COURT FILE NUMBER	2301 14224
COURT	Court of King's Bench of Alberta
JUDICIAL CENTRE	Calgary
APPLICANT	Yue Song
RESPONDENTS	The Law Society of Alberta
DOCUMENT	**AMENDED BRIEF OF THE APPLICANT, YUE SONG**

Clerk's Stamp

JUDICIAL CENTRE OF CALGARY
FILED DIGITALLY
2301 14224
Apr 7, 2025
2:24 PM
CLERK OF THE COURT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Glenn Blackett Law

[redacted]

AMENDED BRIEF OF THE APPLICANT, YUE SONG

Table of Contents

I. INTRODUCTION

> *Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law.*

1. No words could better capture the essence of this claim. To the applicant, Yue (Roger) Song ("**Song**"), they are a great inspiration. He moved to Canada, in part, because he read them and saw in them deep wisdom. In the reference to God he saw that truth and morality are not the business of the state and that Canada cherishes the dignity of the individual without discrimination.

2. He also sees an assumption of universal order and an agreement to regulate state power through rules, reason, and fairness. Mr. Song is a lawyer and Christian who swore an oath to these words and their spirit and now comes to this Honourable Court in their defence.

3. The rule of law depends on each lawyer's resolute and loyal advocacy on behalf of clients, pursuing the client's (and only the client's) rights and interests under and according to the law. Where the lawyer is disloyal to the client, the client's rights are subverted and the rule of law fails. Where the lawyer is disloyal to the law, the law is subverted and the rights of all citizens fail.

4. The legislature entrusts to the Law Society of Alberta (the "**LSA**") regulatory powers over the Alberta bar to, "so far as by human ingenuity it can be so designed," ensure lawyers remain independent of state or political interference. The LSA has, therefore, both immense responsibility to uphold the rule of law and an awesome capacity to pervert it.

5. The self-regulating status of the LSA is in the public interest only insofar as the LSA upholds the rule of law by remaining tirelessly loyal to its statutory objectives: legal competence, legal ethics, and the independence of the bar.

6. The applicant sees that the rule of law in Alberta is under threat because the LSA is exceeding its jurisdiction and encroaching upon the bar's independence. The LSA has itself adopted political objectives, anathema to its statutory duties and to the *Constitution*. The LSA is pursuing its political objectives with those tools at its disposal: competence, ethics, and its vast powers over the bar.

7. Under the label "cultural competence", the LSA has adopted and now enforces: a Professional Development Profile; amendments to the Code of Professional Conduct; Rules 67.2 to 67.4; and a program of mandatory education, all in service of its political objectives.

8. Mr. Song prays that this Honourable Court, recognizing its own vital constitutional role to safeguard the rule of law from such violations, carefully consider the details of these foreign objectives which are difficult and obscure. When its nature is understood, its incompatibility with the *Constitution* is clear.

9. The applicant pleads that this Honourable Court order that the LSA's political objectives and all of its parts (including the Professional Development Profile, the amendments to the Code of Professional Conduct, Rules 67.2 to 67.4, and its program of mandatory education) be prohibited and declared *ultra vires*, unconstitutional, illegal, null, and void and that they be quashed and set aside for all purposes.

10. These political objectives are as incompatible with Canada's *Constitution* as they are to Song's Christian faith. The applicant cannot be both "culturally competent" and true to his conscience and God. He is asked to believe what he cannot know, to disbelieve what he does know, and to tell others. He is asked to not believe in his God, to renounce his God, and to "advocate" against his God. Should he refuse, the LSA's educational "tools" declare him a bigoted oppressor. Should he continue to refuse his practice becomes "unsafe, ineffective, and unsustainable."

11. The applicant pleads that this Honourable Court, in vindication of his rights under the *Canadian Charter of Rights and Freedoms* and in recognition of the importance of guaranteeing *Charter* rights throughout the justice system: pursuant to *Charter* s. 24(1), declare the LSA's conduct an infringement of Song's rights under *Charter* ss. 2(a) and 2(b), including a violation of state religious neutrality; and pursuant to *Charter* s. 52(1), an order striking Rules 67.2 to 67.4 and Part 6.3 of the Code of Professional Conduct. The applicant brings this application in the public interest and does not seek costs

II. FACTUAL BACKGROUND

A. Song

12. The applicant Yeu (Roger) Song ("**Song**") is an Alberta lawyer called to the bar in 2014. He previously lived in People's Republic of China where he taught international law at the Peking University Law School and acted as in-house counsel to major international energy corporations in Hong Kong and China for more than a decade.[1]

[1] Affidavit of Yue (Roger) Song sworn December 6, 2023, filed December 21, 2023 ("**Song Affidavit**"), paras. 2 and 3.

13. Song's father, Ke Song, was a professor at the National University of Defense of the People's Liberation Army of China who published a biography of Mao Zedong. In a chapter called "the Communist Hell" Song's father advised of the nearly 40 million Chinese who starved to death under Mao's utopian "Great Leap Forward." His father was engaged in other dissident activity and was eventually placed under house arrest.[2]

14. Song lived through the Cultural Revolution and, throughout his life in China, he was subject to socialist indoctrination called "political education." To attend university, graduate, teach, work as a professional, or travel he was required to continually improve and demonstrate his ideological conformity to the latest party propaganda. This was called "political competence."[3]

15. The indoctrination had consistent themes including idol worship, tribalism, and the requirement to cleanse one's mind of "spiritual pollution": Western worldviews including Christianity and liberal democracy.[4]

16. Eventually Song became wildly politically incompetent. He is now a faithful Christian and firmly believes that Canada's constitution[5] is fundamentally good and just. He immigrated to Canada, in part, because he read the *Canadian Charter of Rights and Freedom's* (the "***Charter***") preamble, "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law":

> *To me this meant that the source of Canadian truth and morality was not the state but an authority that transcended the state. It also told me that Canadian law was supreme and not subordinate to any ideology or to the dictatorship of any person or party. I believe this preamble is profoundly wise. It reassured me that Canada was, indeed, a free country and would remain so. …*[6]

B. The Law Society of Alberta

17. The Law Society of Alberta (the "**LSA**") is a corporation established in 1907 and continued under the *Legal Profession Act*, RSA 2000, c L-8 (the "***LPA***") which is governed by honorary, appointed, and elected board members (the "**Benchers**").

---

[2] Song Affidavit, paras. 41 – 47.
[3] Song Affidavit, paras. 17 – 20, 22, and 50 – 53.
[4] Song Affidavit, paras. 17 – 19, 22, 26, and 29.
[5] *Constitution Act*, 1867 and *Constitution Act*, 1982, (the "***Constitution***").
[6] Song Affidavit, para. 59.

18. Prior to November 2008,[7] the LSA imposed no continuing professional development ("**CPD**") obligations on lawyers except as set-out in the LSA's Code of Conduct (as of October 5, 2023, the "**Code**") which required that lawyers be and remain competent including by keeping abreast of developments in relevant areas of law and, where competence was lacking, either refuse retainers or become competent without undue delay, risk or expense to the client.[8]

19. In November 2008, the LSA amended the *Rules* of the Law Society of Alberta (the "***Rules***") to require that lawyers make annual CPD plans.[9]

20. According to the LSA's 2010 Annual Accountability Report, in that year LSA conducted a consumer survey and found:

> *Those surveyed indicated a high level of satisfaction (78 per cent) with the services provided by their lawyer and 91 per cent felt they received good value...*[10]

21. Its core values at the time were:

    a. public Interest – "serving the public interest is fundamental";

    b. integrity – "honest and ethical behavior";

    c. transparency – "open and clear processes and communications";

    d. fairness – "fair and consistent treatment";

    e. competency – "best practices, high standards and pursuit of excellence";

    f. objectivity – "independent legal profession, fearless advocates"; and

    g. diversity – "respect individual differences, ideologies, backgrounds and orientations".[11]

22. The LSA makes two further mentions of "diversity" including:

> *… the Law Society [will] work towards increasing the availability and diversity of legal services to the Alberta public.*[12]

---

[7] Song Affidavit, para. 101.
[8] The Code at Rule 3.1 (Song Affidavit, Exhibit "G", p. 149) - References to page numbers in the Song Affidavit are references to the bates page number.
[9] Song Affidavit, paras. 102 - 103.
[10] Song Affidavit, Exhibit "A", p. 38.
[11] Song Affidavit, Exhibit "A", p. 30.
[12] Song Affidavit, Exhibit "A", p. 34.

23. Its strategic goals at that time were:

    a. model regulator: "be a model regulator by promoting and ensuring high ethical standards and competence on the part of all those seeking admission to and practising law in Alberta";

    b. public confidence: "build public confidence in the profession and the Law Society as a regulator by being effective, fair, timely, transparent and responsive";

    c. principles of justice: "uphold and preserve the principles of justice fundamental to a free democratic society, particularly client-lawyer privilege, the rule of law, and the independence of courts and lawyers"; and

    d. access to justice: "promote access to high quality legal services".[13]

C. The Law Society of Alberta's Strategic Shift

24. On September 26, 2019, the LSA received an "Articling Program Assessment Research Report"[14] which is not included in the certified record of proceeding filed by the LSA on April 8, 2024 (the "**CRP**"). The reports first "take-away" was that 32% of articling student respondents experienced discrimination or harassment during recruitment or articling. The survey questions neither defined those terms nor asked whether the discrimination or harassment was in the workplace or involved a lawyer. Some take a very expansive view of those terms. The LSA, for example, defines harassment in the Code as including "an incident … that might reasonably be expected to cause … offence…[including] assigning work inequitably."[15] The survey also found that 51% of new lawyers, "lacked confidence and felt only somewhat prepared or unprepared," without any objective metrics being employed. The survey, therefore, suffered from methodological flaws of the sort referred to below at paras. ^ 349 to ^ 356. This report is not contained in the CRP.

25. On December 5, 2019, the Benchers adopted[16] both a 2020-2024 Strategic Plan[17] (the "**2020 Plan**") and an "executive summary" of a "Statement of Regulatory Objectives" (the "**Regulatory Objectives**").[18] The LSA's CRP does not contain the "Full" Regulatory

---

[13] Song Affidavit, Exhibit "A", p. 30.
[14] Affidavit of Yue (Roger) Song sworn March ^ 11, 2025 ("**Song Affidavit 2**"), Exhibit "B".
[15] The Code at Rule 6.3-2 (Song Affidavit, Exhibit "G", p. 259).
[16] Song Affidavit, Exhibit "B", p. 62.
[17] Song Affidavit, Exhibit "C", p. 70.
[18] The Regulatory Objectives (Song Affidavit, Exhibit "E", p. 101).

Objectives (as requested in the application), the 2020 Plan, or the documentation provided to the Benchers when they were adopted.

26. The 2020 Plan sets, as the LSA's 4 strategic goals:

a. innovation and proactive regulation – including "expand the Law Society's ability to be innovative and proactive through new governing legislation"

b. competence and wellness – including "broaden the concept of competency, within both the Law Society and the profession, into non-traditional areas, such as technological and cultural competence";

c. access – including "reduce unnecessary regulatory barriers to access related to language" and "increase support for lawyers in providing timely and appropriate legal services";

d. equity, diversity and inclusion ("**DEI**"):

> *The Law Society leads the profession to increase cultural competency and promotes a profession that is representative of the public it serves.*
>
> *1. Increase cultural competency of the organization and the profession.*
>
> *2. Increase diversity and inclusion in the delivery, development and engagement of Law Society programs and services.*
>
> *3. Increase diversity and inclusion on the Law Society Board.*
>
> *4. Increase retention of lawyers from diverse communities in the profession.*
>
> *5. Remove barriers to accessing Law Society resources, programs and services.*
>
> *6. Increase collaboration with stakeholders to respond to the Truth and Reconciliation Commission's Calls to Action.*
>
> ***[all emphasis and edits in this brief are added]***

e. The LSA also substantially altered its "core values" (including the definition of "fair"):

> *Integrity – Honest and ethical behaviour.*
>
> *Transparency – Open, timely and clear processes.*
>
> *Fairness – Equitable treatment of people interacting with the Law Society and the profession we govern.*

> *Respect – Equity, diversity and inclusion in the profession, the Law Society and our interactions with the public.*
>
> *Independence – Autonomous regulation of an independent legal profession and commitment to the rule of law.*
>
> *Visionary Leadership – Innovation in regulation, governance and business operations.*

27. The Regulatory Objectives state, *inter alia*:

> *The Law Society views its core purpose as an **active** obligation and duty to uphold and protect the public interest in the delivery of legal services.*
>
> *The public interest, as it applies to the work of the Law Society, will be upheld and protected through the following regulatory objectives:*
>
> *a) Protect those who use legal services;*
>
> *b) Promote the independence of the legal profession, the administration of justice and the rule of law;*
>
> *c) Create and promote required standards for the ethical and competent delivery of legal services and enforce compliance with those standards in a manner that is fair, transparent, efficient, proactive, proportionate and principled;*
>
> *d) Promote access to legal services; and*
>
> *e) Promote equity, diversity and inclusion in the legal profession in the delivery of legal services.*[19]

28. The LSA takes a very expansive view of the "public interest" and observes that the actions of lawyers affect "society as a whole":

> *The "public interest" refers to society at large. The actions that lawyers take have the potential to affect not only the clients they represent, but also society as a whole. Likewise, many decisions and actions taken by the Law Society have the potential to impact the societal view of the legal profession and the profession's role in the legal system.*[20]

---

[19] The Regulatory Objectives (Song Affidavit, Exhibit "E", p. 103).
[20] The Regulatory Objectives (Song Affidavit, Exhibit "E", p. 103).

29. It further states:

> *… there may be times when two or more of the regulatory objectives conflict with one another. In these cases, the Law Society will weigh the costs and benefits of aligning with each objective.*[21]

30. As underlined in paragraphs ^ 25 to ^ 29, above, as of December 5, 2019, the LSA adopted the following objectives:

    a. "proactive" regulation in the "public interest" through expanded powers;

    b. "diversity, equity, and inclusion" in the profession, in the LSA, and the profession's and LSA's interactions with the public;

    c. collaborating with "stakeholders" and responding to the Truth and Reconciliation Commission's (the "**TRC**") calls to action;

    d. competence in the "non-traditional" area of "cultural competence"; and

    e. the provision of "appropriate" legal services,

    so as to affect "society as a whole" (collectively, the "**Political Objectives**"), all of which will be explored in greater detail below including why the applicant characterizes them as "political".

31. On February 11, 2020, the LSA's President, Kent Teskey, authored a memorandum on "competence." He cites on page one, as a top challenge, the above survey's findings on competence and harassment, "that we are compelled to act on." His proposal was to suspend the CPD requirements and to "create competence programs for 2020 and 2021 on Indigenous issues to meaningfully address our obligation arising from the Calls to Action in the Truth and Reconciliation Report." There is no obvious connection between the TRC calls to action and the survey report. Tesky quotes from a speech he gave in 2017:

> *Beyond that, we have few resources to ensure that articling process is safe and equitable. When was the last time that a hearing committee dealt with an issue of harassment involving an articling student? Is it because it doesn't happen. I highly doubt it. Given this backdrop we must* ***assume*** *that a significant number of our colleagues, mostly racialized lawyers and female*

[21] The Regulatory Objectives (Song Affidavit, Exhibit "E", p. 104).

> *practitioner are being trained in disrespectful and frankly unsafe environments. There are few options for these members to seek redress with the Law Society.*[22]

32. Why such an assumption was necessary is not explained. Nor is it clear how the survey's finding of "harassment" or "discrimination" related to indigenous people or a lack of cultural "competence". The memorandum contains the LSA's first reference to a new "CPD planning tool" (the "**CPD Tool**").[23] The Benchers adopted Tesky's CPD proposals at its next meeting.[24]

33. Therefore, according to the CRP and other evidence provided by the applicant, the Benchers decided to impose TRC related cultural "competence programs"[25] (which was later implemented by use of a "cultural competence" program called "The Path" ("**The Path**")) either on the basis of the survey's purported findings of harassment and discrimination or, on the basis of Tesky's assumption, or because the LSA had committed to doing so in its 2020 Plan.

34. On March 11, 2020, the LSA added or updated its webpage on indigenous land acknowledgements (see paragraph 289 below).

35. On July 15, 2020, The LSA's Policy and Regulatory Reform Committee ("**PRRC**") considered[26] new provisions to be added to the Code (Part 6.3 Discrimination and Harassment, that part being referred to herein as the "**Impugned Code**"). The CRP does not include documents circulated for the meeting ("**Meeting Materials**") although it appears they are produced, in part, as part of the Bencher's October 4, 2023 minutes (see A-21). The minutes indicate "harassment and discrimination education will be necessary when the Law Society adopts new Model Code Rules."[27] The effort appears to have been to adopt a Federation of Law Societies of Canada ("**FLSC**"). There is some discussion as to the Impugned Code referring to subjective experience and potential "overreach" as to the "use racial, gender, religious language to describe a person or group of persons" and

---

[22] A-340 - References to the CRP are in the format A-#, B-#, or C-#, meaning CRP Part A, B, or C at bates page #.
[23] A-339.
[24] A-333.
[25] Please note that throughout this document, the applicant uses "scare quotes" in relation to terms such as "cultural competency". It is the applicant's position that what the LSA calls "cultural competency" is, in fact, not so much about culture and not a competency. The applicant is unable, therefore, to employ the LSA's mis-chosen terminology without an indication of disagreement.
[26] C-406.
[27] C-407.

it not being "the Law Society's mandate to exercise total control over lawyers' lives." The Impugned Code's use of subjective experience is discussed below in section III.B.ii.2.

36. On August 13, 2020, [28] the PRRC met again on the Impugned Code. Meeting Materials are absent from the CRP (except to the extent disclosed at A-21. The minutes state:

> *There is a need to shift the culture within the profession and the regulator should deal with harassment and discrimination complaints within the profession. If the LSA decides not to adopt the proposed Model Code amendments, it would be equivalent to deciding to let other bodies deal with these issues.*
>
> *… the survey results demonstrate why the regulator needs to respond.* [29]

37. On September 11, 2020, the Lawyer Competence Committee ("**LCC**") met[30] to discuss The Path. Meeting Materials are absent from the CRP. The Committee supported The Path as a "starting point" for Indigenous training. There is no evidence in the CRP that the LCC considered whether:

    a. The Path was created by a trusted organization;

    b. The Path contained accurate or balanced information;

    c. The Path's subject matter was relevant to professional practice;

    d. The Path's "cultural competence" skills were useful;

    e. the LSA had power under the *LPA* to mandate any CPD or to mandate, in particular, The Path;

    f. The Path's ideological content was appropriate material for CPD in Canada; or

    g. The Path's various policy prescriptions were appropriate educational subject matter or socially, politically, legally, empirically or constitutionally sound.

    (referred to collectively with the considerations referred to at ^ paragraph 48 "**Due Diligence**").

38. Given that the CRP evidences no LCC Due Diligence on The Path, it is not clear on what basis the LCC concluded The Path was appropriate or necessary lawyer competence.

---

[28] C-402.
[29] A-404.
[30] C-398.

Jordan Furlong ("**Furlong**") Consultant, was in attendance and provided a report which is not in the CRP.

39. The only discussion was whether it should be mandatory. The minutes show the following reasons in support of it being mandatory:

> *It is important for all lawyers to be aware of Indigenous issues.*
>
> *The Law Society has an obligation to demonstrate a meaningful response to the Truth and Reconciliation Commission, consistent with its earlier commitment.*
>
> *The Law Society can lead by making the course mandatory.*
>
> *Mandatory Indigenous cultural competence training is a positive way for lawyers to show leadership in the community.*
>
> *Indigenous issues may continue to be ignored if training is not mandatory.*[31]

40. The CRP contains no evidence or explanation as to the matters underlined above.

41. In the fall of 2020, the LSA launched its "My Experience" project where it "invited lawyers and students to share their stories where racial discrimination or stereotyping impacted their legal career."[32] This project is discussed below.[33]

42. On September 17, 2020, the LCC met on the Impugned Code and discussed a draft letter to the FLSC including unspecified "philosophical issues." The Meeting Materials are absent from the CRP including the draft letter.[34] [35]

43. On October 1, 2020, The LSA's "policy counsel", Jennifer Fruend, provided a memorandum to the Benchers regarding The Path.[36] The memorandum indicates: The Path would establish a "baseline" and "cultural competency" would be expanded over time;[37] that the TRC's mandate was to "determine the truth"[38]; other TRC recommended subject matter would be part of future mandatory CPD;[39] The Path should be mandated

---

[31] A-399.
[32] Song Affidavit, Exhibit "H", p. 285.
[33] See section IV.B.i below.
[34] C-392.
[35] The final letter is produced at A-71.
[36] A-279.
[37] A-279, A-284, A-285, A-289, A-294, A-296.
[38] A-280; see below at para. ^ 619.
[39] A-281.

because the LSA committed to "actively participate in reconciliation";[40] and the rationale for The Path was:

> *… The [FLSC] Advisory Committee recognizes that cultivating an understanding of the fact that Canada is a multi-juridical country in which Indigenous legal orders, the common law and the civil law all have an important place is integral to transforming the relationship between the legal profession and Indigenous peoples in Canada.*
>
> *The Committee comments on the important role that law societies play in educating lawyers to assist in the reconciliation process.*[41]

44. The memorandum further states: the FSLC recommends it be mandatory; various LSA committees recommend it be mandatory including because of the Black Lives Matter movement and because cultural competency is "essential";[42] in particular:

> *… many of Alberta's lawyers were not taught about the history of residential schools or Indigenous history or perspectives in school and this has led to*
>
> > *lawyers [who] don't know how to understand their client because Indigenous peoples come from a different culture with different verbal and non-verbal communication cues (and a different language), [and because of this] they miss out on vital arguments that can be made in court. They also miss out on Indigenous legal arguments that can be made.*[43]

45. The relationship between history, perspectives, culture, communication, and arguments not made in court is explored below. Presently, the applicant notes these justifications are not explained and no evidence is provided in their support.

46. The memorandum advises that: the Law Society of British Columbia mandated "cultural competence" training.[44] The memorandum quotes at length from an article by University of Victoria., Faculty of Law professor, Pooja Parmar.[45] This article is reviewed at length

---

[40] A-281.
[41] A-283; see also A-290 regarding "plurality of legal orders" (as opposed to a legal order of pluralism).
[42] A-285.
[43] A-286.
[44] A-287.
[45] Pooja Parmar, *Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence*, La Revue Du Barreau Canadien Vol.97, 2019 ("**Parmar Article**"); Song Affidavit 2, Exhibit "J".

below. Fruend cites several of Parmar's arguments for "cultural competence" training including her:

> *… cautio[n] that it cannot be viewed as a substitute for systemic change.*
>
> *… The essence of critiques within social work and health professions is that mandating cultural competence does not help address structural issues. The reasons offered encompass a range of problems: the fact that cultural competence does not increase accountability, focuses on individual action and autonomy (both of professionals and clients), does not enable professionals to pursue a "transformative agenda"…*[46]

47. Parmar's epistemological perspective is not mentioned or explained in Freund's memorandum, but that is done by the applicant below. The concern that mandatory education in matters of "truth" constitutes "compelled speech and compelled thinking" is dismissed on the basis that, "the point of mandatory education is to ensure that Alberta lawyers have training in an area that has been determined by the regulator to be a core competency."[47] It is not clear at this point that the LSA had determined that "cultural competency" constituted "core competency" (recall, just the year prior LSA had "broadened" the concept of competency to include "non-traditional" areas such as "cultural competence" – Fruend was now claiming it was a "core" competence) and, if so, on what basis and evidence. Nor is it clear that The Path reflected such "core competency" given that no Due Diligence appears to have been done by the LSA or its consultant beyond LSA committees having "found it appropriate"[48].

48. No consideration appears to be given by the LSA here or elsewhere in the record to:

    a. the concept of professional "independence";[49] the need to "weigh the costs and benefits of aligning with"[50] conflicting objectives including:

        i. ensuring the bar plays its role in upholding the rule of law, as compared to;

        ii. engaging in a "transformative agenda"; or

    b. LSA's constitutional obligations including under the *Charter*.

---

[46] A-290.
[47] A-293.
[48] A-294.
[49] Subject to the statement at paragraph 53
[50] The Regulatory Objectives (Song Affidavit, Exhibit "E", p. 103).

49. The LSA's President, Ken Warren K.C., advised members in its annual general meeting on December 1, 2022, the LSA had obtained a legal opinion that its decision to mandate CPD was *intra vires* (the "**Opinion**"). However, no reference is made to such Opinion in the CRP, so far as the applicant can determine. The Opinion (over which privilege was waived by this disclosure) is not included in the CRP and has not been provided to members notwithstanding demands.[51]

50. On October 1, 2020, the Benchers met[52] and unanimously approved making The Path mandatory education for the entire Alberta bar. The Meeting Materials are absent from the CRP. Some Benchers seem to have completed The Path prior to the meeting but, again, there was no Due Diligence apparent. Given that the CRP evidences no Bencher Due Diligence on The Path, it is not clear on what basis the Benchers concluded The Path was necessary lawyer competence to justify its being made mandatory. Again, Furlong was in attendance and his report was discussed, which report is not disclosed in the CRP.

51. The applicant has located a copy of what appears to be the Furlong report from Song Affidavit 2, Exhibit "A", however it is dated November 2020.[53] The report discusses new models for lawyer competence. Under the heading "Universal Competence Activities" it states:

> *But there is a small group of subjects that have relevance to every lawyer in 21st-century Alberta, no matter where they work and what they do, and with which every lawyer should possess a minimum level of familiarity and competence. These subjects include, but are not limited to:*
>
> • *Professional conduct*
>
> • *"cultural competence"*
>
> • *Access to justice*
>
> • *Health and wellness*
>
> *… A good example of this sort of activity, — in fact, the model for this recommendation — is the forthcoming online education program "The Path," which will trace the residential school system's history and describe the system's devastating impact on generations of Indigenous Canadians. It is*

[51] See below at paras. 93 – 100.
[52] A-273.
[53] Song Affidavit 2, Exhibit "A".

> *becoming more widely accepted that "cultural competence" is a key attribute for lawyers in the increasingly diverse future of our country and our profession. "The Path" responds to that trend, and in particular to the Truth and Reconciliation Commission's Call to Action Recommendation 27, which asks that all lawyers in Alberta receive appropriate cultural competency training.*[54]

52. Again, the Furlong report evidences no Due Diligence as to The Path. The Furlong report references articles by Aastha Madaan,[55] Pooja Parmar,[56] and L. Danielle Tully[57] – none of which are contained in the CRP but all of which have been produced by the applicant and are referenced below at paragraph ^ 444.

53. Five days later, the LSA announced that The Path would be mandated[58], which announcement is not in the CRP. In the announcement the LSA explained The Path was mandated pursuant to the LSA's "commitment to respond" to the TRC calls to action and pursuant to its DEI policy (i.e. pursuant to its Political Objectives). It notes that lawyers generally exercise independent professional judgment to ensure they remain competent but adds, without explanation:

> *… there are some competencies where it is appropriate that the Law Society mandate training. Indigenous Cultural Competency is one of those unique areas where mandatory training is important.*[59]

54. The release makes no mention of the LSA's view of The Path as a "starting point." These same basic justifications are repeated throughout the LSA's communications.[60]

55. On October 30, 2020, the LSA's LCC met[61] and discussed rule changes required to permit the imposition of mandatory CPD. The Meeting Materials were excluded from the CRP. The committee recommended the Benchers adopt a new rule 67.4 to permit the

---

[54] Song Affidavit 2, Exhibit "A", p. 62.
[55] Aastha, Madaan, *Cultural Competency and the Practice of Law in the 21st Century*, Probate and Property Magazine, March/April 2016, Volume 30, No 2 ("**Madaan Article**"); Song Affidavit 2, Exhibit "K".
[56] The same article referenced in the Fruend memorandum.
[57] Tully, L. Danielle, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 Stan. J. C.R. & C.L. 201 (2020) ("**Tully Article**"); Song Affidavit 2, Exhibit "L".
[58] Song Affidavit, Exhibit "DDDD".
[59] Song Affidavit, Exhibit "DDDD", p. 991.
[60] For example, at Song Affidavit, Exhibits "V" and "W".
[61] C-386.

Benchers to mandate CPD. No mention is made of any Opinion or the issues referred to at paragraph ^ 48, above.

56. In the same meeting the LCC discussed "seven proposed parameters for the Indigenous Cultural Competence Education" which are not fully disclosed.[62] The LCC recommended that the Benchers adopt the seven parameters for The Path.[63]

57. Freund authored a memorandum to the Benchers on December 3, 2020, suggesting rule changes required for mandatory CPD.[64] No mention is made of any Opinion or the issues referred to at paragraph ^ 48, above.

58. On December 3, 2020, the Benchers "adopted the recommendations, framework, and timeline for implementation of the recommendations, as set out in Jordan Furlong's Report on Lawyer Licensing and Competence in Alberta and in the implementation proposal memorandum." The Furlong report is not disclosed in the CRP but this presumably reference to the Furlong report, above. In addition to its recommendations for mandatory CPD, the report recommends that the concept of "competence" be expanded to include DEI considerations[65] and that the LSA play a more proactive role in managing lawyer competence. Surveys are mentioned[66] which have not been disclosed in the CRP but which appear to include the articling survey mentioned above. Furlong states:

> *… the law society also had the results of two 2019 surveys conducted by the law societies of Alberta, Saskatchewan, and Manitoba that revealed alarming levels of discrimination and harassment in the articling system in these provinces.*[67]

59. Given the survey design, the reference here to "levels" is apparently unsupported. In any case, the report recommends a significant overhaul of Alberta's system of articling on the basis of the survey.

60. In the same meeting the Benchers adopted the seven proposed parameters for The Path recommended by the LCC. The Benchers then adopted the proposed rule 67.4 ("**Rule**

---

[62] But see below at 60.
[63] C-386.
[64] A-259.
[65] Song Affidavit 2, Exhibit "A", p. 22.
[66] Song Affidavit 2, Exhibit "A", p. 10.
[67] Song Affidavit 2, Exhibit "A", p. 13.

67.4") "to provide the authority to mandate education for lawyers." No mention is made of any Opinion or the issues referred to at paragraph ^ 48, above.

61. On March 30, 2021, the LSA released the results of its "My Experience" project,[68] none of which is disclosed in the CRP. The LSA states, *inter alia*:

> *The experiences shared by participants are concerning and paint a disappointing picture of how discrimination and harassment continue to impact Alberta lawyers and students …*
>
> *…*
>
> *We want to make a shift and share the responsibility amongst the legal profession, the Law Society and others in the legal community to address these experiences and the issues they have brought to light.*

62. Again, the LSA references its DEI commitments (i.e. its Political Objectives).

63. The LSA's DEI website provided[69], and continues to provide[70], a number of "key resources", none of which were disclosed in the CRP but many of which have been put into evidence by the applicant. These resources include the Alberta Civil Liberties Research Centre's ("**ACLRC**") certain articles referred to below. According to the ACLRC:

> *The [Calgary Anti-Racism Education] Collective maintains a glossary with definitions of key terms related to your work in anti-racism. These terms are crucial to the system of thought that works to combat individual, institutional and systemic racism. This list is by no means exhaustive. Moreover, history has shown us that terminology tends to shift over time, particularly as marginalized groups and individuals are increasingly heard.*[71]

64. The "**Online Resources**" herein shall mean the Regulatory Objectives, The Acknowledgement (defined below at para. ^ 69, the Glossary, and Song Affidavit, Exhibits "LLL" to "SSS", "VVV", "WWW", "XXX", and "YYY").

---

[68] Song Affidavit, Exhibit "H", "I", "J", "K" and Song Affidavit 2, Exhibit "I", p. 227.
[69] Song Affidavit, paras. 161 – 162 as well as Exhibits "LLL" to "QQQ".
[70] Song Affidavit 2, Exhibit "N", p. 15.
[71] Song Affidavit 2, Exhibit "N", p. 341.

65. On April 19, 2021, the LSA formally launched The Path, which communications are not included in the CRP, nor is the full text of The Path. These materials are available in the applicant's affidavit.[72]

66. On September 14, 2021, the PRRC met on the Impugned Code. Meeting Materials are absent from the CRP including a "memo" which appears not to have been produced elsewhere in the CRP.[73] The committee considered adopting the Impugned Code in some unspecified form. There was no further discussion of the prior "philosophical issues" except, possibly, that it "may be over-reaching." Nor was there further discussion on the issue of subjectivity.

67. On October 1, 2021, the Benchers met[74]. Meeting Materials are absent from the CRP. The Benchers approved a new "articling placement program."[75] In respect of the principle of "innocence until proven guilty" (discussed below at section IV.B.i) the minutes state only:

> *In response to a suggestion that there could be a risk of reputational damage to principals, Ms. Scott advised that the EDIC discussed and concluded that the default position should be presumptive belief because <u>often there is no other evidence</u> …*[76]

68. The minutes contain the first reference in the CRP to a proposed "competency profile" (the "**Profile**").[77] The LSA agreed to extend the CPD suspension a further year to May 2023.

69. On January 12, 2022, the LSA's DEI committee (the "**DEIC**") met[78] and discussed, for the first time, the Bencher's "Acknowledgement of Systemic Discrimination", eventually published April 25, 2022 (the "**Acknowledgment**").[79] Meeting Materials are absent from the CRP. There is no reference to any <u>evidence</u> of systemic discrimination except "all surveys."

---

[72] Song Affidavit, Exhibits "V" and "W": The full text of The Path is available at Song Affidavit, Exhibit "X".
[73] A-383.
[74] A-242.
[75] Song Affidavit, Exhibit "WWW", p. 923.
[76] A-244.
[77] The Profile (Song Affidavit, Exhibit "HHH").
[78] C-380.
[79] The Acknowledgement (Song Affidavit, Exhibit "N").

70. The Benchers met on February 4, 2022. [80] Both this meeting and the Meeting Materials are absent from the CRP. In discussions on the LSA's strategic priorities, the minutes show:

> *The Benchers also asked whether the Legal Profession Act amendments are still a priority and Ms. Osler outlined the challenges associated with getting the government to prioritize legislative amendments to the Act. In the meantime, the Law Society continues to utilize the Rules to advance its work where the legislation is outdated.* [81]

71. This meeting and this comment are critical context for this application.

72. The Profile is mentioned only in connection with the DEIC (i.e. in connection with the Political Objectives). [82]

73. On March 14, 2022, the "Indigenous Advisory Committee" (the "**IAC**") met and discussed the Acknowledgment. The Meeting Materials are absent from the CRP. It appears from the meeting that the only evidence in support of the Acknowledgment was the "My Experiences" survey.

74. On March 16, 2022, the LCC met and discussed the Profile. [83] The Meeting Materials are absent from the CRP including the draft Profile and a referenced "ACT's report on the Validation Survey Results" (the "**Validation Survey**"). According to the minutes:

    a. the Validation Survey asked respondents to rank draft areas of the Profile, called "domains;"

    b. the more senior lawyers ranked the domains "Truth and Reconciliation" and "Cultural Competence, Equity, Diversity and Inclusion" so low that they seemingly did not meet the "validation threshold":

        > *… The Committee discussed the results from different perspectives: should lower ranked Domains or those not meeting the validation threshold be removed or combined?*

        Note the suggestion to resolve the problem of the domain not "validating" by merging it within a domain that did. It appears the consultant Furlong was involved in the LSA's

[80] Song Affidavit, Exhibit "N".
[81] Song Affidavit, Exhibit "ZZZ", p. 958.
[82] Song Affidavit, Exhibit "ZZZ", p. 959.
[83] C-374.

process of "interpreting" survey results "according to industry practices" (see paragraph 82).

c. It was decided that the invalidated domains would be retained regardless because:

> *… raising awareness in these areas aligns with other Law Society work in the equity space to address systemic issues, including the mandatory completion of The Path training … the Profile is aspirational and voluntary.*[84]

75. In fact, the Profile is not voluntary as explained below.

76. In other words, the invalidated DEI and TRC domains were retained in pursuit of the Political Objectives. In connection with other discrete "performance indicators" that were also invalidated:

> *It was recognized that these Performance Indicators are not easy to understand as they are niche areas. Ms. Bailey advised that tools will be made available to assist people who are interested in learning more about certain areas.*[85]

77. The LCC noted the "profile is aspirational and would not be used for conduct matters" and recommended it be approved by the Benchers.[86]

78. On March 31, 2022, the DEIC met and recommended the Acknowledgment.[87] The Meeting Materials are absent from the CRP. No evidence is cited in support of the matters the DEIC recommends be acknowledged.

79. Susannah S. Alleyne, the LSA's Equity, Diversity & Inclusion Counsel and Equity Ombudsperson, authored an April 21, 2022, memorandum to the Benchers on the Acknowledgment. In it she:

a. cites no evidence of systemic discrimination in the legal system except the "My Experience" survey;[88]

---

[84] C-372.
[85] C-373.
[86] C-373.
[87] C-368.
[88] It does also mention "Exit Surveys and the Articling Program Assessment Surveys [which] have also informed our work on advancing EDI" but seems to indicate they are not relied on as evidence of systemic discrimination. The nature structure and findings of those surveys are not known by the applicant.

b. confirms that the term "justice system" is used "broadly" to include: the LSA, the bar, the courts, and "other facets of the justice system (i.e., Tribunals, law enforcement, etc.);[89] and

c. states:

> *Within the Acknowledgment the term systemic discrimination is defined broadly. While the "My Experience" Project focused on racial discrimination and stereotyping, we wanted this Acknowledgment to be as inclusive as possible and to speak to the systemic barriers faced by those from all equity-deserving groups represented within the legal profession.*

80. In other words, although the only "evidence" on which the LSA was relying related solely to race, the LSA would publicly "acknowledge" systemic discrimination of every other sort.

81. Barbra Bailey, LSA's Manager, Education authored an April 21, 2022, memorandum to the Benchers regarding the Profile[90]. In it she states:

> *Some lawyers will want to pay more attention to some areas than others, depending on their practice context and career stage and some lawyers may never pursue development in certain areas of the Profile.*[91]
>
> *...*
>
> *At the outset of the project, the framework was referred to as a "Competency Profile for Alberta Lawyers." Throughout the course of the project, the Law Society observed that this title caused confusion about the purpose of the document. To reflect the aspirational, guiding nature of the document, the title was changed to "Professional Development Profile for Alberta Lawyers."*[92]
>
> *…*
>
> *… the Profile will … Set out the competencies that all lawyers should be able to demonstrate in order to have a safe, effective and sustainable practice after the benefit of a few years of experience.*[93]

---

[89] A-236.
[90] A-210.
[91] A-212.
[92] A-213.
[93] A-215.

82. Confusion as to the purpose of the Profile, including as shown in the contradictions above, continue to present.[94] Bailey also confirmed in her memorandum that the Profile "aligns with" the 2020 Plan[95] which included the Political Objectives. In respect of validation, she had this to say:

> *The LCC reviewed the survey results at its March 2022 meeting, as well recommendations from ACT about how to interpret the results according to industry practices. After ACT's presentation, the LCC determined that no adjustments to the Profile were necessary and agreed to recommend that the Benchers approve it at the April Bencher meeting.*
>
> *… ACT will also make a presentation to the Benchers to describe the development and validation process and the survey findings at the Bencher meeting.*
>
> *…*
>
> *… the Profile has been validated through a survey of the profession.*[96]

The applicant cannot square the last statement with the evidence at paragraph 74 to 76.

83. On April 21, 2022, the Benchers met and approved the Profile.[97] The above noted validation survey is not in the CRP. No mention is made of the fact that the DEI and TRC domains did not validate. The minutes reference a development process but provide none of its details including, critically, the evidence and arguments in support of the LSA's later June 2022 letter that:

> *[The Profile] sets out the competencies that are important to maintain a safe, effective and sustainable legal practice in Alberta today.*[98]

84. The development process is explained in an attachment to the Profile.[99] It indicates that:

    a. The LSA retained "ACT, Inc." to facilitate the development of the Profile which is "a mission-driven not-for-profit organization based in the United States." The CRP does not disclose Act's "mission." According to ACT's website however:

---

[94] See below at para. 90 section IV.D.i.3I.
[95] A-215.
[96] A-219.
[97] A-203.
[98] The Profile (Song Affidavit, Exhibit "HHH", p. 773).
[99] The Profile (Song Affidavit, Exhibit "HHH", p. 788).

> *We exist to fight for fairness in education and create a world where everyone can discover and fulfill their potential.*
>
> *Education has power - a power that changes lives forever. It creates opportunities that lift up individuals, their families, and sparks societal change that echoes through generations to come. From our grassroots we have fought the good fight for inclusivity in education, and we remain devoted to helping anyone who struggles to access that power. This is what matters to us and we must do better - we've never been more sure of our purpose. Today, too many students, families and educators are battling to overcome systemic exclusivity, such as discrimination and a lack of access to knowledge and resources. …*
>
> *…*
>
> *… We help to create life changing opportunities and remove barriers that hold back too many people. These innovations in how we enable education will be the catalysts that transform generations to come. We are all in to create a world that values and encourages each individual's abilities and potential, and a society that is more fair and inclusive.*

As will be explained below, the Profile was developed, therefore, by an entity whose mission mirrors the LSA's Political Objectives.

b. A task force was "selected" by the LSA from volunteers based on a number of considerations including "equity deserving groups" but not, apparently, on the basis of seniority, ideological diversity, or experience in the fields of professional negligence, defalcation or misconduct.

c. The task force came-up with the "competencies" based on their "own expertise", competencies from other entities, the 2020 Plan, the LCC and "outside consultants" – not, so far as the CRP shows, based on data of professional negligence, defalcation or misconduct;

d. Surveys were then conducted with the IAC, the LCC, the Equity Diversity and Inclusion Advisory Committee (the "**DEIAC**", distinct from the DEIC) and "external focus groups" (also selected from volunteers) – note that the LCC developed the Profile, and that the IAC and DEIAC pursue the LSA's Political Objectives.

e. In respect of validation:

The ratings made by the survey respondents validated all of the elements of the Profile.

The applicant can not square this statement with the evidence at paragraph 72 to 73.

85. In the same April 21, 2022, Benchers meeting,[100] the Benchers approved the Acknowledgement (or perhaps only the first six paragraphs of the draft which is not in the CRP). Again, no reference is made to any evidence in support of the matters acknowledged except "survey results."[101]

86. The Acknowledgement was published April 25, 2022.[102] It is not included in the CRP. Consistent with Alleynes's suggestion (see paragraphs 79 and 80 above) the Acknowledgement was not limited to race. The Acknowledgement cites, as evidence, the "My Experience" project and the 2019 articling survey (see paragraph 24).

87. On April 27, 2022, the LCC met[103] and discussed the Profile and CPD Tool. The committee mentioned the importance of the "effectiveness of the tool" and a "phased-in approach to accountability with a focus on coaching during the early days of the program (the first year or two were discussed)."[104]

88. Attached to the Profile is a June 2022 letter from LSA's President and CEO mentioned above. The record suggests the Profile was not formally communicated to the bar until May 2, 2023 (see paragraph 110).

89. On September 29, 2022, Freund authored a memorandum to the Benchers on the CPD Tool.[105] In it she, again, referred to the "phased in" approach to "accountability." Lawyers would be required to create an annual CPD plan and would be held "accountable" in the early phase through a requirement that lawyers implement and check-in on their progress through the year and through LSA "spot checks" which would look at the lawyer's plan.[106]

---

[100] A-203.
[101] A-208.
[102] The Acknowledgement (Song Affidavit, Exhibit "N", p. 338).
[103] C-364.
[104] C-366.
[105] A-173.
[106] A-175.

90. In a Benchers meeting that day,[107] CPD was discussed including that the Profile's "competencies" would "be changed if needed" and that "[t]he approach to CPD in early years of practice will be more prescriptive than later years."[108]

91. The FLSC updated its model code of conduct's harassment and discrimination provisions October 2022.[109]

92. In October 10, 2022, Song completed The Path under protest, asserting that Rule 67.4 was *ultra vires*.[110] Song's personal objections to "cultural competence" training are explored in his affidavit and at section IV.E.

93. At the LSA's annual general meeting on December 1, 2022, members were advised of the Opinion that Rule 67.4 was *intra vires*.[111]

94. On December 6, 2022, the LSA's CEO, Elizabth Osler wrote to lawyer, Glenn Blackett,[112] refusing to provide the Opinion but explaining why Rule 67.4 was *intra vires*.[113] The LSA's letter is discussed in depth at section IV.A.iv.

95. Song spearheaded a petition to requisition a special meeting of the bar to consider a resolution to revoke Rule 67.4, delivering a petition to the LSA on January 13, 2023.[114]

96. The petition[115] claimed Rule 67.4 was *ultra vires* and an unnecessary invasion into professional independence.

97. In a July 13, 2022, position letter[116] Song restated these arguments and further argued that it was impractical given the diversity of the bar's practice.

