

COURT OF APPEAL OF ALBERTA

Form 49
[Rule 13.19]

COURT OF APPEAL FILE NUMBER: 2501-0282AC

TRIAL COURT FILE NUMBER: 2301-14224

REGISTRY OFFICE: CALGARY

APPLICANT: YUE SONG

STATUS ON APPEAL: APPELLANT

STATUS ON APPLICATION: APPLICANT

RESPONDENT: THE LAW SOCIETY OF
ALBERTA

STATUS ON APPEAL: RESPONDENT

STATUS ON APPLICATION: RESPONDENT

DOCUMENT: AFFIDAVIT IN SUPPORT OF APPLICATION

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT:Glenn Blackett
Glenn Blackett Law

AFFIDAVIT OF YUE (ROGER) SONG

Sworn on June 4, 2026

I, Yue (Roger) Song, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I have personal knowledge of the facts and matters hereinafter deposed to by me, except where same are stated to be based upon information and belief, and those I do verily believe to be true.
2. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the Amended Brief of the Applicant filed in the Court King's Bench on April 7, 2025.
3. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of the Written Submissions of the Respondent filed in the Court of King's Bench on April 8, 2025.

4. Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a true copy of the Applicant's Surreply Brief filed in the Court of King's Bench on April 23, 2025.

5. Attached hereto and marked as **Exhibit "D"** to this my Affidavit is a true copy of Mr. Blackett's correspondence dated February 5, 2026, to the Case Management Officer requesting to permit the appellant to file the lower court briefs in the Appeal Record or Extracts of Key Evidence.

6. Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a true copy of the response letter from Mr. Kully to the Case Management Officer dated February 10, 2026.

7. Attached hereto and marked as **Exhibit "F"** to this my Affidavit is a true copy of the Case Management Officer's Administrative Decision dated March 9, 2026, denying the application for permission to include written briefs.

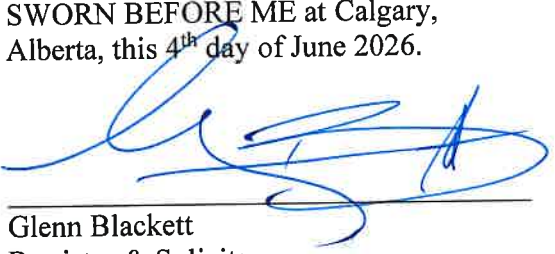
8. Attached hereto and marked as **Exhibit "G"** to this my Affidavit is a true copy of Mr. Blackett's correspondence dated March 19, 2026, requesting reconsideration of the Case Management Officer's decision.

9. Attached hereto and marked as **Exhibit "H"** to this my Affidavit is a true copy of the response letter from Mr. Kully to the Case Management Officer dated March 26, 2026.

10. Attached hereto and marked as **Exhibit "I"** to this my Affidavit is a true copy of the Case Management Officer's Administrative Decision dated May 7, 2026, again denying the application for permission to include written briefs.

11. I make this Affidavit in support of an application under *Rules* 14.36(3) and 14.56 to amend a March 9, 2026, order of the case management officer so as to permit the filing of a written argument from the lower Court as part of the appeal record or extracts of key evidence.

SWORN BEFORE ME at Calgary,)
 Alberta, this 4th day of June 2026.)



 Glenn Blackett
 Barrister & Solicitor

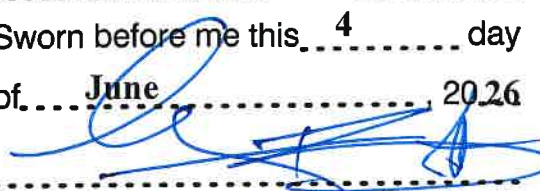


 Yue (Roger) Song

This is Exhibit " A " referred to
in the Affidavit of

Yue (Roger) Song

Sworn before me this 4 day
of June, 2026


A Commissioner for Oaths in and for Alberta

Glenn Blackett
Barrister & Solicitor

COURT FILE NUMBER 2301 14224

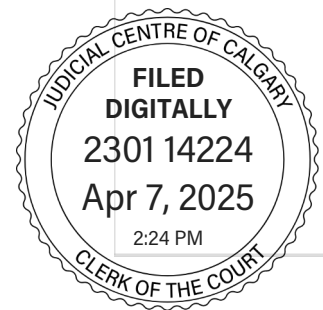
COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Calgary

APPLICANT Yue Song

RESPONDENTS The Law Society of Alberta

DOCUMENT **AMENDED BRIEF OF THE APPLICANT, YUE SONG**



ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF
PARTY FILING THIS DOCUMENT

Glenn Blackett Law



**AMENDED BRIEF OF THE
APPLICANT, YUE SONG**

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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 constitution⁵ 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 adopted¹⁶ both a 2020-2024 Strategic Plan¹⁷ (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**") considered²⁶ 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**”) met³⁰ 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. Freund 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" – Freund 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 met⁵² 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 Benchers 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 Tully⁵⁷ – 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 mandated⁵⁸, 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 met⁶¹ 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 considerations⁶⁵ and that the LSA play a more proactive role in managing lawyer competence. Surveys are mentioned⁶⁶ 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 provided⁶⁹, and continues to provide⁷⁰, 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 met⁷⁴. 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 often there is no other evidence ...*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**") met⁷⁸ 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 evidence 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 Profile⁹⁰. 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 Plan⁹⁵ 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.3l.

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 Alleyne’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 met¹⁰³ 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, Elizabeth 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 petition¹¹⁵ claimed Rule 67.4 was *ultra vires* and an unnecessary invasion into professional independence.
97. In a July 13, 2022, position letter¹¹⁶ 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 Benchers¹²⁰ 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 Benchers’ 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 law¹⁴⁶; 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 law¹⁴⁷

116. On October 23, 2023, the LSA suspended several lawyers for failing to comply 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 democracy¹⁴⁹ based on fundamental and organizing principles, referred to as Canada's "unwritten constitutional principles" which include:

- a. the rule of law¹⁵⁰ 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 law¹⁷⁸ 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 constitutional¹⁸⁷ 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 fiduciary¹⁹² and conduit¹⁹³ to the justice system, be competent¹⁹⁴ 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 interests²¹² 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 improperly²¹⁵ 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 case²¹⁹ 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 *Wurring v Law Society of Alberta*, 2023 ABKB 580 ("**Wurring**") 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 Canada²³⁰ 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 *Wiring* 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 applied²⁵⁰ 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 interpretation²⁶⁴ except as modified to suit the nature of a specialized tribunal²⁶⁵ – 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 untrammelled ‘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 case²⁷⁶ 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; and²⁸⁴
- 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 responsible²⁹⁶ 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* continues³⁰⁰ the Benchers governed,³⁰¹ officer managed³⁰² 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 bar³⁰³ 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 disabled³⁰⁵ 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 defalcation³⁰⁸ 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 caselaw³¹² 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 not 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 hearings³²⁴ after conduct proceedings are commenced³²⁵ 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 commenced³²⁷ 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 of the people of Alberta 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 automatically³³⁰ 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 public³³² 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 ethics³³⁵

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:
- (I) 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 expand the LSA's powers, it facilitates 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 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 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.*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. The Applied Postmodern Theories

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 Williams³⁵⁴ ("**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 necessary 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 racial³⁶⁶ 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-skinned³⁷⁶ 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 discourse³⁹¹ 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 was³⁹⁵ neither: any apparent attempt by the LSA to objectively verify these claims; nor any quantitative³⁹⁶ 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 "A", 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 known 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 statements 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-judicial. 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 not to claim that The Path is necessarily objectively wrong in either its claims⁴⁰⁹ 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 reason to believe that The Path is correct and every reason 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 words⁴¹² 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 rules⁴¹⁹ 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 Stanley 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 reality⁴²⁴ – 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 to 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 flimsy⁴³⁸ 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. The LSA's Political Objectives – An Attack on Loyalty to the Client

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":

*The most important 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 does not further exacerbate presumed power imbalances. Cultural competency assumes people from dominant groups can be trained to speak and behave in new, more sensitive and appropriate ways. The first part of this training often involves making people sensitive to cross-cultural differences. Cultural competence has been described as “the appropriateness and effectiveness of one’s behavior in an alien cultural environment.”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.

mandatory⁴⁸² 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 that decolonization is more useful than ‘cultural understanding’ when the goal is systemic change.*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 already exist. 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 practices⁵⁰⁶ 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 symptom⁵¹¹ 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 duties⁵¹⁸ 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 loyal⁵²⁰ 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 “Incompetent.”
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 attempt⁵⁶⁷ 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 lawyering⁵⁶⁸ 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 contractor 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 power⁵⁷⁶ (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 substance⁵⁸⁰ 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 through 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 groups⁵⁸⁵

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 inclusion⁵⁸⁶

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 presumed⁵⁹¹ 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 participation⁵⁹⁵ 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 inquiry⁶⁰⁹

[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 disempowering⁶¹⁵ 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 Canadians⁶³⁰ and as between distinct indigenous groups⁶³¹ (but not as between individuals within distinct indigenous group⁶³²) The Path is, in fact, an exercise in racial stereotype. This is obvious from both the structure of The Path⁶³³ 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” Haudenauonee 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 education⁶⁵³, child protection⁶⁵⁴, health care⁶⁵⁵, and, of course, peace and order in the form of land title⁶⁵⁶ and criminal justice⁶⁵⁷.

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 above⁶⁶⁴ 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 “appropriate” 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 representative of the population it serves. This is connected to accessibility of legal services, in that the public should have a meaningful

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 educate 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 apostasy.

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 Theories⁷⁰³ 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 Code⁷⁰⁶, 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 domains⁷¹¹, 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 lawyers⁷¹⁸.
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 about 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 change⁷⁴⁷

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 through public statements or by professional “blacklist”. The lawyers who merely supported a motion to repeal Rule 67.4⁷⁵⁰ 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 public 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 discrimination⁷⁷²) 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 about 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, or⁷⁸⁶ 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, disturbing⁷⁹² or false⁷⁹³ 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 serve⁷⁹⁵ 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 Companion 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. lii.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 law⁸¹⁹ and propels the state towards arbitrary power⁸²⁰ 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 irrationality⁸²⁹ the Theories claim to reveal social and historical truths – dogmas⁸³⁰ 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-reliant is 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 coercion⁸⁴⁶ 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”; and⁸⁵⁰
- 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 any position, much less picking favorites or either directly or indirectly stigmatizing a particular set of beliefs or non-beliefs⁸⁵⁹

*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 impact⁸⁶⁴ 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.

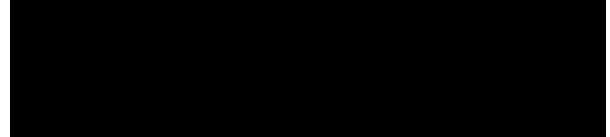
⁸⁶⁶ The Profile (Song Affidavit, Exhibit “HHH”, p. 780).

- 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

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22.	<u>Dunsmuir v New Brunswick</u> , 2008 SCC 9
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24.	<u>Ford c Québec (Procureur général)</u> , [1988] 2 S.C.R. 712
25.	<u>Fortin v Chrétien</u> , [2001] 2 S.C.R. 500, 2001 SCC 45
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27.	<u>Godbout v Longueuil (City)</u> , [1997] 3 S.C.R. 844
28.	<u>Green v Law Society of Manitoba</u> , [2017] 1 S.C.R. 360
29.	<u>Groia v Law Society of Upper Canada</u> , 2018 SCC 27
30.	<u>Guarantee Co. of North America v Gordon Capital Corp.</u> (1999), 1999 CarswellOnt 3171
31.	<u>Hawrish v Bank of Montreal</u> (1969), 1969 CarswellSask 9

32.	<u>Irwin Toy Ltd. v. Quebec (Attorney General)</u> , [1989] 1 S.C.R. 927
33.	<u>Lavallee, Rackel & Heintz v. Canada (Attorney General)</u> 2002 SCC 61 (CanLII), [2002] 3 SCR 209
34.	<u>Law Society of British Columbia v Trinity Western University</u> , 2018 SCC 32
35.	<u>Law Society of Upper Canada v Hunter</u> , 2007 LSDD No. 8, 2007
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68.	Reference Re Alta. Legislation , [1938] S.C.R. 100
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This is Exhibit " **B** " referred to
in the Affidavit of

Yue (Roger) Song

Sworn before me this 4 day
of June, 2026

A Commissioner for Oaths in and for Alberta

Glenn Blackett
Barrister & Solicitor

COURT FILE NUMBER:

2301 14224

COURT:

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE:

CALGARY

APPLICANT:

YUE SONG

RESPONDENT:

THE LAW SOCIETY OF ALBERTA

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PERSON FILING THIS
DOCUMENT:

Field LLP

Barristers and Solicitors

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[REDACTED]

Attention: Jason J. Kully / Leanne Monsma



**WRITTEN SUBMISSIONS OF THE RESPONDENT, THE LAW SOCIETY OF ALBERTA,
FOR A JUDICIAL REVIEW APPLICATION ON MAY 6, 2025**

Submitted by:

Jason J. Kully / Leanne Monsma**FIELD LLP**

Barristers and Solicitors

[REDACTED]
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Counsel for the Respondent,
the Law Society of Alberta

To:

Glenn Blackett**GLENN BLACKETT LAW**

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Counsel for the Applicant,
Yue Song

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I. INTRODUCTION

1. This case is not about post-modernism, post-colonialism, critical race theory, or “diversity, equity, and inclusion”. It is also not about the independence of lawyers or the rule of law. This case is about the Law Society of Alberta’s authority to establish a continuing professional development program and to set ethical standards for its members in accordance with its rule making authority and broad public interest mandate.
2. The Applicant, Yue Song, argues that the Law Society of Alberta lacks the statutory authority to do either of these things. As a second argument, the Applicant suggests that the Law Society of Alberta, in doing these things, has violated the *Canadian Charter of Rights and Freedoms*.¹
3. There is a difference between the Law Society of Alberta doing something that the Applicant disagrees with or does not like and the Law Society of Alberta not having the statutory authority to do something or violating the *Charter*. This is what this case comes down to – the Applicant does not agree with and does not like certain parts of the continuing professional development program and ethical standards selected by the Law Society of Alberta.
4. The Applicant’s reasons for not liking the continuing professional development program and the ethical standards are due in part to his assumptions and beliefs about why the Law Society of Alberta has implemented them. However, his assumptions and beliefs are not only mostly wrong, but they are also irrelevant. Also irrelevant are the Applicant’s feelings around the appropriateness, relevance, applicability, and merits of the continuing professional development program and the ethical standards.
5. In this case, what must be determined is:
 - a. whether the Law Society of Alberta was acting reasonably within its statutory authority when it established the continuing professional development program and the ethical standards; and
 - b. whether the Law Society of Alberta has infringed upon the Applicant’s *Charter* rights to freedom of conscience, religion, and expression.
6. The Law Society of Alberta has acted reasonably within the scope of its statutory authority and has not violated any of the Applicant’s *Charter* rights. The Law Society of Alberta determined that the form of the continuing professional development program and the ethical standards were necessary to uphold and protect the public interest, which is the overriding purpose of the Law Society of Alberta under the legislation. As the governing body of an independently regulating profession, the Law Society of Alberta’s determination of the way its broad public

¹ [*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 \(UK\), 1982, c 11 \[Charter\]*](#).

interest mandate will best be furthered is entitled to deference. This deference maintains the independence of the bar; a hallmark of a free and democratic society.

7. Accordingly, the Applicant's application should be dismissed.

II. FACTS

A. The Law Society of Alberta and the *Legal Profession Act*

8. The *Legal Profession Act* (the "LPA") grants the privilege of independent regulation to the legal profession in Alberta.² More specifically, the LPA recognizes the Law Society of Alberta (the "LSA") and establishes a governing body of the LSA called the Benchers.³
9. For the most part, Benchers are elected by active members of the LSA.⁴ Benchers conduct their work during meetings and, at a meeting of the Benchers, matters are typically determined by a majority of votes of the Benchers present at the meeting.⁵
10. The LPA bestows the Benchers with a very broad authority to "take any action ... the Benchers consider necessary for the promotion, protection, interest or welfare of the Society".⁶
11. The Benchers also have the authority to establish committees.⁷ In exercise of this power, the LSA currently has 13 committees. The committees include:
 - a. the Lawyer Competence Committee;
 - b. the Policy and Regulatory Reform Committee; and
 - c. the Equity, Diversity and Inclusion Committee.
12. From February of 2019 to August of 2023, the LSA also had an Indigenous Advisory Committee. The Committee worked closely with the Indigenous Initiatives representative of the Law Society staff on initiatives relating to truth and reconciliation, access to justice for Indigenous Peoples, and cultural competency development for lawyers.

² *Legal Profession Act, RSA 2000, c. L-8*, as amended.

³ *Ibid*, s 5(1).

⁴ *Ibid*, s 14(3).

⁵ *Ibid*, ss 20-21.

⁶ *Ibid*, s 6(n).

⁷ *Ibid*, s 6(c).

B. Code of Conduct

13. The LPA gives the Benchers the specific authority to “authorize or establish a code of ethical standards for members”.⁸ Pursuant to this authority, the Benchers have established the Code of Conduct (the “Code”).
14. The Code defines and clarifies expectations and standards of behaviour that apply to lawyers. Each standard is typically accompanied by commentary which is intended to help members better understand the expectation and standard.
15. The Code is intended to serve a practical as well as a motivational function. If the LSA receives a complaint about one of its members, then the next step in the process is for the LSA to decide whether to dismiss the complaint or refer the matter to a practice review or conduct committee. In making this decision, the LSA will consider whether the conduct complained of in the complaint could constitute a violation of the Code. If the LSA decides to refer the matter to a conduct committee, then the conduct committee might eventually determine that the member’s conduct violated the Code and is deserving of sanction.
16. The Code is based on a model code (the “Model Code”) developed by the Federation of Law Societies of Canada (the “Federation”), a national association of the 14 law societies mandated by the provinces and territories to regulate Canada’s legal profession in the public interest.⁹
17. The Federation has a standing committee which reviews the Model Code on a regular basis.¹⁰ During the review process, the 14 law societies across Canada are asked to provide feedback on the Model Code and any proposed amendments. When changes are made to the Model Code, individual law societies can decide whether or not to amend their codes of conduct to align with the Model Code. However, the Federation’s goal is that all law societies will implement the amendments so that the rules of conduct are harmonized across Canada.
18. Between 2020 and 2022, the Federation’s standing committee was reviewing the Model Code.¹¹ The LSA, primarily through work done by the Policy and Regulatory Reform Committee, was heavily involved in the review process.¹²
19. The Law Societies Equity Network (the “LSEN”) provided the initial impetus for the examination of Part 6.3 of the Code on Harassment and Discrimination. The LSEN is a network of law society staff engaged in efforts to prevent discrimination and harassment in Canadian legal workplaces.

⁸ *Ibid.*, s 6(l).

⁹ Certified Record of Proceedings [CRP], Vol A & B, pp 21-142. See especially p 22.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² See for example, CRP, Vol C, pp 342-344, 345-348, 352-354, 383-385, 402-405, 406-409, 410-413.

In June of 2019, the LSEN suggested to the Federation that the current Model Code rules concerning harassment and discrimination were insufficient.¹³

20. In response to the LSEN's suggestion, the Federation's standing committee considered empirical and anecdotal evidence that discrimination, harassment, and bullying were prevalent in the legal profession. The sources of this evidence included: a consultation paper from the Law Society of Ontario, results of articling student surveys done by the LSA, the Law Society of Ontario, the Law Society of Saskatchewan, and the Law Society of Manitoba, and a report from the International Bar Association.¹⁴
21. In October of 2022, the Federation amended the Model Code.¹⁵ According to the Federation, the amendments were to "provide significantly greater guidance on the duties of non-discrimination and non-harassment" and also to "include specific guidance regarding bullying".¹⁶
22. Subsequently, on October 5, 2023, the Benchers passed a resolution to amend the Code to reflect the amendments made by the Federation to the Model Code.¹⁷
23. Before the amendments were adopted, the standards set out in Part 6.3 of the Code included:
 - a. a prohibition on sexual harassment of any person;
 - b. a prohibition on any other form of harassment of any person; and
 - c. a prohibition on discriminating against any person.¹⁸
24. Following the amendments, Part 6.3 includes:
 - a. a prohibition on sexually harassing a colleague, employee, client, or any other person;
 - b. a prohibition on harassment of a colleague, employee, client, or any other person;
 - c. a prohibition on discrimination against a colleague, employee, client, or any other person;
 - d. a prohibition on engaging in reprisals against a colleague, employee, client, or any other person.¹⁹

¹³ CRP, Vol A & B, pp 21-142. See especially p 58.

¹⁴ *Ibid.* See especially pp 58-59.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*, pp 19-21. See especially p 20. At the same time, the Benchers passed a resolution to make some slight amendments to the provisions. Thus, Part 6.3 of the Code is very similar to but not exactly the same as Part 6.3 of the Model Code.

¹⁸ *Ibid.*, pp 21-142. See especially pp 104-114.

¹⁹ *Ibid.*

25. The amendments also include updated commentary on each of these standards.

C. The Rules of the Law Society of Alberta

26. The LPA also bestows the Benchers with rule making authority.
27. Pursuant to section 7(1) of the LPA, the Benchers have broad authority to make rules “for the government of the [LSA], 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 [LSA] or the Benchers” under the LPA or any other statute.
28. Section 7(2) goes on to specifically list topics that the Benchers may make rules in relation to. Section 7(2) explicitly states that it does not restrict the generality of section 7(1).
29. In addition, the Benchers are authorized to make rules:
- a. governing the election of Benchers (section 14);
 - b. dealing with enrollment or admission in the LSA (section 37);
 - c. regarding the authorization of individuals enrolled as a member of a law society outside of Alberta to act as counsel in Alberta (section 48);
 - d. respecting the powers and duties of persons conducting hearings and the various committees established by the LPA (section 52);
 - e. respecting the Assurance Fund (section 89); and
 - f. respecting professional liability claims (section 101).
30. The overall legislative scheme in the LPA evidences an intention by the Legislature to grant the LPA extensive and broad rule making authority and discretion.
31. Pursuant to its rule making power, the LSA has established the Rules of the Law Society of Alberta (the “Rules”). The Rules set out specific regulations, responsibilities, and professional standards that all lawyers are required to meet and uphold.
32. Rule 67 concerns continuing professional development. By way of summary:
- a. Rule 67.1 starts by defining the term “continuing professional development” (“CPD”);
 - b. Rule 67.2 goes on to require every active member to prepare and submit to the LSA an annual CPD plan;

- c. Rule 67.3 provides that if an active member fails to submit their annual CPD plan to the LSA by the required deadline, then they will be automatically suspended; and
- d. Rule 67.4 gives the Benchers the ability to prescribe additional specific CPD requirements in a form and manner and time frame acceptable to the Benchers. Section 67.4 also provides that if an active member fails to comply, then they will be automatically suspended.

i. *The history of Rules 67.2 to 67.3 and the new CPD program*

- 33. Rules 67.2 (the requirement to prepare and submit an annual CPD plan) and 67.3 (the automatic suspension of members who failed to submit an annual CPD plan by the deadline) have been in place since November 29, 2008.
- 34. Between 2008 and 2020, the LSA's CPD program required its members to prepare a plan for their CPD.
- 35. The first iteration of the CPD program required a member to complete a personalized CPD plan and then declare to the LSA that they had completed their plan. A self-assessment tool, resources, and a CPD template were available to help members with their plans.
- 36. In 2016, several changes were made to the CPD program. A CPD planning tool and declaration were added to the LSA Member Portal, such that members were required to use the CPD planning tool to create and submit their CPD plans online. The CPD planning tool required members to consider a number of different "types" of competencies and also to include a learning activity related to ethics and professionalism.
- 37. Then, in 2020, the Benchers set out to update the LSA's CPD program. The purpose of the update was described by President Kent Teskey (as he then was) as follows:

a 21st century modern regulator [can] create the most impact on the profession and the public interest by prioritizing competence initiatives.

In many ways, the key control that the regulator has over the effectiveness, wellness and ethics of the profession is [the] power to drive competence. Simply put, a competent lawyer is more likely to be happy, profitable, ethical and effective.²⁰

- 38. President Kent Teskey went on to identify two shortcomings of the CPD program then in place:

First, it treats all practitioners the same no matter their experience, level of practice or access to firm-based competence programming. Second, while we collect substantial amounts of information, we do not do anything material

²⁰ *Ibid*, pp 338-341. See especially pp 338-339.

with it, outside of considering it if a lawyer is in our regulatory stream. The risk is that this could create a substantial credibility gap within the profession.

39. President Kent Teskey then identified his vision for the new CPD program:

a system that accomplishes the following:

1. A competence model that supports practitioners at all points of practice proportionately and responsively, and takes into account wellness as part of the competence framework.
2. That the Law Society of Alberta become a model for protecting the public interest by raising competence across the profession by not only encouraging competence but providing lawyer competence educational programming, where appropriate.
3. That through a young lawyer competence program covering the first five years that our reliance on the current articling model is substantially reduced.²¹

40. In February of 2020, while work on the new CPD program was underway, the Benchers suspended the application of Rules 67.2 (the annual CPD plan requirement rule) and 67.3 (the suspension for failing to comply with the requirement rule).²² In October of 2021, the Benchers further suspended the application of the two Rules so that the LSA would have more time to finalize the updates to the CPD program.²³

41. The LSA finalized the new CPD program in approximately April of 2023.²⁴

42. Under the new CPD program, each member is to develop a personalized learning plan for the CPD program year.²⁵ In developing a plan, the member is required to reference the Professional Development Profile for Alberta Lawyers (the “Profile”).²⁶ The Profile is a document that sets out nine domains or areas of competency that the LSA believes are important to maintain safe, effective, and sustainable legal practice in Alberta today. The domains include the following:

- a. legal practice;
- b. continuous improvement;

²¹ *Ibid*, pp 338-341. See especially pp 338-339.

²² *Ibid*, pp 330-337. See especially pp 333-334. See also pp 322-329. See especially p 324.

²³ CRP, Vol C, pp 242-248. See especially pp 246-247.

²⁴ CRP, Vol A & B, pp 150-166.

²⁵ *Ibid*, pp 150-166. See especially p 158.

²⁶ *Ibid*, pp 150-166. See especially pp 159-161.

- c. cultural competence, equity, diversity and inclusion;
 - d. lawyer-client relationships;
 - e. professional conduct;
 - f. professional contributions;
 - g. truth and reconciliation; and
 - h. well-being.²⁷
43. Under each domain, there are more specific “competencies” as well as a list of performance indicators for each competency. For example, the specific competencies listed under the domain of “well-being” are:
- a. build resilience;
 - b. maintain personal health;
 - c. demonstrate self-awareness; and
 - d. support well-being of others,
- and the specific competencies listed under the domain of “cultural competence, equity, diversity and inclusion” are:
- a. build intelligence related to cultural competence, equity, diversity, and inclusion;
 - b. incorporate equity, diversity, and inclusion in practice; and
 - c. champion enumerated groups in professional activities.²⁸
44. While the LSA requires its members to complete a CPD plan in relation to the Profile, “lawyers are not required to demonstrate competency in every area of the Profile each year”.²⁹ Rather, a member is required to select two or more competencies (not domains) contained within the Profile to focus on in developing their learning plan. Once a member’s CPD plan is complete, the member is to use the CPD Tool to submit their plan to the LSA. The CPD Tool was created based on the Profile.

²⁷ *Ibid*, pp 188-196.

²⁸ *Ibid*, pp 188-196. See especially pp 190, 196.

²⁹ *Ibid*, pp 150-166. See especially p 159.

45. On April 27, 2023 (while the application of Rules 67.2 and 67.3 was still suspended), the LSA made minor amendments to Rule 67.2 and 67.3.³⁰ More specifically, Rules 67.2 and 67.3 were amended so that a member is required to submit their CPD plan to the LSA and, on request by the LSA, produce a copy of the CPD plan and participate in a review of the CPD plan by the LSA.
46. On May 1, 2023, Rules 67.2 and 67.3 (as they were amended on April 27, 2023) came into effect.³¹

ii. The history of Rule 67.4 and The Path

47. Rule 67.4 (the ability to prescribe additional specific CPD requirements) was added to the Rules on December 3, 2020.³²
48. Before Rule 67.4 was added, the Truth and Reconciliation Commission of Canada released its Calls to Action. The 27th Call to Action is as follows:

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.³³

49. In response to the Call to Action, the Federation urged its constituent law societies (as the entities actually responsible for lawyer CPD) to “[c]onsider mandatory Indigenous cultural competency training”.³⁴ In making this recommendation, the Federation further stated that “a one-size-fits-all approach may not meet the needs of all lawyers, however, ‘all members of the legal profession need a baseline knowledge of the issues outlined in Call to Action 27’”.³⁵
50. In February of 2020, the Benchers, in response to the Call to Action and the suggestion of the Federation, passed a resolution asking that the Lawyer Competence Committee and the Indigenous Advisory Committee work with staff at the LSA to create a competence program to provide the “appropriate cultural competency training”.³⁶
51. While work was still being done to come up with the appropriate cultural competency training, the Benchers considered whether Indigenous cultural competency education ought to be mandatory for all active members.

³⁰ *Ibid*, pp 143-149. See especially pp 146-147.

³¹ CRP, Vol C, pp 242-248. See especially pp 246-247.

³² CRP, Vol A & B, pp 249-258. See especially p 256. See also pp 259-261.

³³ *Ibid*, pp 279-296.

³⁴ *Ibid*, pp 279-296. See especially p 284.

³⁵ *Ibid*, pp 279-296. See especially p 284.

³⁶ *Ibid*, pp 330-337. See especially p 333. See also pp 338-341.

52. On October 1, 2020, the Benchers passed a motion to make the Indigenous cultural competency education mandatory.³⁷ In reaching this decision, the Benchers considered, among other things:
- a. the Federation’s recommendation mentioned above;
 - b. the Lawyer Competence Committee’s and the Indigenous Advisory Committee’s recommendations that such training be mandatory;
 - c. the Law Society of British Columbia’s conclusion that such training ought to be mandatory as “the objectives of intercultural competence education, including reconciliation, cannot be fully achieved unless all lawyers have a baseline understanding of the skills and topics identified in Call to Action 27”; and
 - d. a legal academic perspective from Pooja Parmar, Assistant Professor at the University of Victoria Faculty of Law.³⁸
53. The Benchers also specifically considered concerns around “compelled speech and compelled thinking” and “a risk that lawyers will be unreceptive to mandatory training, believing it to force another’s views and perspectives on their own”.³⁹ In response, however, the Benchers noted 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”.⁴⁰
54. The Lawyer Competence Committee and the Indigenous Advisory Committee eventually identified a program called the “The Path” as a means to provide Indigenous cultural competency education.⁴¹
55. The Path is an online course comprised of five modules which cover the topics of education set out in the 27th Call to Action. The five modules are as follows:
- a. What’s in a name: this module covers the use of the terms Indians, Inuit, Metis, and more;
 - b. Defining moments in history: this module covers the creation and origin stories of First Nations and Inuit, introduces pre-contact Inuit culture and talks about the early history of the fur trade in Alberta, residential schools, and the *Indian Act*;

³⁷ *Ibid*, pp 273-278. See especially pp 276-277.

³⁸ *Ibid*. See also pp 279-296.

³⁹ *Ibid*. See especially p 292.

⁴⁰ *Ibid*. See especially p 293.

⁴¹ *Ibid*, pp 249-258, 259-261, 262-272. See especially pp 262-263.

- c. More defining moments in history: this module covers the *Indian Act*,⁴² the legacy of residential schools, and the fostering out and adoption of Indigenous children during the Sixties Scoop;
 - d. It's the law: this module covers historical treaties, modern treaties, and Metis rights; and
 - e. Relationship-building with Indigenous peoples: This module discusses some of the cultural values and traditions of Canada's Indigenous peoples and presents some suggestions on how to work and communicate with Indigenous colleagues and partners.⁴³
56. After each module, there is a short quiz with approximately 10 questions (which are a blend of true or false and multiple-choice).⁴⁴
57. As mentioned above, Rule 67.2 requires every active member to submit an annual CPD plan and Rule 67.3 provides that if an active member fails to submit their annual CPD plan to the LSA by the required deadline, then they will be automatically suspended. However, neither Rule 67.2 nor Rule 67.3 specifically address the ability of the LSA to impose other CPD requirements on members. As such, on December 3, 2020, the Benchers passed Rule 67.4 to give the Benchers the ability to prescribe additional specific CPD requirements in a form, manner, and time frame acceptable to the Benchers.⁴⁵ Section 67.4 also includes an automatic suspension enforcement mechanism (similar to that which is found in Rule 67.3).
58. The Benchers also, on December 3, 2020, passed resolutions to:
- a. create an 18-month timeline for completing the Indigenous cultural competency education;
 - b. deem lawyers to have completed the requirement if they already took The Path through the Canadian Bar Association or another organization;
 - c. deem lawyers to have completed the requirement if they completed "Indigenous Canada" at the University of Alberta; and
 - d. allow lawyers to be exempted from the requirement by certifying that they have previous education or knowledge equivalent to The Path.⁴⁶

⁴² *Indian Act*, RSC 1985, c I-5.

⁴³ CRP, Vol A & B, pp 311-314.

⁴⁴ *Ibid*, pp 311-314.

⁴⁵ *Ibid*, pp 249-258, 259-261. See especially p 256.

⁴⁶ *Ibid*, pp 249-258, 262-272.

59. On February 26, 2023, in response to a written petition led by the Applicant, the LSA held a special meeting in relation to Rule 67.4 and The Path (the “Special Meeting”).⁴⁷
60. The Special Meeting was attended by 3,748 LSA members. At the end of the meeting, those in attendance were invited to vote on a resolution that Rule 67.4 be repealed. The motion was markedly defeated with the results of the vote as follows:
- a. the number of votes cast was 3,473;
 - b. the number of votes necessary for adoption of the resolution was 1,737 (this representing a majority);
 - c. the number of votes in favour of the resolution was 864 (this representing approximately 25% of the vote); and
 - d. the number of votes against the resolution was 2,609 (this representing approximately 75% of the vote).⁴⁸

D. The application for judicial review

61. On October 27, 2023, the Applicant filed this Originating Application for judicial review (the “Application”). As set out in the Application as well as the Applicant’s written submissions, the Applicant is seeking judicial review of the following on the basis that they are *ultra vires*:
- a. Rules 67.2, 67.3, and 67.4;
 - b. the Profile;
 - c. the CPD Tool; and
 - d. Part 6.3 of the Code.
62. The Applicant is also alleging that what he calls the “Political Objective” in the Application and what he calls the “Political Objectives” in his written submissions are *ultra vires*. In the Application, the Applicant defines the “Political Objective” as “the adoption of and promotion of various related post-modern ideologies” which post-modern ideologies include “critical race theory; critical legal theory; postcolonialism; gender theory; and intersectionality”.⁴⁹ However, in his written submissions, the Applicant defines the “Political Objectives” as the LSA’s adoption

⁴⁷ CRP, Vol C, pp 355-360.

⁴⁸ *Ibid*, pp 355-360. See especially p 359.

⁴⁹ Applicant’s written submissions, pp 8-11. According to the Applicant, the LSA adopted the “Political Objectives” through its 2020-2023 Strategic Plan and through its Statement of Regulatory Objectives.

(as set out in the LSA's 2020-2023 Strategic Plan and the LSA's Statement of Regulatory Objectives) of what he describes as:

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

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

collaborating with "stakeholders" and responding to the truth and Reconciliation Commission's (the "TRC") calls to action;

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

the provision of "appropriate" legal services,

so as to affect "society as a whole".⁵⁰

63. In the Application and the written submissions, the Applicant is also alleging that the following violate his *Charter*⁵¹ rights to freedom of expression and freedom of religion:

- a. Rules 67.2, 67.3, and 67.4;
- b. the Profile;
- c. the CPD Tool;
- d. Part 6.3 of the Code; and
- e. the "Political Objectives".

64. Based on the Application as well as the Applicant's written submissions, the Applicant is seeking a number of remedies, some of which are procedural, some of which are judicial review remedies, and some of which are *Charter* remedies:

- a. procedural remedies:
 - i. an order for the LSA to produce a copy of a legal opinion it obtained related to the vires of Rule 67.4 (the "Legal Opinion");
 - ii. an order for the LSA to produce its Statement of Regulatory Objectives;
- b. judicial review remedies:

⁵⁰ Applicant's written submissions, para 30.

⁵¹ *Charter*, *supra* note 1, s 1.

- i. an order declaring that Rules 67.2, 67.3, and 67.4, the Profile, the CPD Tool, and Part 6.3 of the Code are *ultra vires*;
 - ii. an order setting aside Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code; and
 - iii. an order prohibiting the LSA from the continuation of its Political Objectives; and
 - c. *Charter* remedies:
 - i. a declaration that Rules 67.2, 67.3, and 67.4, the Profile, the CPD Tool, Part 6.3 of the Code, and the Political Objectives infringe the Applicant's *Charter* rights; and
 - ii. an injunction prohibiting the LSA from the continuation of its Political Objectives; and
 - iii. an order striking Rules 67.2, 67.3, and 67.4, the Profile, the CPD Tool, Part 6.3 of the Code.
65. In support of his Application, the Applicant has filed three affidavits:
- a. Affidavit of Joanna Williams, sworn October 23, 2023 (the "Williams Affidavit");
 - b. Affidavit of Yue (Roger) Song, sworn December 6, 2023 (the "First Affidavit"); and
 - c. Affidavit of Yue Song, sworn March 11, 2025 (the "Second Affidavit").
- (together, the "Affidavits").

III. ISSUES

66. Before considering the primary issues in this matter, there are three preliminary issues for this Honourable Court to consider:
- a. Should the LSA be required to produce the Legal Opinion or the Statement of Regulatory Objectives?
 - b. What use, if any, should the Court make of the Affidavits?
 - c. Can the Court consider whether the Profile, the CPD Tool, and the "Political Objective" or the "Political Objectives" are *ultra vires*?
67. The primary issues before the Court are:
- a. What is the applicable standard of review?
 - b. Are Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code *ultra vires*?

- c. Has the LSA unreasonably interfered with the Applicant's *Charter* rights to freedom of expression and freedom of religion?
68. With respect to the preliminary issues:
- a. The LSA should not be required to produce the Legal Opinion or the Statement of Regulatory Objectives.
 - b. The Affidavits should be put to no or limited use.
 - c. The Court should not directly consider whether the Profile, the CPD Tool, or the "Political Objective" or the "Political Objectives" are *ultra vires*.
69. With respect to the primary issues:
- a. The applicable standard of review is reasonableness.
 - b. Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are *intra vires* as they are a means of upholding and protecting the public interest.
 - c. The LSA has not unreasonably interfered with the Applicant's *Charter* rights.

IV. ANALYSIS

A. The LSA should not be required to produce the Legal Opinion or the Statement of Regulatory Objectives

70. The procedural rules governing judicial reviews are set out in the *Alberta Rules of Court* (the "Rules of Court").⁵²
71. Pursuant to Rules 3.18 and 3.19, when a body is named in a judicial review, the body must prepare a record of proceedings, which is to include:
- a. the written record, if any, of the decision or act that is the subject of the judicial review;
 - b. the reasons given for the decision or act, if any;
 - c. the document which started the proceeding;
 - d. the evidence and exhibits filed with the body; and
 - e. anything else relevant to the decision or act in the possession of the body.

⁵² [Alta Reg 124/2010](#).

72. Rule 3.22 of the Rules of Court goes on to set out what evidence the Court may consider when deciding a judicial review:

When making a decision about an originating application for judicial review, the Court may consider the following evidence only:

- (a) the certified copy of the record of proceedings of the person or body that is the subject of the application, if any;
- (b) if questioning was permitted under rule 3.21, a transcript of that questioning;
- (b.1) if the originating application is for relief other than an order in the nature of certiorari or an order to set aside a decision or act, and affidavit from any party to the application;
- (c) anything permitted by any other rule or by an enactment;
- (d) any other evidence permitted by the Court.

