide who may become Law Society members, and therefore who can practise law in British Columbia; decide what standards lawyers must meet in the work they do for their clients and ensure that the standards are met; and fix and enforce standards of professional conduct, including rules governing how lawyers must account for trust money that comes into their hands in the course of their practices. In

In British Columbia, the government has no role to play whatsoever in the determination of who can practise law, or about how law should be practised; or about who lawyers can have for clients; or about what arguments lawyers can make in their clients' interests; or about what may or may not constitute professional misconduct; or about what conduct, in a lawyer's private life, might bring the legal profession into disrepute.

...we may excuse some youthful indiscretions but we have no sympathy for scofflaws and, because we cannot tolerate dishonesty, academic cheaters may find that they have come to an insurmountable hurdle.



*Forty-five people came out to hear the President's inaugural speech at the New Westminster Public Library on February 24, 2009.*

Where misconduct is proved at a formal hearing (as for all civil matters in Canada, the standard of proof is on the balance of probabilities), panel members may, in the exercise of their discretion, order a reprimand or a fine or the imposition of practice conditions, or a suspension from practice, or they may order disbarment.

Those services are normally delivered from clinics in local communities and are intended to supplement the very extensive *pro bono* work lawyers quietly do every day from their offices.

British Columbia, the government has no role to play whatsoever in the determination of who can practise law, or about how law should be practised; or about who lawyers can have for clients; or about what arguments lawyers can make in their clients' interests; or about what may or may not constitute professional misconduct; or about what conduct, in a lawyer's private life, might bring the legal profession into disrepute. Equally, except by way of fee review and by way of judicial review of our administrative decisions, the courts are wholly uninvolved in lawyer regulation.

We are careful about credentialling. We aim to admit to membership only those lawyers who are of good repute and who are fit to practise. As I am sure is the case here, we may excuse some youthful indiscretions but we have no sympathy for scofflaws and, because we cannot tolerate dishonesty, academic cheaters may find that they have come to an insurmountable hurdle. Earlier this summer — your winter — we disbarred a criminal lawyer because we learned that he had knowingly made a false statement in the form of application he completed many years ago when he sought membership in our Society. Not surprisingly, applicants who have been bankrupt, or who have histories of substance abuse or of depression, to give only some examples, may find that they are admitted on condition. We employ skilled investigators — one of whom was once a bodyguard for Nelson Mandela! — to make all appropriate credentialling inquiries.

We are also serious about practice standards. Happily, almost all British Columbia lawyers practise above the standard of the reasonably competent lawyer, but there is a small group who are not able to meet the minimum standard. These lawyers are made to submit to what we call "file-side chats," which are really visits by SWAT teams, by another name, of Law Society staff whose job is to identify deficiencies and to propose means — to which the lawyers must adhere — of raising the lawyers' standards of practice. Those who do not improve across the board may find their practice licences limited, and those who do not improve at all may be politely persuaded to resign their memberships or may find themselves on the wrong end of a discipline citation, which could lead to disbarment for incompetence. In any event, the Benchers require all lawyers to undertake a minimum amount of continuing professional development, including, specifically, education in professional responsibility and ethics, to be achieved by course attendance in person or online; by participation in study groups; by writing; by teaching; and, next year, by mentoring. Those who do not report that they have met the annual requirements risk suspension from practice until they have made up their shortfall. By a happy and not wholly unexpected side-wind, the Benchers have discovered

that their imposition of mandatory CLE has stimulated professional providers to increase and diversify their course offerings and has encouraged firms of lawyers to develop quite sophisticated internal professional development programmes.

Each year the Law Society receives about 1,200 complaints about lawyers. About 80 per cent of the complaints are service or client care complaints. These are complaints about lawyers who, for example, are said to have been slow in returning telephone calls or in doing promised work. Those client care complaints are fielded by an experienced intake person whose job is to resolve the complaints as promptly as the circumstances permit and with little fuss, on the theory that nothing will be gained by a protracted inquiry into matters that should be determined by a few telephone calls. But, as John Briton emphasised this morning, sometimes complaints about service reveal otherwise unexposed incompetence or misconduct, and summary disposition is no longer suitable. Complainants who are unhappy with staff resolution of complaints can apply for a reconsideration to the Benchers' Complainants' Review Committee. That Committee is always chaired by one of the non-lawyer appointed Benchers. Very few of the staff decisions are found by the Committee to have been inappropriate.

