

## **Why look to the UK? Canada's system of lawyer regulation works well.**

by  
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In his recent observation on the Canadian legal profession (Philip Slayton, "Why should lawyers be allowed to regulate themselves?", Comment, August 3, 2007), the author suggests that because law societies govern the legal profession the legal system does not properly serve Canadians. That proposition is simply wrong.

That everyone is subject to the law, and that no one is above the law – what we call the "Rule of Law" - is a cornerstone of Canada's democracy and an underpinning of our constitution. Both governments and courts have consistently recognized that an independent, self-regulated legal profession is fundamental to the maintenance of the Rule of Law.

Canada's law societies are mandated to regulate the legal profession in the public interest. Although the specifics of regulation vary from one province or territory to the next, the nature of the regulation is consistent. To fulfill their public interest mandate, law societies have the responsibility to regulate entrance to the profession, to set standards for professional conduct and to discipline members where necessary. The protection of the public is at the heart of their work.

Though independent, law societies are accountable through judicial review and appeal of law society decisions to the courts. For example, the decisions of disciplinary panels are reviewable by the courts in the same way all decisions of administrative tribunals are subject to judicial review. In the case of the most egregious violations of lawyers' codes of ethics, where criminal activities (such as fraud or money laundering) are involved, the usual processes of the criminal justice system are engaged, just as they would for any other person who is alleged to have broken the law.

The public participates in the governance of lawyers in Canadian jurisdictions through "lay benchers" - board members who are not lawyers - who bring an important independent perspective of the wider public to the regulation of the profession. Members of the public also participate as adjudicators in disciplinary proceedings.

The suggestion that laws regarding the regulation of Canadian lawyers should be modeled after reforms recently introduced in the United Kingdom ignores the basic differences between the professions here and there. Had Sir David Clementi, the advisor to the Blair government on such reforms, looked at the regulatory landscape in Canada, he would have seen that the underlying problems which he identified as the basis for reform in his country do not exist here.

The impetus for reform in Britain stemmed from two basic characteristics of the organization of the legal profession in that jurisdiction. Because the profession there is divided into barristers and solicitors, each with its own governance, complaints and disciplinary processes, with both types of lawyers often working on the same matter for the same client, Clementi found that members of the public were confused about where to turn to make their concerns known. He also found overly complex and inconsistent complaints procedures.

In Canada, there is no distinction between types of legal professionals, except in Quebec where the traditional civil law division between lawyers and notaries is clearly set out. Procedures for complaining about lawyers in Canada and notaries in Quebec are clear and transparent. They are largely the same from one law society to the next and, though not perfect, they are effective.

The second problem identified in the UK was that the governing bodies for the legal profession had a dual purpose. They were both regulators to protect the public and advocates for the interests of the members of the profession themselves. This conflict of interest is absent in Canada. The sole function of the law societies, as required by law, is to regulate the legal profession in the public interest. The job of representing the interests of members of the profession is carried out by separate bodies, such as the Canadian Bar Association and a variety of local organizations.

Significantly, the disciplinary function, the heart of self-regulation, was recommended by Clementi and accepted by the British government to remain with the governing bodies of the legal profession because the existing model worked effectively. So it is with the law societies in Canada.

There is no “controversy developing in Canada” about the regulation of the legal profession. The system of legal regulation in Canada, premised on governing in the public interest, works, and it works well.

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