Court of King's Bench of Alberta

Citation: Song v The Law Society of Alberta, 2025 ABKB 525

Date:
Docket: 2301 14224
Registry: Calgary

Between:

Yue Song

Applicant

- and -

The Law Society of Alberta

Respondent

Reasons for Decision
of the
Honourable Justice S.L. Kachur

Introduction

[1] This judicial review is about the scope of the Law Society of Alberta's ("LSA") authority under the *Legal Profession Act*, RSA 2000, c L-8 [*LPA*]. The Applicant, Yue (Roger) Song, is an active member of the LSA. The Applicant filed an application for judicial review seeking to challenge the validity of certain actions taken by the LSA in developing a continuing professional development ("CPD") program and amending its Code of Conduct. The Applicant also raises *Charter* issues.

Facts

[2] The LSA is a corporation created pursuant to the *LPA*. The Benchers are the governing body of the LSA: *LPA*, s 5(1).

[3] The Benchers are granted authority to establish a code of ethical standards for members: *LPA*, s 6(l). In exercise of this authority, the Benchers established a Code of Conduct (the "Code").

[4] The Benchers are also granted authority to "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": *LPA*, s 7. Under that authority, the Benchers have established the Rules of the Law Society of Alberta (the "Rules") that set out specific regulations, responsibilities and professional standards for lawyers in the province.

[5] This judicial review concerns the LSA's decisions to (i) enact Rules 67.2, 67.3, and 67.4 dealing with a CPD program and mandatory CPD, and (ii) amend Part 6.3 of the Code dealing with discrimination, harassment, and sexual harassment.

The Rules of the Law Society of Alberta

[6] Rule 67.1(1) defines "continuing professional development" as 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. CPD must "contain significant substantive, technical, practical or intellectual content": Rule 67.1(2)).

[7] Rule 67.2 requires every active member to prepare and submit an annual CPD plan to the LSA.

[8] Rule 67.3 provides that failure to submit an annual CPD plan will result in an automatic suspension.

[9] Rule 67.4 gives Benchers the authority, independent of Rules 67.1 through 67.3, to prescribe additional CPD requirements, which also carries with it the automatic suspension for failure to comply with the additional requirements.

[10] The requirements for an annual CPD plan (Rule 67.2) and automatic suspension penalties for failure to comply (Rule 67.3) are not new. The LSA has had similar rules in place since 2008. However, in the last five years, changes were made to the CPD program, and in May 2023, the amended Rules 67.2 and 67.3 came into effect when the LSA finalized a new CPD program. Under the new CPD program members are required to develop a learning plan, in which they must make reference to the Professional Development Profile for Alberta Lawyers (the "Profile").

[11] The Profile is a document that sets out nine different "domains" that the LSA views as important to maintaining legal practice:

1. Legal Practice
2. Continuous Improvement
3. Cultural Competence, Equity, Diversity and Inclusion

4. Lawyer-Client Relationships
5. Practice Management
6. Professional Conduct
7. Professional Contributions
8. Truth and Reconciliation
9. Well-being

[12] Under each domain is a list of specific competencies and performance indicators for those competencies. Each year lawyers are required to select two or more competencies (not domains) within the Profile to focus on in developing their learning plan. The member then uses the CPD Tool to submit that plan to the LSA.

[13] The Profile is not a checklist; lawyers are *not* required to demonstrate competency in each of the nine domains listed in the Profile.

[14] The Benchers adopted Rule 67.4 by resolution in December 2020. Prior to that, in October 2020, the Benchers voted by 2/3 majority to mandate Indigenous cultural competency training for all active Alberta lawyers: Certified Record of Proceedings [CRP] at 277. This latter resolution was in response to the Federation of Law Societies of Canada's recommendation that law societies consider implementing mandatory Indigenous cultural competency training and, at minimum, encourage lawyers to take training to enhance their knowledge of Indigenous peoples and legal orders. The Federation's recommendation was in response to the Truth and Reconciliation Commission of Canada Call to Action 27:

> 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.

[15] The Benchers chose "The Path: Your Journey Through Indigenous Canada" (the "Path"), an online five-module course, as the method to deliver the mandatory Indigenous cultural competency education. The Path covers topics set out in the Truth and Reconciliation Commission's Call to Action 27, including: 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. The Path also includes information about cultural and historical differences between First Nations, Inuit and Métis; the evolution of the relationship between Canada and Indigenous people from pre-contact to present day; stories of social and economic success, reconciliation, and resilience; and understanding intercultural communication in the workplace: CRP at 269.

[16] Members were given an 18-month window to complete the Path, but completion of the Path was only one option to satisfy the Indigenous cultural competency education requirement. Members were deemed to have completed the requirement if they had already taken the Path in another jurisdiction, or if they had completed the "Indigenous Canada" course at the University of Alberta. A member could also be exempted from the requirement if they certified that they

had previous education or other knowledge equivalent to The Path. Unlike the CPD plan, which is an annual requirement for active lawyers, completing the Path was a one-time requirement.

Part 6.3 of the Code of Conduct

[17] The Code established by the Benchers is based on the Federation's Model Code of Professional Conduct (the "Model Code"). In October 2022, the Federation amended their Model Code to provide greater guidance on the duties of non-discrimination and non-harassment and to include specific guidance regarding bullying. In October 2023, the Benchers passed a resolution to amend the Code to reflect the Federation's Model Code amendments, with some minor revisions.

[18] Before the amendment, Part 6.3 of the Code, excluding commentary, read:

- Rule 6.3-1: "The principles of human rights laws and related case law apply to the interpretation of this rule."
- Rule 6.3-2: "A term used in this rule that is defined in human rights legislation has the same meaning as in the legislation."
- Rule 6.3-3: "A lawyer must not sexually harass any person."
- Rule 6.3-4: "A lawyer must not engage in any other form of harassment of any person."
- Rule 6.3-5: "A lawyer must not discriminate against any person."

[19] After the amendment, Part 6.3 of the Code was amended as follows:

- Rule 6.3-1: "A lawyer must not directly or indirectly discriminate against a colleague, employee, client or any other person."
- Rule 6.3-2: "A lawyer must not harass a colleague, employee, client or any other person."
- Rule 6.3-3: "A lawyer must not sexually harass a colleague, employee, client or any other person."
- Rule 6.3-4: "A lawyer must not engage or participate in reprisals against a colleague, employee, client or any other person because that person has:
    a. inquired about their rights or the rights of others;
    b. made or contemplated making a complaint of discrimination, harassment or sexual harassment;
    c. witnessed discrimination, harassment or sexual harassment; or
    d. assisted or contemplated assisting in any investigation or proceeding related to a complaint of discrimination, harassment or sexual harassment."

[20] Updated commentary was also included with the amendments detailing the lawyer's special responsibility to uphold the principles of human rights laws and setting out examples of what constitutes discrimination, harassment, and sexual harassment.

Petition Challenging Rule 67.4

[21] In January 2023, the applicant submitted a petition to the LSA requesting a special meeting to consider a resolution to repeal Rule 67.4. A special meeting was held on February 6, 2023, with 3,738 active members present. Members debated Rule 67.4 and voting on the resolution for repeal was conducted via Zoom. The number of votes cast totaled 3,473, with the resolution being defeated by a majority of 2,609 members voting against repealing the rule.

Application for Judicial Review

[22] The Applicant filed this application for judicial review challenging the *vires* of Rules 67.2, 67.3, and 67.4, the Profile, the CPD Tool, and Part 6.3 of the Code. The Applicant argues that the LSA exceeded its statutory authority under the *LPA*.