Misconduct complaints are dealt with differently. By their nature, they require appropriate investigation by experienced staff lawyers. These lawyers embark on extensive inquiries and they report their findings to the Benchers' Discipline Committee. The members of that committee (or, if circumstances require it, any three Benchers) decide whether a citation should issue, resulting in a formal discipline hearing before a panel of three Benchers (typically, we have 30 to 40 hearings each year) or whether some lesser step is sufficient, such as an admonitory letter from the Chair of the Discipline Committee or a conversation with one or two Benchers across a table (not generally regarded as a pleasant experience by the invitees). Where misconduct is proved at a formal hearing (as for all civil matters in Canada, the standard of proof is on the balance of probabilities), panel members may, in the exercise of their discretion, order a reprimand or a fine or the imposition of practice conditions, or a suspension from practice, or they may order disbarment.

The Law Society does, and helps others to do, other important public interest work, principally in respect of improving access to justice, by, for example: exploring ways of overcoming the difficulties and inefficiencies self-represented litigants present; considering how orders for costs can be used as litigation management tools; and investigating the merits of third-party litigation funding (I know you are well down that road in this country); and promoting public education about law-related matters and about the role of the Law Society in the community. Further, every year, one per cent of the fees the Society collects from its members is paid to the Law Foundation, to be used for the administration of province-wide programmes for the delivery of *pro bono* legal services. Those services are normally delivered from clinics in local communities and are intended to supplement the very extensive *pro bono* work lawyers quietly do every day from their offices. From member fees, the Law Society also contributes about \$166 per member every year for the operation of public law libraries throughout the province; and about \$30 a year per member for CanLII, an online legal resource service available free to all Canadian lawyers, a service that has substantially reduced the charges lawyers would otherwise make for research done through services made available by commercial providers. The Society also supports other law-related agencies by helping to populate their boards. Those organisations include the Continuing Legal Education Society, a major provider of CLE courses and a principal law publisher in British Columbia; the Legal Services Society, which is responsible for providing lawyers for people in narrowly defined classes of cases who need legal assistance but do not have the resources to pay for a lawyer themselves; the Law Foundation, which I have mentioned and which funds a wide range of enterprises relating to legal education, legal resources, legal aid, law reform and law libraries; and the British Columbia Law Institute, the independent successor to the once government-funded, but now defunct, Law Reform Commission of BC.

In recent years, the Federation has become a critical instrument for lawyer regulation across the country as its member societies have recognised the need to speak to the provincial and national governments with a single voice, and the need to establish and enforce national standards in relation to membership, competence and discipline.

One of the policy lawyers at the Law Society in Ontario has said of the rule of law in Canada that it's death by a thousand cuts. There is a lot of truth in that statement and therefore a need for us to be constantly vigilant.

## F. THE FEDERATION OF LAW SOCIETIES OF CANADA

Canada's 14 law society regulators are all separately constituted and they operate separately day-to-day. But each of them is a member of the Federation of Law Societies of Canada, an umbrella organisation comprising a council member from every Canadian jurisdiction. The council members meet up to four times a year. As a reflection of the increasing importance of the Federation, the law societies support the council members at the meetings by sending strong delegations, including law society officers, CEOs and policy staff. The Federation was born in 1926 as the Conference of Representatives of the Governing Bodies of the Legal Profession in Canada. In 1972, it was incorporated as a non-profit organisation under a federal statute. There is absolutely no government involvement in any of its affairs and the courts play no role in any of its operations.

Why doesn't anyone ever ask why there is only one competition authority?

In the British Columbia appeal, counsel for the Law Society wrote that the impugned legislation made BC's lawyers "secret agents" of the government.

Having thus taken lawyers out of the cash business, the Federation sat down with the government to see whether some satisfactory long-term arrangement could be worked out to accommodate the government's security concern and the law societies' concern about the government's effective abolition of the solicitor and client privilege.

In recent years, the Federation has become a critical instrument for lawyer regulation across the country as its member societies have recognised the need to speak to the provincial and national governments with a single voice, and the need to establish and enforce national standards in relation to membership, competence and discipline. While a nation-wide "Law Society of Canada" is still only a possibility, the Federation has taken important steps lately by promoting a national model code of professional conduct; by arranging for the member societies to subscribe to a national mobility agreement, permitting, with some reasonable limits, the free movement of lawyers around the country; and by achieving mutual adherence to "no cash" and client identification rules as responses to government attempts to require lawyers to reveal confidential information about their clients' financial and other circumstances.

