An Update on Self-Regulation in the Legal Profession (1989-2000) : Funnel In and Funnel Out

Joan Brockman *

Introduction

Part of the regulatory bargain that professional self-regulating organizations (SROs) strike with the state is that they will investigate and take disciplinary or corrective measures against their wayward members.[1] In an earlier study (the "1988 study"), Brockman and McEwen modified the crime funnel[2] to create a misconduct funnel that they used to examine how self-regulating professions deal with complaints against their members.[3] The misconduct funnel incorporates both the benefits of self-regulation claimed by self-regulating professions and criticisms of it. SROs claim to set and enforce ethical or conduct standards for their members' behaviour that would not otherwise be scrutinized by other means of social control such as the criminal or civil law or other government agencies.[4] In this way, professions "funnel in" such wayward behaviour and subject it to observation, investigation, and sanctions.

SROs are sometimes criticized for being too lenient on their members and, rather than widening the net of social control as they claim, they are accused of "funneling out" so many complaints that they are ineffective in

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1 The regulation of their members' behaviour is only one aspect of this bargain. SROs are also given the power to limit entry into their professional organizations (which they exercise through exclusionary strategies) and the tools to protect the services they offer from other competitors (through demarcationary strategies); see Joan Brockman, "'Fortunate Enough to Obtain and Keep the Title of Profession:' Self-Regulating Organizations and the Enforcement of Professional Monopolies" (1998) 41(4) *Canadian Public Administration* 587. According to Eliot Freidson, *Professionalism: The Third Logic* (Chicago: University of Chicago Press, 2001) at 12 "professionalism may be said to exist when an organized occupation gains the power to determine who is qualified to perform a defined set of tasks, to prevent all others from performing that work, and to control the criteria by which to evaluate performance." Freidson is of the opinion that "monopoly is essential to professionalism." *Ibid.* at 3.

2 The crime funnel includes: actual crimes, crimes detected, crimes reported, crimes recorded, arrests, trials, convictions, and sentencing.

3 Joan Brockman & Colin McEwen, "Self-Regulation in the Legal Profession: Funnel In, Funnel Out or Funnel Away" (1990) 5 C.J.L.S. 1. Also see Bruce L. Arnold & Fiona M. Kay, "Social Capital, Violations of Trust, and the Vulnerability of Isolates: The Social Organization of Law Practice and Professional Self-Regulation" (1995) 23 Int.'l J. Soc. L. 321, and Susan P. Shapiro, "The Road Not Taken: The Elusive Path to Criminal Prosecution for White-Collar Offenders" (1985) 19:2 Law & Soc'y Rev. 179.

4 Brockman & McEwen, *ibid.* at 9.

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controlling wayward professionals. This criticism usually has two aspects. First, professional SROs are not designed to, or do not, deal with the majority of clients' complaints, which are about the quality of professional services, not misconduct. Second, if a complaint does make it through the SRO's disciplinary system, the penalty is so light as to amount to nothing more than a "slap-on-the-wrist."

Clients and the public have complained about the lack of consumer orientation on the part of lawyers for some time. Parker summarizes some of the literature in this area: "lawyers fail to treat clients with respect, do not consider the nature of interpersonal relations with clients to be an important part of law practice, appear to be motivated more by financial returns than professional values, are inaccessible and unresponsive, are poor communicators, and show indifference to client feelings."[5] More devastating than the critique about lawyers, is the critique that professional SROs are not addressing consumer complaints. Rather, they deal with intra-professional complaints (eg. lawyers complaining about how other lawyers attract clients) and inter-professional intrusions on their monopoly (unauthorized practice).[6] In addition to being criticized for not being consumer oriented, lawyers are sometimes criticized for being too client oriented when it comes to clients who can pay for their aggressive, adversarial services ("distorting justice for the rich").[7]

Additional complaints are made about lawyers' bills and billing practices. Hourly billing is perceived to be a source of unfair or padded bills, which are rarely justified.[8] Rhode describes what is probably the "record" in the United States – "a class action attorney who logged over a thousand hours by charging some five thousand asbestos clients for the same twenty-minute task." Rhode calls billing abuses the "perfect crime" in that "it is impossible to verify whether some tasks are necessary and whether they require, or actually consume, the time that lawyers charge for completing them." The fact of overbilling is supported indirectly by surveys that show that 40% of lawyers admit that some of their work is driven by the desire to bill more

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5 Christine Parker, *Just Lawyers: Regulation and Access to Justice* (Oxford: New York: Oxford University Press, 1999) at 13.

6 *Ibid.* at 14-15.

7 *Ibid.* at 20-28.