[23] The Applicant seeks an order:

1. declaring Rules 67.2, 67.3, and 67.4, the Profile, the CPD Tool, and Part 6.3 of the Code *ultra vires*,
2. setting aside Rules 67.2 and 67.3 and Part 6.3 of the Code, and
3. prohibiting the LSA from "the continuation of its Political Objectives in any manner".

[24] The Applicant defines "Political Objectives" in a few different ways. The originating application defines the "Political Objective" as the LSA's "adoption and promotion of various postmodern applied theories." These "theories" include critical race theory, critical legal theory, postcolonialism, gender theory, and intersectionality. The Applicant's view of the so called "Political Objectives" are closely tied to his view on the "theories" he sees as being adopted by the LSA. At another point, the Applicant defines "Political Objectives" as being related to the LSA's Strategic Plan, including the LSA's objectives of diversity, equity, and inclusion in the legal profession and practice regulation.

[25] The Applicant also seeks certain *Charter* remedies. Under section 24 of the *Charter*:

1. a declaration that the LSA's pursuit of its "Political Objectives", including Rules 67.2, 67.3, and 67.4, the Profile, the CPD Tool, and Part 6.3 of the Code, infringes his section 2(a) and 2(b) *Charter* rights, and
2. an injunction prohibition the LSA from the continuation of its "Political Objectives" in any manner.

[26] He also seeks an order under section 52 of the *Charter* striking Rules 67.2, 67.3 and Part 6.3 of the Code.

Justiciability

[27] Rule 3.15(1) of the *Alberta Rules of Court*, Alta Reg 124/2010 permits applications for judicial review to be brought "against a person or body whose decision, act or omission is subject to judicial review."

[28] The Law Society submits that neither the Profile, the CPD Tool, nor the "Political Objectives" are subject to judicial review. I agree.

[29] Whether the subject matter of a dispute is justiciable depends on context. In ***Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall***, 2018 SCC 26 at para 34 the Supreme Court of Canada explained that there is no unifying test for justiciability, and the proper approach is flexible:

> The court should ask whether it has the institutional capacity and legitimacy to adjudicate the matter: see *Sossin*, at p. 294. In determining this, courts should consider "that the matter before the court would be an economical and efficient investment of judicial resources to resolve, that there is a sufficient factual and evidentiary basis for the claim, that there would be an adequate adversarial presentation of the parties' positions and that no other administrative or political body has been given prior jurisdiction of the matter by statute" (*ibid.*).

[30] I agree with the LSA that the "Political Objectives" raised by the Applicant are the Applicant's subjective interpretations of what the LSA believes and his own assumptions about the LSA's motivations. The Applicant's own views of the beliefs and motivations of the LSA are not subject to judicial review because there is no factual or legal basis for the claim. Policy choices must be translated into law or state action in order to be justiciable, either for being *ultra vires* or for being contrary to the *Charter*: ***Canada (Attorney General) v PHS Community Services Society***, 2011 SCC 44 at para 105. The Applicant is raising political questions about ideological and policy considerations that are not susceptible to resolution through the judicial process: see Lorne M Sossin & Gerard Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed (Toronto: Thomson Carswell, 2024) at 322.

[31] A few examples will suffice.

[32] The Applicant argues that the LSA is advancing its "Political Objectives" through various means, including mandatory CPD, the CPD Profile and the Code. As one example, the Applicant made a lengthy argument that the LSA's "Political Objectives" are demonstrated in the definitions contained in a glossary that the Applicant alleges is relied on by the LSA. In fact, the glossary that the Applicant was pointing to was not a glossary even created by the LSA but was a glossary of another third-party organization which was made available as a resource on the LSA website to assist lawyers to locate resources relevant to CPD plans.

[33] The Applicant also relies on statements and opinions from academic commentators to bolster his argument about the content and scope of the LSA's alleged "Political Objectives". But again, those statements and opinions are from third parties, they are not laws or actions of the LSA subject to resolution through the judicial process.

[34] Likewise, the arguments the Applicant makes about the Profile and CPD Tool are also not subject to judicial review. The Applicant's arguments about the Profile and the CPD Tool are intertwined with his arguments about "Political Objectives".

[35] The Profile sets out what the LSA views as important areas of competency for lawyers and suggests areas in which professional development might be undertaken. It is merely a list designed for the purpose of providing guidance to all lawyers, regardless of experience or practice area. The Applicant appears to take issue with the Profile in relation to domain #3 (Cultural Competence, Equity, Diversity and Inclusion) and domain #8 (Truth and Reconciliation). As the certified record of proceedings makes plain, and as counsel for the LSA explained in oral submissions, while the Profile includes descriptions of what the LSA considers

to be professional competence, a lawyer chooses which competencies they wish to include in their CPD plan. A lawyer may choose not to include competencies related to Cultural Competence, Equity, Diversity and Inclusion or Truth and Reconciliation in their CPD plan. The Profile is not a checklist and there would be no sanction should a lawyer choose not to pursue those specific competencies.

[36] The CPD Tool is an online platform used by members to submit their CPD plan. In other words, it is a form used by the lawyer to communicate their CPD plan to the LSA.

[37] To the extent the Applicant's arguments about the content in the Profile and the CPD Tool relate to the *vires* of the Rules, that issue will be dealt with in these reasons. But I find that is not appropriate for this court to adjudicate on the suitability of the Profile and the CPD Tool to implement Rules 67.2 and 67.3. Thus, the scope of the judicial review will be limited to the *vires* of Rules 67.2, 67.3 and 67.4 (together, the "Impugned Rules") and of Part 6.3 of the Code, as well as the *Charter* issues.

Standard of Review

[38] The parties disagree on the applicable standard of review in this case. The Applicant argues that the presumption of reasonableness review is rebutted in this case. The LSA submits that it is not.

[39] The presumptive standard of review on judicial review is reasonableness: ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65. The presumption may be rebutted when the legislature indicates that another standard applies or when the "rule of law requires that the standard of correctness be applied": ***Vavilov*** at pars 16-17. The types of questions that fall into the "rule of law" category include "constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies": ***Vavilov*** at para 17.

[40] Recently in ***Auer v Auer***, 2024 SCC 36 and ***TransAlta Generation Partnership v Alberta***, 2024 SCC 37, the Supreme Court confirmed that in a case which raises a question of *vires*, the "robust reasonableness review" set out in ***Vavilov*** is the default standard which will apply. Only in exceptional cases will a *vires* review raise a question that the "rule of law requires to be reviewed for correctness": ***Auer*** at para 27. For example, a challenge to subordinate legislation on the basis that it fails to respect the division of powers would attract the correctness standard: ***Auer*** at para 27.

[41] The Applicant contends that the standard of correctness should apply because the LSA has encroached on the Alberta bar's independence in a way that "tends to erode loyalty to Canada's constitution" and negatively impacts a lawyer's duty to their clients. The Applicant argues that the LSA has adopted "Political Objectives" that are incompatible with Canada's Constitution and exceed the LSA's jurisdiction.

[42] I do not accept the Applicant's characterization of the issues. The central issue in this case is whether the Benchers of the LSA were authorized, pursuant to the powers granted to them by the *LPA*, to enact the Impugned Rules and Part 6.3 of the Code. This case directly raises questions about the *vires* of both the Rules and the Code. Just like ***Morris v Law Society of Alberta (Trust Safety Committee)***, 2020 ABQB 137 [***Morris***], the Applicant's assertion that the

application raises questions of law of central importance is not sufficient. This is not an exceptional case.

[43] On that basis, and following ***Auer***, the standard of review is reasonableness.

Principles of Reasonableness Review

[44] The principles for assessing the *vires* of subordinate legislation are as follows (***Auer*** at paras 29-33):

- subordinate legislation "must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object";
- subordinate legislation benefits from a presumption of validity;
- the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach consistent with the modern approach to statutory interpretation generally; and
- a *vires* review does not involve assessing the policy merits of the subordinate legislation to determine whether it is "necessary, wise, or effective in practice." Courts are to review only the legality or validity of subordinate legislation.