98. Song, Blackett and Osler exchanged a number of communications prior to the special meeting in which Song and Blackett sought to ensure a "fair and informed" decision making process on the motion,[117] requesting, *inter alia*, that the petitioner's materials be

---

[107] A-167.
[108] A-169.
[109] Song Affidavit, Exhibit "XXX".
[110] Song Affidavit, Exhibit "Z", paras. 115 and 117.
[111] Song Affidavit, para. 124.
[112] Song's present counsel but not Song's counsel at the that time.
[113] Song Affidavit, Exhibit "EE", p. 624.
[114] Song Affidavit, Exhibit "AA", para. 120.
[115] C-361.
[116] Song Affidavit, Exhibit "AA", p. 546.
[117] Song Affidavit, paras. 121 - 132, Exhibit "BB", Exhibit "CC", Exhibit "EE", Exhibit "FF", Exhibit "GG", Exhibit "HH" and Exhibit "II".

circulated to members in advance, that the Opinion be disclosed, and that speakers be given more time including by extending the special meeting past 20 minutes.

99. All such requests were refused.[118] The Benchers did, however, circulate to the bar their own letter opposing the motion, discussed below.[119]

100. On January 30, 2023, Blackett wrote to Osler and the Benchers[120] setting out his requests for informed decision making and a 3-page explanation that Rule 67.4 was *ultra vires* and making no argument as to whether or not the LSA should have such jurisdiction under the *LPA*.

101. On January 31, 2023, Song wrote to Osler arguing, again, that Rule 67.4 was *ultra vires*.[121] He also explained his opposition to mandatory "cultural competence" training given his experiences in China.

102. The Bencher's position letter,[122] circulated to the bar (but absent from the CRP):

    a. claimed, without evidence, that the petition challenged:

        … the Law Society's Benchers' ability to mandate specific continuing professional development and ultimately the Law Society's role as a self-regulating body;

    b. claimed, contrary to the apparent lack of Due Diligence done in respect of The Path that it was the result of:

        … think[ing] critically and make[ing] thoughtful decisions …;

    c. claimed that all 50 petitioners:

        … believe that the Law Society should not have the authority to mandate specific continuing professional development programming …

        as opposed to the petitioner's primary claim that the Law Society does not have the authority; and

[118] Song Affidavit, paras. 122 and 130; Although, at the beginning of the meeting it was announced that it would be longer than 20 minutes.
[119] Song Affidavit, para. 128.
[120] Song Affidavit, Exhibit "EE".
[121] Song Affidavit, Exhibit "FF", p. 631.
[122] Song Affidavit, Exhibit "HH".

d. argued that the motion would make the public think members we just being self-interested – contrary to Song's argument that professional independence was in the public interest.

103. Therefore, the Bencher's position letter did not fairly and accurately represent the petitioners' positions. The applicant returns to this conduct at section IV.D.i.4 below.

104. After one hour of online debate the motion was defeated 2609 to 864.[123]

105. On April 13, 2023, the PRRC met to discuss the Impugned Code (the Meeting Materials are absent from the CRP except as may have been disclosed at A-21):[124]

> *Some Committee members expressed concern with defining the term "discrimination" as the evolution of the word is ongoing and recommended eliminating this commentary.*[125]

106. The CRP contains April 27, 2023, "Continuing Professional Development Program Guidelines.[126]" The guidelines start with the following:

> *… The ability of Canadian Law Societies to establish such programs and administer them through Rules was confirmed by the Supreme Court of Canada in Green v. Law Society of Manitoba, 2017 SCC 20, [2017] 1 SCR 360.*[127]

107. In the applicant's view, this is not accurate given the facts, legislation, concessions and issues in dispute in that action. The *Green* decision is reviewed in detail below at section IV.A.i. The guidelines explain the LSA's new CPD program, including:

a. it is mandatory;[128]

b. lawyers are required to use the CPD tool and choose at least two competencies from the Profile;[129]

c. lawyers are required to "reflect on their learning needs, proficiency levels and priorities and then create a plan to achieve them";[130]

---

[123] C-355.
[124] C-345.
[125] C-248.
[126] A-155.
[127] A-157.
[128] A-158.
[129] A-159.
[130] A-158.

d. the CPD Tool is supposed to "assist lawyers with both planning and reflection;[131]

e. the CPD plan must be submitted to the LSA using the CPD Tool;[132]

f. all information in the plan is available to the LSA for review except proficiency levels and self-reflections on efficacy;[133] and

g. lawyers will be randomly selected for review, notified, and the LSA will access the CPD plan using the CPD Tool and audit it.[134]

108. On April 27, 2023, the Benchers met to discuss, *inter alia*, the CPD Tool.[135] At that meeting the Benchers amended Rules 67.2 and 67.3 as shown in a blackline comparison at Song Exhibit "ZZ".[136] The Benchers also adopted the guidelines.

109. The following terms are defined for the purpose of this brief:

a. "**Impugned Rules**" means Rule 67.2 to Rule 67.4;

b. "**CPD Scheme**" means the Profile, the CPD Tool, the Continuing Professional Development Program Guidelines, and the Impugned Rules;

c. "**Impugned Bylaws**" means the CPD Scheme and the Impugned Code;

d. "**Impugned Conduct**" means the Impugned Bylaws and Political Objectives;

e. "**Prescribed Materials**" means the Profile, the Impugned Code, and The Path;

f. "**Materials**" means the Prescribed Materials, the Online Resources, the Impugned Bylaws, the ^ Pooja Article and ^ the other two articles ^ mentioned in the Furlong Report; and

Mandatory CPD, Unspecified Mandatory CPD and Specified Mandatory CPD have the definitions provided at paragraph ^ 203.

110. On May 2, 2023, the LSA announced the CPD Scheme to the bar.[137]

---

[131] A-158.
[132] A-158.
[133] A-161,A-162.
[134] A-161-A-163.
[135] A-143.
[136] A-147; Song Affidavit, Exhibits "R", "ZZ" and "YY".
[137] Song Affidavit, Exhibits "AAA", "BBB", "CCC", "DDD", "EEE", "FFF",

111. On May 17, 2023, the PRRC recommended adoption of the Impugned Code in the form of the FSLC model code.[138] The Meeting Materials are absent from the CRP.

112. On July 17, 2023, Song delivered a detailed 8-page letter of concern to the LSA and government signed by 70 lawyers and other Canadian professionals reflecting the same concerns as those raised earlier and in this application.[139] On July 27, 2023, the LSA responded, simply:

> *We acknowledge receipt of your letter dated July 17, 2023. Thank you for sharing your views in this way.*[140]

113. Elizabeth Aspinall authored a memorandum to the Benchers on September 6, 2023, providing a detailed background of the Impugned Code amendments including the FSLC deliberations and the LSA's contributions (referenced above).[141] In the memorandum, the problem of defining terms with reference to the subjective experience of the complainant was mentioned and amendments seem to have been made to the FSLC model code in an attempt to address that problem (discussed in more detail below at section IV.D.ii). The memorandum also referenced the evidence in support of the proposition that the Impugned Code was necessary: the LSA's articling survey mentioned above at paragraph ^ 24.[142] According to an attached FLSC consultation report, the FSLC:

> *… took into account the considerable empirical and anecdotal evidence that discrimination, harassment and bullying remain prevalent in the legal profession.* [143]

The report then goes on to detail that "considerable empirical and anecdotal evidence" and all or most it appears to be surveys similar to and including the LSA's articling survey. For example:

> *The LSO's 2017 articling survey ("Articling Experience Survey") revealed that significant numbers of those surveyed reported experiencing discrimination: 21% of respondents who had completed articling had experienced unwelcome comments related to personal characteristics … and 17% of*

---

[138] C-342.
[139] Song Affidavit, Exhibit "AAAA".
[140] Song Affidavit, Exhibit "BBBB", p. 986.
[141] A-21.
[142] A-29.
[143] A-58.

> *respondents believed that they had experienced differential treatment related to a protected ground. …*

114. On September 29, 2023, Song completed his CPD Plan under protest.[144]

115. On October 4, 2023, the Benchers adopted the Impugned Code with amendments.[145] The Impugned Code is identical to the FSLC model code except the Impugned Code:

    a. does not contain:

    > *6.3-1 … [7] c. refusing to provide legal services to any person on the basis of any personal characteristic protected by applicable law*[146]; and

    b. adds to Rule 6.3-1 commentary [7] (b) the underlined portion:

    > *refusing to employ or to continue to employ any person on the basis of any personal characteristic protected by applicable law*[147]

116. On October 23, 2023, the LSA suspended several lawyers for failing to com)ply with the CPD Scheme.[148]

117. On October 27, 2023, this action was commenced.

III. GENERAL LAW

A. Constitutional and Statutory Context

118. Canada is a constitutional democracy[149] based on fundamental and organizing principles, referred to as Canada's "unwritten constitutional principles" which include:

    a. the rule of law[150] including equality before the law;[151]

    b. constitutionalism;

    c. democracy;

---

[144] Song Affidavit, para. 149 and Exhibit "III" at p. 794.
[145] A-4 and A-20.
[146] Song Affidavit, Exhibit "XXX", p. 939.
[147] The Code (Song Affidavit, Exhibit "G", p. 258).
[148] Song Affidavit, Exhibit "JJJ", p. 798.
[149] *Constitution Act*, 1867, preamble: "a Constitution similar in Principle to that of the United Kingdom …"; *Reference re Secession of Quebec*, [1998] 2 SCR 217 ("***Reference re Secession of Quebec***") at para. 44
; *McAteer et al v Canada (Attorney General)*, 2014 ONCA 578 ("***McAteer***") at para. 62.
[150] *Roncarelli v Duplessis*, [1959] SCR 121 ("***Roncarelli***"); *Charter*, preamble: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law …".
[151] *Reference re Secession of Quebec* at paras. 70 and 71; *Charter* s. 15(1).

d. respect for minorities; and

e. federalism.[152]

119. Canada's constitutional and legal order include other fundamental features including:

a. parliamentary sovereignty;[153]

b. personal freedom over each individual's:

i. property;[154]

ii. body;[155]

iii. expression;[156] and

iv. mind and soul;[157]

c. recognition of the inherent and equal dignity of each individual;[158]

d. repugnance for identity-based discrimination and stereotype;[159]

---

[152] *Reference re Secession of Quebec* at paras. 32, 48 and 49.
[153] *Singh v Canada (Attorney General)* (C.A.), 2000 CanLII 17100 (FCA), [2000] 3 FC 185 ("***Singh***") at para. 16a; *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40 at para. 2; and *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 (CanLII), [2021] 1 SCR 175 at para 264.
[154] See, for example, the right of private property protected under the *Land Titles Act*, RSA 2000, c L-4 and the *Criminal Code*, R.S.C., 1985, c. C-46 at s. 322(1) ("***Criminal Code***") and the legal protection of free markets to support the free exploitation of one's own property (i.e. capitalism) under the *Securities Act,* RSA 2000, c S-4 and the *Competition Act*, RSC 1985, c C-34.
[155] *Charter* at ss. 7 and 9 to 12; *R v Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 SCR 30 ("***Morgentaler***").
[156] *Saumur v City of Quebec,* 1953 CanLII 3 (SCC), [1953] 2 SCR 299 *("**Saumur**"); Boucher v R.,* 1949 CanLII 334, [1950] 1 D.L.R. 657 *("**Boucher**")* at p. 682; *Charter* at s. 2(b).
[157] *Roncarelli, Saumur, Boucher and Charter* ss. 2(a) and (b).
[158] *R v Keegstra,* [1990] 3 S.C.R. 697 *("**Keegstra**")* at p. 746 – 747.
[159] *Charter* at s. 15(1) and *R v Kapp*, 2008 SCC 41.

e. empiricism including objectivity,[160] reason,[161] and science;[162]

f. multicultural pluralism;[163] and

g. reasonable limits to individual and collective rights as prescribed by law and demonstrably justified in a free and democratic society.[164]

120. Canada's *Constitution* and legal system is primarily "Western",[165] in particular, modelled on the constitutional and legal structures of the United Kingdom and France,[166] subject to pre-existing aboriginal and treaty rights.[167]

121. These and other constitutional and legal principles are interrelated and interdependent.

122. Parliamentary sovereignty depends on the rule of law:

> *In our constitutional tradition, legality and legitimacy are linked.*[168]

123. Federalism is preserved by the rule of law, because a law must be sufficiently clear so as to determine jurisdiction, given the *Constitution's*[169] division of powers.[170]

---

[160] Meaning the belief that certain things (whether tangible or intangible or relating to the physical world or morality) exist apart from human knowledge or perception of them, actually exist and are universally "real" (Oxford Concise English Dictionary Ninth Edition, Clarendon Press, Oxford, 1995, "object", "objective", and "objectivism"; for example, the objective test for religious interference (*SL v Commission scolaire des Chênes*, 2012 SCC 7 ("***SL v Commission***") at para 23), the objective test for negligence (*Glasgow (City) v Muir* (1943), [1943] 2 All E.R. 44, per Lord Macmillan), objective fault elements under the *Criminal Code of Canada*, the rule against hearsay, and the right to cross-examine a witness on credibility and perspective) and corollary concepts including that words are capable of objective, if somewhat uncertain, meanings (*Committee for the Commonwealth of Canada v Canada*, 1991 CanLII 119 (SCC), [1991] 1 SCR 139 ("***Committee for the Commonwealth***"), and *Dunsmuir v New Brunswick*, 2008 SCC 9 ("***Dunsmuir***")) and the theoretical possibility of being non-partisan and expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations (for example, the requirement for expert witnesses to provide provide fair, objective and non-partisan assistance to the courts in *White Burgess Langille Inman v Abbott and Haliburton Co.*, 2015 SCC 23). The law also contemplates subjectivity, for example, the subjective test for religious belief (*SL v Commission* at para 23) and the concept of criminal *mens rea*.

[161] See, for example, *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("***Vavilov***"), especially paras. 102 to 104.

[162] See, for example, the rules for the admission of opinion evidence: *White Burgess Langille Inman v Abbott and Haliburton Co*., 2015 SCC 23 (CanLII), [2015] 2 SCR 182.

[163] *Boucher* at p. 682; *Charter* at s. 27; *R. v Big M Drug Mart Ltd.,* 1985 CanLII 69 (SCC), [1985] 1 SCR 295 *("**Big M**")* at p. 355.

[164] *Charter* s. 1.

[165] *R. v Big M Drug Mart Ltd.,*1983 ABCA 268 *("**Big M ABCA**")* at para 112.

[166] *Constitution Act*, 1867, preamble and s. 129; *Civil Code of Québec*, CQLR c CCQ-1991.

[167] *Constitution Act*, 1982, s. 35(1) and *Delgamuukw v British Columbia* (1997), 153 D.L.R. (4th) 193 (S.C.C.).

[168] *Reference re Secession of Quebec* at para. 33.

[169] *Constitution Act*, 1867.

[170] *Saumur* at pp. 326, 332 – 333, 338 and 339.

> *The federal principle cannot be reconciled with a state of affairs where the modification of provincial legislative powers could be obtained by the unilateral action of the federal authorities. It would indeed offend the federal principle that "a radical change to ... [the] constitution [be] taken at the request of a bare majority of the members of the Canadian House of Commons and Senate" (Report of Dominion Provincial Conference, 1931, at p. 3).*[171]

124. Constitutionalism is preserved by the rule of law, for only by loyal application of its "rules" is the *Constitution* manifest. For example, in respect of Canada's constitutional supremacy:

> *The constitution of a country is a statement of the will of the people to be governed in accordance with certain principles held as fundamental and certain prescriptions restrictive of the powers of the legislature and government. It is, as s. 52 of the Constitution Act, 1982, declares, the "supreme law" of the nation, unalterable by the normal legislative process, and unsuffering of laws inconsistent with it. The duty of the judiciary is to interpret and apply the laws of Canada and each of the provinces, and it is thus our duty to ensure that the constitutional law prevails.*[172]

125. Democracy, likewise, depends on the rule of law:

> *The consent of the governed is a value that is basic to our understanding of a free and democratic society. Yet democracy in any real sense of the word cannot exist without the rule of law. It is the law that creates the framework within which the "sovereign will" is to be ascertained and implemented. To be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation.*[173]

126. So too does democracy depend on freedom of conscience and expression:

> *… The preamble of the [Constitution Act, 1867], moreover, shows plainly enough that the constitution of the Dominion is to be similar in principle to that of the United Kingdom. The statute contemplates a parliament working*

---

[171] *Resolution to Amend the Constitution, Re*, [1981] 1 S.C.R. 753 at pp. 905 to 906.
[172] *Re Manitoba Language Rights,* [1985] 1 SCR 721 ("***Manitoba Language Rights***") at p.745.
[173] *Reference re Secession of Quebec* at para 67; see also para. 78 and *Federation of Law Societies of Canada v Canada (Attorney General)*, 2002 CanLII 49401 at para. 43.

> *under the influence of public opinion and public discussion. There can be no controversy that such institutions derive their efficacy from the free public discussion of affairs, from criticism and answer and counter-criticism, from attack upon policy and administration and defence and counter-attack; from the freest and fullest analysis and examination from every point of view of political proposals…*[174]

127. Freedom of conscience and expression are linked to Canada's constitutional assumption of empiricism including objectivity, reason, and science:

> *At the core of freedom of expression lies the need to ensure that truth and the common good are attained, whether in scientific and artistic endeavours or in the process of determining the best course to take in our political affairs.*[175]

128. Our constitutional system depends on a "marketplace of ideas", and abhors the top-down prescription of truth. As stated by the Supreme Court of Canada ("**SCC**") *in Ford c. Québec (Procureur général)*:[176]

> *… freedom of expression protects an open exchange of views, thereby creating a competitive market-place of ideas which will enhance the search for the truth...*

129. And as stated in *Reference re Secession of Quebec*:

> *No one has a monopoly on truth, and our system is predicated on the faith that in the marketplace of ideas, the best solutions to public problems will rise to the top.*[177]

130. Freedom of conscience and expression arise from our constitutional recognition of the dignity of the person:

> *… expression … is seen as an aspect of individual autonomy. Expression is to be protected because it is essential to personal growth and self-realization.*

---

[174] *Reference Re Alta. Legislation*, [1938] S.C.R. 100 at pp. 132 to 133; see also *Boucher* at p. 682, and the judgments of Justice Rand and Kellock in Saumur; see also *Keegstra* at pp. 726 – 727.
[175] *Keegstra* at p. 762 – 763.
[176] *SCC in Ford c Québec (Procureur général),* [1988] 2 S.C.R. 712 at p. 765.
[177] *Reference re Secession of Quebec at para. 68; Committee for the Commonwealth of Canada v Canada, 1991 CanLII 119 (SCC), [1991] 1 SCR 139 at para. 76.*

131. The protection of minority rights also depends, entirely, on the rule of law which both enumerates minority rights as positive law[178] and acts as a general bulwark against arbitrary majoritarian action.[179]

132. As seen above, the rule of law is the sinew which binds together Canada's entire constitutional project:

> *The principles of constitutionalism and the rule of law lie at the root of our system of government. …. At its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs. It provides a shield for individuals from arbitrary state action.*[180]

133. The rule of law has, what might be termed, substantive and institutional requirements. As to its substantive requirements, the rule of law means, *inter alia*, that: 1) there are rules, "an actual order of positive laws … brought into existence"[181]; 2) such rules are sufficiently clear so that citizens and individuals in the justice system may follow and enforce them;[182] and 3) the rules are supreme over officials of the government and private individuals ("There is, in short, one law for all")[183] and thereby preclusive of arbitrary power.[184] As stated by Justice Rand:

> *… that an administration according to law is to be superseded by action dictated by and according to the arbitrary likes, dislikes and irrelevant purposes of public officers acting beyond their duty, would signalize the beginning of disintegration of the rule of law as a fundamental postulate of our constitutional structure.*[185]

---

[178] For example, the rights of religious minorities preserved at confederation by s. 129 of the *Constitution Act*, 1867 or minority rights guaranteed under the *Charter* at ss. 2(a), 2(b), 2(c) and 15(1).
[179] See, for example, *Roncarelli*.
[180] *Reference re Secession of Quebec* at para. 70.
[181] *Manitoba Language Rights* at pp. 750 – 751.
[182] *Manitoba Language Rights* at pp. 748 – 749; see also *Reference re Secession of Quebec* at para 70.
[183] *Reference re Secession of Quebec* at para. 71.
[184] *Manitoba Language Rights* at para. 63; see also *Reference re Secession of Quebec* at para 70.
[185] *Roncarelli* at pp.141 and 142.

134. These substantive features sustain the "freedom" in Canada's "free and democratic society,"[186] – including the inherent and equal dignity of each individual and the protection of minorities, by ensuring that each citizen's personal agency is:

a. only constrained, by government, through the law – not by arbitrary state action;

b. facilitated as fully as the law provides – including full access to the law's protections and benefits, including vis-à-vis third parties; and

c. constrained by law to ensure the law's protections and benefits to third parties, and thereby, the freedom of others.

B. The Justice System

135. The rule of law also has institutional requirements. In order for these substantive features to be manifest. There must be an institution – the justice system – which faithfully implements the law. The justice system includes the judiciary and the bar.

i. Judiciary

136. As to the judiciary, judicial independence and impartiality are written and unwritten constitutional[187] and legal requirements:

> *A judge must be impartial. This is a cornerstone of the judicial structure …*[188]

137. As explained by the SCC:

> *The duty of the judiciary is to interpret and apply the laws of Canada and each of the provinces, and it is thus our duty to ensure that the constitutional law prevails.*[189]

138. Like the judiciary, the bar plays an "essential role … in the administration of justice and the upholding of the rule of law in Canadian society."[190]

139. The SCC also described the judiciary's duty as follows:

---

[186] *Constitution Act*, 1867, preamble: "a Constitution similar in Principle to that of the United Kingdom …"; and the *Charter*, section 1.
[187] *Manitoba Provincial Judges Association v Manitoba (Minister of Justice), [*1997] 3 S.C.R. 3 at para. 332; *Charter* at section 11(d); *Valente v The Queen,* 1985 CanLII 25 (SCC), [1985] 2 SCR 673 at para. 22.
[188] *Bizon v Bizon*, 2014 ABCA 174 at para 33.
[189] *Manitoba Language Rights* at p. 745.
[190] *R. v Lavallee, Rackel & Heintz*, 2002 SCC 61 ("***Lavallee***") at para. 64.

> *A state, it is said, is sovereign and it is not for the Courts to pass upon the policy or wisdom of legislative will. … The Courts will not question the wisdom of enactments which, by the terms of the Canadian Constitution are within the competence of the Legislatures, but it is the high duty of this Court to insure that the legislatures do not transgress the limits of their constitutional mandate and engage in the illegal exercise of power.*[191]

ii. Lawyers

140. Given Canada's adversarial legal system, the legal and ethical duties imposed on lawyers necessary to support the faithful application of rule of law (both for the benefit of the client and for third parties) are different. The lawyer must, as the client's fiduciary[192] and conduit[193] to the justice system, be competent[194] and entirely loyal to the client's interests:

> *Unless a litigant is assured of the undivided loyalty of the lawyer, neither the public nor the litigant will have confidence that the legal system, which may appear to them to be a hostile and hideously complicated environment, is a reliable and trustworthy means of resolving their disputes and controversies…*[195]

141. As stated by Justice LeBel:

> *… whether it is the pride or the bane of our civil and criminal procedure, Canadian courts rely on an adversarial system. An impartial and independent judge oversees the trial. He or she must make sure that it remains fair and is conducted in accordance with the relevant laws and the principles of fundamental justice. Nevertheless, the operation of the system is predicated upon the presence of opposing counsel. They are expected to advance often sharply conflicting views. They are also responsible for introducing evidence and presenting argument to the court, in a spirit of sometimes vigorous confrontation …*[196]

---

[191] *Amax Potash Ltd. v Sask.*, [1977] 2 S.C.R. 576 at p. 590.
[192] *R v Neil*, 2002 SCC 70 ("***Neil***") at para. 16.
[193] *British Columbia (Attorney General) v Christie*, 2007 SCC 21 (CanLII), [2007] 1 SCR 873 at para. 22.
[194] *Black v Law Society of Alberta*, 1986 ABCA 68 ("***Black***") at para 44.
[195] *Neil* at para. 12.
[196] *Lavallee* at para. 68.

142. Given the adversarial structure of Canada's justice system, the lawyer's loyalty to the client's interest is not tepid, but "resolute",[197] "zealous",[198] and "fearless":

> *Resolute advocacy requires lawyers to "raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case … This is no small order. Lawyers are regularly called on to make submissions on behalf of their clients that are unpopular and at times uncomfortable. These submissions can be met with harsh criticism — from the public, the Bar, and even the court. Lawyers must stand resolute in the face of this adversity by continuing to advocate on their clients' behalf, despite popular opinion to the contrary.*[199]

143. The lawyer's effective assistance depends also on a duty of candor.[200]

144. The lawyer's competence, duty of candor, and loyalty to the client support the rule of law by ensuring the client understands the justice system's "complex web of interests, relationships and rules"[201] so she can "foresee ... the consequences which a given action may entail,"[202] and representing the client within the legal system to ensure her interests are properly pursued according to law:[203]

> *…resolute advocacy … places decision-making about what is to be done in a legal representation with the client. The lawyer acts to facilitate the client's accomplishment of her ends within the legal system, but it is the client who determines those ends.*[204]

145. In addition to lawyers' private retainers, they uphold the rule of law within public institutions:

---

[197] *Federation of Law Societies of Canada, Model Code of Professional Conduct* ("***Law Societies Model Code***"), as amended April 2024, at rule 5.1-1. (Song Affidavit 2, Exhibit "P", p. 351)
[198] *Neil* at para. 19.
[199] *Groia v Law Society of Upper Canada*, 2018 SCC 27 at para. 73, quoting the *FLSC's model code*, at rule 5.1-1, commentary 1 (Song Affidavit, Exhibit "XXX"), which itself quotes *Rondel v Worsley*, [1969] 1 A.C. 191 at 227 (U.K.H.L).
[200] *Neil* at para. 19.
[201] *R v McClure*, 2001 SCC 14 ("***McClure***") at para. 2; see also *Anderson v Bank of British Columbia* (1876), 2 Ch. D. 644 (C.A.), at p. 649.
[202] *Black* at para. 44.
[203] *Wood v Schaeffer*, 2013 SCC 71 (CanLII), [2013] 3 SCR 1053 at para. 103;
[204] Alice Woolley, *Understanding Lawyers' Ethics in Canada*, 2nd Edition (Canada: LexisNexis, 2016) ("***Lawyers' Ethics***") at p. 56.

> *Governments at all levels … rely extensively upon lawyers, both in technical and policy matters. In the drafting of legislation, regulations, treaties, agreements and other governmental documents and papers lawyers play a major role … they are called upon to advise upon legal and constitutional questions which frequently go to the very heart of the governmental role … It is entirely reasonable, then, that legislators consider and adopt measures designed to maintain within the legal profession a body of qualified professionals with a commitment to the country and to the fulfilment of the important tasks which fall to it.*[205]

146. The lawyer's duty of loyalty to the client's cause (whether that client is private or public) is, "an enduring principle that is essential to the integrity of the administration of justice…" It is a principle of fundamental justice that the "state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes."[206] More broadly, the right to the effective assistance of counsel is a principle of fundamental justice.[207]

147. Necessary to the duty of loyalty is solicitor-client privilege, a "principle of fundamental justice and a civil right of supreme importance in Canadian law," for which stringent norms are required to ensure its protection.[208] It permits the client to have "unrestricted and unbounded confidence" in his or her lawyer, which confidence is:

> *… a part of the legal system itself, not merely ancillary to it … The lawyer's duty of commitment to the client's cause, along with the protection of the client's confidences, is central to the lawyer's role in the administration of justice.*[209]

148. As stated by Justice Major:

> *Lawyers have a unique role. Free and candid communication between the lawyer and client protects the legal rights of the citizen. It is essential for the lawyer to know all of the facts of the client's position. The existence of a*

---

[205] *Andrews v Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 SCR 143 ("***Andrews***") at pp. 188 - 189.
[206] *Canada (Attorney General) v Federation of Law Societies of Canada, [*2015] 1 S.C.R. 401 *("**Canada v FLSC**")* at paras. 84 and 96.
[207] *R. v G.D.B.*, [2000] 1 S.C.R. 520, 2000 SCC 22 at para. 24:
[208] *Lavallee* at p. 212.
[209] *Canada v FLSC* at paras. 84 and 96.

> *fundamental right to privilege between the two encourages disclosure within the confines of the relationship.*[210]

149. Also necessary to the duty of loyalty is preservation of the lawyer's ability to provide "independent discretionary judgment"[211] free from all conflicting interests, whether the lawyer's personal interests[212] or those of any other entity, including the state:

> *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.*[213]

150. The lawyer's independence is not threatened only by the interference of the state. It is also vulnerable to interference by the state's statutory delegates, including law societies, other powerful interests or political interference *writ* large:

> *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.*[214]

---

[210] *McClure* at para. 33; see also
[211] *In the Public Interest: The Report and Research Papers of The Law Society of Upper Canada's Task Force on the Rule of Law and The Independence of The Bar*, By The Law Society of Upper Canada (Toronto: Irwin Law, 2007) ("**Monahan**") at p. 119.
[212] *Canada v FLSC* at para 74 (quoting the Court of Appeal).
[213] *Canada (Attorney General) v Law Society of British Columbia,* [1982] 2 S.C.R. 307 *("**Canada v LSBC**")* at pp. 335 to 336.
[214] *Pearlman v Law Society (Manitoba),* [1991] 2 S.C.R. 869 *("**Pearlman**")* at p. 887, citing *The Ministry of the Attorney General of Ontario* study paper entitled *The Report of the Professional Organizations Committee* (1980); see also *Canada v FLSC* at para 96.

151. Obviously, should some entity or political interest improperly[215] interfere with the bar's independence, the bar becomes the advocate not of the client but of that entity or political interest. As observed by Justice Cromwell referring to anti-money laundering legislation:

> *… this scheme substantially interferes with the lawyers' duty of commitment to their clients' cause because it imposes duties on lawyers to the state to act in ways that are contrary to their clients' legitimate interests and may, in effect, turn lawyers into state agents for that purpose.*[216]

1. Loyalty to Law

152. The lawyer's duty of loyalty to the client is, however, limited by a broader public interest – preservation of the rule of law. As stated by Professor Archibald Cox:

> *The "independent lawyer" owes his client a duty of loyalty, but he or she also stands somewhat apart … partly because the lawyer's calling carries a professional obligation also to serve other, larger, and more diffuse interests than the client immediately recognizes and which the client may even prefer to disregard. A modest statement of this ideal was found in old Canon 32 entitled "The Lawyer's duty in the Last Analysis," where we used to speak of ourselves as "Ministers of the Law" obligated to render no service and give no advice "involving disloyalty to the law…or deception or betrayal of the public."*[217]

153. As stated by (now) Woolley J.A.:

> *…a lawyer must engage in good faith interpretation of the law, and work within the systems of the law as they exist – if the lawyer burns documents that are properly producible in discoveries, for example, then the lawyer has not allowed the client to access the civic compromise of the law, he has helped the client to destroy it.*[218]

154. Given the complexity and variety of legal practice, the modes by which a lawyer might be disloyal to and thereby "pervert" or "distort" it - contrary to the public interest - are legion.

---

[215] Meaning, in a manner not consistent with Canada's constitutional order. It is clearly consistent with Canada's constitution that lawyers not be left to operate "independent" of competence or ethics.
[216] *Canada v FLSC* at para 77; see also para 75.
[217] Quoted in Monahan at p. 119.
[218] *Lawyers' Ethics* at p. 58.

The lawyer may simply distort the rule of law by "soft peddling" the client's case[219] thereby denying the client access to justice and undermining public confidence in the administration of justice.[220]

155. The lawyer might: "knowingly assist in or encourage any dishonesty, fraud, crime or illegal conduct," or instruct, "the client on how to violate the law and avoid punishment;"[221] abuse legal processes including for malicious purposes; seek to influence the decision or action of a tribunal by any means other than open persuasion as an advocate; deceive a tribunal including deliberately withholding binding authority which is directly on point; improperly dissuade a witness from giving evidence or advise a witness to be absent; or commit blackmail.[222]

156. A lawyer may distort the rule of law by more subtle methods. As discussed by Woolley, where a client wants a particular outcome, the lawyer might improperly pervert the law by:

> *… stretching it beyond its reasonable boundaries, to provide the advice that will support the outcome the client seeks. The risk is that a lawyer will provide the colloquial "CYA" opinion, which is effective in allowing the client to say, "I acted on legal advice," even if the legal advice is bogus. That lawyer does not make a mistake; she rather manipulates the law to her client's advantage.*[223]

157. The lawyer might also misstate to the client the full rights and protections afforded to the client by law.

2. Oaths

158. For this reason, when called to the bar, lawyers in Alberta (as in other Canadian jurisdictions) are required to swear certain oaths:

> *… the essential role that the advocate is called upon to play in our society cannot be overemphasized. Advocates are officers of the court. By their oath of office, they solemnly affirm that they will fulfill the duties of their*

---

[219] *Neil* at para. 19.
[220] *Neil* at para. 12.
[221] *Law Society of Upper Canada v Hunter*, 2007 LSDD No. 8, 2007, and ONLS HP27, and *Law Society of Upper Canada v Joseph*, 2003 LSDD No. 34.
[222] *Law Societies Model Code,* at rule 5.1-2 (Song Affidavit 2, Exhibit "P", p. 352 – 353).
[223] *Lawyers' Ethics* at p. 97.

> *profession with honesty, integrity and justice and will comply with the various statutory provisions governing the practice of that profession.*[224]

159. As stated succinctly by Justice Johnson of the Court of King's Bench of Alberta:

> *… the Oath of Allegiance is a requirement for admission as a member of the Law Society of Alberta. Future lawyers are being asked to commit themselves to upholding the rule of law, which is a bedrock of our constitutional democracy.*[225]

160. The oaths administered in Alberta include:

> *I … swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law.*[226]

161. Justice MacGuigan of the Federal Court of Appeal interpreted these words, in the citizenship context, as follows:

> *They express a solemn intention to adhere to the symbolic keystone of the Canadian Constitution as it has been and is, thus pledging an acceptance of the whole of our Constitution and national life … agreement with the fundamental structure of our country as it is.*[227]

162. In the Ontario Court of Appeal's view, the words denote an oath to:

> *… abide by this country's form of government, a democratic constitutional monarchy … [and a] symbolic commitment to our form of government and the unwritten constitutional principle of democracy …*[228]

163. Similarly, the LSA requires of, the following oath, reflecting commitments to resolute advocacy, client loyalty, the rule of law, and Canada's constitutional and legal order:

> *I will as a Barrister and Solicitor conduct all causes and matters faithfully and to the best of my ability. I will not seek to destroy anyone's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice anyone, but in all things will conduct myself truly and with integrity.*

---

[224] *Fortin v Chrétien*, [2001] 2 S.C.R. 500, 2001 SCC 45, at para. 49.
[225] *Wirring v Law Society of Alberta*, 2023 ABKB 580 ("***Wirring***") at para. 117.
[226] *Oaths of Office Act*, RSA 2000, c O-1, s. 1(1).
[227] *Roach v Canada (Minister of State for Multiculturalism and Citizenship)(C.A.),* 1994 CanLII 3453 (FCA), [1994] 2 FC 406 *("**Roach**")* at pp. 415 – 416.
[228] *McAteer* at paras. 61 and 62.

> *I will uphold and maintain the Sovereign's interest and that of the public according to the law in force in Alberta.*[229]

iii. Regulation

164. Provincial governments across Canada[230] regulate their respective bars by means of self-governing law societies. The self-governing status of law societies provides some measure of independence to lawyers from, at least, the state.[231]

165. The purpose of law societies is "the protection of vulnerable interests — those of clients and third parties"[232] given, in part, the general public's inability to appraise "unassisted the need for legal services or the effectiveness of the services provided in the client's cause."[233]

166. In particular, the purpose of law society regulation has been described as broadly relating to competence and ethics:

> *Legislatures have granted law societies broad powers in order to monitor access to the profession and its exercise. The overriding purpose of these powers is to maintain the competence of lawyers and to make sure that their conduct reflects the high ethical standards expected of them …*
>
> *… An independent and competent bar has long been an essential part of our legal system. For this purpose, lawyers have rights and privileges, but obligations flow from them …*[234]

167. In the views of (now) Patrick J. Monahan, J. A.. the broader purposes of law societies are to:

> *… nourish and support the independence of the judiciary, the rule of law and the proper administration of justice … promotion of access to justice for all sectors of the community, the protection and promotion of consumer interests, and the promotion of competition …*[235]

---

[229] The Rules of the Law Society of Alberta, January 1, 2025, Rule 65.2.
[230] Except, most recently, British Columbia's proposed Bill 21 (42nd Parliament (2024), "***Legal Professions Act***").
[231] *Canada v LSBC* at pp. 335 to 336.
[232] *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 ("***TWU***") at para. 36.
[233] *Canada v LSBC* at pp. 334 – 335.
[234] *Lavallee* at para. 67 and 68.
[235] *Monahan* at p. 137.

168. In whatever manner the objectives of regulation might be expressed, given the lawyer's critical role in our constitutional order (including the preservation of the rule of law and liberal democracy): regulation (whether by the state, by its delegate, or by some other arrangement) must be structured "so far as by human ingenuity it can be so designed"[236] so as to ensure the lawyer complies with his or her duty to provide competent, resolute and loyal assistance to protect and promote each individual client's interests.

1. Regulation and the Public Interest

169. The "public interest" is that the rule of law be preserved. Therefore, the public interest is that law societies facilitate and not undermine the bar's duties of competence and loyalty.

170. On this essential point the caselaw could not be more clear.

171. In respect of the necessity in "free societies" of 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," the SCC concludes:

> *On this view, the self-governing status of the professions, and of the legal profession in particular, was created in the public interest.*[237]

172. In *R. v McClure* the SCC stated:

> *The important relationship between a client and his or her lawyer stretches beyond the parties and is integral to the workings of the legal system itself. The solicitor-client relationship is a part of that system, not ancillary to it.*[238]

173. In *R. v Neil*, Justice Binnie described the preservation of the lawyer's fiduciary duty of loyalty as a matter of public interest:

> *… the duty of loyalty … endures because it is essential to the integrity of the administration of justice and it is of high public importance that public confidence in that integrity be maintained… unless a litigant is assured of the undivided loyalty of the lawyer, neither the public nor the litigant will have confidence that the legal system.*
>
> *…*

---

[236] *Canada v LSBC* at pp. 335 to 336.
[237] *Pearlman* at p. 887.
[238] *McClure* at para. 31.

> *Fiduciary duties are often called into existence to protect relationships of importance to the public including, as here, solicitor and client. Disloyalty is destructive of that relationship.*[239]

174. Referencing the "independent … skilled and qualified" bar's fundamentally important role in the administration of justice (and concomitant powers) Justice McIntyre noted:

> *… By any standard, these powers and duties are vital to the maintenance of order in our society and the due administration of the law in the interest of the whole community.*[240]

175. Justice Cromwell connected the bar's duty of loyalty to the public interest as follows:

> *Clients — and the broader public — must justifiably feel confident that lawyers are committed to serving their clients' legitimate interests free of other obligations that might interfere with that duty. Otherwise, the lawyer's ability to do so may be compromised and the trust and confidence necessary for the solicitor-client relationship may be undermined …*
>
> *The duty of commitment to the client's cause is thus not only concerned with justice for individual clients but is also deemed essential to maintaining public confidence in the administration of justice. Public confidence depends not only on fact but also on reasonable perception. It follows that we must be concerned not only with whether the duty is in fact interfered with but also with the perception of a reasonable person, fully apprised of the relevant circumstances and having thought the matter through.*[241]

176. As summarized by Woolley J.A.:

> *Canadian lawyers owe a duty to the public interest, but Canadian legal culture expects them to fulfill that duty by acting as resolute advocates, even when their advocacy places them in an adversarial relationship with the legal* status quo *and with what the majority of the citizenry and the state might identify as the "public interest".*[242]

---

[239] *Neil* at paras. 12 and 16.
[240] *Andrews* at p. 187 – 188.
[241] *Canada v FLSC* at para. 97.
[242] *Lawyers' Ethics* at p. 33.

177. Elsewhere Woolley J.A. nicely summarizes the nuanced distinction between a lawyer providing a free citizen zealous advocacy *versus* providing that free citizen zealous advocacy while also "upholding the rule of law:"[243]

> *This justification for the lawyer as a zealous advocate itself dictates the limits on that advocacy. The lawyer's role is not to obtain for the client whatever the client wants. The lawyer is not a gunman for hire. Rather, the lawyer helps the client pursue* ***her*** *conception of the good within the bounds of the law. The lawyer must be able to engage in good faith interpretation of the law, to determine the difference between what the law provides and what the law can simply be made to give. The lawyer cannot be a morally blinkered technocrat, ignoring the meaning of the law, interpreted reasonably and in good faith. A lawyer may not engage in quasi-legal subterfuge. While the law can be subject to varying interpretations and does not always dictate a single response or answer, it also has a core meaning, interpretations that it does not permit and that cannot be reasonably sustained …*[244]

178. As can be seen, the limits of zealous advocacy expressed in this manner upholds the rule of law while also facilitating the citizen's access to justice and personal autonomy. This model of advocacy respects personal freedom and the inherent dignity of the individual.

2. Postmodernism and the Public Interest

179. "Postmodernism" is explored in more detail below. For present purposes, however, reference is made again to Woolley J.A. in connection with what she calls, the "postmodern objection" to the above model of resolute advocacy.

180. The Professor explains that, according to the postmodernists, a lawyer's duty of loyalty to the client's interests ought to be more constrained than necessary to support the rule of law – that the client's interests should also be counterbalanced against the:

> *… lawyer's own moral and personal commitments, the concerns of the profession (in, for instance, fostering diversity) and, finally, what will best further the public interest and social responsibility. The ethics of the lawyer … should be "sustainable professionalism" in which the lawyer takes into*

---

[243] *Wirring* at para. 117.

[244] Alice Woolley, Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation, Volume 4, Issue 8 (University of Calgary, The School of Public Policy, June 2011) ("***Independence of the Bar***") at p. 10.

> *account all of these inputs and engages in a dialogue, with himself and with others, to determine the right course of action. Ultimately,*
>
> > *… This is not simply an exercise in client autonomy or an exercise in moral superiority. It is an exercise in real world, sustainable lawyering.*[245]

181. Woolley J.A. takes issue with the objection on the basis, *inter alia*, that "[m]ost obviously, there is a fine line between postmodern ethics and no ethics at all." In her view the objection "ends up being entirely based on the personal moral assessments of the lawyer making the decision …"[246] Woolley J.A. elsewhere states:

> *… The fundamental problem with giving lawyers the role of public interest counselors is that, however much its advocates try to finesse this point, it makes lawyers moral gatekeepers in the relationship with their clients. It requires lawyers to go beyond good faith interpretation of the law to make moral assessments of the law's purpose and, if following Luban, to refuse to pursue client goals which, although lawful, the lawyer views as morally wrongful. Yet the idea of law as rules that permit social cooperation necessarily contemplates that individuals, within the rules, will make their own assessment of the right way to live. It recognizes that on important moral questions people disagree, and that the only legitimate restrictions imposed on individuals within the system of social cooperation are the ones that the system itself imposes. This necessarily requires that at points of moral uncertainty the client, not the lawyer, should make the decisions."*[247]

182. The above observation is entirely harmonious with the description of Canada's constitutional order as described by Justice Rand in *Boucher v The King*:

> *Freedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of our life. The clash of critical discussion on political, social and religious subjects has too deeply become the stuff of daily experience to suggest that mere ill-will as a product of controversy can strike down the latter with illegality ... Controversial fury is aroused constantly by differences in abstract conceptions; heresy in some fields is again a mortal sin; there can be fanatical puritanism in ideas as well*

---

[245] *Lawyers' Ethics* at pp. 45 to 46.
[246] *Lawyers' Ethics* at p. 46.
[247] *Independence of the Bar* at pp. 10 to 11.

> *as in mortals; but our compact of free society accepts and absorbs these differences and they are exercised at large within the framework of freedom and order on broader and deeper uniformities as bases of social stability.*[248]

183. The postmodern view of appropriate legal ethics is anathema to the Canadian *Constitution*, as it would pervert the rule of law precisely where the rubber meets the road – in the solicitor-client relationship where the client, dependent on the lawyer, comes for vindication of the his legal interests. There is no support – or room – for the postmodern concept of legal ethics in Canada's constitutional order.