8 Parker, *ibid.* at 13. Recently, retired Supreme Court of Canada Justice Charles Gonthier told the Canadian Bar Association that "billable hours may be partially to blame" for lawyers' increasing focus on the "bottom line" and the "depersonalization" of law firms. He noted, "the practice of measuring one's output in terms of billable hours leads one to emphasize time spent at work to the detriment of other socially worthy activities which cannot be added to the times billed;" Janice Tibbetts, "Huge Fees Hurt 'Image' of Lawyers: Former Supreme Court Justice Wants End to Billing by the Hour" *The Ottawa Citizen* (19 August 2003) A3. A study in 2000 by the Canadian Bar Association found that 97% of lawyers bill by the hour. "The report noted that charging a fixed fee has its problems because it can encourage lawyers to cut corners. But the pitfalls of hourly billing are larger, (...) because the system creates incentive for inefficiency and encourages lawyers to over-research a file;" *ibid.*

hours, and 50 % of corporate counsel and chief executives believe that their law firms overbill them.[9]

Some critics have argued that self-regulation deflects criminal complaints away from the criminal justice system, protecting members from criminal prosecution.[10] That is, self-regulating professions take legitimate complaints of crime and have them "funnelled away" from the criminal justice system. Although members of professions may face multiple proceedings (the criminal justice system, the civil law system, and in some cases other administrative agencies in addition to their own SROs) for the same behaviour,[11] there is a perception that this does not in fact happen.

This paper examines complaints received by the Law Society of British Columbia, between 1989-2000, and how they are funnelled into and then out of the disciplinary system of the Law Society in light of the first two prongs of the three-prong funnel described above.[12] It describes some of the changes that have occurred in the context of the Law Society's disciplinary process since the 1988 study and outlines the Law Society's disciplinary process. The paper then examines the types of complaints received by the Law Society and how they are funnelled through, or out of, the Law Society's disciplinary system. Finally it looks at some of the developments in professional self-regulation from other countries and concludes with some comments on the future of self-regulation in light of some of the renegotiations and readjustments to professional self-regulation that have taken place elsewhere.

The Context of the Law Society's Disciplinary Process and Changes to It

There were a number of changes to the social and political context within which the Law Society's disciplinary system operated between the 1988 study and this one: 1) the Law Society introduced some public relations/educational initiatives; 2) the concept of professional misconduct was expanded; 3) lay benchers were added to the governing body of the Law Society; and 4) the announcement of hearings and the publicity of decisions were enhanced. All of these changes can be seen as efforts by the Law Society to improve the self-regulating aspect of the regulatory bargain that it has with the state and to increase its legitimacy as an SRO in the eyes of the public and the government.

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9 Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* (New York: Oxford University Press, 2000) at 169.

10 See, for example, James William Coleman, *The Criminal Elite: Sociology of White* Collar Crime 4th ed. (New York: St. Martin's Press, 1998) at 124-26.

11 See Caroline Murdoch and Joan Brockman, "Who's On First? Disciplinary Proceedings by Self-Regulating Professions and other Agencies for 'Criminal' Behaviour" (2001) 64:1 *Sask. L. Rev.* 29.

12 The issue of funneling away from the criminal justice system is dealt with in another study that examines in greater detail the cases that resulted in a hearing before a Law Society of British Columbia hearing panel; Joan Brockman and Caroline Murdoch, "Disciplining Wayward Lawyers in British Columbia, 1989-2000" (in preparation).

Public Education / Public Relations Activities

Public education or public relations activities are not new to the Law Society or other professional SROs.[13] In some instances, members of the profession reject spending money on professional self-promotion,[14] but will accept a more broadly based campaign that has some educational merit. Between 1989 and 1991, the Law Society sponsored *Legal Wise,* a 26-week, half-hour programme on CBC TV which profiled various cases and lawyers throughout British Columbia. It was inspired by a CBC production, *Doctor, Doctor*, a programme funded by the British Columbia Medical Association "to promote the image of doctors while informing the public on health-related topics."[15] The Chair of the Law Society's Public Relations Committee explained why the Committee was following up on the *Doctor, Doctor* model: "Our Committee's second goal is to enhance the profession's public reputation. We need to dispel the myths that lawyers are aloof, inaccessible and too expensive for the average citizen. Projecting a more positive (and accurate) image of lawyers is a challenge which our Committee has eagerly accepted."[16] The subsequent Chair of the Committee felt "a sense of satisfaction that Legal Wise [had] portrayed lawyers honestly and positively, as accessible professionals."[17]

In 1988, the Law Society's Public Relations Committee introduced an annual media workshop and an award for Excellence in Legal Journalism "to encourage fair, accurate, comprehensive and in-depth legal reporting."[18] In 2000, the administration of the reward was turned over to the Jack Webster

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13 For example, in turf wars with notaries between 1930 and the 1950s, the Law Society of British Columbia engaged in a number of "educational" efforts to encourage the public to take their legal work to lawyers, not notaries; Joan Brockman, "Better to Enlist Their Support Than to Suffer Their Antagonism: The Game of Monopoly Between Lawyers and Notaries in British Columbia, 1930-1981" (1997) 4(3) International Journal of the Legal Profession 197 at 200-204.

14 An advertising campaign "to inform the public of the benefits of engaging lawyers for legal services and of the dangers inherent in failing to consult lawyers on legal matters" was rejected by a membership vote of the Law Society in 1992; "Advertising Proposal Dropped" (June-July, 1992) 4 Benchers' Bulletin 7 at 7. For a discussion of the expense and difficulties of self-promotion campaigns, see "Communications" in *The Law Society of British Columbia 1992 Annual Report* (Vancouver, British Columbia: Law Society, 1992) 6 at 7.