[45] The party challenging the subordinate legislation bears the burden of demonstrating that the legislation is "not reasonably within the scope of the delegate's authority": ***Auer*** at para 50, citing ***Vavilov*** at paras 100 and 109.

[46] The presumption of validity has two aspects (***Auer*** at para 37, citing ***Katz Group Canada Inc v Ontario (Health and Long-Term Care)***, 2013 SCC 64 at para 25):

> (1) "it places the burden on challengers to demonstrate the invalidity of [subordinate legislation]"; and (2) "it favours an interpretive approach that reconciles the [subordinate legislation] with its enabling statute so that, *where possible*, the [subordinate legislation] is construed in a manner which renders it *intra vires*" [emphasis in original].

[47] For the Applicant to overcome the presumption of validity, the Applicant must "demonstrate that the subordinate legislation does not fall within a *reasonable* interpretation of the delegate's statutory authority": ***Auer*** at para 39 [emphasis in original].

[48] The absence of formal reasons is no bar to reasonableness review: ***Auer*** at para 52. The reasons may be deduced from a variety of sources, such as debate, deliberations, or statements of policy which gave rise to the subordinate legislation: ***Auer*** at para 53. Even when the above sources may not be available "it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason": ***Auer*** at para 54, citing ***Vavilov*** at para 137.

[49] It is not the role of this court to review whether the subordinate legislation is "necessary, wise, or effective in practice": ***Katz Group*** at para 27, cited in ***Auer*** at para 56. "It is not an inquiry into the underlying 'political, economic, social or partisan considerations'" or an assessment of whether the regulations "will actually succeed at achieving the statutory objectives": ***Katz Group*** at para 28, cited in ***Auer*** at para 29. Nor is it an inquiry into whether the potential or actual consequences of the subordinate legislation are "necessary, desirable or wise":

Auer at para 58. The focus of the inquiry is whether the subordinate legislation "is consistent with the enabling statute's text, context, and purpose": ***Auer*** at paras 57, citing M. P. Mancini, "One Rule to Rule Them All: Subordinate Legislation and the Law of Judicial Review" (2024), 55 *Ottawa L Rev* 245 at 279.

[50] Reviewing the *vires* of subordinate legislation is "fundamentally an exercise of statutory interpretation to ensure that the delegate has acted within the scope of their lawful authority under the enabling statute": ***Auer*** at para 59.

Evidentiary Issues

[51] There are two evidentiary issues to address at the outset regarding the Applicant's request for further production of documents by the LSA and the admissibility of affidavit evidence tendered by the Applicant.

Production of Legal Opinion and Statement of Regulatory Objectives

[52] The Applicant requests that the LSA produce a legal opinion mentioned by the LSA's then-President, Ken Warren during the 2022 annual general meeting. The Legal Opinion is covered by solicitor-client privilege. That is not at issue. What is at issue is whether privilege over the Opinion was waived.

[53] Once solicitor-client privilege is established, it can only be waived by the client: ***Canada (National Revenue) v Thompson***, 2016 SCC 21 at para 39. Waiver may be done expressly or by inference "where the client takes a position fundamentally inconsistent with the privilege": ***Milot Law v Sittler***, 2025 ABCA 72 at para 20, citing ***0678786 BC Ltd v Bennett Jones LLP***, 2021 ABCA 62 at para 40 and ***Marion v Wawanesa Mutual Insurance Company***, 2004 ABCA 213 at para 8; ***CNOOC Petroleum North America ULC v ITP SA***, 2024 ABCA 139 at paras 48-49. "Waiver is ordinarily established where it is shown that the privilege-holder (1) knows of the existence of the privilege; and (2) voluntarily evinces an intention to waive it. Waiver may also occur where fairness and consistency require": ***Hirch v Lethbridge***, 2024 ABCA 170 at para 40.

[54] The party asserting waiver has the onus of establishing it: ***Hirch*** at para 40.

[55] This court has held that "mere reference to a legal opinion, or even a statement of its bare conclusion" does not constitute waiver: ***Manson Insulation Products Ltd v Crossroads C&I Distributors***, 2014 ABQB 634 at para 62. Waiver "requires not simply disclosing that legal advice was obtained, but pleading reliance on that advice": ***Myron v Kwinter***, 2009 ABQB 128 at para 25. To establish waiver, the party who received the legal advice "must have made its receipt an issue in the claim or defence": Sidney N. Lederman, Michelle K. Fuerst & Hamish C. Stewart, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 6th ed (Toronto: LexisNexis Canada, 2022) at § 14.170).

[56] I do not find that the President's mere reference to the Opinion at the 2022 annual general meeting amounts to a waiver of privilege in the circumstances of this case. The only information about the Opinion disclosed by the LSA was that LSA had obtained a legal opinion that Rule 67.4, mandating CPD, was *intra vires*. The LSA does not rely on the Opinion to advance its position on this application. The Opinion does not have to be produced.

[57] I also conclude that the Statement of Regulatory Objectives does not have to be produced by the LSA because it is irrelevant. The Regulatory Objectives will not assist the court in

determining whether the Impugned Rules and the Code fall under the LSA's authority under the *LPA*. While the LSA uses the Regulatory Objectives as a guide, the Regulatory Objectives themselves are not being challenged. Moreover, the Applicant's arguments about the relevance of the Statement of Regulatory Objectives are directly linked to the arguments about the LSA's "Political Objectives." As mentioned above, the Applicant's subjective views of the LSA's "Political Objectives" are not subject to judicial review.

Admissibility of Affidavits Filed by the Applicant

[58] The LSA objects to the admissibility of three affidavits filed by the Applicant. The Applicant personally filed two affidavits in support of the application and filed a third affidavit from Joanna Williams, an expert report.

[59] Pursuant to Rule 3.22 of the *Alberta Rules of Court*, "an application for judicial review is based on the record of proceedings; the use of additional affidavit evidence is exceptional": ***Reinink v Alberta Labour Relations Board***, 2022 ABCA 343 at para 12. As explained in ***Gowrishankar v JK***, 2019 ABCA 316 at para 60 [citations omitted]:

> As a "general rule", evidence that was not before the original decision maker and which goes to the merits of the decision is not admissible on a judicial review. The reason for this rule is that a court on a judicial review is simply conducting a review of the decision of the original decision maker based on the record that was before it. "Attempting to introduce fresh evidence respecting the merits of the challenged decision on an application for judicial review misapprehends the nature of judicial review" ...

See also ***Lethbridge and District Pro-Life Association v Lethbridge (City)***, 2020 ABQB 654 at para 11.

[60] Exceptions to the general rule include: evidence to establish a breach of natural justice; evidence to establish standing; or where there is no transcript made of the quasi-judicial proceeding: ***Sobeys West Inc v Alberta College of Pharmacists*****,** 2017 ABCA 306 at para 65.

[61] The Applicant submits that some materials exhibited to the affidavits fall into this third category, arguing that they are necessary to supplement the certified record of proceedings because there is no transcript like in a typical quasi-judicial proceeding. He argues that the court should admit those documents for the purpose of reconstructing the record.

[62] The certified record of proceedings contains Approved Bencher Public Minutes and several memos related to the proposed motions before the Benchers that resulted in the decisions that are at issue in this judicial review. While the record does not include more traditional documents such as debate, deliberations, or clear statements of policy, I am satisfied that the certified record of proceedings is not deficient; the LSA's reasoning process can be deduced from both the record and the context surrounding it. Some materials exhibited to the Applicant's affidavits are materials created by the LSA that they would have been aware of at the relevant times, but I find that they are duplicative. In other words, even if I were to admit those materials I find that they do not provide any additional information related to the LSA's reasoning process that is not already included within the certified record of proceedings.