184. While this may seem an irrelevant detour into philosophy, as we will see below, the LSA's Materials are awash in postmodernism including, contrary to the rule-of-law-based concept of resolute advocacy founded by law, the idea that:

> *… an attorney has the ethical responsibility to be more than just a "hired gun" who gives the client total autonomy. Instead, the attorney has a role to provide ethical advice and at times become an agent of social change.*[249]

185. This application is brought by the applicant because, in his respectful submission, the Impugned Conduct of the LSA undermine the rule of law and Canada's constitutional order. Specifically, the LSA's actions influence lawyer composition and conduct so as to pervert the law in its application and so as to convert the justice system into a legislative entity.

186. In this brief, "**Core Competence and Ethics**" shall mean such reasonable:

    a. knowledge of substantive law and procedure related to the lawyer's area of practice;

    b. ethics consistent with loyalty to the client and loyalty to the *Constitution*;

    c. office-management skills and knowledge (for example, trust safety); and

    d. intellectual and social skills,

    as are consistent with:

    e. the constitutional framework; and

    f. the lawyer's duty to uphold the constitutional framework,

---

[248] *Boucher* at p. 682.
[249] Song Affidavit, Exhibit "RRR", p. 888.

described above in sections III.A to III.B.iii.1., excluding, in all respects, the Theories (as defined below at section IV.B).

C. Standards of Review

187. The merits of administrative decisions are presumptively reviewed on a standard of reasonableness. The presumption of reasonableness can be rebutted where the rule of law requires that the standard of correctness be applied[250] including where constitutional questions are raised,[251] where the scope of constitutional rights are determined,[252] and where general questions of law are raised that "impact the administration of justice as a whole."[253]

188. The standard of correctness applies to all matters under review in this action because the rule of law demands it. As explained below, the LSA has unduly infringed the bar's independence in a manner which tends to erode loyalty to Canada's constitution, laws promulgated thereunder, and fiduciary duties to individual clients. The judiciary (which must also be independent) is selected from this same pool of lawyers. For these reason, the applicant brings this application in the public interest.

189. The LSA has no specialized knowledge as to whether undermining the bar's independence and duties of loyalty undermine the rule of law.[254]

190. Where the legislature chooses to use broad, open-ended, or highly qualitative language, for example, "in the public interest," a more deferential standard applies.[255] The *LPA* contains no such language. To the contrary, the LSA's powers are circumscribed by precise and narrow language and detailed delineations thereby "tightly constrai[n] the decision maker's ability to interpret the provision."[256]

191. In any case, and as will be seen, even on a reasonableness standard of review, the LSA's decisions are patently unreasonable. "Reasonable" means reasonable in process and

---

[250] *Vavilov* at paras. 16 to 17.
[251] *Vavilov* at paras. 17, 55 and 56.
[252] *Mouvement laïque québécois v Saguenay (City)*, [2015] 2 S.C.R. 3 ("***Saguenay***") at para. 49; *York Region District School Board v Elementary Teachers Federation of Ontario*, 2024 SCC 22 ("***York***") at para. 63.
[253] *Vavilov* at paras. 58 to 59, citing *Dunsmuir* at para. 60.
[254] *Dunsmuir* at paras. 51 and 55.
[255] *Vavilov* at para. 110; *TWU* at 33, 36 and 296; *Green v Law Society of Manitoba*, [2017] 1 S.C.R. 360 ("***Green***") at paras. 24 and 31.
[256] *Vavilov* at para. 110.

outcome.[257] In respect of outcomes, decisions must be justifiable, or "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law… "[258] where "some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning …"[259]

192. In respect of reasoning process, the LSA's reasons (such as they are) must:

    a. justify the decisions, transparently and intelligibly, using a rational chain of analysis, in relation to all facts and law that constrain it;[260]

    b. not come to peremptory conclusions without proper analysis;[261]

    c. consider all critical points;[262]

    d. not incorporate unfounded generalizations or absurd premises;[263]

    e. apply the "modern principle" of statutory interpretation[264] except as modified to suit the nature of a specialized tribunal[265] – here the LSA Benchers are largely lawyers (King's Counsel) and, therefore, subject to the modern principle without such modification;

    f. consider all key elements of the *LPA*'s and the *Constitution's* text, context and purpose that should properly weigh on its decision;[266] and

    g. expressly and properly consider *Charter* implications.[267]

193. The reasonableness standard does not grant *carte blanche* to the LSA or, to quote Justice Rand, "there is no such thing as absolute and untrammeled 'discretion'".[268] Therefore:

---

[257] *Vavilov* at paras. 83, 85 to 87, and 90.
[258] *Vavilov* at paras. 85, 86, 87.
[259] *Vavilov* at para 86.
[260] *Vavilov* at paras. 85, 86, 98, 103, 105.
[261] *Vavilov* at para. 102.
[262] *Vavilov* at para. 103..
[263] *Vavilov* at para. 107.
[264] i.e. that expressed in *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 S.C.R. 27 ("***Rizzo***") at para. 21, and *Bell ExpressVu Ltd. Partnership v Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 (S.C.C.), at para. 26, both quoting E. Driedger, Construction of Statutes (2nd ed. 1983), at p. 87.
[265] *Vavilov* at paras. 118 to 123.
[266] *Vavilov* at para. 122.
[267] *York* at paras. 68 and 94.
[268] *Roncarelli* at pg. 140.

a. even where some measure of discretion is granted, the court must discern the proper scope of that discretion and the LSA must not exceed it - sometimes there is a single reasonable interpretation of a statutory provision;[269] and

b. the decision must ultimately comply with the rationale and purview of the statutory scheme under which it is adopted.[270]

194. The foregoing analysis applies notwithstanding the "clearly warranted" standard expressed in *Pearlman*[271] and the significant deference granted to the Law Society of Manitoba in *Green v. Law Society of Manitoba*, 2017 SCC 20 ("***Green***")[272] *Vavilov* indicates that the "reasonableness" standard is a "single standard that accounts for context"[273] so no unique standard applies to law societies Please see a detailed of analysis of the *Green* decision, including in respect of the standard of review, below at section IV.A.i. Despite superficial similarities, *Green* very much supports a "correctness" standard applied to the within application.

IV. FACTS AND ARGUMENT

A. Impugned Rules

195. The Impugned Rules are set-out below for ease of reference:

> *67.1 (1) "Continuing professional development" is any learning activity that is:*
>
> *(a) relevant to the professional needs of a lawyer;*
>
> *(b) pertinent to long-term career interests as a lawyer;*
>
> *(c) in the interests of the employer of a lawyer or*
>
> *(d) related to the professional ethics and responsibilities of lawyers.*
>
> *(2) Continuing professional development must contain significant substantive, technical, practical or intellectual content.*
>
> *(3) It is each lawyer's responsibility to determine whether a learning activity meets these criteria and therefore qualifies as continuing professional development.*
>
> *67.2 (1) Every active member shall, in a form acceptable to the Executive Director:*

---

[269] *Vavilov* at para. 124.
[270] *Vavilov* at para. 108 and *Roncarelli* at pg 140.
[271] *Pearlman* at p. 887.
[272] *Green* at paras. 20 to 25.
[273] *Vavilov* at paras. 88 to 90.

(a) prepare a plan for their continuing professional development during the twelve month period commencing October 1 of each year; and

(b) submit the plan to the Society by October 1 of each year.

(2) Once the plan in subrule (1) has been prepared and submitted, every active member must

(a) maintain a copy of the plan for three years from the date of submission;

(b) produce a copy of the plan for review by the Society, on request; and

(c) participate in any review of the plan by the Society.

67.3 (1) Every active member who does not comply with Rule 67.2(1)(b) in a year shall stand automatically suspended as of the day immediately following the deadline.

(2) Rule 165.1 shall apply to any suspension under (1).

67.4 (1) Independent of Rules 67.1 through 67.3, the Benchers may, from time to time, prescribe specific continuing professional development requirements to be completed by members, in a form and manner, as well as time frame, acceptable to the Benchers.

(2) The continuing professional development requirements of subrule (1) may apply to all members or a group of members, as determined by the Benchers.

(3) Every active member required to complete requirements under subrule (1) who does not comply within the specified time frame shall stand automatically suspended as of the day immediately following the deadline.

(4) Rule 165.1 shall apply to any suspension under subrule (3).

196. Underlined in the paragraph above are the *ultra vires* elements. The amendments made to the Impugned Rules on April 27, 2023, are shown at Song Affidavit, Exhibit "ZZ".

i. Green v Law Society of Manitoba

197. *Green* appears to be most on-point and was expressly relied on by the LSA to justify the Impugned Rules as *intra vires*,[274] so we start there.

198. Despite superficial similarities, the facts of that case and the present action are completely different: both the legislation and the nature of the LSA's Impugned Conduct.

[274] Song Affidavit, Exhibit "EE", p. 624.

199. In *Green* the SCC found that the Law Society of Manitoba (the "**LSM**") (and, by extension, other law societies in Canada operating under substantially similar legislation) have the power to automatically suspend members who do not report CPD hours.

200. The applicant in that case correctly conceded that the LSM had the power to impose CPD requirements and make them mandatory through a system of reporting CPD progress to the LSM.[275] The only issue in that case[276] was whether the LSM could automatically suspend lawyers for their failure to comply with the mandatory CPD requirements.

1. Factual Distinctions

201. In the present case, Song does not challenge the LSA's right to impose CPD obligations of all sorts. The *LPA* clearly empowers the LSA to "establish a code of ethical standards …"[277] and, pursuant to that power, the LSA has promulgated the Code.[278] The Code properly requires that lawyers practice competently.[279] It would be *intra vires* for the Code to provide, for example, that, "a lawyer must consider her need for and obtain, on an ongoing basis, such CPD as the lawyer reasonably determines necessary to maintain ethics and competence."

202. Instead, what Song challenges is the LSA's jurisdiction to create and operate a mandatory program of CPD in which lawyers must: assess their "ethics and competence" against standard that do not relate to, and fundamentally conflict with, appropriate legal competence and ethics given the critical role of lawyers in upholding the rule of law;[280] create CPD plans in a form designated by the LSA; report their CPD plans to the LSA and subject those to discretionary LSA audit; complete specific CPD prescribed by the LSA; and complete CPD prescribed by the LSA which do not relate to, and fundamentally conflict with Core Competence and Ethics.

203. In this brief:

---

[275] *Green* at paras. 15 and 43.
[276] Apart from a procedural fairness issue, which is not relevant here.
[277] *LPA* at s. 6(l).
[278] The Code (Song Affidavit, Exhibit "G", p. 149).
[279] Code, Rule 3.1-2: "A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer."
[280] i.e. The categories of competence and ethics described at 67.1(a) to (d), being: substantive law and procedure related to the lawyer's area of practice; ethics consistent with duties of loyalty to the client and Constitution; and relevant and appropriate office-management skills and knowledge (for example, trust safety) ("Core Competence and Ethics"). As to the subject matter of the Profile, see below at Profile IV.D.i.

a. "**Independent CPD**" shall mean a CPD obligation substantially similar to that described at paragraphs ^ 18 and ^ 201 and which is not Mandatory CPD;

b. "**Mandatory CPD**" shall mean Specified Mandatory CPD, Unspecified Mandatory CPD or both;

c. "**Specified Mandatory CPD**" shall mean a CPD obligation to complete a course or courses of study specified by the LSA, excluding such CPD obligations as may be legally imposed under Part 3 of the *LPA*.

d. "**Unspecified Mandatory CPD**" shall mean a CPD obligation to:

   i. create CPD plans in a form designated by the LSA, including use of the CPD Tool or with reference to the Profile;

   ii. report CPD plans to the LSA; or

   iii. subject CPD plans and progress to any form of LSA audit,

   which is not Specified Mandatory CPD, excluding such CPD obligations as may be legally imposed under Part 3 of the *LPA*.

2. Legislative Distinctions

204. The legal professions acts in some Canadian jurisdictions, including British Columbia,[281]:

> *3 (1) The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.*[282]

205. Given:

a. Osler's statement the LSA would continue to, "utilize the Rules to advance its work where the legislation is outdated;"[283]

b. the LSA's Regulatory Objectives, which uses the term "public interest" seven times on the first page alone; and[284]

c. the LSA's failure to draw any distinction between the *LPA* and the *LPAM* throughout the record

---

[281] *TWU* at para. 32.
[282] *The Legal Profession Act*, C.C.S.M. c. L107 as at November 9, 2016 ("***LPAM***").
[283] Song Affidavit, Exhibit "ZZZ", p. 958.
[284] Regulatory Objectives (Song Affidavit, Exhibit "E", p. 104).

it would appear that the LSA is simply operating as if the *LPA* contains a public interest clause. Of course, it does not. The applicant submits that this legislative choice should be given effect.

206. The *LPAM* also includes a broad powers clause permitting the LSM to make rules to pursue the objective under the public interest clause:

> *4(5) In addition to any specific power or requirement to make rules under this Act, the benchers may make rules to manage the society's affairs, pursue its purpose and carry out its duties.*

207. The *LPAM* includes a specific statutory power to impose a "system" and "program" of CPD:

> *43 The benchers may*
>
> *(c) establish and maintain, or otherwise support, a system of legal education, including the following:*
>
> *…*
>
> *(ii) a continuing legal education program.*

208. The *LPA* contains no such provisions. Of course, in statutory this matters.[285]

209. Both the *LPA* and *LPAM* do contain the following clause, mentioned by *Green* only in *obiter dicta*:

> *4(2) The benchers shall govern the society and manage its affairs, and may take any action consistent with this Act that they consider necessary for the promotion, protection, interest or welfare of the society.*[286]
>
> *6 The Benchers may by resolution … (n) take any action and incur any expenses the Benchers consider necessary for the promotion, protection, interest or welfare of the Society.*[287]

210. This clause is clearly related to the interests of the law societies themselves, not the profession or public *writ* large. It cannot reasonably be interpreted to mean that the LSA has the power to regulate the profession or transform the administration of justice if it benefits the corporation. As explained below,[288] an absurd interpretation of this sort could be avoided by application of the modern principle of interpretation.

211. To use the language of *Vavilov*, while the *LPAM* employs "broad, open-ended or highly qualitative language – for example, 'in the public interest'," the Alberta legislature

---

[285] *Rizzo.*
[286] *LPAM.*
[287] *LPA*.
[288] In section IV.A.ii.

obviously, "wishe[d] to precisely circumscribe [the LSA's] decision maker's power … by using precise and narrow language and delineating the power in detail, thereby [more] tightly constraining the decision maker's ability to interpret the provision[s].[289]

212. The *LPA*'s narrowly worded provisions are analysed at section IV.A.ii, below.

3. Standard of Review

213. *Green* was decided post-*Dunsmuir* and pre-*Vavilov*. As explained above, *Vavilov* imposes a "single standard that accounts for context"[290] so no unique standard applies to law societies *per se*.

214. In *Green* the Court acknowledged that the Manitoba legislature had granted duties and powers to the LSM employing very broad statutory language (i.e. "uphold and protect the public interest") evidencing, consistent with *Vavilov*,[291] a grant of statutory discretion to the LSM to determine what those words mean:[292]

> *The Law Society must therefore be afforded considerable latitude in making rules based on its interpretation of the "public interest" in the context of its enabling statute …*

215. The precise and narrow language of the *LPA*, by contrast, denote considerably less latitude, i.e, a less deferential standard of review.

216. In *Green* the Court found the issue – a highly particularized rule (automatic suspension) which "only [applies] to members of the profession"[293] – to auger towards a deferential standard. As shall be seen below, while the CPD Scheme at issue in this case technically only applies to members, unlike Green, the CPD Scheme undermines the rule of law. The general public, therefore, has a significant interest (whether or not they are aware of it) in seeing the CPD Scheme (and the LSA's broader Political Objectives) eliminated.

217. In *Green*, broader deference was also recognized on the basis the LSM had:

> *… expertise in regulating the legal profession "at an institutional level" … This Court has previously recognized that self-governing professional bodies*

---

289 *Vavilov* at para. 110.
290 *Vavilov* at 88 to 90.
291 *Vavilov* at para. 110; see also *TWU* at 33, 36 and 296.
292 *Green* at 22 and 24.
293 *Green* at para. 23.

> *have particular expertise when it comes to deciding on the policies and procedures that govern the practice of their professions…*[294]

218. Given the issue before the Court in *Green*, this was recognition that the LSM had expertise in matters of administration and, in particular, whether an automatic suspension was a reasonable administrative means of ensuring compliance with CPD rules.[295]

219. Song's complaint, by comparison, is that the LSA is pursuing Political Objectives which undermine the rule of law. It is this Honourable Court, not the Benchers, which is both the "expert" and constitutional entity ultimately responsible[296] to safeguard the conditions necessary to preserve the rule of law.[297]

220. Given the subject matter of this action – the rule of law – it is, particularly important to observe the rule when deciding these issues. If the words in *Green* (and, to similar effect, in *Vavilov*) which express legal principles relevant to determining the appropriate standard of review are to have meaning significantly different words must be taken to have different meanings.

221. According to the principles expressed in *Green* and *Vavilov*, therefore, tight language and an issue of general legal importance demand a standard of correctness.

4. Green and the Public Interest

222. Again, it is the "public interest" that the rule of law be preserved, which requires that lawyers be competent, resolute and loyal advocates for each client's interests within the bounds of legality. It is the public interest, therefore, that the LSA, reasonably, legally, and constitutionally pursue its statutory objects: reasonably ensuring the Core Competence and Ethics of the Alberta bar and indemnifying vulnerable third party's where such competence and ethics are lacking.

223. That is not to say: the Law Society should and has the power, therefore, to do whatever it thinks is in the "public interest."

224. The LSA's objectives are those assigned to it by the legislature. The LSA's powers are those granted to it by the legislature. The LSA acts in the public interest by pursuing its legislatively assigned objectives using its legislatively assigned powers.

---

[294] *Green* at para. 25.
[295] *Green* at para. 47.
[296] Subject to constitutional amendment.
[297] *Singh*.

225. As it related to this action, the LSA acts (or should act) in the public interest by promoting (not undermining) the competence, ethics and independence of lawyers to loyalty serve their clients and, thereby, to uphold the rule of law.

226. However, as explained at paragraph ^ 272, the LSA seems to think its statutory objective is to pursue the public interest. The LSA appears to be confusing why it was given powers with what powers it was given.

227. The LSA seems to think that because the legislature, in pursuit of the "public interest", assigned the LSA certain statutory objectives and powers, the LSA was therefore also assigned the objective of "pursuing the public interest." The LSA is conflating the legislature's motives with its actions.

228. Take, for example, a police department that, in pursuit of the "public interest", assigns a mechanic the objective of servicing police vehicles. The mechanic is not, thereby, assigned the task of fighting crime. His objective remains to service vehicles, although everyone understands he is doing so in the public interest. The police department's motives are to fight crime. Its actions are to hire a mechanic.

229. With respect, this Honourable Court must not lapse into the false syllogism that:

    a. it is in the public interest that the rule of law be maintained;

    b. the rule of law is maintained by the bar's competence and ethics;

    c. the LSA is the statutory vehicle by which the legislature seeks to ensure the bar's competence and ethics; and

    d. therefore, the LSA has the objective and authority to pursue the "public interest."

230. The correct syllogism is that:

    a. it is in the public interest that the rule of law be maintained;

    b. the rule of law is maintained by the bar's competence and ethics;

    c. the LSA is the statutory vehicle by which the legislature seeks to ensure the bar's competence and ethics; and

    d. therefore, the public interest is served by the LSA pursuing its statutory objects (competence and ethics) using its statutory authority.

231. In any case, and returning to the appropriate standard of review:

a. for reasons set-out above, the correctness standard applies here; and

b. alternatively even on a highly deferential standard of review, the LSA's Impugned Conduct is patently unreasonable.

ii. The Modern Rule of Interpretation

232. The words of the *LPA* must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the act and the intention of legislature.[298]

233. The intention of legislature is understood, in part, from the act's purpose in light of the constitutional context of legal regulation set out above at sections III.A to III.B.ii and, in part, from the specific words of the act and their entire context.[299]

1. The Scheme of the Act

234. The *LPA* continues[300] the Bencher governed,[301] officer managed[302] LSA.

235. The *LPA* contains no public interest clause. Its objects must be discerned from the narrower duties and powers it grants.

236. Under the *LPA*, the LSA:

a. controls membership in the bar[303] and, with such membership, the right to practice law in Alberta;[304]

b. may assist members or former members in their personal capacity by means of a special fund for the aged, infirm or disabled[305] or by group insurance;[306]

c. governs the corporate structures by which members may practice;[307]

d. provides protections to third parties in case of defalcation[308] and negligence;[309]

---

[298] *Rizzo* at para. 21.
[299] *Vavilov* at para 118 to 120.
[300] *LPA* at s. 2.
[301] *LPA* at ss. 9 to 19.
[302] *LPA* at s. 24 to 26.
[303] Part 2 – Membership and Qualification to Practice.
[304] *LPA* at s. 106.
[305] *LPA* at s. 6(j).
[306] *LPA* at s. 6(k).
[307] For example, *LPA* at ss. 8(1) (LLP's), Part 8 (PC's).
[308] *LPA* Part 4 Division 1 (Assurance Fund) and Division 2 (Seizure).
[309] *LPA* Part 5 (Indemnity Program).

e. may provide other law-related services to the public including participating in Legal Aid,[310] operating law libraries,[311] publishing caselaw[312] and making appointments to the Alberta Law Foundation.[313]

237. The Alberta Law Foundation is largely controlled by the Minister of Justice.[314]

238. In the *LPA*, the Alberta Law Foundation – and not the LSA – is given the object of "conducting research into and recommending reform of law and the administration of justice."[315] This is consistent with the duty of loyalty lawyers owe to the "fundamental structure of our country as it is."[316] The LSA, itself, should not take any hostile view of Canada's laws or *Constitution*, lest such view transmit to the members. Like members, the LSA is to be loyal to the *Constitution*, including the rule of law, just as are members.

239. In respect of enrollment to the bar, the *LPA* is granted authority (and discretion) to:

a. determine academic pre-requisites;[317]

b. establish and operate the bar course;[318]

c. establish other examinations;[319]

d. structure articles;[320] and

e. determine what constitutes "good character and reputation."[321]

240. The *LPA* grants the LSA the power to "authorize or establish a code of ethical standards for members and students-at-law and provide for its publication" (i.e. the Code).[322] The *LPA* does <u>not</u> contemplate the LSA being involved in ongoing supervision or proactive enforcement of lawyer compliance with the Code.

---

[310] *LPA* at ss. 4 and 119(5).
[311] *LPA* at ss. 6(h), 6(i), 7(2)(u) and Part 7.
[312] *LPA* at s. 6(g).
[313] *LPA* at Part 7.
[314] The Minister or delegate is on the board, appoints 2 members, and designates the chair, while the LSA appoints 2 members and the board itself appoints another 2 members – *LPA* at s. 120(1).
[315] *LPA* at 2. 119(a)(i).
[316] See above at section III.B.ii.2.
[317] *LPA* at s. 37(1)(a).
[318] *LPA* at ss. 6(m), 7(2)(k), 36, 37, etc.
[319] *LPA* at ss. 37(1)(c) and (e).
[320] *LPA* at s. 37(1)(d).
[321] *LPA* at s. 40.
[322] *LPA* at s. 6(m).

241. In fact, the act contemplates virtually no ongoing LSA involvement, supervision, investigation, audit, or "review" of the lawyer's professional practice following enrollment in any manner except:

    a. trust audits;[323] and

    b. investigations, conduct reviews, practice reviews and conduct hearings[324] after conduct proceedings are commenced[325] for "conduct deserving of sanction," in respect of which the member is afforded the right of counsel.[326]

242. Likewise, the *LPA* contemplates LSA involvement in education in only two respects:

    a. the bar course prior to enrollment; and

    b. after conduct proceedings are commenced[327] for "conduct deserving of sanction," as a condition of further practice.[328]

243. The act nowhere mentions or implies LSA involvement in CPD.

244. The only entity contemplated by the *LPA* to be involved in ongoing education efforts is, again, the Alberta Law Foundation whose objects include: "contributing to the legal education and knowledge <u>of the people of Alberta</u> and providing programs and facilities for those purposes."[329]

245. This is all consistent with a statutory prioritization of professional independence.

246. For reasons that will be explored below at section IV.D.i, it is also important to note that conduct proceedings are automatic and mandatory. The proceeding is commenced automatically[330] upon, *inter alia*, the LSA receiving a complaint of or becoming aware of "conduct deserving of sanction" defined as follows:

> *49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that*
>
> *(a) is incompatible with the best interests of the public or of the members of the Society, or*

---

[323] *LPA* at s. 7(2)(p) and (q).
[324] *LPA* at ss. 55 to 59.
[325] *LPA* at s. 50(3).
[326] Except in respect of s. 55 investigations; see *LPA* at s. 64.
[327] *LPA* at s. 50(3).
[328] *LPA* at ss. 72(2)(a)m, 73(1)(a) and (b), 73(4)(b)(i) and 77(1)(d)(ii).
[329] *LPA* at s. 119(a)(iii).
[330] *LPA* at s. 50(3).

(b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

247. The act requires that members take certain oaths "in open court" including the "oath of allegiance" by which members, "commit themselves to upholding the rule of law, which is a bedrock of our constitutional democracy."[331] The LSA's objects and conduct must, therefore, support and not interfere with such loyalty.

248. The overall scheme of the act shows that the LSA is to be heavily involved in the lawyer's competence and ethics at the time of admission to the bar, provide lawyers the guidance of an ethical code, and then leave them alone to independently practice law in their professional discretion barring future misconduct, just as the LSA operated, to the satisfaction of the public[332] for its first century.[333]

249. In a word, following enrollment, the LSA's duties are reactive, not proactive.

2. The Objects of the Act

250. As can be discerned from the scheme of the *LPA*, and the constitutional context, the objects of the LSA are, in the main, as follows:

a. The LSA is to protect vulnerable third parties from defalcation, negligence, and unethical practice by lawyers;

b. The LSA is to achieve these objects by:

i. ensuring lawyers exhibit Core Competence and Ethics at admission;

ii. establishing and publishing a code of ethical standards for members;

iii. investigation and sanctioning lawyers who exhibit competence and ethical failures following admission (including, presumably, breaches of the Code); and

iv. "insuring" third parties against defalcation and negligence by means of an assurance fund and indemnity program;

c. The LSA is to protect the justice system and the Canadian *Constitution*, including the rule of law, from the negligent and unethical conduct of by lawyers;

---

[331] See above at section III.B.ii.2.
[332] See above at para. 20.
[333] The Regulatory Objectives (Song Affidavit, Exhibit "E", p. 101).

d. The LSA is to achieve these objects by:

i. complying with those duties and exercising those powers referred to at subparagraph 250.b, above;

ii. notwithstanding its substantial powers over lawyers, to sedulously maintain, "so far as by human ingenuity it can be so designed," the freedom of enrolled members of the bar from further state interference, especially political sense;[334] and

iii. remaining, itself, loyal to the Canadian *Constitution*, including the rule of law, including not taking any hostile view of Canada's laws or *Constitution* or communicating such hostility to members.

251. These objects are consistent with the proper role of a law society given the fundamental role lawyers play in the administration of justice to uphold the rule of law and Canadian freedom – the freedom of clients to pursue their legal interests constrained only by the law and appropriate legal ethics[335]

252. Returning now to Osler's statement that:

> *… In the meantime, the Law Society continues to utilize the Rules to advance its work where the legislation is outdated.*[336]

we see a serious misunderstanding as to who assigns the LSA's "work." The legislature assigns work. The LSA has no work outside what it is assigned by the legislature. If the *LPA* is "outdated", the LSA's work is outdated. The LSA here admits having taken-on objectives outside of the LPA – objectives not assigned to it by the legislature. This render all of the LSA's modern work (i.e. its Political Objectives) *ultra vires* and an abuse of discretion.

253. Further, as we will see, the danger inherent in a statutory delegate choosing for itself what to do with the powers entrusted to it by the legislature, is brilliantly demonstrated in the nature and effect of the particular work the LSA chose for itself.

---

[334] See above at section III.B.ii.
[335] See above at section III.B.ii and III.B.ii.1.
[336] Song, Exhibit "ZZZ", p. 958; referred to above at para. 70.

iii. The LSA has no Power to Mandate CPD

254. As discussed above, the *LPA* contains no express power for the LSA to impose Unspecified Mandatory CPD or, a *fortiori*, Specified Mandatory CPD. Nor is such power otherwise implied.

255. In *Green*, the Court was to determine if, notwithstanding the *LPAM* contained no express right to automatically suspend a lawyer for non-compliance with Mandatory CPD requirements, the LSM nonetheless had that power. The LSM had the power to impose Mandatory CPD, the power to impose sanctions for non-compliance, and a broad public interest power.[337] The Court referred to the legal principle that:

> *… the Act must be construed such that the powers it confers "include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature,"*[338]

as set-out, also, in Manitoba's *Interpretation Act* which provides that:

> *… [t]he power to do a thing or to require or enforce the doing of a thing includes all necessary incidental powers.*[339]

256. The Court found that automatic suspension was a "practically necessary" power to accomplish its CPD and public interest powers. Green was, therefore, a very narrow ruling. It comes nowhere close to establishing what the LSA claims:

> *The ability of Canadian Law Societies to establish such programs and administer them through Rules was confirmed by the Supreme Court of Canada in Green v. Law Society of Manitoba, 2017 SCC 20, [2017] 1 SCR 360.*[340]

257. Putting that aside, Alberta's *Interpretation Act*[341] contains a similar clause:

---

[337] *Green* at paras. 33, 34.
[338] *Green* at para. 42 quoting *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140 (S.C.C.), at para. 51.
[339] *Green* at para. 42.
[340] A-157.
[341] RSA 2000, c I-8.

> *25(2) If in an enactment power is given to a person to do or enforce the doing of any act or thing, all other powers that are necessary to enable the person to do or enforce the doing of the act or thing are deemed to be given also.*

258. The LSA's "necessarily incidental" powers are of no assistance to the LSA, however, because there is, in the first place, no power given to the LSA to impose Mandatory CPD or to proactively supervise the competence and ethics of lawyers (barring misconduct).

259. Demonstrating no express, implied or necessarily incidental power to impose Mandatory CPD in the *LPA*, the applicant turns to the LSA's stated reasons in support of the vires of the Impugned Rules.

iv. The LSA's Reasons in Support of the Impugned Rules

260. In the LSA's letter of December 6, 2022,[342] issued shortly before the special meeting, Osler claimed jurisdiction to impose Mandatory CPD, including Specified Mandatory CPD, under the *LPA* and the Truth and Reconciliation Commission of Canada's Call to Action 27.

1. Claimed Jurisdiction Under the LPA

261. The LSA claimed jurisdiction under *LPA* sections 6, 7(1), 7(2)(g) and 7(2)(v).

262. Almost all of the provisions under section 6 are plainly inapplicable, for example, the power to enter contracts, establish committees, publish caselaw, etc.[343]

263. The only provisions under section 6 which warrant consideration are, first:

> *(l) authorize or establish a code of ethical standards for members and students-at-law and provide for its publication;*

264. Song does not dispute this permits the LSA to impose, *via* the Code, Independent CPD (as had been done, effectively, at Code Rule 3.1-2).

265. Instead, Song, on a plain reading disputes that a program of Specified Mandatory CPD constitutes a "standard". "Program" and "standard" are different concepts. A standard is:

> *… an object or quality or measure serving as a basis or example of principle to which others conform or should conform or by which the accuracy or*

---

[342] Song Affidavit, Exhibit "EE", p. 624.
[343] *LPA* at ss. 6(a), (c) and (g).

> *quality of others is to be judged … the degree of excellence etc. required for a particular purpose.*[344]

266. A requirement to complete CPD is not a "quality" or "measure". While completing CPD may improve a lawyer's quality or measure, it might not and the requirement to take the program is not, itself, a "quality." Nor should a "standard" be confused with a "credential".

267. In any case, the provision is to be interpreted according to the modern principle in which the words, in their grammatical and ordinary sense, are to be read in their entire context and harmoniously with the scheme of the Act, the object of the Act, and the intention of legislature.

268. The act provides the LSA no jurisdiction to proactively monitor, supervise or "educate" lawyers between enrollment and discipline. The object of the act is to maintain a lawyer's independence, "so far as by human ingenuity it can be so designed."

269. In that scheme and context it becomes apparent that the power to impose ethical conditions on lawyers is not a blank cheque for the LSA to expand its statutory objects (and most especially, not an invitation to wade into politics.[345] The LSA cannot impose Mandatory CPD by way of the Code.

270. Second, there is:

> *(n) take any action and incur any expenses the Benchers consider necessary for the promotion, protection, interest or welfare of the Society.*

271. As explained above at paragraph ^ 210 ^, there is a potential "plain meaning" interpretation of this clause which leads to an absurd result (that the absence of a public interest clause in the *LPA* makes no difference at all). While this absurd result could also be resolved by application of the modern principle, the plain meaning of the words does not permit the absurd interpretation.

272. The implications of the LSA's reliance on this provision should, however, be considered. The LSA is saying it is in the LSA's interest that lawyers be educated to remain competent and ethical. Given that the LSA regulates in the public interest, that makes little sense. Really what the LSA must mean by this is that legal competence and ethics is in the LSA's interest because it is in the public's interest. In other words, the LSA seems to interpret

---

[344] Oxford 1357.
[345] See above at section III.B.ii.

section 6(n) as equivalent to Manitoba's (and British Columbia's) public interest provision and general rule-making powers, combined, which read as follows:

> *3(1) The purpose of the society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence.*
>
> *…*
>
> *4(5) In addition to any specific power or requirement to make rules under this Act, the benchers may make rules to manage the society's affairs, pursue its purpose and carry out its duties.*[346]

273. The LSA, therefore, appears to take two provisions which are manifestly and substantially different and (*LPA* s. 6(n) and *LPAM* ss. 3(1) and 4(5)) "interpret" them to mean the same thing. This is a violation of the rule of law. Under the rule of law, words matter.

274. In addition, the "public interest" and "welfare of the society" clauses must have different meanings. The LPAM already contains a public interest clause which would render the "welfare of the society" clause unnecessary and redundant.[347]

275. Next, the LSA relies on section 7(1):

> *7(1) The Benchers may make rules for the government of the Society, for the management and conduct of its business and affairs and for the exercise or carrying out of the powers and duties conferred or imposed on the Society or the Benchers under this or any other Act.*

276. The observations above apply with equal force to the LSA's reliance on this "basket" clause. In addition, it must be noted that the basket clause is expressly limited to: "powers and duties conferred or imposed on the Society or the Benchers under this or any other Act." By its plain meaning it does not <u>expand</u> the LSA's powers, it <u>facilitates</u> the LSA's powers. Its meaning is no different than section 25(2) of the *Interpretation Act*.

277. The LSA also relies on section 7(2)(g)[348] and section 7(2)(v):

---

[346] *LPAM*.
[347] Contrary to the rule against redundancy: *Newman v Grand Trunk Railway* (1910), 20 O.L.R. 285; *Medovarski v. Canada (Minister of Citizenship & Immigration),* 2005 SCC 51 at para. 31 to 38 and 49.
[348] This is not in issue. If the LSA has the power to compel lawyers to do something, subject to the overarching requirements of reasonableness, legality, and constitutionality, they likely have the power to automatically suspend.

> *(v) respecting the information required to be furnished to the Society by members or students-at-law or by persons acting for them.*

278. Again, the observations above apply with equal force to the LSA's reliance on this these clauses.

279. In conclusion:

a. the *LPA* contains no express power to impose any CPD obligation;

b. the *LPA* contains no implied power to impose Mandatory CPD;

c. the scheme of the act indicates that the LSA is not to be proactively involved in the lawyer's practice following enrollment and barring misconduct, except in narrow respects including trust audits; and

d. to the extent authority to impose Mandatory CPD might be found in the plain and general meaning of various *LPA* provisions, the entire context, the scheme of the act, the intention of legislature, and the Golden Rule (to the extent it needs to be resorted to) demonstrate, clearly, that these provisions do not grant that power.

2. Claimed Jurisdiction Under the TRC

280. The LSA also claims jurisdiction to impose Mandatory CPD because:

> *Canadian law societies are working to respond to the Truth and Reconciliation Commission of Canada (TRC) Calls to Action. Specifically, Call to Action 27 [which] provides:*
>
> > *We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of resident schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.*[349]

281. Taking the LSA's statement, at face value (i.e. based on its plain language) the LSA is claiming legal authority to impose Mandatory CPD (in a vast array of impugned subjects) from a federal commission established pursuant to a settlement agreement with, so far as

---

[349] Song Affidavit, Exhibit "EE", p. 624.

the applicant is aware, no power to delegate statutory power and, as the applicant is aware, no power to delegate statutory power under provincial jurisdiction.

282. The constitutional violation this claimed jurisdiction represents, at face value, can hardly be overstated. It is a clear violation of the principles of federalism, the rule of law:

> *[b]y virtue of the rule of law principle, all exercises of public authority must find their source in law. All decision-making powers have legal limits, derived from the enabling statute itself, the common or civil law or the Constitution,* [350]

and parliamentary sovereignty:

283. The SCC recognizes parliamentary sovereignty as a principle underlying our *Constitution*

> *A structural analysis of the underlying principles of our Constitution… In the present case, two of these principles can shed light on the issue of Charter compliance: first, the separation of powers, and second, parliamentary sovereignty, an expression of the fundamental principle of democracy …*
>
> *…*
>
> *...the principle of parliamentary sovereignty [is] a cornerstone of our Constitution… This unwritten principle has been defined…* [351]

284. We must, therefore, grant the LSA the benefit of the doubt. The LSA did not intend those words be understood by their plain meaning. Rather, the LSA must have been claiming something along the lines of: Specified Mandatory CPD in the area of "cultural competence" is in the public interest because the TRC says so; we have statutory authority to deploy our regulatory powers pursuant to our view of the public interest; therefore, we have the regulatory power to impose this particular Specified Mandatory CPD along with further Specified Mandatory CPD including "anti-racism."

285. The observations above sufficiently dispense with this argument. The LSA does not have the broad power to deploy its power over lawyers to do whatever it deems in the "public interest."

286. Therefore, the LSA has no statutory power to impose Mandatory CPD.

---

[350] *Dunsmuir*.at para. 28.
[351] *R. v Chouhan*, 2021 SCC 26 at paras. 128 and 138.

287. However, there is a more fundamental point to be made which will echo throughout this brief.

288. Even if it were admitted that the LSA had some statutory power, for example, to impose Mandatory CPD, such power can only be exercised in pursuit of the legislative objects (which are explored in detail above at sections III.A to III.B.iii.1 and section IV.A.ii.2).

289. Quoting Justice Rand in *Roncarelli* at paragraphs 40 and 41):

> *It is a matter of vital importance that a public administration that can refuse to allow a person to enter or continue a calling which, in the absence of regulation, would be free and legitimate, should be conducted with complete impartiality and integrity; and that the grounds for refusing or cancelling a permit should unquestionably be such and such only as are incompatible with the purposes envisaged by the statute: the duty of a Commission is to serve those purposes and those only. A decision to deny or cancel such a privilege lies within the "discretion" of the Commission; but that means that decision is to be based upon a weighing of considerations pertinent to the object of the administration.*
>
> *In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption …*

290. Even if the LSA had the power to impose Mandatory CPD (or to engage in any other Impugned Conduct) it could still only exercise such power for the purposes the power was granted which, most fundamentally, is to **uphold** the rule of law by ensuring lawyers are resolute advocates loyal to their clients and loyal to the *Constitution*. To use its powers for

any other purpose whatsoever (an "**Abuse of Improper Objectives**") is an abuse "as objectionable as fraud or corruption."

291. It necessarily follows that for the LSA to use the powers entrusted to it for objectives subversive to or opposed to the *LPA*'s objectives (an "**Abuse of Subversive Objectives**") would be more objectionable still; far more.

292. CPD in support of Core Competence and Ethics is reasonably described in Rule 67.1(1) as substantive content relevant to: the lawyers professional needs or long-term career interests; an employer's interests; or related to professional ethics and responsibilities.

293. However, Rule 67.4 operates "independent" of those specifications, which permits the LSA to impose Specified Mandatory CPD irrelevant to the lawyer's Core Competence and Ethics. Further, the only use to which the LSA has yet put Rule 67.4 was mandating The Path which was clearly irrelevant to Core Competence and Ethics.

294. As will be seen below, The Path related to matters of epistemology, moral and metaphysical relativism, history, economics, sociology, spirituality, psychology, race and culture.[352] Its primary aim appears to have been to advocate for indigenous Canadians to be insulated from the ongoing "legacies of colonialism" within separate political and legal system.

295. Obviously, such content is well outside what has, under our *Constitution* traditionally, been understood to constitute appropriate *curriculum* to support Core Competence and Ethics.

296. Apart from the subject matter and putting aside the questions of whether The Path was accurate or balanced; alleviated or entrenched racial stereotype; or advocated sound policy, the fact that it advocated for policies at all demonstrates it was not Core Competence and Ethics. Lawyers are not in the business of legislative policy.

297. These themes will be explored in greater detail below. For present purposes, the applicant notes that Rule 67.4 operates "independent" of Rule 67.1 so that the LSA can impose Specified Mandatory CPD which is not, in fact, relevant to Core Competence and Ethics – as it did with The Path.

298. Rule 67.4 is, therefore, worded in such a way as to permit the pursuit of purposes which are foreign to the *LPA* (i.e. an Abuse of Improper Objectives) and, as such, is *ultra vires*.

---

[352] The Path (Song Affidavit, Exhibit "X", p. 442).

B. <u>The Applied Postmodern Theories</u>

299. The LSA's Political Objectives are its adoption of and promotion of various postmodern applied theories including critical race theory ("**CRT**"), "Postcolonialism" and "Gender Theory", which are identified in the application by their common, collective labels: "social justice", "political correctness", "DEI," or "woke" (referred to herein as the "**Theories**").

300. By "applied" the applicant means that the Theories do not simply explain how things work, they are also a set of instructions for how to go about changing things. One who adopts the Theories does not simply change their perspective, they advance the Theories and the goals of the Theories through "intentional, positive and conscious efforts."[353]

301. The Theories inform and are plainly present throughout the LSA's Materials including the Profile. In fact, the LSA's Political Objectives are the Theories.

302. As will be seen, the LSA is advancing its Political Objectives (the Theories) through various intentional, positive, and conscious efforts including, most especially, Specified Mandatory CPD, the Profile and the Impugned Code.

303. As will be demonstrated, not only are the LSA's Political Objectives an Abuse of Improper Objectives, when the LSA's Political Objectives (the Theories) are fully understood (which takes much effort) it becomes obvious that the LSA's Political Objectives are an Abuse of Subversive Objectives.

304. In this section, the applicant will explain the Theories and locate them in the LSA's Materials. In the next sections, the applicant will (further) demonstrate why they are an Abuse of Subversive Objectives.

305. The expert report of Dr. Joanna Williams[354] ("**Williams**") provides a descriptive summary of the Theories, demonstrates that the Theories are present throughout the LSA's Materials (including the LSA's only Specified Mandatory CPD to date) and, thereby, assists in elucidating some of the Theories' major features which, the applicant will show, are fundamentally inconsistent with the *Constitution*.[355]

306. William's expert Report is admissible:

---

[353] The Profile (Song Affidavit, Exhibit "HHH", p. 780)
[354] Affidavit of Joanna Williams, sworn October 23, 2023, at Exhibit "A" (the "**Report**").
[355] The Report references a useful liberal critique of the Theories: Pluckrose, H. and Lindsay, J. (2020) Cynical Theories, Pitchstone.

a. It is relevant and necessary. It explains the Theories which are opaque, dense, unintuitive, and often misleading as they redefine familiar terms like “diversity” and “equity” and “inclusion”. Unless the Theories are well understood, how and why they are subversive cannot be understood. While the Theories inform and are present throughout the Materials, the LSA nowhere plainly just spells-out for lawyers what they really mean. In fact, the LSA distanced itself from its own Resources when confronted with them.[356] Also, as the LSA’s Education Manager said (referencing the Profile):

> *It was recognized that these Performance Indicators are not easy to understand as they are niche areas. Ms. Bailey advised that tools will be made available to assist people who are interested in learning more about certain areas.*[357]

307. The Williams report is an indispensable tool for this Honourable Court to understand these “niche” Theories.

308. There is no exclusionary rule that applies.

309. Williams is clearly an expert in the field, as demonstrated by her qualification at page 1 of her Report and her attached curriculum vitae. The Theories are the subject of her studies, doctoral thesis, and life’s work lecturing and writing. She literally wrote the book: “How Woke Won”.