15 "Lawyer, Lawyer?" (December, 1988) 11 Benchers' Bulletin 4 at 4. *Legal Wise* (a series of current affairs episodes) was seen as a better means "to get [the Law Society's] message out to the public" rather than "a self-promotional institutional advertising program;" R. Paul Beckmann, "Prime Time TV" (June, 1989) 5 Benchers' Bulletin at 2.

16 The first goal of the Committee was "to inform the public about the law, the role of the Law Society and of lawyers;" H.A.D. Oliver, "Public Relations Committee" in *The Law Society of British Columbia 1988 Annual Report* (Vancouver, British Columbia: Law Society, 1988) at 24.

17 Michael Bolton, "Public Relations Committee," *ibid.* In 1990, the Public Relations Committee changed its name to the Communications Committee to better reflect that it deals with communications with Law Society members, the public, and government; Michael Bolton, *ibid.* at 8. While the Committee continued to operate, it was no longer featured in the Law Society's Annual Report after 1993.

18 "Penticton Reporter Wins Law Society Award" (June, 1989) 5 Benchers' Bulletin 6.

Foundation and renamed the Jack Webster Award for Excellence in Legal Journalism.[19]

Expanding Concept of Professional Misconduct

Between 1989 and 1992, the Law Society examined the issue of gender bias in the legal profession.[20] In 1991, the Women in the Legal Profession Subcommittee recommended that discrimination on the basis of sex in employment and sexual harassment be included in the definition of professional misconduct.[21] Another report, in 1992, reiterated the recommendations from the first report and recommended that the grounds of discrimination be expanded to include "sexual orientation, marital status, and family status, as well as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age and disability."[22] In 1992, the Law Society prohibited discrimination "on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age" and defined sexual harassment as a form of discrimination through an amendment to Chapter 2 (Integrity) of its *Professional Conduct Handbook.* Young lawyers (called three to seven years), who were interviewed shortly after the ruling was introduced, were much more optimistic about the effectiveness of the anti-sexual harassment ruling than they were about the anti-discrimination ruling.[23]

In 1994, the Law Society created the position of an ombudsperson to deal with discrimination issues and harassment through "informal procedures," which would remain independent from the disciplinary process.[24] This process did not preclude such behaviour from being subject to the disciplinary process, but gave lawyers an alternate, confidential means of resolving these issues. In the first year, the Ombudsofficer "responded to over 50 requests for assistance to resolve discrimination complaints."[25] Another 50 were dealt with in the second year.[26] There are no other public reports on the numbers of complainants that used the Ombudsofficer, but in

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19 Online: The Jack Webster Foundation http://www.jackwebster.com/foundation/index.shtml (accessed June 29, 2003)

20 Joan Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* (Vancouver: UBC Press, 2001) at 12-13.

21 Katharine P. Young (Chair), Dean Lynn Smith, Fran Watters, Karen Nordlinger, Warren Wilson & Martha O'Brien (staff), *Women in the Legal Profession: A Report of the Women in the Legal Profession Subcommittee* (Vancouver: The Law Society of British Columbia, September, 1991) at 31, 37.

22 E.N. (Ted) Hughes (Chair), Alison MacLennan, John McAlpine, Stephen F.D. Kelleher, Marguerite Jackson & Wendy Baker, *Gender Equality in the Justice System* (Vancouver: Law Society of British Columbia, 1992) at 3–30.

23 Joan Brockman, "The Use of Self-Regulation to Curb Discrimination and Sexual Harassment in the Legal Profession" (1997) 35(2) *Osgoode Hall L.J.* 209.

24 "Ombudsperson to Help in Firm Discrimination Complaints" 4 (May-June, 1994) Benchers' Bulletin 1 at 1. The position was filled by Gail H. Forsythe on January 1, 1995; "What Services will the Ombudsperson Offer Law Firms? (December, 1994) Benchers' Bulletin 3.

25 Gail H. Forsythe, "After the First Year: Are Services in Demand? What are the Results?" (January-February, 1996) Benchers' Bulletin 7.

26 Gail H. Forsythe, "Gender Bias and Harassment–Is there Reason to be Concerned" (January-February, 1997) 1 Benchers' Bulletin 10.

1999 the position was restructured to reduce costs. Mediation would be conducted by independent mediators, and education would be done in-house or by contractors.[27] A report from a program evaluation committee in 1996 "noted that the number of discrimination complaints received by the Ombudsperson was more than the number received by the Law Society, which indicated that the service is meeting a previously unmet need in the profession."[28]

It is unclear if these changes had any impact on the disciplinary system of the Law Society. Between 1997 and 2000, there were only 26 complaints of discrimination recorded by the Law Society in its Annual Reports, and it appears as though none of these complaints made it through the disciplinary system.