73. As it relates to Rule 3.22(d), the Court has articulated various reasons why it might consider supplementary evidence, which include:

- a. to address issues of standing;
- b. where there is an allegation of bias but the facts in support of the allegation do not appear in the record of proceedings;
- c. to demonstrate a breach of the rules of natural justice not apparent on the record of proceedings; or
- d. to reveal the evidence before the decision maker where an adequate record of the proceedings does not exist.⁵³

74. In the present case, neither the Legal Opinion nor the Statement of Regulatory Objectives form part of the record of proceedings under Rules 3.18 and 3.19. Neither of them is:

- a. the decision or act that is the subject of the judicial review;
- b. the reasons given for the decision or act, if any;
- c. the document which started the proceeding; or

⁵³ [*Bergman v Innisfree \(Village\)*, 2020 ABQB 661](#), para 45.

- d. the evidence and exhibits filed with the body.
75. Additionally, neither of them are evidence that the Court may consider on judicial review under Rule 3.22. As it relates to Rule 3.22(d), the Statement of Regulatory Objectives also does not qualify as something “relevant to the decision or act in the possession of the body”.
76. The Applicant alleges that the LSA’s “Political Objectives” are based on the Statement of Regulatory Objectives. However, as will be further discussed below, the “Political Objectives” are not properly the subject of judicial review. Consequently, the Statement of Regulatory Objectives has no relevance in this proceeding.
77. As for the Legal Opinion, the Legal Opinion is clearly subject to solicitor-client privilege and it is uncontroversial that documents that are subject to solicitor-client privilege need not be included in the record of proceedings or otherwise disclosed.⁵⁴
78. The Applicant suggests that the LSA waived solicitor-client privilege over the Legal Opinion because then LSA President Ken Warren (as he then was) mentioned the existence of the Legal Opinion at an LSA meeting on December 1, 2022. However, this does not constitute a waiver of the privilege.
79. Waiver of privilege is ordinarily established where it is shown that the possessor of the privilege (1) knows the existence of the privilege, and (2) voluntarily evinces an intention to waive that privilege.⁵⁵ As it relates to the second requirement, “mere reference to a legal opinion, or even a statement of its bare conclusion” does not automatically result in waiver.⁵⁶ The LSA’s reference to its membership that it obtained a legal opinion does not demonstrate an intention to waive privilege over the Legal Opinion.
80. Rules 3.18, 3.19, and 3.22 are not necessarily applicable to the Applicant’s *Charter* allegations. However, neither the Statement of Regulatory Objectives nor the Legal Opinion are relevant to the Applicant’s *Charter* claims either, and, as stated, the Legal Opinion is subject to solicitor-client privilege.

B. The Affidavits should be put to no or limited use

81. The assumption in a judicial review is that the Court will decide the judicial review on the basis of the record of proceedings. More specifically, Rule 3.22(b.1) provides that affidavits are not to be considered if the originating application for judicial review is for relief in the nature of *certiorari* or to set aside a decision or act.

⁵⁴ See for example [*Dhillon v General Faculty Council of the University of Alberta*, 1999 ABQB 635](#).

⁵⁵ [*S. & K. Processors Ltd v Campbell Avenue Herring Producers Ltd*, \[1983\] BCJ No 1499](#), para 6.

⁵⁶ [*Manson Insulation Products Ltd v Crossroads C&I Distributors*, 2014 ABQB 634](#), para 62.

82. In *Lethbridge and District Pro-Life Association v Lethbridge (City)*, the Court stated that, consistent with Rule 3.22, the use of affidavits on judicial review is generally not allowed, especially if the affidavits relate to the merits of the decision under review.⁵⁷
83. In some cases, the Court has declined to rule that an affidavit is inadmissible and has instead opted to put the affidavit to limited use.⁵⁸ This was the approach taken by the Alberta Court of Queen's Bench (as it then was) in *Schulte v Alberta (Appeals Commission)*, where Graesser J. only considered the affidavit insofar as it helped him to better understand the applicant's position on certain issues.⁵⁹
84. Since the present case is a judicial review, the presumption is that the Court will decide the matter on the basis of the record of proceedings. Further, since the Applicant is seeking relief in the nature of *certiorari* and to set aside a decision or act, there is a general rule that the Court will not consider affidavits.
85. While the Court maintains residual discretion to consider supplementary evidence, none of the reasons articulated by the Court in *Bergman v Innisfree (Village)* for why the Court might do so apply in the present case. Specifically:
- a. standing is not at issue;
 - b. there is no allegation of bias;
 - c. there is no allegation of a breach of the rules of natural justice; and
 - d. the record of proceedings provides the evidence that was before the LSA.
86. If, however, the Court is disinclined to rule that the Affidavits are inadmissible, then the Affidavits should be put to limited use.
87. Following the approach used by this Court in *Schulte v Alberta (Appeals Commission)*, the Court might allow the First and Second Affidavits into evidence but only use them to help better understand the Applicant's position on certain issues. However, this allowance ought not to apply to the Williams Affidavit since the Williams Affidavit, not being from the Applicant, would be of limited use in helping the Court to understand the Applicant's position.
88. The Applicant also alleges that his *Charter* rights have been violated. However, the Court is capable of determining the *Charter* issues in this matter without the Affidavits.

⁵⁷ *Lethbridge and District Pro-Life Association v Lethbridge (City)*, 2020 ABQB 654, para 11.

⁵⁸ *Schulte v Alberta (Appeals Commission)*, 2015 ABQB 17, para 33.

⁵⁹ *Ibid.*

C. The Court should not directly consider whether the Profile, the CPD Tool, or the “Political Objective” or the “Political Objectives” are *ultra vires*

89. The Court should not directly consider whether the Profile, the CPD Tool, or the “Political Objective” or the “Political Objectives” are *ultra vires* for a number of reasons.
90. The first reason relates to the Rules of Court. The procedural rules governing judicial reviews are set out in the Rules of Court. The threshold rule, Rule 3.15(1), permits a person to bring an originating application for judicial review “against a person or body whose decision, act or omission is subject to review”.
91. In the present case, the Applicant is asking the Court to review the following:
 - a. Rules 67.2, 67.3, and 67.4;
 - b. the Profile;
 - c. the CPD Tool;
 - d. Part 6.3 of the Code; and
 - e. the “Political Objective” or the “Political Objectives”.
92. Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code constitute “decisions” or “acts” that are subject to judicial review under Rule 3.15(1).⁶⁰
93. However, none of the Profile, the CPD Tool, or the “Political Objective” or the “Political Objectives” are a “decision, act, or omission”. Rather, as explained above:
 - a. the Profile is a document that sets out nine domains or areas of competency that the LSA believes are important to maintain safe, effective, and sustainable legal practice in Alberta today, or, to use the description put forth by the Applicant, it is a description of what the LSA considers to be professional competence;⁶¹
 - b. the CPD Tool is a platform that members of the LSA are to use to submit their CPD plan to the LSA; and
 - c. the “Political Objective” or the “Political Objectives” are the Applicant’s interpretation of the LSA’s thoughts, beliefs, and motivations.

⁶⁰ See for example [*Okotoks \(Town\) v. Foothills \(Municipal District No. 31\)*, 2013 ABCA 222](#), para 9, where the Court held that subordinate legislation can be “a decision or act”.

⁶¹ Originating Application, para 27.

94. Further, none of the Profile, the CPD Tool, or the “Political Objective” or the “Political Objectives” are justiciable.
95. As put in *De Smith’s Judicial Review*, “[i]n respect of the institutional capacity of the courts, there are some decisions which [the courts] are ill-equipped to review – those which are not ideally justiciable or, in other words, ‘not amenable to the judicial process’, or indeed those which are better able to be determined by other bodies”.⁶²
96. In Canada, there is no articulable test for justiciability and, as put by the Supreme Court of Canada, “[t]here is no single set of rules delineating the scope of justiciability. Indeed, justiciability depends to some degree on context, and the proper approach to determining justiciability must be flexible”.⁶³
97. In the United Kingdom, where the law on justiciability is more developed than it is in Canada, decisions which are not justiciable include:
 - a. “decisions which cannot be impugned on the basis of any objective standard because their resolution is essentially a matter of individual (including political) preference”; and
 - b. “when a legal challenge is made on substantive grounds to a matter which is ‘polycentric’ – where the decision-taker has broad discretion involving policy and public interest considerations”.⁶⁴
98. Relatedly, a matter may not be justiciable if it raises a political question. The premise here is that some disputes are political in nature and “must be resolved, if at all, through [a] political process”.⁶⁵ Political questions that are unsuitable for adjudication “will typically involve moral, strategic, ideological, historical or policy considerations that are not susceptible to resolution through adversarial presentation of evidence or the judicial process”.⁶⁶
99. None of the Profile, the CPD Tool, or the “Political Objective” or the “Political Objectives” are justiciable. They raise questions that are unsuitable for the Court to adjudicate. To use the language set out above:
 - a. the Profile and the CPD Tool are essentially matters of preference – they represent the Benchers’ preferred methods of ensuring CPD;

⁶² Lord Woolf, et al, *De Smith’s Judicial Review*, 7th ed (London: Sweet and Maxwell, 2013), p 22 (citations removed) [Tab 1].

⁶³ *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, para 34.

⁶⁴ *Ibid.*

⁶⁵ Lorne M Sossin, *Boundaries of Judicial review: The Law of Justiciability in Canada*, 2d ed (Carswell, 2012), p 161 [Tab 2].

⁶⁶ *Ibid.*

- b. the Benchers implemented the Profile and the CPD Tool as an exercise of their broad discretion involving policy and public interest considerations; and
 - c. the Profile and the CPD Tool involve moral, strategic, ideological, historical, and policy considerations.
100. As it relates to the “Political Objective” or the “Political Objectives”, the LSA disagrees with the Applicant’s characterizations. However, even if the LSA was motivated by the “Political Objective” or the “Political Objectives”, they still would not be justiciable. Rather, they are the epitome of a political question.
101. In *Canada (Attorney General) v Democracy Watch*, the Federal Court of Appeal said the following:
- As in all judicial review applications, the Court must first decide whether the decision sought to be set aside is subject to judicial review. Not all administrative action gives rise to a right of review. There are many circumstances where an administrative body’s conduct will not trigger a right to judicial review. Some decisions are simply not justiciable, crossing the boundary from the legal to the political.⁶⁷
102. Such is the case here. None of the Profile, the CPD Tool, the “Political Objective” or the “Political Objectives” are subject to judicial review. They are political and are simply not justiciable.

D. The applicable standard of review is reasonableness

103. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, the Supreme Court of Canada set out a new framework for determining the standard of review.⁶⁸ Under the *Vavilov* framework:
- a. the presumption is that the standard of review is reasonableness;
 - b. the presumption may be rebutted, and a standard of correctness will apply, if:
 - i. the legislature so indicates; or
 - ii. the rule of law so requires.
104. With respect to the second exception, the Court in *Vavilov* went on to say that the rule of law may require the standard of correctness to apply to the following types of questions: “constitutional questions, general questions of law of central importance to the legal system as

⁶⁷ [2020 FCA 69](#), para 19.

⁶⁸ [2019 SCC 65](#) [*Vavilov*].

a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies”.⁶⁹

105. The Court in *Vavilov* expressly held that “true questions of jurisdiction or *vires*” would no longer attract review on a standard of correctness.⁷⁰ Rather, the new framework, and the presumption of a standard of review of reasonableness, would apply to questions of *vires*.
106. Recently, in *Auer v Auer*, a case concerning a question of *vires*, the Supreme Court of Canada confirmed that “*Vavilov*’s robust reasonableness standard is the default standard when reviewing the *vires* of subordinate legislation”.⁷¹
107. The Supreme Court also expressly held that “the rule of law does not require that questions of *vires*, in themselves, be reviewed for correctness” and “[a] robust reasonableness review is sufficient to ensure that statutory delegates act within the scope of their lawful authority”.⁷²
108. The Court did, however, say that in “exceptional cases”, a *vires* review may engage a question that ought to be reviewed for correctness.⁷³ As an example, the Court pointed to “a challenge to the validity of subordinate legislation on the basis that it fails to respect the division of powers between Parliament and provincial legislatures”.⁷⁴
109. While decided before *Vavilov* and *Auer*, the Supreme Court of Canada’s decision in *Green v Law Society of Manitoba* is also important. In *Green*, which is discussed in further detail below, the Supreme Court asked itself the following question: “What standard of review applies to a question regarding the validity of rules made by a law society?”⁷⁵ In answer to this question, the Court said:

In my view, the standard applicable to the review of a law society rule is reasonableness. A law society rule will be set aside only if the rule “is one no reasonable body informed by [the relevant] factors could have [enacted]”. This means “that the substance of [law society rules] must conform to the rationale of the statutory regime set up by the legislature”.⁷⁶

110. Similarly, in *Morris v Law Society of Alberta (Trust Safety Committee)*, the Alberta Court of Queen’s Bench (as it then was) considered the validity of rules made by the LSA.⁷⁷ Within the *Vavilov* framework, the Applicant argued that the rules at issue had the potential to impact

⁶⁹ *Ibid*, para 53.

⁷⁰ *Ibid*, para 65.

⁷¹ 2024 SCC 36 [*Auer*].

⁷² *Ibid*, para 26.

⁷³ *Ibid*, para 27.

⁷⁴ 2017 SCC 20 [*Green*].

⁷⁵ *Ibid*, para 17.

⁷⁶ *Ibid*, para 20 (citations removed).

⁷⁷ 2020 ABQB 137 [*Morris*].

solicitor-client privilege – a general question of law of central importance to the legal system as a whole – and thus the appropriate standard of review was correctness. This Court, however, determined that the appropriate standard of review was reasonableness. In reaching this conclusion, the Court identified that the central issue did not concern a claim of solicitor-client privilege but instead concerned an issue of *vires*.⁷⁸

111. In addition, in *Shaulov v Law Society of Ontario*, in response to a challenge to the Law Society of Ontario’s licensing examination scheme and policies, the Ontario Superior Court of Justice definitively stated that “[t]he standard of review applicable to the review of law society rules is reasonableness”.⁷⁹
112. Based on the foregoing, the standard of review in the present case is reasonableness:
 - a. the issues concern the *vires* of the Rules and the Code, which are subordinate legislation, and *Vavilov*’s robust reasonableness standard is the “default standard” for such questions;
 - b. the legislature has not, in the *LPA*, indicated that a standard of correctness ought to apply; and
 - c. the rule of law does not require a correctness standard. More specifically, the present case does not raise constitutional questions, general questions of law of central importance to the legal system as a whole, or questions regarding the jurisdictional boundaries between two or more administrative bodies.
113. Despite the foregoing, the Applicant has suggested that the standard of review is correctness. In support of this argument, the Applicant asserts that the LSA’s actions violate the rule of law. Therefore, he says, the rule of law “demands” that the standard of review is correctness.⁸⁰
114. Simply asserting that the rule of law has been violated is not enough to justify the application of the correctness standard. In fact, if mention of the rule of law is reason enough to displace the presumption of reasonableness, then the presumption of reasonableness is not a presumption at all.
115. Rather and as mentioned above, the Supreme Court of Canada has specifically said that only “exceptional cases”, such as those involving the federal and provincial division of powers, will result in exceptions to the presumption of reasonableness.⁸¹ The Applicant has failed to demonstrate that this is such a case.

⁷⁸ *Ibid*, paras 42-46.

⁷⁹ [2023 ONSC 5242](#), para 26.

⁸⁰ Applicant’s written submissions, para 188.

⁸¹ *Auer*, *supra* note 71, para 27.

116. Further, even if it is accepted that the rule of law is implicated here, that does not take away from the fact that, like in *Morris*, the central issue is one of *vires*, not the rule of law or the independence of the bar.
117. In summary and consistent with the Supreme Court of Canada's repeated rulings, the standard of review in this case is reasonableness.

E. Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are *intra vires*

i. How to conduct a reasonableness review of the vires of subordinate legislation

118. In *Auer*, the Supreme Court of Canada explained what reasonableness means in the context of determining the *vires* of subordinate legislation. The Court, pulling from its decisions in *Vavilov* and *Katz Group Canada Inc. v Ontario (Health and Long-Term Care)*⁸² (a case concerning the validity of Ontario regulations adopted by the Lieutenant Governor in Council that aimed to control the price of prescription drugs) said the following about reasonableness:
- a. reasonableness review ensures that courts intervene in administrative matters only where it is truly necessary to do so to safeguard the legality, rationality, and fairness of the administrative process;⁸³
 - b. reasonableness review “finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers”;⁸⁴
 - c. in conducting a reasonableness review, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision;⁸⁵ and
 - d. when conducting a *vires* review, a court does not undertake a *de novo* analysis to determine the correct interpretation of the enabling statute and then ask whether, on that interpretation, the delegate had the authority to enact the subordinate legislation. Instead, “the court ensures that the delegate’s exercise of authority falls within a reasonable interpretation of the enabling statute, having regard to the relevant constraints”.⁸⁶

⁸² 2013 SCC 64 [Katz].

⁸³ *Auer*, *supra* note 71, para 46, citing *Vavilov*, *supra* note 68, para 13.

⁸⁴ *Auer*, *ibid*.

⁸⁵ *Ibid*, para 50.

⁸⁶ *Ibid*, para 65.

119. The Supreme Court of Canada in *Auer* very helpfully went on to provide a roadmap for conducting a reasonableness review of subordinate legislation. Again pulling from *Katz* and *Vavilov*, the Court highlighted the following principles:

- a. subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object.⁸⁷ Statutory delegates are empowered to interpret the scope of their authority when enacting subordinate legislation. Their interpretation must, however, be consistent with the text, context and purpose of the enabling statute.⁸⁸ The governing statutory scheme, other applicable statutory or common law, and the principles of statutory interpretation are particularly relevant constraints when reviewing the vires of subordinate legislation.⁸⁹
- b. the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation.⁹⁰
- c. a review of the vires of subordinate legislation does not involve assessing the policy merits of the subordinate legislation. The Court should not: ask whether the regulations are “necessary, wise, or effective”; inquire into the underlying “political, economic, social or partisan considerations”; or assess whether the regulations “will actually succeed at achieving the statutory objectives”.⁹¹

The “reasonableness standard does not assess the reasonableness of the rules promulgated by the regulation-making authority; rather, it addresses the reasonableness of the regulation-making authority’s interpretation of its statutory regulation-making power”,⁹²

- d. subordinate legislation benefits from a presumption of validity.⁹³ This means that the burden is on the challenger to demonstrate invalidity.⁹⁴ It also means that, wherever possible, the subordinate legislation and the enabling should be interpreted in a manner that renders the subordinate legislation *intra vires*;⁹⁵
- e. a reasonableness review is possible even in the absence of formal reasons. Formal reasons are not usually provided for the enactment of subordinate legislation. However, the reasoning process can often be deduced from various sources, such as debate,

⁸⁷ *Ibid*, para 3.

⁸⁸ *Ibid*, para 64.

⁸⁹ *Ibid*, para 60.

⁹⁰ *Ibid*, para 3.

⁹¹ *Ibid*, paras 29, 55-58.

⁹² *Ibid*, para 56, citing Paul Salembier, *Regulatory Law and Practice*, 3d ed (Toronto: LexisNexis, 2021).

⁹³ *Ibid*, para 50.

⁹⁴ *Ibid*, para 29.

⁹⁵ *Ibid*, para 37.

deliberations, and statements of policy. Even where such sources are not available, the record and the context may reveal the motive or reason;⁹⁶ and

- f. reviewing the *vires* of subordinate legislation is fundamentally an exercise of statutory interpretation to ensure that the delegate acted within the scope of their lawful authority.⁹⁷ This exercise must be carried out in accordance with the modern principle of statutory interpretation. The governing statutory scheme, other applicable statutory or common law, and the principles of statutory interpretation are particularly relevant constraints when determining whether the subordinate legislation at issue falls reasonably within the scope of the delegate's authority.⁹⁸
120. Applying this framework, Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are *intra vires* and reasonably within the LSA's scope of authority.
 - i. *The policy merits of the subordinate legislation*
 121. Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code constitute subordinate legislation. The primary issue before the Court in this proceeding is whether they are *ultra vires*.
 122. Thus, to use the words from the roadmap provided by *Auer*, *Vavilov*, and *Katz*, a review of the *vires* of Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code does not involve assessing their policy merits and the Court should not:
 - a. ask whether any of Rules 67.2, 67.3, and 67.4 or Part 6.3 of the Code are necessary, wise, or effective;
 - b. inquire into the underlying political, economic, social, or partisan considerations; or
 - c. assess whether Rules 67.2, 67.3, and 67.4 or Part 6.3 of the Code will actually succeed at achieving the statutory objectives.
 123. It again bears emphasizing that there is a distinction between the Rules on the one hand and the documents, tools, and programs promulgated under them on the other hand. Rules 67.2 and 67.3 ought to be distinguished from the Profile and the CPD Tool and Rule 67.4 ought to be distinguished from The Path. For Rules 67.2, 67.3, and 67.4, the Court may certainly consider their *vires*. However, the Profile, the CPD Tool, and The Path are different. They are a step removed and the Court ought not to consider their content or merits.

⁹⁶ *Ibid*, paras 52-54.

⁹⁷ *Ibid*, paras 59-60.

⁹⁸ *TransAlta Generation Partnership v. Alberta*, 2024 SCC 37, para 17 [*TransAlta*]. See also *Auer*, *ibid*, para 63.

ii. The presumption of validity

124. This Court must also consider that Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code benefit from a presumption of validity. As such, the burden is on the Applicant to demonstrate that they are invalid. Additionally, if necessary and wherever possible, Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are to be construed in a manner which renders them *intra vires*.

iii. The reasons

125. As mentioned above, a reasonableness assessment can be performed even in the absence of formal reasons.
126. In the present case, various sources indicate that, as it relates to the amendments made to Rules 67.2 and 67.3, the LSA's motives and reasons were as follows:
- a. to prioritize competence initiatives in order to have the most impact on the profession and public interest;
 - b. to drive competence and thereby increase the effectiveness, wellness, and ethics of the profession;
 - c. to account for the reality that members of the LSA have different levels of experience, levels of practice, and access to firm-based competence programming;
 - d. to support practitioners at all points of practice and take into account wellness as part of the competence framework; and
 - e. to raise competence across the profession by not only encouraging competence but providing lawyer competence educational programming where appropriate.⁹⁹
127. As it relates to Rule 67.4, the LSA's motives and reasons were to increase the competence of the profession, including by increasing the cultural competence of its members relative to the following topics: 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.¹⁰⁰
128. Concerning Part 6.3 of the Code, one of the LSA's motivations for updating the provisions was to keep the Code consistent with the Federation's Model Code. As mentioned above, consistency across the codes is important so that the rules of conduct are harmonized across Canada. The LSA and the Federation were also driven by the following:

⁹⁹ CRP, Vol A & B, pp 338-341. See especially pp 338-339.

¹⁰⁰ *Ibid*, pp 279-296.

- a. a concern that the previous provisions might not adequately reflect the importance of preventing discrimination and harassment;
 - b. empirical and anecdotal evidence that discrimination, harassment, and bullying are prevalent in the legal profession. The sources of the evidence included: a consultation paper from the Law Society of Ontario, results of articling student surveys by the LSA, the Law Society of Ontario, the Law Society of Saskatchewan, and the Law Society of Manitoba, and a report from the International Bar Association; and
 - c. a desire to “provide significantly greater guidance on the duties of non-discrimination and non-harassment” and also to “include specific guidance regarding bullying”.¹⁰¹
129. The Applicant repeatedly suggests that the LSA was motivated by its “Political Objective” or “Political Objectives”. However, these assertions are not supported by the evidence. Rather, the record indicates that the LSA’s motives were to increase the competence of the profession and hold the profession to higher and clearer ethical standards.

iv. Statutory interpretation

130. The fundamental question to be considered in assessing if Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are *intra vires* is whether they are consistent with the specific provisions of the LPA and its overriding purpose or object.
131. In reviewing the challenged Rules and the Code, they and the LPA should be interpreted using a broad and purposive approach to statutory interpretation.
132. The modern principle of statutory interpretation is that the words of the statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.¹⁰² In applying the modern principle of statutory interpretation, the constraints of other applicable statutory or common law must be taken into account.
133. When these constraints are examined, it is evident that the LSA’s role goes far beyond that suggested by the Applicant. The LSA is necessarily involved in the ongoing monitoring, supervision, and education of members of the profession and is given the authority to proactively manage the competency and conduct of lawyers.

¹⁰¹ *Ibid*, pp 21-142. See especially pp 58-59.

¹⁰² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, para 21, citing E. A. Driedger, *Construction of Statutes* (2d ed. 1983), at p 87.

a. *The constraints*

134. In the present case, the common law significantly informs the statutory interpretation exercise. The following principles are well-established and relevant:
- a. the purpose of an independently regulating profession is to uphold and protect the public interest;
 - b. the meaning of “public interest” is for the independently regulating profession to decide; and
 - c. in the LPA, the LSA has been given “broad regulatory powers to accomplish its mandate” of protecting the public interest.
135. As it relates to the first principle, it is important to note that many professions in Alberta, and also in other Canadian jurisdictions, are self-regulating. What’s more, in every single Canadian province and territory, the legal profession is self-regulating. Thus, independently regulating professions are relatively common and, as it relates to independently regulating professions, it is universally understood and accepted that “[t]he primary purpose of the establishment of self-governing professions is the protection of the public”.¹⁰³
136. Concerning law societies in particular, the Supreme Court of Canada has explained that a necessary corollary of independent regulation is the protection of the public interest:
- a. “[f]or many years, this Court has recognized that law societies self-regulate in the public interest”;¹⁰⁴
 - b. “the regulation of professional practice through a system of licensing is directed toward the protection of vulnerable interests — those of clients and third parties”;¹⁰⁵
 - c. “[t]he legal profession in British Columbia, as in other Canadian jurisdictions, has been granted the privilege of self-regulation. In exchange, the profession must exercise this privilege in the public interest”;¹⁰⁶ and
 - d. “a major objective of the Act is to create a self-regulating professional body with the authority to set and maintain professional standards of practice. This, in turn, requires that the Law Society perform its paramount role of protecting the interests of the public”.¹⁰⁷

¹⁰³ James T. Casey, *Regulation of Professions in Canada* (Thomson Canada, loose-leaf, 1994), §1:1 [Tab 3].

¹⁰⁴ [Law Society of British Columbia v. Trinity Western, 2018 SCC 32](#), para 36 [Trinity Western].

¹⁰⁵ *Ibid.*, para 36.

¹⁰⁶ *Ibid.*, para 32.

¹⁰⁷ [Law Society of New Brunswick v Ryan, 2003 SCC 20](#), para 36.

137. The Alberta Court of Queen’s Bench (as it then was) has also confirmed that the LSA has “a broad public interest authority”.¹⁰⁸
138. As it relates to the second principle, the Supreme Court of Canada has explicitly said that what is in the “public interest” is “for the Law Society to determine”¹⁰⁹ and also that “the law society’s interpretation of the public interest is owed deference”.¹¹⁰ As recognized by the Supreme Court, where the legislature has delegated aspects of professional regulation to the professional body itself, that body has primary responsibility for the development of structures, processes, and policies for regulation. This delegation recognizes the body’s particular expertise and sensitivity to the conditions of practice. This delegation also maintains the independence of the bar; a hallmark of a free and democratic society.¹¹¹
139. Furthermore, 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”.¹¹²
140. The last principle, that the LPA gives the LSA “broad regulatory powers to accomplish its mandate” of protecting the public interest, was the finding of the Honourable Madam Justice A. Loparco in *Morris*.¹¹³ As mentioned above, in *Morris*, the Court considered the validity of certain rules made by the LSA. The Court ultimately determined that the rules at issue were *intra vires*, stating:
 - a. “the Legislature has given the LSA a broad public interest authority and broad regulatory powers to accomplish its mandate”;¹¹⁴ and
 - b. “[t]he law society cases ... support a broad interpretation of the delegation of legislative authority to law societies”.¹¹⁵
141. The Supreme Court of Canada’s decisions in *Green* and *Trinity Western* also operate as significant constraints.
142. Starting with *Green*, the circumstances considered by the Court in *Green* included the following:
 - a. the Law Society of Manitoba (the “LSM”) implemented a CPD program which required its members to complete 12 hours of CPD activities each year;

¹⁰⁸ *Morris*, *supra* note 77, para 63.

¹⁰⁹ *Green*, *supra* note 74, para 29.

¹¹⁰ *Trinity Western*, *supra* note 104, para 38.

¹¹¹ *Ibid*, para 37.

¹¹² *Green*, *supra* note 74, para 24.

¹¹³ *Morris*, *supra* note 77, para 63.

¹¹⁴ *Ibid*, para 63.

¹¹⁵ *Ibid*, para 77.

- b. if a member failed to complete the requirement, then they would be automatically suspended from the LSM;
 - c. Mr. Green refused to complete 12 hours of CPD activities and was suspended from the LSM; and
 - d. Mr. Green alleged that the LSM did not have the authority to suspend him for failing to comply with the CPD program.¹¹⁶
143. The question before the Court was whether the impugned rule which provided for a mandatory suspension was *ultra vires* and unreasonable. In response, the Court ruled that:
- a. “[t]he establishment of mandatory standards such as those provided for in the impugned rules is compatible with the Law Society’s purpose and duties”;¹¹⁷
 - b. “[t]o set such a [mandatory] standard in order to maintain a practicing certificate which, in the benchers’ view, serves to protect the public, is in keeping with the duties given to the Law Society under the Act”;¹¹⁸
 - c. “[t]o ensure that those standards have an effect, the Law Society must establish consequences for those who fail to adhere to them”;¹¹⁹ and
 - d. “[a] suspension is a reasonable way to ensure that lawyers comply with the CPD program’s educational requirements”.¹²⁰
144. The Court also emphasized that Mr. Green’s opinion on the usefulness of the CPD program was irrelevant, saying, “it is not up to Mr. Green to decide whether CPD activities are valuable or adequate. The legislature has decided that ... it is for the Law Society to determine the nature of those standards”.¹²¹
145. The Court ultimately held that “the rules establishing a mandatory CPD program that permit the suspension of a lawyer as a consequence for contravening those rules are not unreasonable”.¹²²
146. Turning to *Trinity Western*, the facts before the Supreme Court of Canada were as follows:
- a. Trinity Western University (“TWU”) sought to open a law school;

¹¹⁶ *Green*, *supra* note 74.

¹¹⁷ *Ibid.*, para 45.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, para 46.

¹²⁰ *Ibid.*, para 47.

¹²¹ *Ibid.*, para 48.

¹²² *Ibid.*, para 50.

- b. students of the proposed law school would be required to adhere to a covenant prohibiting “sexual intimacy that violates the sacredness of marriage between a man and a woman”;
 - c. the Law Society of British Columbia (the “LSBC”) passed a resolution declaring that TWU’s proposed law school was not an approved faculty of law because of its mandatory covenant; and
 - d. TWU challenged the LSBC’s decision on the basis that it violated section 2(a) of the *Charter*.¹²³
147. The Supreme Court of Canada ultimately decided that the LSBC’s decision not to approve TWU’s proposed law school was reasonable. In reaching this conclusion, the Supreme Court noted that the LSBC’s decision was based on the following objectives:
- a. promoting equality;
 - b. ensuring equal access to the legal profession;
 - c. supporting diversity within the bar; and
 - d. preventing harm to LGBTQ law students.¹²⁴
148. The Supreme Court held that it was reasonable for the LSBC to conclude that these things were valid means to pursue the public interest since the LSBC “has an overarching interest in protecting the values of equality and human rights in carrying out its functions”.¹²⁵
149. It also bears noting that as it relates to Part 6.3 of the Code, the provisions very closely mirror other statutory and common law. For example, the *Alberta Human Rights Act*¹²⁶ contains various prohibitions on discrimination and the *Occupational Health and Safety Act*¹²⁷ prohibits workplace harassment, including bullying. Both statutes also prohibit reprisal.¹²⁸
150. All of these constraints must be considered when applying the modern principle of statutory interpretation in the present case.

¹²³ *Trinity Western*, *supra* note 104.

¹²⁴ *Ibid*, para 40.

¹²⁵ *Ibid*, para 41.

¹²⁶ *Alberta Human Rights Act*, RSA 2000, c A-25.5.

¹²⁷ *Occupational Health and Safety Act*, SA 2020, c O-2.2. See for example s 3(1)(c).

¹²⁸ See for example *ibid*, s 18. See also *Alberta Human Rights Act*, RSA 2000, c A-25.5, s 10.

b. The modern principle of statutory interpretation

151. The words, scheme, and object of the LPA support an expansive construction of the LSA's rule-making authority.
152. At a high level, the LPA covers a wide range of topics, including: membership in the profession; qualifications to practice; conduct of members; and protection of persons dealing with members.
153. Contrary to the Applicant's arguments, the LSA is not just involved at the time of admission and does not just provide an ethical code and then leave lawyers alone to practice independently, barring future misconduct. The LSA is necessarily involved in the monitoring, supervision, and education of lawyers between enrollment and discipline.
154. As it relates to the object of the LPA, the LSA acknowledges that the LPA does not include a "purpose" clause or a clause that specifically mentions the public interest as some other statutes do.
155. However, this does not mean that the LPA is without a purpose and that its role is not to uphold and protect the public interest.
156. Rather, the legal principles and precedents referred to above, as well as the words and the scheme of the LPA, clearly and definitively demonstrate that the LSA's purpose is to regulate the legal profession in the public interest and "the Legislature has given the LSA a broad public interest authority and broad regulatory powers to accomplish its mandate".¹²⁹
157. In examining the words and scheme of the LPA, it demonstrates a requirement to protect the public interest with broad rule making authority.
158. Section 6 of the LPA sets out the powers of the Benchers. Section 6(l) specifically provides that the Benchers may "establish a code of ethical standards for members". Section 6 and subsection (l) in particular are broad and open-ended. There are no prescriptions or restrictions concerning the code of ethical standards. Rather, the content and substance of the code of ethical standards are left for the Benchers to decide.
159. Part 6.3 of the Code establishes ethical standards for members related to discrimination and harassment. It does exactly what section 6(l) of the LPA permits the Benchers to do. It also protects the public interest by ensuring members of the profession are not engaging in discrimination or harassment.

¹²⁹ *Morris*, *supra* note 77, para 63.

160. Accordingly, Part 6.3 of the Code falls reasonably within the LSA's scope of authority under section 6(l) of the LPA.
161. Section 7(1) of the LPA gives the Benchers the power to make rules "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". This provision vests the LSA with a relatively open-ended rule-making authority provided that such rule making authority upholds and protects the public interest.
162. Section 7(2) goes on to list specific items that the Benchers may make rules in relation to. But it explicitly provides that the list of items does not restrict the generality of subsection (1) which confirms that the plenary power is not limited by any of the specific items.¹³⁰
163. Rule 67.2 requires every active member to prepare and submit to the LSA an annual CPD plan and Rule 67.4 allows the Benchers to prescribe additional specific CPD requirements. Such rules are for the exercise or carrying out of the LSA's powers and duties to regulate the profession. As recognized by the Supreme Court of Canada, the establishment of mandatory CPD requirements is compatible with the LSA's purpose and duties.¹³¹
164. Similar reasoning applies to the automatic suspensions set out in Rules 67.3 and 67.4. Such rules are for the exercise or carrying out of the LSA's powers and duties to regulate the profession and, as recognized by the Supreme Court of Canada, a suspension is a reasonable way to ensure that lawyers comply with mandatory CPD requirements.¹³²
165. In addition, section 7(2)(g) explicitly provides that the LSA has the power to make rules respecting "the suspension of the membership of a member or the registration of a student at law, without notice or hearing, if the member or student-at-law does not ... do any other act by the time specified by or determined in accordance with the rules". This is precisely what Rules 67.3 and 67.4 do.
166. Section 6(n) of the LPA also bears mentioning as it gives the Benchers the power to, by resolution, "take any action and incur any expenses the Benchers consider necessary for the promotion, protection, interest or welfare of the Society". Consistent with all of the above, this provision equips the LSA with a broad power to act as it sees fit, subject only to the constraint that the Benchers themselves must consider their actions necessary for the promotion, protection, interest, or welfare of the LSA.
167. The Applicant states that this clause is "clearly related to the interests of the law societies themselves, not the profession or public writ large" (emphasis in original) and that it "cannot reasonably be interpreted to mean that the LSA has the power to regulate the profession".¹³³

¹³⁰ *Green*, *supra* note 74, para 77.

¹³¹ *Ibid*, para 45.

¹³² *Ibid*, para 47.

¹³³ Applicant's written submissions, para 210.

This argument mistakes the nature of the LSA and professional regulation more generally. The LSA does not have its own independent interests. The LSA's only interest, its *raison d'être*, is the public interest.

168. The Applicant's additional arguments concerning the public interest are somewhat difficult to follow. At one point, he seems to argue that, because the LPA does not include a public interest clause, the LSA does not have the power to regulate the legal profession in the public interest.¹³⁴ However, elsewhere in his written submissions, he argues that the LSA is required to regulate the legal profession in the public interest which he defines as "the rule of law be[ing] preserved".¹³⁵
169. The Applicant is wrong about at least two things here; the public interest is not simply the rule of law being preserved and, more importantly, it is the LSA and not the Applicant that is responsible for defining the public interest.
170. Furthermore, the doctrine of jurisdiction by necessary implication also applies to the LSA.
171. As stated by the Supreme Court of Canada in *Green*, the LPA must be construed such that the powers it confers includes 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.¹³⁶ This is consistent with section 25(2) of the *Interpretation Act*.¹³⁷
172. As it relates to the scheme of the Act, part of the Applicant's argument is that the LPA "nowhere mentions or implies LSA involvement in CPD".¹³⁸ However, the Applicant himself contradicts this argument by later acknowledging that the LSA has the ability to impose CPD requirements on its members.
173. For example, the Applicant specifically states that "Song does not challenge the LSA's right to impose CPD obligations of all sorts"¹³⁹ and the Applicant also states that he is not contesting the parts of Rule 67.2 that require members to prepare a plan for their continuing professional development.¹⁴⁰ This inconsistency reveals the truth of the Applicant's position: it's not that the LSA lacks the statutory authority; it's that the Applicant does not like or agree with the CPD program that the LSA has chosen.

¹³⁴ Applicant's written submissions, paras 205-206.

¹³⁵ Applicant's written submissions, para 169.

¹³⁶ *Green*, *supra* note 74, para 42.

¹³⁷ *Interpretation Act*, RSA 2000, c I-8.

¹³⁸ Applicant's written submissions, para 243.

¹³⁹ Applicant's written submissions, para 201.

¹⁴⁰ Applicant's written submissions, para 196.

174. Regardless, the case law clearly establishes that CPD programs are an important part of the public interest:

[a 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.¹⁴¹

v. Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are reasonable

175. As the above analysis demonstrates, Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code fall reasonably within the LSA's scope of authority as they are consistent with the specific provisions of the LPA and its overriding purpose or object.

176. By way of summary:

- a. the evidence indicates that the LSA was motivated to increase the competence and ethics of the profession;
- b. the purpose and object of the LSA, as set out in the LPA, is to protect the public interest;
- c. the meaning of public interest is for the LSA to decide and is owed deference;
- d. the Supreme Court of Canada has ruled that:
 - i. the establishment of mandatory standards, for both CPD and conduct, is compatible with the purpose and duty of a law society;
 - ii. mandatory standards which, in the benchers' view, serve to protect the public are in keeping with the duties given to a law society;
 - iii. to ensure that those standards have an effect, a law society must be able to establish consequences for those who fail to adhere to them;
 - iv. a suspension is a reasonable way to ensure that lawyers comply with the CPD program;

¹⁴¹ [Green](#), supra note 74, para 3.