310. Williams recognizes and confirms that her Report is provided in accordance with her duty to this Court to give fair, objective, and non-partisan opinion evidence. Her Report is manifestly impartial. It reflects an objective assessment of the relevant questions and does not unfairly favour the applicant’s position.

311. The LSA did not challenge the admissibility of the Report.

312. In very brief summary, Williams explains that the Theories are the product of 1960’s “postmodernism”:

> *… postmodernism represents a rejection of grand narratives - broad, universal theories for making sense of the world and society. Postmodernism rejects Christianity and Marxism but also, most fundamentally, the Enlightenment values of reason and rationality associated with the scientific*

---

[356] See below at para. 670.
[357] F-373.

> *method. In place of grand narratives, postmodernists consider "power" crucial to understanding the workings of society. Power, it is argued, is only rarely exercised explicitly. Rather. it is expressed through language and, most especially, "discourse" which shapes thought and frames how people make sense of the world and their place in it. As people communicate through language, we reproduce a dominant discourse and become complicit in the exercise of power, including in our own oppression.*[358]

313. In other words, there is no such thing as objective, empirically discoverable truth. There is only a simulacrum of truth constructed in people's minds through the power of language for the purpose of maintaining hierarchies of oppression, the principles of the Enlightenment, including universalism, being only one such constructed and oppressive reality.

314. Further, unique among various "discourses", the Theories ascribe Enlightenment values such as reason, rationality, objectivity, universalism, and Western notions of law and justice to "whites" and "colonialism" and, rather than view them as good things which can universally uplift people of every race and creed, they view them as a "sham" invented to maintain social dominance – i.e. cynical systems of power to preserve white supremacy:[359]

> *In relation to CRT and postcolonialism, racism is built into the fabric of societies designed by white people, for the benefit of white people.*[360]

315. In place of the "white" or "colonial" concept of objectivity:

> *For Michel Foucault, truth exists … only in "circular relation with systems of power which produce and sustain it."*[361]

316. There is, therefore, only subjective truth verifiable only by reference to the identity of the speaker: "lived experience", "my truth", "spiritual truth", or "cultural truth."[362]

317. Contrary to the civil-rights era which "emphasized universal human traits …" the Theories view it as <u>necessary</u> to identify people by racial categories to ameliorate conditions of disadvantage. From this perspective, Martin Luther King Jr.'s concept of "color blindness"

---

[358] The Report at p. 6.
[359] The Report at pp. 3, 4, 6, 25 and 31.
[360] The Report at p. 31.
[361] The Report at p. 29.
[362] The Report at p. 29 and 30.

is actually an impediment to progress and, therefore, a "cover for white supremacy."[363] The Theories, therefore, entrench divisions between racial groups.

318. As to the meaning of "race" and its relationship to the Theories, Williams explains that:

> *CRT is an ideology which understands race not as a biological or scientific category-type but as a socially constructed concept, ie: race is created and made meaningful by people collectively, over time and place. Today, this view is generally accepted and the so-called "scientific racism" prevalent in the first decades of the 20th Century has been widely discredited.*
>
> *This is not to argue that there are no physical differences between people (ie: skin color) but that the process of classifying people into distinct groups on the basis of such characteristics is an arbitrary exercise.*[364]

319. One of the LSA's "key" Resources, the Glossary similarly tells us (referencing "scientific racism")

> *'Race' is a socially constructed phenomenon, based on the erroneous assumption that physical differences such as skin colour, hair colour and texture, and facial [or other physical] features are related to intellectual, moral, or cultural superiority. The concept of race has no basis in biological reality and, as such, has no meaning independent of its social definitions" … In other words, race is a "concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies" … Although race is socially constructed, it significantly affects the lives of people of colour and Indigenous people.*[365]

320. But the Glossary also tells us:

> *People of Colour [is a] .. term which applies to non-White racial*[366] *or ethnic groups; generally used by racialized peoples as an alternative to the term "visible minority." The word is not used to refer to Aboriginal peoples, as they are considered distinct societies under the Canadian Constitution. When*

---

[363] The Report at p. 3
[364] The Report at p. 2.
[365] Song Affidavit, Exhibit "LLL", p. 832.
[366] Note the Resource here overtly uses the term "race".

> *including Indigenous peoples, it is correct to say "people of colour and Aboriginal peoples.*[367]

321. In other words, the Theories do not reject the existence of race as a category and the Theories themselves categorize people by race. The Theories simply reject (at least, expressly) the idea that – beyond "skin colour, hair colour and texture, and facial [or other physical] features" – racial categories imply anything else about the person. Of course, the applicant agrees, people should be judges on the content of their character not the color of their skin.

322. Things get somewhat confused, however, because, as Williams explains, the Theories conflate culture and race:

> *One criticism of CRT is that, in emphasizing arbitrary racial categories, it rehabilitates racial thinking (most often under the label "culture").*

323. In the LSA's Materials, culture is defined to include race, meaning there is an inherent relationship between race and culture:

> *Culture is the summation of an individual's ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical attributes, marital status, and a variety of other characteristics.*[368]

324. Similarly, The Path instructs lawyers on matters of "cultural" competence when dealing with "indigenous people" which it defines as the people who "have lived here for thousands of years."[369]

325. As will be seen, the Theories do, in fact, attribute moral and cultural attributes to people on the basis of race (and other identity characteristics) while often obscuring the connection by reference to "culture."

326. At the heart of the Theories is the concept of "systemic discrimination"[370] which, "refers to the statistical disparities that can be identified between members of different racial and ethnic communities"[371] and which assumes that:

---

[367] Song Affidavit, Exhibit "LLL", p. 830.
[368] Song Affidavit, Exhibit "RRR", pp. 877 and 878.
[369] The Path (Song Affidavit, Exhibit "X" pp. 443, 460, etc.)
[370] The Report at p. 16.
[371] The Report at p. 33.

> *… all racial disparities (inequalities of outcome) are the sole result of deeply-entrenched systemic racism rather than, for example, social class, poverty, family structure or attitudes towards education.*[372]

327. Williams describes the goal of Postcolonialism as follows:

> *The process of disrupting and reversing this colonial belief-system is known as "decolonization". Decolonize movements aim to ameliorate the structural and epistemological legacy of colonialism through the removal of cultural assumptions of western superiority as manifest in statues and the names of streets and buildings; school and university curricula that privilege "western" knowledge; social and institutional practices that privilege "western" values; and legal systems that privilege "western" notions of justice.*[373]

328. Williams explains (as may now be apparent from the above) that the Theories attribute psychological and social characteristics to people on the basis of their identity; including their race.

> *In claiming the Enlightenment values of reason, rationality, objectivity and universalism as specifically white, western beliefs … Theorists ascribe the opposite social and psychological characteristics to black and indigenous communities. In place of reason comes superstition and in place of rationality comes primitivism. Whereas these characteristics were once derided, they are now celebrated as encapsulating a greater truth and a better, less oppressive way of being.*

329. Given its premises, CRT expressly advocates for racial discrimination. Quoting well known Ibram X. Kendi:

> *... if racial discrimination is defined as treating, considering, or making a distinction in favor or against an individual based on that person's race, then racial discrimination is not inherently racist. If discrimination is creating equity, then it is anti-racist.*[374]

330. To summarize, Postcolonialism:

---

[372] The Report at p. 16.
[373] The Report at p. 4.
[374] The Report at p. 16.

a. theorizes that veiled systems of racial oppression are built into the fabric of Canadian institutions;

b. theorizes that such systems (for example, the Western justice system) pose an inherent disadvantage to indigenous Canadians (based on stereotypes);

c. assumes that all observed socioeconomic disparities between indigenous Canadians and other Canadians are caused by these theorized systems of oppression; and

d. therefore, as the only means of improving the socioeconomic conditions of indigenous Canadians, seeks to “decolonize” Canada by removing cultural assumptions of Western superiority like the Enlightenment and the Western system of justice.

331. Given the premise that objectivity, reason, and science are colonial systems of oppression, for someone to demand proof of these theories or of the wisdom of their prescriptions is itself an act of oppression:

> *Expressing contrary ideas is to side with the oppressor over the oppressed, an act some would describe as "violence".*[375]

332. In other words, the Theories are tautologies: true by their own terms and unfalsifiable.

333. Williams concludes:

> *Systemic racism presents racial disparities as an inevitable consequence of historic and continued oppression. It ignores the fact that other factors such as wealth, social class, sex, occupation, area of residence, educational level, family structure and parental educational level may also contribute to a person's life chances. When these factors are taken into consideration the gap between outcomes for black and indigenous communities and white communities lessens. This suggests that racial prejudice may not be the only reason, or even the most important explanation, for racial disparities. Race may correlate with poor health outcomes, for example, rather than causing such inequalities. This matters because it can lead to policy initiatives that focus on the wrong areas - trying to tackle racism, for example, rather than improving education. What's more, discussion of racism and inequality as "systemic" also overlooks progress that has been made. This can send a message to indigenous children that the odds of success are more stacked*

[375] The Report at p. 30.

> *against them than they really are, with negative psychological consequences.*

334. While the foregoing should, alone, suffice to demonstrate the incompatibility of the Theories as legal "competence and ethics", in the next sections the applicant will, with the assistance of the Williams Report, demonstrate that:

    a. the Theories are present throughout the LSA's Materials;

    b. there are fundamental, irreconcilable contradictions between them and Canada's constitutional and legal order; and

    c. lawyers who come to embrace the Theories are less competent and less ethical to perform their primary task in Canada's legal system: upholding the rule of law and facilitating client access to justice.

i. The LSA's Political Objectives – An Attack on Empiricism, Objectivity, Reason, and Science

335. The Theories are inconsistent with Canada's *Constitution* in virtually every respect but, perhaps most fundamentally, in their basic (and outlandish) premise: that the Enlightenment's universal gifts to humanity of empiricism, objectivity, reason, and science are actually only "real" in one sense: as tools of racial oppression:

> *Whiteness is a set of normative privileges granted to white-skinned*[376] *individuals and groups; it is normalized in its production/maintenance for those of that group such that its operations are "invisible" to those privileged by it (but not to those oppressed/disadvantaged by it). It has a long history in European imperialism and epistemologies).*[377]

336. As discussed above, the Theories outright reject "grand narratives",[378] including the principles of the Enlightenment, as false "discourses" designed to perpetuate black and indigenous oppression:

---

[376] Note here the euphemism for race.
[377] Baltej Singh Dhillon Case, *Whiteness* (Alberta Civil Liberties Research Centre); Song Affidavit, Exhibit "NNN", p. 854.
[378] As pointed out by Williams, the Theories are themselves a grand theory. As will be seen from Pluckrose, H. and Lindsay, J. (2020) Cynical Theories, Pitchstone, the Theories do not claim to be coherent, which is both predictable (given their rejection of the value of reason i.e. coherence) and, in the view of Theorists, a highly useful attribute given their activist goals.

> *Proponents of CRT reject Enlightenment-derived values of objectivity, neutrality, equality and meritocracy as a particular perspective imposed on others under the guise of universalism.*[379]

337. The framing of "objective reality" as just one "perspective", valid only in a relative sense (i.e. valid – if at all – only in the minds of white people who are not engaged in any "discourse") is evident in The Path (the only Specified Mandatory CPD imposed on lawyers under the Impugned Rules):

> *Indigenous accounts of creation are expressions of spiritual and cultural truth. They reflect a way of looking at the world. Science and history tell the story from another perspective. … We can look at science and origin stories as simply different ways to describe where we've come from.*[380]

338. Note the qualified forms of the noun "truth".

339. The Glossary also reflects such epistemological (and moral) relativism:

> ***Eurocentrism****: The tendency to view others through the filters and assumptions of European (primarily Northern European) perspectives, and to assume European practices and perspectives to be the best, the ideal, the norm…*
>
> *…*
>
> ***Universalism****: "The assumption that there are irreducible features of human life and experience" … Claims about the universality of existence, however, usually emanate from the mainstream/dominant locations, and use white, western, middle-class, straight, male experience and perspectives as holding true (or ideal) for all of humanity. An insistence on universality, or its possibility, often emerges as a response by white people to discussions of racism (e.g. "we are all the same"); the evidence that these individuals "present," however, is often vague or generalized to the point of meaninglessness in the attempt to erase the materialities of privilege and oppression (i.e., "we all love our children"). The ideology of universalism is*

[379] The Report at p. 26.
[380] The Path (Song Affidavit, Exhibit "X" p. 454); Report at p. 14.

> *pervasive in Canada, used to market a wide range of commodities, especially literature and film.*[381]

340. In accordance with CRT, the Materials contradict Empiricism, including in the LSA's Acknowledgment, where the LSA commits:

> *To take further steps to address systemic discrimination… Ensuring that our Benchers participated in training focused on unconscious bias and centering equity in their governance and decision-making roles.*[382]

341. Williams explains:

> *The notion of "unconscious bias" rather than overt racism speaks to CRT-influenced understanding of racism as not just systemic but inherent within the minds of individuals.*[383]

342. To this point, the Glossary states:

> *Anti-Black Racism: "Anti-Black racism is prejudice, attitudes, beliefs, stereotyping and discrimination that is directed at people of African descent*[384] *and is rooted in their unique history and experience of enslavement and its legacy. Anti-Black racism is deeply entrenched in Canadian institutions, policies and practices, to the extent that anti-Black racism is either functionally normalized or rendered invisible to the larger White society …*[385]

343. Williams explains:

> *… CRT has it that even though we cannot see racism, it is not just still there, but all the worse for being "rendered invisible".*[386]

344. The Materials elsewhere confirm that the postmodern rejection of objectivity is central to supposed "cultural competence":

---

[381] The Glossary (Song Affidavit, Exhibit "LLL", pp. 814 and 839)
[382] Acknowledgment (Song Affidavit, Exhibit "N", p. 338).
[383] The Report at p. 8.
[384] Note, again, the euphemism for race.
[385] The Glossary (Song Affidavit, Exhibit "LLL", p. 808).
[386] The Report at p. 10.

> *The most important theoretical concept for cultural competency is that all experience is constructed …*[387]

345. Where this Resource describes the culturally incompetent lawyer, we are told they:

> *… still utilizes one's own cultural patterns as central to an assumed universal reality.*[388]

346. A direct upshot of the rejection of objectivity, neutrality, science, reason, and the like, combined with the Theories' activist goals of "equity" and "decolonization" – the "upending" of "dominant power relations [to] bring about equity and social justice"[389] – is the active duty to root systemic discrimination. In the words of the LSA:

> *Where systemic discrimination manifests in policies, procedures and other work of the Law Society, we will identify this and address it.*[390]

347. Having embraced the Theories, the activist is happily free of the shackles of rigorous science which, if employed, would constitute complicity in the oppressive discourse[391] of colonialism and (some would say) even an act of violence.[392]

348. For this reason, it seems inevitable that the LSA's research, which purported to reveal the "existence of systemic discrimination within the justice system, including within the Law Society and the legal profession," was far from rigorous.

349. The problems in the "My Experience" study design are immediately apparent: a self-selecting survey where people are asked to "share their experiences of racial discrimination and stereotyping with us." This will result in at least some "experiences of racial discrimination and stereotyping" being shared. Williams observes, this "introduces bias. Members who had not experienced discrimination were unlikely to respond to such a call. In this way, research becomes political advocacy."[393] Of course, to the Theories bias is not inherently problematic. In fact, bias is inescapable. Rather, the goal of neutrality is complicity in oppression.[394]

---

[387] Song Affidavit, Exhibit "RRR", p. 880.
[388] Song Affidavit, Exhibit "RRR", p. 884.
[389] The Report at p. 21.
[390] The Acknowledgment (Song Affidavit, Exhibit "N", p. 339).
[391] The Report at p. 4.
[392] The Report at p. 30.
[393] The Report at p. 25.
[394] The Report at p. 29.

350. We also observe that, consistent with the Theories' elevation of subjective truth and the moral imperative not to question "lived experience," there was[395] neither: any apparent attempt by the LSA to objectively verify these claims; nor any quantitative[396] analysis of the survey responses (i.e. were they statistically significant):

> *A qualitative analysis of the experiences shared was conducted by an independent researcher. This analysis suggests that discriminatory culture, biased employment practices, and poor representation and distribution of Black Canadians, Indigenous Peoples and People of Colour (BIPOC) create a vicious circle in the legal profession.*[397]

351. Having collected "some" or even "many" stories of alleged discrimination does not mean there is more than we should reasonably expect. Zero stories is a fine goal, but not a realistic one. The "study" failed to identify or compare the results to a realistic baseline.

352. Looking at the claims, objectively, reveal that many of them contain stories of social conflict attributed to racism by the respondent. For example, from one respondent:

> *… At the career fair the lawyers at the booths, who were predominantly white, would not engage with me the same way they would engage with several of my peers. They would answer my questions, but not really make any conversation with me. I applied to several firms and only got one interview.*

353. Or the following response:

> *A white lawyer gossiped about me behind my back the first time she saw me in court about a small problem with my appearance. She did not once tell me her concern, she just gossiped to other white lawyers about it. She continued to gossip about me for literal years and is still angry and hostile towards me for confronting her about it.*[398]

354. Others reference racist or insensitive ideas without saying whether anyone in the legal profession had actually stated them. Many allege racial discrimination from the perspective of a successful lawyer, bringing into question whether the alleged discrimination "result[ed] in disproportionate opportunities or disadvantages" to the

---

[395] Consistent with the structure of the TRC: Song Affidavit 2, para. 4, Exhibit "C".
[396] Song Affidavit, Exhibit "K", p. 299.
[397] Song Affidavit, Exhibit "J", p. 295.
[398] Song Affidavit, Exhibit "^I", p. 291.

respondent, as would necessary to qualify their experience as "systemic discrimination" according to the LSA's definition.[399]

355. In the Western legal tradition, a competent and ethical lawyer defending the alleged "racists" would, on cross examination, almost certainly further undermine these responses, and thereby narrow the evidence of purported "systemic discrimination", if not eliminating it. Likewise, in argument the lawyer would seek to have the evidence entirely rejected on the basis of its preliminary bias.

356. The LSA's apparent and concerning failure to apply those principles resulted in a body of highly unreliable data – *albeit* data which was useful for political activism.

357. This is not to deny the existence of outright racism and bigotry in the legal profession. The profession is a heterogeneous population of 10,000 practicing Alberta lawyers as well as judges, legal support staff, staff, and students.

358. The question for the regulator is not: does bigotry exist? Yes, it does.

359. The questions are, rather: 1) how must "bigotry" be defined to ensure it captures a problem which impairs the legal profession's ability to perform its role under the *Constitution*; 2) is bigotry, properly defined, causing material impairment of the profession's proper role under the *Constitution*; and 3) does the LSA possess regulatory powers which can be reasonable applied to materially reduce that problem while maintaining the profession's proper role under the *Constitution*?

360. For example, should the following not qualify as "bigotry"?

> *[Speaking about the 1969 "White Paper", authored by former Canadian Prime Ministers Pierre E. Trudeau and Jean Chrétien] The policy paper is probably one of the most clever pieces of documentation that I've ever seen politically. It's aimed at the white people who are bigoted, who hate Indians,*[400]

or

> *This is why Indigenous people speak so strongly about the protection of the environment, the land and the water; their perspective stretches beyond*

[399] The Acknowledgment (Song Affidavit, Exhibit "N", p. 338).
[400] The Path (Song Affidavit, Exhibit "X", p. 496).

> *short term profit from development, and focuses on the need to preserve what we have for future generations,*[401]

or

> ***Euro-Canadian** is a term used to refer to predominantly white Canadians of European descent and encompasses their cultural values, attitudes and assumptions. It refers to the group of people that is largest in number and "successfully controls other groups through social, economic, cultural, political, or religious power. In Canada, the term has generally referred to White, Anglo-Saxon, Protestant males,"*[402]

or

> ***White Supremacy**: This term is often connected to extremist, right-wing hate groups. However, the term is often used in anti-racist work to force an acknowledgement of the belief systems underlying whiteness. Thus, white supremacy is seen as the ideology which perpetuates white racism. This ideology exists in both the overtly prescriptive form, i.e. the white supremacy that we attach to right-wing white power groups, and as the self-perpetuating cultural structure also know as whiteness.*[403]

361. How is a "white, Anglo-Saxon, Protestant male" to reasonably expect his lawyer will zealously pursue his access to justice if this reflects the lawyer's mandatory racial attitudes? From the LSA's reliance on survey responses which characterize the mere mention of race as a form of systemic racism (much less attributing to that race negative characteristics) it would appear these statement do qualify as bigotry for the LSA's purposes – unless, of course, one applies the lens of CRT or Postcolonialism:

> *… if racial discrimination is defined as treating, considering, or making a distinction in favor or against an individual based on that person's race, then racial discrimination is not inherently racist. If discrimination is creating equity, then it is antiracist.*[404]

---

[401] The Path (Song Affidavit, Exhibit "X", p. 505).
[402] The Glossary (Song Affidavit, Exhibit "LLL", p. 813).
[403] The Glossary (Song Affidavit, Exhibit "LLL", p. 841).
[404] The Report at p. 16.

362. The Theories' abandonment of Western empiricism and reason leads directly to the treatment of theory as fact and correlation as causation. This is well evident in The Path where the LSA "educated" lawyers into the belief that the Canadian justice system is corrupted by colonial racism. The Path goes so far as to suggest that 80% of indigenous inmates are incarcerated for no reason other than the "legacy of colonialism":

> *Canada's colonial legacy is still alive. And nowhere is that clearer than in the treatment of Indigenous people within the Canadian Justice system. It's clear when you look at the overall numbers. While Indigenous people make up about 5% of Canada's population, they represent 27% of its prison population.*[405]

363. As explained by Williams, referencing the LSA's formal "acknowledgment" and "recognition" of the "historical and ongoing impacts of Canadian and Alberta law on Indigenous Peoples" (which recognition was the impetus for mandating The Path):

> *The imperative to "acknowledge" "recognize" and "incorporate" puts ideas beyond empirical contestation.*[406]

364. The Path, therefore:

a. assumes that veiled systems of racial oppression are built into the fabric of Canadian institutions;

b. theorizes that such systems (for example, the Western justice system) pose an inherent disadvantage to indigenous Canadians (based on stereotypes);

c. assumes that all observed socioeconomic disparities between indigenous Canadians and other Canadians are caused by these theorized systems of oppression;

> *It is assumed that statistical disparities between different communities have been caused by discrimination.*[407]

d. therefore, as the only means of improving the socioeconomic conditions of indigenous Canadians, seeks to "decolonize" Canada by (at least when dealing with indigenous people) removing cultural assumptions of Western superiority like the Enlightenment and the Western system of justice:

---

[405] The Path (Song Affidavit, Exhibit "X", p. 470).
[406] The Report at p. 31.
[407] The Report at p. 34.

> *Indigenous laws should be recognized as law …*
>
> *…*
>
> *It's something that I think that's important for Indigenous people. But you know what, it's just as important for every Canadian. Canada is multi juridical. And right now the only law that people are familiar with is civil law and common law. And there's a richness of legal history and ways of managing that are thousands and thousands of years old that can help not only just indigenous peoples today insofar as managing ourselves, but also our relationship with Canada, and that matters.*

365. The Path then goes on to correlate a number of other unfavourable statistical disparities with the theorized "racism, … discrimination, … unfair treatment and … inequality built into Canadian law, policies, and structures" including in the areas of sexual assault, high school completion, suicide, and childhood poverty.[408]

366. The point here is <u>not</u> to claim that The Path is necessarily objectively wrong in either its claims[409] or prescriptions just because it makes a pile of assumptions including that nothing else could be causing the problems.

367. Rather, the applicant is here demonstrating, only, that by the application of the Theories, which abandon empiricism, we have no <u>reason</u> to believe that The Path is correct and every <u>reason</u> to believe that it is wrong. Reason has it that correlation is not causation. Reason has it that to theorize is not to prove. Reason has it that there is such a thing as objective reality.

368. The danger posed by the abandonment of objective reality is, again, well summarized by Williams:

> *… it can lead to policy initiatives that focus on the wrong areas - trying to tackle racism, for example, rather than improving education. What's more, discussion of racism and inequality as "systemic" also overlooks progress that has been made. This can send a message to indigenous children that the odds of success are more stacked against them than they really are, with negative psychological consequences.*

---

[408] The Path (Song Affidavit, Exhibit "X", p. 470).
[409] Except its metaphysical and epistemological claims.

369. In other words, however well intentioned the LSA may be in its efforts to identify and root out of the causes of socioeconomic disadvantage within the legal system,[410] its choice to, first, jettison empiricism from the project virtually guarantees the wrong diagnosis and the wrong cure. Worse yet, the LSA's public endorsement of Postcolonialism seems almost certain to do serious harm, including by sowing the pernicious belief in the minds of indigenous youth that, because the causes of socioeconomic underprivilege are deeply embedded in history, culture, and institutions, as individuals they lack personal agency to improve their own socioeconomic wellbeing – except of course as the instruments of decolonization.

370. While the foregoing examples are not taken squarely from realm of legal practice,[411] they nicely demonstrate the practical implications of what removing "cultural assumptions of western superiority" in the form of empiricism, objectivity and reason really mean.

371. When the Theories are more directly applied to the lawyer's practice of law, the destructive impacts on the rule of law are like acid. As one considers the relationship between the *Constitution* and empiricism, objectivity and reason, it becomes apparent that to pull at that thread is to unwind the entirely constitutional project. Consider, if there is no such thing as objective reality:

    a. What becomes of the fact-finding purpose of a trial and the related rules of tendering evidence, cross-examination, credibility, qualifying experts, and hearsay? What is the purpose of a trial if not to determine what, objectively, happened?

    b. What becomes of the meaning of words? Is the law to inquire, not, into the subjective intention of the parties as evidenced by the objective meaning of words[412] but rather, directly, into everyone's subjective understanding as validated by the person's identity? For example, where a treaty says:

        > *… and whereas the said Indians … hereby cede, release, surrender, and yield up … to the Government of Canada …. all of their rights, titles and privileges whatsoever to the lands …,*[413]

---

[410] Which the applicant denies is within the LSA's statutory mandate.
[411] Except, apparently, as understood by the LSA.
[412] Re: statute see *Rizzo*, re contracts see *Hawrish v. Bank of Montreal,* 1969 CanLII 2 (SCC), [1969] SCR 515.
[413] Song Affidavit 2, Exhibit "G", p. 199.

should it matter, short of fraud or incapacity, that the subjective understanding of the indigenous signatories (as alleged currently by way of decades of hearsay) was nearly the opposite?

> *A hundred and forty years after the treaties we're still waiting for the things that were promised in those agreements to share the land.*[414]

To similar effect The Path tells lawyers that the treaty's stated "right to pursue their vocation of hunting throughout the Tract surrendered … subject to such regulations as may, from time to time be made"[415] was actually a reservation of environmental jurisdiction:

> *So in the English language, it's only hunting, trapping and fishing, and maybe some of the little side things like the medicine chests or whatever. But it means so much more than that. It's the interpretation of the words. So if you're talking hunting, it's not just picking up a gun or whatever mechanism that you're using to kill an animal. It is 'What is the state of the land, the air and the water that will sustain that animal or that species of animal to maintain the health of that animal.' And in order to do that you have to have healthy water, air and land. Because this is a treaty right that can go on for as long as the sun shines, the rivers flow and the grass grows, and unless something dramatically happens to the earth, that means that that's almost forever, because those are the words and those are the interpretations.*[416]

The Glossary likewise informs lawyers:

> ***Treaty**: "Indigenous treaties in Canada are constitutionally recognized agreements between the Crown and Indigenous peoples. Most of these agreements describe exchanges where Indigenous nations agree to share some of their interests in their ancestral lands in return for various payments and promises.*[417]

The LSA tells lawyers that "cultural competence" involves recognizing that:

---

[414] The Path (Song Affidavit, Exhibit "X", p. 447).
[415] Song Affidavit 2, Exhibit "G", p. 199.
[416] The Path (Song Affidavit, Exhibit "X", p. 499).
[417] The Glossary (Song Affidavit, Exhibit "LLL", p. 837)

> *… one's own culture is experienced as just one of a number of equally complex worldviews… [therefore] more than one meaning may exist for verbal and nonverbal messages communicated between people from different cultures.*[418]

c. What becomes of the rule of law, which demands that the exercise of all state power *via* legislation be prescribed by sufficiently clear and, therefore, predictable rules[419] if the law depends on subjectivity? For example, if a legal prohibition is defined by the subjective mental state of a would-be-victim, a citizen does not know what the law prohibits until the subjective contents of the would-be-victim's mind are revealed.

d. If subjectivity is elevated in law, what becomes of the "presumption of innocence … a hallowed principle lying at the very heart of criminal law?"[420] It would appear, from the LSA's Articling Placement Program, that where allegations of harassment and discrimination are concerned, the elevation of subjectivity means you simply chuck the innocence principle by the wayside:

> *The program's default position is that articling students' experiences are believed.*[421]

The LSA abandons the innocence principle in The Path, suggesting the not-guilty verdict in the Gerald Stanely trial was a miscarriage of justice:

> *… the challenging intersection of the justice system with Indigenous peoples is seen in close up, in … the death of Colton Boushie in Saskatchewan, and the not guilty verdict for his killer Gerald Stanley that sparked fury and unrest across Canada … These and other events have exposed the racism, the discrimination, the unfair treatment and the inequality built into Canadian law, policies, and structures.*[422]

The dismissal of objectivity has the capacity, therefore, to shatter public confidence in the justice system.

---

[418] Song Affidavit, Exhibit "RRR", p. 885.
[419] See, for example, Committee for the Commonwealth at pp. 211 – 212.
[420] *Oakes* at pp. 119 – 120.
[421] Song Affidavit, Exhibit "WWW", p. 923.
[422] The Path (Song Affidavit, Exhibit "X", p. 470).

e. What becomes of the rule of law which demands that the exercises of all state power *via* statutory discretion be legal, reasonable and fair,[423] if the very concept of "reasonableness" is taken to have no objective reality[424] – merely a "sham", a "discourse in oppression?"

372. In what should be a warning against its Political Objectives, the LSA's own Resources tell us how the legal system is meant to operate once lawyers reach the lofty heights of "cultural competence". For example:

> *… the law lags behind these other disciplines because it closely resembles dominant American culture and its value of "universalism". Our court system, legal doctrines, and law schools are entrenched in the universalist belief that what is right is right, regardless of the circumstances or who is involved. To a universalist, fairness means treating everyone the same, and one should not make exceptions for family, friends, or members of one's in group. Furthermore, universalists believe it is important to put feelings aside and look at situations objectively and that people and systems should avoid making exceptions to rules.*[425]

373. This appears to be little more than an open call for tribalism and lawlessness; or, to quote Justice Rand:

> *.. an administration according to law .. superseded by action dictated by and according to the arbitrary likes, dislikes and irrelevant purposes of public officers …*[426]

which, the Court will recall, Justice Rond said, "would signalize the beginning of disintegration of the rule of law…"[427]

374. The Theories are clearly subversive to the rule of law in their hostility to empiricism, objectivity, and reason. The "removal of cultural assumptions of western superiority"[428] in the form of empiricism, objectivity and reason effects a global and devastating subversion of the *Constitution*, including the law thereunder. To borrow and modify the LSA's words:

---

[423] *Dunsmuir* at para. 28.
[424] Report at p. 10 references the "relativist notion that all differences are equally valid comes with postmodernism more broadly."
[425] Song Affidavit, Exhibit "RRR", p. 891.
[426] *Roncarelli* at pp. 141 and 142.
[427] *Roncarelli* at para. 41.
[428] The Report at p. 4.

> *Where systemic discrimination [statistical disparities between indigenous and other Canadians assumed to be solely or primarily caused by theorized yet invisible forms of racism built deeply into the structure of the Constitution] manifests in policies, procedures and other work of the Law Society [definitions of legal competence which assume Western superiority like objectivity], we will identify this and address it [by rejecting or subordinating the validity of such assumptions, including objectivity, in The Path, the Profile, the Code and the Articling Placement Program].*
>
> *…*
>
> *The Law Society remains committed to reducing barriers created by racism, bias and discrimination, in order to affect long-term systems changes within our legal culture.*[429]

375. Consider how the Theories are subversive to the rule of law just with reference to the LSA's own Impugned Conduct. Having downgraded the cultural assumption of western superiority in the form of objectivism, the LSA, including its Bencher lawyers, have:

a. determined it is appropriate to incorporate radical, political Theories into their Materials and operations, stated publicly and taught lawyers in mandatory training that objectivity is a made-up white person's thing:

> *It would take many more modules to teach the rich cultural history of all of the Indigenous nations in this country. But there is a common thread they all share. Viewed through the lens of Indigenous language, the world is not hierarchical, or linear, or divided into multiple, rigid categories. The Indigenous world view, and thus Indigenous languages, interpret experience in a holistic way. Its most powerful image is the circle, which reflects and contains all things, and links back to itself. You see this image in the teaching of the medicine wheel, or in the circle of life itself.*[430]

b. used its powers over the bar the compel acceptance, as truth, of facts which lawyers can not perceive through their senses and reason and, therefore, can not know through an empirical process; for example, the claims of systemic discrimination in The Path and, from the Profile:

---

[429] The Acknowledgment (Song Affidavit, Exhibit "N", p. 339).
[430] The Path (Song Affidavit, Exhibit "X", p. 506).

> *Develop self-awareness of how one's own … unconscious biases affect perspectives and actions*
>
> *…*
>
> *Recognize how systemic inequalities and barriers affect individuals and groups*
>
> *…*
>
> *Develop and promote a deeper understanding of sexual orientation and gender identity*[431]

c. interpreted its legal jurisdiction without reference to the objective contents of the *LPA* including the objective differences between it and the *LPAM* at issue in *Green* – the absence of a public interest clause and CPD clause appears to have been deemed irrelevant;[432]

d. undermined the principle of innocence until proven guilty;[433]

e. defined harassment and discrimination for discipline purposes with reference to anti-objectivity concepts including unconscious bias, invisible systems of oppression, and (effectively) subjective experience;[434] and

f. as explained below, undermined the bar's duty of loyalty to the *Constitution* and undermined other constitutional features including the dignity of the person.

376. This demonstrates the power of the Theories to transform the law.

377. Rather than work through the democratic process to repeal or amend the *Constitution* – the only legitimate and legal means of constitutional amendment known to Canadian law and Western legal culture – the Theories operate by subverting the "values", "norms", "cultural assumptions", "institutions" and "practices" which make the *Constitution* work.

378. Perhaps this is what Dr. Val Napoleon was referring to where she is quoted in The Path with the following words of encouragement to the captive Alberta bar:

> *Every Canadian should have an understanding of law that allows it to be intensely democratic in terms of how they manage their families, in terms of*

---

[431] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[432] See above at section IV.A.iv
[433] See above at para. 371.d.
[434] See below at section IV.D.ii.

> *how they manage their communities, in terms of being a part of the relations of power in Canada. It's everybody's business.*[435]

379. Why go through the democratic process when we can simply take matters into our own hands?

380. Insofar only as the Theories reject empiricism, objectivity, reason, and science, their effect on the rule of law, should the Alberta bar join the LSA in adopting them, would be catastrophic. Given that the LSA's objectives are to ensure lawyers remain competent and ethical so as to uphold the rule of law, the LSA's Political Objectives are clearly an Abuse of Subversive Objectives. All of its Impugned Conduct is, therefore, ultra vires.

ii. The LSA's Political Objectives – An Attack on Loyalty to the Law

381. Another cultural assumption the Theories attack, which effects a subversion of the *Constitution*, is the moral and legal legitimacy of the *Constitution* itself.

382. The LSA's Political Objectives tend to undermine another cultural assumption of Western superiority: the "norm" of lawyer loyalty to the "fundamental structure of our country as it is."[436]

383. As explained above, the Theories characterize the Western legal system and its Western notions of justice as mere instruments of oppression, relying on various "sham" assumptions (like empiricism, objectivity, and reason) to effect racial hegemony. The LSA's Materials are unambiguous in this respect.

384. The LSA claims – in mandatory education no less – that there is:

> *… racism … discrimination … unfair treatment and … inequality built into Canadian law, policies, and structures.*

385. Again, the LSA's suggestion seems to be that the racism in our justice system is so severe that 80% of indigenous inmates are wrongfully detained.

386. To similar affect the LSA describes "anti-black racism" as:

---

[435] The Path (Song Affidavit, Exhibit "X", p. 519).
[436] *Roach* at p. 415 – 416.

> … deeply entrenched *in Canadian institutions, policies and practices, to the extent that anti-Black racism is either functionally normalized or rendered invisible to the larger White society.*[437]

387. The LSA also publicly acknowledged, without qualifiers as to its extent or seriousness (and, it will be recalled, on the basis of a flimsy[438] survey that related only to race.[439]

> *… the existence and impact of systemic discrimination within the justice system, including within the Law Society and the legal profession [which] … result[s] in disproportionate opportunities or disadvantages for people with a common set of characteristics such as age, culture, disability, gender, race, religion, sexual orientation, and/or socio-economic status. Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions … We recognize that systemic discrimination goes against principles of fairness that the legal profession values and upholds.*

388. These proclamations expressly and broadly accuse Canada's law and legal institutions as being deeply corrupt. This is a message to 10,000 Alberta lawyers (in the case of statements like this in The Path, 10,000 captive lawyers) and the broader public.

389. In addition, the entire premise of The Path is that the history of European - indigenous contact has been one of uninterrupted and conscious attempts at cultural genocide including by use of law.[440] Again, referencing the 1969 White Paper:

> *If they had a legal way and in a way a which they could justify their action, I think they would have shot every Indian to death in this country this year. But since they could not do this morally, they resorted to a legal means of cultural genocide.*[441]

390. The LSA's Materials, including The Path, contain another kind of broad attack on the moral and legal validity of the *Constitution* – on citizenship, territorial sovereignty, and

---

[437] The Glossary (Song Affidavit, Exhibit "LLL", p. 808).
[438] See above at paras. 347 to ^ 356.
[439] See above at para. 79.
[440] See also The Path's treatment of the Inuit tag system (Song Affidavit, Exhibit "X", p. 460), the *Indian Act* (Song Affidavit, Exhibit "X", pp. 465 and 475), truancy laws (Song Affidavit, Exhibit "X", p. 466), the justice system (Song Affidavit, Exhibit "X," p. 470), scrip (Song Affidavit, Exhibit "X", p. 475).
[441] The Path (Song Affidavit, Exhibit "X", p. 496).

parliamentary supremacy. The 10,000 citizens required to complete The Path were asked, in respect of Canada's national anthem:

> *And when you sing that Canada is our home and native land, are you really celebrating our Indigenous past? Perhaps it would be best to avoid that word altogether.*[442]

391. Elsewhere the LSA advises lawyers (the non-indigenous racial groups, that is):

> *Land acknowledgements are traditional protocol used to give thanks and to pay respect to the peoples and the land for which you are a **visitor** upon.*[443]
>
> *… acknowledgement of the land is a traditional custom of Indigenous peoples when welcoming **outsiders** onto their land and into their homes.*

392. The Path advises:

> *… You may have been in a meeting or an event when someone does a land acknowledgement; this is becoming a common practice to think about whose treaty territory or land you're on.*[444]

393. The Path also "calls into question the legitimacy of the nation state by indicating an impermanence,"[445] by repeated use of the phrase "this land now called Canada,"[446] as in:

> *You've just taken a quick tour through 20,000 years of Indigenous history in this place we now call Canada.*[447]

394. Because the LSA seems to have done no Due Diligence on The Path, the applicant did. The Path's primary researcher, Angela Day, is listed on the "Nationhood Council House" website as a research intern.[448] A project on the Nationhood Council House's website is called "Land Back" which states:

> *Canadians are hesitant to discuss the concepts of Land Back, Indigenous Sovereignty and Inherent Jurisdiction. Such conversations are difficult to have with settlers as they often get defensive about how they came to be on*

---

[442] The Path (Song Affidavit, Exhibit "X", p. 449).
[443] The Path (Song Affidavit, Exhibit "VVV", p. 919).
[444] The Path (Song Affidavit, Exhibit "X", p. 501).
[445] Report at p. 13.
[446] The Path (Song Affidavit, Exhibit "X", pp. 443, 457 and 509); also, "the river now called the St. Lawrence" at The Path (Song Affidavit, Exhibit "X" p. 455).
[447] The Path (Song Affidavit, Exhibit "X" p. 509).
[448] Song Affidavit 2, Exhibit "D", p. 185.

> *this land that we now call Canada. "Land back" … means to understand, for enabling your gain, what was stolen and what continues to be **stolen**. And then understand what has to happen to stop this ongoing theft.*
>
> *The five structures that define and sustain Canada and its continued land theft are — Doctrine of Discovery, Doctrine of Reception, British North America Act, the Confederation and the Indian Act …*
>
> *Our communities must be treated as nations with our own laws. … There are thousands of non-Indigenous lawyers in this country – as they go about their livelihood, my first call to action would be to them – do some self-reflection and ask where their law/the Canadian law, is originally stemming from. And then knowing that, why are they continuing to go about business-as-usual? If the Canadian Constitution was imported in a matter of days, surely, corrections can be made in similar time frame. Each passing day of status quo is a day of unlawfulness that they help retain.* [449]

395. There is no obvious inconsistency between this message and the messages to the bar contained in The Path.

396. If the Alberta bar is forcibly re-educated into the belief that:

    a. the *Constitution* is and remains a "colonial" imposition by "visitors";[450]

    b. almost five centuries after Cartier's landing on Canada's East Coast, the descendants of that racial group remain, "outsiders" and "visitors" on indigenous land and in indigenous homes;

    c. the political compromises reached between indigenous people and Europeans – treaties – are arguably void on the principle of *non est factum* or, at the very least, the word "surrender" should be interpreted to mean "share" because the indigenous signatories to the treaties were unable to understand the concept of exclusive land possession;

---

[449] Song Affidavit 2, Exhibit "E", p. 189.

[450] As opposed, for example, to a peaceful, stable, and mutually beneficial political compact reached by a diverse population following a period of massive upheaval through disease, immigration, war, allyship, peace, rebellion, political and economic cooperation, and cultural exchange.

d. in violation of the treaties and the Honour of the Crown, the "visitors" so grossly breached their obligations under the treaties as to qualify as an attempt at "cultural genocide;"[451]

e. the *Constitution*, the legal system thereunder, and the cultural assumptions that support it may appear neutral and objective, but are in fact an unholy ruse designed to maintain indigenous people in a subjugated and impoverished state, including incarcerated, murdered, abused, sick, poor and disposed,

what comes of their loyalty to the law? Does the oath lawyers took, when called to the bar, to uphold the *Constitution*, including the rule of law, retain any moral or legal claim on their conscience?

397. The applicant submits that the obvious effect of The Path and, more broadly, the LSA's Impugned Conduct, is to seriously undermine the bar's loyalty to the law. If the LSA's views on the *Constitution* are seriously believed, there is no reason whatsoever, legal or moral, for a lawyer to honour that oath. Quite the opposite in fact. To honour the oath is an oppressive "discourse in colonialism."

398. The Theories attack the moral and legal legitimacy of Canada's *Constitution*, as amply repeated by the LSA in its Materials including, especially, The Path (the only Specified Mandatory CPD imposed under the Impugned Rules).

399. The effect of the LSA's Political Objectives demonstrated in this section is to undermine the lawyer's duty to uphold that *Constitution* by undermining the binding effect of the lawyer's oaths.

400. Given that the LSA's objects are, directly opposite – to ensure professional competence and ethics so as to uphold the *Constitution* – its Political Objectives as manifest (including in The Path which, it must be recalled, was the LSA's partial response to just one of the TRC's 94 calls to action) are clearly an Abuse of Subversive Objects. Its Impugned Conduct is *ultra vires*.

401. It might be asked, how, then, might lawyers change the way they execute their duties under the *Constitution* if their oath ceases to have any moral or legal claim on their conscience?

---

[451] Consider the principles of repudiatory breach, which permit the innocent party the election to terminate *Guarantee Co. of North America v. Gordon Capital Corp.* (1999), 1999 CarswellOnt 3171.