Lay Benchers

At the end of the time framework for the 1988 study, the *Legal Profession Act* was amended to allow for up to three lay benchers. The number was increased to six in 1999.[29] The first report by the lay benchers (1989) was critical of the Law Society because its disciplinary hearings and penalties lacked full transparency. The report also criticized a disciplinary decision in which a lawyer was suspended for "a mere four months" by the Law Society, following a conviction in criminal court for tax evasion of $260,000. The lawyer had been sentenced in court to serve nine months in jail and pay a $50,000 fine. The lay benchers sought a review and suggested disbarment, but upon review the penalty was raised to an eight month suspension. The lay benchers also suggested that any defalcation of trust funds should be a "hanging offence" and result in permanent expulsion from the legal profession.[30] The lay benchers' second report was again concerned with transparency of hearings and the fact that they were held without any public announcements. In addition, they thought that the Discipline Committee should review lawyers who were convicted for a second time of drinking and driving, and that lawyers should be required to report any criminal charges against them to the Law Society.[31] The report also raised the concern that a

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27 "Review of Discrimination Ombudsperson Program Brings Changes" (August-September, 1999) 4 Benchers' Bulletin 6. These changes occurred despite the fact that an earlier report had considered such a model and recommended that "all services be offered by one neutral, independent Ombudsperson;" "Discrimination Ombudsperson Program to Stay" (January-February, 1996) 1 Benchers' Bulletin 4 at 4.

28 "Discrimination Ombudsperson", *ibid.*

29 There are 25 lawyers elected as benchers, so the potential proportion of lay benchers (now at 19%) still falls short of the one-third required by the British Columbia government in the early 1990s for many health professional SROs. The Law Society was opposed to increasing the number of lay benchers to one third because it would bring their independence from government into question, they did not monitor the spending of public funds like health professionals, the substantial cost would be funded by lawyers, and the board would be ineffective if it became too large; "Benchers to Ask Government for More Lay Benchers" (November, 1993) 6 Benchers' Bulletin 6.

30 "Lay Benchers' Report" in *The Law Society of British Columbia Annual Report, 1989* (Vancouver: Law Society of British Columbia, 1989) 28 at 29.

31 The Law Society finally added this requirement effective July 1, 2003. Lawyers and articled students must now report to the Law Society the particulars of any charges they

few lawyers charged excessively high fees.[32] The third report was again concerned with transparency and the fact that the public was still not informed of the dates of open discipline hearings. It reiterated its concerns over excessive fees.[33]

The next few reports were somewhat toned down in their criticisms and focused on the progress that the Law Society was making in various areas. Some might attribute the earlier criticism by the lay benchers to the presence of Jack Webster (a well known and opinionated open line broadcaster in British Columbia), but the tone of the reports changed under his watch. It is difficult to determine why this change occurred. It could be because the Law Society responded favourably to the lay benchers' concerns or that the lay benchers were being coopted in their position. For example, in responding to Mary Southin's criticism of her fellow benchers of the Law Society of British Columbia as "betrayers" for wanting to accept lay benchers into their midst in 1980, then Treasurer, David Tupper wrote:

> In my opinion, and based on my experience with the Legal Aid Society and the Legal Services Society, the appointment of a few laymen as benchers will have the effect of opening a needed line of communication between lawyers and the lay public without disturbing the collegial spirit which is so important to the Benchers' deliberations. Whilst lay men will open some windows, if they are welcomed into our midst as equals they will inevitably tend to emphathise and sympathise with the lawyers' point of view, at least so long as it is sensibly advanced.[34]

Obviously, the explanation is more complex and the result is probably from an interaction of these and other forces.

Publicity of Discipline Hearings and Decisions

At one time criticized for their secrecy, some professional SROs now conduct disciplinary hearings that are open to the media and the public. In their first report, in 1989 (just as the time framework for this study got underway), the lay benchers of the Law Society referred to "public hearings about which the public and the media are not advised," suggesting that there be some publicity about when a hearing will take place. The benchers were not prepared to do more than supply the dates and details of upcoming hearings on a confidential basis if the media made an inquiry.[35] In 1998, the

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face under a federal or provincial statute, except if it is processed by way of a ticket. This rule was probably in response to the widespread publicity surrounding charges of impaired driving against the President of the Law Society, five days after he assumed the position on January 1, 2003. The charges related to an incident on October 2, 2002, and he informed the Law Society after the *Kelowna Daily Courier* reported the story on January 16; "B.C. Law Society Prez Charged" (July 2003) Canadian Lawyer 7.

32 "Lay Benchers' Report"in *The Law Society of British Columbia Annual Report, 1990* (Vancouver: Law Society of British Columbia, 1990) 26 at 27.

33 "Lay Benchers' Report" in *The Law Society of British Columbia Annual Report, 1991* (Vancouver: Law Society of British Columbia, 1991) 25 at 25.

34 "Entre Nous: The Lay Benchers Affair" (1980) 38 Advocate 461 at 467.

35 "Lay Benchers' Report" *supra* note 30 at 29.