- v. promoting equality, ensuring equal access to the legal profession, supporting diversity within the bar, and preventing harm to vulnerable populations are valid things for a law society to consider; and
 - vi. the public interest may include protecting the values of equality and human rights;
- e. the LSA has broad regulatory powers to accomplish its mandate of protecting the public interest;
 - f. the Benchers have a broad and open-ended authority in section 6(l) of the LPA to establish a code of ethical standards for members;
 - g. the Benchers have a broad authority in section 7(1) to establish rules for the exercise or carrying out of the powers and duties conferred or imposed on the LSA or the Benchers under the LPA, which includes upholding and protecting the public interest, including CPD;
 - h. the Benchers also have an explicit authority in section 7(2)(g) to make rules respecting the suspension of a member if the member fails to do any act within a specified timeline; and
 - i. section 6(n) gives the Benchers have the power to take any action and incur any expenses the Benchers consider necessary for the promotion, protection, interest or welfare of the LSA.
177. While the Applicant repeatedly argues that the public interest is limited to “legal competence, legal ethics, and independence of the bar”, that is not the case. As outlined above, the public interest includes ensuring equal access to the legal profession, supporting diversity within the bar, and preventing harm to LGBTQ law students. It also includes upholding a positive public perception of the legal profession.¹⁴²
178. Fundamentally, the public interest is a broad concept that is within the LSA’s discretion to determine on the basis of a number of policy considerations related to the public interest.
179. With respect to the challenged Rules and the Code, the LSA determined that these Rules and the Code were needed to ensure competency within the profession, which included increasing the cultural competence of its members, and to demonstrate to members the importance of protecting against discrimination and harassment. The LSA is entitled to consider how to promote the competence of the bar as a whole.
180. The competency of the profession, including cultural competency, and the elimination of discrimination and harassment are inherent to protecting public confidence in the profession

¹⁴² *Trinity Western*, *supra* note 104, para 40.

and in promoting the quality of legal services provided to the public. A bar with cultural competency is more responsive to the needs of the public it serves.

181. In promoting the public interest in the administration of justice and, relatedly, public confidence in the legal profession, the LSA was entitled to consider competence and cultural competence. A lack of cultural competence in the profession could undermine public confidence in the LSA's ability to independently regulate in the public interest.
182. In addition, according to the Supreme Court, all of the Rules and the Code must be viewed from the following perspectives:
 - a. the starting point is judicial restraint and respect for the LSA's role;
 - b. the court is not to undertake a *de novo* analysis;
 - c. the court is not to consider the policy merits of the subordinate legislation;
 - d. the court should not: ask whether the subordinate legislation is necessary, wise, or effective; inquire into the underlying political, economic, social, or partisan considerations; or assess whether the subordinate legislation will actually succeed at achieving the statutory objective;
 - e. the court is to presume that the subordinate legislation is valid;
 - f. the onus is on the Applicant to show that the subordinate legislation is unreasonable; and
 - g. wherever possible, the subordinate legislation and the enabling statute should be interpreted in a manner that renders the subordinate legislation *intra vires*.
183. Based on all of this, Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are *intra vires* the LSA. They fall within a reasonable interpretation of the LSA's authority under the LPA, having regard to the relevant constraints. The LPA grants the LSA extremely broad authority to establish rules and ethical standards. This authority is constrained by the requirement that the LSA uphold and protect the public interest. Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code respect this constraint.

F. The LSA has not unreasonably interfered with the Applicant's Charter rights

i. The LSA has not interfered with the Applicant's Charter rights at all

184. Section 2(a) of the *Charter* provides that everyone has the right to "freedom of conscience and religion". The test for determining whether section 2(a) has been infringed is as follows:

- a. does the claimant sincerely believe in a belief or practice that has a nexus with religion; and
 - b. does the impugned measure interfere with the claimant's ability to act in accordance with their religious beliefs in a manner that is more than trivial or insubstantial?¹⁴³
185. Section 2(b) of the *Charter* provides that everyone has the right to "freedom of thought, belief, opinion and expression". The test for determining whether section 2(b) has been infringed is as follows:
- a. does the activity in question have expressive content;
 - b. does the method or location of this expression remove that protection; and
 - c. does the government action in question infringe that protection, either in purpose or effect?¹⁴⁴
186. Applying these tests, it is clear and obvious that the LSA has not infringed on the Applicant's section 2(a) or 2(b) rights.
187. The Applicant bears the onus of establishing that their *Charter* rights were infringed. In the present case, the Applicant identifies the tests just set out but fails to apply them. His arguments, however, appear to be as follows:
- a. the "Political Objective" or the "Political Objectives" and the "Theories" are in conflict with his own beliefs;
 - b. the LSA requires him to complete The Path and to complete The Path, he must answer multiple choice questions, and the Applicant does not believe that the "correct" answers are actually correct;
 - c. the LSA requires him to demonstrate what the LSA calls "cultural competence" or else his legal practice will be deemed unsafe, ineffective, and unsustainable; and
 - d. the LSA requires the Applicant to avoid engaging in "harassment and discrimination" or else his conduct may be "deserving of sanction".
188. In response, it's important to clarify what actions or measures the LSA has *actually* taken. As already set out:

¹⁴³ *Trinity Western*, *supra* note 104, para 63.

¹⁴⁴ *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2, para 38.

- a. the LSA amended Rules 67.2 and 67.3 so that a member is required to submit their CPD plan to the LSA and, on request by the LSA, produce a copy of the CPD plan and participate in a review of the CPD plan by the LSA;
- b. the LSA introduced a new CPD program under which each member is to develop a personalized learning plan for the CPD program year. In developing a plan, the member is asked to reference the Profile – a document which sets out nine domains or areas of competency that the LSA believes are important to maintain safe, effective, and sustainable legal practice in Alberta today. One of the domains is “Cultural Competence, Equity, Diversity, and Inclusion”. This competency is summarized as follows:

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 all people with dignity and respect and take active steps to support and advocate for members of enumerated groups.¹⁴⁵

While the LSA requires its members to complete a CPD plan in relation to the Profile, “lawyers are not required to demonstrate competency in every area of the Profile each year”.¹⁴⁶ Rather, a lawyer is required to select two or more competencies of their choosing (not domains) contained within the Profile to focus on in developing their learning plan. This approach acknowledges that CPD plans are personal to each lawyer, their practice, and their learning goals and that the LSA does not expect that all lawyers will be highly proficient in all domains included in the Profile. Once a member’s CPD plan is complete, the member is to use the CPD Tool to submit their plan to the LSA. The CPD Tool was created based on the Profile;

- c. the LSA introduced Rule 67.4 to allow it to prescribe additional specific CPD requirements in a form, manner, and time frame acceptable to the Benchers and to allow the LSA to automatically suspend a member for failing to comply with the additional specific CPD requirements;
- d. the LSA required its members to complete The Path, an online course which covers topics such as:
 - i. the cultural and historical differences between First nations, Inuit, and Metis;
 - ii. the evolution of the relationship between Canada and Indigenous people from pre-contact to yesterday’s headlines;

¹⁴⁵ CRP, Vol A & B, pp 179-202. See especially p 190.

¹⁴⁶ *Ibid*, pp 150-166. See especially p 159.

- iii. stories of social and economic success, reconciliation and resilience; and
 - iv. understanding intercultural communication in the workplace;
 - e. the LSA modified Part 6.3 of the Code to state that the LSA expects lawyers not to:
 - i. directly or indirectly discriminate against a colleague, employee, client or any other person;
 - ii. harass a colleague, employee, client or any other person;
 - iii. sexually harass a colleague, employee, client or any other person;
 - iv. 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.
189. It is difficult, if not impossible, to see how any of these things could interfere with or infringe upon the Applicant's rights to freedom of conscience, religion, or expression.
190. In more direct response to the Applicant's arguments:
- a. the Applicant's rights to freedom of conscience, religion, and expression, do not guarantee to the Applicant that the LSA's motivations will mirror and align with the Applicant's beliefs. Even if the "Political Objectives" conflict with the Applicant's beliefs, such a conflict does not result in a violation of the Applicant's *Charter* rights. It also again bears highlighting that when the Applicant refers to the "Political Objective" or the "Political Objectives", he is referring to what he believes the LSA's political persuasions and motivating ideologies are. In other words, the Applicant is essentially asserting that his *Charter* rights have been violated because what he thinks the LSA believes is at odds with what he believes;
 - b. the multiple-choice questions included in The Path do not ask the Applicant what he believes. Instead, they ask what the module taught. Further, while the Applicant alleges that the questions concern "complex matters of social, epistemological and historical 'truth'", this severely mischaracterizes the vast majority (if not all) of the questions included in The Path. Further, if the Applicant is so offended by The Path and the multiple-choice questions, then he has the option to educate himself on the required topics and then certify the same to the LSA, upon which he may be exempted from completing the Path;

- c. the Applicant is required to prepare and submit a CPD plan. If the Applicant wishes to do so, he can focus on competencies listed under the “Cultural Competence, Equity, Diversity, and Inclusion” domain. However, he is equally free to craft his plan using competencies listed in the other eight domains. He is explicitly “not required to demonstrate competency in every area of the Profile each year”.¹⁴⁷ If a member of the LSA fails to satisfy the CPD program requirements, they are subject to an administrative suspension. The LSA does not declare the member’s practice to be unsafe, ineffective, or unsustainable;¹⁴⁸ and
 - d. the Code defines and clarifies the expectations and standards of behaviour that are applied to lawyers. It is intended to serve a practical, as well as a motivational function. If the LSA received a complaint that the Applicant discriminated against someone, harassed someone, sexually harassed someone, or engaged in reprisal against someone, then the LSA would handle the complaint pursuant to its conduct process. More specifically, the LSA would review and analyze the complaint and then decide to dismiss the complaint or refer the matter to a practice review or conduct committee. At the end of the process, it’s possible that a conduct committee might determine that the Applicant’s conduct was deserving of sanction. Furthermore, as mentioned above, the standards set out in Part 6.3 of the Code essentially mirror those set out in other pieces of legislation. Thus, if Part 6.3 of the Code violates the *Charter*, then the *Alberta Human Rights Act* and the *Occupational Health and Safety Act* do as well.
191. In sum, the LSA has not ordered or required the Applicant to think, believe, say, or do anything and has not interfered with his rights to freedom of conscience, religion, or expression.

ii. The balancing exercise

192. *Charter* rights are not absolute. Instead, they are subject to reasonable limits.¹⁴⁹
193. When the Court considers an allegation that a law infringes a *Charter* right, the Court first considers whether a *Charter* right has been violated and, if so, the Court next conducts an *Oakes* analysis to determine if the infringement is reasonable.¹⁵⁰
194. In *Doré v Barreau du Québec*, the Supreme Court of Canada moved away from a strict application of the *Oakes* test in assessing an administrative decision for *Charter* compliance in favour of a “more flexible administrative approach” to balancing *Charter* protections in the exercise of administrative discretion.¹⁵¹

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ *Charter*, *supra* note 1, s 1.

¹⁵⁰ *R. v. Oakes*, [1986] 1 S.C.R. 103.

¹⁵¹ 2012 SCC 12, para 37 [*Doré*].

195. *Doré* involved a challenge to the decision of a disciplinary body to reprimand a lawyer for the content of a letter he wrote to a judge. The lawyer did not challenge the constitutionality of the provision in the lawyer code of ethics that authorized the reprimand. Instead, he alleged that the reprimand decision itself was unconstitutional because it infringed his freedom of expression under s. 2(b) of the *Charter*.
196. As noted by the Court in *Doré*, a discretionary administrative decision made by a decision-maker within the scope of their mandate is normally judicially reviewed on the deferential standard of reasonableness.¹⁵² The question was whether reasonableness should be replaced by the *Oakes* test where the administrative decision-maker was required to account for *Charter* protections.
197. In moving away from the *Oakes* test in favour of an administrative law framework, the Court found that such a change was justified, at least in part, by the “completely revised relationship between the *Charter*, the courts, and administrative law”.¹⁵³ This changed relationship included the policy of deference on judicial review to recognize legislative intent and the specialized expertise of administrative decision-makers.
198. Under the administrative law framework set out in *Doré*, the decision-maker must “balance the severity of the interference of the *Charter* protection with the statutory objectives”.¹⁵⁴ On judicial review, the question is whether the decision reflects a “proportionate balancing” of the relevant *Charter* protections.¹⁵⁵ If, in exercising their discretion, an administrative decision-maker has proportionately balanced the *Charter* protections with the statutory objectives, then the decision will be found to be reasonable. While this was a move away from a formulaic application of the *Oakes* test, the Court observed that the administrative framework used the same “justificatory muscles”; that is, balance and proportionality.¹⁵⁶
199. In *Loyola High School v Quebec (Attorney General)*, the Supreme Court of Canada affirmed the *Doré* framework, with some modification.¹⁵⁷ In *Loyola*, the Court identified a preliminary issue in the analysis: “whether the decision engages the *Charter* by limiting its protections”.¹⁵⁸ If such a limitation has occurred, then the question becomes whether the decision reflects a proportionate balancing of *Charter* protections in light of statutory objectives.¹⁵⁹
200. It is not entirely clear what framework the Court should apply in a case like this where the subordinate legislation looks somewhat like a law, but also somewhat like an adjudicative

¹⁵² *Ibid.*, para 3.

¹⁵³ *Ibid.*, para 30.

¹⁵⁴ *Ibid.*, para 56.

¹⁵⁵ *Ibid.*, para 57.

¹⁵⁶ *Ibid.*, para 5.

¹⁵⁷ 2015 SCC 12 [*Loyola*].

¹⁵⁸ *Ibid.*, para 39.

¹⁵⁹ See for example *Trinity Western*, *supra* note 104, paras 57-59; *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, paras 59-74.

decision. However, given the conclusion set out above, that none of the Applicant's *Charter* rights have been infringed, it is unnecessary for the Court to conduct this secondary analysis.

201. If, however, the Court were to find that the Applicant's *Charter* rights have been infringed upon, then the Court ought to apply the *Dore / Loyola* framework in order to give credence to the fact that a discretionary administrative decision made by a decision-maker within the scope of their mandate is normally judicially reviewed on the deferential standard of reasonableness.
202. The *Doré / Loyola* framework was summarized by the Supreme Court of Canada as follows:

Under the *Doré/Loyola* framework, an administrative decision which engages a *Charter* right will be reasonable if it reflects a proportionate balancing of the *Charter* protection with the statutory mandate. The reviewing court must be satisfied that the decision "gives effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate. In other words, the *Charter* protection must be "affected as little as reasonably possible in light of the state's particular objectives". ...

The reviewing court must consider whether there were other reasonable possibilities that would give effect to *Charter* protections more fully in light of the objectives, always asking whether the decision falls within a range of reasonable outcomes. If there was an option or avenue reasonably open to the decision-maker that would reduce the impact on the protected right while still permitting him or her to sufficiently further the relevant objectives, the decision would not fall within a range of reasonable outcomes. The reviewing court must also consider how substantial the limitation on the *Charter* protection was compared to the benefits to the furtherance of the statutory objectives in this context. In the context of a challenge to an administrative decision where the constitutionality of the statutory mandate itself is not in issue, the question is whether the administrative decision-maker has furthered his or her statutory mandate in a manner that is proportionate to the resulting limitation on the *Charter* right.¹⁶⁰

203. The LSA's actions, rules, standards, and programs have significantly advanced the public interest. In accordance with *Green*, it is in the public interest for the LSA to require lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity, ethics, and professionalism and in accordance with *Trinity Western*, it is in the public interest for the LSA to take actions to promote equality, ensure equal access to the legal profession, support diversity within the bar, and prevent harm to the vulnerable.
204. Even if there has been some interference with the Applicant's *Charter* rights, which is denied, the interference is at most minimal. Again, the LSA has not ordered or required the Applicant to think, believe, say, or do anything to interfere with his rights to freedom of conscience, religion,

¹⁶⁰ *Trinity Western*, *ibid*, paras 35-36.

or expression. Further, the LSA has provided the Applicant with options when it comes to completing the requirements. For example, the Applicant can decide what types of competencies to focus on in his CPD plan just as the Applicant has the option of pursuing education other than The Path.

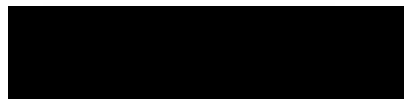
205. The LSA has significantly advanced the public interest and has not interfered (or minimally interfered if at all) with the Applicant's *Charter* rights. Consequently, in the present case, the LSA's actions reflect a proportionate balancing of the *Charter* and the LSA's statutory mandate.

V. CONCLUSION AND RELIEF SOUGHT

206. As stated at the outset, this case is about the LSA's statutory authority to establish Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code.
207. For the reasons set out above, in establishing Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code, the LSA has acted reasonably and within the scope of its statutory authority. The LSA has broad and specific powers under the LPA and, when reviewed for reasonableness, Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are *intra vires* as they are all in the public interest.
208. As it relates to the Applicant's secondary *Charter* argument, Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code do not infringe on any of the Applicant's rights and to suggest otherwise is to mischaracterize and misconstrue Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code and the LSA's actions.
209. Consequently, the Respondent LSA respectfully requests that:
- a. the Application be dismissed;
 - b. costs in such amount this Honourable Court deems appropriate; and
 - c. such further and other relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April 2025.

FIELD LLP


 Jason J. Kully / Leanne Monsma
 Counsel for the Law Society of Alberta

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Limitations inherent in the courts' institutional capacity

- Matters which are in essence matters of preference*

- 111 *R. v Inland Revenue Commissioners Ex p. National Federation of Self-Employed and Small Businesses Ltd* [1982] A.C. 617 at 644 (Lord Diplock: "It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central governments is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge"). This view towards judicial deference on constitutional grounds is shared by Lord Steyn, "Deference: A Tangled Story" [2005] P.L. 346; J. Jowell, "Judicial Deference and Human Rights: A Question of Competence", in P. Craig and R. Rawlings (eds), *Law and Administration in Europe, Essays in Honour of Carol Harlow* (2005), p.67; Jowell, "Judicial Deference: Servility, Civility to Institutional Capacity" [2003] P.L. 592. In respect of "common law" rights the courts may presume that Parliament did not intend to abrogate the right unless clearly enunciated—"the principle of 'legality'" (on which see 5–036). cf. *Rehman v Secretary of State for the Home Department* [2001] UKHL 47; [2003] 1 A.C. 153 at [62] (Lord Hoffmann contended that matters of national security "must be made by persons whom the people have elected and whom they can remove").

¹¹² See, e.g. in relation to local authorities: *R. v Brighton Corp Ex p. Tilling (Thomas) Ltd* (1916) 85 L.J.K.B. 1552 at 1555 (public transport licensing); *Sagnata Investments Ltd v Norwich Corp* [1971] 2 Q.B. 614 (amusement arcade permit); *Cumings v Birkenhead Corp* [1972] Ch. 12 (local educational policy); *Cannock Chase DC v Kelly* [1978] 1 W.L.R. 1 (allocation of tenancies of council houses); *Pickwell v Camden LBC* [1983] Q.B. 962 (allocation of salaries and wages even though strike still in progress). But note the caution expressed in *Huang v Secretary of State for the Home Department* [2007] UKHL 11; [2007] 2 A.C. 167 at [17] (HL found unpersuasive the submission of the Secretary of State that the decision-maker and the court should assume that the immigration rules adopted by the responsible minister and laid before Parliament “had the imprimatur of democratic approval and should be taken to strike the right balance between the interests of the individual and those of the community”). In *R. (on the application of Sinclair Collis Ltd) v Secretary of State for Health* [2011] EWCA Civ 437; [2012] Q.B. 394 (on the lawfulness under EU law and Convention rights of delegated legislation banning the sale of tobacco from automatic vending machines) the CA accepted, with different nuances, that “the involvement of the legislature is a factor favouring a broader margin of appreciation than would be appropriate to a purely executive decision” (Lord Neuberger of Abbotsbury M.R. at [211]–[214]), though this was not inevitably the case when all the relevant factors were taken into account (Arden L.J. at [151]–[155]).

¹¹³ *Council for the Civil Service Unions v Minister for the Civil Service* [1985] 1 A.C. 374 at 418 (Lord Roskill).

¹¹⁴ *R. v Secretary of State*
521 at 593, 597 (Lord H
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¹¹⁶ *R. (on the application*
[2008] 2 C.M.L.R. 57 at [
¹¹⁷ *R. (on the application*
(No.2) [2008] UKHL 61; [
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BOUNDARIES OF JUDICIAL REVIEW

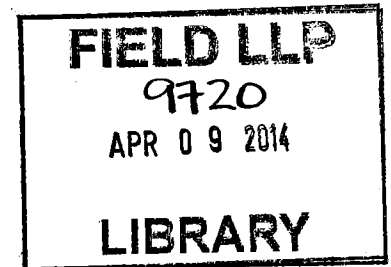
The Law of Justiciability in Canada Second Edition

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Issues are sometimes resolved by judicial process which might have been resolved by political processes, and justice is often contrasted with politics, not because it is even *prima facie* expected that political decisions will be unjust, but because there are characteristic (though disputed) differences between the ways in which decisions may be reached ... But what does this contrast amount to, and are there some types of disputes which are inherently suited to one sort of decision rather than another?

Geoffrey Marshall¹

It is the prerogative of a sovereign Parliament to make its intention known as to the role the courts are to play in interpreting, applying and enforcing its statutes. While the courts must determine the meaning of statutory provisions, they do so in the name of seeking out the intention or sovereign will of Parliament, however purposively, contextually or policy-oriented may be the interpretative methods used to attribute such meaning. If, then, the courts interpret a particular provision as having the effect of ousting judicial remedies for entitlements contained in that statute, they are, in principle, giving effect to Parliament's view of the justiciability of those rights. The rights are non-justiciable not because of the independent evaluation by the court of the appropriateness of its intervention, but because Parliament is taken to have expressed its intention that they be non-justiciable.

Chief Justice Brian Dickson²

INTRODUCTION

In the previous chapters, I explored areas where the boundaries of judicial review turned on the capacity of courts to hear and decide disputes that were not "live" in one sense or another. In this chapter, I consider the boundaries, if any, where disputes raise political questions. The "political questions" doctrine has a chequered history and uncertain future in Canada. Its premise is simple. Certain disputes are either "purely" political or designated as such by statute, and must be resolved, if at all, through the political process. However, the common law suggests that a court should not allow actions to be immune from review lightly.³ Moreover, an overly broad understanding of justiciability will lead to a

- 1 G. Marshall, "Justiciability" in A. Guest (ed.) *Oxford Essays in Jurisprudence* (London: Oxford University Press, 1961), 265.
- 2 *Canada (Auditor General) v. Canada (Minister of Energy, Mines & Resources)*, [1989] 2 S.C.R. 49 (S.C.C.) at 91-92 [hereinafter *Auditor General*].
- 3 See for a discussion of this common law principle, *Hamilton City Council v. Waikato Electricity Authority*, [1994] 1 N.Z.L.R. 741 (New Zealand H.C.).

Regulation of Professions in Canada § 1:1

Regulation of Professions in Canada

James T. Casey

Chapter 1. Introduction

§ 1:1. Generally

The purpose of this book is to review the law with respect to the regulation of professions in Canada. The power of self-government granted to the professions has two essential aspects—the authority to license and the ability to discipline licensees. The licensing power is essentially the authority to decide who shall be permitted to earn their living by the pursuit of a particular calling.¹ This means that professional organizations act as the gatekeepers to the professions in their assessment of the qualifications of prospective members. Once an individual becomes a member of a profession, the professional organization has the power to regulate the conduct of the licensee by establishing rules of practice and standards of conduct enforceable through the discipline process.

Self-governing professions have a long history in Canada. In the pre-Confederation era, only the legal and medical professions were established to any significant extent. Other modern professions were in their infancy with individual practitioners forming small informal groups to provide professional support. As these groups became better organized, they began to lobby the Legislatures for the extension of self-governance to their particular professions. In the post-World War II era, there was a tremendous growth of all types of administrative tribunals, including professional tribunals, as the Federal Parliament and the Provincial Legislatures recognized the advantages of delegating powers to specialized tribunals staffed by experts in the area. Initially, the debate focused on the advantages of self-governance to the professions. However, in the late 1960's and the 1970's, the public's focus began to change and fundamental questions were asked. Is a self-governing model for the professions in the best interest of the public? Are the rights of the individual adequately protected in a self-governing model? A number of provinces conducted investigations into the self-governing status of various professional organizations. For example, the *McRuer Report*² in the Province of Ontario, provided recommendations which formed the basis for the future legislative framework of many self-governing professions. The various studies carried out during this period generally affirmed the desirability of the self-governing model, but recommended greater emphasis on public accountability and on the protection of the rights of the individual.

During the first part of the century, the principles of natural justice which provide protection to individuals had been steadily eroding in Canada, largely due to the artificial distinctions among judicial, *quasi-judicial* and administrative actions.³ The supervisory function of the Court of administrative tribunals was extremely restricted because the requirements of natural justice were found to apply only to judicial and *quasi-judicial* acts. The landmark decision of the Supreme Court of Canada in 1979 in *Nicholson*⁴ led to the establishment of the doctrine of procedural fairness and largely reduced the need to make artificial distinctions based on the characterization of the type of power being exercised. The Court held that the requirements of procedural fairness could apply even where no *quasi-judicial* function was involved. As a result, there was a tremendous expansion of the type and number of decisions made by administrative tribunals to which administrative law remedies applied. Professional disciplinary tribunals had long been considered in Canada to be *quasi-judicial*, and thus subject to a greater degree of review by the Courts. Therefore, while the distinction between *quasi-judicial* and administrative actions was somewhat less important in this area of the law, the *post-Nicholson* era saw a greater general awareness of the rights of the individual in administrative law. There was a great explosion of case law with respect to professional tribunals, as individuals increasingly challenged the decisions of their professional bodies.

The enactment of the [Canadian Charter of Rights and Freedoms](#) in 1982 led to a further increase in the case law of professional tribunals. The [Charter](#)'s focus on individual rights provided a natural remedy for an individual in conflict with the collectivity represented by his or her professional organization. [Charter](#) challenges regarding the regulation of the professions presented Courts with the difficult task of attempting to balance the legitimate and often competing interests of the stakeholders in professions. There are three groups with an interest in the effectiveness and the fairness of the self-governance of professions: the public, the profession itself, and members of the profession who are subject to regulation and potentially, discipline.⁵

Firstly, the public's interest is clear. The Supreme Court of Canada has concluded that it is difficult to overstate the importance in our society of the proper regulation of our learned professions.⁶ The primary purpose of the establishment of self-governing professions is the protection of the public. This is achieved by ensuring that only the qualified and the competent are permitted to practise and that members of the profession conform to appropriate standards of professional conduct. The Supreme Court has on many occasions noted the crucial role that regulatory organizations play in protecting the public interest. The Court notes: "The privilege of professional self-regulation therefore places the individuals responsible for enforcing professional discipline under an onerous obligation. The delegation of power by the state confirms the importance of properly discharging this obligation and the seriousness of the consequences of failing to do so."⁷

Secondly, the members of established professions have an interest in the proper functioning of their organization. The downfall of one individual is said to diminish all members of the profession. Clearly, there is an interest in ridding the profession of the incompetent and the unethical. Further, if the public perceives that a profession is not properly functioning in the public's interest, then there will be pressure on the government to either re-examine or revoke a profession's self-governing status. Members of a 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.

Finally, members of the profession who may be subject to discipline have a crucial interest in the proper functioning of the self-governing process. Disciplinary sanctions can lead to the loss of one's profession, the loss of one's work. The Supreme Court of Canada describes the importance of work as follows:⁸

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in Society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

Disciplinary tribunals have been described as both an anachronism and an anomaly, since they allow professional tribunals to establish private courts like the feudal courts of old.⁹ Members of a disciplinary tribunal are not elected by the general public and are often not appointed by the government, but have the authority to impose disciplinary sanctions of the most serious kind and until recently, most disciplinary tribunals carried out their work behind closed doors as required by statute.

The tremendous powers of a disciplinary tribunal have been described as having the capability of destroying a man's or woman's professional life,¹⁰ affecting in a grave and sometimes irretrievable way, not only the member being disciplined, but also his colleagues, the members of his family and his patients or clients.¹¹ As stated by the British Columbia Court of Appeal:¹²

Disciplinary proceedings expose a member of the Society to a range of punishments which include suspension of the right to practise and even disbarment. In addition, irrespective of their outcome, the very nature of the proceedings can have a devastating effect on a member's reputation, the single most valuable asset which any professional can possess.

The far-reaching effect of professional sanctions led the *McRuer Report* to conclude the following with respect to the importance of procedural safeguards in the disciplinary process:¹³

The most obvious feature of the power of a self-governing body to discipline its members is that it is clearly a judicial power within the meaning we have given to that term, i.e., its consists of the independent and impartial application of predetermined rules and standards; no element of policy should be present in the exercise of this power. It is a power whose exercise may have the most far-reaching effects upon the individual who is disciplined. The sanction imposed upon one who has been found guilty of professional misconduct may be anything from a reprimand to expulsion from the profession. Where a conviction may result in what has aptly and justifiably been termed “economic death”, it is vital that procedural safeguards to ensure fairness be clearly established and rigorously observed.

The tension generated from the balancing of the legitimate and at times competing interests of the public, the profession, and the individual, has resulted in the creation of an unique body of law concerning the regulation of professions in Canada.

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Footnotes

- 1 Ontario, Royal Commission Inquiry into Civil Rights McRuer Report, (Report No. 1, Vol. 3) Commissioner: James Chalmer McRuer (Toronto: Queen's Printer, 1968-1971) 1163.
- 2 Ontario, Royal Commission Inquiry into Civil Rights McRuer Report, (Report No. 1, Vol. 3) Commissioner: James Chalmer McRuer (Toronto: Queen's Printer, 1968-1971) 1163.
- 3 See the history of the development of the principles of natural justice in D.P. Jones & A.S. de Villars, *Principles of Administrative Law* (Toronto: Carswell, 1985) at 147 and following.
- 4 [Nicholson v. Haldimand-Norfolk \(Regional Municipality\) Commissioners of Police \(1978\), \[1979\] 1 S.C.R. 311.](#)
- 5 Ontario, Royal Commission Inquiry into Civil Rights McRuer Report, (Report No. 1, Vol. 3) Commissioner: James Chalmer McRuer (Toronto: Queen's Printer, 1968-1971) 1163 at 1183; see also generally [DeMaria v. Law Society of Saskatchewan, 2013 SKQB 178 \(Sask. Q.B.\)](#) at para. 41 to 45, affirmed [2015 SKCA 106](#), [2015 CarswellSask 590 \(Sask. C.A.\)](#); application for leave to appeal dismissed with costs (2016), [2016 CarswellSask 224](#), [2016 CarswellSask 225](#), [2015] S.C.C.A. No. 493 (S.C.C.).
- 6 [Rocket v. Royal College of Dental Surgeons \(Ontario\) \(1990\), 71 D.L.R. \(4th\) 68 at 80 \(S.C.C.\)](#).
- 7 [Pharmascience inc. c. Binet, 2006 SCC 48, 2006 CarswellQue 8953, 2006 CarswellQue 8954 at paragraph 36 \[SCC\]](#).
- 8 [Reference Re Public Service Employee Relations Act \(Alberta\), \[1987\] 1 S.C.R. 313 at 368.](#)
- 9 [Branigan v. Yukon Medical Council \(No. 1\) \(1986\), 21 Admin L.R. 127 at 143 \(Y.T.S.C.\)](#).
- 10 [Bernstein v. College of Physicians & Surgeons \(Ontario\) \(1977\), 15 O.R. \(2d\) 447 at 470 \(Div. Ct.\)](#).
- 11 [Brand v. College of Physicians & Surgeons \(Saskatchewan\) \(1989\), 58 D.L.R. \(4th\) 178 at 184 \(Sask. C.A.\)](#).
- 12 [Cameron v. Law Society \(British Columbia\) \(1991\), 81 D.L.R. \(4th\) 484 at 492 \(B.C.C.A.\)](#).
- 13 Ontario, Royal Commission Inquiry into Civil Rights McRuer Report, (Report No. 1, Vol. 3) Commissioner: James Chalmer McRuer (Toronto: Queen's Printer, 1968-1971) 1163 at 1181.

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This is Exhibit " C " referred to
in the Affidavit of

Yue (Roger) Song

Sworn before me this 4 day
of June, 2026

A Commissioner for Oaths in and for Alberta

Glenn Blackett

Barrister & Solicitor

FIAT: Let the within Surreply Brief be filed notwithstanding that it is being filed late

J.C.K.B.A

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 **APPLICANT'S SURREPLY BRIEF**

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**APPLICANT'S
SURREPLY BRIEF**

FIAT: Let the within brief be filed, this
23rd day of April, 2025.

OPM.

J.C.K.B.A.

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I. INTRODUCTION

1. The facts of this case were already extraordinary. The applicant alleged and cogently demonstrated, on the basis of evidence and law, that:
 - a. the LSA is in direct violation of its duties and exceeding its jurisdiction;
 - b. the LSA is encroaching upon the bar's independence through the imposition of political objectives anathema to the *Constitution*; and
 - c. the LSA is doing so by use of those tools at its disposal; "competence" and "ethics."
2. The LSA's response is more extraordinary still, both for what the LSA says and for the LSA does not say.
3. The LSA says that, indeed, it has political objectives, but refuses to say what those political objectives are. It calls its objectives "competence", "ethics" and the "public interest", seemingly oblivious to the applicant's allegation that the terms "competence" and "ethics" are being abused.
4. The LSA says that how the LSA is utilizing these terms should not be demonstrated, is none of this Honourable Court's business, and is beyond the Court's faculties.
5. As to the obvious question, "then how is the Court to scrutinize the legality of the LSA's conduct?" the LSA has nothing to say at all – at least not directly.
6. Indirectly, the LSA is saying – nay, shouting – that this Court should assume what the LSA means by such terms. The Court should assume that the LSA means by these terms something that is within the LSA's jurisdiction and concordant with the *Constitution*.
7. In other words, the LSA seems to be asking this Court to conduct a judicial review in form but not substance.
8. Given the allegations, there could be no worse time for the Court to abandon its Constitutional post.
9. The LSA has little to say, too, about the independence of the bar – the central column of the applicant's complaint. And what little it has to say is, in effect, that the independence of the bar means giving the Benchers lots of power, subject to little oversight.
10. The applicant hopes the argument below elucidates these and other fundamental flaws in the LSA's extraordinary position.

II. THE LSA’S ADMISSIONS AND OMISSIONS

A. Admissions

i. Political Objectives

11. The LSA admits:

*... the Profile, the CPD Tool, the “Political Objective” [and] the “Political Objectives” are ... political ...*¹

12. It admits:

*.. the Profile and the CPD Tool involve moral, strategic, ideological, historical, and policy considerations.*²

13. It cautions the Court against second-guessing:

*... matter[s] of individual (including political) preference ...*³

14. It admits:

*... the Profile and the CPD Tool are essentially matters of preference – they represent the Benchers’ preferred methods of ensuring CPD ...*⁴

15. It cautions the Court from any inquiry into:

*... underlying political, economic, social or partisan considerations ...*⁵

16. In other words, the LSA admits (in a roundabout way) that it is exercising its statutory powers in pursuit of “ideological” and “political” objects, including when it implemented the Profile and CPD Tool.

17. That should be a shocking admission. It is a fundamental breach of the LSA’s primary objective to protect the bar’s independence including, most especially, from political interference.

18. The LSA, however, may claim that this is not a shocking admission at all – that by “politics” the LSA only meant the ordinary exercise of statutory discretion, for example, the

¹ Respondent’s brief at para.102: Such is the case here. None of the Profile, the CPD Tool, the “Political Objective” or the “Political Objectives” are subject to judicial review. They are political and are simply not justiciable.”

² Respondent’s brief at paras. 99.c.

³ Respondent’s brief at paras. 97.a. and 101.

⁴ Respondent’s brief at para. 99.a.

⁵ Respondent’s brief at paras.122b; see also paras.119.c. and 182.d.

setting of fees under *Legal Profession Act* (“**LPA**”) s. 7(2)(g) – that by “ideology” it meant only the postulates of our *Constitution*.⁶

19. To answer the jurisdictional and *Charter* questions before this Court, it is therefore necessary to know exactly what the LSA’s “political” and “ideological” preferences are.
20. But, of course, the premise of the LSA’s argument is that the Court is not allowed to know that. The LSA’s argument is a convenient “Catch-22”:
 - a. while the LSA’s political and ideological objectives are:
 - i. illegal if they are the Political Objectives; and
 - ii. legal if they are the proper exercise of statutory discretion,
 - b. it is illegal⁷ to figure-out what its preferences are.
21. The obvious upshot, as evidenced throughout the CRP, is that the LSA wants this Court to essentially assume that the LSA’s political and ideological objects are *intra vires*. In other words, the LSA’s proposal is that this Court can satisfy its duty of “robust”⁸ judicial review by assuming the LSA is within its jurisdiction.
22. The LSA’s (i.e. the Benchers’) political and ideological preferences are not some intangible state of mind with only a loose connection to the Court’s judicial function. They are:
 - a. the objects for which the LSA exercises its statutory discretion – improper objects:
 - i. are a nullifying abuse of discretion;⁹
 - ii. are not a “pressing and substantial objective” under the *Charter*’s s. 1¹⁰; and
 - b. set-out in the Profile, the Impugned Code and the Path so knowing what they are provides definitional clarity to the vague terminology used in those and other LSA Resources, where:
 - i. the LSA has no jurisdiction to impose improper “competence” and “ethics” including “competence” and “ethics” which incorporates the Theories; and

⁶ Which would be a misnomer, as the term generally excludes empiricism.

⁷ i.e. Beyond the Court’s constitutional legitimacy and institutional capacity.

⁸ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“**Vavilov**”) at para. 72.

⁹ Applicant’s brief at para. 289.

¹⁰ See below.

- ii. if “competence” and “ethics” mean what Song demonstrates, he proves important parts of his *Charter* claims; and
 - c. objects still pursued by the LSA and are the subject, therefore, of the applicant’s request for *prohibition* and for an injunction under the *Charter*.
23. The applicant argues below that the LSA’s suggestion¹¹ that this Court should assume that various nomenclature bears its superficial meaning¹² risks this Court falling into a motte-and-bailey fallacy – the Court will assume these terms evidence a defensible position (the motte: the proper governance of the legal profession) when in fact they evidence an indefensible position (the bailey: hostility to the Constitution).
24. The Court must, therefore, find out what the LSA’s guiding political and ideological objects are (see below at section II.B.ii. (What the LSA’s Political Objectives Are)).

ii. Public Interest Objective

25. Throughout the brief the LSA admits that its decisions were made for the object of the “public interest” suggesting the LSA is operating as if the LSA contains the same type of public interest clauses as the legislation in British Columbia and Manitoba. It does not. The LSA admits, therefore, pursuing a statutory objective which is far more general and broad than can be discerned from the text and scheme of the *LPA*. The LSA admits, therefore, an Abuse of Improper Objectives.¹³

B. Omissions

i. The Independence of the Bar

26. The thrust of the applicant’s application is that the LSA is illegitimately interfering with the independence of the bar undermining the rule of law.
27. It is incredible, therefore, that the LSA has so little to say on the matter.
28. Equally incredible are the uses to which the LSA puts the little-referenced concept. Rather than recognizing that its statutory duty to protect the independence of the bar is an overriding limit on its discretion, the LSA only conceives of the bar’s independence as something which necessitates expansive powers and limited judicial oversight.

¹¹ Undeniably implied by the scheme of the LSA’s argument.

¹² Especially “competence”, “cultural competence”, “harassment” and “discrimination”.

¹³ Respondent’s brief at paras. 6, 99.b., 138, 139, 161 and 174. At times the LSA will phrase its objects in more narrow terms (for example, “competence”) but that does not cure the problem.

29. The LSA, therefore, seriously misses the point – or, rather, refuses to address it.

30. In its first sentence, the LSA asserts:

*This case is not about ... the independence of lawyers or the rule of law.*¹⁴

31. Yes, it is. This describes almost the entirety of the applicant's evidence and legal argument.

32. The LSA references the relationship between the privilege of self-governance and the concomitant duty to govern in the public interest:

*... the purpose of an independently regulating profession is to uphold and protect the public.*¹⁵

33. The purpose of this observation, however, is to reinforce the LSA's argument that the LSA's statutory objective is, therefore, to pursue the statutory objective of:

*... the "public interest" [which] is "for the Law Society to determine" ...*¹⁶

which, as discussed below, is wrong because it ignores the words of the statute.