402. The answer is: nothing is off the table. Once the lawyer has embraced the Theories they become untethered from obligations to the *Constitution* and the rule of law. Lawyers become political agents with *de facto* power being as The Path says, " a part of the relations of power in Canada."[452] Political agents with a new, overriding, objective: dismantling systems of oppression. The LSA specifically instructs lawyers to:

> *Take action to dismantle systemic inequalities and barriers*[453]

403. Once the Theories are understood, the following implication discussed by Williams becomes quite obvious:

> *… Theories consider impediments to achieving political objectives as evidence of continued systemic discrimination …*[454]

404. Note that, notwithstanding the LSA's limited mandate (to maintain the competence and ethics of lawyer members of the bar, which is a legal impediment) its U ambitions well exceed such limits and extend to the transformation of the legal system itself. The LSA's public commitment is to:

> *… address issues in the legal profession and the justice system arising from historical, deep-rooted inequities … We recognize and accept the need to take further steps to address systemic discrimination within the Law Society, the legal profession and the justice system. The Law Society remains committed to reducing barriers created by racism, bias and discrimination, in order to affect long-term systems changes within our legal culture …*

405. To quote again Osler, commenting on challenges associated with getting the government to prioritize legislative amendments to the *LPA*:

> *… In the meantime, the Law Society continues to utilize the Rules to advance its work where the legislation is outdated.*[455]

The legal impediment of the *LPA* being "outdated" seems to have been simply ignored.

406. The LSA's Impugned Conduct tends to effect *de facto,* global amendments to the *Constitution* including, especially, the subversion of the rule of law. Quoting Williams:

---

[452] The Path (Song Affidavit, Exhibit "X", p. 519).
[453] The Profile at 3.2 and 8.2.
[454] The Report at p. 24.
[455] Song Affidavit, Exhibit "ZZZ", p. 958.

> *Decolonization also builds on the idea that the legacy of colonialism endures in culture. But it goes further than advocating cultural competence to suggest that the lasting impacts of colonialism should be exposed and removed from all aspects of society. There is a particular concern with "western knowledge" and "western ways of thinking" that shape school and university curricula and the law. Decolonization campaigns aim to expose western understandings that, they argue, are often disguised as politically and culturally neutral. They then seek to substitute, or add alongside, alternative beliefs and practices from non-western cultures.*[456]

407. The applicant's "lived experience" under Chinese socialism provides a window of insight into the potential effects on the rule of law when such ideology is elevated over "cultural assumptions of Western superiority":

> *In primary school and high school … my classmates and I were required to attend classes in "Political Education" where we were taught to believe in and advance the CCP's socialist ideology including dogmas relating to legal, historical, political, social, economic, moral, spiritual, and cultural issues.*
>
> *…*
>
> *As a part of CCP indoctrination, I was taught to consistently engage in self-reflection and self-examination and to acknowledge and cleanse from my mind the "spiritual pollution" of corrupt (i.e. Western) worldviews and ideas. By "Western" and "West", the CCP meant, inter alia, the principles of the Canadian Constitution and Christianity. Such corrupting worldviews and ideas, I was taught, originated from the "corrupt cultures of Western countries and the bourgeoisie." …*
>
> *…*
>
> *All the ideological indoctrination I was subjected to in China had … distinct features … the ideological indoctrination, including dogmas, was unchallengeable truth, beyond discussion or doubt …*
>
> *… the ideological indoctrination was always presented as the highest order of morality or social justice to protect the interests of oppressed peoples, to liberate the "poor people exploited by rich people." The objective is to "destroy an old corrupt world" …*
>
> *…*
>
> *… Imposed dogma is destructive to society … It elevates state-mandated morality above all competing authorities including the transcendent authority of one's faith …*
>
> *…*

[456] The Report at p. 18.

> … *The entity which imposes the dogma becomes the law-maker, regardless of the entity designated by the constitution as the "official" law-maker. In fact, the official law-maker is subordinate to the indoctrination. I believe the effect of this is to destroy the rule of law.*
>
> …
>
> *Throughout all aspects of Chinese society under the CCP's regime there is only one supreme law: the CCP's socialism. Everything, including "fundamental" constitutional rights are subordinate to the will of the CCP. The effect is that, whatever rights the constitution or laws may ostensibly secure to the people, nothing which interferes with socialism and the leadership of the CCP is legitimate or allowed to continue.*[457]

408. Not to put too fine a point on it but, according to the LSA's Materials, in order to achieve "cultural competence", which includes ceasing to view the lawyer's culture as "normal" (which view "black liberation theorists" term "cultural imperialism"):

> *… Our education must include perspectives on advocacy from lawyers in … the global east, i.e. China …*[458]

409. What innocent explanation can the LSA possibly offer for the suggestion that Canadian lawyers, under the guise of "cultural competence", ought to adopt the legal perspectives of a totalitarian communist dictatorship?

410. 400. As will be seen below, the specific goals of the LSA's Impugned Conduct appears to be the transformation of Canada away from multicultural plurality animated by the spirit of color blindness.

411. The role of the Canadian lawyer is to uphold the rule of law – not to change the laws it upholds. For this reason, lawyers are required by the LPA to pledge "I will be faithful and bear true allegiance to His Majesty King Charles the Third … according to law."

412. For lawyers to, instead, take on the objective of changing the law is to take on the role of the legislature. This is a gross violation of the *Constitution* – the principles of parliamentary supremacy and democracy, to name just two – and of their oath.

413. Clearly, to encourage lawyers to "take action to dismantle systemic inequalities and barriers" they encounter in the legal system (which they have the power to improperly pervert) is an Abuse of Subversive Objectives. The LSA's Impugned Conduct is *ultra vires*.

---

[457] Song Affidavit, paras. 17 to 33.
[458] Song Affidavit, Exhibit "RRR", pp. 883 and 889.

iii. <u>The LSA's Political Objectives – An Attack on Loyalty to the Client</u>

414. As discussed above, Canada's constitutional order depends for its maintenance on safeguarding the lawyer's duty of loyalty to the client's interests, subject only to such legal and ethics limits as are necessary to maintain the rule of law.

415. Just as the Theories, and the LSA's Impugned Conduct, undermine the lawyer's duty of loyalty to the law, they also undermine the lawyer's duty of loyalty to the client's interest in several ways.

1. "Cultural Competence"

416. It is first necessary to elucidate the meaning of so-called "cultural competence".

417. As Williams explains, the concept arises from the Theories. This is made clear throughout the Materials including in "Cultural Competency: A Necessary Skill for the 21st Century":

> *<u>The most important</u> theoretical concept for cultural competency is that all experience is constructed …*[459]

418. According to Postcolonialism, treating the culture of the white, male, middle class, cis-gendered, heteronormative man (i.e. "colonialism" or "whiteness") as the "norm" causes people to "internalize the systems of repression and reproduce them by conforming to certain ideas." The system of colonial oppression then endures through these:

> *… "mental frameworks"; in other words, through the beliefs, concepts and language people use to express their relationship to the world.*[460]

419. Similarly, the LSA's Glossary tells us:

> *… [i]nternalized racism is the situation that occurs in a racist system when a racial group oppressed by racism supports the supremacy and dominance of the dominating group by maintaining or participating in the set of attitudes, behaviors, social structures and ideologies that undergird the dominating group's power…*[461]

420. Williams continues:

---

[459] Song Affidavit, Exhibit "RRR", p. 880.
[460] The Report at p. 16.
[461] The Glossary (Song Affidavit, Exhibit "RRR", p. 824).

> *In this way, formerly colonized people continue to be oppressed, not by direct rule and a denial of democracy, but through their own mental processes. Fanon defines colonized people as those "in whose soul an inferiority complex has been created by the death and burial of its local cultural originality."*[462]

421. Exposure to these "discourses in colonialism" or participation in them, "becomes prejudice in former-oppressors and trauma in the formerly- oppressed."[463]

422. Cultural competency is:

> *… mastery of the skills required to relate to people from different communities in a way that respects their outlook and traditions and <u>does not further exacerbate presumed power imbalances</u>. Cultural competency assumes people from dominant groups can be trained to <u>speak and behave in new, more sensitive and appropriate ways</u>. The first part of this training often involves making people sensitive to cross-cultural differences. Cultural competence has been described as "the <u>appropriateness and effectiveness of one's behavior in an alien cultural environment</u>;"*[464]
>
> *and*
>
> *"the acquisition and maintenance of culture-specific skills".*[465]

423. "Cultural competence" means, at a minimum:

    a. recognizing that treating Western values as "normal" or "superior" causes trauma in indigenous people;

    b. recognizing that the trauma is the result of feelings of inferiority induced in indigenous people by such norms alienating them from their original culture; and

    c. not further exacerbating such trauma by:

        i. learning about the indigenous person's culture;

        ii. behaving and speaking in culturally appropriate ways; and

---

[462] The Report at p. 16.
[463] The Report at p. 4.
[464] The Report at p. 17
[465] The Report at p. 18.

iii. of course, exposing the indigenous person to no further assumptions that Western values are normal or superior.

424. This interpretation of "cultural competence" as a set of "skills" is reflected in the LSA's Materials. For example, the "21st Century" article referenced above (not to be confused with the "21st Century" article by Madaan referenced by the LSA's consultant Furlong)[466] discusses the spectrum of "cultural competence":

> *… in Denial, one's own culture is experienced as the only real one and other cultures are ignored or vaguely identified …*[467]
>
> *In … Defense, other cultures are recognized yet viewed negatively and the person's own culture is perceived as being the only one that is "normal." Recently, feminist and black liberation theorists have used the term "cultural imperialism" to describe this practice of normalizing one's own cultural expressions …*[468]
>
> *… in Minimization, tend to emphasize similarity and the cross-cultural applicability of economic, political, philosophical, or even behavioral traits. … still utilizes one's own cultural patterns as central to an assumed universal reality … the Minimization lawyer still sees the world through an ethnocentric lens and fails to see deeper cultural differences such as philosophy, ideology…*[469]
>
> *Effective advocacy involves more than a mastery of the law but also a deep understanding of the client and the facts surrounding the legal matter …*[470]
>
> *Cultural competency is the ability to accurately understand and adapt behavior to cultural difference and commonality.*[471]
>
> *Cultural competency, like other legal skills, requires a disciplined approach to viewing the world from different perspectives …*[472]

---

[466] Song Affidavit 2, Exhibit "A".
[467] Song Affidavit, Exhibit "RRR", p. 883.
[468] Song Affidavit, Exhibit "RRR", p. 883.
[469] Song Affidavit, Exhibit "RRR", p. 884.
[470] Song Affidavit, Exhibit "RRR", p. 877.
[471] Song Affidavit, Exhibit "RRR", p. 880.
[472] Song Affidavit, Exhibit "RRR", p. 877.

425. This Resource, therefore, encourages lawyers to abandon the assumption of "universalism" when clients from other cultures including, as set out above, assumptions like:

    a. what is right is right, regardless of the circumstances or who is involved;

    b. we should treat everyone the same;

    c. we should not making exceptions for family, friends, or members of one's in group;

    d. we should put feelings aside and look at situations objectively; and

    e. we should avoid making exceptions to rules.

426. As referenced above, according to this Resource, so thoroughly ought lawyers dispense with assumptions of Western superiority that it encourages the adoption of legal "perspectives" that operate on the basis of tribalism and even the adoption of perspectives from the communist dictatorship of China. The Resource informs lawyers that if they adopt these "skills" they might come to see people from other cultures as "equally human."[473]

427. Although it does not seem to, what the above model of "cultural competence" actually requires is that the lawyer purge Enlightenment values entirely from her mind.

428. This results from the problem of the lawyer having a duty of honesty and only having one head.

429. Presumably the "culturally competent" lawyer who deals with an indigenous client is not to just pretend she respects the (allegedly-anti-Enlightenment) indigenous worldview while secretly thinking "this person's worldview is inferior to mine and wrong."

430. It doesn't seem so. The LSA says a lawyer must "respect the diverse … perspectives … of clients, co-workers and colleagues."[474] This means the lawyer must "remov[e] cultural assumptions of western superiority"[475] including "the belief that 'there is one right answer'."[476]

431. So let us credit the LSA with the assumption that the "culturally competent" lawyer really believes that the indigenous worldview is equally valid.

---

[473] Song Affidavit, Exhibit "RRR", p. 885.
[474] The Profile (Song Affidavit, Exhibit "HHH", pp. 780).
[475] The Report at p. 4.
[476] Song Affidavit, Exhibit "RRR", p.877.

432. Superficially, it seems possible to have an Enlightenment worldview (for example, believing in objective reality) while fully respecting the validity of the perspectives of those who don't. But that is actually not possible. The Path informs that:

> *We can look at science and at origin stories as simply different ways to describe where we've come from.*[477]

433. According to the Western worldview, which underpins our *Constitution*, this is false. Science and origin stories are not simply different ways to describe where we've come from. They each have their own objective attributes, strengths, and weaknesses. Science's weaknesses include its inability to prove anything. The scientific method consists only of attempts to disprove hypotheses. Origin stories, on the other hand, have the strength of claiming absolute truths without any need to resort to objective proof. But, the Westerner would say, science's objective weakness makes it a superior system for gathering certain information about the natural world. Perhaps origin stories are, for some, a superior system to reinforce collectivist identities or a superior system for establishing claims to land.

434. Like science, universalism suffers from its own weaknesses. While the metaphysical relativists may comfortably believe that two people can hold mutually exclusive views about reality and both be right, the universalist cannot. The universalist's "perspective" is that there is only one reality; that if two people disagree about reality, *ipso facto*, one of them is wrong. If the universalist finds out the relativist is right, the universalist finds out she herself was wrong.

435. So, the universalist who comes to truly "respect" the relativist's perspective (meaning she does not think the relativist is wrong) - presto-chango! - ceases to be a universalist.

436. It is impossible to be a universalist while respecting the equal validity of relativism.

437. The same holds true of all aspects of the Enlightenment. An empiricist who thinks reason works, cannot also believe that it does not.

438. Which is all to say, the only truly "culturally competent" lawyer is one who has cleansed the Enlightenment from her mind.

---

[477] The Path (Song Affidavit, Exhibit "X", p. 454).

439. By the “colonial” standard (that is, according to the standards of a lawyer competent to uphold the Canadian constitution) the “culturally competent” lawyer has simply rendered herself incapacitated.

440. In addition to the objections above in respect of epistemological relativism undermining the rule of law and moral relativism and assumptions of deeply embedded systems of oppression in our legal system undermining the lawyer’s loyalty to the law,[478] the applicant disputes that the “skills” offered by such “cultural competence” are either useful or appropriate in Canadian legal practice. As will be described below in section IV.C and as Williams observes, “cultural competence” as a set of “skills” can “reinforce crude and outdated stereotypes.”[479]

441. The applicant argues below that the assertion that “cultural competence” provides valuable inter-cultural skills is undermined when the “skills” it teaches are actually catalogued and inspected.

442. However, “cultural competence” can also refer to a more overt political objective: “decolonization”:

> *The first part of this training often involves making people sensitive to cross-cultural differences … Decolonization also builds on the idea that the legacy of colonialism endures in culture. But it goes further than advocating cultural competence to suggest that the lasting impacts of colonialism should be exposed and removed from all aspects of society.*[480]

443. It is clear from a review of the CRP and The Path itself that, by “cultural competence” the LSA means this extended definition.

444. When the LSA was considering implementation of The Path, it received a report from its consultant Jordan Furlong which referenced the three articles at paragraph ^ 52 (the Parmar Article, the Madaan Article and the Tully Article) in support of the claim that, “it is becoming more widely accepted that ‘cultural competence’ is a key attribute for lawyers in the increasingly diverse future of our country and our profession”[481]. It also received a memorandum from its “Policy Counsel” Jennifer Freund advocating that The Path be

---

[478] See section IV.B.i.
[479] The Report at p. 17.
[480] Report at pp. 17 and 18.
[481] Song Affidavit 2, Exhibit "A", p. 62.

mandatory[482] which quotes with approval from the Parmar Article, an "excellent piece of academic writing in this area."[483]

445. The Parmar Article clearly characterizes "cultural competence" as an application of Postcolonialism, for example:

> *Legal professionals .. need to become familiar with histories that document how colonial logics shaped the idea that some people have 'culture' while others have 'law' and created hierarchies—placing Indigenous peoples' knowledges, governance systems, economies, laws and epistemologies at the bottom of those hierarchies everywhere.*[484]

446. According to the article, "meaningful" "cultural competence" must mean more than:

> *… skills, behaviours, attitudes, and knowledge that enable a professional to provide services that are appropriate to a diverse range of clients …*[485]
>
> *…*
>
> *Any commitment to reconciliation demands acknowledgement of the foundational violence of colonialism that has shaped Canada, Canadian laws, and Canadians. It also requires explicit acknowledgement of Indigenous peoples as the first peoples of Canada, whose rights are specifically recognized in the Canadian Constitution. In fact, the longstanding and continued assertion of sovereignty sets Indigenous peoples apart from other minorities in Canada today. Recognition of this difference and knowledge of the legacies of Canada's colonial history has to be part of appropriate training required for lawyers in the context of reconciliation.*[486]

447. The article claims the TRC's call to action no. 27 is an opportunity for "reimagining lawyering"[487] to effect "radical transformation" of the legal system.[488] The specifics of such radical transformation include:

    a. the usual "acknowledgements" about the foundational violence of colonialism, etc.;

---

[482] CRP279
[483] Parmar Article, pp. 526-557 at Song Affidavit 2, Exhibit "J", p. 230.
[484] Song Affidavit 2, Exhibit "J", p. 252.
[485] Song Affidavit 2, Exhibit "J", p. 238.
[486] Song Affidavit 2, Exhibit "J", pp. 239 – 240.
[487] Song Affidavit 2, Exhibit "J", p. 238.
[488] Song Affidavit 2, Exhibit "J", p. 245.

b. "unlearning colonial logics, hierarchies of legal cultures, and the disregard of particular knowledges …"[489]

c. "understand[ing] how racial difference works, how such ideas frame law and policy, and how colonial legacies such as the pressure to conform or assimilate permeate the present;"[490]

d. moving away from the … "the rational independent self-reliant individual [which] lies at the heart of [the] narrow approach to "cultural competence";"[491]

e. learning indigenous law and epistemologies;[492] and

f. most especially, helping build-out indigenous law and legal systems and coming to understand "when it is necessary to draw on Indigenous laws in order to represent or respond to an Indigenous claim."[493]

448. According to the article, academics are currently in the process of "making visible" these "indigenous laws", legal systems, and legal culture:

> *Val Napoleon, in her work on Indigenous laws and legal processes, has also created invaluable resources for legal practitioners. Several other scholars have contributed to the creation of literature on ways to work meaningfully with different Indigenous legal systems in Canada by drawing on Indigenous epistemologies, ontologies, and legal principles, on the need for robust and ethical engagement with Indigenous legal orders, and the possibilities for respectful relations between the multiple legal traditions in Canada. The Indigenous Law Research Unit at University of Victoria continues to direct energies and resources towards revival of Indigenous laws in ways that can make a real difference for communities. This work of documenting and making visible laws that generations of Indigenous peoples have kept alive in their everyday practice is critical to undoing some of the colonial violence.*
>
> *Building on this rich and growing body of work on Indigenous laws, I suggest that the continuing disregard of Indigenous laws impoverishes not only the development of substantive law and legal principles in Canada, but also impoverishes the practice of law. The legal profession can only be enriched by seeking out ways in which Indigenous epistemologies might inform the ethical practice of law and ideas of professionalism. Existing codes or principles of ethics are shaped by old and new stories about practices of lawyering and judging in the common and civil law traditions. Absent from these are the stories of ethics that exist within Indigenous legal traditions. More research in this area is likely to reveal stories of representation,*

[489] Song Affidavit 2, Exhibit "J", p. 255.
[490] Song Affidavit 2, Exhibit "J", p. 244.
[491] Song Affidavit 2, Exhibit "J", p. 245.
[492] Song Affidavit 2, Exhibit "J", p. 232.
[493] Song Affidavit 2, Exhibit "J", p. 253.

> *practices of advocacy, and ethical practices of responding to claims that can help us build upon, or even rethink, obligations of lawyers and judges as recognized in existing codes of professional responsibility or principles of ethics.*[494]

449. The other articles referred to by Furlong are also based on the Theories. The Madaan Article, for example, starts with the following quote:

> *Culture is like the air we breathe— it is largely invisible and yet we are dependent on it for our very being. Culture is the logic by which we give order to the world.*[495]

450. This raises many serious questions including:

a. On what legal and constitutional basis can a legal regulator, under the term "competence," seek to change the law, the legal systems, and the epistemological framework of practicing lawyers necessary to support Canada's *Constitution*? Why is this called "competence" at all? The author quotes the same observation:

> *… it is important to ask if 'cultural difference' is invoked only to avoid naming or addressing systemic racism. Noting the relationship between colonialism and racism in Canada, as well as the ways in which institutional racism permeates professional cultures, Green argues <u>that decolonization is more useful than 'cultural understanding' when the goal is systemic change</u>.*[496]

b. "Colonialism" has it that if, under the *Constitution*, the appropriate legislative body in an indigenous community promulgates local laws which are legitimate in accordance with the legal framework, the lawyer whose client interfaces with such laws must know and apply them. But having "unlearned" colonial logics including the "hierarchies of legal cultures" are lawyers to abandon the legal hierarchy that is democratic parliamentary supremacy? It seems they are as, of course, the article tells us it is the Indigenous Law Research Unit at University of Victoria which is "making visible" laws which <u>already exist</u>. Once the "Research Unit" makes an extant law "visible" is the lawyer for whom it is "necessary to draw on Indigenous law" to impose the colonial logic of demanding proof that this is the law, or the colonial logic of demanding proof that the laws have the people's democratic consent? To lawyers who have moved past "denial", "defence", and "minimization" in their cultural competency journey to the phase of

---

494 Song Affidavit 2, Exhibit "J", p. 254.
495 Song Affidavit 2, Exhibit "K", p. 263.
496 Song Affidavit 2, Exhibit "J", p. 244.

"acceptance"[497] the answer to all of these questions is "yes;" to impose such "colonial logics" is to do violence and to retraumatize.

451. In the applicant's submission, lawyers who have come to "accept" such a framework have simply and obviously decided to violate their oaths of loyalty to the *Constitution* and their clients. Far from mandate "acceptance" of this scheme under the guise of "competence", the LSA should be pursuing conduct proceedings to defend the rule of law.

452. That the LSA does not have the legal jurisdiction under the *Constitution* to compel lawyers to accept such training in "cultural competence" is beyond question: "cultural competence" is an Abuse of Subversive Objectives.

453. But seeing as the LSA has made it a lawyer's business to muse on matters of indigenous policy, a broader and perhaps more important question must also be asked. Given that those who embrace the Theories reject objectivity, reason, and science, and given that we therefore have no reason to believe their socioeconomic diagnoses or prescriptions are correct (and every reason to believe they are not) how, as Canadians who care to see the socioeconomic conditions of our indigenous citizens substantially improve, are we to expect that the "real difference for communities" this initiative will make will not just be further ruin? Are indigenous communities simply being made the subject of a sociological experiment?

454. That the LSA adopted a broader conception of "cultural competence" in line with this article when mandating its only "continuing professional development" to date is obvious from The Path. As referenced above, The Path's premise is that "Canada's colonial legacy is still alive" in the form of "racism, the discrimination, the unfair treatment and the inequality built into Canadian law, policies, and structures" which causes disproportionate incarceration, abuse, suicide, etc.[498]

> *Numerous reports on the criminal justice system over the years including the TRC, the Missing and Murdered Indigenous Women and Girls Inquiry, and several other Supreme Court cases including Williams, Ewert, Ipeelee and Barton cite systemic racism as the factor for the rise in incarceration rates of Indigenous peoples.*[499]

---

[497] Song Affidavit, Exhibit "RRR", p. 882.
[498] See above at 362.
[499] The Path (Song Affidavit, Exhibit "X", p. 513).

455. The implication being that Canadian law, policies, and structures must be rebuilt. Given that the system is deeply corrupted by racism, the better verb is probably "overhaul." The LSA mandated The Path to lawyers which means, *ipso facto*, lawyers – not our democratically elected representatives; – are supposed to participate in the overhaul within their professional practice. Recall the words of Nationhood Council House

> *… There are thousands of non-Indigenous lawyers in this country – as they go about their livelihood, my first call to action would be to them – do some self-reflection and ask where their law/the Canadian law, is originally stemming from. And then knowing that, why are they continuing to go about business-as-usual? If the Canadian Constitution was imported in a matter of days, surely, corrections can be made in similar time frame. Each passing day of status quo is a day of unlawfulness that they help retain.* [500]

456. The Path contains the same encouragement,

> *Here is Adam Drew, Crown prosecutor for the Calgary Indigenous Court, discussing next steps that legal professionals can consider taking in their practise towards reconciliation.*
>
> *"We're living now in a Post Truth and Reconciliation Commission environment. I think we've reached a point in Canadian history where there's no longer any excuse for Canadian professionals working in government, working in law enforcement, working in prosecutions and courts generally, in the legal profession. There's no excuse for any of us to be ignorant of the recommendations of the Truth and Reconciliation Commission in with relation to culture, to health and to justice,* [501]

457. As for the specific recommendations of The Path, it tells lawyers to, *inter alia*:

    a. stop misapplying *Gladue*[502] by also applying it to bail proceedings;[503]

---

[500] Song Affidavit 2, Exhibit "E", p. 191.
[501] The Path (Song Affidavit, Exhibit "X", p. 513).
[502] *R. v Gladue*, 1999 CanLII 679 (SCC), [1999] 1 SCR 688, which was decided on the principle that a sentence must be "fit and proper."
[503] Note here another manifestation of "words don't matter" to the Theories. *Gladue* is not binding precedent as to bail making stare decisis an impediment to be overcome through activism (The Path) and practice – *stare decisis* is "evidence of continued systemic discrimination …" (Report at p. 24).

b. seemingly, support and continue to build-out the nascent parallel system of justice for indigenous people, i.e. "Indigenous Courts;"[504]

c. seemingly, support and assist court initiatives to "make room" and cede legal control of sentencing to indigenous communities;[505]

d. implement trauma-informed and "therapeutic" legal practices[506] which means or includes:

i. Knowing that indigenous people are in a state of "constant trauma." Recall:

Fanon defines colonized people as those "in whose soul an inferiority complex has been created by the death and burial of its local cultural originality."[507]

The Path tells us:

We deal with the people, as a person who's in conflict with themselves who are out of balance, as we say, and move forward from a trauma informed perspective.

Recall also that "trauma" is exposure to "discourses of colonialism" meaning:

… assumptions of western superiority as manifest in … curricula that privilege "western" knowledge; social and institutional practices that privilege "western" values; and legal systems that privilege "western" notions of justice,[508]

meaning that indigenous clients are to be insulated from exposure to the *Constitution* and the laws promulgated thereunder and from exposure to lawyers who comply with their oath of loyalty to uphold it. For example:

The challenge that we've been under, is that we actually through the (our) [sic] justice system, encourage conflict, through divorce, separation, restraining orders, peace bonds. So, we have all of these laws and processes

[504] The Path (Song Affidavit, Exhibit "X", p. 514).
[505] The Path (Song Affidavit, Exhibit "X", p. 515).
[506] The Path (Song Affidavit, Exhibit "X", p. 514).
[507] Report at p. 15.
[508] Report at p. 4.

in place to separate people. What we don't have is a full understanding of who we're dealing with.[509]

Also:

.. consider the non-legal aspects of a client's situation (like colonialism, systemic discrimination, historic trauma, loss of culture, poverty, and a mistrust of government systems), as well as place a higher value on the lawyer's understanding of a client's perspectives, emotions, and values.[510]

ii. Not treating substance abuse as a problem but as a symptom[511] and generally connecting "a person's behavior to their trauma response rather than isolating their actions to the current circumstances and assuming a character flaw."[512] Recall, the deep-rooted but invisible systems of oppression in Canada's legal system are, according to the Theories which reject reason, the cause of these socioeconomic disparities. For example, The Path declares:

This post-colonial legacy can be seen in: lower life expectancy, higher rates of childhood poverty, a much higher likelihood of committing suicide, sky-high rates of diabetes, an active tuberculosis rate among Inuit that's 400 x higher than the Canadian population, Disproportionate numbers of Indigenous peoples who are victims of violence, who are murdered or go missing. High rates of substance abuse. Poorer education. Lower levels of employment outcomes. And the list goes on.

The applicant submits that treating substance abuse as a problem is critical to recovery.

e. Apply *The United Nations Declaration on the Rights of Indigenous Peoples* ("*UNDRIP*") to indigenous laws, including those "made visible" by the "Indigenous Law Research Unit" and others like it:[513]

Self-government involves parties at the negotiation table recognizing Section 35 Aboriginal rights and title under the Constitution Act, 1982 and being

---

[509] The Path (Song Affidavit, Exhibit "X", p. 516).
[510] The Path (Song Affidavit, Exhibit "X", p. 518).
[511] The Path (Song Affidavit, Exhibit "X", p. 518).
[512] The Path (Song Affidavit, Exhibit "X", p. 518).
[513] The Path (Song Affidavit, Exhibit "X", p. 518).

> *aware that the Crown has a duty to consult and accommodate. But it goes further than that, we also need to recognize Indigenous laws.*[514]
>
> *…*
>
> *The UN Declaration does not create new or special rights just for Indigenous peoples. Rather, the UN Declaration is necessary to rectify the ongoing denial and violation of Indigenous peoples' existing and inherent human rights.*[515]

f. Seemingly, support and assist with a broader interpretation of treaty rights to implement self-government including via *UNDRIP*.[516]

g. Seemingly, support and assist with efforts to have indigenous children (whether on and off reserve, status or non-status, Inuit or Métis) in foster care come under the legal authority of indigenous government.[517]

458. To summarize, "cultural competence," as understood by the LSA, involves participation in a broad overhaul of the Canadian legal system to segregate indigenous people (including non-status indigenous and Metis children living off-reserve in foster care) into a parallel system of government and legal system, subject to laws being "made visible" by academic "research units" and, to the extent possible, insulating indigenous people from colonialism in the form of Canada's *Constitution* and the Enlightenment.

459. That does not describe legal "competence." That describes legislating. A lawyer who participates in those efforts in her professional duties[518] is violating both of her primary legal and ethical obligations: loyalty to the law (for reasons that are obvious) and loyalty to the client (for reasons that are discussed below).

460. The LSA clearly has no statutory authority to encourage lawyers to violate those loyalties. It's Political Objectives, as manifest in the its efforts to render the bar "culturally competent" are an Abuse of Subversive Objectives.

461. The applicant will now demonstrate that the LSA's "cultural competence" (and its Political Objectives more broadly) undermine the lawyer's loyalty to the client in many respects.

---

[514] The Path (Song Affidavit, Exhibit "X", p. 498).
[515] The Path (Song Affidavit, Exhibit "X", p. 517).
[516] The Path (Song Affidavit, Exhibit "X", p. 517).
[517] The Path (Song Affidavit, Exhibit "X", p. 518).
[518] Except as permitted under the *Constitution*, for example, drafting legislation in accordance with instructions of a constitutional order of government or constitutional statutory delegate.

2. "Cultural Competence" Undermines Access to Justice

462. According to the LSA's system of legal ethics, the first question a lawyer must obviously ask when a new client presents themselves is whether they are "culturally competent" to take the case. According to the LSA's conception of "competence" a lawyer such as the applicant would seem to be grossly culturally incompetent to take a case for any indigenous client, black client, transgendered client, or for that matter and ironically, any Chinese client. This is because Song finds himself, on his "cultural competence" journey, in hard "denial":

> *I believe the liberal democratic systems of Western countries are superior to the CCP's socialist system – if the goal is personal and social outcomes including individual dignity, spiritual fulfilment, freedom, democracy, health, wealth, happiness, social harmony, peace, order, and progress.*
>
> *…*
>
> *… I believe the Canadian system, pluralism, is far superior to [the Chinese socialist] system of tribalization because pluralism acts as a unifying, rather than dividing, order which accepts and absorbs conflicting opinions through equal freedom of thought and expression.*
>
> *…*
>
> *I immigrated to Canada, in part, because I read the preamble to the Canadian Charter of Rights and Freedoms which states, "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law." To me this meant that the source of Canadian truth and morality was not the state but an authority that transcended the state. It also told me that Canadian law was supreme and not subordinate to any ideology or to the dictatorship of any person or party. I believe this preamble is profoundly wise. It reassured me that Canada was, indeed, a free country and would remain so. I believe the Canadian Constitution is a social good.*[519]

463. Song obviously assumes the superiority of Western values. "Incompetent."

464. Song believes in objective reality including matters of fact and ethics. Song views socialism and tribalization as objectively inferior to Canada's *Constitution*. "Incompetent."

---

[519] Song Affidavit, paras 25, 32 and 59.

465. Song has only one mind and conscience. He can not, both, believe in objective reality in his spare time but not believe in objective reality while lawyering. “Incompetent.”

466. Song has sworn an oath which compels him to be loyal[520] to the Canadian *Constitution* and the laws promulgated thereunder.[521] “Incompetent.”

467. Song does not believe the Canadian *Constitution* or the laws promulgated thereunder (subject to the following) are a system of “colonialism”, “whiteness”, “privilege”, “systemic discrimination”, “racism”, “liberal racism”, “ignorance”, “hate’, “violence” or other such system of oppression.[522] He does not believe in the existence of invisible or unconscious discrimination and does not believe that unfavourable socioeconomic disparities between Canadians of different identities are materially caused by discrimination, whether conscious, unconscious, individual or (subject to the following) systemic.[523] “Incompetant.”

468. Song believes that the only thing in Canada which might be fairly described as “systemic discrimination” is the racial segregation of indigenous people from other Canadians pursuant to the *Indian Act*, caselaw including *Gladue*, and as further promoted by the LSA in The Path.[524] Song believes racial segregation harms indigenous Canadians.[525] “Incompetent.”

469. According to the LSA, then, Song is engaging in discourses of colonialism including “binary thinking,”[526] “ethnocentrism,”[527] “eurocentrism,”[528] “harassment,”[529] “individual racism,”[530] “internalized racism (oppression),”[531] “liberalism/liberal (democratic) racism,”[532] “racism,”[533] “oppression,”[534] “power,”[535] “universalism,”[536] “whiteness,”[537] and “white

---

[520] Song Affidavit 2, para. 20.
[521] Song Affidavit, para. 58.
[522] Song Affidavit, para. 13(b)(iii).
[523] Song Affidavit, para. 92.
[524] Song Affidavit, para. 91.
[525] Song Affidavit, para. 91.
[526] The Glossary (Song Affidavit, Exhibit “LLL”, p. 809).
[527] The Glossary (Song Affidavit, Exhibit “LLL”, p. 814).
[528] The Glossary (Song Affidavit, Exhibit “LLL”, p. 814).
[529] The Glossary (Song Affidavit, Exhibit “LLL”, p. 817).
[530] The Glossary (Song Affidavit, Exhibit “LLL”, p. 823).
[531] The Glossary (Song Affidavit, Exhibit “LLL”, p. 824).
[532] The Glossary (Song Affidavit, Exhibit “LLL”, p. 826).
[533] The Glossary (Song Affidavit, Exhibit “LLL”, p. 834).
[534] The Glossary (Song Affidavit, Exhibit “LLL”, p. 829).
[535] The Glossary (Song Affidavit, Exhibit “LLL”, p. 830).
[536] The Glossary (Song Affidavit, Exhibit “LLL”, p. 839).
[537] The Glossary (Song Affidavit, Exhibit “LLL”, p. 841).

supremacy."[538] Worse yet, it also seems clear Song wishes to engage in further "colonialism,"[539] and "imperialism"[540] and does not wish to engage in "decolonization."[541] "Incompetent."

470. Song is therefore in breach of several sections of the Profile including virtually the whole of domain 3 (Cultural Competence, Equity, Diversity and Inclusion) including:

> *Take action to dismantle systemic inequalities and barriers*

and virtually the whole of domain 8 (Truth and Reconciliation) including:

> *Acknowledge the impacts of colonization and systemic discrimination*[542]

471. According to the "trauma-informed" model of professional practice, should Song share these views with an indigenous person he threatens to cause them further trauma.

472. For these reasons, Song's perspectives on these matters render his practice according to the Profile "unsafe, ineffective and unsustainable"[543] – at least insofar as he has any professional contact with a person of any race except white.

473. This substantially narrows the pool of clients Song may "competently" represent. Even white clients might have business or litigation involving another racial group. Conversely, it narrows the pool of lawyers from which clients may freely select.

474. Song is surely not the only lawyer who shares these views. There may be other lawyers who not only swore loyalty to the *Constitution* but also thought doing so was an objectively good thing.

475. One effect of the LSA's "cultural competence" is, therefore, to seriously limit Albertans' free choice of counsel. As it relates to Song, he loses potential clients to whom he may assume the duty of loyalty in the first place.

476. According to the LSA's Regulatory Objectives all this may not actually be viewed as an impairment of client freedom to select counsel, because that freedom is defined with reference to the freedom to choose a lawyer who is "representative of the population it

---

[538] The Glossary (Song Affidavit, Exhibit "LLL", p. 842).
[539] The Glossary (Song Affidavit, Exhibit "LLL", p. 810).
[540] The Glossary (Song Affidavit, Exhibit "LLL", p. 819).
[541] The Glossary (Song Affidavit, Exhibit "LLL", p. 811).
[542] CRPA-190, A-195.
[543] CRPA183.

serves" (i.e. is of the same race) and "understands their culture" (i.e. is "culturally competent"):

> *The Law Society believes it is in the public interest for the legal profession to be representative of the population it serves. This is connected to accessibility of legal services, in that the public should have a meaningful choice in who represents them. This is particularly true in the case of groups who might be underrepresented in society, have cultural or language barriers to working with certain lawyers or firms, or simply feel more comfortable having someone who understands their culture representing them, particularly in cases where that person might be in a vulnerable legal situation.*

477. What we seem to be witnessing here is a drift from client autonomy. Rather, the client is afforded only a narrow range of autonomy: the right to choose an "appropriate" legal provider.

478. There is another major way in which the LSA's "cultural competence" interferes with the lawyer's duty of loyalty to the client: in respect of "access to justice."

479. The essence of the rule of law is that "there is, in short, one law for all."[544] "Access to justice" means, therefore, effective access to the same law without discrimination on the basis of race or other identity. But, according to "cultural competence", this kind of universalist, objective, linear thinking is the very "colonialism", "whiteness" and "anti-black racism" which is deeply embedded in our legal systems and structures. By the "logic" of the Theories effective access to justice, therefore, requires for each race access to different laws.

480. In The Path, the LSA makes this explicit in relation to indigenous Canadians. However, "cultural competence" has the same effect when applied to all other "hierarchies of oppression" including as such hierarchies "intersect":

> *Lawyers have an awareness of the unique experiences of the enumerated groups set out in the Alberta Human Rights Act. They implement strategies to meet the specific needs of individuals from these groups to achieve culturally or community-**appropriate** services and outcomes. Lawyers treat*

[544] *Reference re Secession of Quebec* at para. 71.

> *all people with dignity and respect and take active steps to support and advocate for members of enumerated groups.*[545]

481. As Williams observes:

> *This establishes the view that there are distinct cultures each with an historically distinct experience that requires differential treatment in the present. It also suggests that lawyers should aim not for an objectively "best" outcome, or equal outcomes, but "appropriate" outcomes. These views emerge from postcolonial theory.*[546]

482. This undermines the lawyer's duty of loyalty to the client because the "culturally competent" lawyer does not effectively facilitate the client's interests under the law. Instead, the lawyer sizes-up the client's race, sexuality, etc. and seeks to facilitate the client's interests under the "appropriate" law for that intersecting identity group.

3. "Cultural Competence" Undermines Communication Skills

483. The "culturally competent" lawyer is not to simply take instructions from every client in the same manner but, instead, is to have a "deep understanding of the client," by understanding their culture.

484. Let us for a moment assume this is realistic. Let us assume that by employing the "skills" of "cultural competence" and, in particular, by applying a specific cultural "lens" we will:

> *.. see deeper cultural differences such as philosophy, ideology, and … conflict style,*[547]

and will actually come to, for example, understand the client's instructions differently.

485. This begs two major questions:

a. how do we know which lens to apply; and

b. how do we know the lens is not warped?

486. As to the first question, the answer seems to be that the lawyer selects the "appropriate" lens or lenses based on the client's race (or other inherent characteristics like sex).

---

[545] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[546] The Report at p. 11.
[547] Song Affidavit, Exhibit "RRR", p. 884.

487. The Path, for example, nowhere warns lawyers that the lens it provides is only intended for people of an indigenous race who come from the culture or cultures purportedly described. As a means of reducing trauma, The Path advocates for the treatment of all indigenous clients from the same trauma informed perspective. It advocates for the placement of foster children into indigenous legal custody whether or not they are status or non-status, on-reserve or off-reserve – i.e. regardless of the actual cultural milieu in which the child may have lived its whole life.

488. What of the indigenous client, then, who insist you not apply the indigenous lens when taking instructions? According to the LSA's Theories, this is just colonialism in action – this is how it works. The client is merely suffering from "internalized racism (oppression)."[548] To quote Williams:

> *… formerly colonized people continue to be oppressed, not by direct rule and a denial of democracy, but through their own mental processes.*[549]

489. It would appear the "culturally competent" lawyer's duty in this situation would be to ignore the client's objectives. Recall, according to the "excellent piece of academic writing" quoted to the Benchers (the Parmar Article), cultural competency means moving away from the … "the rational independent self-reliant individual [which] lies at the heart of [the] narrow approach to cultural competence."[550] Recall, also, postmodernism's antipathy to client autonomy. Ignoring the client's instructions is clearly not an improvement on a lawyer's communication skills.

490. As to the second question, in the applicant's submissions, we have every reason to believe the lens is warped. That seems obvious for many reasons.

    a. First, by what hubris does a lawyer come to imagine that after a few hours of study they would so thoroughly know "deeper cultural differences such as philosophy, ideology, and conflict style" that communication with their client would be meaningfully improved? It is generally by extended social interaction that we come to understand other cultures, not by reading books or listening, captive, to "experts."

---

[548] The Glossary (Song Affidavit, Exhibit "LLL", p. 824).
[549] The Report at p. 17.
[550] Song Affidavit 2, Exhibit "J", p. 245.

b. Second, to assume your client's culture, his "local cultural originality,"[551] based on his race is simple racial prejudice. Finally here, the applicant and the Glossary agree:

> *Prejudice/Racial Prejudice: To "pre-judge" an individual or group. "A state of mind; a set of attitudes held, consciously or unconsciously, often in the absence of legitimate or sufficient evidence" … Oftentimes, prejudices are not recognized as stereotypes or false assumptions and through repetition, become accepted as "common sense."*[552]

The Enlightenment came to the conclusion that prejudice was wrong because it doesn't work. To select cultural lenses based on the client's race assures error. Rather than applying a lens to correct vision, the lawyer will be applying a lens to distort it.

c. Third, The Path was mandated because the LSA thought it would materially improve the "cultural competence" of the Alberta bar. But it purports to teach the culture of hundreds of different nations, speaking 70 different languages and subdialects, including the Inuit and Metis (who are half-European):

> *Every human language embodies a specific cultural approach to communication and understanding Each of these languages encapsulates a unique culture and a specific way of looking at the world.*[553]

In relation to these 70 distinct cultures, it devoted about 10 of its 82 pages to understanding their "culture".[554] How is this possible without stereotype? As Williams observes:

> *When taught as a set of skills, cultural competence can reinforce crude and outdated stereotypes that all members of a particular community behave in a particular way.*[555]

At the very least, The Path must have so flattened the diversity of indigenous culture into these 10 pages as to seriously undermine the claim that lawyers' "cultural competence" was meaningfully developed; that lawyers came away with a "lens" that could responsibly be applied to alter the understanding of client instructions.

---

[551] The Report at p. 17.
[552] The Glossary (Song Affidavit, Exhibit "LLL", p. 831).
[553] The Path (Song Affidavit, Exhibit "X", p. 505).
[554] Unless one treats a history of abuse as part of indigenous culture, in which case, according to the pages devoted to that history, abuse constitutes the vast majority of indigenous culture.
[555] The Report at p. 17.

d. Finally, as will be discussed below in section IV.C.iii, it is the applicant's position that The Path, as with the LSA's Impugned Conduct more generally, not only employs racial stereotypes, it employs stereotypes which are insulting to the inherent dignity of the individual. Whether or not "effective" in any manner, a lawyer sworn to uphold the *Constitution* and to behave ethically should not entertain or operationalize any such racial stereotypes in their professional conduct.

491. The "culturally competent" lawyer will prejudge the client's "culture" on the basis of her race and will apply racial stereotypes which, assuming the premise of "cultural competence" is even realistic, is likely to distort the lawyer's understanding of the client's interests rendering the lawyer loyal to an interest which is not the client's.

492. Further evidence that "cultural competence" does not teach useful skills can be found by reviewing the "skills" themselves.