For many years, the Federation has superintended its National Committee on Accreditation, which is charged with the difficult responsibility of assessing the merits of foreign-trained lawyers who seek to be admitted as members of the law societies in one or more of the Canadian provinces and territories. Over the last year and a half or so, the Federation has sponsored the work of a task force whose job is to identify what sort of instruction at a Canadian common law faculty of law would yield a law degree that all the Canadian law societies would accept as a minimum educational requirement for applicants for membership in any of the societies and would therefore stand as a measure for the admission of foreign applicants. Identifying the minimum educational requirement has proved to be a very difficult job, but the task force is expected to report at the Federation's next meeting, which is next month, in Winnipeg, Manitoba. (For those of you who may not have been to Manitoba during the winter, and it will be winter by then, think Antarctica.) There is a significant Australian connection to the work of our common law degree task force because our National Committee on Accreditation now fields many applications every year from graduates of Queensland's Bond University. Bond has made a business of catering to Canadian students — many of whom are highly qualified — who have not been able to find a place in a first-year class at a Canadian law school.

## G. UPHOLDING THE RULE OF LAW AND PROTECTING THE PUBLIC INTEREST

In Canada, we haven't yet had any government suggest that lawyers should not be self-regulating. But I often say that, at any given time, we face 14 indirect state challenges to the rule of law; independence of lawyers; self-governance; and the sanctity of lawyer-client communications. One of the policy lawyers at the Law Society in Ontario has said of the rule of law in Canada that it's death by a thousand cuts. There is a lot of truth in that statement and therefore a need for us to be constantly vigilant.

New rule of law and independence issues arise all the time. Let me list the ones (I have 12 here) with which we are having to contend right now or have had to contend with recently:

1. federal proceeds of crime and money laundering legislation requiring lawyers to report suspicious transactions to a governmental agency, even when by doing so they would be divulging confidential client information;

2. federal client identification legislation requiring lawyers to identify and verify their clients and to provide the identification and verification information they collect to a governmental agency on request;
3. provincial legislation authorising fairness commissioners (“fairness” is their word, not mine) effectively to compel law societies to adopt credentialling standards fixed by the commissioners in relation to applications for call and admission by foreign-trained lawyers;
4. the possibility that federal negotiators involved in discussions concerning the World Trade Organization’s proposed General Agreement on Trade in Services will effectively commit the government of Canada to a set of standards for assessing the qualifications of foreign-trained lawyers that are less rigorous than the standards currently used by Canadian law societies acting in the public interest;
5. federal legislation allowing the government to access electronic documents and the records of Internet service-providers, without, at least in some cases, imposing a requirement of judicial authorisation to ensure that confidential communications between lawyers and clients are not revealed;
6. provincial legislation authorising privacy commissioners, who field complaints from people seeking access to information or from people concerned about the collection, use or disclosure of personal information, to compel the production of information that might be subject to solicitor-client privilege, and to reveal the information to the state if it discloses evidence of a crime;
7. a proposal, now happily withdrawn, by which the provincial Securities Commission, whose members are appointed by government, would have been authorised to prevent some lawyers from practising as lawyers before the commission;
8. inquiries by the federal competition authority about the so-called monopoly (“monopoly” is their word, not mine) enjoyed by lawyers in the delivery of legal services without, as the law societies think, adequate regard for the need to protect the public interest by ensuring that, wherever necessary, legal services are provided by people who are sufficiently schooled in the law; adequately equipped with technical skills; insured; and are contributors to a defalcation fund and bound by appropriate standards of professional responsibility;
 

(Why doesn’t anyone ever ask why there is only one competition authority?)
9. trade agreements among provinces and territories requiring each province and territory to recognise the qualifications of people, including lawyers, who arrive from another jurisdiction intending to practise their profession, whether or not the mobile professional would meet the standards set by the regulatory body for his or her profession in the jurisdiction to which he or she has moved;
10. the practice of the Canada Revenue Agency (Canada’s federal tax collector) of requiring lawyers, by a statutory demand, to produce client documents that might be privileged, and of threatening to claim costs personally against the lawyers for maintaining privilege claims the merits of which have to be decided at court, whether because the lawyers are instructed to make the claims or because they can’t find their clients to discuss getting waiver instructions;
11. the practice of the CRA of requiring lawyers whom the CRA is auditing to produce copies of bills they had sent to their clients, without recognising that the Supreme Court of Canada has decided that, prima facie, lawyers’ bills to their clients contain privileged information;
12. (and one that seems particularly insidious to me) a proposal by the government of Newfoundland and Labrador (our most easterly and also our youngest province) to exempt lawyers employed by government from having to pay practice fees to the Newfoundland Law Society, the independent regulator of the province’s lawyers.