Law Society finally announced that it was posting upcoming hearings on its website.[36] These announcements have made the hearings somewhat more open.[37] Up until recently, the Law Society posted only the date, the name of the lawyer, the lawyer's year of call and geographic location, and in some cases the nature of the hearing (penalty, credential, and so on). It now also posts the citation and stage of the hearing, but not the time of the hearing. The Alberta Law Society provides the name of the lawyer, his or her geographic location, the name of counsel for the lawyer (or the fact the lawyer is unrepresented), the name of the lawyer for the Law Society, the time and place of the hearing, and the allegations contained in the citation.[38]

In 1989, the lay benchers, concerned that the *Discipline Digests* and *Discipline Case Digests* were not readily accessible to the public or the press, persuaded the benchers that it was important that the public be made more aware of its disciplinary decisions.[39] The Law Society announced that it would send summaries of its discipline cases to the media in British Columbia, much like what the Law Society of Upper Canada was doing in Ontario.[40] Following a report by its Disclosure and Privacy Task Force, the Law Society announced that in the fall of 2003, citations and full case reports will be available on the Law Society's website "for six months or until completion of all aspects of the penalty imposed, whichever is longer. The reports will then form part of a consolidated archive of decisions."[41] The Law Society now posts, on its website, discipline reports released since September 1, 2003.

Sources of Information

As a non-practising member of the Law Society of British Columbia, I receive its *Annual Reports, Benchers' Bulletins, Discipline Digests,* and *Discipline Case Digests*. These documents are also in the public domain. The first two can be found on the Law Society's website, the last two are accessible at some libraries and by subscription.[42] The *Annual Reports*

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36 "Professional Conduct and Discipline" in *The Law Society of British Columbia Annual Report, 1998* (Vancouver: Law Society of British Columbia, 1998) 10 at 10.

37 I use the word "somewhat" because of the difficulties that some of my students in my Crimes and Misconduct in the Professions class have in observing "open" disciplinary hearings at the Law Society. They describe an atmosphere of being treated like intruders who should not be there.

38 Online: Law Society of Alberta http://www.lawsocietyalberta.com/media/Hearings.asp; accessed June 20, 2003.

39 "Lay Benchers' Report" *supra* note 30 at 28.

40 The Law Society of Upper Canada now publishes detailed summarizes of its decisions on its website. Online: The Law Society of Upper Canada http://www.lsuc.on.ca /lawyer/discipline_releases.jsp. Today, the Law Society of British Columbia's press releases state that the following documents are available to the media: the citation, hearing report, penalty report, *Discipline Digest*, and *Discipline Case Digest*; "Law Society Disciplines B.C. Lawyers" *Canada News-Wire* (16 June 2003).

41 "Disclosure and Privacy Task Force: Discipline Rule Changes–Greater Transparency Over Process, Greater Protection for Privilege" (May-June, 2003) 3 Benchers' Bulletin 6 at 6.

42 In addition, the full case reports of the cases found in the Discipline Case Digests summarizes, as of April, 1991, are available on Quicklaw, and the cases released after September 1, 2003 are now on the Law Society's website.

provide information on the number of complaints to the Law Society per year (ranging from 855 in 1989 to 1423 in 2000), and some statistics that allow one to infer how some of these complaints are funnelled out of the Law Society's disciplinary system. The *Discipline Digests* provide summaries of cases that are dealt with following a conditional admission by the lawyer. If the conditional admission is accepted by the Discipline Committee (which acts much like a prosecutor), the citation is rescinded,[43] the admission is added to the lawyer's conduct record, and the complainant is advised of the disposition. Between 1989 and 2000, 75 cases were published in the *Discipline Digests*. Over the same time period, 170 cases went to a hearing panel and were summarized in the *Discipline Case Digests*.

The Disciplinary Process

Section 3 of the *Legal Profession Act*, S.B.C. 1998, c. 9 (the *Act*) states the same object and duty of the Law Society as it did in 1988:[44]

> It is the object and duty of the society
> (a) to uphold and protect the public interest in the administration of justice by
> (i) preserving and protecting the rights and freedoms of all persons,
> (ii) ensuring the independence, integrity and honour of its members, and
> (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and
> (b) subject to paragraph (a),
> (i) to regulate the practice of law, and
> (ii) to uphold and protect the interests of its members.

The benchers[45] of the Law Society govern the Society. According to section 38(4) of the *Act*, the Law Society may discipline one of its members, a former member, or an articled student, following a hearing and a determination that the person has committed:

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[43] In February of 2003, the Benchers amended the Rules so that the citation is now disposed of, not rescinded. When lawyers undertake to leave the profession under the new rules, they are treated as if they were disbarred or suspended and may not practise law, even without accepting a fee; "Rule changes on conditional discipline admissions" (2003) 1 Benchers' Bulletin at 4. The change provides greater transparency and avoids the suggestion that the Law Society is settling cases "in private;" Michael Wilhelmson, "LSBC Moves to Toughen Rules on Misconduct 'Guilty Pleas'" (21 March 2003) Lawyers Weekly 3.

[44] There has been no modernization of this section. For example, the *Health Professions Act*, R.S.C.B. 1996 c. 183, states that
16 (1) It is the duty of a college at all times
(a) to serve and protect the public, and
(b) to exercise its powers and discharge its responsibilities under all enactments in the public interest. The ten objects of a college listed in subsection 2 of the *Health Professions Act* are concerned with enforcing the legislation and bylaws, establishing and enforcing standards, maintaining competency, etc. There is no reference to upholding "the interests of its members."