493. The skills taught in the LSA's "21st Century Resource" include:

a. a prosecutor not seeking more strenuous penalties for gang related crime if the gang member is black (i.e. to racially discriminate);[556]

b. not labelling an apparently impolite person from a foreign culture "uncivilized", "less developed", "unwilling" or "untrustworthy" (which we all know the adage:"when in Rome …");[557]

c. functioning as a "cultural chameleon" who can adapt behaviour to different environments and put themselves "in their client's shoes" (as children we learn "inside voice", the word for a person with no empathy is "sociopath" or "psychopath" because it is a rare pathology);

d. not being too quick to assume that a well-dress, middle-aged, non-English speaking woman is financially independent or buys her own clothes.

494. The Resource is obviously insulting to the humanity and intelligence of its subjects and readers:

495. Unlike the Denial or Defensive attorney, the Acceptance attorney will be able to understand the difference between himself and the family he is interviewing while seeing them as **equally human**.

[556] Song Affidavit, Exhibit "RRR", p. 883.
[557] Song Affidavit, Exhibit "RRR", p. 884.

496. The “skills” taught in The Path are similarly less than useful and insulting in the premise that any of it needs to be taught (to adults) at all. In the module, “Relating to Indigenous Peoples” lawyers are taught the following “skills” to “increase what we call your IQ, or your Indigenous Quotient”:

> *There is a difference between speaking and having something to say.*
>
> *… be aware that gestures, facial expressions and other subtle, non-verbal forms of communication are very much part of the way that many Indigenous peoples interact.*
>
> *If they laugh at you or with you, it just may mean that you shouldn’t take yourself so seriously.*
>
> *Elders are revered and honoured for their wisdom and knowledge … It is important to listen and not interrupt when Elders tell stories and share knowledge … simply listen, observe, imitate and think about what you’ve learned. Often the lesson will come to you later, when you need it.*
>
> *… do some homework …*
>
> *There might be a need for translation and interpretation in communities where people’s first language is not English*
>
> *Is the relationship just about what you need from them?*
>
> *Relationships take time and effort and a willingness to listen, on both sides*

4. “Cultural Competence” Undermines Zealous Advocacy

497. An aspect of client loyalty is being the client’s zealous advocate.

498. However, as demonstrated above, a sincere adoption of the Theories profoundly handicaps the lawyer’s willingness and ability to zealously advocate on behalf of the client’s interests.

499. Having, “recognize how systemic inequalities and barriers affect individuals and groups,” and having become aware of the “effects of individual and systemic trauma,” the “culturally competent” lawyer “incorporate[s] equity, diversity and inclusion in practice,” by

"practis[ing] anti-discrimination and anti-racism," "implement[ing] strategies to mitigate trauma," and "tak[ing] action to dismantle systemic inequalities and barriers."[558]

500. In other words, the lawyer stops engaging in "discourses in colonialism" and takes action to stop discourses in colonialism in the legal system more broadly:

> *Reconciliation demands that the profession also turn its mind to training competent lawyers who are committed to ensuring that the legal system no longer replicates colonial violence.*[559]

501. The central "discourse in colonialism" which is deeply embedded in our legal system, which must be rooted out, is the "sham" of objectivity and reason. The "culturally competent" lawyer may neither treat those concepts as true or superior to other ways of knowing. This effectively removes virtually every legal tool previously available to the lawyer under the "legal syste[m] that privilege[d] "western" notions of justice."[560]

5. A Day in the Life of the "Culturally Competent" Lawyer

502. Take an easy example. An indigenous woman enters into a contractor arrangement to provide services to a corporation. The contract requires that she "arrive for work in a timely manner" with the right to terminate for breach of that clause. The corporation has nine other contractors, all of whom are from the "dominant culture … White, Anglo-Saxon, Protestant males."[561] Under the contract, she is consistently late for work or does not arrive at all. After a period of attempted remediation, she is terminated, citing breach of the punctuality clause and rights of termination. No other contractors are late and therefore no other contractor is fired. The woman sues for breach of contract claiming damages for the balance of its term. The corporation hires a lawyer to defend.

503. To our "colonial" lawyer, Roger, operating under the "discourse in colonialism" which is the legal system described by our *Constitution*, the claim is a slam dunk. She breached an express clause, the corporation acted reasonably, the corporation terminated pursuant to clear contractual rights. Note, the "colonial" system of law has provided all parties clarity as to their obligations and, therefore, contractual predictability. Roger assures the corporation the claim will likely be resolved quickly, especially once the former contractor retains a lawyer who will, no doubt, correctly explain her legal rights. The most likely

---

[558] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[559] Song Affidavit 2, Exhibit "J", p. 235 – 236.
[560] The Report at p. 4.
[561] The Glossary (Song Affidavit, Exhibit "LLL", p. 813).

outcome is the client pays little or nothing to the contractor and a modest amount in legal fees.

504. Now imagine, instead, the corporation hires an "effective, safe, and sustainable" lawyer named Jane. To the "culturally competent" Jane, the file is a quagmire. She immediately recognizes that the contractor was suffering from internalized racism when she entered into a contract which made assumptions about words having fixed meanings. The contract even expressly treated the colonial value of punctuality as the norm.

505. Further, seeing that 100% of the indigenous contractors were fired, who represented 10% of the workforce, and 0% of the white contractors were fired, who represent 90% of the workforce, she is squarely facing a "post-colonial legacy" as seen in "business and employment outcomes."[562] Worse yet, the systemic discrimination is operating on "multiple points of discrimination": race, ethnicity, religion, sex and gender.[563] Her client has really stepped in it!

506. Jane knows there must be a "policy, procedure or practice within the system that resulted in disproportionate disadvantages to the contractor based on her race."[564] When she reviews the contract, her heart sinks. Although superficially neutral and although her corporate clients surely did not "engage in intentional discriminatory behaviour," she sees the punctuality clause and that it "norms" colonial values. The contract and the punctuality clause are discourse in colonialisms – inequitable principles "historically embedded in our systems and institutions."[565]

507. Jane reviews the plaintiff's statement of claim. It alleges that the contract she signed did not contain the punctuality clause. It also alleges that, according to the contractor's language and epistemological systems, the word "timely" has an entirely different meaning than it does to the corporation. It alleges:

> *Viewed through the lens of Indigenous language, the world is not hierarchical, or linear, or divided into multiple, rigid categories. The Indigenous world view, and thus Indigenous languages, interpret experience in a holistic way.*[566]

---

[562] The Path (Song Affidavit, Exhibit "X", p. 484).
[563] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[564] The Acknowledgment (Song Affidavit, Exhibit "N", p. 338).
[565] The Acknowledgment (Song Affidavit, Exhibit "N", p. 338).
[566] The Path (Song Affidavit, Exhibit "X", p. 508).

508. It explains that in her culture, the day is not divided into rigid categories of “hours” each of the same period, higher hours following lower hours, in linear succession. Rather, time is experienced in a more holistic and less linear fashion. To her culture, “timely” means, “when the time is right.” The statement of claim alleges, “I always arrived when the time was right.”

509. “Culturally competent” Jane, therefore, recognizes that the contractor was not in breach of the punctuality clause and that the contract effects systemic discrimination.

510. The claim further alleges that the corporation’s conduct has exacerbated the plaintiff’s trauma and seeks aggravated and punitive damages.

511. Jane’s first failure of zealous advocacy: she advises the corporation that it was in breach of the contract and owes the plaintiff damages. She recommends the client attempt[567] to settle for, just, the general damages claim in an attempt to avoid aggravated and punitive damages.

512. The client refuses and demands that a statement of defence be filed which alleges the plaintiff signed a contract including the punctuality clause, that the contractor was fully aware of the meaning of “timely”, and denying that the contractor suffers from trauma or that the termination exacerbated it.

513. This puts the “culturally competent” Jane in a serious ethical bind. The client is instructing her to participate in epistemological violence by:

    a. asserting objective realities including that the words of the contract have an objective meaning, that the contractor knew what it was, and that the contractor does not suffer from trauma;

    b. challenging the indigenous person’s lived experience; and

    c. applying the logical, i.e. reasonable, concept of causation.

514. Jane’s next failure of zealous advocacy: she either refuses and quits, counsels her client not to make these allegations, or, when she drafts the statement of defence, she “soft pedals” the allegations.

515. The “culturally competent” lawyer’s next failure of zealous advocacy: at questioning she refuses to ask relevant questions like “did you tell my client on several occasions that you

[567] As seen below, the “culturally competent” would, in fact, not make this recommendation.

were sorry when you arrived late?" The relevance of this question is to make a logical inference: you arrived late then apologized; therefore you knew you were late; and by apologizing you admitted being late was a breach of your duties. To the "culturally competent" lawyer this is a "discourse in colonialism": it employs reason and assumes that reason is real, that reason works, and that reason is superior to irrationality.

516. The "culturally competent" lawyer's next failure of zealous advocacy: her training and understanding of the "trauma-informed therapeutic model" of lawyering[568] requires that she recognize that the contractor's "people are in a state of constant trauma," and are "in conflict with themselves."[569] She has a therapeutic duty towards the contactor not to retraumatize. The lawyer takes a sympathetic tone when asking questions, never confronts her with an opposing viewpoint, and when given an answer that makes no sense to the lawyer's "colonial logics", she simply moves on.

517. The "culturally competent" lawyer reveals herself to be grossly incompetent. In place of zealous advocacy is confusion, misdirection, reluctance, opposition, and, likely, outright refusal. After all, the lawyer is under an ethical duty under the Code to:

> *… respect the dignity and worth of all persons and to treat all persons fairly and without discrimination … [and a] ... special responsibility to respect and uphold the principles and requirements of human rights and workplace health and safety laws in force in Canada … and … specifically, to honour the obligations enumerated in such laws.*
>
> *…*
>
> *Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.*[570]

518. The "culturally competent" lawyer's client is likely to pay more money to the plaintiff (either because they took Jane's advice to settle or because the lawyer's tepid advocacy was

---

[568] The Path (Song Affidavit, Exhibit "X", p. 514).
[569] The Path (Song Affidavit, Exhibit "X", p. 515).
[570] The Code, Rule 6.3-1 (Song Affidavit, Exhibit "G", p. 257).

less effective in court) and more money to Jane for protracted litigation (because she refused to draw clear lines and make forceful arguments).

519. Note also the effect on the legal system more broadly. The introduction of "cultural competence" into "our legal culture"[571] tends to:

a. reduce contractual certainty and increase contractual risk;

b. pervert the law; and

c. increase the cost to access justice.

520. "Cultural competence" is incompetence.

6. "Cultural Competence" Creates Divided Loyalty

521. Loyalty to the client means loyalty to the client, and only the client, within the law:

> *… the duty of loyalty … endures because it is essential to the integrity of the administration of justice and it is of high public importance that public confidence in that integrity be maintained… unless a litigant is assured of the undivided loyalty of the lawyer, neither the public nor the litigant will have confidence that the legal system, which may appear to them to be a hostile and hideously complicated environment, is a reliable and trustworthy means of resolving their disputes and controversies.*
>
> *…*
>
> *Fiduciary duties are often called into existence to protect relationships of importance to the public including, as here, solicitor and client. Disloyalty is destructive of that relationship.*[572]

522. Given the lawyer's fundamental role in the administration of justice, and her role in facilitating the client's access to the "civic compromise of the law," only one other loyalty is therefore required and permitted: loyalty to the law.[573]

523. The lawyers' loyalty may be further, and improperly divided, either by competing personal interests or by some other external interest, like that of a third party including the state.[574]

---

[571] The Acknowledgment (Song Affidavit, Exhibit "N", p. 339).
[572] *Neil* at paras. 12 and 16.
[573] See above at section III.B.ii.1.
[574] *Canada v FLSC* at para. 71.

524. The most dangerous form of divided loyalty is to a political interest:

> *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.*[575]

525. The reason the SCC sees this as the most dangerous form of divided loyalty is likely because it erodes the rule of law's ability to constrain the arbitrary exercise of power[576] (lawyers who are supposed to secure the client's interests under the law have a conflicting interest to secure the political objective), it erodes the rule of law's function as an "order of positive laws which preserves and embodies the more general principle of normative order"[577] (lawyers who are supposed to secure the client's interests under the law have a conflicting interest to secure the political objective), and because it produces a fascistic merger of state and private power (the state's interests are pursued, even in pursuit of ostensibly private rights and interests).

526. A divided loyalty to a political interest perverts the lawyer's role from zealous advocate of the client's legal interests, to "agent" for the political purpose.[578]

527. Where the political interest pursued is not the state's (or the state's statutory delegate), the same holds true, (except there is no fascistic merger of state and private power.)

528. The LSA is a statutory delegate exercising state power.[579]

529. The LSA's Political Objectives are "political" both in substance[580] and as employed by the LSA:

---

[575] *Canada v LSBC* at pp. 335 to 336.
[576] *Manitoba Language Rights* at pp. 748 – 749.
[577] *Manitoba Language Rights* at p. 749.
[578] *Canada v FLSC at para 77;* see also para 75.
[579] See, especially, LPA at s. 106.
[580] See above at IV.B.ii.

> *When we use the term systemic discrimination, we mean policies, procedures and practices within systems and institutions … Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions.*
>
> *…*
>
> *We recognize and accept the need to take further steps (#resources) to address systemic discrimination within the Law Society, the legal profession and the justice system.*
>
> *The Law Society remains committed to reducing barriers created by racism, bias and discrimination, in order to affect long-term systems changes within our legal culture.* [581]

530. The LSA intends to change principles which are embedded in our systems and institutions, change the Law Society, the legal profession and the justice system (recall how broadly the LSA interprets the term "the justice system", see paragraph 79) so that it does not produce systemic discrimination and affect long-term systems changes within Canada's legal culture. These are political objectives and, worse yet, political objectives to change the *Constitution*.

531. Rather than exercising state power to ensure lawyers do not pervert the law, the LSA's Impugned Conduct exercises state power to ensure they do.

532. That the LSA expects the "culturally competent" lawyer to embrace and pursue this divided loyalty is apparent at every level:

    a. At the level of the Theories: Once the Theories are accepted, there becomes one apex moral imperative: equity and decolonization. Moral and legal impediments under our Western legal order (including under the *Constitution*) are colonialism and systemic discrimination and objections on the basis of those moral and legal impediments are discourses in colonialism (epistemological violence which oppresses indigenous and black people through their own mental processes). Not being racist is not enough. Inaction is systemic discrimination so people must be "anti-racists." The lawyer must, therefore, actively destroy systems of oppression regardless of colonial values that would otherwise act as a constraint – like upholding the rule of law.

---

[581] The Acknowledgment (Song Affidavit, Exhibit "N", pp. 338 and 339).

b. At the level of the LSA's Impugned Conduct: The LSA has publicly acknowledged it accepts the Theories as valid. The LSA is not simply not racist, it is actively anti-racist. In pursuit of the Political Objectives it created laws (the Impugned Bylaws), it engaged in political advocacy;[582] and it forced the entire bar of 10,000 lawyers to submit to re-education in the Theories. As to the order of priority between "discourses in colonialism" and its Political Objectives, from the LSA's Regulatory Objectives:

> *The Law Society views its core purpose as an active obligation and duty to uphold and protect the public interest in the delivery of legal services. The public interest, as it applies to the work of the Law Society, will be upheld and protected through the following regulatory objectives:*
>
> *…*
>
> *b) Promote the independence of the legal profession, the administration of justice and the rule of law;*
>
> *…*
>
> *e) Promote equity, diversity and inclusion in the legal profession in the delivery of legal services.*
>
> *…*
>
> *… there may be times when two or more of the regulatory objectives conflict with one another. In these cases, the Law Society will weigh the costs and benefits of aligning with each objective,*[583]

Two years later the LSA discussed which of these objectives really takes priority:

> *As part of our commitment to take further steps to address systemic discrimination, the Law Society will lead by example. We have already started this work by ensuring that our Benchers participated in training focused on unconscious bias and centering equity in their governance and decision-making roles, and by mandating that lawyers complete Indigenous Cultural Competency Education … through The Path …"*[584]

[582] Song Affidavit, Exhibits "H", "L", "K", "KKK", "UUU", "E", etc.
[583] The Regulatory Objectives (Song Affidavit, Exhibit "E", pp. 103 and 104).
[584] The Acknowledgment (Song Affidavit, Exhibit "N", p. 339).

c. The Profile expressly requires that lawyers believe the Theories (including things they do not or can not know though an empirical process), for example:

> *Build intelligence related to cultural competence, equity, diversity and inclusion:*
>
> *…*
>
> *Develop self-awareness of how one's own conscious and unconscious biases affect perspectives and actions*
>
> *…*
>
> *Recognize how systemic inequalities and barriers affect individuals and groups*[585]

The Profile expressly requires lawyers to express support for the Theories and the LSA's Political Objectives (compelled speech and, in the case of Song, forced apostacy), for example:

> *Develop and promote a deeper understanding of sexual orientation and gender identity*
>
> *…*
>
> *Champion enumerated groups in professional activities*
>
> *…*
>
> *Acknowledge and respect the traditional Indigenous territory in which the lawyer practises or lives*

The Profile expressly requires lawyers to advocate for and pursue the Political Objectives while acting as an advocate for the client for example:

> *Lawyers … implement strategies to meet the specific needs of individuals from these groups to achieve culturally or community-appropriate services and outcomes. Lawyers treat all people with dignity and respect and take active steps to support and advocate for members of enumerated groups.*
>
> *…*
>
> *3.2 Incorporate equity, diversity and inclusion in practice:*
>
> *Practise anti-discrimination and anti-racism*
>
> *…*
>
> *Take action to dismantle systemic inequalities and barriers*

[585] The Profile (Song Affidavit, Exhibit "HHH", pp. 780 and 785)

> *3.3 Champion enumerated groups in professional activities:*
>
> *Advocate for those facing systemic barriers to accessing what they need or deserve*
>
> *Advocate for hiring, promotion and retention in a manner consistent with enhancing diversity, equity and inclusion*[586]

533. This is key. The LSA is, here in the Profile, telling advocates to incorporate advocacy for the Theories into their "professional activities." Nowhere else in the record is the LSA quite so explicit that the advocate is to have divided loyalties while advocating on behalf of clients. This is, unambiguously, a requirement to be less than fully loyal to the client within the law.

534. Understanding the broad and unusual interpretations given to words and phrases by the Theories (for example, that non-discrimination is racism because it "still uphold[s] a racist *status quo*"[587]) all of the Profile's "ethical" duties are almost certainly contained in the Code, likely even within this single requirement:

> *A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.*[588]

535. Seemingly, in fact, the obligations expressed in the Code are even more exhaustive than the Profile's because, as the Code warns lawyers:

> *… regardless of the possibility of formal sanction, a lawyer should observe the highest standards of conduct on both a personal and professional level so as to retain the trust, respect and confidence of colleagues and members of the public.*
>
> *… the rules and regulations of the Law Society cannot exhaustively cover all situations that may confront a lawyer, who may find it necessary to also consider legislation relating to lawyers, other legislation, or general moral principles in determining an appropriate course of action.*[589]

---

586 The Profile Domain 3 (Song Affidavit, Exhibit "HHH", p. 780).
587 The Report at p. 22.
588 The Code, Rule 6.3-1.
589 The Code, Preface.

536. As demonstrated above, “cultural competence” as understood and promoted by the LSA, renders the lawyer grossly disloyal to the client’s interests. The client is free to choose only an “appropriate lawyer” who will pursue “appropriate” client interests. The client is sure to be racially profiled (i.e. stereotyped) and, therefore, more likely to be misunderstood and ignored. The client’s legal rights are less likely to be vindicated. The client’s lawyer has a divided loyalty to an extraneous political interest.

537. The “culturally competent” lawyer is, therefore, an incompetent and unethical lawyer; the exact opposite of the LSA’s objects. Clearly, therefore, using the powers entrusted to it by the legislature to encourage the bar to become “culturally competent” is an Abuse of Subversive Objectives.

C. The LSA’s Political Objectives – An Attack on Human Dignity

538. Respect for the dignity of the individual permeates the *Constitution*.[590]

539. In granting the LSA powers under the *LSA* it is presumed[591] to have done so in the expectation such powers would be exercised in accordance with the fundamental values of Canadian society, including as described in section III.A to III.B.iii.1 above:

> *As a fundamental document setting out essential features of our vision of democracy, the Charter provides us with indications as to which values go to the very core of our political structure. A democratic society capable of giving effect to the Charter's guarantees is one which strives toward creating a community committed to [1] equality, [2] liberty and [3] human dignity …*[592]

540. In the following section (and last section analyzing the impact of the Theories on the Constitution generally) it will be shown that the LSA’s Political Objectives are directly hostile to each of the 3 core Canadian values identified above.

541. Dignity means that each individual is afforded equal value, granted the equal right to personal autonomy, assumed to be equally capable, and judged on the basis of personal

---

[590] *Rodriguez v British Columbia (Attorney General),* 1993 CanLII 75 (SCC), [1993] 3 SCR 519, p. 592.
[591] *Commission scolaire francophone des Territoires du Nord-Ouest c Territoires du Nord-Ouest (Éducation, Culture et Formation)*, 2023 SCC 31,c at para. 65;
[592] *R. v Zundel,* 1992 CanLII 75 (SCC), [1992] 2 SCR 731 *(“**Zundel**”)* at pp. 735 – 736.

merit and capacity, not by the stereotypical application of presumed group characteristics.[593]

542. The "colorblindness" aspect of human dignity was expressed most eloquently by Martin Luther King Jr.:

> *I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today.*[594]

543. Respect for the dignity of the individual gives rise to society's protections of fundamental freedoms, personal autonomy, and democratic participation[595] and equality under the law.[596]

544. The Theories, including as evidenced throughout the LSA's Materials, grossly violate this "Western" notion of human dignity.

*i. **Mental Slavery***

545. Wherever one finds oneself in the hierarchies of intersectional oppression (i.e. regardless of whether you are white or indigenous, male or female, straight or gay) she is characterized as a hateful or hated mental slave of the system.

546. One's perception of reality is the product of the system:

> *[The Path:] Viewed through the lens of Indigenous language, the world is not hierarchical, or linear, or divided into multiple, rigid categories.*[597]

547. One's values are the product of the system:[598]

> *[The Path:] The Land is valued and shared by all, not as a possession, but as an integral element of existence and community.*[599]

---

[593] *Miron v Trudel*, [1995] 2 S.C.R. 418 (S.C.C.) at para. 131; *Godbout v Longueuil (City)*, [1997] 3 S.C.R. 844 at para. 66; *Association of Justice Counsel v Canada (Attorney General)*, [2017] 2 S.C.R. 456 at para. 49;
[594] Martin Luther King Jr., speech delivered August 28, 1963, on the steps of the Lincoln Memorial.
[595] *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, at para. 77.
[596] *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 ("***Law v Canada***"), at paras. 51-54.
[597] The Path (Song Affidavit, Exhibit "X", p. 506).
[598] The Report at 3, 4, 16 and 17.
[599] The Path (Song Affidavit, Exhibit "X", p. 504).

> *… the standards for what is appropriate or "normal" that people of color accept are white people's or Eurocentric standards. [They] have difficulty naming, communicating and living up to [their] deepest standards and values, and holding [themselves] … accountable to them.*[600]

548. One's actions are the product of the system:[601]

> *[The Path:] Canada's colonial legacy is still alive. And nowhere is that clearer than in the treatment of Indigenous people within the Canadian Justice system.*
>
> *It's clear when you look at the overall numbers. While Indigenous people make up about 5% of Canada's population, they represent 27% of its prison population. The number of incarcerated Indigenous women in federal custody increased more than 75% in the past decade. … sexual assault … High school diploma rate … suicide, childhood poverty …*
>
> *[The Glossary:] Due to racism, people of color do not have the ultimate decision-making power over the decisions that control our lives and resources.*[602]

549. One's life outcomes are the product of the system:[603]

> *[The Path:] This post-colonial legacy can be seen in: lower life expectancy, higher rates of childhood poverty, a much higher likelihood of committing suicide, sky-high rates of diabetes, an active tuberculosis rate among Inuit that's 400 x higher than the Canadian population, Disproportionate numbers of Indigenous peoples who are victims of violence, who are murdered or go missing. High rates of substance abuse. Poorer education. Lower levels of employment outcomes. And the list goes on.*[604]

550. According to the Theories, both the oppressors and the oppressed lack virtually all agency to resist because the system of oppression operates within their own minds and without even their awareness. Williams explains:

---

[600] The Glossary (Song Affidavit, Exhibit "LLL", p. 824).
[601] The Report at p. 16.
[602] The Glossary (Song Affidavit, Exhibit "LLL", p. 824).
[603] The Report at p. 16.
[604] The Path (Song Affidavit, Exhibit "X", p. 484).

> *… the belief that the world can be divided between a "civilized" West and a "barbaric" other endures in a colonialist mind-set.*
>
> *…*
>
> *The notion of "unconscious bias" rather than overt racism speaks to CRT-influenced understanding of racism as not just systemic but inherent within the minds of individuals.*[605]

551. A white person just going about their normal life is complicit in colonial oppression:

> *… "discourses of colonialism" … continue to be reflected in values, language and social practices. Such practices would include the law, politics and economics. … power perpetuated through discourse and emerging in people's attitudes and biases.*[606]

552. A white person who does nothing is complicit in colonial oppression:

> *… A white person might never say or do anything that demonstrates prejudice towards a person of a different race but, in the context of a systemically racist society, this is not enough: they will still uphold a racist status quo.*[607]

553. Even a white person who fervently corrects their conscience and, as the Profile requires, "practice[s] anti-discrimination and anti-racism"[608] will still never escape their oppressive mindset. One can only:

> *[The Profile:] Reduce one's own biases through continual education, self reflection and inquiry*[609]
>
> *[The Report:] The assumption that racism manifests itself in individual biases that can only be "reduced" not overcome is a hallmark of CRT.*[610]

554. Every indigenous person is born with trauma.[611] An indigenous person who shares the values of the Enlightenment, is their own mental jailer, inauthentic and spiritually dead:

---

[605] The Report at pp. 4 and 8.
[606] The Report at p. 4.
[607] The Report at p. 34.
[608] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[609] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[610] The Report at p. 8.
[611] The Path (Song Affidavit, Exhibit "X", p. 466).

> *… formerly colonized people continue to be oppressed, not by direct rule and a denial of democracy, but through their own mental processes. Fanon defines colonized people as those "in whose soul an inferiority complex has been created by the death and burial of its local cultural originality."*

555. An indigenous person who objects, who claims they are not traumatized, who claims they desire to live as a Westerner, is suffering from oppressive self-hatred:

> *[Glossary:] "[i]nternalized racism is the situation that occurs in a racist system when a racial group oppressed by racism supports the supremacy and dominance of the dominating group by maintaining or participating in the set of attitudes, behaviors, social structures and ideologies that undergird the dominating group's power …*[612]

556. A legal regulator is only able to detect the obscure and oppressive workings of the Enlightenment by its oppressive results:

> *When we use the term systemic discrimination, we mean policies, procedures and practices within systems and institutions that result in disproportionate opportunities or disadvantages for people … Systemic discrimination functions due to some of the inequitable principles historically embedded in our systems and institutions. Even if no individual members of the justice system engage in intentional discriminatory behaviour, the inequity embedded within the system still exists and results in disproportionate harmful impacts to those who are marginalized.*[613]

557. For everyone:

> *Indigenous people, clients, also come with the weight of colonialism and there's no escaping that however accomplished you are as an individual, the cultural way of colonialism is inescapable.*[614]

558. This is all a grotesque insult to the dignity of Canadians, of every race. What's more, it is a disempowering[615] insult, especially for the many underprivileged Canadians among the indigenous communities. Not only is there no point in exercising personal agency,

---

[612] The Glossary (Song Affidavit, Exhibit "LLL", p. 824).
[613] The Acknowledgment (Song Affidavit, Exhibit "N", p. 338).
[614] The Path (Song Affidavit, Exhibit "X", pp. 519 and 520).
[615] The *Charter* s. 15(1) guarantee is concerned with self-determination and, therefore, "physical and psychological integrity and empowerment" (*Law v Canada* at para. 53).

because we are all powerless, the exercise of personal agency for anything but the prescribed goals of the Theories are met with one last insult:

> *… to comply with dominant social and cultural conventions or to emerge as robust, rational individuals in control of their own lives … is presented as a betrayal of your people.*[616]

559. The Theories are, therefore, an attack on human dignity as they deny its core concept: autonomy. The legislature is presumed to have granted the LSA its powers to be exercised in accordance with fundamental Canadian values. It cannot have been the legislature's intent that the LSA would, instead, exercise its powers to deny and degrade human dignity. The LSA's Political Objectives are an Abuse of Subversive Objectives.

ii. Stereotype

560. Again, no matter where one finds oneself in the hierarchies of intersectional oppression the Theories, including in the LSA's Resources, ascribe crude, outdated, and often insulting characteristics on the basis of race.

561. To indigenous and black Canadians, as seen above, the Resources generally ascribe trauma, self-contempt, and powerlessness. In a "key" Resource (from the Alberta Civil Liberties Research Centre) called "Strategies of Liberal Racism"[617] the LSA advises that the very perception of the individual as a "rational independent self-reliant individual"[618] is an oppressive norm:

> *Individualism fosters a belief that everyone is free to choose, that our destiny is within our own control and that choice, determination, "pulling oneself up by one's boot straps," are all individually determined and ultimately achievable despite social, economic, racial and cultural circumstances.*

562. At the base of the Theories is the assumption that systemic racism operates by treating "white" or "colonial" language and culture, including university *curricula*, legal systems and Western notions of justice as the "norm":

---

[616] The Report at p. 32.
[617] The Glossary (Song Affidavit, Exhibit "LLL", p. 849).
[618] Song Affidavit 2, Exhibit "J", p. 230.

> *Postmodernism rejects Christianity and Marxism but also, most fundamentally, the Enlightenment values of reason and rationality associated with the scientific method.*[619]

563. These oppressive norms include universalism, objectivity, empiricism, and reason which all support the scientific method.

564. Accordingly, The Path informs that:

> *We can look at science and at origin stories as simply different ways to describe where we've come from.*[620]

565. The LSA's "cultural competency", therefore, tells us indigenous people do not think in a linear, hierarchical or categorical way, but rather in a holistic, circular sort of way.[621]

566. As a result, presumably, of this non-categorical thought process, we are told indigenous people have troubles differentiating an action from the environment in which the action occurs:

> *So if you're talking hunting, it's not just picking up a gun or whatever mechanism that you're using to kill an animal. It is 'What is the state of the land, the air and the water that will sustain that animal or that species of animal to maintain the health of that animal.'*[622]

567. Likewise, we are told that, as a result of a less hierarchical language, the Cree do not differentiate between animate and inanimate objects:

> *… In Cree, we don't have animate-inanimate comparisons between things. Animals have souls that are equal to ours. Rocks have souls, Trees have souls. Trees are 'who,' not 'what.*[623]

568. The concept of colorblindness is also characterized by the LSA as another oppressive norm. According to the Glossary:

> *… Colour-blindness (or colour evasion) is the insistence that one does not notice or see skin colour or race. … "conflates lack of eyesight with lack of knowing. Said differently, the inherent ableism in this term equates blindness*

---

[619] The Report at p. 6.
[620] The Path (Song Affidavit, Exhibit "X", p. 454).
[621] The Path (Song Affidavit, Exhibit "X", p. 506).
[622] The Path (Song Affidavit, Exhibit "X", p. 499).
[623] The Path (Song Affidavit, Exhibit "X", p. 506).

> *with ignorance" … Gotanda asserts that this "[n]onrecognition [of the significance of race] fosters the systematic denial of racial subordination and the psychological repression of an individual's recognition of that subordination, thereby allowing such subordination to continue"…*[624]

569. Williams advises:

> *CRT is particularly hostile to "color blind" anti-racism. Eddo-Lodge explains: "seeing race is essential to changing the system."*[625]

570. To similar effect, the Glossary tell us:

> *Equality: Equal treatment is valued as one of the central concepts (along with tolerance and freedom of expression) in liberal democracies. Often the discourse of equality is used to perpetuate discriminatory practices because there is a focus on same or equal treatment, which is perceived as fair by dominant culture. Therefore, the focus remains on the treatment and not on the result. If the treatment does not result in equality or the balancing of power, then equality has not been achieved. Keeping the focus on equal treatment is a form of denial and promotes a lack of knowledge by being unwilling to consider how dominant institutions may not meet the needs of racialized people and how they are structured to exclude certain groups.*[626]

571. As the Theories attack the Enlightenment principles which yield a liberal democratic political and social order, they characterize liberal democracy, itself, as an oppressive norm that only operates in favour of whites:

> *Liberalism/Liberal (Democratic) Racism: Democratic liberalism is distinguished by a set of beliefs that includes, among other ideals: the primacy of individual rights over collective or group rights; the power of (one) truth, tradition, and history; an appeal to universalism; the sacredness of the principle of freedom of expression; and a commitment to human rights and equality. But as many scholars observe, liberalism is full of paradoxes and contradictions and assumes different … meanings, depending on one's social location and angle of vision … "Liberalism is both egalitarian and*

---

[624] The Glossary (Song Affidavit, Exhibit "LLL", pp. 810 and 811)
[625] The Report at p. 23.
[626] The Glossary (Song Affidavit, Exhibit "LLL", p. 813).

> *inegalitarian" … It simultaneously supports the unity of humankind and the hierarchy of cultures. It is both tolerant and intolerant …*[627]

572. Similar arguments appear elsewhere in the LSA's materials including in the Alberta Civil Liberties Research Centre's article titled "Strategies of Liberal Racism."[628]

573. Even the norm of heterosexuality (which science would tell us is the result of evolutionary forces and, for that reason, is produced throughout the animal kingdom) is a discourse:

> *Heterosexism: "[T]he privileged and dominant expression of sexuality in most known societies, which is often regarded as the 'natural' form of human sexual desire. In Western culture, heterosexuality has been normalized and prioritized over all other forms of human sexuality via institutional practices, including the law and social policy"… In other words, the normalization of heterosexuality denies, denigrates and stigmatizes nonheterosexual forms of behaviour, identity, relationship or community.*[629]

574. How this particular discourse pre-dated the human species by several billion years is not clear but, of course, it needn't be: the Theories reject reason and, therefore, reject the "norm" that things should be coherent or reasonable.

575. In summary, according to the Theories, indigenous people do not share the following values and to even encounter the cultural assumption that these values are good or normal so traumatizes them as to render them helpless:

    a. the principles of the Enlightenment including objectivity, empiricism, reason, and science;

    b. the Western legal system including Western notions of justice; and

    c. as a result, the following values are seen not as objectively good (either to Theorists or, by extension, indigenous people) but rather as systems of colonial oppression:

        i. the concept of the rational independent self-reliant individual;

        ii. colorblindness;

        iii. the rule of law principle of equality before the law; and

---

627 The Glossary (Song Affidavit, Exhibit "LLL", pp. 826 and 827).
628 Song Affidavit, Exhibit "MMM", p. 843.
629 The Glossary (Song Affidavit, Exhibit "LLL", p. 817).

iv. liberal democracy.

576. This is a stereotype. While the LSA in The Path purports to eschew racial stereotype, both as between indigenous and other Canadians[630] and as between distinct indigenous groups[631] (but not as between individuals within distinct indigenous group[632]) The Path is, in fact, an exercise in racial stereotype. This is obvious from both the structure of The Path[633] and its express messages.[634]

577. The very premise of the Theories, that certain cultures are a good or poor fit different racial groups, assumes that racial stereotypes are valid:

> *When taught as a set of skills, cultural competence can reinforce crude and outdated stereotypes that all members of a particular community behave in a particular way.*[635]

578. As seen in this section, not only are racial stereotypes applied to indigenous and black populations, degrading stereotypes are applied. Of course, the "culturally competent" lawyer would disagree: the racial stereotype that indigenous people are not rational thinkers is only degrading if you value reason; it is actually an oppressive "discourse in colonialism" to claim the stereotype is degrading.

579. Other racial stereotypes are applied by The Path to indigenous people which, while they may not be universally viewed as derogatory, suggest that the indigenous "local culture originality" to which indigenous people must retreat to resolve trauma,[636] is social and economic collectivism.

580. The Inuit, we are told, cannot really conceive of property ownership or even the division of one's identity from "the land … Heritage is something inside you."[637] Coincidentally, other indigenous people also reject Westerns notions of land ownership and also have identities tethered to the soil:

---

[630] For example, "There are many stereotypes out there about Indigenous peoples, but they are just that; stereotypes or ill-informed perceptions." (The Path (Song Affidavit, Exhibit "X", p. 443)).
[631] For example, "With more than 600 First Nation communities, dozens of Inuit hamlets, Métis settlements and urban Indigenous people in every corner of this country, there's a very wide diversity when it comes to cultural beliefs and traditions." (The Path (Song Affidavit, Exhibit "X", p. 503)).
[632] To the contrary, see "Indigenous" in The Glossary (Song Affidavit, Exhibit "LLL" p. 822).
[633] See above at para. 490.c
[634] As seen above and in section IV.B.i.
[635] The Report at p. 17.
[636] The Report at p. 17.
[637] The Path (Song Affidavit, Exhibit "X", p. 461).

> *"We are people of the land; we see ourselves as no different than the trees, the caribou and the raven, except we are more complicated." Sahtu Dene Elder George Blondin*
>
> *"We know our land [sic] have now become more valuable. The white people think we do not know their value; but we know that the land is everlasting, and the few goods we receive for it are soon worn out and gone" Haudenausonee leader Canassatego 1740.*[638]
>
> *"We do not own the freshness of the air or the sparkle of the water. How can you buy them from us?" Squamish Chief Seattle.*[639]

581. The Path returns, again and again, to the cultural value of "sharing" as opposed to ownership:

> *Sharing is paramount among all Indigenous cultures. Indigenous people would not have survived if they did not share food, resources, land and labour. They had no concept of money but shared and traded. This led to considerable confusion when they first encountered European concepts of "ownership" and "possession", particularly when it comes to land. But the spirit of sharing persists today.*[640]
>
> *…*
>
> *The Land is valued and shared by all, not as a possession, but as an integral element of existence and community …[1]*[641]

582. We are told Indigenous people elevate the collective over the individual, to the point that the individual's identity is defined by the community:

> *In our hereditary system, our elders watch the young people as they grew up and identified their strengths.*
>
> *And those strengths were nurtured so when they became adults, they had a place in our society.*

---

638 The Path (Song Affidavit, Exhibit "X", p. 503).
639 The Path (Song Affidavit, Exhibit "X", p. 503).
640 The Path (Song Affidavit, Exhibit "X", p. 504).
641 The Path (Song Affidavit, Exhibit "X", p. 504).

> *We were structured so that every family had a role to play, a responsibility that was given from the Creator to that family and that family was expected to fulfill that role and responsibilities.*
>
> *And that's what made everyone in the community, every person was important.*[642]

583. The Path also contains more flattering seeming stereotypes, including the indigenous environmentalist trope, often expressed in the language of Europe's 18th century Romantic movement:[643]

> *This is why Indigenous people speak so strongly about the protection of the environment, the land and the water; their perspective stretches beyond short term profit from development, and focuses on the need to preserve what we have for future generations.*[644]
>
> *And in order to do that you have to have healthy water, air and land. Because this is a treaty right that can go on for as long as the sun shines, the rivers flow and the grass grows, and unless something dramatically happens to the earth,"*

584. As to the "dominant culture"[645] ("whites", "settlers", and especially the "White, Anglo-Saxon, Protestant male"[646]) the identity based stereotypes applied in the Materials are unambiguously and wholly degrading.

585. Of course, the entire premise of the Theories is degrading: the claim that the white, male, middle class, cis-gendered, heterosexual intersectional class invented:

    a. the categories of race, sex, class, gender, and sexuality;

    b. the principles of the Enlightenment including objectivity, empiricism and reason;

    c. Western legal system including Western notions of justice,

    d. the concept of the rational independent self-reliant individual;

---

[642] The Path (Song Affidavit, Exhibit "X", p. 505).
[643] While the premise of the Path is that it portrays authentic indigenous culture, the culture it portrays bears a striking imprint of the West. For example, here as elsewhere we have the European trope of the "noble savage" and environmentalist. And, of course, throughout the Path we're told the indigenous worldview is fundamentally postmodern. ^
[644] The Path (Song Affidavit, Exhibit "X", p. 505).
[645] The Glossary (Song Affidavit, Exhibit "LLL", p. 813).
[646] The Glossary (Song Affidavit, Exhibit "LLL", p. 813).

e. colorblindness;

f. the rule of law principle of equality before the law; and

g. liberal democracy,

for no other reason but as a "sham" to oppress every other person in a prison of white supremacy within their own minds, is as insulting to "white-skinned individuals and groups,"[647] men, the middle class, cis-gendered people, and heterosexual people as absurd and incoherent.[648]

586. The LSA nowhere pulls any punches. "Whiteness", we are told, is:

> *… A social construction that has created a racial hierarchy that has shaped all the social, cultural, educational, political, and economic institutions of society. Whiteness is linked to … domination and is a form of race privilege invisible to white people who are not conscious of its power … The power of Whiteness, however, is manifested by the ways in which racialized Whiteness becomes transformed into social, political, economic, and cultural behaviour. White culture, norms, and values in all these areas become normative natural. They become the standard against which all other cultures, groups, and individuals are measured and usually found to be inferior… Ruth Frankenberg asserts that whiteness is "a dominant cultural space with enormous political significance, with the purpose to keep others on the margin. … [W]hite people are not required to explain to others how 'white' culture works, because 'white' culture is the dominant culture that sets the norms. Everybody else is then compared to that norm. … In times of perceived threat, the normative group may well attempt to reassert its normativity by asserting elements of its cultural practice more explicitly and exclusively" …*[649]

587. Elsewhere the LSA's Materials advise:

> *Whiteness … a dominant cultural space with enormous political significance, with the purpose to keep others on the margin … Racism is based on the*

[647] Song Affidavit, Exhibit "NNN", p. 861.
[648] For convenience, the applicant refers to the Theories' apex prototype class of white, Anglo-Saxon, protestant, male, middle class, cis-gendered, heterosexual intersectional oppressors as, simply, "whites."
[649] Song Affidavit, Exhibit "NNN".

> *concept of whiteness—a powerful fiction enforced by power and violence. Whiteness is a constantly shifting boundary separating those who are entitled to have certain privileges from those whose exploitation and vulnerability to violence is justified by their not being white".* [650]

588. Whites who objects to this expressly-irrational theory are characterized as a weak-minded racist:

> *White Fragility: "White people in North America live in a social environment that protects and insulates them from race-based stress. This insulated environment of racial protection builds white expectations for racial comfort while at the same time lowering the ability to tolerate racial stress … White Fragility is a state in which even a minimum amount of racial stress becomes intolerable [for white people], triggering a range of defensive moves. These moves include the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation. These behaviors, in turn, function to reinstate white racial equilibrium" … Suggested Reading: Robin DiAngelo's article "White Fragility: Why It's So Hard to Talk to White People About Racism"*[651]

589. This action and brief, therefore, is characterized by the LSA as an example of "whiteness":

> *[i]n times of perceived threat, the normative group may well attempt to reassert its normativity by asserting elements of its cultural practice more explicitly and exclusively.* [652]

590. The primary lesson of The Path is that, throughout history, the socioeconomic contribution of white "settlers" amounts to virtually nothing but "waves of interference, assimilationist policies and cultural genocide." This purported genocide was inexplicably propagated by various means including education[653], child protection[654], health care[655], and, of course, peace and order in the form of land title[656] and criminal justice[657].

---

[650] "Whiteness" by the Alberta Civil Liberties Research Centre (Song Affidavit, Exhibit "NNN", p. 860).
[651] The Glossary (Song Affidavit, Exhibit "LLL", p. 839).
[652] Song Affidavit, Exhibit "NNN".
[653] The Path (Song Affidavit, Exhibit "X", p. 465).
[654] The Path (Song Affidavit, Exhibit "X", pp. 469 and 517).
[655] The Path (Song Affidavit, Exhibit "X", pp. 469, 478 & 479).
[656] The Path (Song Affidavit, Exhibit "X", p. 474).
[657] The Path (Song Affidavit, Exhibit "X", p. 470).

591. Notwithstanding what appears in the Materials to be simple racism and bigotry, according to the Theories, racism is not a bad thing - as long as it is directed at the correct race. No racist ideology in history has ever held otherwise.