It might be too much to suggest that the government of Canada is flummoxed over the law societies’ reactions to money laundering and client ID, but it is not too much to say that the societies have learned that effective stands can be taken and that there is real power in collective action.

In British Columbia, the Benchers have worked hard to ensure that people in the community understand that there is no connection between the Law Society and any of the lawyer interest or advocacy groups.

With due concern for appropriate privacy concerns, everything the Law Society in British Columbia does is done publicly.



*By the end of 2009, Mr. Turriff will have made 39 presentations in 21 communities around the province. The July 2009 issue of *The Advocate* said Mr. Turriff was taking a community relations program a “quantum leap forward by making public communication his personal commitment.”*

Not surprisingly, when Wirick’s wrongdoing was exposed, and, naturally, it received very wide exposure, public confidence in lawyer regulation was compromised. But the Benchers knew what had to be done.

When all the investigation and accounting was done, BC lawyers had paid Wirick’s victims over \$38 million dollars to make them whole.

Earlier in my remarks, I mentioned that the Federation of Law Societies had had a role to play in respect of money laundering and client identification. In fact, the money laundering response began when the Law Society of British Columbia obtained an injunction restraining the federal government from enforcing against British Columbia’s lawyers the reporting provisions of the proceeds of crime and money laundering legislation until the constitutionality of the law — whether it undermined constitutionally protected lawyer independence — was determined. Other Canadian law societies later obtained similar injunctions in their jurisdictions. Appeals followed. In the British Columbia appeal, counsel for the Law Society wrote that the impugned legislation made BC’s lawyers “secret agents” of the government.

Not contenting themselves with having achieved a stay of the application of the legislation, the law societies gathered themselves under the Federation umbrella to consider how they might outrun the government. Working up an idea that originated in British Columbia, they rather brilliantly agreed that each of them would adopt a “no cash” rule, meaning that no lawyer would be permitted to receive or disburse cash in an amount exceeding \$7,500. Having thus taken lawyers out of the cash business, the Federation sat down with the government to see whether some satisfactory long-term arrangement could be worked out to accommodate the government’s security concern and the law societies’ concern about the government’s effective abolition of the solicitor and client privilege. Unfortunately, after several years of negotiations, no agreement could be made. It is expected that the constitutional question will be answered at court next year.

The Federation also responded to the government’s client identification and verification rules. At the instigation of the Federation, each Canadian regulator has adopted or committed to adopt rules that require lawyers to collect the information the government would like to have. But the Federation’s position, and therefore the position of each member regulator, is that the gathered information is privileged and must be revealed only if a court orders its production. Stay tuned.

It might be too much to suggest that the government of Canada is flummoxed over the law societies’ reactions to money laundering and client ID, but it is not too much to say that the societies have learned that effective stands can be taken and that there is real power in collective action.

A little later I will tell you that the Federation is not perfect.

What else can I say about work being done in Canada to uphold the rule of law, to protect lawyer independence and to maintain public confidence in regulation of lawyers by lawyers? Well, let me give you some examples.

Usually, although unfortunately not always, one or more of the law societies, or the Federation, will state an independence position for the record when a government claims a power that might undermine any of the rule of law propositions I described earlier in this address. Accordingly, when the competition authority came calling a few years ago, the Federation politely told the commissioner that she had no jurisdiction to purport to control the way in which lawyers might deliver legal services (for example, she questioned the merit of an upper limit for contingency fees imposed by the Benchers in British Columbia and also suggested that it was hard to defend any restriction on lawyer advertising), but the Federation astutely engaged an experienced antitrust lawyer who superintended a comprehensive Federation response to the commissioner's questions. Now, across the country law societies are asking themselves whether they have or should have answers for the questions the commissioner raised. It is the best of both worlds. No one has been misled about where the jurisdiction line has to be drawn, at least as far as the law societies are concerned, and the law societies have delivered the message that they will listen when it is suggested that, as much as they might think they are, they aren't in fact acting in the public interest.

