The End of Law Societies?

Not quite, but we need to polish our image to save self-regulation

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Our profession's public image is in free-fall. Negative media is partly to blame. So, too, is jealousy against educated élites. But neither explains decades of decline, and neither explains why the public harbours greater ill will toward us than other professionals. Lawyer jokes abound. Indeed, it is hard to find similar ill feeling toward doctors, academics or engineers. Even the accountants, responsible for pink slips by the millions, receive grudging blue-collar respect as saviours of businesses. Instead of blaming "those who buy newsprint by the ton," or the public we serve, we need look no further than the belief that self-regulation was intended to protect *members* of the legal profession from public accountability. It is a misconception shared by non-lawyers and lawyers alike, and it is toxic to our public image.

In 2007, reforms to the legal profession severed discipline and regulation from the Law Society of England and Wales (the LSEW), into the Solicitors Regulation Authority and the Legal Complaints Service. Of course, I over-simplify the wrenching history leading to this split. The LSEW's fate was ultimately sealed by the landmark 2004 *Clementi* Report urging such reforms. The institutional target of the outcry was the tension between the LSEW's dual roles as promoter of the legal profession and as its regulator in the public interest. Consumer complaints against solicitors mounted. Reform came not fast enough. Fuelled by popular anti-lawyer sentiment, government trained is cannons on solicitor self-regulation. (Don't think it can happen here? In the ethos of Tea Party politics, all it will take is another Bernardo Tapes episode for a provincial government to succumb to public outrage and convene a Clementi-style public review.)

Predictably, disestablishment of the regulatory function of the LSEW sparked fierce resistance. As Sir David Clementi concluded:

> Reform will not be easy. Whilst there is pressure for change, from consumer groups and also from many lawyers, reform will be resisted by other lawyers who are comfortable with the system as it is. Lawyers who are opposed to the reforms in this Review will either argue that I am mistaken and have failed to understand the special characteristics that set the law apart, or call for further research and consultation, kicking reform into the long grass.

The mandates for the new entities drew a bright line between the remaining "promoting the bar" role of the remaining LSEW and the "protecting the public *from* lawyers" role of the new departments. In Ontario, there remains confusion about the roles of the Law Society of Upper Canada (the Law Society) and the OBA. Some public confusion is unavoidable, but it is nevertheless one both entities must strive to counter. No lawyers in Ontario would ever mistake the OBA for their governing body. Lawyers in Ontario who consider the Law Society as their promoter or protector, either in their practices or on the public stage, still abound. Historically, they were in the majority, however indefensible this view is now. Witness the feeling of betrayal expressed by many lawyers when the Law Society recently agreed to license and regulate paralegals. The Law Society did not betray lawyers. For betrayal, one has to owe a loyalty. Recent governance reforms in Convocation have been a step in the right direction. The Law Society must do more to promulgate the message that it exists to serve the public, not lawyers.

The public interest role of the Law Society is clearly stated in the *Law Society Act*. There is no mandate to advance the interests of lawyers beyond a jurisdiction to advance the rule of law (the basic political condition in which lawyers' advice and services are in need). There is certainly no mandate to help lawyers earn a living. The Law Society "offers" education and assistance to lawyers, but even in doing so it treads a

fine line. It does so to protect clients, not lawyers. There are no "member benefits" at the Law Society on car rental discounts or front-of-the-line access to basketball tickets. Nor does the Law Society restrict the number of lawyers by making its licensing examinations unduly rigorous.

As any lawyer in Ontario knows, one wants to be on good terms with the Law Society. Nevertheless, it is not the Law Society's role to be the "friend" of lawyers. Membership in the Law Society is a political franchise—to elect benchers and to be benchers—nothing else. Lawyers benefit, in that those who preside over their regulation and discipline come from their own ranks. The fallout after *Clementi* has had the salutary effect of placing law societies around the world on notice. Public confidence in the profession depends much on how sharply we define the roles of the regulator and the bar association.

In modern governance parlance, benchers must be representative *of* the legal profession, not *for*. In the 2011 bencher elections, some candidates will undoubtedly campaign on the short-term message of being there for lawyers. Watch out for those who will say, "I'll fight for you, in Convocation." These "fighters" will perform a disservice to the profession by perpetuating alienation between the profession and the public we serve. Instead, lawyers will have a historic opportunity to elect leaders with a long-term vision of our future. For loyalty to lawyers, look not to the Law Society. Look to the OBA.