Regardless, as can be seen, the LSA employs the concept of independence in support of the LSA's powers being interpreted as broad and expansive.

34. Finally, the LSA references the bar's independence where it discusses the relationship between deference and freedom as follows:

*As the governing body of an independently regulating profession, the Law Society of Alberta's determination of the way its broad public interest mandate will best be furthered is entitled to deference. This deference maintains the independence of the bar; a hallmark of a free and democratic society.*¹⁷

35. Here the LSA references the independence of the bar to justify its broad and expansive powers being exercised with broad deference.

36. In other words, the LSA uses "the independence of the bar" only as a rhetorical means to an end.

¹⁴ Respondent's brief at para. 1, a claim repeated at para. 116.

¹⁵ Respondent's brief at para. 134.a., reproduced at paras. 135 and 136.

¹⁶ Respondent's brief at para. 138.

¹⁷ Respondent's brief at para. 6, see also para. 138.

37. The LSA politically interfering with the self-governing bar of Alberta lawyers – and immune from judicial oversight in such interference – is not a “hallmark of a free and democratic society” it is a hallmark of authoritarianism.
38. The rule of law requires an independent bar, not independent Benchers.

ii. What the LSA’s Political Objectives Are

39. While the nature of the LSA’s political and ideological objects are essential to answering the legal questions before this Court, the LSA refuses to tell the Court what they are and tells the Court the entire topic is simply off-limits.
40. It should be noted, however, that the LSA nowhere squarely denies that its objectives are the Political Objectives. Rather, it seems only to squarely deny that its objectives are exactly the Political Objectives:

*As it relates to the “Political Objective” or the “Political Objectives”, the LSA disagrees with the Applicant’s characterizations.*¹⁸

*The Applicant repeatedly suggests that the LSA was motivated by its “Political Objective” or “Political Objectives”. However, these assertions are not supported by the evidence. Rather, the record indicates that the LSA’s motives were to increase the competence of the profession and hold the profession to higher and clearer ethical standards.*¹⁹

41. Given the applicant’s brief, which demonstrates that the LSA’s Political Objectives are directly hostile to virtually the entire *Constitution* and represent a profound violation of the LSA’s prime duties, the Court should have expected a robust denial and fulsome explanation. Instead, the LSA simply repeats “competence”, “ethics” etc. without any acknowledgment that the meaning of those terms is, really, the issue in dispute.
42. In any case, the LSA admits that its objectives include:
 - a. “diversity”²⁰;
 - b. “preventing harm to vulnerable populations”²¹;

¹⁸ Respondent’s brief at para. 100.

¹⁹ Respondent’s brief at para. 129; see also paras. 62 and 93.c.

²⁰ Respondent’s brief at paras. 147, 176.d., 177 and 203.

²¹ Respondent’s brief at paras. 176 and 203.

c. avoiding “violence” (by which it means “psychological injury or harm”)²²,

which, as evidenced in a review of the Impugned Code, the Profile and the Path undeniably include the Theories.

43. In addition to the applicant’s comprehensive demonstration that the LSA, indeed, is pursuing the Political Objectives (including the incorporation of the Theories into its regulation of competence and ethics), in the applicant’s submission it would be reasonable to draw the inference, given the LSA’s failure to produce a comprehensive CRP, that the LSA’s political and ideological preferences are, essentially, the Political Objectives.

III. AVOID THE MOTTE-AND-BAILEY FALLACY

44. To effectively review the legality and constitutionality of the LSA’s Impugned Conduct this Honourable Court must correctly understand what the LSA actually means when it uses anodyne seeming terms like “discrimination” and what the LSA is actually doing when it implements familiar sounding programs like professional “competence”.
45. It is obvious from (even) the CRP that the LSA employs terminology not according to commonly understood definitions, but as specialized terms of art. “Competence”, for example, is used by the LSA to include “cultural competence” which means the pursuit of a “transformative agenda”²³ and “anti-racism.”²⁴
46. The CRP does not explain what “transformative agenda” lawyers ought to pursue or what a lawyer must think and say to qualify as an “anti-racist” and, therefore, to be “competent” lawyers with a “safe, effective and sustainable” 21st century professional practice.
47. In its brief, the LSA neither explains these concepts (they are not even mentioned!) nor provides coherent, rational, and intelligible reasons as to how these constitute “competence” within the LSA’s proper legal jurisdiction. In fact, rather than the rational transparency demanded by *Vavilov* (and the rule of law), the LSA’s incredible position is that these matters are simply none of the Court’s business and beyond its capacity.²⁵
48. In other words, the LSA’s CRP and brief invite this Court to view matters in an utterly superficial and misleading way – to accept the motte for the bailey.

²² Respondent’s brief at paras.149 and 190.d.

²³ Applicant’s brief at para. 46; CRP at A-290.

²⁴ CRP at A-263.

²⁵ Respondent’s brief at s. III.C.

49. As warned in the application itself:

The Anti-Constitutional Ideologies [the Theories] ... appear, superficially, to embody the values, principles, and guarantees of the Canadian Constitution including, most especially: a. recognition of the inherent and equal dignity of each individual; b. respect for minorities; c. the rules of equity; d. the principles of fundamental justice; and e. equality before and under the law without discrimination, but are, in fact, subversive to the Canadian Constitution including hostile to those same values, principals, and guarantees.²⁶

50. To do justice in this action it is critical that the Court review the evidence and arguments which demonstrate how the LSA is actually exercising its statutory powers and not rely, instead, on superficial appearance and arguments.

IV. THE LSA'S PLEAS TO IGNORE ITS POLITICAL OBJECTIVES – EVIDENCE

51. The LSA's first argument in support of a superficial review is that this Court should put no or limited use to the affidavits filed in support of the motion: the Song Affidavit, the Song Affidavit 2 and the Williams Affidavit (the "**Affidavits**").
52. In the next two sections the applicant will review the rules on the use of evidence in judicial review, including where *Charter* claims are advanced, and will then summarize what categories of evidence the LSA asks this Court to ignore and explain its obvious importance to a just decision.

A. Evidence in Judicial Review

53. This action could not be filed in the form of a simple originating application – as would have been a proper²⁷, fair, just, timely and cost-effective means of resolving the claims²⁸ – because the *Rules* required that it be filed in the form of an originating application for judicial review.²⁹
54. "Judicial review" is a broad and varied mechanism. At base, it is the exercise of the courts' constitutional duty to ensure that public authorities do not overreach their lawful powers.³⁰

²⁶ Application at para.16(a).

²⁷ Rule 3.2(2).

²⁸ Rule 1.2(1).

²⁹ Rule 3.15(1).

³⁰ *Dunsmuir v New Brunswick*, 2008 SCC 9 ("**Dunsmuir**") at para. 29.

Given the variety of statutory delegates subject to judicial review (traditional tribunals as well as the Governor in Council, ministers, government officials, agencies, boards, municipalities and professional regulators) the nature of judicial review depends on context.³¹

55. In keeping with the theme of superficiality, the LSA's arguments on evidence in judicial review ignore all nuance. The LSA's argument rests on the premise that the LSA is a quasi-judicial decision-maker subject only to "traditional" judicial review (where an applicant typically seeks the prerogative remedy of *certiorari*) and that Song's claim arises following a tribunal hearing. That is incorrect. Clarity about the nature of the respondent, this application, and the "record" is essential for a proper determination of, both, substantive and procedural issues.
56. The evidentiary *Rules* in Part 3, Division 2, Subdivision 2 contemplate, both, such "traditional" judicial reviews (where the procedural record is a complete set of the evidence and arguments submitted by participating parties to the tribunal) and non-traditional judicial reviews (such as this application).
57. This is obvious from the *Rules* themselves. Pursuant to *Rule* 3.18(2)(d), for example, the respondent is required to include in the CRP, *inter alia*, all "evidence and exhibits filed with the person or body." In the case at bar, there was no hearing prior to or during which the party (i.e. the applicant) might have "file" evidence and exhibits.
58. *Rule* 3.22 restricts evidence in judicial review. *Rule* 3.22 "...as originally drafted, contemplated applications for orders in the nature of *certiorari* quashing decisions of tribunals."³² In such "traditional" judicial review hearings, the prohibition on "fresh evidence" safeguards against the applicable standard of review being subverted by the introduction, on review, of evidence which could have been submitted by the party in the original tribunal, lest the fresh evidence effect a sort of *de novo* hearing.³³
59. When deciding to implement its statutory powers by the Impugned Conduct, the LSA was not a tribunal exercising quasi-judicial or adjudicative functions. There was nothing resembling a hearing in which Song enjoyed the rights of *audi alterem partem* including

³¹ See, for example, *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para. 21 and *Vavilov* at paras. 88 to 90.

³² *Oleynik v University of Calgary*, 2023 ABCA 265, ("*Oleynik*") at para 8.

³³ *Alberta Liquor Store Association v Alberta (Gaming and Liquor Commission)*, 2006 ABQB 904 ("*Alberta Liquor*") at para 46.

notice, disclosure and participatory rights, and there was no adversarial system of evidence and argument.

60. The “traditional” judicial review procedural framework is, obviously, a poor fit.
61. For this reason³⁴ the *Rules* also contemplate the kind of “non-traditional” judicial review represented by this action – including *Rule* 3.22(b.1) (added in 2022) which permits affidavit evidence in judicial review applications where relief other than *certiorari* is claimed.
62. On a plain reading of the *Rules*, therefore, the applicant is permitted to file affidavit evidence in support of his claims for prohibition, declarations, and *Charter* remedies. The Affidavits are plainly admissible.
63. Prior to the 2022 amendment, Alberta courts readily acknowledged that judicial review procedures, including the admission of evidence, had to be sensitive to context. For example, *C.M. v Alberta* dealt with a COVID-19 order of a Public Health Officer (“PHO”). The Crown respondent argued that the PHO materials should constitute the entire record, and that affidavits submitted by the applicants were inadmissible. The Court disagreed, holding that the PHO’s orders were not the product of a typical hearing in which evidence and arguments were made by two or more parties. Instead, the *Public Health Act* allowed the PHO to make orders without formal hearings and without parties. The Court held “...there is not a discrete and well-defined body of material available to the Court to assess the reasonableness of the Order. In such circumstances, it may be necessary to reconstruct the record ... ”³⁵
64. Similarly, in *Alberta’s Free Roaming Horses Society v Alberta*³⁶ the Court held that in cases which are not “typical judicial reviews” (where there is a record of proceedings which shows materials submitted to a tribunal by affected parties, along with reasons for decision) the court can permits additional evidence. The case dealt with a minister’s discretion, and the record of proceedings only contained an order, a briefing note and a memorandum. No reasons were provided (nor were they required). In such circumstances, the Court held that the record was inadequate and that a common law exception (no or inadequate record) was satisfied.

³⁴ *Oleynik* at para 8.

³⁵ *C.M. v Alberta*, 2022 ABKB 716 at para. 28.

³⁶ 2019 ABQB 714.

65. Even if this were a traditional judicial review the Affidavits would be admissible. As the LSA properly observes, evidence may be filed “where an adequate record of the proceedings does not exist”³⁷ including, as expressed in *Alberta Liquor*, “where a tribunal makes no, or an inadequate, record of its proceedings.”³⁸ In this case the CRP is deficient for both of these reasons. There was no hearing in which Song could submit evidence, so there is no “adequate record” and, to the extent materials were before the LSA when exercising its powers, many (if not most) of those materials are conspicuously absent from the CRP (see below at section IV.B (The Evidence the LSA Asks This Court to Ignore)).
66. In a traditional judicial review, the parties generally have both control over and knowledge of the “record.” In this case the LSA has superior knowledge as to what the CRP should contain. It also has an interest in ensuring that the contents of the CRP are helpful to its position. Indeed, the CRP is missing many records which were before the LSA when it made the decisions impugned here (and unhelpful to its position) including its Regulatory Objectives which state, *inter alia*:

*The Law Society will use these regulatory objectives as a guide when making regulatory, governance and operational decisions.*³⁹

67. Even in traditional judicial review the right to file affidavits is broader than set-out in the LSA brief. Affidavits may also be filed:
- a. where the evidence provides necessary background and context to the judicial review application, such as explaining the operation of a complex licensing system;
 - b. to show a complete absence of evidence before the decision maker on an essential point; and
 - c. where the evidence provides necessary background and context to a related constitutional argument under the *Charter*.⁴⁰
68. As explained below, the Affidavits would also be admissible on these grounds.
69. In the following sections the applicant will briefly survey what evidence the LSA asks this Court to ignore, why it is important, and on what common law exception it would have been admissible (had reliance on any exception been necessary – which it is not).

³⁷ Respondent’s brief at para. 73, quoting *Bergman v Innisfree (Village)*, 2020 ABQB 661 at para. 45.

³⁸ *Alberta Liquor* at para. 41.

³⁹ Song Affidavit, Exhibit “E”, p. 104.

⁴⁰ *Syncrude v Alberta (Minister of Energy)*, 2023 ABKB 317 (“**Syncrude**”), at para. 57.

B. The Evidence the LSA Asks This Court to Ignore

70. There are 6 broad categories of evidence in the Affidavits. Much of the affidavit evidence fits within more than one category.

i. Meeting Materials Not Disclosed by the LSA

71. Throughout the CRP decision makers are frequently provided materials in advance of meetings which materials the LSA failed to produce. The failure was so frequent the applicant defined the term “Meeting Materials” for efficiency.⁴¹ The CRP likewise makes reference to various other materials on which LSA’s decision makers expressly relied but which are absent from the CRP.⁴² The CRP is clearly “inadequate.”⁴³

72. The Affidavits fill these gaps by putting into evidence, *inter alia*:

- a. The Furlong Report which is central to the LSA’s new model of “competence” and program of CPD and which demonstrates that to the LSA “competence” is an application of the Theories that no Due Diligence seems to have been done by Furlong on the Path.
- b. The above articles, including the “excellent” Parmar article specifically referenced in the CRP and included within the LSA’s Online Resources.
- c. Amazingly, the Path itself. Instead the LSA has chosen to include in its CRP an “information sheet” and “description” of the Path (the motte)⁴⁴ from which is absent all of the Path’s most pernicious political content (the bailey). For example, the “description” advises that lawyers will be able to “summarize scientific theories”⁴⁵ (the motte), whereas the Path actually gives a lesson in epistemological relativism (the bailey).⁴⁶ The “description” suggests lawyers will be able to “highlight the failure of the Canadian justice system towards Indigenous peoples” (the motte) but actually gives a lesson in postcolonialism and CRT (i.e. the Path teaches the key concept of systemic discrimination / colonialism that Canada’s *Constitution* is itself anti-indigenous racism). In fact, virtually none of the applicant’s various observations about the Path’s improper

⁴¹ See applicant’s brief at paras. 35, 36, 37, 42, 50, 55, 66, 67, 69, 70, 73, 74, 78, 105 and 111.

⁴² See, for example, applicant’s brief at paras. 24, 25, 38, 49, 52, 53, 58, 61, 63, 65, 76, 84, 85, 86, and 102.

⁴³ *Alberta Liquor* at para. 41.

⁴⁴ CRP at A-311.

⁴⁵ CRP at A-316.

⁴⁶ See, for example, applicant’s brief at para. 337.

content are evident from the “description” provided in the LSA’s CRP. Nor does the LSA’s “description” include the Path’s accuracy warning.⁴⁷

- d. The motte-and-bailey problem with the Path is aggravated in the LSA’s brief which provides only part of the TRC’s call to action no. 27⁴⁸, excluding the sentence: “This [i.e. “cultural competency”] will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”⁴⁹
 - e. The Path, being the LSA’s only use of its powers under *Rule* 67.4 to date, as well as an expression of what the LSA means by the term “cultural competence”, was provided to and relied on by Williams to prepare her expert Report.
 - f. The articling survey which is referenced throughout the CRP as part of “considerable empirical and anecdotal evidence”⁵⁰ or as showing “alarming levels” of harassment and discrimination⁵¹ (the motte) but is not disclosed. A review of the survey reveals that it is actually evidence of very little at all (the bailey).⁵²
73. The LSA’s CRP also entirely omits the Bencher’s February 4, 2022, minutes in which CEO, Elizabeth Osler, admits a disconnect between the “outdated” *LPA* and the LSA’s “work.”⁵³
74. Had this been a traditional judicial review in which affidavits were not otherwise permitted, the Affidavits would be admissible to supplement the LSA’s highly deficient CRP. In addition, the Affidavits provide necessary background and context for both the judicial review application and for an assessment of Song’s *Charter* claims.⁵⁴

ii. Reasons Not Disclosed by the LSA

75. The CRP contains little in the form of “reasons” in support of LSA’s various Impugned Conduct. The LSA, for example, cites as its “motives and reasons” for *Rules* 67.2 and 67.3, (then) President Teskey’s 2020 memorandum⁵⁵ issued 3 years before the amendments the applicant seeks to quash.⁵⁶

⁴⁷ Applicant’s brief at para. 632.

⁴⁸ Respondent’s brief at paras. 48 and 127.

⁴⁹ Song Affidavit, Exhibit “EE”, p. 624.

⁵⁰ Applicant’s brief at para. 113.

⁵¹ Applicant’s brief at paras. 58 and 59.

⁵² Applicant’s brief at para. 24.

⁵³ Applicant’s brief at para. 70.

⁵⁴ *Synchrude* at para. 57.

⁵⁵ Respondent’s brief at para. 126.

⁵⁶ Applicant’s brief at para. 102.

76. The Affidavits contain further evidence as to the LSA's "reasons" including Osler's outline of the LSA's jurisdiction to impose CPD⁵⁷, and the Benchers' letter to the bar.⁵⁸
77. Had this been a traditional judicial review in which affidavits were not otherwise permitted, the Affidavits would be admissible to supplement the LSA's deficient CRP.

iii. Strategic Materials Not Disclosed by the LSA

78. There are other materials in the Affidavits which inform Benchers decision making all of which (but one) are referenced in the CRP but not disclosed.

1. Regulatory Objectives

79. As observed above at paragraph , the LSA "...use[s] these regulatory objectives as a guide when making regulatory, governance and operational decisions."
80. In direct contradiction the LSA argues that the (full) Regulatory Objectives are not, in fact, relevant to their decision-making.
81. The Regulatory Objectives are very important evidence because, *inter alia*, the LSA expressly admits that its Political Objectives may take priority over its other objectives including the one assigned to it by the legislature: safeguarding the rule of law. Likewise, the Regulatory Objectives evidence the LSA's facilitation of a racially segregated legal system and its view that its "public interest" mandate extends to affecting "society at large." For this reason the Regulatory Objectives were provided to and were relied on by Williams to prepare her expert report.
82. The Regulatory Objectives (including the "full" version of them, which the LSA infers it has in its possession) should clearly have been included in the CRP. It is deficient. In addition, the Regulatory Objectives provide necessary background and context for the judicial review application (they evidence the LSA's guiding objectives and explain the nature of the LSA's Political Objectives) and for an assessment of Song's *Charter* claims.

2. Acknowledgment

83. The Acknowledgment includes further information as to the Benchers' decision-making process including, contrary to the Regulatory Objectives (which suggests the LSA's various objectives are co-equal) a public acknowledgement that the Benchers received

⁵⁷ Song Affidavit, Exhibit "EE", p. 624.

⁵⁸ Song Affidavit, Exhibit "HH", p. 798.

training to ensure they “centre” their Political Objectives when exercising statutory power.⁵⁹

84. It should, therefore, have been included in the CRP.
85. The Acknowledgment is also very important evidence in this action because, *inter alia*, it is a clear expression of the LSA’s Political Objectives and one of the very few instances in which the LSA directly defines a term (“systemic discrimination”). For this reason the Acknowledgment was provided to and was relied on by Williams to prepare her expert report.
86. The Acknowledgment provides necessary background and context for the judicial review application (including as reference material on which the Williams Report is based) and for an assessment of Song’s Charter claims.

3. Other Strategic Materials

87. The Affidavits also contain the LSA’s 2010 Annual Accountability Report in which it reveals that Albertans were very satisfied with legal services in Alberta.⁶⁰ Following this (and, on the basis of no apparent evidence which explain it) the Affidavits demonstrate a significant strategic shift by the LSA in 2019 towards its Political Objectives including new core values, new strategic goals, and a new definition of the familiar seeming term “fairness.”⁶¹
88. The LSA’s core values, strategic goals, and definitions for the terminology used in that respect is clearly relevant to its decision making. The materials should have been included in the CRP. Further these materials provide necessary background and context for the judicial review application and for an assessment of Song’s Charter claims.

iv. Guidance Materials Not Disclosed by the LSA

89. Throughout the CRP and the Affidavits it is clear that a proper understanding of the LSA’s nomenclature and underlying ideological concepts is critical to understanding the true nature of the LSA’s Impugned Conduct.
90. The LSA itself acknowledges this. For example, to ““support lawyers in creating meaningful and effective CPD plans”⁶² (i.e. to assist lawyers to understand the meaning

⁵⁹ Applicant’s brief at paras. 340 and 532,

⁶⁰ Applicant’s brief at para. 20.

⁶¹ Applicant’s brief at paras. 24 to 32.

⁶² CPD at A-183.

and content of various “competencies” in the Profile) it directs lawyers to the Online Resources.⁶³

91. The importance of one such resource, the Glossary, is explained in the LSA’s Online Resources as follows:

*The CARED 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.*⁶⁴

92. As observed by Williams, “the very fact that a glossary is needed speaks to a project of either introducing new theory-inspired terminology or redefining existing terms.”⁶⁵
93. The LCC confirmed that tools would be made available to assist lawyers to understand elements of the Profile because they include “niche areas.”⁶⁶
94. The PRRC even discussed not providing a definition for “discrimination” “as the evolution of the word is ongoing.”⁶⁷
95. When the LSA determined that it should “acknowledge” the existence of systemic discrimination in the justice system it felt it necessary to, first, define the term.⁶⁸
96. Clearly, then, the LSA’s Online Resources, the Furlong report (and references articles), the Path, the Regulatory Objectives, the LSA’s strategic documents, and many other records contained within the Affidavits should have been included at first instance in the CRP. If they are a necessary roadmap for lawyers to understand the LSA’s nomenclature, they are equally necessary to the Court.
97. Without this “guidance” the Court may mistake the motte (for example, “prejudice”) with the bailey (“racial prejudice ... directed at white people ... is not considered racism ...”).⁶⁹

⁶³ Song Affidavit, Exhibit “CCC”, p. 736 and

⁶⁴ Song Affidavit 2, Exhibit “N”, p. 341; see also the Glossary (Song Affidavit, Exhibit “LLL”, p. 806).

⁶⁵ Report at p. 9.

⁶⁶ Applicant’s brief at paras. 76, 306, 307, and 667.

⁶⁷ Applicant’s brief at para. 105.

⁶⁸ Applicant’s brief at paras. 529 and 556.

⁶⁹ Applicant’s brief at para. 593. Recall also Osler’s purported attempt to distance the LSA from its own Online Resources. When confronted with the Glossary’s attack on colorblindness she is reported to have

98. For this reason, some of these materials (the Path, the Regulatory Objectives and the Glossary) were provided to and were relied on by Williams to prepare her expert report.
99. The admissibility of the Williams Report itself is discussed in the applicant's brief at paragraphs 305 to 311. The Report is a critical roadmap for the Court to understand the LSA's Political Objectives because the Theories are opaque and poorly explained in the Online Resources (to the extent they are explained at all).
100. For example, the LSA's view that cultural competence includes, "unlearning colonial logics, hierarchies of legal cultures, and the disregard of particular knowledges" is virtually meaningless without the Report's overview of postcolonialism. Likewise, the meaning of the Path's observation that "we can look at science and origin stories as simply different ways to describe where we've come from"⁷⁰ is seemingly benign (if inaccurate) without the Report's explanation of the relativistic core of the Theories.
101. For these reasons the applicant makes extensive use of the Williams Report in his brief.
102. It should also be recalled that, according to the LSA, this Honourable Court lacks the institutional capacity to even consider the LSA's Political Objectives. While this is obviously incorrect, it does (correctly) suggest that the Court will benefit from expert assistance.
103. In any case, the LSA's only objection to the Report (apart from the LSA's broad objections to all affidavit evidence) is that the Report, "not being from the Applicant, would be of limited use in helping the Court to understand the Applicant's position."⁷¹ Given the obvious utility of the Report to the applicant's brief, this is patently incorrect.
104. The Online Resources were wrongly excluded from the CRP and they and the Report provide necessary background and context for the judicial review application and for an assessment of Song's *Charter* claims.

v. Evidence in Support of Song's Charter Claims

105. The applicant advances *Charter* claims. It is essential that *Charter* claimants establish an evidentiary basis; *Charter* claims cannot be advanced or decided in a factual vacuum.⁷²

said the Online Resources "are not required reading and lawyers can choose their own resources." – Applicant's brief at para. 670.

⁷⁰ Applicant's brief at para. 337.

⁷¹ Respondent's brief at para. 87.

⁷² *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357.

106. In the present case, the applicant advances *Charter* claims under ss. 2(a) and 2(b). These claims require evidence of:
- a. the fact that the LSA's Political Objectives include the promotion of the Theories, making many of the exhibits to the Affidavits necessary, including the Report;
 - b. the ideological content of the Theories, making many of the exhibits to the Affidavits necessary, including the Report;
 - c. the applicant's sincerely held religious and secular beliefs and desired expression, making much of the body of the Song Affidavit necessary (it should be noted here that, contrary to the LSA's claim that Song's "feelings ... around the merits"⁷³ of the Law Society's Political Objectives are not relevant, Song's "feelings" are a necessary component of his s. 2(a) and 2(b) claims – he must evidence how he wants to manifest his religious and secular beliefs, what he wants to say, and that the LSA is interfering with such freedoms);
 - d. objective interference with Song's beliefs and desired expression, making the balance of the Song Affidavit and the Report necessary evidence;
 - e. a breach of the LSA's duty of religious neutrality, making much of the Affidavits necessary;
 - f. the scope of the LSA's proper jurisdiction to support Song's argument that the LSA's *Charter* infringements are for an *ultra vires* purpose (as opposed to a "pressing and substantial" objective consistent with freedom and democracy), making much of the Affidavits necessary; and
 - g. that the LSA's *Charter* infringements are not "reasonable limits" in a free and democratic society, making much of the Affidavits necessary.
107. There is, in fact, nothing the applicant can identify in the Affidavits which are evidence solely in support of the jurisdictional arguments.
108. Contrary to all this, however, the LSA goes so far as to suggest that the Court is (somehow) "capable of determining the *Charter* issues in this matter without the Affidavits."⁷⁴ That is plainly wrong.

⁷³ Respondent's brief at para. 4.

⁷⁴ Respondent's brief at para. 88.

vi. Other Evidence Demonstrating the Nature and Scope of the LSA's Political Objectives

109. The Affidavits also contain other evidence which demonstrates the nature of the LSA's Political Objectives and the manner in which it has pursued those objectives (i.e. evidence of the Impugned Conduct).
110. For example, the Affidavits include the LSA's My Experience Project (referenced throughout the CRP) including sample submissions and the accompanying "qualitative analysis" about which the applicant makes a significant argument.⁷⁵
111. The Affidavits include the LSA's articling placement program which evidences the LSA's rejection of the innocence principle⁷⁶, relevant to the applicant's arguments as to practical consequences flowing from the broader rejection of objectivity⁷⁷ and as to the inherent uncertainty of the LSA's subjective definition of harassment.⁷⁸
112. The Affidavits contain evidence that the LSA's Specified Mandatory CPD contained misinformation, relevant to the nature of the LSA's Political Objectives⁷⁹ and to the reasonableness of *Charter* infringements if the ostensible purpose of such infringements is enhancing historical competence.⁸⁰
113. The Affidavits include Act, Inc.'s mission (which is referenced in the CPD but not disclosed) which shows the organization responsible for the development of the Profile (including advising on "industry practice" for the interpretation of survey results) also has, as its mission, the advancement of the Theories.⁸¹

V. THE LSA'S PLEAS TO IGNORE ITS POLITICAL OBJECTIVES - SUBSTANCE

114. The LSA argues the Court should entirely ignore the fact that it has assumed a political objective (one which is antithetical to the *Constitution*), including as it relates to the questions of whether the Profile, the CPD Tool, and the Political Objectives are *ultra vires*, on two bases.

⁷⁵ See especially, applicant's brief at paras. 349 and 646.

⁷⁶ Applicant's brief at para. 67

⁷⁷ Applicant's brief at para. 371

⁷⁸ Applicant's brief at para. 710.

⁷⁹ Applicant's brief at para. 394.

⁸⁰ Applicant's brief at paras. 631 to 635,

⁸¹ Applicant's brief at paras. 82 to 84.

A. The LSA Claims Judicial Review Does Not Relate to Discretionary Decisions

115. The LSA first seems to argue that this Court only has supervisory jurisdiction over the LSA insofar as it promulgates formal “subordinate legislation.”⁸² It relies on *Okotoks (Town) v Foothills (Municipal District) No. 31*, 2013 ABCA 222 (“*Okotoks*”)⁸³, but the Court in that case found a municipal bylaw was a “decision or act” under *Rule 3.15(2)*⁸⁴, not that bylaws were the only form of delegate action subject to judicial review.
116. While the applicant does not agree with (or fully understand)⁸⁵ the LSA’s categorizations, it suffices to note that this narrow and formalistic framing of the ambit of judicial review is completely at odds with judicial review’s purpose: to “... ensure that exercises of state power are subject to the rule of law ...”⁸⁶. Judicial review plainly relates also to discretionary decision making under legislation and subordinate legislation. For example:
- a. *Roncarelli* related to the abuse of powers under statute by means of an improper “dictate” from Premier Duplessis to the liquor commissioner; and⁸⁷
 - b. *TWU* related to a Benchers’ resolution under its rules to declare the applicant school not approved.⁸⁸

B. The LSA Claims its Politics are Non-Justiciable

117. The LSA next argues that this Honourable Court should ignore the Profile, the CPD Tool, and the Political Objectives because the court has neither the Constitutional legitimacy nor institutional capacity⁸⁹ to answer the basic questions:
- a. Is it legal and constitutional for the LSA, pursuant to its powers to regulate the legal “competence” and legal “ethics” of the bar, to assume a political objective?
 - b. What if such a political objective contradicts and is hostile to the *Constitution*, including the rule of law?

⁸² Respondent’s brief at paras. 92 and 93.

⁸³ Respondent’s brief at para. 9, citing *Okotoks* at para. 9.

⁸⁴ *Okotoks* at para. 9.

⁸⁵ For example, if the Profile is not an “act” reviewable in judicial review – what is it?

⁸⁶ *Vavilov* at para. 82; all emphasis and edits in this brief are added.

⁸⁷ *Roncarelli* at para. 36.

⁸⁸ *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 (“*Trinity*”) at para. 22.

⁸⁹ Respondent’s brief at Section IV.C.

- c. Is it legal and constitutional for the LSA, pursuant to its powers to regulate the legal “competence” and legal “ethics” of the bar, to advance its political objective in the manner it has?
- d. Do the: 1) assumption of the political objective; and 2) means chosen to advance it (including the Profile, the CPD Tool, the Acknowledgment, the Regulatory Objectives, the Online Resources, the Impugned Code, and Specified Mandatory CPD including the Path), infringe the applicant’s *Charter* rights?
- e. Has the LSA “prescribed” such limits on Charter rights “by law”?
- f. Has the LSA demonstrably justified that the *Charter* infringements are reasonable in a free and democratic society?

118. These might be summarized as:

Is it legal and constitutional for the LSA to adopt and promote, in the manner it has, anti-Constitutional Political Objectives?

i. Constitutional Legitimacy

119. The concept of “justiciability” has procedural aspects (standing, mootness, and ripeness) and substantive aspects (constitutional legitimacy and institutional capacity).⁹⁰ The LSA rests its argument on substantive justiciability. Justiciability pertains to several factors:

*... notably: (1) the capacities and legitimacy of the judicial process; (2) the constitutional separation of powers; and (3) the nature of the dispute before the court, including the nature and text of the legal instruments as the basis of the dispute.*⁹¹

120. The LSA quotes the SCC in *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall*⁹² with respect to justiciability. The SCC continues:

... 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

⁹⁰ Lorne M. Sossin & Gerard Kennedy, *Boundaries of Judicial Review; The Law of Justiciability in Canada*, 3rd ed (Carswell, 2012) (“**Sossin**”) at s. 1.2.

⁹¹ Sossin at s. 1:2.

⁹² [2018] 1 S.C.R. 750 (“**Highwood**”) at para. 34; quoted, in part, by the LSA at Respondent’s Brief, para. 96.

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.).

121. Arising from Canada's constitutional separation of powers⁹³ the justiciability rule prohibits a court itself making "political" decisions. Such decisions are, according to our constitutional structure (a constitutional democracy), made by the legislature and (duly authorized) executive.⁹⁴ It is constitutionally illegitimate for the courts to usurp the function of the legislature – just as it is constitutionally illegitimate for a legal regulator to usurp that function (which, if course, is the applicant's fundamental complaint).
122. When conducting a *Charter* s. 1 analysis the court comes very close to assessing legislative wisdom:

Central to the section 1 analysis is a decision as to the purpose of the impugned legislation and the importance of this purpose ...

Determining the importance of a law's objective perhaps is not identical to adjudicating the wisdom of legislation, but it inherently involves the court judging the "political" means that the government has employed ...

...

Determining whether a law is or is not worth overriding a Charter right calls upon the Court to consider many of the elements that are constitutive of the "wisdom" of legislation - these are variations on a single theme: does the law further the public interest in a reasonable fashion? ...⁹⁵

123. Except with respect to s. 1, the same holds true in the United Kingdom.⁹⁶
124. However, that the legislature is the only entity with constitutional legitimacy to make political decisions (including insofar as it delegates statutory discretion, however broad and no matter the nature of such discretion⁹⁷), obviously does not mean that the exercise of legislative or statutory discretion is immune to judicial review.

⁹³ See Sossin at s. 6:8 [GBCR3].

⁹⁴ See Sossin at s. 2:20.

⁹⁵ Sossin at s. 6:9.

⁹⁶ Lord Woolf, et al, *De Smith's Judicial Review*, 7th ed (London: Sweet and Maxwell, 2013) ("De Smith's") at ss. 1-032 to 1-037.

⁹⁷ Political, national security, emergencies, etc.

125. As nicely stated in De Smith's (in respect of the law of the United Kingdom):

*Discretion has been described as the "hole in the [legal] doughnut", but that hole is not automatically a lawless void.*⁹⁸

126. De Smith's makes this point with respect to the United Kingdom (describing a legal framework of deference and justification in the United Kingdom very similar to *Vavilov*, *Oakes* and *Doré*):

*The constitutional status of the judiciary should not, however, excuse the courts from any scrutiny of policy decisions. Courts are able, and indeed obliged, to require that decisions, even in the realm of "high policy" are within the scope of the relevant legal power or duty ... The courts display reserve in impinging upon the substance of policy decisions, but even here they may legitimately intervene if the decision is devoid of reason and not properly justified. Judges always possess the capacity to probe the evidence and assess whether the reasons and motives for decisions are rationally related to their aims ... public law has rapidly advanced recently from a "culture of authority" to a "culture of justification".*⁹⁹

127. The same observation applies in Canada. As Sossin & Kennedy state:

*... courts must not conflate whether a matter is per se justiciable with giving decision-makers considerable deference ...*¹⁰⁰

128. Justiciability means the court should not make the political decision itself (as expressed in De Smith's, "the primary decisions of policy"¹⁰¹). It is constitutionally illegitimate for the court to decide whether or not the LSA's Political Objectives are wise policy – just as was constitutionally illegitimate for the LSA to have decided that its Political Objectives are wise policy.

129. The court's constitutional role is, instead, to review political decisions (and exercises of statutory discretion) to ensure they are constitutional and legal (as expressed in De Smith,

⁹⁸ De Smith's at s. 1-033, footnote 94.

⁹⁹ De Smith's.

¹⁰⁰ Sossin at s. 6:1.

¹⁰¹ De Smith's at p. 21.

the “secondary function of probing the quality of the reasoning”¹⁰²). As stated by Dickson J. for the SCC:

*A state, it is said, is sovereign and it is not for the Courts to pass upon the policy or wisdom of legislative will. As a broad statement of principle that is undoubtedly correct, but the general principle must yield to the requisites of the constitution in a federal state. By it the bounds of sovereignty are defined and supremacy circumscribed. 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.*¹⁰³

130. However the LSA may wish to frame the application¹⁰⁴, as is obvious from a review of the application itself and the applicant’s brief the applicant does not question the wisdom of the LSA’s Political Objectives and other Impugned Conduct¹⁰⁵. Rather, the applicant disputes the LSA’s jurisdiction to assume a political objective, especially one which is hostile to the *Constitution*. Song’s argument is one of jurisdiction.
131. This Court has not only the constitutional legitimacy to ensure the LSA’s regulation of the profession is legal and constitutional, it has the constitutional duty to do so.
132. On a related matter, the Court must be wary of another way in which the LSA conflates a concept in its brief (that of “policy”). While a statutory delegate exercising discretion may be characterized as making “policy”, such policy-making function is confined to matters within the delegates proper legal and constitutional jurisdiction. In this sense, the LSA obviously has the discretion to make “policy”¹⁰⁶ (for example, its rules¹⁰⁷ and a “code of

¹⁰² De Smith’s at p. 21.

¹⁰³ *Amax Potash Ltd. Etc. v The Government of Saskatchewan*, 1976 CanLII 15 (SCC), [1977] 2 SCR 576 at p 590, quoted in the applicant’s brief at para. 139 and in Sossin. See also Sossin at pp. and *Operation Dismantle v The Queen*, [1985] 1 S.C.R. 441 at para. 62 (Wilson J.’s dissenting opinion, approved on this point by the majority at para. 38).

¹⁰⁴ For example, as about what the “Applicant disagrees with or doesn’t like” (Respondent’s brief at paras. 3 and 173).

¹⁰⁵ Apart from his claims under the *Charter*. Song does evidence and discuss his contradictory subjective beliefs and desired expression, as is necessary to ground his claims under ss. 2(a) and 2(b) of the *Charter*. As discussed above, the “wisdom” of the legislation is also relevant to the *Charter* s. 1 inquiry.

¹⁰⁶ A concept repeatedly cited by the LSA; see, for example, respondent’s brief at sections. IV.C, IV.E.i. (“The policy merits of the subordinate legislation”); IV.E.v. (“Rules 67.2, 67.3, and 67.4 and Part 6.3 of the Code are reasonable”); and IV.F.ii. (“The balancing exercise”).

¹⁰⁷ *LPA* at s. 7.

ethical standards”¹⁰⁸). The “policy” at issue in *Green* was the LSM’s policy of automatic suspension which policy “appl[ied] only to members of the profession.”¹⁰⁹ However, the court must distinguish the LSA’s limited “policy-making” function from the much-broader kind of policy-making which is the subject of the applicant’s complaint: an attempt to modify (i.e. pervert) laws of general application, including the *Constitution*, by “shift[ing] the culture within the profession”¹¹⁰ - it is illegal and unconstitutional for the LSA to engage in that kind of policy-making.

ii. Institutional Capacity

133. A question is likewise not substantively “justiciable” if the court lacks the institutional capacity to answer it. For example, a court may not decide matters of religious dogma – although, again, “[the] fact that a dispute has a religious aspect does not by itself make it non-justiciable.”¹¹¹
134. That the LSA’s argument here is plainly wrong can be demonstrated easily. By the logic of the LSA’s argument, if it adopted a *religious* objective, the Court would have no institutional capacity to conduct judicial review because the Court may not “decide matters of religious dogma.”
135. Obviously, the LSA is again confusing the primary question (Are the LSA’s Political Objectives wise policy?) with the secondary question (Are they legal and constitutional?).
136. The LSA claims the matter is not justiciable (for lack of institutional capacity) on two bases. First, the LSA claims the question (Is it legal and constitutional for the LSA to adopt and promote, in the manner it has, anti-Constitutional Political Objectives?) cannot be answered by a court on “any objective standard” as the question is “essentially a matter of individual (including political) preference.”¹¹²

1. Objective Standards

137. There are clearly objective standards which apply to the questions before this Court, including the objective standards imposed by the *LPA* (i.e. the LSA’s legal duties and powers); the objective standards imposed by the *Charter* (i.e. the constitutional constraints

¹⁰⁸ *LPA* at s. 6(l).