[63] To the extent the Applicant's affidavits contain factual assertions relating to his *Charter* arguments, I adopt the approach taken by Graesser J. in ***Schulte v Alberta (Appeals Commission***

for Alberta Workers' Compensation), 2015 ABQB 17 and admit those portions of his affidavits for the limited purpose of assessing the Applicant's *Charter* arguments.

[64] However, the remainder of the Applicant's affidavits and the William's affidavit are directed at the merits of the application and do not fall within any of the recognized exceptions. Much of the Applicant's affidavits contain his opinions and argument about the merits of the issues which are not admissible evidence in any event. Further, I find admission of the William's affidavit, an expert report, would run afoul of the animating purpose of judicial review, which is to review the decision of the LSA based on the record before it.

Vires Analysis

The *Legal Professions Act*

[65] The scope of the LSA's lawful authority is set out in the *LPA*.

[66] Section 6 of the *LPA* sets out the powers of the Benchers. For the purposes of this application, sections 6(l) and 6(n) are relevant:

> 6 The Benchers may by resolution
>
> ...
>
> (l) authorize or establish a code of ethical standards for members and students-at-law and provide for its publication;
>
> ...
>
> (n) take any action and incur any expenses the Benchers consider necessary for the promotion, protection, interest or welfare of the Society.

[67] Section 7(1) authorizes the Benchers to "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." Section 7(2) specifies rules the Benchers may make, although subsection (2) is prefaced with the phrase "without restricting the generality of subsection (1)".

[68] Other sections of the *LPA* deal with the Benchers rule making authority: *LPA*, ss 14, 37, 48, 52, 89, and 101.

[69] The Benchers' authority to establish the Code is clearly set out in section 6(l) of the *LPA*.

[70] The parties diverge on the scope of authority granted to the LSA and its Benchers under the *LPA* to establish a CPD program. The Applicant views the *LPA* as a narrow grant of authority and without an express grant of authority to create and operate a mandatory CPD program, he says the LSA is acting outside its lawful authority. The LSA's position is that the language of the *LPA* evinces an intention by the legislature to grant the LSA extensive and broad rule making authority and discretion. This includes the power to make rules about professional standards that all lawyers are required to meet and uphold.

[71] This court's task is to determine whether the Impugned Rules and Part 6.3 of the Code fall within a reasonable interpretation of the *LPA*.

Position of the Applicant

[72] The Applicant's position is that because the *LPA* does not have a public interest clause, the objectives of the *LPA* must be discerned from "the narrower duties and powers it grants." The Applicant argues that the *LPA* does not contemplate the LSA having involvement in ongoing supervision or proactive enforcement of member compliance with the Code nor LSA involvement in CPD. The LSA, he says, has duties that are reactive and not proactive.

[73] The Applicant submits that pursuant to the *LPA*, the objectives of the LSA are to protect vulnerable third parties from (i) defalcation, (ii) negligence and (iii) unethical practice by lawyers. To achieve these three objectives, the Applicant argues that the LSA's authority is to: ensure "Core Competence and Ethics" at admission, establish a code of ethical standards, investigate and sanction lawyers for competence and ethical failures (including breaches of the Code), and insure third parties through an assurances fund and indemnity program.

[74] The Applicant defines "Core Competence and Ethics" as substantive and procedural law related to the lawyer's area of practice, ethics consistent with duties of loyalty to the client and the Constitution, and relevant and appropriate office-management skills and knowledge (for example, trust safety).

[75] The Applicant also submits that another objective of the LSA is to protect the justice system and the Constitution, including the rule of law, from unethical and negligent conduct by lawyers. To achieve this objective, the LSA has authority to maintain the freedom of their members from "state interference, especially political sense" and by remaining loyal to the Constitution.

[76] The Applicant's position is that the *LPA* does not grant the LSA express, implied or necessarily incidental power to impose mandatory CPD on its members. The Applicant concedes that the LSA has authority to impose some CPD obligations, but it says the LSA exceeded its authority when it created a mandatory CPD program in which lawyers must: assess their ethics and competence against standards that do not relate to, and fundamentally conflict with, appropriate legal competence and ethics given the critical roles of lawyers in upholding the rule of law; create CPD plans in a form designated by the LSA; report their CPD plans to the LSA which are then subject to discretionary LSA audit; and complete specific CPD prescribed by the LSA, including CPD which does not relate to, and fundamentally conflicts with, "Core Competence and Ethics". The Applicant also submits that the LSA has attempted to "modify (i.e. pervert) laws of general application, including the *Constitution,* by 'shif[ing] the culture within the profession' – it is illegal and unconstitutional for the LSA to engage in <u>that</u> kind of policy-making" (Applicant's Surreply Brief at para 132).

[77] The Applicant's position on the *vires* of Part 6.3 of the Code is similar in nature. The Applicant's view is that Benchers must exercise their statutory discretion in accordance with the object of the *LPA*, which includes "insulating lawyers from political interference." The Applicant also submits that Part 6.3 of the Code uses words of "wide and differing meanings" which results in no reasonable standards for determining the meaning of the provision; the resulting "vagueness" of the obligations set out in Part 6.3 of the Code renders them *ultra vires*.

Position of the Respondent

[78] The LSA submits that the words, scheme and object of the *LPA* supports an "expansive construction" of the rule making authority of the LSA. While the *LPA* does not have a purpose

clause, the LSA submits that it is clear from the legislative scheme that the LSA's purpose is to regulate the legal profession in the public interest. In its view, the competency of the profession, which includes cultural competency and elimination of discrimination and harassment, are inherent to protecting the public's confidence in the profession. The LSA submits that the Impugned Rules and Part 6.3 of the Code fall within a reasonable interpretation of the LSA's authority under the *LPA*.

The Legal Professions Act grants broad authority to the Law Society of Alberta to regulate the profession in the public interest

[79] The limits and contours of the LSA's authority are set out in the *LPA*. Where the legislature has used precise and narrow language to delineate the power, the legislature has demonstrated an intention to "tightly" constrain the delegate's authority: ***Auer*** at para 62. On the other hand, where the legislature has used broad, open-ended or highly qualitative language, the legislature has conferred broad authority on the delegate: ***Auer*** at para 62.

[80] I do not accede to the Applicant's submission that the absence of a purpose clause explicitly referencing the public interest means the LSA does not have a broad authority to regulate the profession in the public interest. The *LPA* does not use precise and narrow language to constrain the powers of the LSA in the way the Applicant suggests.

The Legal Professions Act uses broad language

[81] Subsection 7(1) uses broad language. I agree with the LSA that the provision provides for a relatively open-ended authority authorizing the Benchers to make rules for a number of different reasons including the government of the LSA generally and for the carrying out of duties conferred on the Society or Benchers. Subsection 7(2), which delineates specific types of rules the Benchers may make uses the language of "without restricting the generality of subsection (1)." This signals that the Benchers' plenary power in subsection 7(1) is not limited by anything under subsection (2): see ***Vavilov*** at para 110; see also ***Auer*** at para 76.

[82] Similarly broad language is used in subsection 6(n) authorizing the Benchers to take any action it considers necessary "for the promotion, protection, interest or welfare of the Society." While the Applicant appears to argue that 6(n) relates only to "private interests," this view of 6(n) does not take into account that the LSA is a public actor. The LSA's interests cannot be understood in the way the Applicant describes. While there may be decisions made by Benchers that could be viewed as more "private" in nature – such as hiring staff – to find that actions taken in relation to the "promotion, protection, interest or welfare of the Society" only means actions related to "private" interests ignores that the underlying purpose of the Law Society is to regulate the profession in the *public* interest.