In British Columbia, the Benchers have worked hard to ensure that people in the community understand that there is no connection between the Law Society and any of the lawyer interest or advocacy groups. This is part of the message I have been delivering about the role of the Law Society as the regulator of lawyers on my tour of our province this year in recognition of the Law Society's 125th anniversary. Some of my Bencher colleagues think I go too far when I suggest that the Society should not, as it does, have the BC Branch of the Canadian Bar Association — the lawyer advocacy body — as a tenant occupying, at a market rent, one of the 10 floors of the Law Society's office building, when the Society quite prominently occupies eight of the other floors. On the other hand, several years ago, the Benchers did vote to abolish an arrangement that had seen them, as agent for the CBA, collect from all Law Society members the annual fee charged for CBA membership. The Benchers decided that the agency was an insupportable connection between the regulator and the regulated.

With due concern for appropriate privacy concerns, everything the Law Society in British Columbia does is done publicly. We have an extensive website where reports of all our activities may be found. We have a publicly articulated strategic plan and we have established publicly advertised key performance measures with standards by which we can assess how effectively we are carrying out our regulatory functions.

Recently, the Benchers abandoned a rule that required them to withhold the name of a disciplined lawyer if public disclosure of the name would cause the lawyer grievous harm. The Benchers decided that the rule was inconsistent with their need to act, and to be seen to be acting, only in the public interest. In the result, under a new rule, lawyers' names will only be held back if publication would cause harm to an innocent third party.

As part of their new strategic plan, British Columbia's Benchers recently endorsed a broad new trust assurance programme, bringing in-house a trust audit function that had largely been left for lawyers to superintend, with the result that trust accounting was not truly controlled by the Law Society. Now it is. Since the new arrangements were introduced, the Law Society's internal accountants have turned up nearly \$400,000 in interest income that banks had not paid to the Law Foundation for use in the public good and several (fortunately minor) defalcations were revealed that might have gone undiscovered for some time under the old regime.

In British Columbia, the Law Society employs three practice advisors who are available to BC lawyers, as needed. One of them advises exclusively about matters of professional responsibility and ethics; one about general practice matters (for example, must a lawyer approve the form of a Court's order when he or she is discharged after the order is pronounced?); and one about the business aspects of the practice of law — this latter because it is the Law Society's experience, and undoubtedly the experience of regulators everywhere, that allegations of incompetence and misconduct often result from the inability of lawyers to manage their practices in a business-like way. The three Law Society advisors whom I have described answer thousands of calls from British Columbia's lawyers every year.

On oversight? No self-regulator of lawyers should fear oversight as long as the overseer has only the power to embarrass and to recommend.

...surely there aren't many lawyers who would want to protect another lawyer who has brought their profession into disrepute.

The further truth is that we want to know if people in the community think we can do a better job as regulator.

As another way of helping lawyers not to flounder and thus of saving their clients from the trouble that floundering produces, the Law Society developed and produced an award-winning online Small Firm Practice Course as a mandatory resource for lawyers working in groups of four or fewer lawyers.

I should not leave the subject of public confidence without reporting about what we in British Columbia call the Wirick affair. Wirick was a sole practitioner, principally a conveyancer. Over a period of years, he misappropriated many millions of dollars, mostly by failing to discharge mortgages with money given to him for that purpose. Not surprisingly, when Wirick's wrongdoing was exposed, and, naturally, it received very wide exposure, public confidence in lawyer regulation was compromised. But the Benchers knew what had to be done. We removed the cap we had in place for payments out of our Special Compensation Fund; we used all available insurance proceeds; and we assessed British Columbia's lawyers extra fund amounts over a period of several years. When all the investigation and accounting was done, BC lawyers had paid Wirick's victims over \$38 million dollars to make them whole.

We need to shape the context to the value, not the value to the context.

In Canada, we believe very strongly that we can't be partners in lawyer regulation with an entity we are bound to challenge on behalf of clients to whom we owe a duty of undivided loyalty.