¹⁰⁹ *Green v Law Society of Manitoba*, [2017] 1 S.C.R. 360 (“*Green*”) at para. 23.

¹¹⁰ See the applicant’s brief at paras. 36, 374, 377 and 404.

¹¹¹ *Highwood* at 36, referencing the “primary” / “secondary” dichotomy.

¹¹² Respondent’s brief at paras. 97.a. and 99.a.

placed on the LSA's discretion); and the objective standards imposed by the evidence (including the nature of the LPA's Political Objectives).

138. The LSA's argument here¹¹³ reflects other fundamental errors. The LSA's statutory discretion may not in fact be exercised in accordance with the Benchers' "individual (including political) preference." Neither may the Benchers (*qua* Benchers) have any political preference¹¹⁴ nor may their statutory powers be exercised according to "personal preference":

*... 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 ...*¹¹⁵

2. Polycentric Matters

139. The LSA seems to argue that this matter is "polycentric" because the LSA exercises broad policy-making discretion in the public interest. The applicant addresses some of this argument in section VIII. (Statutory Interpretation and Purported "Constraints"). In addition, this is not a "polycentric" matter.
140. Following the quote provided by the LSA, De Smith goes on to give examples of polycentric matters with respect to which a court lacks institutional capacity. It cites, for example, allocation decisions like electoral boundaries where judicial intervention sets up a "chain reaction, requiring a rearrangement of other decisions with which the original has interacting points of influence."¹¹⁶ To adjust the boundaries of one electoral district (to ensure no "excessive disparity" between electors and electoral quota) is to set-off a cascade of changes to all other electoral districts. De Smith also cites as an example of a polycentric decision the allocation of scarce resources amongst competing claims, including those not represented in Court.
141. There is nothing "polycentric" about the questions before this Court.

¹¹³ Which repeats throughout the respondent's brief.

¹¹⁴ Unless loyalty to the *Constitution* and laws promulgated thereunder is characterized as a "political preference."

¹¹⁵ *Roncarelli* at para. 41.

¹¹⁶ De Smith's at p. 26.

iii. Test for Justiciability of Political Matters

142. While, as the LSA observes, the concept of justiciability is applied in a contextual and flexible manner, some guidance is available in the caselaw. As summarized by Sossin, referencing *Reference re Secession of Quebec*¹¹⁷:

*The Court proceeded to articulate something approaching a political questions test: (1) First, the Court is to determine if there is a legal question posed; if not, the matter should be dismissed; (2) If there is a legal question, the Court must then consider whether that legal question has a significant extralegal component. If not, the question should be answered. (3) If the question does have a significant extralegal component, and the Court can answer the question narrowly, severing the extralegal aspects of the question, then it should answer the question; however, if the extralegal component cannot be severed, then the Court should decline to answer the question.*¹¹⁸

143. Applying that test:
- a. Purely legal questions are posed: is the LSA's Impugned Conduct *ultra vires* and does the LSA's Impugned Conduct infringe Song's *Charter* rights?
 - b. The legal questions have no extra-legal components.
144. The questions posed of the Court are justiciable.
145. This is true (not *despite* but) *because of* the fact that the LSA's Impugned Conduct is political and hostile to the *Constitution*.
146. To return to the donut analogy, there is a statutory donut (the *LPA*) with a hole (discretionary powers assigned to the LSA as limited by the *Charter*). It is the Court's legitimate duty and within its institutional capacity to compare the size of the donut hole to the size of the LSA's Impugned Conduct.
147. To frame this with reference to institutional capacity, this Court has full institutional capacity to understand and determine the legality and constitutionality of what the LSA characterizes as "core legal competence" and "legal ethics" (which ethics "very closely

¹¹⁷ At paras. 26 to 28.

¹¹⁸ Sossin at s. 6:6.

mirror other statutory and common law.”¹¹⁹) If the Court lacks such institutional capacity, *ipso facto*, it cannot be the proper purview of a legal regulator.

iv. Justiciability – Conclusion

148. For the above reasons, the Court has both the duty, legitimacy, and capacity to consider the LSA’s Profile, CPD Tool and Political Objectives.
149. The Court must also remain cognizant of the integral connection between, on the one hand, the Impugned Rules and, on the other hand, the Profile, CPD Tool and Political Objectives.
150. Rules 67.2 and 67.3 require that lawyers prepare their plans “in a form acceptable to the Executive Director” and “submit” them. According to the LSA (obviously) these Rules grant the Executive Director discretion and power to select as the necessary “form” a plan prepared only with reference to the Profile (by which the LSA pursues its Political Objectives) using the CPD Tool (by which the LSA also pursues its Political Objectives). Of course, the Profile and CPD Tool are the “form” which has, in fact, been chosen by the Executive Director under the Rules. It is impossible to review the *vires* of these Rules without knowing or considering what they, in fact, permit the LSA to do. The scope of the Executive Director’s discretion under these Rules becomes relevant to the argument at section IX.C.iii (The Impugned Rules), below.
151. The same observation applies to Rule 67.4. According to the LSA, Rule 67.4 is sufficient authority for the LSA to prescribe the Path, as they did. It is impossible to review the *vires* of Rule 67.4 without knowing or considering what the Rule, in fact, permits the LSA to do. The scope of the Benchers’ discretion under this Rule becomes relevant to the argument at section IX.C.iii (The Impugned Rules), below.
152. Finally, as observed in section III (Avoid the Motte-and-Bailey Fallacy), without knowledge, analysis, and understanding of the LSA’s Political Objectives (including as expressed in the Profile, the Code, and the Path) this Court’s review of the LSA’s alleged jurisdictional abuses would not be “robust” but would, instead, be virtually neutered. The Court would seemingly have to restrict itself to the superficial realm of “public interest”, “competence”, “cultural competence”, and “ethics” (the motte) without acknowledging that these terms actually bear a very different and inconsistent meaning to the LSA (the bailey).

¹¹⁹ Respondent’s brief at para. 149.

VI. STANDARD OF REVIEW

153. The LSA argues that the standard of review should be “reasonableness” but fails to provide any response to almost any of the applicant’s arguments as to why correctness applies.¹²⁰
154. The LSA’s argument proceeds on the basis of three fundamental errors.
155. First, as is discussed below at section VIII.i (The LSA’s Statutory Interpretation of the LPA), the LSA proceeds on the erroneous assumption that its statutory duties and powers are the same as other Canadian law societies notwithstanding major differences in governing legislation. The LSA does not have “extremely broad authority”¹²¹ to do whatever it deems to be in the “public interest.” The LSA’s reliance on *Green* is, therefore, misplaced. The reasonableness standard was applied in *Green* because, unlike the *LPA*, the *LPAM* does contain broad public interest clauses and because, unlike the case here, the rule at issue was highly particularized, related to administrative matters within the LSM’s discretion and area of expertise, and affected only members of the bar.¹²²
156. As this relates to the standard of review, the LSA effectively ignores *Vavilov* which stated:
- ... where the legislature chooses to use broad, open-ended or highly qualitative language — for example, “in the public interest” — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language ...*¹²³
157. Second, the LSA seems to have misunderstood *Vavilov*. In *Vavilov*, the SCC moved away from *Dunsmuir*’s treatment of “true questions of jurisdiction” as a separate category for the purpose of determining the appropriate standard. The LSA flips *Vavilov* on its head and argues, in essence, that true questions of a law society’s jurisdiction are, as a separate category, reviewed on the basis of reasonableness.
158. The correct approach is set-out in the applicant’s brief: there is a “single standard that accounts for context”, which is reasonableness unless, *inter alia*, the rule of law demands correctness.¹²⁴

¹²⁰ See applicant’s brief at sections III.C and IV.A.i.3.

¹²¹ Respondent’s brief at para. 183.

¹²² See applicant’s brief at pp. 58 to 61.

¹²³ *Vavilov* at para. 110.

¹²⁴ See applicant’s brief at sections III.C and IV.A.i.3.

159. *Morris v Law Society of Alberta (Trust Safety Committee)* (“**Morris**”)¹²⁵ is consistent with *Vavilov*. The reasonableness standard was selected in *Morris* because the application did not raise a general question of law of central importance to the justice system but, instead, raised a narrow issue of jurisdiction.¹²⁶
160. To the extent *Shaulov v Law Society of Ontario*, 2023 ONSC 5242, conflicts with *Vavilov*, it is wrong and should not be followed.
161. Third and finally, the LSA claims that that the applicant “simply assert[s]” and merely “mentions” the rule of law, which is not enough to rebut the presumption.¹²⁷ Only one who did not read the applicant’s brief could arrive at this conclusion. The applicant explains, in painstaking detail, exactly how and why the LSA’s Impugned Conduct undermines the rule of law. In just the introduction alone, the nature of the threat to the rule of law is explained at paragraphs 3, 4, 5, 6, 7, 8 and 9.
162. The appropriate standard of review is correctness although the applicant repeats: it does not matter.¹²⁸ “Reasonableness” does not mean the court just gives the statutory delegate a pass. The LSA cannot – and has not attempted to – offer any reason which might justify its use of regulatory powers to politically interfere with the bar.

VII. THE LSA’S REASONS AND OBJECTIVES

A. The LSA Fails to Identify Reasons

163. In section IV.E.i. (How to conduct a reasonableness review ...) and section IV.E.iii. (The reasons), the LSA’s brief misses two key points.
164. First, while it is true that a reasonableness review may be possible in the absence of formal reasons, the court is still to locate and review records which evidence the delegate’s reasoning process which “will not usually be opaque.”¹²⁹
165. With respect to the LSA’s Impugned Conduct, the LSA does not identify what seems to constitute the LSA’s reasoning process.
166. For example, take the LSA’s adoption of “cultural competence” as a relevant and necessary form of legal competence for the purpose of Rule 67.4, the Profile and the

¹²⁵ 2020 ABQB 137.

¹²⁶ *Morris* at 42 and 43.

¹²⁷ Respondent’s brief at para. 114.

¹²⁸ Applicant’s brief at para. 190.

¹²⁹ *Vavilov* at para. 137.

Code. Cultural competence, along with the rest of the LSA's Political Objectives, became a strategic goal in the LSA's 2020 Plan (excluded from the CRP) on December 5, 2019. The decision, therefore, came two months before Teskey's February 11, 2020, memorandum cited by the LSA as its "reasons" for seeking to improve, *inter alia*, cultural competence.¹³⁰ Teskey likewise observes that the LSA had decided 5 years previously to become more "proactive" in regulation.

167. Further, there is no evidence that Teskey's memo reflects the Bencher's reasons for adopting Rules 67.2, 67.3 and 67.4, the Profile, the Path and, generally, adopting its Political Objectives (all decisions which were made at another time). Assuming for a moment that these are the Bencher's reasons for such earlier or later decisions, the memo fails to include any reasons in the sense of a jurisdictional analysis. There seems to simply be an assumption that the LSA can do whatever it likes as long as it relates to something the LSA might conceive of as "competence." The memo actually summarizes, to use the LSA's term, the LSA's purported "motives". Further problems discerning "reasons" from Teskey's memo are discussed in the brief.¹³¹
168. If, instead, the Furlong Report is taken to represent the LSA's reasons¹³² for such Impugned Conduct, Furlong's "reasons" are: "... it is becoming more widely accepted ..."; and the TRC requested it – no jurisdictional analysis at all.
169. Similarly, the LSA cites the Freund memo as the LSA's reasons for adopting Rule 67.4.¹³³ However, the memo does not provide any "reasons" in the sense of a jurisdictional analysis (i.e. it does not conduct any statutory interpretation, so much as mention *Green*, discuss the LSA's proper statutory objectives, discuss the *Charter* rights that are engaged, etc.). Instead, the memo (and Bencher's meeting) simply proceeds on the assumption that the LSA has jurisdiction to do all things "competence" and provides a summary of various motives (including, primarily, the motive to promote "reconciliation" (undefined except as including implementing the TRC's call to action no. 27)). Nor, again, does the memo outline the Bencher's reasons. All that can be discerned from the Benchers' minutes is that some Benchers liked the content of the Path and that they had already committed to responding to the TRC's call to action no. 27. Finally, the Freund memo as "reasons" is entirely opaque. She fails to say even what she means by "cultural competence" including,

¹³⁰ Respondent's brief at para. 126; Applicant's brief at para. 102.

¹³¹ Applicant's brief at paras. 31 and 32.

¹³² Which the LSA must deny, because it is not included in the CRP.

¹³³ Respondent's brief at para. 127.

for example, identifying the “transformative agenda” the “culturally competent” bar is to pursue.

170. Finally, the LSA cites as its “reasons” in support of the Impugned Code a memo from Elizabeth Aspinall dated September 6, 2023 (with many attachments). The LSA then distills from this the LSA’s “motivations” which might be summarized as “do more because we thought harassment and discrimination was a serious problem.” Again, it is not obvious which part of these 121 pages were the Benchers’s reasons for adopting the Impugned Code.
171. Given all of this, the reasons cited by the LSA do not demonstrate the LSA’s “reasons” for its various Impugned Conduct.
172. To what reasons is the Court to defer if no reasons are discernable?
173. The second key point the LSA misses is that a reasonableness analysis should start with the LSA’s reasons: are the reasons reasonable in process and outcome.¹³⁴ However, having summarized its purported “reasons” in section 4.E.iii (The reasons), the LSA then moves on to make a number of jurisdictional arguments which are nowhere reflected in the “reasons.” This, of course, is the logical result of the LSA having actually identified no reasons (as opposed to motives) in the record.
174. As observed in *Vavilov*, in the absence of reasons discernable from the record the reasonableness review changes character and the focus becomes one, solely of outcome.¹³⁵
175. The foregoing further supports a standard of correctness being applied. The LSA appears (according to the reasons now cited by the LSA) not to have even turned its mind to the question of its legal or *Constitutional* jurisdiction. The LSA is owed no deference.

B. The LSA Ignores Other “Reasons”

176. The CRP does contain the following conclusion in respect of the *vires* of Rule 67.4 (within the materials provided to the Benchers in advance of their April 27, 2023, meeting):

The Law Society of Alberta (Law Society) established a mandatory continuing professional development (CPD) program and developed Rules for the implementation and administration of the program. The ability of

¹³⁴ *Vavilov* at para. 83.

¹³⁵ *Vavilov* at para. 138.

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 360.¹³⁶

177. This is not cited as reasons by the LSA.
178. This seems to be the sum total of the LSA's jurisdictional reasons (as to any of its Impugned Conduct) in the CRP.
179. In the applicant's Affidavits there is more (but still an alarming paucity) of LSA consideration of its jurisdiction (all of which is absent from the CRP) including:
 - a. The fact that the LSA announced that the Path would be mandatory before the LSA had even passed Rule 67.4;¹³⁷
 - b. The President's statement in the annual general meeting that the LSA had obtained an opinion that rule 67.4 was *intra vires*;
 - c. A Benchers Meeting, absent from the CRP, at which Osler stated, "the Law Society continues to utilize the Rules to advance its work where the legislation is outdated".¹³⁸
180. The Affidavits also includes Osler's December 6, 2022, letter refusing to provide the Opinion but explaining why Rule 67.4 was *intra vires*.¹³⁹ This is the most comprehensive record of the LSA's reasoning process as to why Rule 67.4 was *intra vires* (but is absent from the CRP). In 2022 Osler identified the LSA's reasons as to why Rule 67.4 was *intra vires* as including:
 - a. LPA s. 6;
 - b. LPA s. 7(2)(v); and
 - c. The TRC's call to action no. 27.

C. "Our Objective was Competence, But Never Mind What That Means"

181. Where the LSA says "reasons"¹⁴⁰ it actually seems to mean "objectives."

¹³⁶ CRP at p. A-157.

¹³⁷ Applicant's brief at paras. 53 and 55.

¹³⁸ Applicant's brief at para. 70.

¹³⁹ Applicant's brief at para. 113 and section IV.A.iv.

¹⁴⁰ Respondent's brief at section IV.E.iii. (The reasons).

182. At paragraph 129 of its brief it draws a critical (and wholly unsupported) conclusion: the LSA claims its objectives were “competence”, “cultural competence”, “harassment”, “discrimination” and “ethics” and, therefore, not the Political Objectives.¹⁴¹
183. It would be impossible, however, for the Court to assess this argument without having:
- a. reviewed the evidence as to the nature of the LSA’s Political Objectives – which the LSA argues should be ignored; and
 - b. considered whether the Political Objectives are being advanced within the framework of “competence”, “cultural competence”, “harassment”, and “discrimination” – which the LSA says is beyond this Court’s constitutional legitimacy and institutional capacity.
184. The applicant argues that it is accurate to claim that the LSA has an objective of “competence” (the motte) but only if it is understood that “competence” means belief in, compliance with, and active advancement of the Theories (the bailey).
185. How, then, does the LSA expect the Court to assess its argument (that it is not pursuing the Political Objectives) without knowing what those Political Objectives are (and, therefore, how they are being pursued or not pursued within the LSA’s “competence” framework)?
186. The answer seems to be: the Court is being asked to assume that where the LSA says “competence” in the CRP, it means “something within the LSA’s jurisdiction.”
187. This is little more than an invitation for the Court to abandon its duty of ensuring that the LSA is pursuing proper statutory objectives and operating within its jurisdiction. The Court must admit, review and consider the evidence and arguments as to the LSA’s Political Objectives.

D. The LSA Was Clearly Pursuing the Political Objectives

188. The applicant is not going to rehash, here, the brief the comprehensive demonstration that the LSA is most certainly pursuing Political Objectives, which it pursues under the headings “competence”, “cultural competence”, “ethics”, etc.
189. However, the applicant will demonstrate that, just in connection with the “reasons” discussed in sections VIII.A (The LSA Fails to Identify Reasons) and VII.B (The LSA Ignores Other “Reasons”) above, the LSA’s pursuit of Political Objectives is obvious.

¹⁴¹ Respondent’s brief at para. 129.

190. For example, the LSA takes (then) President Teskey's February 11, 2020, memorandum as the only evidence of its various "competence" motives for Rules 67.2 and 67.3, but fails to:
- a. explain what the LSA means by "competence", especially given that the CRP contains no evidence (or even reference to) any lawyer negligence or defalcation;
 - b. note Teskey's reference to "proactive" regulation including not simply receiving CPD plans but doing something "material with it" (which would explain why, when Rules 67.2 and 67.3 were adopted, they included the requirement that lawyers send their plans to the LSA and participate in reviews);
 - c. note Teskey's various references to "harassment" in connection with his proposed "competence" initiative;
 - d. note that, to Teskey, "competence" included complying with the TRC's call to action to impose Specified Mandatory CPD;
 - e. reference the LSA's Regulatory Objectives¹⁴² which "the Law Society will have regard for ... when discharging its regulatory functions"¹⁴³ and which include its Political Objectives as an objective distinct from the objectives of ethics, competence, and access to justice (and which Political Objectives the LSA expressly contemplated taking priority over other objectives including, even, the protection of the rule of law);¹⁴⁴ and
 - f. reference the LSA's Acknowledgement¹⁴⁵ in which the LSA advises that the Benchers had participated in "training focused on unconscious bias and centering equity in their governance and decision-making roles".¹⁴⁶
191. The LSA's summary of its "motives and reasons" for Rules 67.2 and 67.3 are therefore superficial and incomplete. Even in Teskey's memo itself we see the Political Objectives manifest – the LSA just fails to acknowledge them.
192. The LSA asserts a "competence" and "cultural competence" objective for Rule 67.4 on the basis of Freund's October 1, 2020, memorandum, but fails to:

¹⁴² Which the LSA would keep from the Court.

¹⁴³ Song Affidavit, Exhibit "B", p. 103.

¹⁴⁴ Applicant's brief at para. 29.

¹⁴⁵ Which the LSA would keep from the Court.

¹⁴⁶ Applicant's brief at para. 340; See also applicant's brief at paras. 31 and 32.

- a. explain what the LSA means by “cultural competence”;
- b. acknowledge that Fruend’s memo references an “excellent piece of academic writing in this area ... from Pooja Parmar” arguing that “cultural competence” (properly understood) means “enable[ing] professionals to pursue a transformative agenda” and “radical” transformation of the legal system (i.e. the Political Objectives);¹⁴⁷
- c. acknowledge that the Parmar Article is an application of postcolonialism;¹⁴⁸
- d. acknowledge that according to parts of the Parmar Article (which have been excluded from the CRP):
 - i. “reconciliation” means “acknowledgment of the foundational violence of colonialism that has shaped Canada, Canadian laws, and Canadians” and “unlearning colonial logics”, etc.;¹⁴⁹
 - ii. “decolonization” might be a more useful term “than ‘cultural understanding’ when the goal is systemic change.”¹⁵⁰
- e. mention the Furlong report, which is improperly excluded from the CRP and which memo includes further evidence that the LSA was pursuing the Political Objectives;¹⁵¹
- f. include, where the LSA lists the Path’s subject matter, the entire last sentence of call to action no. 27:

*[this] will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism;*¹⁵²
- g. mention that the Path includes the Theories and misinformation which tends to denigrate Canada’s first Prime Minister¹⁵³; or
- h. reference the Regulatory Objectives, the Acknowledgement and the Bencher’s training to “centre equity” in governance decisions.

¹⁴⁷ See applicant’s brief at paras. 43 to 47 and 444 to 447.

¹⁴⁸ Applicant’s brief at para. 445.

¹⁴⁹ Applicant’s brief at para. 447.

¹⁵⁰ Applicant’s brief at para. 450(a).

¹⁵¹ See applicant’s brief at paras. 444 to 449.

¹⁵² CRP at A-281.

¹⁵³ Applicant’s brief at paras. 632 to 634.

193. Again, the LSA's summary of its "motives and reasons" for Rule 67.4 is superficial and incomplete. Rule 67.4 was obviously done in pursuit of the Political Objectives. The LSA simply ignores those parts of the record (or omits them from the CRP).
194. As for the LSA's stated motives and reasons for the Impugned Code provisions, the LSA fails to:
- a. explain that, according to the PRRC, it was the Alberta articling survey which "demonstrate[d] why the regulator needs to respond"¹⁵⁴ (which survey the LSA has kept from the Court so that what it "demonstrates" can not be assessed objectively)¹⁵⁵;
 - b. explain how the Impugned Code's references to, for example, "systemic biases", "colonization", "ongoing repercussions of the colonial legacy", "systemic factors, and implicit biases", "systemic discrimination", "distinct needs", and "unconscious biases" are not a reflection of and advancement of the LSA's Political Objectives;
 - c. explain how the Impugned Code was significantly overhauled without materially altering it;¹⁵⁶
 - d. mention and explain that LSA's motives and reasons included assuming jurisdiction over matters it viewed as being mishandled by the Alberta Human Rights Commission and labour organizations;¹⁵⁷
 - e. mention (here) that the FSLC's model code was the brainchild of the Law Societies Equity Network (the "**LSEN**") and fails to mention here or earlier¹⁵⁸ that the LSEN's mandate included the promotion of "diversity and inclusion" (i.e. the Political Objectives);
 - f. explain on what basis the LSEN concluded the existing rules were insufficient (including on what basis the "commentary may not adequately reflect the importance of preventing discrimination and harassment");¹⁵⁹

¹⁵⁴ Applicant's brief at para. 63.

¹⁵⁵ Applicant's brief at para. 24.

¹⁵⁶ See the respondent's brief at paras. 23 and 24 (which suggest the amendments only resulted in the addition of a non-reprisal clause) as compared to CRP A-095 – A-100 which show the addition of an enormous amount of language.

¹⁵⁷ CRP at C-404.

¹⁵⁸ Respondent's brief at para. 19.

¹⁵⁹ CRP at A-058

- g. disclose in the CRP any of the (allegedly) “considerable empirical and anecdotal evidence that discrimination, harassment and bullying remain prevalent in the legal profession”;¹⁶⁰
 - h. address the applicant’s observations that (at least) Alberta’s contribution to the articling surveys (which was also excluded from the CRP) was highly flawed¹⁶¹ and was used by the LSA to “inform our work on advancing EDI”¹⁶² (i.e. to advance the Political Objectives); or
 - i. reference the Regulatory Objectives, the Acknowledgement and the Benchers’ training to “centre equity” in governance decisions.
195. Instead, again, the LSA provides a series of “motives and reasons” by superficial and cherry-picked references to the CRP, while simply ignoring the political dimensions of LSA’s actions (which are comprehensively catalogued in the applicant’s brief).
196. It is accurate to say the LSA’s objectives were “competence”, “cultural competence” and reducing “discrimination and harassment” only insofar as those terms and objectives are defined according to the ideologies which informs the LSA’s Political Objectives (i.e the Theories).
197. Simply put, the LSA claims easily defensible “motives and reasons” (the motte: competence and ethics) while simply refusing to disclose, acknowledge, or defend the indefensible (the bailey: its Political Objectives).

E. The Policy Merits of the Subordinate Legislation

198. As explained at section V.B (The LSA Claims its Politics are Non-Justiciable), the applicant does not inquire into the policy merits of the LSA’s Impugned Conduct.

F. The Presumption of Validity

199. The presumption of validity, as expressed in *Auer v Auer*¹⁶³ is that:

... the burden [is] on challengers to demonstrate the invalidity of [subordinate legislation]” and ... “it favours an interpretive approach that reconciles the

¹⁶⁰ CRP at A-059.

¹⁶¹ Applicant’s brief at para. 24.

¹⁶² CRP at A-123.

¹⁶³ 2024 SCC 36 at para. 37.

[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]

200. The LSA is incorrect, therefore, where it claims that the Impugned Rules and Impugned Code “should be interpreted in a manner that renders the subordinate legislation *intra vires*”¹⁶⁴ (but states the rule correctly elsewhere¹⁶⁵).
201. However, the presumption has no application here. The LSA offers no interpretation of its Impugned Conduct, including the Impugned Rules and Impugned Code, which might render it *intra vires*.

G. Opinion and Regulatory Objectives

202. With respect to the Regulatory Objectives, please see above at section IV.B.iii.1 (Regulatory Objectives). The CRP is clearly deficient for the LSA’s failure to include, within it, the Regulatory Objectives (which are actually an “executive summary” only). The LSA has now implicitly acknowledged that it has a fuller version of the Regulatory Objectives (it would not waste the Court’s resources with argument as to why they should not be disclosed if they did not exist). The full Regulatory Objectives should, therefore, be ordered disclosed.
203. The respondent resists disclosing the Legal Opinion it received purporting to find that Rule 67.4 was *intra vires*, despite the fact that on December 1, 2022, at its annual general meeting, its then-President Ken Warren K.C. publicly advised members both of its existence and its substance.¹⁶⁶ The respondent relies on a statement in *Manson Insulation Products Ltd. v Crossroads C&I Distributors* where Justice Poelman stated that he was not aware of authority holding that “mere reference to a legal opinion, or even a statement of its bare conclusion, requires a finding of waiver.”¹⁶⁷ In *Manson*, the defendant’s witnesses “did not describe [the legal opinion’s] contents”¹⁶⁸ and Justice Poelman held that the defendant “cannot be said to have voluntarily waived privilege by

¹⁶⁴ Respondent’s brief at para. 119(d).

¹⁶⁵ Respondent’s brief at para. 124.

¹⁶⁶ Song Affidavit, para 124.

¹⁶⁷ Respondent’s brief para. 79 (quoting *Manson Insulation Products Ltd v Crossroads C&I Distributors*, 2014 ABQB 634 (“**Manson**”), para 62).

¹⁶⁸ *Manson* at para 64. See *F.P. Bourgault Industries Seeder Division Ltd. v. Flexi-Coil Ltd.* (1995), 1995 CanLII 19325 (FC), 64 C.P.R. (3d) 70 (F.C.T.D.) at para. 72: “Reference to the terms of a document as such will usually waive privilege in the document.”

telling the plaintiffs it had received two legal opinions, without even referring to what they said.”¹⁶⁹ Justice Poelman’s comment concerning his lack of awareness of other caselaw finding waiver based on “a statement of [a legal opinion’s] bare conclusion” was, therefore, obiter.

204. In *Canadian Council of Professional Engineers v Memoria University of Newfoundland*, There, Justice Rothstein held that the University had waived privilege over a legal opinion.¹⁷⁰ The University’s in-house counsel had commented during cross examination about University meeting minutes that referred to a legal opinion that “the University may lose” a potential case. The University counsel made brief comments attempting to temper the minute’s reference to the legal opinion, saying that the University may lose or it may win a potential case.
205. The comments of (then) President Ken Warren K.C. in the present matter are analogous. In a meeting where the jurisdiction of the LSA to impose mandatory CPD requirements was at issue, Mr. Warren, chose not merely to say that the respondent had received legal advice for its position, but also to unequivocally disclose the substance of the opinion: that Rule 67.4 was *intra vires*. The choice of the respondent’s president to disclose a legal opinion and its specific conclusion to justify to the members the adoption of a controversial rule was an express (or at least implied) waiver of the privilege over that opinion.¹⁷¹
206. A finding of waiver is also required for the purpose of ensuring fairness and consistency. The respondent relied on the Legal Opinion in adopting rule 67.4 and in justifying that adoption to its members; fairness and consistency require that the Legal Opinion be disclosed to this Court, which is being called upon by the respondent to find that its adoption of Rule 67.4 was reasonable.¹⁷²
207. An example of fairness and consistency demanding a finding of waiver can be seen in *Imperial Tobacco Co v Newfoundland and Labrador (Attorney General)*.¹⁷³ There Chief Justice Green of the Newfoundland and Labrador Supreme Court commented on a government actor making public partial disclosure of its retainer agreement with its legal

¹⁶⁹ *Manson* at para 63.

¹⁷⁰ *Canadian Council of Professional Engineers v Memoria University of Newfoundland*, 1998 CarswellNat 2364, [1998] FCJ No 1703.

¹⁷¹ See *Biehl v. Strang*, 2011 BCSC 213 at paras 39-40.

¹⁷² *Ibid.*

¹⁷³ *Imperial Tobacco Co v Newfoundland and Labrador (Attorney General)*, 2007 NLTD 172 (CanLII).

counsel, and then resisting disclosure by asserting-solicitor client privilege over the retainer agreement:

Here, the partial disclosure was not inadvertent. It was done deliberately to achieve a political result - to demonstrate to the public that the government was acting in a fiscally responsible manner in the way in which it was conducting the litigation. It was ostensibly promoting itself as complying with principles of transparency. In fact, in Stevens, Linden, J.A. at para. 52 acknowledged that "a government body may have more reason to waive its privilege than private parties, for it may wish to follow a policy of transparency with respect to its activity". The problem, however, with releasing only selected parts of a fee agreement in these circumstances is that the public whom the government is trying to reassure about its fiscal responsibility, has no way of judging whether the government's assertions are correct unless they see the whole document. Other provisions of the document might contain terms that detract from what has been disclosed or make the overall arrangement not as advantageous or fiscally responsible as represented.

Having decided to go down the road of wrapping itself in the twin flags of fiscal responsibility and transparency with a view to convincing the public of the appropriateness of its actions, it is not unreasonable to assume that the government was essentially saying that its financial arrangements with its lawyers were an "open book" and should be used as a basis for public judgment on its decisions.

. . .

In the circumstances of this case, I conclude that even if the contingency fee agreement was a privileged communication, there has been a subsequent waiver of the privilege.¹⁷⁴

208. The present case is analogous: the respondent by its intentional public partial disclosure of the Legal Opinion waived its solicitor-client privilege over the Legal Opinion. This Honourable Court should order that it be produced.

¹⁷⁴ *Ibid.* at paras 112-13, 115.

VIII. STATUTORY INTERPRETATION AND PURPORTED “CONSTRAINTS”

209. At paragraph 132 of the respondent’s brief it conflates the modern rule of statutory interpretation (the first sentence) with the reasonableness analysis in *Vavilov* (the second sentence).
210. *Vavilov* indicates that what is “reasonable” depends on factual and legal constraints which “dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt.”¹⁷⁵ The first such constraint is the words of the enabling statute.¹⁷⁶ *Vavilov* also references, “other relevant statutory or common law [and] the principles of statutory interpretation.”¹⁷⁷
211. The LSA flips the concept of “constraint” on its head, deploying the concept in an attempt to expand the LSA’s powers beyond the constraints actually imposed by the words of its enabling statute.
212. Specifically, the LSA claims that caselaw interpreting British Columbia’s and Manitoba’s legislation (where each provincial “legislature [chose] to use broad, open-ended or highly qualitative language — for example, ‘in the public interest’”¹⁷⁸) is a “constraint” which permits Alberta’s legislation (where the provincial legislature “precisely circumscribe[d] an administrative decision maker’s power ... by using precise and narrow language”¹⁷⁹) to be “interpreted” to mean the same thing.
213. The LSA uses this supposed “constraint” to justify its conclusion that LSA’s statutory mandate is to decide the meaning of “public interest” and then to deploy “extremely broad” regulatory powers to pursue such “public interest.”¹⁸⁰
214. As to the glaring fact that the words chosen by Alberta’s legislature are far narrower than the words chosen by the legislatures of British Columbia and Manitoba¹⁸¹ the LSA argues, in essence, that:

¹⁷⁵ *Vavilov* at para. 90.

¹⁷⁶ *Vavilov* at para. 68.

¹⁷⁷ *Vavilov* at para. 106.

¹⁷⁸ *Vavilov* at para. 110 – public interest clauses of the sort at issue in *Trinity* (s. 3 of the BC LPA) and *Green* (ss. 3(1) and 4(5) of the LPAM) shall be referred to herein as “**Public Interest Clauses**”.

¹⁷⁹ *Vavilov* at para. 110.

¹⁸⁰ Respondent’s brief at paras. 134 and 183.

¹⁸¹ The LPA, for example, contains no public interest clause, no public interest powers, and no duty to operate a program of CPD; see applicant’s brief at section IV.A.i.2. (Legislative Distinctions).

- a. because the LSA also operates in the “public interest” the statutory differences (i.e. the constraints placed on its powers and duties by the *LPA*) are irrelevant; and
- b. therefore, whatever the *LPA* may actually say, the LSA can decide what is in the “public interest” and then exercise any *de facto* powers it has over the bar to pursue such “public interest”.¹⁸²

215. The applicant warns against this “false syllogism” at section IV.A.i.4 of its brief (*Green* and the Public Interest). As stated in the applicant’s brief:

*... 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.*¹⁸³

216. The LSA expresses continued confusion as to the difference between a delegate operating in the public interest and the delegate’s enabling legislation containing Public Interest Clauses.¹⁸⁴

217. It may help to recall that (so far as the applicant can determine) every statutory delegate known to Canadian law is assigned its duties and powers in the public interest. Should, then, the constating legislation throughout the entire administrative state be “interpreted” to include the following Public Interest Clauses (modeled on the Public Interest Clauses in the LPAM)?

The purpose of the delegate is to uphold and protect the public interest.

In addition to any specific power or requirement, the delegate may make rules to pursue its purpose and carry out its duties.

218. Obviously not. To do so would be to render statutory interpretation and judicial review practically meaningless.

219. Contrary to the LSA’s assertions that:

... what is in the ‘public interest’ is “for the Law Society to determine” and also that “the law society’s interpretation of the public interest is owed deference” ...

¹⁸² Respondent’s brief at paras. 154 to 156 and 168 to 171.

¹⁸³ Applicant’s brief at para. 205.

¹⁸⁴ Respondent’s brief at paras. 168 to 169.

Furthermore, a law society must be afforded “considerable latitude in making rules based on [their]¹⁸⁵ interpretation of the ‘public interest’ in the context of [their]¹⁸⁶ enabling statute ...¹⁸⁷

Green and *TWU* are abundantly clear that the law societies before the court had the power and duty only to interpret the Public Interest Clauses actually contained their enabling statutes, not to interpret the “public interest” *simpliciter*.¹⁸⁸

220. Alberta’s legislature chose not to include Public Interest Clauses in the LPA. For this reason, presumably, the LSA considers the act “outdated”. The *LPA* uses far narrower wording than in British Columbia and Manitoba. To find that the *LPA*, nonetheless, contains Public Interest Clauses would be to simply ignore the Alberta legislature.
221. The LSA relies heavily on a statement from *Morris*¹⁸⁹ that, “the Legislature has given the LSA a broad public interest authority and broad regulatory powers to accomplish its mandate.”¹⁹⁰ The LSA’s reliance on this statement is misplaced for several reasons:
- a. The applicant does not dispute that the LSA has a “public interest authority” and “regulatory powers.” That Justice Loparco describes such authority and powers with the adjective “broad” does not mean that Alberta’s legislation grants an authority and powers as broad as British Columbia’s and Manitoba’s – the Justice engages in no legislative comparisons. A legislative comparison instantly reveals major textual differences (most obviously, the absence of the Public Interest Clauses in the *LPA*).
 - b. Nor does Loparco J.’s use of the adjective “broad” have any interpretive utility. Her use of the adjective “broad” does not permit later courts to interpret the *LPA* to be “broader” than the constraints imposed by the legislature’s chosen statutory language.
 - c. In any case, Loparco J.’s observations as to the LSA’s “broad” powers must be understood in their context. The case related to the LSA’s trust audit authority and powers (LPA ss. 7(2)(p) and (q)) which, the court found, by necessary implication required the LSA to breach solicitor client privilege.¹⁹¹ This is the *ratio* of *Morris*, not

¹⁸⁵ In original.

¹⁸⁶ In original.

¹⁸⁷ Respondent’s brief at para 138.

¹⁸⁸ *Trinity* at paras. 32 to 38 and *Green* at paras. 28 to 37.

¹⁸⁹ *Morris*.

¹⁹⁰ *Morris* at para. 63.

¹⁹¹ *Morris* at paras. 29, 79, 81 and 91.

that Alberta's legislation contains Public Interest Clauses like those at issue in *TWU* and *Green*.

222. It is also noteworthy that in the "constraint" section, the LSA argues that its statutory objective is to protect the "public interest" as it determines, but the LSA hardly explores what that "public interest" includes according to caselaw.¹⁹²
223. Critically, the LSA discusses the "public interest" while entirely ignoring the applicant's main point: that the maintenance of the rule of law (the "sinew which binds together Canada's entire constitutional project") is in the public interest – which necessitates that lawyers "so far as by human ingenuity it can be so designed" be independent of state or political interference.¹⁹³
224. The LSA makes passing reference to the concept of legal independence only to support its claim that "delegation also maintains the independence of the bar; a hallmark of a free and democratic society." The LSA obviously confuses itself for the bar of lawyers it regulates. If the LSA (as statutory delegate) politically interferes with the bar, then delegation (and deference) works to destroy the bar's independence.
225. The LSA's proper statutory objectives are summarized in the applicants brief at paragraphs 250 and 251.

i. The LSA's Statutory Interpretation of the LPA¹⁹⁴

1. General Errors in the LSA's Interpretation

226. The LSA has elected to abandon any arguments to demonstrate the *vires* of the Profile, the CPD Tool and the LSA's entire political enterprise (the Political Objectives) except the argument that, in essence, these matters are none of the Court's business.
227. It, therefore, offers no arguments that the Profile, the CPD Tool and any political objectives (much less the LSA's Political Objectives) are properly within the LSA's statutory jurisdiction. Of course, they are not for the comprehensive reasons provided in the applicant's brief. But, even if the standard of review is "reasonableness" the LSA's election to say nothing on these points falls well short of the required standard: transparent, intelligible and justified.

¹⁹² By comparison, see the applicant's brief at section III.B. (The Justice System).

¹⁹³ See applicant's brief, especially paras. 4, 149, 168, and 250.

¹⁹⁴ Respondent's brief at section IV.E.iv (Statutory Interpretation).