[45] The benchers include the Attorney General of the province, 25 benchers elected by the members of the Society, and up to six lay benchers (appointed by the provincial cabinet).

(i) professional misconduct;[46]
(ii) conduct unbecoming a lawyer;[47]
(iii) a breach of [the] Act or the rules;
(iv) incompetent performance of duties undertaken in the capacity of a lawyer.

Under section 36(h) of the *Act*, the benchers have the power to make rules to "summarily suspend or disbar a lawyer convicted of an offence that may only be prosecuted on indictment." Rules 4-40 and 4-41 allow the benchers to summarily suspend or disbar a lawyer in these circumstances, provided that notice is given to the lawyer. They also have the discretion to hear from the lawyer under Rule 4-42.

Complaints officers and staff lawyers in the Professional Conduct Department (called the Complaints Department prior to 1998) conduct an initial assessment of complaints. A staff member shares the complaint with the lawyer targeted by the complaint and decides whether "there is a basis for investigation (for example, whether the Law Society has jurisdiction under the *Legal Profession Act* to review the matter)." If the staff member finds no basis for investigation, the file is closed. If the staff member decides an investigation is warranted, it is conducted by gathering information from the complainant and the lawyer. Following the investigation, the staff person will refer the matter to the Practice Standards Committee (if competency is at issue) or the Discipline Committee (if ethical issues or breaches of the Law Society's rules), or close the file.[48] The Practice Standards Committee may in turn refer the matter to the Discipline Committee before or after a practice review.[49]

Complainants who disagree with the staff's decision not to refer a matter to the Discipline Committee may appeal to the Law Society's Complainants' Review Committee.[50] The Complainants' Review Committee is chaired by a lay bencher, and if a lay bencher directs, the Committee must "make

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46 For further discussion of this concept see Gavin Mackenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, 3d ed. (Toronto: Carswell, 2001) Chapter 26 at 19 and 25 and James T. Casey, *The Regulation of Professions in Canada* (Toronto: Carswell, 1994) at c. 13. The Supreme Court of Canada has stated that lawyers themselves (through their self-governing body) are in the best position to determine what is misconduct on the part of a lawyer; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 880.

47 "Conduct unbecoming a lawyer" is defined in section 1 of the *Act* and section 1 of the *Rules* to include "a matter, conduct or thing that is considered, in the judgment of the benchers or a panel, (a) to be contrary to the best interest of the public or of the legal profession, or (b) to harm the standing of the legal profession." For further discussion of this concept see, Mackenzie, *ibid.* at 26-25 to 26-29; and Casey, *ibid.* c. 13.

48 Online: Law Society of British Columbia http://www.lawsociety.bc.ca/; accessed June, 21, 2003; and various *Annual Reports*. Also see *Law Society Rules*, Rules 3-2 to 3-7 for more details on this process.

49 *Law Society Rules*, Rule 3-12(e) and Rule 3-14(6).

50 This committee was created a year prior to the time framework for this study; "New Complainant's Review Committee" (June, 1988) 6 Benchers' Bulletin 7. The Law Society made it clear that the Committee reviews complaints where staff have decided that no further action is to be taken; it does not review the Law Society's decision not to investigate; "Complaints and Discipline" in *The Law Society of British Columbia Annual Report, 1997* (Vancouver: Law Society of British Columbia, 1997) 10 at 11.

enquiries of the complainant, the lawyer or any other person." After its review, the Committee must confirm the decision not to proceed with a complaint, or refer the matter to the Practice Standards Committee or to the Discipline Committee "with or without recommendation." The complainant, the lawyer, and the Executive Director are informed, in writing, of the decision and the reasons for it.[51]

Table 1 (appendix) shows that the Complainants' Review Committee received an average of 117 cases per year between 1994[52] and 1997, and an average of 195 cases per year between 1998-2000. The vast majority of cases are dealt with by "no further action": 80.4% between 1994-1997; and 91.9% between 1998-2000. In 1997, the Committee's work was "streamlined to make it work more smoothly"– the limitation period for applying to the Committee for a review was reduced to thirty days from three months.[53]

If a matter is referred to the Discipline Committee, it may require the Executive Director to conduct a further investigation under Rule 4-3. After considering the information gathered on the complaint, the Discipline Committee must under Rule 4-4:

> (a) decide that no further action be taken on the complaint,
> (b) require the lawyer to appear before the Conduct Review Subcommittee, or
> (c) recommend that a citation be issued against the lawyer under Rule 4-13(1).