[83] The interests of the LSA and the interests of society generally are inherently linked. Subsection 6(n) provides for broad powers for Benchers to act in ways they deem fit to protect the public interest.

Jurisprudence recognizes that law societies have a mandate to self-regulate in the public interest

[84] In addition to the broad language used in the *LPA*, it is well established in the jurisprudence that law societies have authority to self-regulate in the public interest.

[85] As noted by the LSA, the legal profession is self-regulating in every jurisdiction in Canada. The legal profession is not the only profession that is self-regulating – doctors, nurses, dentists, and architects are also self regulating and are bound by codes of professional conduct. It is widely accepted that the "primary purpose of the establishment of self-governing professions is the protection of the public": James T. Casey, *Regulation of Professions in Canada* (Toronto: Thomson Reuters, loose-leaf, Release 2025-06) at §1:1 [**Casey**].

[86] In ***Green v Law Society of Manitoba***, 2017 SCC 20 the Supreme Court considered the validity of *Rules of the Law Society of Manitoba* that provided for mandatory completion of 12 CPD hours per year with a possible suspension for failing to meet the requirements. Justice Wagner (as he then was) writing for the majority recognized that law societies self-regulate in the public interest. He noted that law societies are given "broad discretion to regulate the legal profession on the basis of a number of policy considerations related to the public interest" (para 22); that a law society must be afforded "considerable latitude in making rules based on [their] interpretation of the 'public interest' in the context of [their] enabling statute" (para 24); and that law societies have "particular expertise when it comes to deciding on the policies and procedures that govern the practice of their professions" (para 25).

[87] In ***Law Society of British Columbia v Trinity Western University***, 2018 SCC 32 [***Trinity Western***], the Supreme Court considered the scope of the Law Society of British Columbia's statutory mandate in the context of a section 2(a) *Charter* claim arising from the Law Society of British Columbia's resolution not to recognize Trinity Western's proposed law school. The majority cited Justice Wagner's earlier comments in ***Green*** and re-iterated that for many years the Supreme Court has "recognized that law societies self-regulate in the public interest": para 36. The Supreme Court confirmed that where an act creates a self-regulating professional body with the authority to set and maintain professional standards of practice, like the LSA, that professional body "must exercise this privilege in the public interest": ***Trinity Western*** at para 32, citing ***Law Society of New Brunswick v Ryan***, 2003 SCC 20 at para 36.

[88] The Applicant argues that the principles from ***Green*** and ***Trinity Western*** have no application in the present case given that the *LPA* does not have a public interest clause, like the acts in Manitoba (***Green*** at para 29) and British Columbia (***Trinity Western*** at para 32), respectively. I disagree.

[89] In my view, the principle that a self-regulating profession must regulate in the public interest applies regardless of whether there is an express public interest clause in the enabling act. Indeed, this court has found the LSA has broad authority to regulate in the public interest even though there is no "public interest" purpose clause in the *LPA*. For example, in ***Muti v Law Society of Alberta***, 2016 ABQB 276, Justice Bensler dismissed an application for judicial review concerning the assessment of a foreign degree program. She stated that the Rules and the Code are the means by which the LSA protects and serves the public interest, at para 34:

> The purpose of the Law Society in this province and other Canadian jurisdictions is to protect and serve the public interest by promoting a high standard of legal services and professional conduct. The Law Society implements this goal through the Code of Conduct and the Rules.

[90] More recently, Justice Loparco expressly adopted ***Green*** when discussing the scope of the LSA's mandate (***Morris*** at paras 63-64):

> ...the Legislature has given the LSA a broad public interest authority and broad regulatory powers to accomplish its mandate. The provisions of s 7 of the [*LPA*] grants the LSA oversight powers over law firm trust accounts to ensure they comply with rules that promote the public interest. The legislative text must be interpreted using a broad and purposive approach: ***Green*** at para 28, citing ***United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)***, 2004 SCC 19 at paras 6-8.
>
> The Supreme Court's decision in ***Green*** acknowledges that the LSA's expansive mandate and regulatory authority is consistent with the approach taken by the Court in previous cases. Citing McLachlin CJ in ***Canadian National Railway Co v McKercher LLP,*** 2013 SCC 39, the Court in ***Green*** held that "[t]he purpose of law society regulation is to establish general rules applicable to all members to ensure ethical conduct, protect the public and discipline lawyers who breach the rules — in short, the good governance of the profession" (para 31).

[91] As for the question of what is in the public interest, where the legislature delegates aspects of professional regulation to a professional body, it is for that professional body to determine for themselves the development of "structures, processes, and policies for regulation": ***Trinity Western*** at para 37. It is this delegation of authority to law societies that "maintains the independence of the bar; a hallmark of a free and democratic society": ***Trinity Western*** at para 37. It follows that when conducting reasonableness review, the law society must "be afforded considerable latitude in making rules based on its interpretation of the 'public interest' in the context of its enabling statute": ***Green*** at para 24.

[92] Moreover, the *LPA* 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'": ***Green*** at para 42, citing ***ATCO Gas and Pipelines Ltd v Alberta (Energy and Utilities Board)***, 2006 SCC 4 at para 51; see also *Interpretation Act*, RSA 2000, c 1-8, s 25.

Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code fall reasonably within the LSA's scope of authority

[93] Applying the principles of reasonableness review as affirmed in ***Auer*** and considering the broad scope of authority granted to the LSA under the *LPA* to self-regulate in the public interest, I find that the LSA's creation of the Impugned Rules and amendments to Part 6.3 of the Code fall within a reasonable interpretation of the *LPA*.

[94] The Applicant's submissions that the LSA enacted the Impugned Rules and amended Part 6.3 of the Code "in service of its Political Objectives" or that the LSA's adoption of equity, diversity and inclusion and cultural competence, among other things, are "Political Objectives" are outside the scope of this application. As explained earlier, the Applicant's submissions regarding the LSA's alleged "Political Objectives" are not justiciable and in any event, the court's task on this application is not to weigh the substantive merits of the LSA's policies: ***Auer*** at paras 55-58.

[95] The purpose and object of the *LPA* is ultimately to protect and serve the public interest. The creation of mandatory standards in order to maintain a practicing certificate is compatible with the LSA's public interest purpose: see ***Green*** at para 45; see also ***Trinity Western*** at para

42. The LSA is mandated to ensure the competence of lawyers (see for example *LPA*, s 49). This mandate is not discharged at admission; the LSA is necessarily involved in the monitoring, supervision, and education of lawyers at all times while practicing. And the LSA is not limited to enforcing a minimum standard of competence for individual lawyers it licences. The LSA is also entitled to consider "how to promote the competence of the bar as a whole": ***Trinity Western*** at para 42.

[96] I now turn to the Impugned Rules and Part 6.3 of the Code.

Impugned Rules fall reasonably within the LSA's scope of authority

[97] Section 7(1) of the *LPA* confers the Benchers with a broad and open-ended rule-making authority. Section 7(2)(g) authorizes the Benchers to make rules about suspension of members for failing to do any act specified in the rules. Section 6(n) authorizes the Benchers to "take any action...the Benchers consider necessary for the promotion, protection, interest or welfare of the Society."

[98] The Impugned Rules require every active member to prepare and submit an annual CPD plan to the LSA. Failure to do so will result in an automatic suspension. Benchers may prescribe mandatory CPD requirements, and the Benchers did so when they required all members to complete the Path, a form of Indigenous cultural competency training.

The Record

[99] In a February 2020 memo from the LSA President to the Benchers titled "Competence Bencher Motions" the President explained that the LSA was committed to becoming a "competence-centered regulator" and to develop a competence model that supported practitioners at all points of practice and raised competence across the profession. The memo also states that results of the articling survey revealed issues related to competence and harassment in the profession: CRP at 338-341.