592. This is admitted by academics of the Theories.[658] As Williams states:

> *The notion that anti-black racism is distinct from other types of racism emerges from a CRT- led view that not all racism is equally bad. Being prejudiced against people on the basis of their skin color can be acceptable if they are from an historically privileged community.* [659]

593. This is admitted in the LSA's Materials:

> *Prejudice/Racial Prejudice: To "pre-judge" an individual or group. "A state of mind; a set of attitudes held, consciously or unconsciously, often in the absence of legitimate or sufficient evidence" … Oftentimes, prejudices are not recognized as stereotypes or false assumptions and through repetition, become accepted as "common sense." When backed with power, prejudice results in acts of discrimination and oppression against groups or individuals. Racial prejudice refers to a set of discriminatory or derogatory attitudes based on assumptions deriving from perceptions about race/skin colour. Racial Prejudice can be directed at white people (e.g., "White people can't dance") but is not considered racism because of the systemic relationship of power.*[660]

594. The LSA was empowered to ensure the competency and ethics of lawyers to uphold a constitution to which identity-based discrimination and stereotype is repugnant. It is obviously not in the LSA's jurisdiction, therefore, to use that power to promote discrimination and stereotype, whether or not labelled some form of "competence". The Political Objectives are an Abuse of Subversive Objectives.

iii. Inequality and Racial Segregation

595. As Williams observes, the effect of Theories is to, both, inherently and through activism, entrench racial division.

---

[658] The Path (Song Affidavit, Exhibit "X", p. 499).
[659] The Report at p. 9.
[660] The Path (Song Affidavit, Exhibit "X", p. 831),

596. Their inherent tendency to entrench racial division arises from their premise: that the world has been divided into arbitrary categories by whites to dominate all other categories. Therefore, contrary to the liberal notions of dignity, equality, colorblindness, democracy, reason, science, and the like – by every reference to the concepts of the Theories we start with the race, sex, gender, etc. of both the speaker and the subjects. The "culturally competent" lawyer tells us:

> *An analysis of cultural competency would not be complete without the recognition and serious consideration of the author's social location and context. Such cultural self-awareness is considered in social science to be the key to multicultural competence, especially for an attorney, because an attorney's awareness of his or her own culture allows for a more accurate understanding of cultural forces that affect him or her as a lawyer, his or her client, and the interaction of the two. I am a 26-year-old, white, heterosexual male from a middle class background. I am approaching my final year of law school and the majority of my legal training has occurred in the criminal and child protection realm. Only in the last five years have I been trained in cultural competency. I am grateful and indebted to have mentors and teachers who are culturally diverse to help me along in this journey. Without their mentorship, this paper, which marks an early checkpoint in a long journey of discovery, would not be possible.*[661]

597. But the Theories do not only entrench categorical differences (i.e. they do not just require us to constantly think about each other's skin color and sexual organs). The Theories claim that certain "norms" are oppressive because such norms are incompatible for certain races or sexes (i.e. the Theories entrench, both, categories and differences between categories; as observed above, they apply different stereotypes to different groups).

598. One who embraces the Theories becomes, by necessity, race-obsessed. As Williams states:

> *This language shapes our very thoughts and, in this way, racial differences become deeply psychologically entrenched. Pluckrose and Lindsay argue that it is when power is separated from politics and the workings of institutions and is relocated in language and knowledge itself, that racism can be*

[661] Song Affidavit, Exhibit "RRR", p. 879.

> *identified everywhere: it exists within our unconscious mind and becomes real with our every utterance.*[662]

599. Williams identifies the regressive and divisive nature of the re-entrenchment of identity categories:

> *Attempts to label knowledge and values as "western" or "indigenous" can rehabilitate outdated prejudices. The notion of "difference" becomes re-entrenched.*[663]
>
> *…*
>
> *Cultural competence is contested because it entrenches differences between people rather than focusing on what people have in common. When taught as a set of skills, cultural competence can reinforce crude and outdated stereotypes that all members of a particular community behave in a particular way.*

600. Further, as discussed above[664] the Theories treat these entrenched differences as insurmountable:

> *The idea that cultural differences are real, deeply entrenched and often insurmountable stems from CRT.*[665]

601. In reference to The Path's assertion of the "ways of colonialism" being "inescapable" Williams observes:

> *This sets up a barrier between two distinct groups - Indigenous and Non-Indigenous people, ascribing ignorance to the latter and passivity to the former. Indigenous people are destined to suffer from the legacy of a past where they were "done to" rather than being agents of change. Again, such tropes emerge directly from postcolonialism.*[666]

602. The Path appears to be a form of political advocacy for the purpose of reinforcing insurmountable racial difference between Canadians. Apart from its entire premise – that

---

662 The Report at p. 27.
663 The Report at 4 and 17.
664 See above at section IV.C.i.
665 The Report at p. 10.
666 The Report at p. 14.

indigenous people are so different that special skills are required to successfully mediate a relationship with one without aggravating trauma – it sets up differences between:

a. Canadians for whom "twenty thousand years of history and culture define the way [they] … think, feel and act today," [667] who protect the environment, and whose "perspective stretches beyond short term profit"[668]; and

b. other Canadians, who apparently (somehow) have short histories, do not protect the environment and only think about short-term profit:

> *This sets up two distinct groups of people: those whose actions in the present are defined by "twenty thousand years of history" and those whose actions are driven by more immediate concerns. It both creates and entrenches divisions.*[669]

603. Inevitably, the Theories therefore lead to prescriptions for legal, and physical, racial segregation and racial discrimination (i.e. "equity"), in direct contradiction to the *Constitution's* model of the rule of law (including equality, non-discrimination, and colorblindness) and multicultural pluralism.

604. The Theories' general hostility to the *Constitution*, their demands that advocates erode if not destroy it, and their hostility to the more specific foregoing constitutional principles, all as evidenced in the LSA's Materials, has been amply demonstrated above.[670]

605. Williams further explains that by "anti-racism" and "equity" the Theories actually mean:

> *… affirmative action, or positive discrimination which is advocated by proponents of CRT.*[671]

606. Again, from Ibram X. Kendi:

> *… racial discrimination is not inherently racist. If discrimination is creating equity, then it is antiracist.*

607. As Williams also points-out, the logical upshot of claiming that the races have deeply entrenched, insurmountable, and antithetical worldviews is racial segregation:

---

[667] The Path (Song Affidavit, Exhibit "X", p. 509).
[668] The Path (Song Affidavit, Exhibit "X", p. 505).
[669] The Report at p. 11.
[670] See above at sections III.B.ii.1, IV.B, and IV.B.ii.
[671] The Report at pp. 6, 9, 15, 16, and 22 to 24.

> *… two distinct communities: white colonizers who imposed rationality, reason, objectivity and science upon Indigenous peoples who had their own beliefs and values. The endpoint of accepting separate but equally valid belief systems is that it is no longer possible to advocate for equality under the rule of law …*[672]

608. This is certainly the recommendation of The Path: that indigenous people (whether status or non-status, on reserve or off reserve, Inuit or Metis, culturally Western or indigenous) ought to have their own government, their own laws, and their own legal systems.

609. In the Profile, the LSA likewise instructs lawyers to "demonstrate support for reconciliation" by:

> *Incorporat[ing] Indigenous principles, laws, culture and perspectives when developing strategies for representing Indigenous clients* [and]
>
> *Recogniz[ing] that Indigenous Peoples have their own restorative justice systems and us[ing] them where appropriate.*[673]

610. Outside of The Path and this domain of the Profile, the LSA is generally less overt in its calls for racial segregation.

611. In the Profile the LSA calls for lawyers to pursue, "culturally or community-appropriate services and outcomes"[674]

> *This establishes the view that there are distinct cultures each with an historically distinct experience that requires differential treatment in the present. It also suggests that lawyers should aim not for an objectively "best" outcome, or equal outcomes, but "<u>appropriate</u>" outcomes. These views emerge from postcolonial theory.*[675]

612. In its Regulatory Objectives it asserts the notion that, as a matter of "access to justice" it should facilitate some racial segregation of the bar:

> *The Law Society believes it is in the public interest for the legal profession to be <u>representative of the population it serves</u>. This is connected to accessibility of legal services, in that the <u>public should have a meaningful</u>*

---

[672] The Report at p. 26.
[673] The Profile (Song Affidavit, Exhibit "HHH", p. 785).
[674] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[675] The Report at p. 11.

> *choice in who represents them. This is particularly true in the case of groups who might be underrepresented in society, have cultural or language barriers to working with certain lawyers or firms, or simply feel more comfortable having someone who understands their culture representing them, particularly in cases where that person might be in a vulnerable legal situation.*[676]

613. Assuming a Political Objective which has, as its necessary and express object, moving Canada away from a multicultural pluralism which operates according to the rule of law including legal equality and non-discrimination is obviously not the purpose of the LSA's discretionary powers under the *LPA*.

iv. Illiberalism and Dogma

614. Flowing from the Theories':

a. rejection of the Enlightenment principles of objectivity, empiricism, and reason;

b. rejection of the dignity of the rational independent self-reliant individual;

c. view that the contents of each person's conscience is an irrational social construct,

the utility of freedom of conscience, freedom of religion, and freedom of speech are all eliminated.

615. As explained above, to hold or express any opinion contrary to the Theories or to fail to act for the advancement of the Theories is oppressive discourse. As discussed above,[677] in place of objective truth the Theories substitute subjective truth, (provided such subjective truth is valid according to the Theories):

> *This sets up two competing notions: "truth" which can be objectively tested and exists independent of the identity of the knower; and "truth" which is subjective and dependent upon the identity of the knower.*[678]

616. Contrary to the *Constitution's* "marketplace of ideas" this creates something more like a Soviet car dealership - "would you like your Trabant with 2 doors or 4." However, as discussed above, the Theories also invalidate as false the subjective experience of anyone who is actually engaging in any discourse in colonialism. In other words, an

---

[676] The Regulatory Objectives (Song Affidavit, Exhibit "E", p. 106).
[677] See above at section IV.B.i.
[678] The Report at p. 29.

indigenous person's earnest belief in an ordered and objective universe or in the slightest measure of individual indigenous responsibility (i.e. agency) for their own poor socioeconomic outcomes, is wrong. Williams explains:

> *Ironically, the notion of truth as multiple and subjective does not mean that Subject Theories are open to political and intellectual challenge. They are hostile to the expression of alternative viewpoints. Pluckrose and Lindsay note that,*
>
> > *"Postmodernism is no longer characterized by radical skepticism, epistemic despair, nihilism, and a playful, though pessimistic, tendency to pick apart and deconstruct everything we think we know. […] In the guise of Social Justice scholarship, postmodernism has become a grand, sweeping explanation for society - a metanarrative - of its own.*[679]

617. Again, the "truths" prescribed by the Theories are tautologically true. Once the tenants of the Theories are accepted as true, all alternative viewpoints are, by operation of the accepted tenants, false. This is evident in much of the argument above. Williams further explains:

> *When truth claims are premised upon assumptions of identity and standpoint, they cannot be objectively tested. When I speak "my truth" I utter something that no one else can challenge, only I can confirm or deny the veracity of my claim. In the same way, we cannot question the "spiritual truth" of creationism: it is true because people hold it to be true. When truth is linked to identity and power, a white man cannot challenge the claims of a black woman: to do so would be to call into question the veracity of her lived experience. Expressing contrary ideas is to side with the oppressor over the oppressed, an act some would describe as "violence".*

618. While it may seem over the top to claim that some would describe "expressing contrary ideas" as "violence", that is exactly what happened in the special meeting organized by Song:

> *… during the special meeting, one member described the comments in support of the motion as "violence."*[680]

---

[679] The Report at p. 30.
[680] Song Affidavit, para. 138(j).

619. Given this, the Theories are applied to "correct" people's false consciousness with "the Truth." The TRC's mandate was to "reveal to Canadians the complex truth."[681] The Path was mandated to educates lawyers in "spiritual and cultural truth"[682] and "the Truth."[683] The Profile requires that lawyers "strengthen understanding of the truth"[684]

> *References to "the truth" suggest only one account of the past is accurate and there is no room for alternative interpretations of history. Calls to "acknowledge the impact" again suggest that the ongoing legacy of colonialism cannot be disputed, simply recognized.*[685]

620. Williams explains:

> *… This is an approach to history entirely derived from postcolonialism. Furthermore, there are no opportunities for participants to challenge the facts presented. The lessons to be learnt are not about history but about morality in the present. Successful completion of The Path involves demonstrating acquisition of approved attitudes and values.*[686]

621. Williams further explains that, according to the Theories, "through repetition, such speech acts 'accumulate the force of authority' … 'agents bring a new fact into being with their speech: their saying so makes it so."[687]

622. This is a serious enough violation of the constitutional principles of freedom of conscience and religion, but the LSA goes much further.

623. The Profile says the "safe, effective and sustainable" lawyer actually believes "the truth" including, it must be remembered, invisible systems of racial oppression that cannot be empirically proven and structures of oppression operating unconsciously in one's own mind:

> *Develop self-awareness of how one's own conscious and unconscious biases affect perspectives and actions*

---

[681] Song Affidavit 2, Exhibit "F", p. 197.
[682] The Path (Song Affidavit, Exhibit "X", p. 454).
[683] The Path (Song Affidavit, Exhibit "X", pp. 486 and 509).
[684] The Profile (Song Affidavit, Exhibit "HHH", p. 785).
[685] The Report at 12.
[686] The Report at p. 13.
[687] The Report at p. 27.

> *Reduce one's own biases through continual education, self reflection and inquiry*[688]

624. This is a patent absurdity or, as Orwell termed it, "doublethink". Assuming there is such a thing as unconscious bias (bigots are usually aware of their racial preferences), the moment a lawyer becomes aware of a previously unconscious bias, it becomes a conscious bias. That's what "awareness" means. And yet, according to the LSA, the lawyer is nonetheless required to somehow maintain an awareness of something outside her awareness. To a reasonable individual, this is simply a demand for mental surrender.

625. A reference point is useful in contextualizing the magnitude of this violation of the dignity of the person. As Song deposes, this is entirely consistent with the Maoist ideological indoctrination he experienced in totalitarian China:

> *As a part of [Chinese Communist Party] indoctrination, I was taught to consistently engage in self-reflection and self-examination and to acknowledge and cleanse from my mind the "spiritual pollution" of corrupt (i.e. Western) worldviews and ideas. By "Western" and "West", the CCP meant,* inter alia*, the principles of the Canadian Constitution and Christianity. Such corrupting worldviews and ideas, I was taught, originated from the "corrupt cultures of Western countries and the bourgeoisie." I believe a commandment from the state to rid one's conscience of impugned thoughts is a profound invasion of conscience which is destructive to society. …*[689]

626. The LSA then goes further still to require that lawyers both know these "truths" and say they believe them. The culturally competent lawyer will:

> *… promote a deeper understanding of sexual orientation and gender identity*
>
> *…*
>
> *acknowledge the impacts of colonization and systemic discrimination*
>
> *acknowledge the discriminatory practices that have been applied to Indigenous Peoples in Canada*

---

[688] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[689] Song Affidavit, para. 21.

> *demonstrate support [by] acknowledge[ing] .. the traditional Indigenous territory in which the lawyer practises or lives*[690]

627. This is compelled speech, compelled thought, and, as we shall see in the case of a Christian, forced apostacy.

628. The purpose of the "fundamental freedoms" protected under Canada's *Constitution*, including the *Charter* ss. 2(a) and 2(b), include guarding against majoritarian dogma.[691] In *Zundel* the SCC highlighted, both, the "exceedingly difficult task" of determining "truth" "where complex social and historical facts are involved,"[692] while warning against such assertions in any political context:

> *Particularly with regard to the historical fact — historical opinion dichotomy, we cannot be mindful enough both of the evolving concept of history and of its manipulation in the past to promote and perpetuate certain messages. The danger is not confined to totalitarian states like the Nazi regime in Germany or certain communist regimes of the past which blatantly rewrote history. We in Canada need look no further than the "not so noble savage" portrayal of Native Canadians in our children's history text books in the early part of this century. Similarly, in the United States, one finds the ongoing revision of the historical representation of African Americans, whose contribution to aspects of the history of the United States, such as their contribution to the North's victory in the Civil War, is only now being recognized.*[693]

629. This warning is no less applicable where the trope employed, as in The Path, is of the "noble savage."

630. In the words of Jackson J. in *West Virginia State Board of Education v Barnette*, 319 U.S. 624 (1943), at p. 642, quoted with approval by Justice LaForest in *Committee for the Commonwealth*:

> *[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism,*

---

690 The Profile at Domains 3 and 8 (Song Affidavit, Exhibit "HHH", pp. 780 and 785).
691 *Zundel* at pp. 752 – 753.
692 *Zundel* at p. 757.
693 *Zundel* at pp. 768 – 769.

> *religion, or other matters of opinion or force citizens to confess by word or act their faith therein.*[694]

631. It could be no more obvious in a free and democratic society which operates according to the rule of law that the LSA's purposes include neither the imposition of dogmatic "truths" nor the invasion of the lawyer's deepest conscience and the surrender of his faculties of reason. The Political Objectives are profound Abuse of Subversive Objectives.

632. The applicant does not admit that the facts asserted in The Path were all correct or that The Path was balanced. On page 12 of The Path it states:

> *This video is for instructional purposes only. This video is not intended to provide a full, in-depth historical overview of Indigenous peoples in Alberta, nor a full, in-depth overview of provincial and Canadian legislation, policy and laws that have occurred over time. This video briefly summarizes history and law and is only to be used as general background knowledge to begin your journey towards Indigenous cultural competencies in Alberta.*[695]

for example, it says:

> *John A, [sic] Macdonald, as Canada's First [sic] Prime Minister, has many progressive achievements to his credit but his policies and stance regarding Indians and Métis is not one of them.*
>
> *In 1876, the new Canadian government consolidated all existing legislation regarding Indians into the Indian Act, which had an immediate impact on every Indian living on a reserve in Canada. It set out restrictive and repressive regulations that dictated all the ways in which Indians on reserve were expected to live.*[696]

633. At first blush this is just wrong. The *Indian Act* was not brought in by Sir John A. MacDonald, but by Alexander Mackenzie's Liberal government when Sir John A. was in opposition.[697]

634. But upon closer inspection – much closer inspection – the quote above does not actually say the *Indian Act* was brought in by Sir. John A. So the quote is highly misleading but

---

[694] Committee for the Commonwealth at para. 76.
[695] The Path (Song Affidavit, Exhibit "X", p. 453).
[696] The Path (Song Affidavit, Exhibit "X", p. 465).
[697] Song Affidavit 2, paras. 18 and 19, Exhibits "Q" and "R".

does not actually say anything false, except that Alexander Mackenzie's Liberal government was not "new." Rather, Mackenzie was almost three years into his term. The erroneous choice of the adjective "new" makes the quote even more misleading because in the mind of the reader we think we're talking about the "first" (i.e. "new") MacDonald government.

635. Nor does the applicant admit that the facts asserted in the TRC were all correct or that the TRC report, and especially the summary, was balanced. The TRC's mandate was to, *inter alia*:

> *… reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools, in a manner that fully documents the individual and collective harms perpetrated against Aboriginal peoples, and honours the resilience and courage of former students, their families, and communities …*[698]

636. Like the LSA's "My Experiences" political advocacy above, the TRC's mandate, therefore, introduced bias. And, worse than the LSA's decision that its articling placement program "default position should be presumptive belief," the TRC's position was belief – no presumptions about it. According to a video hosted on the LSA's website, lead TRC organizer, Kathleen Mahoney, K.C., advises:

> *Testimony was not taken under oath that was deliberate. Recall that what we heard from going coast to coast to coast, to consult with survivors, they wanted to tell their stories in a safe place where they would be believed. So it was our view that, and it wasn't a difficult thing to negotiate really, was that there should be no requirement for them to swear on a Bible, which for many of them is also a colonial imposition, that they were just coming to tell their stories and that they would be believed.*
>
> *Another aspect that that surprised some people was that there was no subpoena power with the Truth Commission …*
>
> *…*
>
> *Also, another point that was criticized was that no names, people were not allowed to name names when they were pointing fingers at the people who*

[698] Song Affidavit 2, Exhibit "F".

> *abused them, except when there had been a criminal conviction. The reason for that was, and I experienced this personally in some of the cases that I had, these people were children when they were abused, and often they thought they had the name right of a person, a sister or a or a nun or a priest or a brother and don't forget they all look the same, they dress the same, and so occasionally some would say well, brother, so and so was the one that abused me and you showed them the picture, perhaps of the classroom, that they were in and they would point to say, that's the one. And lo and behold, it's a different name. So that risk was quite high that people wouldn't have the names, right. …*[699]

637. Accusations, given without oath or solemn affirmation, were accepted by the TRC as truth, without investigative powers to collaborate, and paying no mind to the fact that witnesses were unable to properly identify the accused.

638. While this may be an ideal therapeutic vehicle, it is not an ideal fact-finding vehicle – not the Empirical mind anyways.

v. Retreat into Collectivism

639. As set-out above, the LSA's Political Objectives include some form of racial segregation for, at least, indigenous people and, thereafter, presumably for every other "oppressed" identity group.

640. It warrants asking, however, what form of segregated sociopolitical structure is suggested for our indigenous citizens? The answer reveals itself when it is recalled that, according to the Theories, "colonialism" is anathema to indigenous culture, which seems to include:

    a. the principles of the Enlightenment including universalism, objectivity, empiricism, reason, and scientific method – suggesting the "appropriate" indigenous sociopolitical structure will be characterized, instead, by postmodern relativism, superstition and, as Williams terms it, "primitivism"[700];

---

[699] Song Affidavit 2, Exhibit "D".

[700] The Path does contradict itself somewhat by claiming that indigenous people do not really conceive of selling land, in part because of environmental concerns, but at the same time references with approval resource development projects including indigenous "jobs, training and contracting opportunities." (See The Path (Song Affidavit, Exhibit "X", p. 448). How indigenous people without a "colonial" education will meaningfully contribute to resource extraction efforts is not explained.

b. individual property rights – suggesting the "appropriate" indigenous sociopolitical structure will be characterized, instead, by economic collectivism (i.e. socialism);

c. the dignity of the individual – suggesting the appropriate indigenous social structure is one in which the individual's identity is defined by the community and tethered to one historical spot (i.e. blood-and-soil social collectivism);

d. liberalism – suggesting the "appropriate" indigenous political structure will be authoritarian; and

e. rigid, categorical and hierarchical language and concepts – suggesting the "appropriate" indigenous legal structure will not be characterized by the rule of law but by the arbitrary exercise of "state" power.

641. This describes something like the tribal and nomadic existence of pre-contact indigenous people described in The Path – with the additional feature, of course, of a postmodern "local cultural origina[l]"[701]worldview.

642. The Materials contain no evidence that this structure will produce improved socioeconomic outcomes for indigenous people. Just as the Theories diagnose the causes of socioeconomic disparities without objective proof or reason (because there is no such thing as objectivity or reason), the Theories also prescribe the remedies for those socioeconomic disparities without objective proof or reason. In other words, there is no reason to believe this structure will produce improved socioeconomic outcomes for indigenous people. As Williams observes:

> *Systemic racism …. This matters because it can lead to policy initiatives that focus on the wrong areas - trying to tackle racism, for example, rather than improving education …*[702]

643. The LSA's purposes do not include perversion of the rule of law to effect an irrational and evidence free social experiment with the lives of indigenous people. The Political Objectives are a dangerous abuse of discretion.

[701] The Report at p. 16.
[702] The Report at p. 34.

D. The Profile, the Code and the Requirement to Comply with the Theories

i. The Profile

644. As demonstrated above, the Profile, insofar as it contains obligations consistent with the Theories, is an Abuse of Subversive Objectives. While it is most obviously incompatible in domain 3 (diversity, equity and inclusion) and 8 (truth and reconciliation), obligations consistent with the Theories are peppered throughout the remainder of the document. This makes sense when we recall its development was overseen by Act, Inc. whose mission is the same as the LSA's - advancing the Theories[703] For example, under domain 1 (legal practice):

> *1.2 Communicate effectively … Adapt communications appropriately to different contexts, purposes and audiences (courts, clients, lawyers, enumerated groups, other individuals)*[704]

645. The Profile is also *ultra vires* the LSA's jurisdiction and an abuse of discretion for several other reasons.

1. No Code of Competence

646. The *LPA* grants authority to the LSA to establish a "code of ethical standards for members and students-at-law and provide for its publication,"[705] not a code of competency standards.

647. This is consistent with the scheme of the act. Once enrolled at the bar, the *LPA* envisions an independent professional exercising her own judgment as to the competencies which are relevant to the lawyer's own unique practice and the lawyer's own unique educational needs. Given the variety of legal practice and the variety of lawyers within practice at any given moment, it would be impossible for the LSA to provide a meaningful code of competency standards.

---

[703] The Profile indicates that "all the domains are interconnected" (Song Affidavit, Exhibit "HHH", p. 775). in Alberta today.
[704] The Profile (Song Affidavit, Exhibit "HHH", p. 778).
[705] *LPA* at s. 6(l).

648. However, given the significant duplication between the domains in the Profile and the components of the Code[706], the normative nature of the Profile's "competencies," and the fact that the Profile contains, it is, in substance, a code of ethics.

649. Recall, the LSA changed the title of the Profile from "Competency Profile" to "Professional Development Profile" because, "this title caused confusion about the purpose of the document."[707]

650. The only statutory authority for the Profile is to be found, if anywhere, under *LPA* section 6(l).

2. One Code Not Two

651. Under section 6(l), the *LPA* empowers the LSA to establish "a code of ethical standards,"[708] not two. Having established the Code, its jurisdiction is exhausted and the Profile is *ultra vires*.

3. No Statutory Authority to Establish as a Menu of Uncertain Aspirations

652. The Profile is uncertain in two major respects, which render it, *ultra vires*:

a. it does not clearly impose any ethical standard; and

b. the ethical obligations it imposes are unclear.

a. No Standards

653. The Profile indicates that it is not a "checklist of requirements" but rather "should be thought of as a menu of options."[709] The Profile is not, therefore, a "standard" of ethics. The plain meaning of the word "standard" is:

> *… an object or quality or measure serving as a basis or example of principle to which others conform or should conform or by which the accuracy or quality of others is to be judged … the degree of excellence etc. required for a particular purpose.*[710]

---

[706] See for example: Profile domain 1 (legal practice) (Song Affidavit, Exhibit "HHH", p. 778) nearly duplicates Code Rule 3.1-1 (Song Affidavit, Exhibit "G", p. 161); domain 2 (continuous improvement) (Song, Exhibit "HHH", p. 779) nearly duplicates Code Rule 3.1-1(j) and (k) (Song Affidavit, Exhibit "G", p. 161); domain 3 (cultural competence, equity, diversity and inclusion) (Song, Exhibit "HHH", p. 780) significantly duplicates Code Rule 6.3 (Song Affidavit, Exhibit "G", p. 257); and so on.
[707] A-213.
[708] *LPA* at s. 6(l).
[709] The Profile (Song Affidavit, Exhibit "HHH", pp. 774 and 775).
[710] Oxford 1357.

654. If lawyers are each free to pick which "competencies" to comply with, the Profile ceases to function as a standard.

655. Further, the lawyer must choose from the "menu" based not on levels of perceived incompetence or on the relative priority of the domains[711], but according to what the lawyer "might"[712] "like to"[713] improve "depending on their level of experience, practice context and goals."[714]

656. If lawyers are free to pick their competencies on the basis of personal preference, the Profile ceases to function as a standard.

657. Presumably for this reason the LSA describes the Profile as a "source of inspiration and aspiration for Alberta lawyers."[715]

658. The *LPA* does not grant the LSA authority to establish a "code of ethical inspiration" or a "menu of ethical aspirations." The LSA has no statutory authority to promulgate the Profile.

659. Confusion as to the Profile's purpose is increased substantially with its claim that it does not "set threshold standards for purposes of discipline."[716]

660. It is useful to compare the Profile to the Code which does create ethical standards.

661. The Code says it contains "standards governing lawyer conduct." Lawyers "remains subject to this Code no matter where the member practices law." The code sets, "ethical standards to which all members of the profession must adhere." Rather than striving for any bare minimum, the lawyer should observe "the highest standards of conduct on both a personal and professional level so as to retain the trust, respect and confidence of colleagues and members of the public."[717]

662. The LSA's Rules are, likewise, clear that the Code is a standard to which every lawyer must comply, including visiting and transfer lawyers[718].

663. As observed above at paragraph 246, the *LPA* makes conduct proceedings mandatory. Proceedings are commence automatically where there is a complaint or where

---

[711] The Profile indicates that each domain is equally important (Song Affidavit, Exhibit "HHH", p. 775).
[712] The Profile (Song Affidavit, Exhibit "HHH", pp. 773 and 775).
[713] The Profile (Song Affidavit, Exhibit "HHH", p. 777).
[714] The Profile (Song Affidavit, Exhibit "HHH", p. 776).
[715] The Profile (Song Affidavit, Exhibit "HHH", p. 775).
[716] The Profile (Song Affidavit, Exhibit "HHH", p. 774).
[717] The Code (Song Affidavit, Exhibit "G", pp. 155, 156, and 185).
[718] *Rules* 72.1(1) and 73.1(1).

misconduct is otherwise brought to the LSA's attention. While the *LPA* does not say that the breach of the Code is conduct deserving of sanction (which would initiate conduct proceedings) that is strongly implied. The LSA interprets the *LPA* in that manner. The LSA's Rules suggest that the LSA treats any breach of the Code as *prima facie*, conduct deserving of sanction. In respect of the right of the Executive Director to summarily dismiss a proceeding under the *LPA*[719] the Rules constrain that right in respect of a breach of the Code only where the breach is "technical" and "no substantive consequence or is of insufficient regulatory concern."[720]

664. The scheme of the act suggests that a material breach of any "code of ethics" is *prima facie* conduct deserving of sanction. To establish a second code of ethics, the breach of which in no way constitutes conduct deserving of sanction, is seriously inconsistent with that scheme to impose a menu of options.

b. Unclear Menu Options

665. The Profile contains a number of obligations which are, on their face, vague and uncertain. For example, "develop and promote a deeper understanding of sexual orientation and gender identity" might mean that a person should consult:

a. the Bible to discover that God created a man Adam, who was a male in sex and gender, and a woman Eve, who is female in sex and gender;

b. texts in evolutionary biology to discover that the sexual binary and sexual dimorphism is virtually ubiquitously in nature including in humans; or

c. texts on Gender Theory to discover that sex being assigned at birth is an arbitrary and symbolically violent act of binary categorisation.

666. Likewise, where the Profile references "equity" does it mean:

a. the principles of equity referenced in the *Judicature Act*;[721] or

b. what Ibram X. Kendi means by it: "making a distinction in favor or against an individual based on that person's race"[722]

---

[719] *LPA* at s. 53(4)(a).
[720] Rule 85(6)(c).
[721] *Judicature Act*, R.S.A. 2000, c. J-2.
[722] The Report at p. 16.

667. The superficial meaning of the obligations in the Profile take on a very different meaning when their full ideological content is known and understood – which is no small task. The LSA essentially admitted this. Recall, when the LCC waived the Profile's "performance indicators" failing to validate, they did so on the basis that:

> *… It was recognized that these Performance Indicators are not easy to understand as they are niche areas. Ms. Bailey advised that tools will be made available to assist people who are interested in learning.*[723]

668. If legislation is so vague as to require an "interest in learning" to understand, it violates the rule of law. Laws must be comprehensible.

669. The applicant expects the LSA to argue that the applicant has misunderstood entirely what the Profile means and that, to the extent the Resources indicate an ideological meaning in accordance with the Theories, the applicant is mistaken.

670. In fact, the LSA has already taken a similar position publicly. In October 2023 when asked about the Glossary's attack on colorblindness the LSA's CEO Osler said the Resources: "are not required reading and lawyers can choose their own resources."[724]

671. For the lawyer who earnestly wishes to understand these "competencies" the Profile itself says reference should be had to the Resources:

> *The Profile is the first step in the Law Society's enhanced approach to CPD. The Law Society will continue to develop guidance and resources to support lawyers in creating meaningful and effective CPD plans.*[725]

672. The LSA's attempt to put distance between the Resources and the meaning of the Profile, render the meanings in the Profile even more obscure. Are the Resources a tool to help us understand the Profile or aren't they?

673. It is an abuse of discretion for a statutory delegate to create bylaws using words of such wide and differing meanings that there are no reasonable standards for determining their meaning.[726]

---

[723] C-373.
[724] Song Affidavit, Exhibit "TTT", pp. 4 and 5.
[725] The Profile (Song Affidavit, Exhibit "HHH", p. 773).
[726] *Red Hot Video Ltd. v Vancouver (City),* 1985 CanLII 634 (BCCA) *("**Red Hot**")*, at para. 8.

674. Both the vague framing of the obligation (as a menu from which the lawyer may choose what he "likes") and the vague and uncertain wording in Profile likewise render it *ultra vires*.

675. If the Profile is capable of having meanings which are both:

    a. intra vires and ultra vires;

    b. for proper purposes or improper purposes; or

    c. constitutional or unconstitutional,

    the Profile's validity cannot be judged and it is *prima facie ultra vires*:

> *Its validity is not to be judged from the standpoint of matters to which it might be limited, but upon the completely general terms in which it in fact is couched.*[727]

676. Finally, where bylaws abut constitutional freedoms, (which, as demonstrated throughout this argument, they obviously do), they must be drafted to a high degree of precision and predictability, as to constitute the "prescription by law" of constitutional rights which might be justified under the *Charter's* section 1. The bylaw must not be so uncertain or imprecise that a citizen of common intelligence must necessarily guess at its meaning or tell easily whether one's conduct falls inside or outside the proscribed range of activities.[728]

677. The vague and uncertain manner of the LSA's incorporation of the Theories into the Profile(and Code) seems consistent with postmodern regulation. In addition to the Theories which deny the existence and value of objectivity, including the objective meaning of words and the assertion of objective values, as Woolley J.A. observes:

> *… the problem with the postmodern accounts of the lawyer is that they try to have their ethical cake and throw it to the pigs too. They want to impose values on the lawyer, but only in a sort-of-kind-of-maybe way, one that allows the lawyer – and us – to duck the difficult questions about what we, as a society, think the right thing is for lawyers to do.*[729]

---

[727] *Saumur* at p. 339.
[728] *Committee for the Commonwealth* at pp. 208 – 211.
[729] Lawyers' Ethics at p. 47

4. The Profile's Indirect Effects

678. While the Profile is extremely vague as to whether it imposes any obligations on lawyers and, if so, which obligations – that is not to say it exerts no improper pressure on lawyers.

679. The Profile has several legal and *de facto* effects.

a. Further Specified Mandatory CPD

680. The Profile says it will be used to, "support the Law Society's development of a professional development program for lawyers."[730] In other words, the Profile will be used to select further Specified Mandatory CPD.

681. The Path was mandated in response to the LSA's "commitment and obligation to respond to the … [TRC's] Calls to Action."[731] The Path was only partial satisfaction of a single call to action (no. 27,[732] "Indigenous Cultural Competency Training"). The LSA understands The Path only to constitute a "baseline"[733] of knowledge or "initial starting point."[734] There will be more "Indigenous Cultural Competency Training" to come. In addition, call to action no. 27 is broader, it requires "cultural competency" training more broadly and conflict resolution, human rights and "anti-racism":

> *We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.*[735]

682. The LSA's first Specified Mandatory CPD was related to the Theories under domain 8 of the Profile. It seems quite likely that the LSA's next Specified Mandatory CPD will also be related to the Theories under either domain 8 (TRC) or domain 3 (DEI).

---

[730] The Profile (Song Affidavit, Exhibit "HHH", p. 774).
[731] Song Affidavit, Exhibit "DDDD", p. 990.
[732] Song Affidavit, Exhibit "V". p. 418.
[733] C-390, A-268 and Song Affidavit, Exhibit "V", p. 418.
[734] A-293.
[735] Song Affidavit, Exhibit "D", p. 85.

b. CPD Planning and Disclosure

683. Pursuant to Rule 67.2 lawyers are required, on pain of automatic suspension, to:

a. "in a form acceptable to the Executive Director" prepare an annual CPD plan;

b. submit the plan to the LSA;

c. maintain the plan for 3 years;

d. produce the plan to the LSA on request; and

e. participate in any review of the plan by the LSA.[736]

684. The "form acceptable to the Executive Director" is by use of the LSA's online CPD Tool which forces the building of plans with reference to the Profile. Lawyers' CPD plans must select at least two competencies from any of the domains in the Profile (some of which are overtly based in the Theories, the rest of which are necessary based in the Theories).[737]

685. Given that the CPD Tool is operated by the LSA, it can access most of the CPD plan itself: chosen competencies; priorities; selected learning activities and any progress made in completing learning, "to assist in the Review process." Other information contained within the CPD Tool (self-reflections and self-assessments), is not immediately accessible to the "education department".[738] However, under Rule 67.2(b), the LSA can demand the entire plan and, it needs to be recalled, "the Profile and related documentation are intended to be living documents; they are expected to evolve and change'[739]

686. Despite the importance the LCC place on the "effectiveness of the tool", Song deposes that the CPD Tool provided no value whatsoever – at least not as a lawyer's planning tool. Its only value appears to be: requiring that the plan be housed with the LSA for its access; and requiring that the plan be prepared in accordance with the Profile.[740] Any meaningful plan must be entered into the blank field labelled: "further details about your chosen activities, reasons for picking them, and/or how you hope these activities will help you enhance or develop this competency" which, when completed, constitutes an actual plan.

---

[736] Rule 67.2.
[737] Song Affidavit, Exhibit "BBB", pp. 725 – 728.
[738] Song Affidavit, Exhibit "GGG", pp. 763 – 765.
[739] The Profile (Song Affidavit, Exhibit "HHH", p, 774).
[740] The Code (Song Affidavit, Exhibit "G", pp. 150 – 159).

687. According to the June 2022 foreword to the Profile, it "sets out the competencies that are important to maintain a safe, effective and sustainable legal practice in Alberta today."[741] All domains are "interconnected and equal in importance.[742]

688. The meaning of these words is not provided, however:

    a. "Safe" must mean, both, safe from claims of professional negligence and defalcation as well as safe from risk of physical, psychological, or systemic harm, given that several domains reference physical, psychological and systemic "performance indicators."[743] "Safe" includes, therefore, safety from epistemological violence and discourses of oppression which might oppress, marginalize or traumatize minorities.

    b. "Effective" must mean, both, providing the client effective access to justice and effectively supporting the integrity of the justice system – the lawyer has no other role.

    c. "Sustainable" obviously means that the lawyer's practice will not continue unless the "incompetence" is resolved.

689. In the LSA's view, then, the lawyer who is not reasonably "proficient" in one or more of the inter-connected and equally important "competencies" is incompetent and her practice is unsafe, ineffective, and unsustainable meaning that:

    a. people are at risk of financial loss or physical or psychological injury;

    b. the lawyer will exacerbate systemic discrimination, which the LSA has publicly and repeatedly committed to eliminating; or

    c. clients will be denied access to justice or the lawyer will otherwise subvert the administration of justice,

    so that the lawyer's practice must, without intervention, cease.

690. However, in such a case the LSA says it will not discipline the lawyer.

691. For the "incompetent" lawyer this is cold comfort.

692. First, if the Profile is to be characterized as "competence", the *LPA* indicates that incompetence which renders a lawyer's practice unsafe or ineffective is conduct deserving

---

[741] The Profile (Song Affidavit, Exhibit "HHH", p. 773).
[742] The Profile (Song Affidavit, Exhibit "HHH", p. 775).
[743] For example, domain 3.1: "develop an awareness of the effects of individual and systemic trauma" and domain 3.3: "promote a healthy, safe and inclusive workplace." (The Profile (Song Affidavit, Exhibit "HHH", p. 780)).

of sanction which automatically triggers a conduct process once it comes to the attention of the LSA:

> *49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that*
>
> *(a) is incompatible with the best interests of the public or of the members of the Society, or*
>
> *(b) tends to harm the standing of the legal profession generally,*
>
> *is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta*

693. The LSA seems to have no discretion to simply ignore incompetent, unsafe, and ineffective legal practice; the lawyer's practice is unsustainable according to the act.

694. Second, as discussed above, if the Profile is to be characterized as ethics, the *LPA* still strongly implies (according also to the LSA's interpretation) that a breach of ethics is conduct deserving of sanction, especially where the breach renders the lawyer's practice unsafe and ineffective. Again, the lawyer's practice is unsustainable according to the act.

695. Third, as explained above, the Profile includes many "competencies" which require the lawyer to hold and express certain views, and not to hold and express contrary views. The lawyer must, for example, "acknowledge the impacts of colonization and systemic discrimination." Where the lawyer expressed the "wrong ideas", for example:

    a. signing a letter along with 29 other Alberta lawyers expressing opposition to the LSA's Political Objectives;[744] or

    b. swearing an affidavit to that effect,[745]

    the lawyer permanently thereafter marks himself "incompetent" unless and until he "rid[s] [his] conscience of impugned thoughts"[746] and demonstrates his correct thoughts to the LSA. Should the Profile ever be used for discipline purposes in the future, the lawyer's present demonstration of incompetence remains grounds for complaint and evidence

[744] Song Affidavit, Exhibit "AAAA", p. 962.
[745] Song Affidavit.
[746] Song Affidavit, para. 21.

relevant to such future proceeding. The LSA is clear that its use of the Profile is expected to change:

> *The Profile is the first step in the Law Society's enhanced approach to CPD*
>
> *…*
>
> *The Profile and related documentation are intended to be living documents; they are expected to evolve and change as the demands on lawyers evolve and change*[747]

696. Forth, the vagueness and uncertainty of the Profile – whether it imposes obligations or not, what its obligations mean, what degree of incompetence is or is not acceptable, how long the LSA will permit an unsafe, ineffective, and unsustainable practice to carry on – leaves the lawyer's expression seriously "chilled". The chilling effect of vague prohibitions tend to be aggravate constitutional violations because where prohibitions are clear the citizen, at least, need not maintain a wide berth around the prohibition (or "risk zone"[748]). As explained in *Luscher v. Revenue Canada*:

> *In my opinion, one of the first characteristics of a reasonable limit prescribed by law is that it should be expressed in terms sufficiently clear to permit a determination of where and what the limit is. A limit which is vague, ambiguous, uncertain, or subject to discretionary determination is, by that fact alone, an unreasonable limit. If a citizen cannot know with tolerable certainty the extent to which the exercise of a guaranteed freedom may be restrained, he is likely to be deterred from conduct which is, in fact, lawful and not prohibited. Uncertainty and vagueness are constitutional vices when they are used to restrain constitutionally protected rights and freedoms. While there can never be absolute certainty, a limitation of a guaranteed right must be such as to allow a very high degree of predictability of the legal consequences.* [749]

697. Fifth, the LSA declaring certain thoughts and actions incompetence, unsafe, ineffective, and unsustainable sends a signal to the bar and the broader public who may themselves

---

[747] The Profile (Song Affidavit, Exhibit "HHH", p. 773).
[748] Re: certainty and the "risk zone" see *R. v Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC), [1992] 2 SCR 606 at pp. 638 – 639.
[749] *Luscher v. Deputy Minister, Revenue Canada, Customs and Excise*, [1985] 1 F.C. 85 (C.A.) at pp. 89-90.

"sanction" the lawyer though public statements or by professional "blacklist". The lawyers who merely supported a motion to repeal Rule 67.4[750] were "pilloried, privately and publicly, as, *inter alia*, ignorant and racist" including even in a Canadian Broadcasting Corporation column in which an Alberta lawyer claimed that denial of the existence of systemic discrimination is "embarrassingly irresponsible and inexcusably ignorant," and even a breach of the rule of law.[751] Song attaches to his affidavit several published articles and pubic and private communications in which lawyers and other members of the public excoriated Song and his supporting lawyers for signing the motion:

> *… disgusting and shameful …* [752]
>
> *… racism and arrogance …* [753]
>
> *.. arrogant entitlement and a willful ignorance …* [754]
>
> *… distasteful hyperbolic characterizations …* [755]
>
> *You still suck as a human being & now the AB law society thinks so too. Ha ha ha* [756]*~*
>
> *What a disgusting motion you put forward. Immigrants, settlers and colonists, such as yourself came to our stolen land and were provided opportunities that were denied to First Nations people. Again and again, our history is marginalized and you are part of it. You should be ashamed of yourself, best thing to do is go back to where you and your ancestors came from.* [757]
>
> *You show a lack of ethical, moral leadership by promoting a racist, intolerant and ignorant view of our Canadian history. Read a book, look at the ongoing discovery of bodies buried at residential school sites.*
>
> *Your pathetic hateful refusal to take the course and to be protesting its existence is repulsive.* [758]

---

[750] Which did does not describe Song and others, but describes most of the petitioners.
[751] Song Affidavit, para. 137 and Exhibit "LL", p. 655.
[752] Song Affidavit, Exhibit "MM", p. 659.
[753] Song Affidavit, Exhibit "NN", p. 664.
[754] Song Affidavit, Exhibit "OO", p. 671.
[755] Song Affidavit, Exhibit "PP", p. 678.
[756] Song Affidavit, Exhibit "RR", p. 689.
[757] Song Affidavit, Exhibit "SS", p. 691.
[758] Song Affidavit, Exhibit "TT", p. 693.