## H. GETTING BETTER

I had suggested earlier that the Federation of Law Societies is not perfect. It is not perfect because it is underfunded; because it has not yet quite learned how to manage parochialism; because it has not yet quite learned how to ensure that a consistent message is delivered; and because, in my view at least, it has not been quick enough to advocate the introduction of regulatory oversight.

I have to say I am irked when I see the Law Societies in Ontario and Nova Scotia refer, in official publications, to self-governance as a privilege; when the Law Society of the Northwest Territories shares an executive director with the NWT branch of the Canadian Bar Association; when Nova Scotia insists on playing a lead role in the selection of appointed Benchers; and when Manitoba and Ontario allow the introduction of fair access to regulated professions legislation in their jurisdictions with hardly a whiff of opposition. These are matters on which the Federation should feature significantly and its success will be measured by its capacity to promote common positions on matters that are fundamental to the integrity of self-governance.

On oversight? No self-regulator of lawyers should fear oversight as long as the overseer has only the power to embarrass and to recommend. Involving an Ombudsperson may be the best available means of preserving independence of lawyers and of ensuring that self-regulators will always know how they might improve. The Federation needs to make oversight a national priority.

A few months ago, after the Benchers had voted to abolish their "serious harm" disclosure rule, a Vancouver newspaper columnist wrote that the Law Society was protecting one of its own by refusing to reveal the name of a lawyer who was the subject of a Law Society discipline proceeding. The Society had not disclosed the name because, in a criminal proceeding in which the lawyer was an accused person, a judge had ordered that his name not be published to anyone. Yet the journalist charged the Society with institutional arrogance for remaining silent. In fact, the Law Society believed that the public interest was best served by publishing the name and instructed counsel to seek an order from the court dissolving the publication ban. After a hearing, the ban was lifted. Of course it was astounding and irresponsible for the columnist to have suggested that the Law Society could disobey a court order. I wrote the paper's editor about the column, using polite but very direct language. Despite repeated requests, the paper would not publish my response. This refusal was most unfortunate, and, really, was a second instance of irresponsible press conduct. In my piece (only about 800 words), I identified the false premise in the journalist's declaration, which was that the Law Society was protecting one of its own. As I pointed out, the Law Society has no "own" other than the members of the public whom the Society is committed to serve. In any event, surely there aren't many lawyers who would want to protect another lawyer who has brought their profession into disrepute.

I tell this story as an illustration of how misguided some critics can be about self-regulation of lawyers. Within the last several years, former Presidents of the Law Societies of Upper Canada and British Columbia have been disciplined, one for conduct in practice and the other for conduct in his private life. In each case, a suspension from practice was ordered. This suggests that there is no merit in the argument that Caesar judges Caesar when self-regulating lawyers mete out punishment to other lawyers. If there were merit in the Caesar theory, it would mean that a judge couldn't sit in judgment of another judge when the other judge was a party to criminal or civil proceedings. That proposition has never held water at court.

In British Columbia, the truth is that the Law Society is fully committed to the protection of the public interest and the Benchers, who are volunteers unless they become Society officers (in which case they are largely volunteers), do their public interest work because they believe it's the right thing to do and for the feeling of satisfaction it brings them to have contributed to the welfare of the community.

The further truth is that we want to know if people in the community think we can do a better job as regulator. By "people in the community", I do not mean ill-informed journalists or "victims" with axes to grind. I mean thoughtful commentators. We can respond to thoughtful commentators either by improving or by explaining why we believe things have to be done without change. And there are good reasons not to change some things.

As Chief Justice Martin postulated yesterday, a theory of consumerism appears to have motivated the very significant regulatory changes made here and in England in recent years. These changes appeared to us in Canada to have occurred (as people here have confirmed) because, very unfortunately, regulators in Australia and England were also advocates for the interests of the regulated, and because politicians climbed on board what I believe was an ill-conceived consumerism train, a train sent out on the track by Sir David Clementi, the banker who had been asked in England to review the English regulatory arrangements.

Regrettably, no one in England had stressed (there have been some murmurings this year) that consumerism and efficiency, although all very well in themselves, had to be woven into the rule of law quilt, and that they were not a new blanket to be thrown over, and allowed to smother, fundamentally important values.