228. In response to the applicant's review of the scheme of the *LPA* (which shows heavy LSA involvement at admission, the guidance of an ethical code, and the bar's independence thereafter to "practice law in their professional discretion barring future misconduct, just as the LSA operated, to the satisfaction of the public for its first century."¹⁹⁵) the LSA asserts that:

*The LSA is necessarily involved in the ongoing monitoring, supervision, and education of members of the profession and is given the authority to proactively manage the competency and conduct of lawyers.*¹⁹⁶

229. The LSA fails to:

- a. show that supposed "necessity" by reference to the statutory scheme;
- b. explain how the *LPA* "necessarily" requires such direct supervision now (in the "21st century"¹⁹⁷) whereas it did not "necessarily" require such direct supervision throughout the 20th century; or
- c. evidence in the CRP or to demonstrate the correctness or reasonableness of the LSA decision to "commi[t] to the goal of proactive regulation" in the 2015¹⁹⁸ to 2019¹⁹⁹ timeframe.

230. In other words, the LSA baldly asserts that "proactive" regulation is "necessary". The LSA has, therefore, failed to demonstrate that the scheme of the act includes any "proactive" supervision.

231. The LSA also claims that, because Mandatory CPD is "necessary", the *LPA* must be interpreted so as to empower the LSA to impose Mandatory CPD as a matter of "necessary implication."²⁰⁰ In addition to the LSA having failed to establish that Mandatory CPD is "necessary" (and a century of successful operation evidencing very clearly that it is not) this argument seriously overstates the principle. In *Green* the principle was employed as follows: "... since the Law Society has the power to create a CPD scheme, it necessarily has the power to enforce the scheme's standards."²⁰¹ In *Morris* it was

¹⁹⁵ Applicant's brief at para. 248.

¹⁹⁶ Respondent's brief at paras. 133 and 153.

¹⁹⁷ A-338.

¹⁹⁸ A-338.

¹⁹⁹ The Affidavits evidence that the LSA adopted its goal of proactive regulation (publicly) only in December of 2019 – see applicant's brief at paras. 25 and 26.

²⁰⁰ Respondent's brief at paras 170 and 171.

²⁰¹ *Green* at para. 42.

employed as follows: “Since the LSA has the authority to regulate ... trust accounts, it has the power to determine what data points are necessary to permit it to test the integrity and proper use of such accounts.”²⁰² In other words, the principle only operates where a power or duty is granted in the legislation and, as a matter of practical necessity, the power or duty cannot be accomplished without some ancillary power which must be implied. The principle does not permit the addition to the delegate’s statutory authority whatever new powers the delegate deems “necessary” from time to time.

232. In the LSA’s view the legislation is “outdated.” It is not within the LSA’s powers, however, to “update” the *LPA* by the simple expedient of deeming certain powers “necessary.”
233. Finally, in keeping with the motte-and-bailey theme of the LSA’s brief, the LSA employs, throughout its analysis, concepts of “competence”, “cultural competence”, “ethics”, “discrimination” and “harassment” without telling the Court what it means by these terms. The upshot being, the Court is being asked to assume that where the LSA says “competence” and “ethics” that the LSA must mean a type of competence appropriate to Canada’s Constitutional structure (i.e. one governed by the rule of law which supports freedom and democracy). The Court is to assume that the LSA does not, by “competent and ethical”, mean the bailey; a lawyer who:
 - a. views her role, not as the client’s loyal advocate, but as the advocate for social justice - an agent pursuing the “‘radical transformation’ of the legal system”;²⁰³
 - b. has “unlearn[ed] colonial logics, hierarchies of legal cultures” and has learned, in their place, indigenous law and epistemologies; and
 - c. generally, views the Western legal system and its notion of justice as mere instruments of oppression, relying on various “sham” assumptions (like empiricism, objectivity, and reason) to effect racial hegemony.²⁰⁴
234. The Court is even asked to make such assumptions where the CPR itself indicates that these terms are used as specialized terms of art with seriously problematic meanings.
235. The Court can simply not do justice in this matter on the basis of such assumptions.

²⁰² *Morris* at para. 66.

²⁰³ Applicant’s brief at para. 447.

²⁰⁴ Applicant’s brief at para. 338.

236. The LSA's entire legislative interpretive exercise must be reviewed with knowledge that where the LSA says "competent" and "ethical" it means (in essence) belief in, obedience to, and the promotion of the Political Objectives.
237. Once the meaning of such terms are properly understood (i.e. how does the LSA understand these terms) the wheels fall off of the LSA's interpretive bus.

2. LSA's Arguments Re: Part 6.3 of the Code

238. In addition to the arguments provided in section VIII.i.1 (General Errors in the LSA's Interpretation), the LSA claims, with respect to s. 6(l) if the LPA:

*There are no prescriptions or restrictions concerning the code of ethical standards. Rather, the content and substance of the code of ethical standards are left for the Benchers to decide.*²⁰⁵

239. That is wrong. As observed by the applicant, the text itself includes many restrictions:
- a. It permits a code of ethics, not a code of competence (the LSA now claims the Profile relates to competence, rendering it *ultra vires* as the LPA does not empower the LSA to impose a "code of competence");²⁰⁶
 - b. It permits only one code, not two;²⁰⁷ and
 - c. It only permits the creation of a "standard", not a "menu of uncertain aspirations".²⁰⁸
240. Also as observed by the applicant, the common law and, of course, the *Constitution* (including the *Charter*) impose further "prescriptions and restrictions" including:
- a. the Benchers must always exercise their statutory discretion in accordance with the objectives discernible from the text and scheme of the legislation:

*... 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.*²⁰⁹
 - b. those objectives include insulating lawyers from political interference, not subjecting lawyers to political interference;

²⁰⁵ Respondent's brief at para. 158.

²⁰⁶ Applicant's brief at section D.i.1 (No Code of Competence); Respondent's brief at para. 93(a).

²⁰⁷ Applicant's brief at section D.i.2 (One Code Not Two).

²⁰⁸ Applicant's brief at section D.i.3 (Menu of Uncertain Aspirations).

²⁰⁹ *Roncarelli* at para. 41.

- c. where rules about constitutional freedoms they must be drafted to a high degree of predictability; and
 - d. *Charter* infringements must be: for *intra vires* purposes; prescribed by law; and reasonable in a free and democratic society.²¹⁰
241. When the substantive content of Part 6.3 of the Code is reviewed (and especially when it is understood) it becomes clear that the LSA has violated each of the “prescriptions and restrictions” set-out in the preceding paragraph.
242. Rather than address these arguments in its brief, the LSA’s analysis is superficial, simply claiming that the Code’s “harassment” and “discrimination” provisions do “exactly what section 6(l) of the *LPA* permits.” The LSA uses labels (“discrimination” and “harassment”), without so much as discussing the substantive content of the Code provisions.
243. None of the applicant’s arguments as to the *vires* of the Impugned Code have been addressed by the LSA including, of course, the fact that the Code now incorporates concepts from the Theories which are anathema to the Canadian *Constitution*.
244. For the reasons given in the applicant’s brief, the LSA’s reasons are wrong and the reasons now given are not a justification in relation to the facts and law that constrain the decision maker by means of a transparent, intelligible, internally coherent and rational chain of analysis.²¹¹
245. The LSA’s *Charter* arguments as to the Code are discussed below.
246. The LSA’s observation that the Code now closely “mirrors” the *Alberta Human Rights Act* and *Occupational Health and Safety Act*²¹² raise two issues. First, the LSA has failed to prove the Code “mirrors” these acts at all. The Code contains a significant volume of explanation as to the meaning of “discrimination” and “harassment” absent from those pieces of legislation and, so far as the applicant is aware, largely absent from the associated common law.
247. Second, the “mirror” argument suggests the LSA is intruding into the jurisdiction of other statutory entities. Indeed, the LSA’s CRP indicates this was the intention. Although:

²¹⁰ Applicant’s brief at paras. 709 to 719; *Charter* at s. 1.

²¹¹ *Vavilov* at 85.

²¹² Respondent’s brief s. 149 and 190.d.

*Concern was expressed with duplicating the Human Rights Commission discrimination complaint process ...*²¹³

The PRRC seems to have proceeded on the basis that:

*Human Rights and Labour Relations bodies have not been dealing with harassment and discrimination effectively.*²¹⁴

248. Having admitted this, the LSA should (but fails to) give reasons in support of its assumption of the jurisdiction of these other statutory delegates.

3. LSA's Arguments Re: the Impugned Rules²¹⁵

249. In addition to the arguments provided in section VIII.i.1 (General Errors in the LSA's Interpretation), in the LSA's argument it mentions but then fails to give the following underlined words any meaning:

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.

250. As observed by the applicant in its brief, this basket clause does not expand the LSA's powers, it facilitates the exercise of powers and compliance with duties elsewhere granted to the LSA. Its meaning is no different than section 25(2) of the *Interpretation Act*.²¹⁶
251. In other words, to rely on this provision the LSA must identify elsewhere a power or duty to impose Mandatory CPD.²¹⁷ The LSA says the LSA's "powers and duty to regulate the profession"²¹⁸ include "CPD" but, rather than locating such CPD power or duty in the LPA,²¹⁹ it observes, "the establishment of mandatory CPD requirements is compatible with the LSA's purpose and duties."²²⁰ The fact of power being "compatible with" the LSA's

²¹³ C-408.

²¹⁴ C-404.

²¹⁵ Respondent's brief at paras. 161 to 167.

²¹⁶ Applicant's brief at para. 71.

²¹⁷ See definition at applicant's brief at para. 203.

²¹⁸ Respondent's brief at para. 163.

²¹⁹ In *Green*, for example, the court notes (at para. 33) the Manitoba statute's express grant of power to "establish and maintain ... a continuing legal education program" (bearing in mind that the LSM's jurisdiction to impose Unspecified Mandatory CPD was (wisely) conceded by the applicant in *Green* and was not in issue). *Green's ratio* has nothing to do with jurisdiction to impose CPD, it is solely about the LSM's ability to automatically suspend.

²²⁰ Respondent's brief at para. 163.

purposes and duties is not the same as that power being legislatively granted. Also, a Mandatory CPD requirement is in no sense “compatible with” the LSA’s purposes and duties (its duty is to maintain the bar’s professional independence) especially the Mandatory CPD the LSA has in mind (which is hostile to the *Constitution*).

252. The LSA argues²²¹ that the applicant contradicts himself by saying the LSA has no authority to impose CPD (the applicant said “Mandatory CPD” – see section IV.A.iii (The LSA has no Power to Mandate CPD)) while admitting that the LSA may impose some sorts of CPD obligation (the applicant said “Voluntary CPD” under the Code – see paragraph 201). There is no contradiction. In making these respective statements the applicant expressly differentiated between different types of CPD (Mandatory CPD and Voluntary CPD, defined at paragraph 203). Even if the applicant had contradicted himself, such contradiction does not “reveal the truth” that the applicant’s “position” is not that the LSA lacks jurisdiction. That is very much the applicant’s position. Nor is the applicant somehow hiding that the LSA’s conception of “competence” and “ethics” grossly violates his sincerely held religious and secular beliefs. In fact, this is the premise of his *Charter* claims.
253. The LSA also seems to argue that the provision permits the LSA to do what it would like “provided that such rule making authority upholds and protects the public interest.”²²² In other words, the LSA interprets s. 7(1) of the *LPA* to be the same as the Public Interest Clauses included in the Manitoba and British Columbia legislation but excluded from Alberta’s *LPA*: “the LSA is simply operating as if the *LPA* contains Public Interest Clauses.”²²³
254. The LSA has failed to provide any response to the arguments in the applicant’s brief with respect to this provision.²²⁴
255. The LSA also relies on *LPA* s. 6(n) which, again, it simply treats as (a second) set of Public Interest Clauses – despite the fact that the text of the respective clauses are entirely different.

²²¹ Respondent’s brief at paras. 172 to 173.

²²² Respondent’s brief at para. 161.

²²³ At para. 205.

²²⁴ Applicant’s brief at para. 276.

256. With respect to the LSA's argument that the LSA has no "independent interests"²²⁵ the LSA is overlooking the legislative text which expressly references the "interest ... of the Society."²²⁶ The LSA's continued conflation of the interests "of the Society" with the interests "of society" can be resolved if it is recalled that "... even public bodies make some decisions that are private in nature – such as renting premises and hiring staff ..." ²²⁷ In other words, where the *LPA* references the "interests ... of the Society" it is referencing such "private" interests (although it remains true that the LSA's ultimate purpose is to serve the public interest (legally and constitutionally)).
257. For the reasons given in the applicant's brief, the LSA's reasons are wrong and the reasons now given are not a justification in relation to the facts and law that constrain the decision maker by means of a transparent, intelligible, internally coherent and rational chain of analysis.²²⁸ The LSA's *Charter* arguments as to the Impugned Rules are discussed below.

4. The LSA's Summary re: Impugned Rules and the Impugned Code

258. At paragraph 176 of its brief, the LSA provides the following summary, with the applicant's inexhaustive clarifications and corrections provided in parenthesis:

By way of summary:

a. the evidence indicates that the LSA was motivated to increase the competence and ethics of the profession [the accuracy of this statement depends entirely on definitions of "competence" and "ethics" which the LSA claims is outside of the Court's supervisory legitimacy and capacity];

b. the purpose and object of the LSA, as set out in the LPA, is to protect the public interest [the LPA contains no Public Interest Clauses. The LSA's proper objectives are set out in the applicant's brief at paragraphs 250 and 251. To overstate the LSA's "objects" generally and without qualification as "to protect the public interest" ignores the text of the LPA and invites the very mischief now before the Court – a regulator

²²⁵ Respondent's brief at para. 167.

²²⁶ *LPA* at s. 6(n).

²²⁷ *Highwood* at para 14.

²²⁸ *Vavilov* at para. 85.

which believes it may regulate according to “personal political preference.”];

c. the meaning of public interest is for the LSA to decide and is owed deference [the LSA is relying on TWU where such discretion related solely to the Public Interest Clauses which are absent from the LPA];

d. the Supreme Court of Canada has ruled that:

i. the establishment of mandatory standards, for both CPD and conduct, is compatible with the purpose and duty of a law society; [This is obiter from Green involving the LPAM’s express power to maintain and operate a program of CPD which is absent from the LPA. It is obviously not compatible with the LSA’s legal duties to assume a power the LPA does not grant. The LSA’s definitions of “competence” and “ethics” to which its CPD and conduct rules relate are political and hostile to the Constitution and, as such, the substance of the LSA’s “CPD” grossly violates the LSA’s purpose and duty];

ii. mandatory standards which, in the benchers’ view, serve to protect the public are in keeping with the duties given to a law society [The Bencher’s have not been empowered by the legislature with Public Interest Clauses. The Bencher’s view of the “public interest” is irrelevant to a determination of the Bencher’s legal and constitutional jurisdiction. The Bencher’s discretion must always be exercised for the proper and constitutional objectives envisioned by the LPA, “any clear departure from its lines or objects is just as objectionable as fraud or corruption.” The Benchers may in no manner mandate standards which affect political interference with the bar and especially political interference anathema to the Constitution.]

iii. to ensure that those standards have an effect, a law society must be able to establish consequences for those who fail to adhere to them; [irrelevant]

iv. a suspension is a reasonable way to ensure that lawyers comply with the CPD program [irrelevant];

v. promoting equality, ensuring equal access to the legal profession, supporting diversity within the bar, and preventing harm to vulnerable

populations are valid things for a law society to consider ***[This is a misinterpretation of TWU. In that case the Court found that the LSBC's interpretation of its Public Interest Clause to include such objectives was reasonable. The LPA does not contain Public Interest Clauses. The LSA's Resources suggest that it uses different definitions for these terms than does the SCC. For example, the majority in TWU cites equality rights and diversity as supporting the "merit" of the bar (the larger the talent pool, the higher the bar's talent) but the concept of "merit" conflicts with the LSA's Political Objectives²²⁹]; and***

vi. the public interest may include protecting the values of equality and human rights [irrelevant];

e. the LSA has broad regulatory powers to accomplish its mandate of protecting the public interest [The LPA contains no Public Interest Clauses.]

f. the Benchers have a broad and open-ended authority in section 6(l) of the LPA to establish a code of ethical standards for members [The power is not open ended. It is highly constrained by both the text of the LPA including the provision itself, the common law and the Constitution. It is a violation of the LSA's duties to have or advance any political objective by means of the Code, much less the Political Objectives which are hostile to the Constitution.]

g. the Benchers have a broad authority in section 7(1) to establish rules for the exercise or carrying out of the powers and duties conferred or imposed on the LSA or the Benchers under the LPA, which includes upholding and protecting the public interest, including CPD [The LPA does not contain Public Interest Clauses and s. 7(1) can not be reasonably interpreted to be a Public Interest Clause. Section 7(1) can only be relied on where a duty or power is elsewhere granted. The LPA nowhere grants the LSA the power to operate a program of CPD. Even if the LSA had such

²²⁹ See, for example, the Report at p. 26: "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." See also, for example, para. 425 of the brief where Parmar explains that cultural competence means "making exceptions for ... one's in group" and "what is right is right." See also section IV.B.i. (The LSA's Political Objectives – An Attack on Empiricism, Objectivity, Reason, and Science).

power, CPD can not be used by the LSA to advance any political objectives, much less objectives which are hostile to the Constitution.]

h. the Benchers also have an explicit authority in section 7(2)(g) to make rules respecting the suspension of a member if the member fails to do any act within a specified timeline [irrelevant]; and

i. section 6(n) gives the Benchers have the power to take any action and incur any expenses the Benchers consider necessary for the promotion, protection, interest or welfare of the LSA [The LSA confuses the interests of the “Law Society of Alberta” with the interests of “society.” This clause relates to the LSA’s “private” interests. The LPA does not contain Public Interest Clauses and s. 6(n) can not be reasonably interpreted to be Public Interest Clauses. The LSA can not exercise any power for political purposes, much less political purposes hostile to the Constitution].

259. At paragraphs 176 d.v. and 177 to 181 the LSA is trying to “have its cake and eat it too.” The LSA’s position is that its admitted political objectives are non-justiciable (because the Court has no constitutional legitimacy or institutional capacity to review its political objectives).²³⁰ It seeks to exclude the evidence by which the Court may come to know and understand the LSA’s Political Objectives including the meaning and substantive content of the LSA’s nomenclature²³¹. And yet, in these paragraphs (and elsewhere) the LSA argues that its Political Objectives are actually in keeping with the “public interest.” The argument is vacuous and impossible. The LSA cannot, both, refuse to disclose or discuss the meaning of its nomenclature and then make arguments as if its nomenclature means what it superficially seems to.

260. A bar with cultural competency is irrefutably less responsive to the needs of the public it serves if cultural competence means the pursuit of a “transformative agenda” or “unlearning colonial logics.” It manifestly does not serve the needs of the democratic electorate to pervert the law and, thereby, assume the role of legislator. It manifestly does not serve the needs of racial minorities in a multicultural pluralism to insulate them from

²³⁰ See respondent’s brief section IV.C. (The Court should not directly consider whether the Profile, the CPD Tool, or the “Political Objective” or the “Political Objectives” are ultra vires)

²³¹ See respondent’s brief section IV.B. (The Affidavits should be put to no or limited use).

the Western legal system on the theory the Western legal system is not “appropriate” for their race.

B. The LSA Can Discern No Charter Infringements

261. The LSA denies any *Charter* infringements, going so far as to claim that it is “difficult, if not impossible,” to see how there could be one.²³²
262. The LSA finds it “impossible”, in other words, to imagine that prohibiting the applicant, on pain of regulatory sanction under the Code, from proscribed forms of speech could constitute a limit of the applicant’s fundamental freedom of speech. Surely that infringement is rather obvious.
263. The LSA’s argument that there are no *Charter* infringements is highly superficial. For example, the LSA entirely fails to address the applicant’s argument that its Impugned Conduct constitutes a breach of state neutrality, given that it vilifies the Christian worldview as a “sham” intended to oppress, *inter alia*, racial minorities.²³³
264. Likewise, the LSA’s argument is superficial, using terms like “sustainable”, “competence”, “community appropriate services and outcomes”, “discrimination” and “harassment” without:
 - a. acknowledging these terms are nomenclature from “niche areas” requiring “tools” to understand, which are constantly evolving, etc. (see above at paragraphs 89 to 97); or
 - b. acknowledging the political content of these terms (i.e. that they incorporate the Theories and are manifestations of the LSA’s Political Objectives) arising, of course, from the LSA’s overall position that this Court has no constitutional legitimacy or institutional capacity to inform itself as to the LSA’s Political Objectives.
265. The applicant did not fail to apply the *Charter* tests.²³⁴ In very summary fashion:
 - a. Section 2(a) and 2(b) (religious and secular belief):
 - i. the applicant describes his sincerely held religious and secular beliefs and demonstrates that his beliefs have a nexus with religion and his perception of himself, humankind, nature, and metaphysics; and

²³² Respondent’s brief at para. 189.

²³³ Applicant’s brief at paras. 772 to 777.

²³⁴ Respondent’s brief at para. 187.

- ii. the applicant demonstrates that the Impugned Conduct interferes with his ability to act in accordance with his religious and secular beliefs in a manner that is more than trivial or insubstantial including compelled apostasy.²³⁵

b. Section 2(a) (religious neutrality):

- i. the applicant demonstrates that the LSA has taken a religious position: it disfavors and hinders the applicant's beliefs by vilifying the Christian worldview as an oppressive "sham"; and
- ii. the applicant demonstrates resulting interference including those above, fear of hindrance and reprisals, and public vilification.²³⁶

c. Section 2(b) (expression):

- i. the applicant describes his desired expression which is manifestly not violence or otherwise categorically unprotected speech;²³⁷
- ii. the applicant observes that the legal profession is obviously a "location" in which one expects – and requires – the constitutional protection for free expression²³⁸
- iii. the applicant demonstrates that the Impugned Conduct in both purpose and effect restricts freedom of expression including through compelled speech.²³⁹

266. The LSA's purported summary of Song's *Charter* claims at paragraph 187 of its brief is, therefore, woefully incomplete. It is also incorrect:

- a. Song does not argue that the Political Objectives are "in conflict" with his beliefs, he demonstrates the LSA's Political Objectives are hostile to his religion and desired expression and hostile to his belief in and desire to express his belief that the Canadian *Constitution* is objectively superior to regimes which prioritize ideology and dogma;

²³⁵ Applicant's brief at sections II.A (Song), II.C (The Law Society of Alberta's Strategic Shift), III.B. (The Justice System), IV.B. (The Applied Post Modern Theories), IV.C. The LSA's Political Objectives – An Attack on Human Dignity); IV.D. (The Profile, The Code and The Requirement to Comply With the Theories) and paras. 739 to 771.

²³⁶ *Ibid* and paras. 772 to 778.

²³⁷ Applicant's brief at sections II.A (Song), IV.B.ii (The LSA's Political Objectives – An Attack on Loyalty to the Law); and paras. 739 to 771.

²³⁸ Applicant's brief at para. 737.

²³⁹ Applicant's brief at sections II.C (The Law Society of Alberta's Strategic Shift), III.B. (The Justice System), IV.B. (The Applied Post Modern Theories), IV.C. The LSA's Political Objectives – An Attack on Human Dignity); IV.D. (The Profile, The Code and The Requirement to Comply With the Theories) and paras. 739 to 771.

- b. Song proves the Path contains misinformation, objects to the Path's incorporation of the Theories, and denies the LSA has jurisdiction, either, to impose Mandatory CPD or to redefine "competence" to include matters of history, politics, economics or epistemology; and
 - c. Song does not object to prohibitions on "harassment and discrimination" *writ large*²⁴⁰, Song objects to such prohibitions as defined by the LSA (i.e. its incorporation of the Theories into such prohibitions) and objects to restrictions on fundamental freedoms by vague and subjective language.
267. At paragraph 187 the LSA purports to summarize "what actions or measures the LSA has *actually*²⁴¹ taken" which is, again, superficial and incomplete. For example:
- a. The LSA employs its usual nomenclature, the definitions of which the Court is expected to assume (which assumption will likely lead to a motte-and-bailey fallacy);
 - b. The LSA claims that under Rules 67.2 and 67.3 the lawyer is "asked to" reference the Profile. It is more correct and complete to say that the lawyer is required to reference the Profile, that the Profile incorporates the Theories and "... is not intended to ... address substantive legal knowledge and procedures specific to different areas of legal practice;"²⁴²
 - c. The LSA says Rule 67.4 allows it to prescribe additional "CPD" (suggesting the purpose of the rule is "professional" development) but fails to mention that Rule 67.4 operates "independent of Rule 67.1" including its requirement that CPD be a "learning activity that is: ... relevant to the professional needs of a lawyer ... related to ... professional ethics ... [or that it] must contain significant substantive, technical, practical or intellectual content.").
 - d. The LSA, again, summarizes the Path's topics without mentioning:
 - i. That the relevant TRC call to action was:
 - 1. not "understanding intercultural communication" but to mandate "training in intercultural competency";
 - 2. to mandate "training in ... anti-racism";

²⁴⁰ Although Song does not concede the LSA has jurisdiction to regulate harassment and discrimination even on a traditional definition of such terms.

²⁴¹ Emphasis in original.

²⁴² A-184.

ii. That the Path included that content as well as:

1. disparaging misinformation about Canada's first Prime Minister;
2. lessons in epistemological relativism (i.e. the Theories);
3. assertions that every socioeconomic disparity between indigenous and other Canadians was a "legacy of colonialism" (i.e. the Theories);
4. an accusation that Gerald Stanley being found "not guilty" was a miscarriage of justice;
5. the accusation that 80% of indigenous inmates are incarcerated for no reason other than the "legacy of colonialism" (i.e. the Theories);
6. encouragement to incorporate "reconciliation" into legal practice including in government, law enforcement and in the judiciary;
7. instructions to apply *Gladue* at bail hearings;
8. advice to see every indigenous person as a person "who's in conflict with themselves", who is in trauma, and whose trauma is to blame for their behaviour;
9. advice to stop treating alcoholism as a problem;
10. calls for the 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 law (laws which are being "made visible" by academic "research units") (i.e. the Theories and the Political Objectives);
11. the premise that the history of European - indigenous contact has been one of uninterrupted and conscious attempts at cultural genocide including by use of law;
12. the work of research Angela Day, connected with an organization which characterizes the Canadian *Constitution* as a continued theft which lawyers should fix in the way they practice law; and
13. etc.

e. The LSA summarizes the Impugned Code, again, with superficial references to "discrimination" and "harassment" without:

- i. acknowledging that these are nomenclature of the Theories including the Impugned Code's references to "internal bias", "colonization", "systemic factors", "systemic discrimination", "organizational cultures", "distinct needs" etc.; and

- ii. acknowledging or addressing the applicant's observation that the Code abuts *Charter* freedoms but is vague and defines proscriptions subjectively.

268. This demonstrates the importance of an informed and robust judicial review. When reviewed superficially “what actions or measures the LSA has actually taken” may seem unobjectionable – it may be “difficult, if not impossible, to see how any of these things could interfere” with Song’s *Charter* rights. When reviewed with some degree of rigor, however, the LSA’s actions take on an entirely different hue.
269. At paragraph 187.b. the LSA makes the argument presaged in the words of the Profile – that the CPD scheme does not actually define competence or require anything in particular of lawyers. The Profile tells lawyers that it is “not a checklist of requirements” but a source of “inspiration and aspiration” and that it does not “set threshold standards for purposes of discipline.” Similarly, the CPD Guidelines (not the Profile) say, “lawyers are not required to demonstrate competency in every area of the Profile each year.” The LSA’s approach might be described as “light-touch” regulation with the LSA “phasing in greater accountability ... during the early days of the program.”²⁴³
270. The applicant deals with these predicted arguments at section IV.D. of his brief and will not restate those observations here. The LSA simply makes the arguments with no recognition whatsoever that the applicant has already addressed them. Those parts of the applicant’s brief are begging for a cogent response. None has been provided.
271. However, it must be observed that the LSA first claims that the Profile “sets out ... areas of competency that the LSA believes are important to maintain safe, effective, and sustainable legal practice.” The Profile’s Forward says, instead, that the Profile, “... sets out the competencies that are important to maintain a safe, effective and sustainable legal practice in Alberta today.” The Profile is not an expression of the LSA’s “beliefs”, it is the regulator’s definition of competence. As for the LSA’s observation that the LSA “does not declare the member’s practice to be unsafe, ineffective, or unsustainable”²⁴⁴ this is exactly what the Profile says and does.

²⁴³ C-366.

²⁴⁴ Respondent’s brief at 190.c.

272. As to the LSA's observation that the lawyer "is not required to demonstrate competency in every area of the Profile each year"²⁴⁵ the LSA fails to answer the obvious questions (addressed in the applicant's brief) including, primarily:
- a. How can it be consistent with the LSA's statutory mandate to permit the continuation of an incompetent, unsafe, ineffective and, therefore, unsustainable legal practice?
 - b. Now that the LSA has taken the position that the Profile represents a code of competence²⁴⁶, how can it not "set threshold standards for purposes of discipline" given that the LPA defines "conduct deserving of sanction" to include "incompetence" (and automatically initiates conduct proceedings)?
 - c. What does it matter whether the Profile "set[s] threshold standards for purposes of discipline" if the Code does? For example, the Code sets a "threshold standard for purposes of discipline": "discrimination". Is it "discrimination" to advance social justice by not hiring, promoting, or provide services to whites because they are white? The Profile says the "competent" lawyer "practise[s] anti-discrimination and anti-racism" meaning the lawyer discriminates against oppressive identity groups (including whites) to achieve social justice. Given the Profile's definition of competence, therefore, it would appear that the LSA cannot sanction a lawyer under the Code for discrimination against whites. The Code and Profile are inextricably related. The Profile may not "set threshold standards for purposes of discipline" but it necessarily informs those standards.
 - d. Likewise, the Code sets another "threshold standard for purposes of discipline": "A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer."²⁴⁷ Like the Profile, the Code does not require that Song be competent in every area of law – only in the areas in which he would practice. While the LSA insists that Song need not "demonstrate competency in every area of the Profile each year" that does not mean that Song is free to practice where he is incompetent and that does not mean that he is free to demonstrate his incompetence publicly and thereby "harm the standing of the legal profession generally." Surely Song is prohibited from taking on files where the Profile indicates that to take on that file

²⁴⁵ Respondent's brief at s. 188.b and 190.c.

²⁴⁶ Respondent's brief at 93.a.

²⁴⁷ Code at s. 3.1-2.

would be gross incompetence.²⁴⁸ For example, Song may remain “competent” to represent white Anglo Saxon Protestant males but, given his beliefs, desired expression, and past expression, he does not seem “competent” to professionally interact with any other race, sex, or religion.

273. To similar effect, the LSA’s observation that the lawyer “is not required to demonstrate competency in every area of the Profile each year”, must be clarified. That means “in the lawyer’s annual CPD self-assessment.” Nowhere in the record is it suggested that it is acceptable to the LSA that a lawyer practice incompetently.

274. More broadly, as to the LSA’s:

- a. argument that the Profile is, but is not really, a definition of competence;
- b. representations that it will not intervene if lawyers are incompetent;
- c. representations that the LSA will not intervene if a lawyer’s practice is unsafe, ineffective and unsustainable;
- d. characterizations of the “competencies” in the Profile as only a set of “beliefs”, “inspirations”, and “aspirations”, and not required standards; and
- e. etc.

we need to step back and ask: “what on earth is going on here?”

275. If the LSA’s statutory duty is to ensure competence, and it has so carefully and comprehensively defined competency in the Profile, why does the LSA now argue, in essence, that it is okay to be incompetent? In a more legal framing, the *LPA* grants the LSA jurisdiction to pass “rules”²⁴⁹ (which must be followed) and a code of ethics (which must be followed, in letter and spirit)²⁵⁰, but where in the *LPA* is the LSA granted jurisdiction to promulgate something like the Profile?

276. The LSA argues at paragraph 190 of its brief that by “Political Objectives” Song only means “what he believes the LSA’s political persuasions and motivating ideologies are.” First, this is wrong. Song has carefully proven that the LSA’s “political persuasions and motivating ideologies” are the Political Objectives. Second, it is the LSA, not Song, that seeks to evade an objective analysis of its politics by its position on the Affidavits and

²⁴⁸ Applicant’s brief at section IV.B.iii.2. (“Cultural Competence” Undermines Access to Justice).

²⁴⁹ *LPA* s. 7.

²⁵⁰ *LPA* s. 6(l).

justiciability. Finally, the LSA here, again, references its “political persuasions and motivating ideologies” without addressing the elephant in the room: the LSA may not have any political persuasion or ideology.

277. That Song can “educate himself” on the “required topics” is a *non-sequiter*. The applicant’s objection is that he is “required” to receive the “education” at all.
278. Finally, as to the LSA’s ultimate conclusion that it has not “ordered or required the Applicant to think, believe, say, or do anything ...” this is both wrong (the Code is a clear “order” to not say things and not do things, the Rules are a clear “order” to complete a CPD plan annually with reference to the Profile, Song would have been suspended had he failed to complete the Path including providing “correct” answers during a test, etc.) and besides the point. An “order” or “requirement” is not the threshold for constitutional infringements:

*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 ...*²⁵¹

279. The LSA’s ultimate conclusion, therefore, that there are no *Charter* infringements is premised entirely on a superficial, misleading, and incomplete analysis. The LSA fails to acknowledge or address most of the “actions or measures it has actually taken”, refuses to evidence or discuss the nature of its “political persuasions and motivating ideologies”, employs nomenclature without providing comprehensive definitions, summarizes the Path ignoring entirely the objectionable content of the Path, fails to dispute the applicant’s arguments demonstrating that the LSA’s Impugned Conduct substantially interferes with Song’s *Charter* rights, etc.
280. Like the accounting adage “garbage in, garbage out”, the LSA’s purported “balancing exercise” is, therefore, meaningless. Nonetheless, the applicant will respond to it briefly.

IX. THE CHARTER

A. The Appropriate Section 1 Standard

281. Where a Law Society makes a rule of general application to the members of the profession, it is acting in a legislative capacity, rather than in an administrative capacity,

²⁵¹ *R. v Big M Drug Mart Ltd.*, 1985 CanLII 69 (SCC), [1985] 1 SCR 295 (“**Big M**”) at para. 95.

such as when it makes a specific decision applying such rules to a member.²⁵² In analyzing *Charter* issues, rules of general application are subject to section 52(1) of the *Constitution Act*, 1982 and an *Oakes* analysis (on a standard of correctness) is applied,²⁵³ whereas administrative decisions addressing specific facts of a case are subject to section 24(1) and the *Doré* framework is applied on a reasonableness standard²⁵⁴ (subject to issues of constitutionality where the rule of law requires correctness²⁵⁵).

282. As set out in *Greater Vancouver*, “[a] binding rule of general application is not an individualized form of government action like an adjudicator’s decision or a decision by a government agency concerning a particular individual or a particular set of circumstances.”²⁵⁶ In *Greater Vancouver*, the SCC found that it was appropriate to view a transit authority’s advertising policies—which it described as “binding rules of general application that establish the rights of members of the public who seek to advertise on the transit authorities’ buses”²⁵⁷ — as “law” subject to section 52 of the *Constitution Act*, 1982. The applicant seeks remedies, *inter alia*, under section 52.
283. For these reasons the appropriate section 1 test is *Oakes*. *Oakes* is also required in this action because, whereas the *Doré* test takes the “statutory objective” as a given, *Oakes* first assesses the “objective” to ensure it is “pressing and substantial in a free and

²⁵² See *Green* at paras 22, 54.

²⁵³ See *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2018 ONSC 579, paras. 51-69, which applied the *Oakes* test rather than the *Doré* reasonableness analysis where the issue was constitutionality of particular provisions in administrative policies of general application to all physicians. The Court of Appeal applied the same approach without deciding the issue: see *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393 at paras. 58-60.

²⁵⁴ *Doré* at paras. 2 (“The lawyer does not challenge the constitutionality of the provision in the Code of ethics under which he was reprimanded. Nor, before us, does he challenge the length of the suspension he received. What he does challenge, is the constitutionality of the decision itself, claiming that it violates his freedom of expression under the *Canadian Charter of Rights and Freedoms*.”), 5-6, 37 (“Some of the aspects of the *Oakes* test are, in any event, poorly suited to the review of discretionary decisions, whether of judges or administrative decision-makers. For instance, the requirement under s. 1 that a limit be “prescribed by law” has been held by this Court to apply to norms where “their adoption is authorized by statute, they are binding rules of general application, and they are sufficiently accessible and precise to those to whom they apply” (*Greater Vancouver Transportation Authority v Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, [2009] 2 S.C.R. 295 (“**Greater Vancouver**”), at para. 53).”, 54 (“Even where *Charter* values are involved, the administrative decision-maker will generally be in the best position to consider the impact of the relevant *Charter* values on the specific facts of the case. But both decision-makers and reviewing courts must remain conscious of the fundamental importance of *Charter* values in the analysis.”)

²⁵⁵ *York Region District School Board v Elementary Teachers Federation of Ontario*, 2024 SCC 22 (“**York Region**”) at paras 62-71.

²⁵⁶ *Greater Vancouver* at para 88.

²⁵⁷ *Greater Vancouver* at para 90.

democratic society”.²⁵⁸ It is the applicant’s submission that the LSA’s Political Objectives are subversive to the *Constitution*.

284. The LSA asserts that its Impugned Conduct is “somewhat like a law, but also somewhat like an adjudicative decision.”²⁵⁹ The LSA’s Impugned Conduct is nothing like an adjudicative decision. As observed above in section IV.A (Evidence in Judicial Review) “the LSA was not a tribunal exercising quasi-judicial or adjudicative functions.”
285. It must also be recalled that the applicant’s argument, now admitted by the LSA, is that the LSA has adopted a political objective. The applicant demonstrates that the Impugned Code, the Impugned Rules, and the Profile all advance and incorporate the LSA’s overarching Political Objectives. As to the Political Objectives themselves, they are “to effect ‘radical transformation’ of the legal system”²⁶⁰ through the means of changes to “legal culture.”²⁶¹ While not legislation in form, it is legislation in substance.
286. The *Doré* standard is likewise inappropriate because the “reasons” which the LSA would have this Court review with deference are:
- a. To the extent they relate to the Impugned Code and Impugned Rules, neither identified nor properly summarized in the LSA’s brief (see sections V.E (The LSA Fails to Identify Reasons) to section V.H (The LSA Was Clearly Pursuing the Political Objectives) above); and
 - b. To the extent they relate to all other Impugned Conduct, including the Profile, the CPD Tool, and the Political Objectives more broadly, the LSA has elected to leave all argument as to those matters absent from its brief on the premise that the Court has no right to consider that evidence or those matters.
287. The Court can obviously not assess whether the LSA “considered”²⁶² all matters relevant to the *Charter* balancing exercise when the LSA’s considerations are either absent from the record or not identified.

²⁵⁸ *R v Oakes*, [1986] 1 SCR 103 (“*Oakes*”) at para. 73.

²⁵⁹ Respondent’s brief at para 200.

²⁶⁰ Applicant’s brief at para. 447.

²⁶¹ Applicant’s brief at paras. 374 to 379, 404 to 406, 450, etc.

²⁶² *Doré* at paras. 55 to 56.

B. Threshold Failures

i. York and the Failure to Consider the Charter

288. If the Court is to proceed on the basis of *Doré*, the LSA immediately hits a fatal snag: nowhere in the CRP (or even its brief) does the LSA recognize that a *Charter* right even applies much less is there any clear acknowledgement of and analysis of that right.²⁶³

ii. Improper Objectives

289. The LSA cannot justify the infringement of fundamental *Charter* freedoms on the basis of asserted objectives which are “discordant with the principles integral to a free and democratic society”.²⁶⁴ To be justified, the Impugned Conduct must “relat[e] to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important”.²⁶⁵

290. As demonstrated in the applicant’s brief, the LSA’s Political Objectives (including as expressed in the Profile, the Code and the Path) are not merely “discordant” with a free and democratic society, they are positively hostile to it.²⁶⁶ The LSA cannot justify *Charter* infringements in pursuit of such objectives. The LSA cannot justify *Charter* infringements, for example, so as to promote the harmful stereotypes that:

- a. white Anglo Saxon Protestant males use the “shams” of universalism, empiricism, objectivity, reason and science to oppress minorities; and
- b. indigenous Canadians are inherently traumatized, lack agency, and are cognitively incompatible with a Western worldview including legal system.