698. As Song deposes: “In China this kind of social opprobrium to enforce ideological compliance is called ‘struggle session’ and ‘social death.’”[759]

699. Although more measured in tone, a letter signed by hundreds of Alberta lawyers was also circulated in opposition to Song’s motion, characterizing the motion as contrary to reconciliation and for ulterior motives.[760]

700. The LSA’s public characterization of Song as an “incompetent” with an unsafe and inefficient practice is, demonstrably, likely to cause harm to his reputation in the legal and broader community. Even without the direct sanction of the LSA, the Profile may generate significant social and professional pressure on a lawyer.

701. Sixth, while the Profile does not “set threshold standards for purposes of discipline” the Code does. The Code says that lawyers are, for example, to refrain from all forms of discrimination and harassment”[761] and “harassment” is defined to include “verbal or nonverbal conduct … that might reasonably be expected to cause humiliation, offence or intimidation.”[762] In connection with indigenous people, lawyers are to take special care given a history of colonialism:

> *Indigenous peoples may experience unique challenges in relation to discrimination and harassment as a result of the history of the colonization of Indigenous peoples in Canada, ongoing repercussions of the colonial legacy, systemic factors, and implicit biases. Lawyers should take particular care to avoid engaging in, allowing, or being willfully blind to actions which constitute discrimination or any form of harassment against Indigenous peoples.*[763]

702. However, while the Code nowhere mentions, in this respect, the concept of “trauma” or “trauma informed practice,” the Profile does. The Profile indicates that, in order for a lawyer’s practice to be “safe” she must “implement strategies to mitigate trauma.”[764] Surely “harassment” under the Code must include causing an indigenous person “trauma” as described in the Profile. In other words, while only the Code may (currently) “set threshold standards for purposes of discipline” the Profile acts as an interpretive aid.

---

[759] Song Affidavit, para. 139.
[760] Song Affidavit 2, Exhibit “H”, p. 201.
[761] The Code at Rule 6.3-1 (Song Affidavit, Exhibit “G”, p. 257).
[762] The Code at Rule 6.3-2 (Song Affidavit, Exhibit “G”, p. 259).
[763] The Code at Rule 6.3-1 Commentary 3 (Song Affidavit, Exhibit “G”, p. 257).
[764] The Profile (Song Affidavit, Exhibit “HHH”, p. 780).

703. Therefore, although ostensibly not binding on the lawyer for discipline purposes, lawyers are under significant pressure to nonetheless comply with the Profile. Further, the LSA plans to soon tighten the screws.[765]

704. The Profile's resulting interference with Song's *Charter* ss. 2(a) and 2(b) rights are discussed below.

ii. The Code - Rule 6.3

705. The Code's Rule 6.3 also contains ethical obligations which are manifestations of the Theories and the LSA's Political Objectives.

706. Rule 6.3-1:

> *A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person.*

incorporates *via* the commentary concepts from the Theories including "internal bias", "colonization", "systemic factors", "systemic discrimination", "organizational cultures", "distinct needs" etc.

707. To similar effect Rule 6.3-2:

> *A lawyer must not harass a colleague, employee, client or any other person.*

less obviously, but still, incorporates, *via* the commentary concepts from the Theories. For example, the rule prohibits "assigning work inequitably." As described above, "harassment" almost certainly includes causing "trauma." Harassment includes "bullying" which is defined to include "unfair or excessive criticism", "ridicule", "humiliation", "exclusion or isolation." Recall the 2020 Plan's redefinition of the term "fair" to "equitable".[766] According to the LSA's "My Experience" project "bullying" as thus defined constitute "systemic discrimination."[767]

708. Incorporating the Theories renders the Code's Rule 6.3 an Abuse of Subversive Objectives.

709. As with the Profile, the Code's Rule 6.3 incorporates words of such wide and differing meanings that there are no reasonable standards for determining the meaning of the

---

[765] C-366.
[766] Song Affidavit, Exhibit "C", p. 77.
[767] See Song Affidavit, Exhibits "K", "J", and "N" as compared to the shared experiences at Song Affidavit, Exhibit "I" and Song Affidavit 2, Exhibit "I", p. 227.

bylaw.[768] For example, the Code requires a professional environment which is "respectful, accessible, and inclusive." Provided a workplace has any degree of conflict or excludes anyone for any reason, it might be claimed – by someone, for example a respondent in the "My Experience" project – that discrimination has therefore occurred. What about a tough boss who bluntly criticizes a minority lawyer's work. Is that "respectful?" What if a minority candidate is not hired because a white candidate with marginally better grades was selected. Is that "accessible and inclusive?"

710. The uncertainty of these words is compounded by the fact that, should a discrimination or harassment complaint be lodged by a student with the LSA, by default:

    a. the complaining student will be believed – consistent with the Theories; and

    b. the firm will be considered "unsafe or untenable … due to harassment or discrimination,"

    and the LSA may thereafter "determine that it is necessary to proceed with a complaint against the principal." [769] In other words, provided the complainant feels that the workplace is disrespectful or not accessible and inclusive, it is then up to the principal to disprove guilt.

711. Similar considerations of vagueness apply throughout the Impugned Rule: "practices that would reinforce" internal biases; "organizational policies, practices and cultures that create, perpetuate, or unintentionally result in unequal treatment", "distinct needs", "derogatory racial, gendered, or religious language to describe a person or group of persons,"[770] "objectionable", "assigning work inequitably", etc.

712. While the FLSC, with the LSA's input, seemed alert to the problem of subjectivity in the model code, with respect, the parties failed to cure it.[771] The model code, as adopted into the Impugned Code, still incorporates subjectivity, which increases the degree of uncertainty.

---

[768] *Red Hot* at para. 8.
[769] Song Affidavit, Exhibit "WWW", pp. 923, 930 and 931.
[770] Does the LSA's Resources, including The Path, the Glossary, and article "Whiteness," not qualify? (Song Affidavit, Exhibit "G", "X", "LLL", and "NNN").
[771] See above at paragraph 113.

713. The Code defines "harassment" (where harassment also constitutes discrimination[772]) to mean, inter alia:

> *… conduct … that might reasonably be expected to cause humiliation, offence or intimidation … it is harassment if the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation.*[773]

714. Sexual harassment is defined in like terms.[774]

715. While this appears to now be an objective test ("lawyer knew or ought to have known") the thing the lawyer "knew or ought to have known" is whether the complainant would or did find the conduct "unwelcome", "humiliating", "offensive", "intimidating", etc. It is the complainant's personal preferences and spontaneous emotional reactions, therefore, which determine (in part) whether conduct constitutes harassment. The same "harassing" conduct is not harassment if:

    a. there is a different potential complainant who has different preferences;

    b. there is a different potential harasser from whom the complainant finds the conduct "welcome"; or

    c. for whatever reason, the complainant interprets the situation differently.

716. While the offense still theoretically retains some degree of objectivity (because it still must be objectively proven that the lawyer "knew or ought to have known" the complainant's preferences), in practice the fact of a complaint leads almost inevitably to a finding of harassment (even without application of the LSA's "guilt until proven innocence" rule). The fact of a complaint establishes irrefutably that the conduct was, in fact, "unwelcome." For practical purposes, it will be difficult or impossible to prove "I had no reason to suspect she would find unwelcome what she found unwelcome." Once the LSA's "guilty until proven innocence" rule is applied, guilt becomes more certain still. Finally, according to the Benchers' consideration of its "guilt until proven innocence" rule, "the EDIC discussed and concluded that the default position should be presumptive belief because often there is no

---

[772] See cross-references at the Code Rule 6.3-1 at Commentaries 2, 3, 4, 6 and 7 (Song Affidavit, Exhibit "G", pp. 257 – 259).
[773] Rule 6.3-2 at Commentary 1 (Song Affidavit, Exhibit "G", p. 259).
[774] The Code at Rule 6.3-3 (Song Affidavit, Exhibit "G", p. 260).

other evidence".[775] Given all of this, there seems to be no difference between an accusation and guilt.

717. Again, where rules abut constitutional freedoms (which this provision obviously does as it relates almost exclusively to expressive conduct and matters of thought and belief) they must be drafted to a high degree of predictability.

718. The vagueness of the harassment and discrimination obligations are an invalidating abuse of discretion rendering the Impugned Code *ultra vires.*

719. The Code's resulting interference with Song's *Charter* ss. 2(a) and 2(b) rights are discussed below.

E. Freedom of Religion, Conscience and Expression

720. The LSA is subject to the *Charter.*[776]

721. As discussed above, the sanctity of human dignity drives constitutional protection for freedom of religion and conscience, which rights are also "fundamental" under the *Charter* because they are essential to a "free and democratic society"[777]. As expressed in *R. v. Big M Drug Mart Ltd*:

> *What unites enunciated freedoms in the American First Amendment, s. 2(a) of the Charter and in the provisions of other human rights documents in which they are associated is the notion of the centrality of individual conscience and the inappropriateness of governmental intervention to compel or to constrain its manifestation… It is easy to see the relationship between respect for individual conscience and the valuation of human dignity that motivates such unremitting protection.*
>
> *… emphasis on individual conscience and individual judgment also lies at the heart of our democratic political tradition. The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government. It is because of the centrality of the rights associated with freedom of individual conscience both to basic beliefs about human worth and dignity and to a free and democratic political system that American jurisprudence has*

[775] A-244.
[776] *Andrews*.
[777] *Charter* at s. 1.

> *emphasized the primacy or "firstness" of the First Amendment. It is this same centrality that in my view underlies their designation in the Canadian Charter of Rights and Freedoms as "fundamental". They are the sine qua non of the political tradition underlying the Charter.* [778]

722. Freedoms of thought, belief, opinion, and expression under *Charter* s. 2(b) are likewise "fundamental" because they facilitate the search for truth, participation in social and political decision-making, and individual self-fulfillment and human flourishing – activities which are integral to a free, pluralistic and democratic society.[779] If citizens are not free to think for themselves, to express their true thoughts, or to hear the true and free thoughts of other citizens – democratic consent and pluralism are illusory.

723. The s. 2 rights are given a generous rather than legalistic and purposive interpretation.[780] Given the central role of lawyers in upholding Canada's constitutional order, a court should be particularly assiduous in ensuring Canada's lawyers enjoy their fundamental freedoms within the scope of their professional duties, because this permits lawyers to zealously advocate on behalf of clients, to advocate against injustices and constitutional encroachments and subversions, as well as personally enjoying life in a free and democratic society.

724. The *Charter* s. 2(a) guarantee prohibits state-imposed orthodoxy in matters of profoundly held personal beliefs (whether religious or secular)[781] such as those which govern one's perception of oneself, humankind, nature, and metaphysics:

> *… Limits that amount to state compulsion on matters of belief are always very serious. As the U.S. Supreme Court has stated: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State"…*[782]

---

[778] *Big M* at p. 346; see also *Saguenay* at para. 75.
[779] *Irwin Toy Ltd. v Quebec (Attorney General),* [1989] 1 S.C.R. 927 *("**Irwin Toy**"),* pp. 976 and 977, *Keegstra* pp. 763 – 764; 94; Saguenay at para. 61.
[780] *Big M at* p. 344.
[781] *Morgentaler* at p. 37.
[782] *Hutterian Brethren of Wilson Colony v Alberta,* 2009 SCC 37 *("**Wilson Colony**")* at para. 91 and 32; see also *R. v Edwards Books and Art Ltd.,* [1986] 2 S.C.R. 713 *("**Edwards Books**")* at p. 759*; Big M* at p. 346*; Syndicat Northcrest v Amselem,* [2004] 2 S.C.R. 551 at para. 41.

725. The s. 2(b) guarantee is, likewise, a guard against state-imposed dogma in matters of fact and morality.[783]

726. As expressed in Ontario (Attorney General) v. Dieleman:

> *Freedom of conscience has also been described as the "protection against invasion" of a sphere of individual intellect and spirit such as protection against officially disciplined uniformity or orthodoxy, but it does not protect the broader notion of "activity" motivated by one's conscience.*[784]

727. The 2(a) right has been described generally as follows:

> *The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. ...*[785]

728. It is, therefore, a breach of the s. 2(a) right to coerce a person to act against their conscience, or[786] to coerce apostasy,[787] where:

> *… Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others … Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.*[788]

729. The *Charter* s. 2(a) right has two broad dimensions: protection of the individual against state interference and a state duty of neutrality.

730. The general test for individual infringements is as follows (modified to incorporate secular belief):

---

[783] See above at paras. 628 – 631.
[784] *Ontario (Attorney General) v Dieleman* (1994), 117 D.L.R. (4th) 449 at para. 235.
[785] *Big M* at p. 336.
[786] *Saguenay* at para. 69; *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine c. Lafontaine (Municipalité)*, 2004 SCC 48, [2004] 2 S.C.R. 650 (S.C.C.), at para. 65.
[787] *Big M* at pp. 338 and 346 – 347; *Wilson Colony* at para. 89
[788] *Big* M at pp. 336 – 337*;* see also *Edwards Books* at pp. 757 – 758.

a. the claimant sincerely holds a belief that has a nexus with religion (or nexus with profoundly held personal beliefs such as those which govern one's perception of oneself, humankind, nature, and metaphysics); and

b. the impugned measure interferes with the claimant's ability to act in accordance with his or her religious (or deeply held personal) beliefs in a manner that is more than trivial or insubstantial.[789]

731. Sincere belief is established with subjective evidence while interference must be established objectively.[790]

732. In respect of the *Charter*'s expressive rights under s. 2(b) the SCC in *Montréal (Ville) v 2952-1366 Québec Inc.*, 2005 SCC 62 ("***Montréal***") summarized the 3-part test:[791]

a. Does the activity in question have expressive content that brings it within the prima facie protection of s. 2(b)? The test is content neutral. Protection is afforded no matter how offensive, unpopular, disturbing[792] or false[793] it may be.

b. If so, does the method or location of this expression remove that protection?

i. Methods, like violence, which conflict with the values underlying the provision may not enjoy protection.[794]

ii. Location: is it a public place where one would expect constitutional protection for free expression on the basis that expression in that place does not conflict with the purposes which s. 2(b) is intended to serve[795] considering:

1. the historical or actual function of the place; and
2. whether other aspects of the place suggest that expression within it would undermine the values underlying free expression.

c. Does the law or government action at issue, in purpose or effect, restrict freedom of expression?

---

[789] *Wilson Colony*.
[790] *SL v Commission* at paras. 2 and 24.
[791] *Montréal* at paras. 56 to 81.
[792] *Keegstra* at p. 828.
[793] *Canada (Attorney General) v. JTI-Macdonald Corp.,* [2007] 2 S.C.R. 610, at p. 60*; Zundel* at p. 758*; R. v Lucas,* [1998] 1 S.C.R. 439, at para. 25.36; *R. v Lucas*, *[1998] 1 S.C.R. 439, at para. 25*.
[794] *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2, at para. 37; *Montréal* at para. 72.
[795] Democratic discourse, truth seeking, self-fulfillment.

733. Where the purpose is to restrict the content of expression, to control access to a certain message, or to limit the ability of a person who attempts to convey a message to express him or herself, that purpose will infringe section 2(b). A purpose to restrict the harms associated with people coming to have false beliefs is also an infringing purpose, because the purpose remains to regulate thoughts, opinions, beliefs or particular meanings.[796]

734. Where the purpose is not to restrict the content of expression, the applicant must demonstrate the action infringes the right including the applicant's intention to convey a meaning reflective of the principles underlying freedom of expression.[797]

735. Where government interference in freedom of expression is accompanied by the systemic targeting of a particular group in society, the issue "takes on a further and even more serious dimension."[798]

736. Compelled speech is a particularly egregious violation:

> *Remedies Nos. 5 and 6 thus force the Bank and its president to do something, and to write a letter, which may be misleading or untrue.*
>
> *This type of penalty is totalitarian and as such alien to the tradition of free nations like Canada, even for the repression of the most serious crimes. I cannot be persuaded that the Parliament of Canada intended to confer on the Canada Labour Relations Board the power to impose such extreme measures, even assuming that it could confer such a power bearing in mind the Canadian Charter of Rights and Freedoms, which guarantees freedom of thought, belief, opinion and expression. These freedoms guarantee to every person the right to express the opinions he may have: a fortiori they must prohibit compelling anyone to utter opinions that are not his own.*[799]

737. The legal profession is obviously a "location" in which one expects – and requires – the constitutional protection for free expression.

738. Song claims the LSA's Political Objectives violate both his deeply held religious and (what might be called) deeply held secular beliefs as to the comparative superiority of the Canadian *Constitution* over a sociopolitical order organized around ideology and power. In

---

[796] *Irwin Toy* at pp. 971 – 975.
[797] *Irwin Toy* at pp. 971 – 975.
[798] *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120, at para. 36.
[799] *National Bank of Canada v. Retail Clerks' International Union et al.*, 1984 CanLII 2 (SCC), [1984] 1 SCR 269, at p. 296.

respect of his “secular” views, therefore, Song makes an excellent proxy to consider the impact of the LSA’s Political Objectives on non-believing liberal democratic members of the bar.

739. Song’s sincerely held religious and secular beliefs and desired expression are set-out in full in his affidavit. It is most efficient to summarize those by reference to the contradicting orthodoxies in matters of fact and morality imposed by the Theories and by the LSA’s Impugned Conduct.

740. What will become obvious is that, just as the Theories stand in near perfect contradiction to the fundamental tenants of the Canadian *Constitution*, they stand in near perfect contradiction to the fundamental tenants of Song’s Christian faith. This should come as no surprise. As Justice Rand observed in *Saumur*:

> *The Christian religion, its practices and profession, exhibiting in Europe and America an organic continuity, stands in the first rank of social, political and juristic importance. The Articles of Capitulation in 1760, the Treaty of Paris in 1763, and the Quebec Act of 1774, all contain special provisions placing safeguards against restrictions upon its freedom…*[800]

741. As later expressed by Belzil J.A., as he then was:

> *It is realistic to recognize that the Canadian nation is a part of "western" or European civilization molded in and impressed with Christian values and traditions. These remain a strong constituent element in the basic fabric of our society. English law in particular bears the imprint of canon law … The extent of the influence of Christianity on our legal and social systems is outlined in the Oxford Campanion to Law [at p. 724]:*
>
> > *… consider the influence of Christianity and the Bible on Western legal systems. These factors have influenced law … by influencing the law of nature theory; secondly, by directly supplying rules which were enacted or followed; … by reinforcing ethical principles and providing an underlying justification for rules of statute or common law … by influencing law in a humanitarian direction, emphasizing the worth of the individual … and the sanctity of life; and … justifying and emphasizing*

[800] *Saumur* at p. 327.

> *the maintenance of moral standards, notions of honesty, good faith, fairness, and others … the underlying belief in the oath is that the force of religious belief will compel the witness to tell the truth, and that, if he does not, God will punish him.*[801]

742. Where Williams refers to the "West," it might be recalled that the "West" was once called "Christendom".

743. The LSA's Political Objectives, as evidenced in its Materials, conflict with Song's Christian faith and secular beliefs in general and in particular ways.

744. The Theories and the LSA's materials attack Song's Christian faith in general. As Williams observes, the Theories outright reject Christianity.[802] It is surprising that the LSA's Materials therefore have so little to say about Christianity directly. Rather, where the Theories and the LSA reference the values or norms of the "dominant culture" (for example as "whiteness" or "colonialism"), we are left to connect the dots that the dominant culture includes Christianity. The Glossary at least makes this clear:

> *Dominant Culture: … Euro-Canadian is a term used to refer to predominantly white Canadians of European descent and encompasses their cultural values, attitudes and assumptions … the term has generally referred to White, Anglo-Saxon, Protestant males"*[803]

745. In addition to this direct attack, the premise of the Theories is that the dominant culture, including Christianity, is a "discourse in colonialism" constructed for the purpose of the surreptitious oppression of minorities.[804] This is obviously an assault on the veracity, integrity, and morality of Christianity.

746. Of course, where the Theories attack the "dominant culture," this is also an attack on Canada's *Constitution* and the various principles that underly it.[805]

---

[801] *Big M ABCA* at para. 113; The law of nature theory is a reference to natural law that posits universal moral principles discoverable through reason.
[802] Report at p. 6.
[803] The Glossary (Song Affidavit, Exhibit "LLL", pp. 813 and 817); see also "ethnocentrism", "heterosexism "imperialism", "majority" The Glossary (Song Affidavit, Exhibit, "LLL", pp. 814, 817, 819, and 827).
[804] See above at section IV.B.
[805] See above at sections IV.B, IV.B.i, and IV.B.ii.

747. The LSA's vilification of a particular group in society – whether or not it is "equitable" to attack, in this case, "white, middle-class, Christian, straight people"[806] – seriously aggravates the LSA's *Charter* violations.

748. Consistent with constitutional tenants,[807] Song's faith is that God created an ordered and comprehensible universe and granted to humans, without discrimination by race, sex, culture or other identity characteristic, the capacities (including humility, curiosity, wisdom, the senses, and reason) to search for and discover universal truth and that science is a manifestation of this ordered universe.[808] Song believes Western institutions like freedom of thought, freedom of speech, and science have proven excellent systems for discovering truth and moving away from error. 23c

749. The Theories, on the other hand, say universalism, empiricism, objectivity, reason and science are a "sham" to oppress minorities.[809] The Theories characterize the "marketplace of ideas" as a "discourse in colonialism".[810] Again, this is an assault on the veracity, integrity, and morality of fundamental Christian and constitutional values.

750. In place of objectivity, the Theories substitute identity-based subjectivity with insurmountable intellectual and cultural divisions between racial tribes.[811] The Theories are race-obsessed, entrench racial division and racial prejudice and reject colorblindness as cover for tribal oppression. Iii.b.vi, iv.c

751. This conflicts with and attacks as oppressive Song's religious view of humans, all created in God's own image and likeness who are, therefore, fundamentally the same.[812] It conflicts with Song's primary self-identification by his relationship with and faith in, "God and God's only Son, Jesus Christ, not by my Collectivist Identity."[813] It conflicts with Song's religious commandment to "love thy neighbor" meaning without discrimination or racial stereotype.[814]

---

[806] The Glossary (Song Affidavit, Exhibit "LLL", p. 814).
[807] see above at section III.A.
[808] Song Affidavit, para. 71(e).
[809] See above at sections IV.B and IV.B.i.
[810] See above at section IV.C.iv.
[811] see above at sections IV.B, and IV.C.iii
[812] Song Affidavit, para. 71(d).
[813] Song Affidavit, para. 71(m).
[814] Song Affidavit, para. 8.

752. This also conflicts with Song's secular beliefs in the destructive tendencies of tribalism and the superiority of Canada's constitutional model of pluralism.[815]

753. Viewing humans as fundamentally tribal and incompatible, viewing Western legal structures as colonial, oppressive norms, the Theories seek to subvert the rule of law including its foundations objectivity and equality.[816]

754. But for Song, the rule of law, including equality before the law, is God's law.[817] His experiences in China brought him to the secular belief that Canada's constitutional prioritization of the rule of law was profoundly wise.[818]

755. Song believes that elevating ideology over the rule of law dissolves the rule of law[819] and propels the state towards arbitrary power[820] which is destructive to personal and social outcomes including, individual dignity, spiritual fulfilment, freedom, democracy, health, wealth, happiness, social harmony, peace, order, and progress.[821]

756. Song believes the *Constitution* is good and just, and is not (except to the extent it permits the further racial segregation of indigenous Canadians in the form of the *Indian Act*[822]) a system of "colonialism", "whiteness", "privilege", "systemic discrimination", "racism", "liberal racism", "ignorance", "hate", or "violence." The Theories say the opposite,[823] that the *Constitution's* premises are "liberal racism".[824]

757. Song is

> *… commanded by God to love my neighbor as I love myself, meaning 'without discrimination', and to seek and speak the truth.*

758. Song moved to Canada, in part, because he saw great wisdom in Canada's constitutional prioritization of God which, to Song, meant:

---

[815] Song Affidavit, paras. 31 and 32.
[816] See above at sections IV.B, IV.B.i, and IV.C.iii
[817] Song Affidavit, para. 71(c).
[818] Song Affidavit, para. 59.
[819] Song Affidavit, para. 38.
[820] Song Affidavit, paras. 33 – 40.
[821] Song Affidavit, para. 20.
[822] Song Affidavit, para. 91.
[823] See above at section IV.B.ii.
[824] Song Affidavit, Exhibit "MMM", p. 849.

> *the source of Canadian truth and morality was not the state but an authority that transcended the state.*[825]

759. This is a secular belief also, reflected in the constitutional hostility to prescribed orthodoxy.[826]

760. For Song, God is the ultimate source of truth and morality – universal truth and universal morality.[827] Song believes state-enforced dogma is often false, is idolatry, and tilts the state towards arbitrary power, wielded by that which imposes dogma.[828]

761. But through tautology and irrationality[829] the Theories claim to reveal social and historical truths – dogmas[830] imperceptible with observation and reason – and claim to be the source of ultimate morality: equity.[831, 832]

762. Song views, as a severe and destructive invasion of conscience, the state requirement to search your mind, acknowledge, and cleanse the corrupting worldviews of the West.[833] The Theories require it.

763. But, at the same time, the Theories say the oppressive prison of our minds are ultimately inescapable.[834] The Theories say people are individually powerless that the constitutional view of the individual as rational and self-reliantis another "strategy of liberal racism."[835] To Song, "it is the lie of Satan that one is forever bound by sin and that all is hopeless."[836]

764. Song believes God granted humans free will,[837] that an individual, through work and God's grace, can succeed, and that Theories cynicism as to free will begets apathy and is destructive to society and is sin.[838]

765. Song believes God created only man and woman, that sex is a biological and objective fact and is not dependent on subjective experience.[839] The Theories say God's

---

[825] Song Affidavit, para. 59.
[826] See above at section IV.C.iv.
[827] Song Affidavit, paras. 71(b), 71(f), and 71(e).
[828] Song Affidavit, para. 23(a).
[829] See above at section IV.C.iv.
[830] See above at section IV.C.iv.
[831] See above at sections IV.B and IV.B.i.
[832] Report at p. 21.
[833] Song Affidavit, para. 21.
[834] See above at section IV.C.i.
[835] Song Affidavit, Exhibit "MMM", p. 849.
[836] Song Affidavit, para. 71(i).
[837] Song Affidavit, para. 71(g).
[838] Song Affidavit, para. 94.
[839] Song Affidavit, para. 71(d).

assignment of Adam's and Eve's sex was arbitrary and violent, that sex and gender are distinct, that gender is a subjective feeling which may be multiple and fluid – different at different times.[840]

766. Song rejects the Theories outright as false, immoral, unconstitutional, dangerous and destructive, he believes they undermine loyalty to the law and to clients, undermine the profession's reputation, and reduce meaningful diversity. He finds the Theories to be much like the destructive system of Maoist socialism from which he fled and which he believes is objectively inferior to Canada's *Constitution*.[841]

767. The Theories characterize Song's "denial" [842], his sincere belief in and manifestation of his God's commandment to love his neighbor as he loves himself, to seek and speak the truth, and to spread the gospel: "colonialism", "whiteness", "systemic discrimination", "dominant culture", "imperialism", and even "white supremacy."[843]

768. Rather than a lover of Christ they call him, at best, a fool and, at worst, a hater.

769. It is against this backdrop, and in gross violation of its statutory and constitutional jurisdiction, that the LSA decided to invade Song's conscience. In pursuit of its Political Objectives, subversive to the *Constitution*, it required and still requires that Song:

    a. Subject himself to "cultural competency" training including in the form of The Path which compelled Song to "correctly" answer questions as to complex matters of social, epistemological and historical "truth", which he either disputes or denies and which directly contradicted with Song's beliefs and desired expression as to God, the *Constitution*, the Theories, and the LSA's Political Objectives, which program he found an alarming parallel to Maoist "political competency" and a sharp assault on the dignity of his person.[844]

        I found myself captured in the jaws from which I had escaped.[845]

    b. Subject himself to whatever future "cultural competency", "anti-racist or other Theories-inspired training the LSA next deems necessary for "safe, effective and sustainable" practice under the Impugned Rule within similar effects.

---

[840] The Report, p. 4 – 5.
[841] Song Affidavit, paras. 10, 13(b)(i), 13(b)(vi), 24, and 50.
[842] Song Affidavit, Exhibit "RRR", p. 882.
[843] See above at section IV.B and the Glossary (Song, Exhibit "LLL", p. 841).
[844] Song Affidavit, paras. 60, 62, 64, 65, 67, 100, 115, 117, 133, and 136.
[845] Song Affidavit, para. 63.

c. Work towards and demonstrate "cultural competence" and avoid "harassment and discrimination" or have his practice deemed "unsafe, ineffective and unsustainable" and his conduct "deserving of sanction" which exerts substantial coercion[846] on Song to:

   i. believe the Theories;

   ii. say he believes the Theories;

   iii. advocate on behalf of the Theories;[847] and

   iv. come to understand and confess himself a "visitor" in his "home and native land".[848]

   all of which directly and seriously interfered with Song's rights, religious and secular, to entertain the beliefs of his choice – his love of his God and of his country – to declare these beliefs openly and without fear of reprisal, to seek wisdom and fulfillment from the sources of his own choosing, and to manifest his beliefs in the Godly pursuit of his profession and life.

770. As such, the LSA's Impugned Conduct constitutes an invasion of Song's conscience, an attempt to censor and compel his speech, to compel his apostacy, and to compel Song to violate his oath of loyalty to his clients and the Constitution by "advance[ing] inclusion through intentional, positive, and conscious efforts."[849]

771. Given:

   a. Song's public vilification for advancing the special motion against Rule 67.4;

   b. Song's intimate familiarity with the formal and informal methods employed to enforce ideological compliance including "political education", the ideological filtering of professions, the arbitrary exercise of power, and informal "social death"; and[850]

   c. The LSA's conduct to date including:

---

[846] See above at section IV.D.
[847] See above at section IV.C.iv.
[848] See above at section IV.B.ii.
[849] The Profile (Song Affidavit, Exhibit "HHH", p. 780).
[850] Song Affidavit, paras. 17 – 20, 28, 33 – 50, and 139.

i. adopting the Political Objectives and foisting them on the bar when one of its highest duties is to preserve the bar's independence, most especially from political interference;

ii. mandating The Path without authorization under the *Rules* and only passing Rule 67.4 retroactively;[851]

iii. passing Rule 67.4 without apparent consideration for the *LPA* or the glaring differences with *Green*;[852]

iv. publicly waiving privilege over a legal opinion as to the *vires* of Rule 67.4 then refusing to provide that opinion to the bar which was to consider a special motion on that very issue;[853]

v. procedural refusals as to the special meeting which were prejudicial to the bar's, the public's and this Honourable Court's interest in the fair and informed consideration of the *vires* of 67.4;[854]

vi. publicly distancing itself from the Resources when confronted publicly with its disturbing contents, suggesting that the contents were not representative of the LSA's Political Objectives;[855]

vii. providing a curt and ineffectual response to a detailed 8-page letter of concern (reflecting the same concerns as those raised in this action) signed by 70 lawyers and other Canadian professionals which response, in full, was:

We acknowledge receipt of your letter dated July 17, 2023. Thank you for sharing your views in this way.[856]

viii. confirming in its Regulatory Objectives that its Political Objectives may overrule its duty to uphold the rule of law.[857]

Song therefore expresses a reasonable and substantial concern where he deposes that:

Because the LSA's [Theories] and … Materials and the way the LSA is implementing them categorize my beliefs and desired expression as conduct

[851] Song Affidavit, para. 110.
[852] See above at section IV.A.i.
[853] Song Affidavit, paras. 124 – 126.
[854] Song Affidavit, paras. 121 – 132.
[855] Song Affidavit, paras. 163.
[856] Song Affidavit, Exhibit "BBBB", p. 986.
[857] The Regulatory Objectives (Song Affidavit, Exhibit "E", p. 104).

> *deserving of sanction I fear hindrance and reprisals for my beliefs and expression of same.*[858]

772. Returning to the issue of the LSA's targeting of a particular group – including Christians – the *Constitution,* including the *Charter,* requires that the state not interfere with religious freedoms through its guaranteeing a religiously neutral public space. The state may not favour nor hinder any particular belief or non-belief by taking <u>any</u> position, much less picking favorites or either directly or indirectly stigmatizing a particular set of beliefs or non-beliefs[859]

> *Religion is an integral part of each person's identity. When the state adheres to a belief, it is not merely expressing an opinion on the subject. It is* ***creating a hierarchy of beliefs*** *and* ***casting doubt on the value of those it does not share****. It is also* ***ranking the individuals*** *who hold such beliefs:*
>
> > *If religion is an aspect of the individual's identity, then when the state treats his or her religious practices or beliefs as less important or less true than the practices of others, or when it* ***marginalizes her or his religious community in some way****, it is not simply rejecting the individual's views and values, it is* ***denying her or his equal worth****.*[860]

773. The state must, therefore, maintain a neutral public space, "free from coercion, pressure and judgment on the part of public authorities in matters of spirituality."[861]

774. Where the price for loyalty to one's faith is isolation, exclusion, or stigmatization there is a breach of state neutrality.[862]

775. The state may not shelter under the "guise of cultural or historical reality or heritage."[863]

776. In determining whether there is a *Charter* breach, the court must consider both the purpose and effect of conduct or legislation. Where the purpose is *ultra vires* including a purpose to infringe *Charter* rights, the court need not inquire into the legislation's actual impact[864] and no resort may be made to section 1:

---

858 Song Affidavit, para. 75.
859 *Saguenay* at paras. 53 and 124.
860 *Saguenay* at para. 73.
861 *Saguenay* at para. 74.
862 *Saguenay* at paras. 120 and 121.
863 *Saguenay* at para. 78.
864 *Big M* at paras. 81 and 82.

Parliament can not rely upon an ultra vires purpose under s. 1 of the Charter."[865]

777. The LSA has "intentional[ly], positive[ly] and conscious[ly]"[866] created a prejudicial public space by attacking the honesty, integrity, and morality of the "White, Anglo-Saxon, Protestant male" and by attacking the veracity, integrity, and morality of his entire culture including his profoundly held personal beliefs (religious and secular) which govern his perception of himself, humankind, nature, and metaphysics.

778. The LSA's breaches of Song's *Charter* rights under ss. 2(a) and 2(b) of the *Charter* are clear, egregious, and for unconstitutional purposes.

V. REMEDIES

779. Therefore, the applicant prays that this Honourable Court grant the following remedies:

a. an order that Part 5 of the *Alberta Rules of Court,* Alberta Regulation 124/2010 shall apply to this action as follows:

i. the respondent shall produce the Opinion; and

ii. the respondent shall produce its full "Regulatory Objectives";

b. an order:

i. for a declaration that the Profile, the CPD Tool, Rules 67.2 to 67.4 and Part 6.3 of the Code are *ultra vires*;

ii. in *certiorari*, setting-aside Rules 67.2 to 67.4 and part 6.3 of the Code; and

iii. in *prohibition*, prohibiting the LSA from the continuation of its Political Objectives in any manner;

c. Pursuant to *Charter* section 24(1):

i. a declaration that the LSA's Political Objectives and pursuit thereof, including the Profile, the CPD Tool, Rules 67.2 to 67.4 and Part 6.3 of the Code infringe Song's rights under *Charter* sections 2(a) and 2(b); and

ii. an *interim* and final injunction prohibiting the LSA from the continuation of its Political Objective in any manner.

---

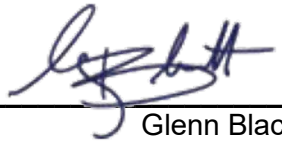
[865] *Big M* at pp. 352 – 353*;* see also *Wilson Colony* at 92.
[866] The Profile (Song Affidavit, Exhibit "HHH", p. 780).

d. Pursuant to Charter section 52(1), an order striking Rules 67.2 to 67.4 and Part 6.3 of the Code.

780. Song does not seek costs given the public interest in the outcome of these proceedings.

781. Such further and other remedy as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of March 2025.



Glenn Blackett
Counsel for the Applicant

VI. LIST OF AUTHORITIES

Tab	*Caselaw*
1.	Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37 (CanLII), [2009] 2 SCR 567
2.	Amax Potash Ltd. v Sask., [1977] 2 S.C.R. 576
3.	Andrews v Law Society of British Columbia, 1989 CanLII 2 (SCC), [1989] 1 SCR 143
4.	Association of Justice Counsel v. Canada (Attorney General), [2017] 2 S.C.R. 456
5.	ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board), 2006 SCC 4, [2006] 1 S.C.R. 140 (S.C.C.)
6.	Bell ExpressVu Ltd. Partnership v Rex, 2002 SCC 42, [2002] 2 S.C.R. 559 (S.C.C.)
7.	Bizon v Bizon, 2014 ABCA 174
8.	Black v Law Society of Alberta, 1986 ABCA 68
9.	Blencoe v British Columbia (Human Rights Commission), 2000 SCC 44
10.	Boucher v R., 1949 CanLII 334, [1950] 1 D.L.R. 657
11.	British Columbia (Attorney General) v Christie, 2007 SCC 21 (CanLII), [2007] 1 SCR 873
12.	Canada (Attorney General) v Federation of Law Societies of Canada, [2015] 1 S.C.R. 401
13.	Canada (Attorney General) v JTI-Macdonald Corp., [2007] 2 S.C.R. 610
14.	Canada (Attorney General) v Law Society of British Columbia, [1982] 2 S.C.R. 307

15.	Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65
16.	Canadian Broadcasting Corp. v. Canada (Attorney General), 2011 SCC 2
17.	Commission scolaire francophone des Territoires du Nord-Ouest c Territoires du Nord-Ouest (Éducation, Culture et Formation), 2023 SCC 31
18.	Committee for the Commonwealth of Canada v Canada, 1991 CanLII 119 (SCC), [1991] 1 SCR 139
19.	Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine c. Lafontaine (Municipalité), 2004 SCC 48, [2004] 2 S.C.R. 650 (S.C.C.)
20.	Delgamuukw v British Columbia (1997), 153 D.L.R. (4th) 193 (S.C.C.)
21.	Doré c Québec (Tribunal des professions), [2012] 1 S.C.R. 395
22.	Dunsmuir v New Brunswick, 2008 SCC 9
23.	Federation of Law Societies of Canada v Canada (Attorney General), 2002 CanLII 49401
24.	Ford c Québec (Procureur général), [1988] 2 S.C.R. 712
25.	Fortin v Chrétien, [2001] 2 S.C.R. 500, 2001 SCC 45
26.	Glasgow (City) v Muir (1943), [1943] 2 All E.R. 44 (Scotland H.L.)
27.	Godbout v Longueuil (City), [1997] 3 S.C.R. 844
28.	Green v Law Society of Manitoba, [2017] 1 S.C.R. 360
29.	Groia v Law Society of Upper Canada, 2018 SCC 27
30.	Guarantee Co. of North America v Gordon Capital Corp. (1999), 1999 CarswellOnt 3171
31.	Hawrish v Bank of Montreal (1969), 1969 CarswellSask 9

32.	Irwin Toy Ltd. v. Quebec (Attorney General), [1989] 1 S.C.R. 927
33.	Lavallee, Rackel & Heintz v. Canada (Attorney General) 2002 SCC 61 (CanLII), [2002] 3 SCR 209
34.	Law Society of British Columbia v Trinity Western University, 2018 SCC 32
35.	Law Society of Upper Canada v Hunter, 2007 LSDD No. 8, 2007
36.	Law Society of Upper Canada v Joseph, 2003 LSDD No. 34
37.	Law v Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497
38.	Little Sisters Book and Art Emporium v Canada (Minister of Justice), [2000] 2 S.C.R. 1120
39.	Luscher v. Deputy Minister, Revenue Canada, Customs and Excise, [1985] 1 F.C. 85 (C.A.)
40.	Manitoba Provincial Judges Association v Manitoba (Minister of Justice), [1997] 3 S.C.R. 3
41.	McAteer et al v Canada (Attorney General), 2014 ONCA 578
42.	Medovarski v Canada (Minister of Citizenship & Immigration), 2005 SCC 51
43.	Mikisew Cree First Nation v Canada (Governor General in Council), 2018 SCC 40
44.	Miron v Trudel, [1995] 2 S.C.R. 418 (S.C.C.)
45.	Montréal (Ville) v 2952-1366 Québec Inc., 2005 SCC 62
46.	Mouvement laïque québécois v Saguenay (City), [2015] 2 S.C.R. 3
47.	National Bank of Canada v. Retail Clerks' International Union et al., 1984 CanLII 2 (SCC), [1984] 1 SCR 269
48.	Newman v Grand Trunk Railway (1910), 20 O.L.R. 285

49.	Ontario (Attorney General) v Dieleman (1994), 117 D.L.R. (4th) 449
50.	Pearlman v Law Society (Manitoba), [1991] 2 S.C.R. 869
51.	R. v Big M Drug Mart Ltd., 1983 ABCA 268
52.	R. v Big M Drug Mart Ltd., 1985 CanLII 69 (SCC), [1985] 1 SCR 295
53.	R. v Chouhan, 2021 SCC 26
54.	R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713
55.	R. v G.D.B., [2000] 1 S.C.R. 520, 2000 SCC 22
56.	R. v Gladue, 1999 CanLII 679 (SCC), [1999] 1 SCR 688
57.	R v Kapp, 2008 SCC 41
58.	R v Keegstra, [1990] 3 S.C.R. 697
59.	R. v. Lucas, [1998] 1 S.C.R. 439
60.	R v McClure, 2001 SCC 14
61.	R v Morgentaler, 1988 CanLII 90 (SCC), [1988] 1 SCR 30
62.	R v Neil, 2002 SCC 70
63.	R. v Nova Scotia Pharmaceutical Society, 1992 CanLII 72 (SCC), [1992] 2 SCR 606
64.	R v Oakes, [1986] 1 SCR 103
65.	R. v Zundel, 1992 CanLII 75 (SCC), [1992] 2 SCR 731
66.	Re Manitoba Language Rights, [1985] 1 SCR 721
67.	Red Hot Video Ltd. v Vancouver (City), 1985 CanLII 634 (BCCA)

68.	Reference Re Alta. Legislation, [1938] S.C.R. 100
69.	Reference re Secession of Quebec, [1998] 2 SCR 217
70.	References re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11 (CanLII), [2021] 1 SCR 175
71.	Resolution to Amend the Constitution, Re, [1981] 1 S.C.R. 753
72.	Rizzo & Rizzo Shoes Ltd., Re, [1998] 1 S.C.R. 27
73.	Roach v. Canada (Minister of State for Multiculturalism and Citizenship)(C.A.), 1994 CanLII 3453 (FCA), [1994] 2 FC 406
74.	Rodriguez v British Columbia (Attorney General), 1993 CanLII 75 (SCC)
75.	Roncarelli v Duplessis, [1959] SCR 121
76.	Saumur v City of Quebec, 1953 CanLII 3 (SCC), [1953] 2 SCR 299
77.	Singh v Canada (Attorney General) (C.A.), 2000 CanLII 17100 (FCA), [2000] 3 FC 185
78.	SL v Commission scolaire des Chênes, 2012 SCC 7
79.	Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551
80.	Valente v The Queen, 1985 CanLII 25 (SCC), [1985] 2 SCR 673
81.	White Burgess Langille Inman v Abbott and Haliburton Co., 2015 SCC 23
82.	Wirring v Law Society of Alberta, 2023 ABKB 580
83.	Wood v Schaeffer, 2013 SCC 71 (CanLII), [2013] 3 SCR 1053
84.	York Region District School Board v Elementary Teachers Federation of Ontario, 2024 SCC 22

Legislation	
85.	Constitution Act, 1867 - 1982
86.	Criminal Code, R.S.C., 1985, c. C-46 at s. 322(1)
87.	Interpretation Act, RSA 2000, c I-8
88.	Legal Profession Act, RSA 2000, c L-8
89.	Oaths of Office Act, RSA 2000, c O-1, at s. 1(1).
90.	The Legal Profession Act, C.C.S.M. c. L107
Secondary Sources	
91.	Alice Woolley, *Understanding Lawyers' Ethics in Canada*, 2nd Edition (Canada: LexisNexis, 2016)
92.	Alice Woolley, Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation, Volume 4, Issue 8 (University of Calgary, The School of Public Policy, June 2011)
93.	In the Public Interest: The Report and Research Papers of The Law Society of Upper Canada's Task Force on the Rule of Law and The Independence of The Bar, By The Law Society of Upper Canada (Toronto: Irwin Law, 2007)