Not long ago in Canada one of the former Presidents of the Canadian Bar Association, the lawyer interest group, suggested that we need modern arguments to justify lawyer independence in the modern context. I think he has it wrong. I think we need the old arguments — the arguments that sustain the rule of law — even if, and perhaps especially because, the context is new. *We need to shape the context to the value, not the value to the context.* This is why I think we have to be careful not to be fooled by the consumerists. What is best for one consumer or, indeed, for many consumers, may not be what is best for the public interest. In the case of independence of lawyers, we in British Columbia think that choosing consumerism over independence is decidedly not in the public interest. In British Columbia, we don't think that lawyers can be half independent, as I suggest they are in some places where they were fully independent not so long ago. Here, as Attorney General McClelland said this morning, there is, by state, and is to be, nationally, a partnership of government and the legal profession in the regulation of lawyers. In Canada, we believe very strongly that we can't be partners in lawyer regulation with an entity we are bound to challenge on behalf of clients to whom we owe a duty of undivided loyalty. We are afraid that if we lost our independence, by losing self-governance, we could never get it back. We are not afraid for ourselves. We are afraid for those whose interests we could not serve.

## MEDIA RESPONSE TO THE PRESIDENT'S MESSAGE

*His name is Gordon Turriff, and if you don't know much about him, don't feel ignorant. It's likely many don't. But his role and beliefs that the justice system and parliament system are necessarily separate entities makes him an interesting figure on top of the legal food chain...*

*Turriff has been giving speeches across the province this year to raise awareness of the issues lawyers are facing in today's legal world. He spent time Thursday at both the Prince Rupert Public Library and Charles Hayes Secondary School, which he freely admitted was a "tough crowd."*

*But it's teens as much as anyone else that he wants to reach with his independence message, as it was only a few decades ago that he was in their shoes and wondering what the role of law was in 1970s Canada. As a young political science student in 1970, Turriff said he remembers reading and watching news broadcasts about the Kent State killings where the US National Guard killed four students for protesting the Vietnam War. It affected him greatly to see a heavy-handed approach by a government to what was a legal act of civil disobedience.*

**—Prince Rupert Daily News,  
May 19, 2009**

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*While Turriff spoke about the role of the society in regulating lawyers, he also talked about the importance of keeping lawyers independent from the state.*

*He spoke about 1970, the year he says he unconsciously decided to become a lawyer. It was the summer of the Kent State shootings in the United States and the FLQ crisis in Canada.*

**—Prince George Free Press,  
April 2, 2009**

*While Turriff speaks in solidarity with lawyers, he emphasizes that the Law Society does not advocate for the profession, and is not an "interest group." The Law Society, he said, is only a regulatory body.*

*It ensures that such principles as lawyer-client privilege are maintained and that lawyers adhere to ethical and regulatory requirements.*

*His most important message is that the legal profession must continue to police itself in order to maintain the rule of law.*

*"We need to preserve independent lawyers who regulate themselves."*

**—Nanaimo Daily News,  
March 30, 2009**

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*Turriff, a founding member of the B.C. Law Institute, will speak in the Valley during two presentations today. He also wants to inform people on how the Law Society protects public interests, unlike lawyer associations.*

*"The Law Society doesn't act in the lawyers' interest, we act in the people's interest," he said. "Many people don't understand the distinction."*

**—The Daily Courier (Vernon),  
March 5, 2009**

*Tanya Helton, instructor of Criminology and Sociology at NLC and chair of the Law Day committee in Fort St. John said she was pleased and impressed with Turriff's talk to her students.*

*"I think it just gave them a bit of expanded information, certainly augmented what we already covered and gave them that other perspective. He was a very interesting speaker, to give a personal view and some of the cases he gave were very helpful as well," she said.*

**—Alaska Highway News,  
April 2, 2009**

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*"It's one set of laws that applies to everybody," explained Turriff to members of the South Peace business community in attendance. "The rule of law provides for the conditions that allow all of us to go about our lives in relative comfort."*

*That means the peace of mind that comes with knowing those who break the law will be punished, and those who are innocent will be left alone, he explained.*

*"In communities where people don't have this rule of law, people don't have that confidence," he said, with a nod towards examples like present-day Zimbabwe, and Germany in the 1930s.*

*In that case, Turriff noted, "a set of laws emerged that were designed to serve the people in power."*

*Citizens in Pakistan recently protested and forced the government to reinstate a judge who had been removed, thereby upholding the rule of law, he added.*

**—Dawson Creek Daily News,  
April 3, 2009**

*B.C. has one of "the purest systems of self-regulation of lawyers in the world," and Turriff and his members want to keep it that way.*