[100] In February 2020, the Benchers passed a resolution to create competency programs on Indigenous issues to "meaningfully address our obligation arising from the Calls to Action in the Truth and Reconciliation Report": CRP at 333.

[101] In an October 2020 memo to the Benchers, policy counsel explained the impetus for the implementation of the Indigenous cultural competency training and potential issues with making the training mandatory. The memo references Call to Action 27 and the response of the Federation, as well as the Indigenous Advisory Committee's view that training should be mandatory in response to "ever-evolving sentiments about systemic racism": CRP at 285. The memo quotes the LSA Indigenous Initiatives Liaison who notes that Indigenous cultural competency programs are (CRP at 285-286):

> ...essential for a lawyer's practice, stating 'I am sure every firm deals with an Indigenous client (whether it be a big firm or small) ...they just don't know it.' She notes specifically the disproportioned numbers of Indigenous individuals with legal issues related to residential schools and the '60s Scoop, as well as interactions with child welfare and the criminal justice systems. She notes that 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.

[102] The memo references academic commentary and surveys Indigenous training offered by other law societies – British Columbia has introduced mandatory training while other provinces offer optional training. The memo notes that lawyers had raised concerns that mandatory training was compelled speech and compelled thinking. The memo states "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": CRP at 293.

[103] As stated earlier, the Benchers passed a resolution adopting mandatory Indigenous cultural competency training on October 1, 2020.

[104] On December 3, 2020, the Benchers passed a resolution adopting Rule 67.4 providing for mandatory education. Also on December 3, 2020, the Benchers passed a resolution creating parameters of the mandatory Indigenous cultural competency training, including timelines for completion of the Path and exemptions: CRP at 255.

[105] A December 3, 2020 memo, drafted by LSA policy counsel, notes that Rule 67.4 was intended to be generic with the rationale being that a general rule provides for the possibility of further mandated education as requirements are developed by the LSA: CRP at 260-261.

[106] In a different December 3, 2020 memo, drafted by LSA policy counsel, the basis for mandatory Indigenous cultural competency training was in response to the Call to Action 27, and the LSA's view that "it is important for all lawyers to have a common baseline understanding from which to work and to build upon": CRP at 268.

Analysis

[107] It is not this court's task to focus on the "content of the inputs into the process or the policy merits of those inputs." Rather, the task is to determine whether the Impugned Rules fall within a reasonable interpretation of the *LPA*. I find that they do.

[108] CPD programs serve the public interest and it is for each law society to determine the nature of the educational standards that should apply: ***Green*** at para 48. Justice Wagner said this about CPD programs in ***Green*** at para 3:

> The Law Society is required by statute to protect members of the public who seek to obtain legal services by establishing and enforcing educational standards for practising lawyers. CPD programs serve this public interest and enhance confidence in the legal profession by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity and professionalism. CPD programs have in fact become an essential aspect of professional education in Canada. Most law societies across the country have implemented compulsory CPD programs.

[109] In ***Green***, the applicant argued that the CPD activities that were made available to him would not have been helpful to him in his practice. The majority held that it was not up to the

applicant to decide whether CPD activities were valuable or adequate: ***Green*** at para 48. The majority and dissent in ***Green*** agreed that a law society has authority to require mandatory CPD and has authority to suspend its members for failing to comply with those requirements: ***Green*** at paras 50 (majority) and 71-72 (dissent).

[110] Here, I find that the Impugned Rules fall within a reasonable interpretation of the LSA's broad rule-making authority in section 7(1) of the *LPA* having regard to the principles enunciated by the majority in ***Green***. I find that the decision to impose the Impugned Rules, including mandatory CPD requirements, was made for the purpose of raising competence across the profession and supporting practitioners at all stages of practice.

[111] As for the Benchers' exercise of its authority under Rule 67.4 mandating that all lawyers complete the Path, I find that a reasonable interpretation of the Benchers' rule-making authority under the *LPA* permits the Benchers to mandate cultural competency training. This follows from the broad authority conferred by the *LPA* and the principles from ***Green*** and ***Trinity Western***.

[112] I find that the Call to Action 27 is not a source of jurisdiction for the LSA. Rather, it is a contextual factor that played a role in the LSA's decision to mandate cultural competency training. I find that the LSA viewed a basic understanding of Indigenous history and issues as a core competence of practicing lawyers. I find that the LSA recognized a gap in this competence, as some lawyers would not have received education on Indigenous history. I find that the LSA viewed the Path as a means of providing training relevant to the professional needs, ethics and responsibilities of lawyers as it pertains to both substantive law (i.e. Treaties, Aboriginal rights) and practical law (i.e. communicating with Indigenous clients).

[113] I find that the LSA's interpretation that the public interest in the administration of justice is furthered by promoting cultural competency in the legal profession is owed deference, and it is not for this court to second guess the LSA's determination of what is in the public interest.

[114] "A diverse bar is more responsive to the needs of the public it serves": ***Trinity Western*** at para 43. To be responsive to the public, lawyers must have an understanding of who that public is. Cultural competency, in this case The Path, provides lawyers with an understanding of how they can be more responsive to the needs of the diverse populations they serve. Moreover, as the majority stated in ***Trinity Western***, "upholding and maintaining the public interest" necessarily includes "upholding a positive public *perception* of the legal profession": at para 40. Lawyers who do not understand, at the most basic level, the lived experiences of Canada's Indigenous population could undermine public confidence in the LSA's ability to self-regulate in the public interest.

[115] The decisions to mandate training generally and to mandate Indigenous cultural competency training specifically are consistent with the text, context, and purpose of the *LPA*.

Part 6.3 of the Code falls reasonably within the LSA's scope of authority

[116] Section 6(l) of the *LPA* expressly grants the Benchers the power to "authorize or establish a code of ethical standards for members and students-at-law". This is a broad and open-ended grant of authority. The *LPA* does not prescribe the content of the code of ethical standards, evincing a legislative intention that the content of the code falls within the Benchers' discretion. This includes power to amend the Code as the Benchers deem necessary.

[117] Part 6.3 of the Code imposes duties on lawyers not to engage in discrimination, harassment, or sexual harassment.

The Record

[118] A January 29, 2020 Consultation Report published by the Federation explains that in 2019 the Law Societies Equity Network sent a memo to the Federation suggesting that the current Model Code rules on discrimination and harassment were inadequate as the rules and commentary "did not adequately reflect the importance of preventing discrimination and harassment": CRP at 58. The Federation then reviewed empirical and anecdotal evidence and determined that it was "essential to clarify the harassment and discrimination provisions of the Model Code and to include specific guidance on bullying": CRP at 59. The Model Code was amended to "clarify relevant obligations" drawing on relevant case law and the text of the *Charter*: CRP at 60.

[119] A September 6, 2023 memo to the Benchers explained that the Policy and Regulatory Reform Committee proposed that the LSA change its Code to adopt the Federation's amendments to the Model Code addressing discrimination and harassment. The memo explains that the LSA began the work towards amending its Code as early as 2015, with efforts gaining momentum after the 2019 Articling Student Survey established concerns of discrimination and harassment in the profession.

[120] The memo states that the commentary in the examples is meant to be "instructive" and an "interpretive aid", noting that the Code is written for a wide audience including lawyers, students, staff members, and members of the public: CRP at 35. The memo notes that the definition of discrimination is intended to reflect the law as it has developed since ***Andrews v Law Society of British Columbia***, [1989] 1 SCR 143. The memo also notes that Part 6.3 of the Code is not intended to impact the defence bar's ability to represent clients. Instead, the amended Part 6.3 is intended to "address an existing problem within the profession about discrimination and harassment. The 2019 Articling Student Report illuminates some of those problems": CRP at 36.