The Discipline Committee may refer matters to the Practice Standards Committee under Rule 4-4(2). Again, "[t]he Executive Director must notify the complainant and the lawyer or law corporation in writing of the determination of the Discipline Committee under Rule 4-4."[54] In addition, the Discipline Committee "may instruct the Executive Director to deliver to the Ministry of the Attorney General, to the Department of Justice or to a peace officer any information or documents that the Committee reasonably believes disclose an offence."[55]

If the Discipline Committee refers the matter to the Conduct Review Subcommittee for a review ("an informal proceeding at which the lawyer (a) must appear personally, and (b) may be represented by counsel"), the Subcommittee will prepare a written report of its findings and any recommendations, which the lawyer will have an opportunity to dispute in writing. If the dispute is not resolved the Subcommittee must forward its original report to the Discipline Committee. The Discipline Committee must then decide to take no action, refer the matter to the Practice Standards Committee, or recommend that a citation be issued. Again, the lawyer and complainant are advised of this decision.[56]

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51 *Law Society Rules*, Rule 3-9(4) to 3-9(6).
52 The Complainants' Review Committee was established in 1988, but systematic details of its activities were not reported in the Law Society's *Annual Reports* until 1994.
53 "Complaints and Discipline" *supra* note 50 at 11.
54 *Law Society Rules*, Rule 4-5.
55 *Ibid.* Rule 4-6(5).
56 *Ibid.* Rule 4-9.

A citation, issued by the Executive Director, on the direction of the Discipline Committee or any three benchers, moves the complaint towards a formal hearing. At least 14 days before the hearing date, the lawyer may make a conditional admission under Rule 4-21 which the Discipline Committee may accept (with or without undertakings to protect the public) or reject. The lawyer may also make a conditional admission under Rule 4-22 accompanied by consent to a specific disciplinary action. If the Discipline Committee accepts the admission and agreed upon disciplinary action, discipline counsel recommends its acceptance to the hearing panel.[57] If the agreement is rejected by the panel, a newly constituted panel will hear the case.[58]

The Hearing Panel can dismiss the citation or find, by a majority, that the lawyer committed a violation. If it finds against the lawyer, it will hold a penalty hearing and can impose any of the penalties set out in Section 38(5) of the *Act*:

(a) reprimand the respondent;
(b) fine the respondent an amount not exceeding $20,000;[59]
(c) impose conditions on the respondent's practice;
(d) suspend the respondent from the practice of law or from practice in one or more fields of law (...)
(e) disbar the respondent.

In addition, under paragraph (f) the hearing panel can require the respondent to complete a remedial course, appear before a board of examiners to satisfy the board of the respondent's competence or that "the respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs." Rules 4-38 and 4-38.1 require publication of disciplinary actions. Disciplinary actions by the hearing panel are circulated to the profession through the *Discipline Case Digest* and to the media via a Canada News-Wire release.

Complainants are more dissatisfied with the disciplinary process than lawyers. A survey in 1994 found that while 78 % of lawyers were "very satisfied" with how the complaints against them were resolved, only 22 % of complainants were "very satisfied" with how their complaints were resolved. A majority of complainants (56 %), and only 2 % of lawyers were "not at all satisfied".[60] An astonishing 32 % of complainants volunteered that there was discrimination in the way the Law Society handled their complaints because the Law Society was biased in favour of lawyers.[61] The disjuncture between

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57 *Ibid.* Rule 4-22(4).
58 *Ibid.* Rule 4-23.
59 The maximum fine was raised from $10,000 to $20,000 in 1998.
60 Bognar and Associates/Social Research, *The Law Society's Complaint Service: Report on a Survey* (August 1994) [unpublished, archived at the Law Society of British Columbia] at 14.
61 I say astonishing because the complainants were not asked this specific question. Rather they were asked "Do you believe there is any element of discrimination (for example, on the basis of gender or race) in the way the Law Society handled your complaint(s)?" There was no question that specifically asked, or hinted at, whether the Law Society was biased.

the Law Society and complainants is probably illustrated by the above findings and a comment by the Chair of the Law Society of British Columbia's Discipline Committee in 1989: "The Complainant's Review Committee has a thankless job and often must hear complaints that may have no merit whatsoever."[62] This may be true; however, it is important for any SRO to try and meet public expectations if it is to retain its legitimacy.

The Funneling Process: Funnel In

This section examines the sources and number of complaints to the Law Society (funnel in) and the next section examines how these numbers decrease as they are funneled through the various components of the Society's complaints, investigatory, and disciplinary systems (funnel out). The years used in these two sections vary because of changes in the way the Law Society recorded its statistics over the years. Where the numbers are not comparable, the years included have been changed from the initial time framework of 1989-2000. Some comparisons with the 1988 study, which examined statistics from 1978 to 1988, are also made.