291. The LSA cannot justify *Charter* infringements in pursuit of racial segregation.

292. Of course, the LSA offers no argument to the contrary, having instead taken the position that this Court has no legitimacy or capacity to even know the LSA’s political objectives.

293. Where the LSA argues, therefore, that its objectives included “equality”, “diversity”, “access”, and the “prevent[ion of] harm to the vulnerable”²⁶⁷, those terms are empty labels. The LSA may as well have claimed, as its objectives, “good things” or “legal stuff.”

²⁶³ *York Region* at paras. 68 and 94.

²⁶⁴ *Oakes* at para. 69.

²⁶⁵ *R. v Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697 at para. 62.

²⁶⁶ Applicant’s brief at section IV.B. (The Applied Postmodern Theories) and IV.C. (C. The LSA’s Political Objectives – An Attack On Human Dignity).

²⁶⁷ Respondent’s brief at para. 203.

iii. Ultra Vires Objectives

294. In *Big M*, the SCC cautioned that “Parliament cannot rely upon an *ultra vires* purpose under section 1 of the *Charter*” to justify the limitation of a *Charter* right. There, compelling religious observance was found to be an illegitimate purpose incapable of justifying the limitation of *Charter* freedoms.
295. The LSA simply has no legal jurisdiction under the *LPA* to have as a purpose:
- a. any political objective including the Political Objectives;
 - b. political interference with the independence of the bar;
 - c. division of the lawyer’s loyalty to the client;
 - d. undermining the lawyer’s loyalty to the law;
 - e. the prescription of dogma in matters of epistemology, morality, metaphysics, history, economics, sociology, spirituality, psychology, race, gender, or culture²⁶⁸; or
 - f. the prescription of the contents of the lawyer’s conscience²⁶⁹.
296. Again, the LSA offers no argument to the contrary.

C. The LSA’s Failure to Prescribe Charter Limits by Law

297. *Charter* rights may only be restricted by “clear and explicit” laws, meaning standards that are intelligible to a citizen of common intelligence without guesswork with “tolerable certainty” and, where constitutional rights are abutted, to “a very high degree of predictability”. Failing which, there is no *Charter* limit “prescribed by law” and no resort may be made to section 1.²⁷⁰ In other words, the “law” is void for vagueness.
298. The SCC elsewhere phrased the test as requiring, at least, a sufficient delineation of an area of risk which provides an intelligible standard sufficient for legal debate.²⁷¹

i. The Profile

299. As discussed above at section IV.B.iv (Guidance Materials Not Disclosed by the LSA) and in the applicant’s brief at section IV.D.3. (No Statutory Authority to Establish a Menu of

²⁶⁸ Except insofar as Core Competence and Ethics relates to such matters.

²⁶⁹ Except insofar as the LSA must ensure lawyers make and comply with their oaths.

²⁷⁰ *Committee for the Commonwealth of Canada v Canada*, 1991 CanLII 119 (SCC), [1991] 1 SCR 139 (“*Committee*”) at paras. 158, 161, 163, 164, 170, and 172.

²⁷¹ *R. v Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC), [1992] 2 SCR 606, at paras. 59, 63, 64, and 72.

Uncertain Aspirations) the Profile's meaning is largely opaque without the guidance of the LSA's various "Key Resources" and without the benefit of an expert's assistance (i.e. the Williams Report).

300. Having spent considerable effort analyzing and summarizing the content of the LSA's Political Objectives (including as manifest in the Profile) the LSA now claims (incorrectly, it is submitted) that the applicant has merely summarized "what he believes [are] the LSA's political persuasions."²⁷² According to the LSA, then, neither the expert (Williams) nor the applicant has yet to understand the true meaning of the competencies set out in Profile. The Profile, in other words and according to the LSA, is extremely vague.
301. To compound the uncertainty of what the Profile actually means, when the LSA was publicly confronted with just a single comment from one of its "key resources", it sought to distance itself from that resource saying it was "not required reading and lawyers can choose their own resources."²⁷³
302. In fact, whether in the LSA's view the Profile truly incorporates the Theories is somewhat irrelevant. The relevant inquiry is whether the Profile might; whether it is expressed in such broad and vague language so as to permit that interpretation. As explained in *Saumur*:

*Assuming, for the purposes of argument, that the by-law here in question might, in actual administration by the official mentioned therein, be administered solely to prevent literature reaching the streets which might cause disturbance or nuisance therein, and that a by-law expressly so limited would be within provincial competence, the present by-law is not so limited in its terms. 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.*²⁷⁴

303. To compound the uncertainty even further, the LSA now seems to assert that it is acceptable to the LSA that a lawyer practice incompetently (as defined by the Profile).
304. A lawyer of common intelligence is left in a place of intolerable uncertainty and no clue as to the zone of risk. Given that the Profile clearly abuts constitutional freedoms (it

²⁷² Respondent's brief at para. 190.a.

²⁷³ Applicant's brief at para. 670.

²⁷⁴ *Saumur v City of Quebec*, 1953 CanLII 3 (SCC), [1953] 2 SCR 299 at para. 128.

prescribes and proscribes thoughts, words, and conduct including in matters of self-perception, humankind, nature, and metaphysics) this uncertainty aggravates the constitutional violations because the lawyer's expression and conduct is seriously "chilled"²⁷⁵: better to just say nothing than to hazard a guess as to where the LSA's Hearing Committee will draw the line between free speech and "incompetence."

305. The Profile does not, therefore, "prescribe by law" constitutional rights and may not be saved under the *Charter's* section 1.

ii. The Code

306. The same observations apply with respect to the Impugned Code. The Code also incorporates opaque nomenclature, requiring guidance to understand and follow the rules, but the LSA insists that its Political Objectives remain misunderstood.

307. In addition, the Code suffers from uncertainty stemming from its use of a would-be-complainant's subjective mindset to define proscribed behavior.²⁷⁶ As stated in *Luscher v Revenue Canada*, a limit which is vague, ambiguous, uncertain, and subject to discretionary determination is, by that fact alone, an unreasonable limit."²⁷⁷

308. The Code does not, therefore, "prescribe by law" constitutional rights and may not be saved under the *Charter's* section 1.

iii. The Impugned Rules

309. So too do such observations apply to the Impugned Rules.

310. Rules 67.2 and 67.3 require lawyers to prepare and submit CPD plans in the "form acceptable to the Executive Director." That provides a seemingly unlimited discretion to the Executive Director to determine such form. In fact, the Executive Director has chosen, as the prescribed form, a CPD plan prepared in accordance with the Profile and within the LSA's CPD Tool. While it may be a surprising result that Rules 67.2 and 67.3 give the Executive Director discretion to choose a form which:

a. defines competence as including, for example:

i. being conscious of the contents of one's unconscious mind²⁷⁸; and

²⁷⁵ Applicant's brief at para. 696.

²⁷⁶ Applicant's brief at paras. 712 to 718.

²⁷⁷ Applicant's brief at para. 696.

²⁷⁸ The Profile at s. 3.1.

ii. having and promoting a deeper understanding of sexual orientation and gender identity,²⁷⁹ and

b. “is not intended to ... address substantive legal knowledge and procedures specific to different areas of legal practice”,

the Rules (according to the LSA’s interpretation) permit just that.

311. In other words, the Rules Grant the Executive Director a virtually unlimited plenary discretion which is not a “limit prescribed by law.”²⁸⁰

312. Rule 67.4 is more vague still because it starts with the words, “Independent of Rules 67.1 through 67.3” – meaning it (expressly) operates independent of Rule 67.1’s substantive definition of CPD which requires that it be “relevant to the professional needs of a lawyer” etc. While the Executive Director’s discretion would at least seem²⁸¹ to be limited by Rule 67.1, the Benchers’ discretion under Rule 67.4 has no such limit. The Rule is so broad as to permit the Benchers to mandate “education” including that Gerald Stanley’s not guilty verdict was a miscarriage of justice, that our national anthem’s phrase “our home and native land” is a fraud, that “surrender” means “share”, that Canada’s history of providing to indigenous Canadians education, child protection, health care, and peace and order in the form of land titles and criminal justice is really cultural genocide.

313. The Impugned Rules do not, therefore, “prescribe by law” constitutional rights and may not be saved under the *Charter*’s section 1.

D. The Balancing Exercise

i. The LSA’s Failure to Weigh

314. In order to meaningfully “balance” *Charter* rights against governmental objectives, the Court (or statutory delegate) must “weigh” each against one another.²⁸²

²⁷⁹ The Profile at s. 3.2.

²⁸⁰ *Committee* at p. 209.

²⁸¹ The Profile contains some “competencies” which might meet the definition in Rule 67.1, many clearly do not.

²⁸² See, for example, *Canada (Attorney General) v JTI-Macdonald Corp.*, [2007] 2 SCR 610, at para. 45.

315. In the CRP the LSA (i.e. the Benchers) failed entirely to identify any *Charter* engagement²⁸³ or conduct any balancing exercise and now maintains that a *Charter* infringement is impossible even to imagine.
316. Therefore, the LSA placed, and continues to place, on the “freedom” side of the scale exactly nothing. Whatever it now places on the other side of the scale will necessarily “outweigh” this nothingness.
317. The LSA has not, therefore, met its burden of proof. In the words of *Oakes*, it has not demonstrated its measures impair “as little as possible” and has not demonstrated proportionality between the effects of the measures and the objective. In the words of *Doré* the LSA has not considered how the *Charter* will “best be protected” because it recognizes no material *Charter* rights in the first place.
318. On the “state objective” side of the scale, the LSA has likewise failed to properly “weigh” the relevant items for two main reasons.
319. First, the LSA denies the Court’s jurisdiction to scrutinize its political objectives and, concomitantly, refuses any meaningful evidence or analysis of the substantive content of its nomenclature (including as reflected in the Profile and Code). It has, therefore, chosen not to discuss its objectives at all (at least, not in any meaningful sense).
320. Rather, the LSA shelters behind the empty labels “competence”, “ethics”, “professionalism”, “diversity”, etc. and expects this Court to assume that those labels relate to something concordant with the Constitution and that they are “pressing and

²⁸³ Contrary to the LSA’s assertions at para. 53 of its brief, the only person who appears to have even considered the concept of freedom of conscience and speech was Freund where, with respect to mandating the Path she (not the Benchers) observes: “A concern raised by lawyers, in another context, is that of compelled speech and compelled thinking. There is a risk that lawyers will be unreceptive to mandatory training, believing it to force another’s views and perspectives on their own. Rather than fostering a broader perspective and critical thinking, some may see it as narrowing the acceptable worldview. These are the types of arguments that arose in Ontario in the debate over the Statement of Principles. The Statement of Principles was a statement to be produced by every licensee in Ontario, where each licensee was to acknowledge their obligation to promote equality, diversity and inclusion generally, and in their behaviour towards colleagues, employees, clients and the public. This caused tremendous debate and rancour in Ontario and was eventually repealed.

The analogy between the “compelled speech” that was the subject of debate in Ontario and the question here around mandatory Indigenous education is not a strong one. Distinct from requiring an individual commitment to equality, diversity and inclusion, 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.” In other words, Freund say no violation of freedom of conscience because (according to Freund) the LSA had determined the entire contents of the Path to be core competency.

substantial.” This despite the fact that it is very obvious, and strenuously advocated by the applicant, that the LSA’s Political Objectives are constitutionally subversive.

321. Related to the LSA’s refusal to define its terminology (and thereby elucidate the nature of its objectives) is the LSA’s attempt to frame its objectives far too generally. As stated by Chief Justice McLachlin in *Sauvé v Canada (Chief Electoral Officer)*²⁸⁴, Courts must be careful not to countenance “vague and symbolic objectives”:

This leaves the question of whether the objectives of enhancing respect for law and appropriate punishment are constitutionally valid and sufficiently significant to warrant a rights violation. Vague and symbolic objectives such as these almost guarantee a positive answer to this question. Who can argue that respect for the law is not pressing? Who can argue that proper sentences are not important? Who can argue that either of these goals, taken at face value, contradicts democratic principles? However, precisely because they leave so little room for argument, vague and symbolic objectives make the justification analysis more difficult. Their terms carry many meanings, yet tell us little about why the limitation on the right is necessary, and what it is expected to achieve in concrete terms. The broader and more abstract the objective, the more susceptible it is to different meanings in different contexts, and hence to distortion and manipulation. One articulation of the objective might inflate the importance of the objective; another might make the legislative measure appear more narrowly tailored. The Court is left to sort the matter out.

... Demonstrable justification requires that the objective clearly reveal the harm that the government hopes to remedy, and that this objective remain constant throughout the justification process. As this Court has stated, the objective “must be accurately and precisely defined so as to provide a clear framework for evaluating its importance, and to assess the precision with which the means have been crafted to fulfil that objective”... If Parliament can infringe a crucial right such as the right to vote simply by offering symbolic and abstract reasons, judicial review either becomes vacuously constrained or reduces to a contest of “our symbols are better than your

²⁸⁴ [2002] 3 S.C.R. 519, 2002 SCC 68.

symbols". Neither outcome is compatible with the vigorous justification analysis required by the Charter.

*The rhetorical nature of the government objectives advanced in this case renders them suspect ... To establish justification, one needs to know what problem the government is targeting, and why it is so pressing and important that it warrants limiting a Charter right. Without this, it is difficult if not impossible to weigh whether the infringement of the right is justifiable or proportionate.*²⁸⁵

322. *Andrews* provides an example of appropriate characterization and the impact mischaracterization has on the balancing exercise. The majority found the objectives (for the citizenship requirement) were, *inter alia*, ensuring familiarity with Canadian institutions and customs and commitment to Canadian society, which were insufficiently pressing and substantial to justify *Charter* infringement. The dissent would have saved the legislation under Section 1, however, on the basis of its for more broadly framed objective ("the due regulation and qualification of the legal profession").²⁸⁶
323. Here the LSA asserts objectives which are patently misleading (see, for example, paragraph 267 above) but also framed in vague and symbolic terms, for example "equality" – who can argue with that?
324. The LSA has failed, therefore, to properly weigh anything in the balance. It has failed to meet its burden.

ii. Nothing Demonstrated

325. In order to justify a *Charter* infringement the LSA must generally present "cogent and persuasive evidence" to "demonstrably justify" an infringement²⁸⁷. Scientific and social science evidence which is available is required.

²⁸⁵ At para. 22 to 24; see also Justice McLachlin in *RJR-MacDonald Inc. v Canada*, [1995] 3 S.C.R. 199, 1995 CarswellQue 119: "Care must be taken not to overstate the objective. The objective relevant to the s. 1 analysis is the objective of the infringing measure, since it is the infringing measure and nothing else which is sought to be justified. If the objective is stated too broadly, its importance may be exaggerated and the analysis compromised."

²⁸⁶ *Andrews v. Law Society (British Columbia)* [1989] 1 S.C.R. 143, 1989 CarswellBC 1659-63; 83-90.

²⁸⁷ *Oakes*.

326. The LSA provides no evidence whatsoever. Worse, to the extent the record includes evidence (specifically, the articling survey²⁸⁸ and the My Experiences survey²⁸⁹) the LSA's position is that it should be ignored.
327. Instead, the Court is asked to accept the bald assertion that another organization "considered empirical and anecdotal evidence that discrimination, harassment, and bullying were prevalent in the legal profession."²⁹⁰ That's not evidence, that's a reference to evidence (which should be in the CRP).
328. The record also contains much evidence the LSA would prefer be ignored which tends to show the LSA's objectives are not "competence" or "ethics" in any traditional sense of those words including the 2010 consumer survey²⁹¹, the actual contents of the Path, evidence that it contains misinformation, evidence about its primary researcher, the Williams Report which explains the LSA's terminology and ideological content, the LSA's own Regulatory Objectives and Acknowledgment that subordinate "the independence of the legal profession, the administration of justice and the rule of law" to "equity, diversity and inclusion", and the Furlong report and referenced articles.
329. Likewise the record contains evidence the LSA ignores or insists be ignored which tend to demonstrate the LSA's Impugned Conduct is not likely to advance any public interest, including the items in the paragraph above, the Profile's competencies failing to validate (the validation survey having been excluded), the public shellacking the applicant took for merely asking members to repeal Rule 67.4 (is Song's dissent not the kind of "diversity" the LSA claims as its objective?).
330. The Court is left with the LSA's bald assertion that "the LSA's actions, rules, standards, and programs have significantly advanced the public interest ..." without any "demonstration" of any sort. The LSA has failed to meet its burden.

iii. Conclusion

331. The LSA's "balancing" of the applicant's fundamental *Charter* freedoms against the LSA's purported "objectives" in this context and in this manner is totally devoid of substance.

²⁸⁸ Applicant's brief at para. 24.

²⁸⁹ Applicant's brief at para. 41.

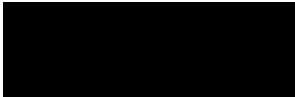
²⁹⁰ Respondent's brief at paras. 20 and 128.

²⁹¹ Applicant's brief at para. 20.

X. REMEDIES

332. Therefore, the applicant prays that this Honourable Court grant the remedies requested in his brief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of April 2025.


ckett
Counsel for the Applicant

XI. LIST OF AUTHORITIES

Tab	Caselaw
1.	<i>Alberta Liquor Store Association v Alberta (Gaming and Liquor Commission)</i> , 2006 ABQB 904
2.	<i>Alberta's Free Roaming Horses Society v Alberta</i> , 2019 ABQB 714
3.	<i>Amax Potash Ltd. Etc. v The Government of Saskatchewan</i> , 1976 CanLII 15 (SCC), [1977] 2 SCR 576
4.	<i>Andrews v Law Society of British Columbia</i> , 1989 CanLII 2 (SCC), [1989] 1 SCR 143
5.	<i>Auer v Auer</i> , 2024 SCC 36
6.	<i>Baker v Canada (Minister of Citizenship and Immigration)</i> , 1999 CanLII 699 (SCC), [1999] 2 SCR 817
7.	<i>Bergman v Innisfree (Village)</i> , 2020 ABQB 661
8.	<i>Biehl v. Strang</i> , 2011 BCSC 213
9.	<i>C.M. v Alberta</i> , 2022 ABKB 716
10.	<i>Canada (Attorney General) v JTI-Macdonald Corp.</i> , [2007] 2 SCR 610
11.	<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , 2019 SCC 65
12.	<i>Canadian Council of Professional Engineers v Memorial University of Newfoundland</i> , 1998 CarswellNat 2364, [1998] FCJ No 1703
13.	<i>Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario</i> , 2018 ONSC 579

14.	<i>Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario</i> , 2019 ONCA 393
15.	<i>Committee for the Commonwealth of Canada v Canada</i> , 1991 CanLII 119 (SCC), [1991] 1 SCR 139
16.	<i>Doré c Québec (Tribunal des professions)</i> , [2012] 1 S.C.R. 395
17.	<i>Dunsmuir v. New Brunswick</i> , 2008 SCC 9
18.	<i>F.P. Bourgault Industries Seeder Division Ltd. v. Flexi-Coil Ltd. (1995)</i> , 1995 CanLII 19325 (FC), 64 C.P.R. (3d) 70 (F.C.T.D.)
19.	<i>Greater Vancouver Transportation Authority v Canadian Federation of Students — British Columbia Component</i> , 2009 SCC 31, [2009] 2 S.C.R. 295
20.	<i>Green v Law Society of Manitoba</i> , [2017] 1 S.C.R. 360
21.	<i>Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall</i> , [2018] 1 S.C.R. 750
22.	<i>Imperial Tobacco Co v Newfoundland and Labrador (Attorney General)</i> , 2007 NLTD 172 (CanLII)
23.	<i>Law Society of British Columbia v Trinity Western University</i> , 2018 SCC 32
24.	<i>Mackay v Manitoba</i> , 1989 CanLII 26 (SCC), [1989] 2 SCR 357
25.	<i>Manson Insulation Products Ltd v Crossroads C&I Distributors</i> , 2014 ABQB 634
26.	<i>Morris v Law Society of Alberta (Trust Safety Committee)</i> , 2020 ABQB 137
27.	<i>Okotoks (Town) v Foothills (Municipal District) No. 31</i> , 2013 ABCA 222
28.	<i>Oleynik v University of Calgary</i> , 2023 ABCA 265

29.	<i>Operation Dismantle v The Queen</i> , [1985] 1 S.C.R. 441
30.	<i>R. v Nova Scotia Pharmaceutical Society</i> , 1992 CanLII 72 (SCC), [1992] 2 SCR 606
31.	<i>RJR-MacDonald Inc. v Canada</i> , [1995] 3 S.C.R. 199, 1995 CarswellQue 119
32.	<i>Reference re Secession of Quebec</i> , [1998] 2 SCR 217
33.	<i>Roncarelli v Duplessis</i> , [1959] SCR 121
34.	<i>Saumur v City of Quebec</i> , 1953 CanLII 3 (SCC), [1953] 2 SCR 299
35.	<i>Sauvé v Canada (Chief Electoral Officer)</i> , [2002] 3 S.C.R. 519, 2002 SCC 68
36.	<i>Shaulov v Law Society of Ontario</i> , 2023 ONSC 5242
37.	<i>Syncrude v Alberta (Minister of Energy)</i> , 2023 ABKB 317
38.	<i>York Region District School Board v Elementary Teachers Federation of Ontario</i> , 2024 SCC 22
Legislation	
39.	<i>Legal Profession Act</i> , RSA 2000, c L-8
Secondary Sources	
40.	Lorne M. Sossin & Gerard Kennedy, <i>Boundaries of Judicial Review; The Law of Justiciability in Canada</i> , 3rd ed (Carswell, 2012)
41.	Lord Woolf, et al, <i>De Smith's Judicial Review</i> , 7 th ed (London: Sweet and Maxwell, 2013)

This is Exhibit " D " referred to
in the Affidavit of

Yue (Roger) Song

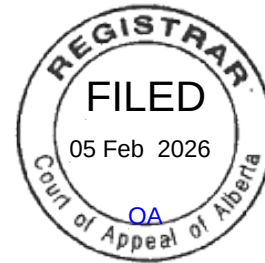
Sworn before me this 4 day
of June 2026

A Commissioner for Oaths in and for Alberta

Glenn Blackett
Barrister & Solicitor

Distributed to CMO

February 5, 2026

Court of Appeal of Alberta
Registrar's Office

via CAMS

Attention: Case Management Officer, L. Baptiste

Dear Ms. Baptiste:

[*SEE Endorsement of CMO on last page](#)

Re: Yue Song (A) v. The Law Society of Alberta (R)
Appeal No. 2501-0282AC
Request for Variance

This is a request under Rules 14.18(3) and s. 14(2)(c)(ii) of the *Court of Appeal Act* to permit the appellant to file the lower court briefs as either part of the Appeal Record or Extracts of Key Evidence.

The Court of Appeal's access to the briefs is necessary to ensure the fair, just, effective and efficient determination of the appeal.

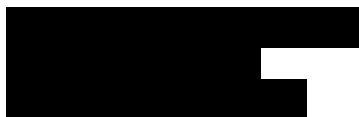
This appeal arises from an application for judicial review. Many of the applicant's/appellant's arguments were solely or primarily set out in the written briefs and were not (or not fully) argued orally – there was no time. Rather, oral argument focused on major themes in a general manner. The appellant relied heavily on his written argument. In the lower Court's reasons, central arguments were either entirely absent or so misstated as to be barely recognizable.

The transcript and reasons do not, therefore, reflect the application and arguments before the lower Court.

The appellant intends to argue on appeal that the lower Court erred by, *inter alia*, failing to consider or by misconstruing several of the appellant's central arguments and authorities. Consequently, the appellant must refer to the lower Court briefs to evidence the arguments (or full arguments) and authorities which were advanced in the lower Court and were either not considered or seriously misconstrued.

In addition, an analysis of the appropriate standard of review and most of the appellant's grounds of appeal require, first, establishing necessary:

- constitutional context, including the meaning and purpose of the independence of the bar, the relationship between the independence of the bar and professional duties of loyalty to law and client, the relationship between professional loyalty and the rule of law, and the relationship between the rule of law and constitutional principles; and



- evidentiary context including the nature and content of the respondent's objectives, their relationship to the constitutional context, and the scope, nature, and quality of evidence before the respondent when exercising its statutory discretion.

Notwithstanding that such context was set out at length in the written briefs (which run approximately 300 pages of dense and concise, not prolix, argument), the reasons reflect essentially none of it. It is impossible to establish this context and to address errors, all within 30 pages.

Take, for example, the two primary grounds of appeal – that the lower Court erred by refusing:

- to consider the respondent's "political objectives" on the basis they were "non-justiciable" or were only the "subjective" views of the appellant; and
- to admit evidence of such objectives on the basis such evidence was either not relevant to the claims or that evidence of such objectives was substantially duplicative of the records within the certified record of proceedings.

On the basis of these errors, the lower Court largely ignored approximately half (by page count) of the written argument and failed to mention, summarize, and/or analyse such argument in the reasons.

In order for the appellant to demonstrate that such issues are justiciable and that the associated evidence is admissible, it is necessary to demonstrate the nature and content of those objectives – an exhaustive process. In order to demonstrate that the excluded evidence is relevant, not duplicative, and not merely the subjective views of the appellant, it is necessary to locate those objectives within the excluded evidence and not within the certified record of proceedings – a painstaking process.

Again, this is not possible within 30 pages but has been done in the lower Court briefs.

This request is not, therefore, an attempt to retry the action,¹ but is, instead, the quickest means of justly resolving the appeal efficiently and at the least expense.² As a consequence of the broad and foundational nature of the errors alleged and the lower Court's highly circumscribed reasons, the briefs are an indispensable resource to the Court of Appeal.

The appellant reserves the right to present further arguments, authorities, and evidence in support of a request to rescind or amend under *Rule* 14.36(3), should that be necessary, including the lower court briefs, transcript of oral argument, and reasons, which are not attached to this letter to save space but are available upon request.

The appellant does not, at this time, seek an increase in the page maximum because, for the reasons discussed above, the lower Court briefs are required to evidence the full arguments before the lower Court and because it would be unfair and inefficient and would serve no purpose to require the appellant to condense and repackage the constitutional and evidentiary context.

¹ See *Consolidated Practice Directions* of the Court of Appeal of Alberta, Part F, para. 6 and the Alberta Court of Appeal's resource, *Overview of Extracts of Key Evidence*.

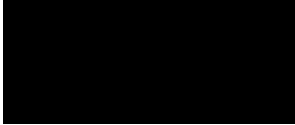
² *Rule* 1.2; The notice of appeal does, however, contemplate the granting of judicial review remedies, which is within the Court of Appeal's jurisdiction under *Rule* 14.75(1)(c) and will be argued on appeal.

GLENN BLACKETT LAW

Barrister

I copy Mr. Kully and Ms. Monsma who I understand to be acting for the respondent, although I have heard nothing from their office since serving the notice of appeal. I have not, therefore, consulted with them about this request.

Sincerely

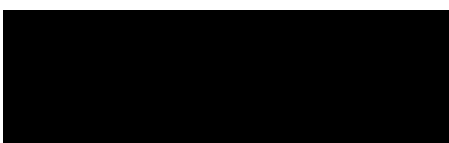


Barrister

cc: Field LLP (J.J. Kully and L.M. Monsma)

CMO Reviewed

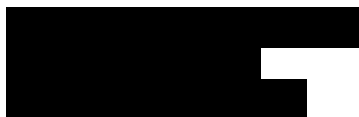
☐ No Response Required☐ Followed up by letter/phone☒ Other:

I am prepared to consider your application to include written briefs from the court below, or parts of them, in your Extracts. Providing them in the Appeal Record makes less sense given the connection to the factum, and your application is being made too late to allow time for proper consideration of an application to include them in your Appeal Record. I ask the Respondent to provide  026.

Case Management Officer

Laurie Baptiste

Dated: February 05, 2026



This is Exhibit " E " referred to
in the Affidavit of

Yue (Roger) Song

Sworn before me this 4 day
of June 2026

A Commissioner for Oaths in and for Alberta

Glenn Blackett
Barrister & Solicitor



fieldlaw.com

CALGARY / CANMORE / EDMONTON / YELLOWKNIFE

Jason Kully
Partner

February 10, 2026

VIA CAMS

Court of Appeal of Alberta

Attention: Laurie Baptiste, Case Management Officer

██████████ ██████████ ██████████
██████████

Dear Ms. Baptiste:

Re: Yue Song (A) v. The Law Society of Alberta (R)
Court of Appeal No. 2501-0282AC

We write in response to the Appellant's February 5, 2026, request to permit the filing of lower court briefs as part of the Appeal Record or Extracts of Key Evidence.

The Law Society of Alberta submits that this request should be dismissed as the Appellant has not provided sufficient reason to justify departing from the prohibition on the inclusion of trial briefs in the Appeal Record (Rule 14.18(2.1)) and in the Extracts of Key Evidence (Rule 14.27(1)(c)) as found in the *Alberta Rules of Court*.

The Honourable Justice Shaner considered a similar request very recently and dismissed an application to allow an applicant to file trial briefs. In [LaTrace v Warkentin Building Movers Virden Inc \(Warkentin Building Movers\)](#), 2026 ABCA 25, the Honourable Justice Shaner held:

[20] As the CMO stated in her decision, r 14.27(1)(c) prohibits including trial briefs in extracts of key evidence. An appeal is not an opportunity to repeat the trial. The purpose of an appeal is to identify and, if necessary, correct errors. Trial briefs are of little assistance in this exercise and their inclusion risks circumventing the factum page limits and the focussed and concise arguments necessitated by those limits. *Carbone v Whidden*, 2015 ABCA 161 at para 28.

[21] The applicants ask that I exercise my discretion under the *Rules* and allow them to file the trial briefs submitted at trial respecting the application of the [Consumer Protection Act](#). They say this is necessary to demonstrate the respondent raised a new argument at the trial concerning the applicability of the *Consumer Protection Act*, which they assert was barred by the doctrine of *res judicata*. The difficulty with the applicants' argument is that there is no justification for including the trial briefs. They have not identified a relationship between opposing counsel's representations to the trial judge and the applicants' argument on appeal that the trial judge erred by failing to apply *res judicata*.

The Appellant's request should be dismissed on the same reasoning as any alleged judicial error can be sufficiently argued without reference to the previous submissions and the inclusion of previous trial briefs risks circumventing the factum page limits and their purpose.

Sincerely,

FIELD LLP



Jason Kully
Partner
JHK/mj

Cc: Glenn Blackett, Glenn Blackett Law, via email
client, via email

This is Exhibit " F " referred to
in the Affidavit of

Yue (Roger) Song

Sworn before me this 4 day
of June 2026

A Commissioner for Oaths in and for Alberta

Glenn Blackett
Barrister & Solicitor

Registrar's Office
[REDACTED]Registrar's Office
[REDACTED]

COURT OF APPEAL OF ALBERTA

Case Management Officer: L. Baptiste
[REDACTED]Case Management Officer: B.J. McDevitt
[REDACTED]

March 9, 2026

Case Management Officer Administrative Direction

Appeal No: 2501-0282AC

Yue Song (A) v. The Law Society of Alberta (R)

Introduction and Background

1. The Appellant applies under Rule 14.18(3) of the *Alberta Rules of Court* and s 14(2)(c)(ii) of the Court of Appeal Act for permission to include written briefs filed in the lower court, totally about 300 pages, in their appeal materials, in particular, in their Extracts of Key Evidence (“EKE”).
2. The appeal is from a decision of Justice Kachur issued September 12, 2025 as *Song v The Law Society of Alberta*, 2025 ABKB 525, which was said to be about (at para 1):

“... 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.”
3. The decision later indicates (at para 22) that the application for judicial review challenged the *vires* of Rules 67.2, 67.3, and 67.4, the Profile (the Professional Development Profile for Alberta Lawyers, which members of the LSA must make reference to as part of the new CPD program of the LSA, in developing a learning plan), the “CPD Tool”, and Part 6.3 of the Code. And that the Applicant also argued that the LSA exceeded its statutory authority under the LPA, and sought certain remedies under sections 24 and 52 of the *Charter* in relation to the alleged “Political Objectives” of the LSA.
4. The decision, which dismissed the judicial review, is 25 pages long. It first finds that neither the Profile, the CPD Tool or the “Political Objectives” of the LSA are justiciable or subject to judicial review (para 28), including as the alleged “Political Objectives” were just the “Applicant’s subjective interpretations of what the LSA believes and his own assumptions about the LSA’s motivations” (para 30). It, therefore, stated that the scope of the judicial review would be limited to the *vires* of Rules 67.2, 67.3 and 67.4 (the “Impugned Rules”) and Part 6.3 of the Code, as well as the *Charter* issues (para 37).

5. The decision concluded that the Impugned Rules and Part 6.3 of the Code were *intra vires* as they fell within a reasonable interpretation of the LSA's authority pursuant to the LPA (para 131). The decision also found no infringement of the Applicant's *Charter* rights (paras 157, 159).
6. The Notice of Appeal was filed, in time, on October 9, 2025. After my review of the appeal, I classified it as a Standard appeal, which made the Appeal Record due by February 9, 2026. The Appeal Record was filed on February 9, 2026, including 122 pages of transcripts, of which about 64 pages were oral submissions of the Applicant/Appellant.
7. Just 4 days before the Appeal Record was due and filed, on February 5, 2026, the Appellant filed their application to me for permission to permit the lower court briefs as either part of their Appeal Record or EKE. That same day, I endorsed their letter application to indicate that I was prepared to consider the application to include written briefs, or parts of them, in the EKE. I said that providing them in the Appeal Record made less sense given the connection to the factum, and that the application was being made too late to allow time for proper consideration of an application to include them in the Appeal Record, and I set a deadline for the Respondent's position of February 10, 2026.
8. The Respondent's position was provided by letter filed February 10, 2026, indicating that the request should be dismissed.
9. The Appellant's Factum, and EKE, is now due by April 9, 2026.

Submissions of the Parties

10. The Appellant submits that "access to the briefs is necessary to ensure the fair, just, effective and efficient determination of the appeal". They say the appeal is from a judicial review and that many of their arguments were solely or primarily set out in written briefs and were not, or not fully, argued orally. They submit that, in the lower court's reasons, central arguments were "either entirely absent or so misstated as to be barely recognizable", so they say the transcript and reasons do not reflect the application and arguments before the lower court. Therefore, they intend to argue on appeal that the lower court erred by failing to consider or by misconstruing several of the appellant's central arguments and authorities. The Appellant says they must refer to the lower Court briefs to show the full arguments made.
11. They say they must also establish the necessary constitutional and evidentiary context, noting that context was "set out at length in the written briefs (which run approximately 300 pages of dense and concise, not prolix, argument)" and that the "reasons reflect essentially none of it". They say it is impossible to establish the necessary context and address errors within 30 pages, but note that was done in the lower court briefs.
12. As just one example, they say the two primary grounds of appeal, that the lower court erred by refusing to consider the alleged "Political Objectives" as being non-justiciable or admit evidence of such objectives and so "ignored approximately half (by page count) of

the written argument and failed to mention, summarize or analyze such arguments in the reasons”.

13. In summary, the Appellant submits that “the lower Court briefs are required to evidence the full arguments before the lower Court and because it would be unfair and inefficient and would serve no purpose to require the appellant to condense and repackage the constitutional and evidentiary context”. They say their request is not an attempt to re-try the action but is, rather, the “quickest means of justly resolving the appeal efficiently and at the least expense”.
14. The Appellant indicates they do not, at this time, seek an increase in the page limit for their factum. The implication being that they won’t seek an increase only if they are able to include the extensive written briefs from the court below in their appeal materials.
15. The Appellant also indicates they can provide evidence, including the lower court briefs, in support of a request to rescind or amend whatever decision I may make under Rule 14.36(3). They do not explain why they have not provided necessary supporting evidence for the application they are making to me.
16. The Respondent submits that the Appellant’s request should be dismissed as they have not provided sufficient reason to justify departing from the prohibition on inclusion of trial briefs. They note the recent decision in *LaTrace v Warkentin Building Movers*, 2026 ABCA 25 (“*LaTrace*”), which considered and dismissed a similar request. They say the Appellant’s request should be dismissed on the same reasoning as “any alleged judicial error can be sufficiently argued without reference to the previous submissions and inclusion of trial briefs risks circumventing the factum page limits and their purpose”.

Relevant Rules and Authorities

17. Parties are prohibited from including any comment, argument or trial briefs in an Appeal Record: Rule 14.18(2.1).
18. Parties are also prohibited from including any comment, argument or trial briefs in EKE: Rule 14.27(1)(c) and *AltaLink v AUC*, 2022 ABCA 18 at para 35(d).
19. Part F of the Consolidated Practice Directions sets out guidance about EKE, including the following: “Trial briefs are not permitted, even where there was no oral argument in the court below, because an appeal is not a re-trial of the action. The factums will focus on the alleged reviewable errors in the trial decision, something the trial briefs do not do.”
20. Authority is vested in Case Management Officers (“CMOs”) to deal with a wide variety of matters, including management of all matters before the Court and the steps parties must take to advance appeals: *Court of Appeal Act*, RSA 2000, c C-30, s 14(2) and *Alberta Rules of Court*, Alta Reg 124/2010, r 14.36(1).
21. Both s 14(2)(c)(ii) of the *Court of Appeal Act* and the Information Note following r 14.36 shows that CMO authority includes, among other things, the authority to: permit the filing of deficient documents or to permit deviations in or vary the contents or format of

documents to be filed. Rule 14.18(3) also allows a CMO to set or vary the contents or format of the Appeal Record.

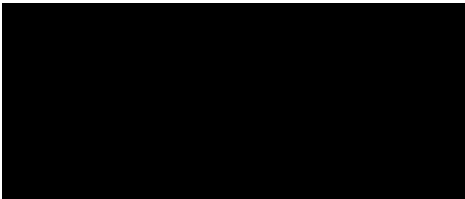
22. If a party wishes to bring an application for permission to include trial briefs in their EKE, they can apply to a CMO: *Office of the Child and Youth Advocate v LC*, 2023 ABCA 365, at para 13.
23. The purpose of an appeal is to identify and, if necessary, correct errors; it is not an opportunity to repeat the trial. Trial briefs are of little assistance in this exercise and their inclusion risks circumventing the factum page limits and the focused and concise arguments necessitated by those limits: *LaTrace* at para 20. Inclusion of trial briefs was denied in that case, which were submitted as being “necessary to demonstrate the respondent raised a new argument at the trial concerning the applicability of the *Consumer Protection Act*, which they assert was barred by the doctrine of *res judicata*”. No justification was found for including the briefs as the applicant did not identify a “relationship between opposing counsel’s representations to the trial judge and the applicants’ argument on appeal that the trial judge erred by failing to apply *res judicata*”.
24. A request to include trial briefs will be denied if they are being provided to get around page limits for factums: *Carbone v Whidden*, 2015 ABCA 161 at para 28.

Analysis

25. I emphasize, as was noted in *LaTrace*, that an appeal is from the decision of the lower court and an appeal is not just a re-do of the matter. Therefore, the arguments made and, in particular, written arguments, are not generally of assistance on appeal. Portions of written argument may be permitted but only in very limited circumstances. For example, if there is a dispute as to whether an issue was or was not raised or a fact or point of law conceded, or if the trial judge adopted parts or all of certain written submissions without reproducing or summarizing what was adopted, then limited excerpts from the written argument might be allowed. Although, as noted in the CPD, even the complete absence of oral submissions in the lower court does not, on its own, justify inclusion of written trial briefs in appeal materials. There can, again, be exceptions depending on the issues raised and arguments being made.
26. However, the general rule is that written briefs are not to be included. The Court expects the parties to focus the argument on the errors of law in the trial judge’s reasons and address those arguments within the confines of the factum. Further, courts have repeatedly found that 30 pages is more than sufficient for factums for even reasonably complex cases and that leave to file factums exceeding the page limit is an exceptional request to be granted only sparingly: *LaTrace* at para 5.
27. In this case, there does not appear to be any dispute about whether certain issues were raised or any fact or point of law conceded and the trial judge did not adopt all or any part of the written submissions.
28. Rather, in this case, I find the reasons behind the Appellant’s application fall directly within the authorities that show why requests to include written briefs should be denied.