[121] On October 5, 2023, the Benchers passed a resolution to amend Part 6.3 of the Code: CRP at 19-20.

Analysis

[122] The context and record show that the reason the LSA amended Part 6.3 of the Code was to keep Alberta's Code consistent with the Federation's Model Code and to address ongoing issues within the legal profession related to discrimination and harassment.

[123] The Applicant argues that the *LPA* does not contemplate the LSA being involved in ongoing supervision or proactive enforcement of lawyer compliance with the Code. I disagree as this is inconsistent with the scheme of the *LPA*. In particular, this overlooks sections of the *LPA* that contemplate proceedings dealing with conduct deserving of sanction and the complaints process that deals with the conduct of members.

[124] Part 6.3 of the Code falls within a reasonable interpretation of the *LPA*. For one, law societies are public actors with an overarching interest in protecting the values of equality and human rights in carrying out their mandates: ***Trinity Western*** at para 41. Part 6.3 of the Code embodies values and principles of human rights law. I find that it is a reasonable interpretation of the *LPA* that the LSA has authority to implement its public interest mandate by creating standards that promote equality and human rights. Ensuring members of the legal profession do

not discriminate or harass other members, clients, or members of the public falls squarely within the kind of protection of "values of equality and human rights" that serves the public interest.

[125] What is more, Part 6.3 of the Code is a means of preventing harm to other members, clients and the public. In ***Trinity Western***, the majority held that where a law society has an objective of protecting the public interest in the administration of justice, the law society is entitled to consider harms to some communities in making its decision: para 44. In that case, the Law Society of British Columbia was entitled to consider potential harm to the LGBTQ community as a factor in its decision on whether to approve a proposed law school. Here, the LSA is entitled to consider the harm caused by discrimination, harassment and sexual harassment when exercising its statutorily mandated power to create a code of conduct under section 6(l).

[126] The focus is not on whether this provision is "necessary, wise, or effective in practice". The focus is on whether Part 6.3 of the Code falls reasonably within the scope of the LSA's authority. I find that creating ethical standards for lawyers not to engage in discrimination, harassment and sexual harassment falls reasonably within the LSA's authority under section 6(l) of the *LPA* and is consistent with other legislation (including the *Alberta Human Rights Act*, RSA 2000, c A-25.5 and the *Occupational Health and Safety Act*, SA 2020, c O-2.2).

[127] I also see no merit in the Applicant's vagueness argument. The Applicant submits that the Code uses words of "wide and differing" meaning in that there are "no reasonable standards for determining" the provision's meaning.

[128] For example, the Applicant argues that the definition of harassment is subject to the complainant's "personal preferences and spontaneous emotional reactions". The commentary to Part 6.3-2 of the Code defines harassment as follows: "If the lawyer knew or ought to have known that the conduct would be unwelcome or cause humiliation, offence or intimidation." The commentary then gives a non-exhaustive list of behaviours that constitute harassment, including objectionable or offensive behaviour, degrading, threatening or abusive behaviour, bullying, verbal abuse, abuse of authority, comments, joke or innuendoes or assigning work inequitably. The Applicant asserts that due to the subjective nature of the definition of harassment, a complaint will lead "almost inevitably to a finding of harassment".

[129] "A provision will be considered impermissibly vague where there is no adequate basis for legal debate or where it is impossible to delineate an area of risk": ***Harper v Canada (Attorney General)***, 2004 SCC 33 at para 90, citing ***R v Nova Scotia Pharmaceutical Society***, [1992] 2 SCR 606 at 639-40; see also ***Mills v Corporation of the City of Calgary***, 2024 ABKB 256 at paras 36-37.

[130] I am satisfied that the words "discriminate", "harass" and "sexually harass" are well understood and are sufficiently precise to put members on notice as to the type of conduct in which they are not to engage. These are terms familiar to lawyers, who are required to know the law, and I do not accept that lawyers would be unable to understand their obligations. For example, in ***Canadian Broadcasting Corp v Canada (Attorney General),*** 2011 SCC 2 at para 62 the Supreme Court held, in the context of a section 1 *Charter* analysis, that rules of practice as to media and public conduct within court buildings that prohibited "harassing" behaviour were not too vague to enable members of the public to understand their obligation. In the result, I find that Part 6.3 of the Code is not rendered *ultra vires* because of vagueness.

Conclusion on *Vires*

[131] The Impugned Rules and Part 6.3 of the Code are *intra vires* as they fall within a reasonable interpretation of the LSA's authority pursuant to the *LPA*.

[132] Given that establishing mandatory standards is compatible with protecting the public interest, it follows that having Rules that support the formation of a culturally competent bar and an ethical code of conduct that protects against discrimination, harassment and sexual harassment are valid means by which the LSA can pursue their overarching statutory duties to regulate the profession in the public interest.

Charter Breaches

[133] The Applicant submits that the Profile, the CPD Tool, the Impugned Rules, and Part 6.3 of the Code infringes his rights under sections 2(a) and (b) of the *Charter*.

[134] The Applicant bears the onus of establishing a *Charter* infringement.

Position of the Applicant

[135] The Applicant's *Charter* arguments are not entirely clear. In the Applicant's brief, the Applicant appears to claim that the LSA's "Political Objectives" and "theories" violate sections 2(a) and (b) of the *Charter*. The Applicant also makes arguments that suggest that the Profile, the CPD Tool, the Code, and the Rules do not "prescribe by law constitutional rights" and cannot be saved under section 1 of the *Charter*. These arguments are inherently connected to the Applicant's subjective interpretation of what the LSA believes and his own assumptions about the LSA's motivations for implementing the Profile, CPD Tool, Impugned Rules, and Code. This appears to be what the Applicant argued in oral argument when the Applicant stated that the "theories" and related resources as being the source of the alleged *Charter* breaches.

[136] What I understand the Applicant's position to be is that his section 2(a) and (b) *Charter* rights are violated because the CPD program (implemented through the Profile, the CPD Tool, and the Impugned Rules) and Part 6.3 of the Code are forcing the Applicant to believe things that he does not believe and state as true things that he does not believe to be true. I understand his argument to be that there is a *Charter* infringement because if he does not believe, or says he does not believe in certain things, the LSA will deem him not competent and his practice unsafe, ineffective and unsustainable. I understand his argument does not relate only to the requirement to undertake cultural competence training or to avoid "harassment and discrimination", but he argues more broadly that the LSA is imposing their "Political Objectives" and "theories" on him.

Position of the Respondent

[137] The LSA submits that based on the steps that the LSA has actually taken, and not based on the Applicant's subjective views, there is no basis to find that the LSA has infringed on the Applicant's section 2(a) and (b) *Charter* rights.

Analysis

Section 2(a) of the Charter

[138] Section 2(a) of the *Charter* provides that everyone has the right to "freedom of conscience and religion." The test to establish an infringement of section 2(a) of the *Charter*

requires the claimant demonstrate that (***Trinity Western*** at para 63; ***Syndicat Northcrest v Amselem***, 2004 SCC 47 at para 65):

(a) they sincerely believe in a practice or belief that has a nexus with religion; and

(b) that the impugned state conduct interferes with the claimant's ability to act in accordance with that practice or belief in a way that is more than trivial or insubstantial.

[139] The record demonstrates that the Applicant has a sincerely held belief in the form of his Christian faith. That is not in dispute. The issue is whether the LSA has interfered with the Applicant's ability to act in accordance with his Christian faith in a way that is more than trivial or insubstantial.

[140] I see no merit to the Applicant's section 2(a) *Charter* arguments.