*"We want the public to have confidence in British Columbia's lawyers and that is one of the reasons I am traveling around the province, because I want to demonstrate to people in the community that they can have confidence in British Columbia's lawyers."*

*Almost all lawyers are working to "a very high standard, they are striving to do the best they can for their clients and they are doing a lot of free work... that people never hear about."*

*But paid or not, "every bit of legal work that is being done helps to oil the machinery of our community."*

**—Trail Daily Times,  
October 8, 2009**

## AUDIENCE FEEDBACK TO THE 125 ANNIVERSARY TOUR

Gordon Turriff, QC, President of the Law Society of British Columbia in 2009, embarked on a province-wide speaking tour to help educate the public about the rule of law, independence of lawyers and the Law Society's public interest mandate. The President's tour was part of the Law Society's 125th anniversary activities, taking place throughout 2009.

Public response to the President's topic has been overwhelmingly positive. Here is some of the audience feedback from the tour:

*Very comprehensive presentation.*

*Lots of info, well-presented, good speaker.*

—**New Westminster Public Library,**  
**March 24, 2009**

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*I liked it all.*

*Very well presented, particularly information about independence and self-governing.*

—**Kelowna Public Library,**  
**Thursday, March 5, 2009**

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*Was interesting to hear about the Law Society in a presentation geared for the layperson.*

*Lots of useful information re independent lawyers and judges.*

—**Surrey Board of Trade,**  
**April 23, 2009**

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*Presented in layman's terms.*

*I enjoyed the whole presentation and exchange with the audience.*

*I enjoyed the presentation very much, especially... learning more about the integrity of lawyers in these difficult times.*

—**Vancouver Brock House Society,**  
**May 5, 2009**

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*Integrity and character are of utmost importance. The presentation was informative and increased my confidence in lawyers because of the existence of the Law Society.*

*[Liked] general information that lets us know we are protected. A real eye opener on how the law works and why.*

*Good information; lawyers look at problems differently; I was intrigued that a seasoned lawyer would state that at first he was cynical that the Society worked in meeting the needs of the public.*

*The role of the Law Society is a very important role.*

—**Dawson Creek Chamber of Commerce,**  
**April 2, 2009**

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*What I liked most: Being educated about the Law Society and its valuable role in our society. What I liked least: Not enough time to learn more.*

—**Trail Rotary Club / Trail Chamber of Commerce,**  
**October 7, 2009**

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*Very well presented; very appropriate in length. Gordon Turriff is a good speaker.*

—**Qualicum Beach Rotary,**  
**March 23, 2009**

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*Good clarification of the role of the Law Society.*

*Very educational — I learned a lot!!*

—**Okanagan College (Penticton Campus),**  
**March 5, 2009**

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*I think Mr. Turriff did a very good job delivering information and trying to make sure people understood the topic before he moved on. Good job!*

*All the information about law and the Law Society was very interesting and useful.*

*All the information that I needed was presented and in good order... I quite enjoyed it and understood it.*

**—Law 12, South Peace Secondary School, Dawson Creek,  
April 2, 2009**

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*It gave a good overview of lawyers and the Law Society's function.*

*I really liked the way the presentation focused on the public and the duties and responsibilities of the [Law] Society.*

*Clear speaker and solid information. It was direct, balanced and diplomatic.*

**—Vancouver Island University (Nanaimo Campus),  
March 24, 2009**

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*Appreciated emphasis on independence of lawyers and the function of the Society...*

*Very useful, speaker had excellent presentation manner, very interesting content, made a solid case for his views.*

**—Nanaimo Public Library,  
March 24, 2009**

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*[Liked] the overall reasoning for having the Law Society. Very interesting and all went away learning a lot more.*

*Taught me things I didn't know.*

*Personable/interesting/enlightening. Thank you.*

*Content was great! Not long enough!*

**—100 Mile House Rotary Club,  
April 30, 2009**

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*Dynamic presentation.*

*Great examples, approachable.*

*[Liked] description of Law Society, importance of lawyer independence and self-regulation as it applies to the individual and government.*

*I liked that Mr. Turriff stayed on topic and the talk was not too long. It was interesting. Q&A session was good – Mr. Turriff answered all questions in plain language.*

**—Kamloops Library,  
April 29, 2009**







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