It seems that the goal is essentially to make all the same arguments on appeal that were made to the court below and try to get a different result, despite that the Appellant says they are not attempting to re-try the matter.

29. The alleged errors are that the lower court judge did not consider, understand or fully set out or summarize all of the arguments made by the Appellant. However, the fact that the lower court judge summarized or provided just examples of the extensive arguments that were made does not mean all arguments provided were not considered. Rather, it indicates those were the main arguments that the court felt it was necessary to address in deciding the application.
30. It may have been of assistance to have a draft of the Appellant's Factum and also the written submissions, but neither were provided. I feel I have a reasonable sense of the approach the Appellant wants to take to this appeal based on the more limited submissions provided. The Appellant is free to apply to me again to reconsider and provide further information and supporting materials.
31. I am not persuaded that the extensive written briefs filed in the court below are required for the appeal, or that this case presents exceptional circumstances to justify the request being made. Perhaps there may be certain, more limited, excerpts from the briefs that may be justified, but that is not the request currently being made.
32. I note that the Appellant has already provided all the oral submissions that were made, amounting to approximately 64 pages of the transcript that was filed and they will be free to make reference to that in their Factum, rather than having to repeat any of it. They may also reference particular parts of the written briefs and make an offer within the factum that written briefs, or parts of them, can be provided and then the panel will be free to consider that.
33. Based on the above, the application for permission to include written briefs from the court below in the Appellant's EKE is denied.



Case Management Officer
Court of Appeal - Calgary

Submissions provided by:

G.C. Blackett
Glenn Blackett Law
Email: 
Counsel for the Appellant

J.J. Kully
Field LLP
Email: [REDACTED]
Counsel for the Respondent

This is Exhibit " **G** " referred to
in the Affidavit of

Yue (Roger) Song

Sworn before me this 4 day
of June 2026

A Commissioner for Oaths in and for Alberta

Glenn Blackett
Barrister & Solicitor

GLENN BLACKETT LAW

Barrister

March 19, 2026

via CAMS

Court of Appeal of Alberta
Registrar's Office[REDACTED]
[REDACTED]
[REDACTED]

Attention: L. Baptiste, Case Management Officer

Dear Ms. Baptiste:

Re: Yue Song (A) v. The Law Society of Alberta (R)
Appeal No. 2501-0282AC
Request for Variance

Thank you for your letter of March 9, 2026. Pursuant to paragraph 30 of your letter, my client hereby applies for reconsideration of your decision to exclude the lower Court briefs from either the Appeal Record or the Extracts of Key Evidence. Please find attached the briefs in question (Applicant's Brief as Appendix "A", Respondent's Brief as Appendix "B", and Applicant's Surreply Brief as Appendix "C"), which will be referred to throughout this request for reconsideration. I also attach our previous correspondence as Appendix "D".

I repeat and adopt all statements of fact and argument from my previous letter of February 5, 2026.

An appellant is given 30 pages in the factum to discuss the lower Court's errors. That discussion in this particular case, however, first requires that the panel be provided a dense and complicated factual and legal context including:

1. The nature of the Respondent's "Political Objectives," being the promotion of certain theories describes as the "anti-constitutional ideologies" in the Amended Originating Application for Judicial Review filed January 19, 2024 (the "OA") at paragraph 16(a) – primarily critical race theory, critical legal theory, and postcolonialism. It must be demonstrated, for example, that these theories reject the validity of objective reality and reason. As stated in the Applicant's Brief:

Mr. Song prays that this Honourable Court ... carefully consider the details of these ... objectives which are difficult and obscure ...¹

¹ Page 5.

[REDACTED]
[REDACTED]
[REDACTED][REDACTED]
[REDACTED]

and,

*... 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.*²

This factual context is explained over about 90 pages.³ This context is not a demonstration of lower Court errors. The lower Court did not err in its analysis of the theories, it entirely failed to analyse the theories (on the basis of an error, which will be argued in the 30-page factum, that the Political Objectives, whatever they are, are not "justiciable.")⁴

2. The constitutional and regulatory context of the regulation of the Canadian legal profession, which is provided over 20 pages.⁵ Again, this context is not a demonstration of lower Court errors. The lower Court did not err in its analysis of this context, it failed entirely to even reference it. Rather, the lower Court only states that, "... the limits and contours of the LSA's authority are set out in the LPA."⁶
3. The presence of the theories throughout the Respondent's materials including in the "Impugned Acts."⁷ This is provided over about 84 pages.⁸ Again, this context is not a demonstration of lower Court errors. The lower Court did not err in its analysis of whether the theories were present in the materials. Rather, the lower Court simply asserted, without analysis, 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," despite being shown clear evidence of:
 - a. The LSA's "strategic shift";⁹
 - b. The LSA's proper objectives;¹⁰
 - c. The subversive nature of the "Political Objectives";¹¹
 - d. The LSA's abuse of subversive objectives;¹²
 - e. The LSA's own admissions regarding the "Political Objectives".¹³
4. The essential inconsistency between the theories and the Respondent's powers and duties, given the constitutional and regulatory context, which is provided over the 84 pages referenced above.¹⁴ Again, the lower Court made no error in its analysis – there was simply no analysis.

² Page 76.

³ Pages 76 to 166.

⁴ Song v The Law Society of Alberta, 2025 ABKB 525 ("**Reasons**") at paras. 27 – 37.

⁵ Pages 33 to 53.

⁶ Reasons at para. 79.

⁷ As defined at OA, para. 35.

⁸ Pages 83 to 167.

⁹ Pages 8 to 31.

¹⁰ Pages 33 to 52.

¹¹ Pages 76 to 166.

¹² Pages 167, 180.

¹³ Page 21 of the Respondent's Brief; pages 5, 9, 10, 15-20, 22, 37-41 of the Applicant's Surreply Brief.

¹⁴ Pages 83 to 167.

The 30-page factum limit, which my client does not seek to extend or subvert, presumes that the arguments of the parties are more or less reflected in the lower Court's reasons. Where – as here – this is not the case, the Appellant's right to meaningful appellate review is fatally compromised. For this reason, and this reason alone, we request that the CMO exercise its discretion to include the lower Court briefs in the Appeal Record and Extracts of Key Evidence.

Summary of legal principles

Rule 1.2(1) provides that the overarching purpose of the rules of civil procedure is to provide for the fair and just resolution of disputes.

Rules 14.18(2.1) and 14.27(1)(c) prohibit the inclusion of trial briefs in the Appeal Record and the Extracts of Key Evidence, respectively.

Rule 14.18(3) grants the CMO the discretion to vary the contents or format of appeal materials, including the discretion to override the rules against inclusion of trial briefs.

Rule 14.75(2) generally provides that an error of the lower Court must be shown to be determinative of the outcome, or resulted in a miscarriage of justice, or caused prejudice to a party, in order for the Court to allow an appeal on the basis of that error.

The Respondent has cited *LaTrace v Warkentin Building Movers Virden Inc*, 2026 ABCA 25 as authority for excluding the briefs. *LaTrace* stands for the proposition that:

- An appeal is not an opportunity to repeat the trial, but rather to identify and correct errors;¹⁵
- Inclusion of briefs risks circumventing factum page limits and the focus that those limits impose.¹⁶

LaTrace does not stand for the proposition that the inclusion of trial briefs is never permissible, nor does it say anything about situations in which the applicant has a *bona fide* reason for seeking their inclusion, and not merely seeking to subvert page limits on the factum.

My client agrees entirely with the propositions advanced in *LaTrace*. Rather, as set out above, Mr. Song requires the inclusion of the briefs as necessary context for this Honourable Court to understand and identify the lower Court's errors, and disagrees strongly with the LSA's position that these errors can be argued without them.

As set out above, the errors to be canvassed in the factum turn principally on failures to consider evidence and arguments offered mainly – often solely – in the briefs.

This was not the situation in *LaTrace*, which turned on the applicants' failure to identify a relationship between opposing counsel's representations to the trial judge, and the applicants'

¹⁵ *LaTrace* at para 20.

¹⁶ *LaTrace* at para 20, citing *Carbone v Whidden*, 2015 ABCA 161 at para 28.

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argument on appeal.¹⁷ The applicants were unable to establish why the inclusion of the briefs was necessary for what they wanted to do.

By contrast, my client's argument on appeal is founded largely on the lower Court's failure to engage with the arguments that were made, but were either not summarized or were seriously misstated. Evidence, and an understanding, of those arguments is crucial to effective appellate review. The importance of this is underscored by the Supreme Court of Canada, which has written that when evaluating the sufficiency of a trial judge's reasons, the appellate court must consider whether "[those] reasons, considered in the context of the evidentiary record, the live issues as they emerged at trial and the submissions of counsel, deprive the appellant of the right to meaningful appellate review".¹⁸

As the Supreme Court explained in *REM*, meaningful appellate review is premised on the lower court's reasons reflecting, *inter alia*, an understanding of, and meaningful engagement with, counsel's submissions. Respectfully, the Reasons of Kachur J do not reflect such an engagement, and as such, my client will be deprived of his right to meaningful appellate review – and, by extension, a fair and just resolution of his appeal – if those submissions, both oral and written, are not included in full.

Mr. Song submits that the law is clear that the rules against inclusion of trial briefs must be viewed in light of its intended purpose – that is, to prevent litigants from subverting factum page limits, which is not the case here. Furthermore, the law is equally clear that the CMO's discretion to vary the appeal materials must be exercised with a view to upholding the appealing party's right to a meaningful appellate review, which includes the appellate court's ability to evaluate the sufficiency of the lower Court's reasons.

Response to specific CMO comments

Inclusion of the briefs are necessary for a fair, just, effective and efficient determination of this appeal

At paragraph 25 of your letter, you discuss common exceptions that may justify the inclusion of lower court briefs, including a dispute among the parties about whether an issue was or was not raised. At paragraph 27 you conclude that this exception does not apply here because "there does not appear to be any dispute about whether any issue was raised ...". However, the fact that some issue, generally described, was or was not raised (for example, "the applicant argued the Respondent is promoting Political Objectives which are inconsistent with its proper statutory and constitutional duties") is far from the whole necessary context. The details of the issue that was raised need to be demonstrated and understood. In the case of the LSA's "Political Objectives", this is impossible from looking at the Reasons, because the Court never analysed the arguments beyond general descriptions:

The Applicant contends ... 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

¹⁷ *LaTrace* at para 21.

¹⁸ *R v REM*, 2008 SCC 51 at para 57 [emphasis added].

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Objectives" that are incompatible with Canada's Constitution and exceed the LSA's jurisdiction.¹⁹

Had the lower Court analysed that argument, then discrete errors in that analysis could have been the subject of a 30-page factum. Having entirely failed to analyse the argument, however, my client cannot, within the limits of the factum, demonstrate both the error and its causation of a wrongful outcome, as required by Rule 14.75(2).

In other words, an appellant cannot simply assert that some issue was raised; it must also demonstrate that the Court:

- failed to consider the argument on that issue; or
- misconstrued the argument on that issue (which requires a comparison of the argument to the Court's purported summary thereof);

and that the argument, if considered or properly construed, was determinative of the outcome, or resulted in a miscarriage of justice, or caused prejudice to a party (Rule 14.75(2)).

As I indicated in my previous letter, and respectfully reiterate here, because Kachur J's errors are largely rooted in:

- failure to turn her mind to arguments brought by the Appellant, and
- fundamental misconstruing of the arguments that she did consider,

it is not possible for my client, Mr. Song, to adequately identify and explain those errors to the Court of Appeal, and to explain how they led to a miscarriage of justice, and to do so within standard factum page limits, without reference to the lower Court briefs, as evidenced by a few examples given below.

In a similar vein, at paragraph 26 of your letter, you state that courts have repeatedly found that 30 pages are sufficient as a factum limit even for complex cases. We agree that 30 pages is usually sufficient to discuss errors of law; however, this presupposes the existence of adequate factual context in which to understand those errors. The Court's own Consolidated Practice Directions, referenced in paragraph 19 of your letter, bear out that factums are meant to focus on reviewable errors, and this is exactly what my client intends for his factum to do. We are not seeking to use the briefs to point out errors – that is what the factum is for – but rather to provide necessary context.

At paragraph 32 of your letter, you note that a party is able to refer to written briefs in the factum, and offer to provide them to the panel. While I appreciate this offer, it's not clear how to draft the factum incorporating such references without knowing whether the panel is going to take my client up on the offer. The Appellant has to know whether reference will be made to the briefs before the factum is prepared.

¹⁹ Reasons at para 41.

Kachur J misconstrued evidence and argument relating to third-party authorship

Kachur J asserted that the Applicant “made a lengthy argument that the LSA’s ‘Political Objectives’ are demonstrated in the definitions contained in a glossary” that was authored by a third-party organization.²⁰ The Applicant’s Brief, at pp 20, 23, 30, 77, 135 and 171, and in the Respondent’s Brief at pp 18-20, explain the relationship between the LSA and a resource – the glossary – that the LSA described as a “Key Resource”. These arguments are entirely absent from Kachur J’s decision.

Kachur J also took issue with Mr. Song’s reliance on “statements and opinions from academic commentators to bolster his argument about the content and scope of the LSA’s alleged ‘Political Objectives’”. In Kachur J’s view, these statements “are not laws or actions of the LSA subject to resolution through the judicial process”.²¹ This is another misconstrual of the Appellant’s argument. As the Applicant’s Brief makes clear at pp 13-18 and 111-115, these academic commentaries were relied on by the LSA in meetings where the impugned policies were developed, and were resources the record showed the LSA intended to provide practitioners to understand the Profile and Code requirements that are at issue. As such, they ought properly to have been part of the certified record of proceedings. These commentaries were raised by the Applicant because despite the LSA’s obvious reliance on them, they were absent from the record. As with the glossary, these statements and opinions formed part of the LSA’s “Key Resources”. This argument was absent from Kachur J’s decision.

The misplaced focus on third-party resources is compounded by the fact that Kachur J relied on these two examples – the glossary and the academic commentaries – to find that the entirety of the “Political Objectives” were merely Mr. Song’s subjective opinion about the LSA’s motivations, and therefore non-justiciable.²² These errors, therefore, effectively tainted the whole of Kachur J’s subsequent analysis of the *vires*, and the *Charter*-compliance, of the LSA’s actions. None of this is demonstrable, however, without reference to the briefs.

The briefs demonstrate over approximately 340 pages, including scores of cross references to the evidence, that the materials absent from the certified record of proceedings tended to reflect the impugned Political Objectives, while the respondent’s filed certified record of proceedings, generally excluded such materials or included summaries or excerpts that obscured the presence of Political Objectives. Kachur J concluded, nonetheless, that:

*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.*²³

It is impossible within a 30-page factum to re-analyse the records to demonstrate that they are not duplicative and to demonstrate that such exclusions were material and prejudicial, while also leaving room to discuss the lower Court’s other major errors.

²⁰ Reasons at para 32.

²¹ Reasons at para 30.

²² See Reasons at paras 30-33

²³ Reasons at para 62.

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Kachur J misconstrued the Appellant's Charter arguments

Respectfully, Kachur J admitted that she did not understand the Appellant's *Charter* arguments.²⁴ In her view, Mr. Song had argued that the LSA's "Political Objectives" violated sections 2(a) and 2(b) of the *Charter*.²⁵ Mr. Song made it clear, on pp 193-194 of the Applicant's Brief, that the LSA's actions – not their motivations – that had the effect of:

- Requiring Mr. Song to subject himself to training, and "correctly" answer questions which directly contradicted his beliefs and desired expression;
- Exerting substantial pressure on Mr. Song to say he believes in, and to advocate for, theories which he does not believe are true; and
- Breaching the Respondent's duty of religious neutrality (at pp 185 and 105).

These arguments are absent from the judgement.

Kachur J ignored other key arguments of the Appellant

Kachur J held that the Profile was "merely a list designed for the purpose of providing guidance to all lawyers, regardless of experience or practice area".²⁶ In so doing, she ignored pp 173-180 of the Applicant's Brief, which explained that the Profile was mandatory for reasons including implications for a lawyer's fitness to practice under the Code. This entire argument is absent from the decision. Had the Justice analysed the arguments, the factum could have focused on errors in that analysis. As it is, the Appellant must, first, restate the arguments so as to, secondarily, demonstrate it was a material error for the Court to have ignored them.

Large segments of argument are in the brief only

As the oral transcript makes clear, and as I mentioned in my original application letter, due to time constraints, several arguments were only made in writing in the briefs, and mentioned as such in passing during oral argument. The following examples from the transcript illustrate this point [with emphases added]:

11:19 – "That sounds somewhat intangible, this concept that we could somehow pervert the law, so our brief goes into a lot of detail to try to demonstrate how it is that a lawyer can pervert the law if they get the wrong legal culture".

48:04 – "So, there are many ways in which this [CPD] profile is both obviously compulsory and in a more insidious and indirect way, which we explore in the brief".

49:07 – "I need to reference the importan[ce] of referring back to the briefs to see those arguments because I am not able to make those in oral submissions".

²⁴ See the Reasons at para 135.

²⁵ Reasons at para 135.

²⁶ Reasons at para 35.

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59:14 – [The Court] “I know there’s a lot more you want to say. I know there is a lot more in your brief but we’re good?”

109:13 – “We’ve in our brief gone in great detail to [discuss the implications of cultural competence] – which my friend should have done”.

111:34 – “I would encourage the Court to take a look at my brief under this section...the Indirect effects of the Profile”.

With roughly 340 pages of argument across the three briefs, it was inevitable that large swathes of this written material would get short shrift in a single-day oral hearing. Nevertheless, the fact remains that a great deal of the argument before Kachur J, which we submit she did not turn her mind to, will not be accessible to the Court of Appeal without inclusion of these briefs.

Conclusion and requests

The rule against the inclusion of briefs is premised on the assumption that the arguments of the parties are reflected more or less correctly in the reasons. Where the reasons don’t do this, an appellant has to create and correct the record before moving on to judicial errors. Where the reasons bear little to no resemblance to the arguments put before the Court, an appellant is seriously handicapped by the rule against inclusion.

It is telling that it has taken more than a quarter-factum’s worth of pages to summarize why the briefs are necessary in the first place. Basic fairness requires that the rule against inclusion be lifted in this instance, and we respectfully request an administrative direction to this effect.

Finally, given the amount of time and attention this application has required – and the fact that factums are now due in about 3 weeks, I also request an extension on the factum filing deadline, which is currently set for 9 April 2026. Per Rules 1.4(2)(h) and 13.5(2), the Court has the discretion to extend filing deadlines, and in considering whether to do so, should look to:

- 1) The reasons for the delay;
- 2) The prospects of moving ahead with the appeal;
- 3) Any prejudice to the other party; and
- 4) The potential merit of the appeal.²⁷

The reasons for the delay are self-explanatory. There is no discernible prejudice to the Respondent that would arise in the event of a short extension. Finally, there is no reason to conclude that the appeal has no merit, nor that it faces a low prospect of moving ahead. In short, it is well within the law for the CMO to exercise its discretion to grant the requested extension.

I would ask that this deadline be postponed to the applicable of the following:

- If your current order is reversed, or if your current order stands and my client does not appeal to the Court, **30 days** from the date of your decision;

²⁷ Keef v Peters, 2015 ABCA 16 at para 6.



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I [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
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[REDACTED]

[REDACTED]

This is Exhibit " **H** " referred to
in the Affidavit of

Yue (Roger) Song
.....

Sworn before me this: **4** day

of: **June** 20**26**

.....
A Commissioner for Oaths in and for Alberta

Glenn Blackett
Barrister & Solicitor



fieldlaw.com

CALGARY / CANMORE / EDMONTON / YELLOWKNIFE

Jason Kully
Partner

March 26, 2026

VIA CAMS

Court of Appeal of Alberta

Attention: Laurie Baptiste, Case Management Officer



Dear Ms. Baptiste:

Re: Yue Song (A) v. The Law Society of Alberta (R)
Court of Appeal No. 2501-0282AC

We write in response to the Appellant's March 19, 2026, request for reconsideration of the March 9, 2026 Case Management Officer Decision (the "Decision") denying the Appellant's request to permit the filing of lower court briefs as part of the Extracts of Key Evidence.

1. The reconsideration request should be dismissed

The Appellant has not provided any sufficient rationale to justify deviating from the general prohibition on the inclusion of trial briefs in the Appeal Record (Rule 14.18(2.1)) and in the Extracts of Key Evidence (Rule 14.27(1)(c)) as found in the *Alberta Rules of Court*, as re-iterated by the Court of Appeal in [LaTrace v Warkentin Building Movers Virden Inc \(Warkentin Building Movers\), 2026 ABCA 25](#), and as found in the Decision.

While the Appellant has applied for reconsideration and provided copies of the trial briefs, the Appellant has not provided a draft of their factum and has not provided an outline of the arguments they intend to make on appeal. The Appellant has not even provided a proposed table of contents or anticipated topics that they intend to argue. Without these, it is very difficult to determine if this case is one of the "very limited circumstances" where the previous written submissions would be of assistance to the Court of Appeal.

Instead, the Appellant argues that the Court of Appeal requires the trial briefs because they provide the "necessary context" for the Court of Appeal to "understand and identify the lower Court's errors" and that the Appellant's argument of the lower Court's errors will require that the Court of Appeal "be provided a dense and complicated factual and legal context".

The Law Society of Alberta does not agree that the written submissions and arguments are needed to provide "context". "Context" is just another word for the evidence and facts that inform a matter and an

appeal. This evidence and facts can be presented in the factum without reference to the trial briefs and this is the default requirement for all parties appearing before the Court of Appeal. Further, the majority of cases before the Court of Appeal can be described as having a “dense and complicated factual and legal context”. Nonetheless, the prohibition on the inclusion of trial briefs applies to all cases and the Court of Appeal has repeatedly found that 30 pages is more than sufficient for factums for even reasonably complex cases and that leave to file factums exceeding the page limit is an exceptional request to be granted only sparingly.¹

In this regard, the Appellant repeatedly asserts that the inclusion of the trial briefs is not an attempt to subvert factum page limits. However, the Appellant’s own submissions indicate that this is not true and that the inclusion of the trial briefs is specifically for this purpose as the Appellant cannot make their arguments within the 30 page limit. The Appellant contends:

1. “Having entirely failed to analyse the argument, however, my client cannot, within the limits of the factum, demonstrate both the error and its causation of a wrongful outcome, as required by Rule 14.75(2)”;
2. “... it is not possible for my client, Mr. Song, to adequately identify and explain those errors to the Court of Appeal, and to explain how they led to a miscarriage of justice, and to do so within standard factum page limits, without reference to the lower Court briefs”; and
3. “It is impossible within a 30-page factum to re-analyse the records to demonstrate that they are not duplicative and to demonstrate that such exclusions were material and prejudicial, while also leaving room to discuss the lower Court’s other major errors”.

(emphasis added)

The Appellant also reiterates that the lower court judge did not consider, understand, or fully set out all of the arguments that the Appellant made. This argument was considered and rejected in the Decision as it was observed that “... the fact that the lower court judge summarized or provided just examples of the extensive arguments that were made does not mean all arguments provided were not considered. Rather, it indicates those were the main arguments that the court felt it was necessary to address in deciding the application.”

The Appellant argues that their concerns are that the lower court failed to analyze its arguments on the “Political Objectives”, the “constitutional and regulatory context of the regulation of the Canadian legal profession”, and presence of certain theories in the Law Society of Alberta’s “Impugned Acts”. While the trial judge did not reproduce or discuss all of the Appellant’s arguments on these issues (which is not required), the trial judge addressed and made a finding on these issues:

1. The trial judge concluded the “Political Objectives” are not subject to judicial review.²
2. The trial judge found the *Legal Profession Act* grants broad authority to the Law Society of Alberta to regulate in the public interest.³
3. The trial judge acknowledged the “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”⁴ and that the

¹ [LaTrace v Warkentin Building Movers Virden Inc \(Warkentin Building Movers\)](#), 2026 ABCA 25 at para. 5.

² [Song v The Law Society of Alberta](#), 2025 ABKB 525 at paras 28-37.

³ [Song v The Law Society of Alberta](#), 2025 ABKB 525 at paras 79-92.

⁴ [Song v The Law Society of Alberta](#), 2025 ABKB 525 at para 24.

Applicant “appears to claim that the LSA’s “Political Objectives” and “theories” violate sections 2(a) and (b) of the *Charter*.”⁵

Accordingly, there is no dispute as to whether these issues were raised and the Appellant will be able to make fulsome arguments in their factum as to whether the trial judge erred. Such arguments do not require the Appellant to make the same arguments that were made to the court below in an attempt to try to get a different result.

Further, if there is truly a concern that the Appellant made an error by failing to address a relevant legal issue, the Court of Appeal will have the appeal record, which includes the Amended Originating Application, the Extracts of Key Evidence, which can include relevant portions of the Certified Record of Proceedings, and the transcript of the appearance before the trial judge. These will provide a sufficient basis for the Appellant to argue the trial judge erred and the repetition of previous arguments is not necessary or helpful. The Court of Appeal will be able to address the key question, whether the trial judge on the record as a whole did not deal with the substance of the critical issues on the case, without the trial briefs.

In this respect, while the Appellant cites the Supreme Court of Canada’s decision in *R v Rem* for the principle that a trial judge must meaningfully engage in counsel’s submissions in a decision, the Supreme Court did not grant an appellant court the power to intervene simply because it thinks the trial court did a poor job of expressing itself. As stated by the Supreme Court in *R v Rem*:

To justify appellate intervention, the Court makes clear, there must be a functional failing in the reasons. More precisely, the reasons, read in the context of the evidentiary record and the live issues on which the trial focussed, must fail to disclose an intelligible basis for the verdict, capable of permitting meaningful appellate review.⁶

The Court of Appeal will be able to determine, without review of the trial briefs, if the reasons, read in the context of the record and the issues, fail to disclose an intelligible basis for the decision, capable of permitting meaningful appellate review.

Finally, the Appellant argues that they are “seriously handicapped by the rule against inclusion” of the trial briefs because the reasons do not reflect the arguments put before the court. The trial judge could not have summarized and included all of the arguments raised by the Appellant in the approximately 300 pages of written submissions made just by the Appellant. It cannot be the case that a litigant can overwhelm a judge with hundreds and hundreds of pages of submissions and then argue that the failure to discuss every submission made is an error or a reason for the prohibition on the inclusion of trial briefs to be relaxed. The issue will always be whether the trial judge did not deal with the substance of the critical issues on the case.

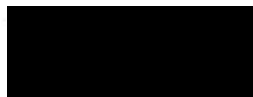
⁵ [Song v The Law Society of Alberta, 2025 ABKB 525](#) at para 135.

⁶ [R v Rem, 2008 SCC 51](#) at para 53.

In conclusion, the Appellant's request for reconsideration should be dismissed as they have not demonstrated any reason for the Decision to be reconsidered. Any alleged judicial error can be sufficiently argued without reference to the previous submissions and the inclusion of previous trial briefs risks circumventing the factum page limits and their purpose.

Sincerely,

FIELD LLP



Jason Kully
Partner
JHK/mj

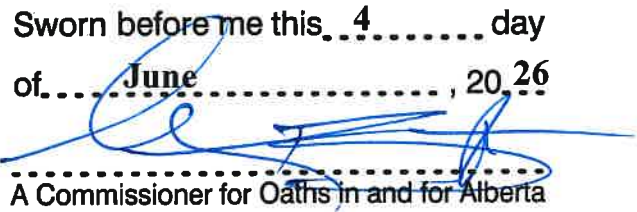
Cc: Glenn Blackett, Glenn Blackett Law, via email
client, via email

This is Exhibit " I " referred to
in the Affidavit of

Yue (Roger) Song
.....

Sworn before me this 4 day

of June, 2026
.....


.....
A Commissioner for Oaths in and for Alberta

Glenn Blackett
Barrister & Solicitor

Registrar's Office
[REDACTED]Registrar's Office
[REDACTED]

COURT OF APPEAL OF ALBERTA

Case Management Officer: L. Baptiste
Email: [REDACTED]Case Management Officer: B.J. McDevitt
Email: [REDACTED]

May 7, 2026

Case Management Officer Administrative Direction

Appeal No: 2501-0282AC

Yue Song (A) v. The Law Society of Alberta (R)

Introduction and Background

1. The Appellant has applied to me, by letter dated March 19, 2026, for reconsideration of my decision issued March 9, 2026, which denied the Appellant's request to include roughly 340 pages of written briefs filed in the lower court in their Extracts of Key Evidence ("EKE"). The appellant's new letter application included copies of the briefs in question in Appendices and also indicated adoption of fact and argument from their prior letter of February 5, 2026.
2. While the Rules do not expressly allow for an application for reconsideration, my prior decision of March 9, 2026 did provide that the Appellant would be free to apply to me to reconsider and provide further information and supporting materials.
3. I have now had time to consider both letters and the Appendices, along with an additional letter filed April 2, 2026, which addressed potential mootness of the appeal and confirmed the Appellant still plans to proceed with the appeal.
4. My March 9, 2026 decision set out the background to the matter and relevant Rules and Authorities so I will not repeat that again here.

Submissions of the Parties

5. The Appellant submits that they are given 30 pages in the factum to discuss the lower court's errors but that, in this case, that discussion requires the panel be provided "a dense and complicated factual and legal context", in addition to the alleged errors, which they indicate can only be done by including all or some significant portion of the lengthy written briefs filed in the court below: 90 pages of factual context, over 20 pages of constitutional and regulatory context, over 84 pages about the alleged theories and actions and powers of the Respondent and inconsistencies in that regard. The Appellant submits that the lower court failed entirely to reference, consider or analyze these parts of the written briefs.
6. Yet, the Appellant indicates they do not seek to "extend or subvert" the 30-page factum limit. Further, they submit the 30-page factum limit "presumes that the arguments of the

parties are more or less reflected in the lower Court's reasons" and note that is not the case here.

7. The Appellant asserts that *LaTrace v Warkentin*, 2026 ABCA 25 ("**LaTrace**"), cited in my prior decision and by the Respondent, does not stand for the proposition that inclusion of trial briefs is never permissible and indicates they agree with the propositions in that case. However, they say they require inclusion of the briefs as "necessary context", without which this Court cannot understand or identify the lower Court's errors. They note that the errors to be canvassed in the factum turn mainly on (alleged) failures to consider evidence and arguments which had been offered mainly and often solely in the briefs, which was not the situation in *LaTrace*, which turned on the applicants' failure to identify a relationship between the briefs and arguments on appeal.
8. In contrast to *LaTrace*, the Appellant submits their argument on appeal are focused on the lower court's failure to engage with their arguments, which were "either not summarized or were seriously misstated". They submit evidence and understanding of those arguments is crucial to effective appellate review, citing *R v REM*, 2008 SCC 51 ("**REM**") at para 57. Further, that meaningful appellate review is premised on the lower court's reasons reflecting an understanding of, with meaningful engagement with, counsel's submissions, which the reasons of the lower court do not reflect.
9. The Appellant submits that their intended purpose is not to subvert the factum page limits and note, without citing any authority, that a "CMO's discretion to vary the appeal materials must be exercised with a view to upholding the appealing party's right to a meaningful appellate review, which includes the appellate court's ability to evaluate the sufficiency of the lower Court's reasons".
10. The Appellant also provides responses to specific comments I made in my prior decision, including as follows:
 - a. CMO statement (para 25 of my decision): An exception that may justify inclusion of briefs – a dispute between the parties about whether an issue was or was not raised – does not apply here.
 - i. Appellant Response: the fact that some issue was or was not raised is far from the whole necessary context and details of the issue are needed, such as in regard to the alleged LSA's "Political Objectives", which is impossible to do from the reasons since the court did not analyze the arguments in any detail, along with demonstrating the Court failed to consider the issue or misconstrued the arguments made; it is not possible to adequately identify and explain the errors and how they led to a miscarriage of justice within the standard factum page limits, without reference to the lower Court briefs.
 - b. CMO statement (para 26 of my decision): courts have repeatedly found that 30 pages are sufficient for even complex cases.
 - i. Appellant Response: They agree 30 pages is sufficient to discuss errors of law, which is what they intend to do, but that presupposes the existence of

adequate factual context and in this case adequate factual context can only be provided in the lower court briefs.

- c. CMO statement (para 32 of my decision): a party is able to refer to written briefs in the factum and offer to provide them to the panel.
 - i. Appellant Response: They appreciate the offer but not clear how to draft a factum incorporating such references without knowing whether they panel will take up the offer, noting again extensive arguments were made in the briefs that are entirely absent from the lower court reasons (in relation to the LSA's "Political Objectives") or that were misconstrued (reliance on statements and opinions from academic commentators, *Charter* arguments), errors which are said to have tainted the whole of the analysis, none of which is demonstrable without reference to the briefs, which provide evidence of materials said to be absent from the certified record of proceedings.
11. Overall, the Appellant argues that basic fairness requires the rule against inclusion of written briefs be lifted in this case.
12. The Respondent submits that the reconsideration request should be dismissed. They say the Appellant has not provided sufficient rationale to justify deviating from the general prohibition on inclusion of trial briefs as found in the Rules, and as re-iterated in *LaTrace* and my prior decision.
13. The Respondent notes that the Appellant did not provide a draft, or even an outline, of their factum, which makes it difficult to determine whether written briefs would be of assistance.
14. The Respondent does not agree that the written briefs are required to provide the "necessary context" for the appeal or to understand the alleged errors. They say the "evidence and facts can be presented in the factum without reference to the trial briefs and this is the default requirement for all parties appearing before the Court of Appeal". Further, that "the majority of cases before the Court of Appeal can be described as having a "dense and complicated factual and legal context"", noting 30 pages is usually sufficient for complex appeals as noted in *LaTrace*.
15. They also note "the Appellant repeatedly asserts that the inclusion of the trial briefs is not an attempt to subvert factum page limits" but that "the Appellant's own submissions indicate that this is not true and that the inclusion of the trial briefs is specifically for this purpose as the Appellant cannot make their arguments within the 30 page limit", citing a number of examples from the Appellant's submissions.
16. Further, that the Appellant's reiteration that the lower court did not consider, understand, or fully set out all of their arguments was considered and rejected in my prior decision, where I observed, "... the fact that the lower court judge summarized or provided just examples of the extensive arguments that were made does not mean all arguments provided were not considered. Rather, it indicates those were the main arguments that the court felt it was necessary to address in deciding the application."

17. As for the Appellant's concern that the lower court failed to analyze their arguments about the alleged "Political Objectives", constitutional and regulatory context and presence of certain theories, the Respondent submits the trial judge was not required to reproduce or discuss all of the Appellant's arguments but did address and make findings on them, including that the "Political Objectives" were not subject to judicial review, about the broad authority of the Law Society and the link between the alleged "Political Objectives" and theories. Therefore, the Respondent submits there is no dispute such issues were raised and the Appellant can make arguments in their factum about whether the lower court erred, but that does not require the Appellant to make (again) the same arguments made to the court below and try to get a different result.
18. The Respondent notes this Court will have the appeal record, which includes the Amended Originating Application, Extracts of Key Evidence which can include relevant portions of the Certified Record of Proceedings, and the transcript, which provide a sufficient basis for the Appellant's intended arguments, without the repetition in the trial briefs.
19. The Respondent notes that *REM* does not grant an appellate court the power to intervene just because it thinks the trial court did a poor job of expressing itself, only when there is a "functional failing in the reasons" or a failure to "disclose an intelligible basis for the verdict, capable of permitting meaningful appellate review", which is not the case here.
20. Finally, the Respondent notes it was not possible for the lower court to summarize the ~300 pages of written submissions made by the Appellant and that it "cannot be the case that a litigant can overwhelm a judge with hundreds and hundreds of pages of submissions and then argue that the failure to discuss every submission made is an error or a reason for the prohibition on the inclusion of trial briefs to be relaxed".

Analysis

21. Contrary to the submissions of the Respondent, I do not find that the lack of draft factum makes it difficult to determine whether the written trial briefs would be of assistance for this appeal as I find the issues that the Appellant intends to raise are sufficiently set out in the submissions provided.
22. While no authority was cited for the proposition, I accept the submission of the Appellant that a "CMO's discretion to vary the appeal materials must be exercised with a view to upholding the appealing party's right to a meaningful appellate review, which includes the appellate court's ability to evaluate the sufficiency of the lower Court's reasons". However, I do not find that the extensive written briefs are required to provide meaningful appellate review in this matter or for the Court to evaluate the sufficiency of the lower Court's reasons in this case.
23. I understand the importance of this matter and appeal to the Appellant. I also understand the arguments made by the Appellant, as to why they believe that the extensive written briefs filed in the lower court are required for the appeal. I am just not persuaded by them.
24. I do not find that *REM* supports the request made or requires provision of the extensive written briefs.

25. The Appellant submits that it is “telling that it has taken more than a quarter-factum’ worth of pages to summarize why the briefs are necessary”. What I find telling is that the summary itself is more than sufficient as context for the appeal, and I do not find that the written briefs are necessary to provide context. The written briefs would only be necessary to reargue the matter which, as has been pointed out, is not the point of an appeal. The alleged errors with the decision can be made within the confines of the factum, as Appellant counsel has confirmed repeatedly that they will be able to do.
26. Much, if not all, of the detail provided in the extensive written briefs would only potentially be required if the appeal is successful and if there were to be a re-hearing ordered, such as if the panel was to accept that the lower court made a reviewable error in its decision about justiciability. But I do not find the briefs are required in order for the Appellant to make their arguments about the errors they allege.
27. In addition, contrary to the submissions of the Appellant, the standard 30 pages for factums is expressly meant to and is required to cover *both* the relevant facts *and* the alleged errors, as shown by the required contents for Factums in Rule 14.25. Further, as I indicated in my prior decision, the 30-page limit has been found to be more than sufficient for factums in complex cases and I do not find this case to be exceptional, other than length of the written briefs that were filed.
28. Similarly, the Appellant’s assertion that the 30-page limit “presumes that the arguments of the parties are more or less reflected in the lower Court’s reasons” is not correct, nor is any authority provided for that proposition.
29. As noted by the Respondent, the Appellant will be able to reference the evidence and transcript, which will provide a sufficient basis for the Appellant’s intended arguments. For example, I found the introduction provided by Appellant counsel in their oral submissions in the lower court was eloquent and succinct and sufficient to orientate the circumstances of the matter.
30. I cannot accept the Appellant’s claim that the alleged errors are not demonstrable without the written briefs. I again reiterate that the Appellant will be free to *mention* the written briefs in their factum and *offer* to provide them if the panel finds they would be of assistance and the panel can consider that. I do not see why the Appellant would need to know whether the panel may make such a request before the factum is prepared and that is **not** information that can be provided in advance. And there should not be any issues as long as the written briefs are only being mentioned in case further context is required, or to offer examples of arguments made that are alleged to have been overlooked, ignored or misstated by the trial judge. However, it is my view that all of the required context and examples can be set out based on the transcript and other allowed materials. If the Panel feels more information is required, they will be free to ask for it.
31. Despite the above, the one final thing I am willing to consider is a further request to provide *limited* excerpts from the written briefs. But such a request can only be made if a copy of the Appellant’s draft factum is provided so I can determine if the reference and proposed provision of excerpts are appropriate. And by “limited” I mean a small fraction of the number of total pages, perhaps somewhere in the nature of no more than 10%, although I am not setting any firm limits.

32. Based on the above, the request for consideration is denied in its current form.
33. I had suspended the Appellant's factum deadline until I was able to issue this decision. Appellant counsel asked that, when I re-set the deadline, I set it at least 30 days out from the date of my decision, or 30 days after a decision on any appeal of my decision and that request is granted. Although, the Court prefers to count time in months, not days, where possible. Therefore, the new Appellant Factum deadline shall be 1 month from the date of this decision or 1 month from the date of a decision on any appeal of my decision made in accordance with Rule 14.36(3).
34. If the Appellant decides, instead, to seek further relief from me instead of seeking to appeal my decision, their deadline can be adjusted accordingly, such as by making the deadline 1 month after the date of my decision on any further application.



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