[141] First, as discussed earlier in these reasons, the "Political Objectives" and "theories" discussed at length by the Applicant are merely the Applicant's view of what he believes motivated the LSA to enact the Impugned Rules and amend Part 6.3 of the Code. I agree with the LSA that there is no *Charter* breach where the claimant believes that his beliefs are at odds with what he assumes the LSA believes. There is no factual basis for the claim. The *Charter* claim must be grounded in the actual conduct of the LSA, not the Applicant's subjective interpretations of the LSA's views.

[142] Second, to the extent the Applicant's arguments relate to the Profile, the Profile is not a checklist and lawyers are *not* required to demonstrate competency in each of the nine domains listed in the Profile. As stated earlier, a lawyer may choose not to include competencies related to Cultural Competence, Equity, Diversity and Inclusion or Truth and Reconciliation in their CPD plan. There would be no sanction should a lawyer choose not to pursue those specific competencies. The Applicant is not required to ever engage with those competencies should he choose not to.

[143] Third, the CPD Tool is in effect a form; it is the means by which the lawyer communicates their CPD plan to the LSA. I see no basis in this record to find that requiring a lawyer to fill out a form detailing their CPD plan, which can include any of the competencies listed in the Profile, results in a *Charter* infringement.

[144] Fourth, to the extent the Applicant's arguments relate to the Path, the Path does not tell lawyers that they *must* believe the content within the program. I understand the Applicant's argument to be that the Path compelled him to answer questions which "he either disputes or denies and which directly" contradict his beliefs. I note that the Applicant did not need to take the Path, and there were other options available to him to satisfy the mandatory Indigenous cultural competence training.

[145] The Path provides a base-level understanding of the history of Indigenous peoples in Canada, commentary on some of the sociolegal issues facing Indigenous communities today, and the ways in which both past and present histories may impact the practice of law. At the end of The Path, the course states that participants will be left "with a few thoughts on why all of this *should* matter" to them [emphasis added]. The Path does not dictate that the content of the program *must* matter, only that there are many reasons why it *should* matter. The Applicant is not being told that he must leave his faith and religion behind and subscribe to the beliefs set out in The Path. The Path clearly states: "Like the story of Adam and Eve, Indigenous accounts of

creation are expressions of spiritual and cultural truth. They reflect a way of looking at the world... we can look at science and at origin stories as simply different ways to describe where we've come from" [emphasis added].

[146] As to the questions asked at the end of The Path, I do not have them before me. However, my understanding is that the questions asked are focused on comprehension of the material presented and not an affirmation that one believes what they have read.

[147] I find the Applicant has failed to establish an infringement of his section 2(a) *Charter* rights.

Section 2(b) of the Charter

[148] Section 2(b) of the *Charter* provides that everyone has the right to "freedom of thought, belief, opinion and expression." The test for determining a section 2(b) infringement asks three questions (***Canadian Broadcasting Corp v Canada (Attorney General)***, 2011 SCC 2 at para 38, citing ***Ontario (Public Safety and Security) v Criminal Lawyers' Association***, 2010 SCC 23 at para 32):

(a) Does the activity in question have expressive content, thereby bringing it, *prima facie*, within the scope of section 2(b) protection?

(b) Is the activity excluded from protection because of the location or method of expression?

(c) If the activity is protected, does an infringement of the protected right result from either the purpose or the effect of the government action?

[149] First, my comments earlier about the Applicant's arguments related to "Political Objectives" and "theories" apply equally to section 2(b) of the *Charter*. Moreover, I have already found that the CPD Program, including the Profile, the CPD Tool, and the Path, do not require that the Applicant believe anything, nor do they compel speech. The remainder of my comments relate to Part 6.3 of the Code.

[150] The interplay between freedom of expression and the duties of an individual within a regulated profession are well canvassed in case law. The Supreme Court of Canada has held that "allowing lawyers to freely express themselves serves an important function in our legal system": ***Groia v Law Society of Upper Canada***, 2018 SCC 27 at para 115. Law society decisions that sanction or discipline lawyers for what they say can engage their freedom of expression under section 2(b) of the *Charter*: ***Groia*** at para 112.

[151] As discussed above, the purpose of the Law Society is to protect and serve the public interest, including through the promotion of a high standard of professional conduct. It is understood that the expression of lawyers may be impacted by codes of professional conduct, but this on its own does not mean that the Code provisions related to harassment and discrimination infringe on the Applicant's right to freedom of expression.

[152] Whether the expressive freedoms of a lawyer have been infringed is most often decided in the context of a disciplinary hearing. If a lawyer engages in conduct that leads to a complaint, that complaint would then be handled pursuant to the LSA's conduct process which may result in a disciplinary hearing. It is within that context where it would be determined whether the conduct of the lawyer, which may include speech considered to be harassment or discrimination, is deserving of sanction.

[153] Freedom of expression can encompass protection of unpopular, disturbing, or even false statements: see ***R v Keegstra***, [1990] 3 SCR 697. However, whether statements that could be seen as discrimination or harassment are deserving of sanction is determined within the LSA's conduct process through balancing a regulated member's expressive freedom with the Law Society's statutory mandate: ***Groia*** at para 119.

[154] The privilege of self-regulation comes with great responsibility, including engaging in behaviour that conforms to "appropriate standards of professional conduct": Casey at 1:1. Members of the legal profession, as in any regulated profession, "have an interest in ensuring that their profession is operating in the public interest and that the public perceives this to be the case": Casey at 1:1. Codes of conduct help to further this interest by clarifying expectations for regulated members.

[155] The Code outlines for lawyers that they should not be engaging in speech or other conduct that is discriminatory and should not harass other people. I do not find this provision infringes section 2(b) of the *Charter*. The LSA "as a public actor, has an overarching interest in protecting the values of equality and human rights in carrying out its functions": ***Trinity Western*** at para 41. I find that this interest is reflected in the Part 6.3 of the Code. Any potential infringement on the Applicant's section 2(b) *Charter* right to freedom of expression would be determined at the point in which it is determined that he has engaged in conduct that offends the Code provisions which are deserving of sanction.

[156] I find the Applicant has failed to establish an infringement of his section 2(b) *Charter* rights.

[157] Having found no infringement of the Applicant's *Charter* rights, it is unnecessary to deal with section 1 of the *Charter*.

Conclusion

[158] I find that the Impugned Rules and Part 6.3 of the Code fall reasonably within the scope of the LSA's authority under the *LPA*.

[159] The LSA has not infringed the Applicant's sections 2(a) or (b) *Charter* rights.

[160] As discussed throughout these reasons, with the privilege of self-regulation comes a host of responsibilities. As is seen through the wide array of jurisprudence that focuses on professional conduct in the legal profession, there are high standards of professional conduct expected of regulated professionals in Canada. It is inevitable that as society changes, the law changes, and with it, the way professions are governed will also change. Having a basic understanding of the people and communities you serve as a lawyer does not work against the public interest. Nor does cultivating a safe work environment built on the principles of evolving human rights law.

[161] As stated in Casey at 3:1: "By their very nature, professions restrict the activities of individuals in order to achieve what is considered to be a greater societal good." The LSA viewed the decision to establish the Impugned Rules and Part 6.3 of the Code as necessary to achieve a greater societal good, and it was within their authority to do so.

[162] The application for judicial review is dismissed.

[163] The LSA has been completely successful in this application. Should the parties not be able to agree on costs, submissions can be made to me within 30 days with a response to follow within 15 days.

Heard on the 6th day of May, 2025.
Dated at Calgary, Alberta this 12th day of September 2025.

S.L. Kachur
J.C.K.B.A.

Appearances:

Glen Blackett
for the Applicant

Jason Kully and Leanne Monsma
for the Respondent