Sources of Complaints

Complaints to the Law Society come from a number of different sources. A study by the Law Society of British Columbia in 1995, found that of a sample of 400 complaints received between 1991 and 1995, 17 % came from lawyers and 39 % from lawyers' clients. The remainder came from opposing parties, judges, other regulatory agencies (e.g., B.C. Securities Commission, Financial Institutions Commission, etc.), court reporters, and lawyers reporting their own conduct.[63]

In order to complain about a lawyer's behaviour, complainants must know that the Law Society exists. In 1998, the Law Society commissioned a survey of the public in British Columbia that found that "of the 26 percent of survey respondents who said they were familiar with the Law Society, only three percent were willing to say that they were 'very familiar.'"[64] Consumers must not only be aware of the Law Society's functions, the Law

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Questions which draw respondents attention to a form of discrimination are more likely to elicit a higher response than questions that remain more open ended; Joan Brockman, "'A Wild Feminist at Her Raving Best:' Reflections on Studying Gender Bias in the Legal Profession" (2000) 28:1&2 Resources for Feminist Research 61 at 66-67. Further afield, a survey of client satisfaction with the General Council of the Bar in England, found that the majority of complainants thought that "the complaints-handling system lacked transparency and was overly legalistic, that it was dominated by lawyers, that the complainants were not given sufficient weight in the process, and that the legal profession acted to protect its own members;" Legal Services Ombudsman, *Annual Report of the Legal Services Ombudsman 2002/2003: Taking Up The Challenge* at 12; online: Legal Services Ombudsman http://www.olso.org/default2.asp; accessed August 7, 2003.

62 Robert H. Guile "Discipline Committee" in *The Law Society of British Columbia AnnualReport, 1989* (Vancouver: Law Society of British Columbia, 1989) 10 at 10.

63 David Newell, "Complaints Statistics" Appendix to Don Thompson, Maureen F. Fitzgerald, and David Newell, *The Disciplinary Process: Part I, Complaints* (Vancouver, British Columbia: Law Society of British Columbia, 1995) 16 at 18-19.

64 "Managing your Client Relations: A Key to Successful Practice" (January-February, 1999) 1 Benchers' Bulletin 10 at 10.

Society must itself be accessible and appear accessible. Although the Law Society advertised in the Yellow Pages during the 1980s, it no longer does so. In 1998, it launched a website which now informs people about what to do if they have concerns about their lawyer's conduct.

The Role of Whistle-Blowers

Subject to solicitor-client privilege, Chapter 13, Rule 1 of the Law Society's *Professional Conduct Handbook* requires a lawyer to report to the Law Society: "(a) another lawyer's breach of undertaking which has not been consented to or waived by the recipient of the undertaking, (b) another lawyer's shortage of trust funds, and (c) any other conduct by another lawyer which raises a substantial question as to the other lawyer's honesty or trustworthiness as a lawyer in other respects." Chapter 5, Rule 1 states: "A lawyer should assist in maintaining the honour and integrity of the legal profession, should expose without fear or favour before the proper tribunals, unprofessional or dishonest conduct by any other lawyer and should accept without hesitation a retainer against any lawyer who is alleged to have wronged the client." A commentary to a similar Rule of the Law Society of Upper Canada states: "Unless a lawyer who tends to depart from proper professional misconduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation, or may indicate the commencement of a course of conduct which would lead to serious breaches in the future."[65]

Despite the importance of whistle blowers to ensure that self-regulation works,[66] the Chair of the Law Society's Discipline Committee once complained about that fact that 16 of the 31 complaints received by the Discipline Committee were by lawyers, about lawyers. He wrote, "We try to discourage that and to make peace. I really hope we can stop those complaints altogether and I urge my replacement (...) to undertake that formidable task."[67] Three years later, the Discipline Committee's report noted that "[w]hile reporting serious misconduct of a colleague is important to the concept of self-governance, it is clear some lawyers report even minor instances of rudeness instead of handling the problem themselves or with the help of a colleague." It recommended that the "[t]he best cure [was to] mediate, rather than fight it out as a matter of principle."[68] While personal squabbles should be settled without the intervention of the Law Society,

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65 Law Society of Upper Canada, *Rules of Professional Conduct* (effective November 1, 2000) Commentary to Rule 6.01(3); available at the Law Society of Upper Canada's website. Online: Law Society of Upper Canada http://www.lsuc.on.ca/services/RulesProfCondpage_en.jsp; accessed July 5, 2003.

66 See, for example, Cynthia L. Gendry, "Ethics: An Attorney's Duty To Report The Professional Misconduct Of Co-Workers" (1994) 18 *Southern Illinois University Law Journal* 603; Archie J. Rabinowitz and Eric K. Gillespie "Case Comment: 'Blowing the Whistle' and the Lawyer's Duty to Report: *Wieder v. Skala*" (1994) 7(2) Can. J.L. Jur. 349.

67 "Robert H. Guile, *supra* note 63 at 12.

68 "Discipline" in *The Law Society of British Columbia Annual Report, 1992* (Vancouver: Law Society of British Columbia, 1992) 10 at 11.

perhaps whistle-blowers should be encouraged and protected by an SRO.[69] The Law Society has recently introduced a specific whistle-blowing requirement when a lawyer or a notary fails to provide evidence that a mortgage is discharged within a set time.[70]

Rhode points out that it is ironic that lawyers justify self-regulation by saying they can be judged only by other lawyers and former lawyers (judges) because of the required expertise, but yet they rely on clients to have sufficient knowledge to bring forward complaints. She suggests that while clients should be encouraged to report complaints, lawyers who fail to report other lawyers' misconduct should be disciplined. She gives the example of the *Himmel* effect in Illinois. A lawyer was disciplined for failure to report "that his client's previous lawyer had unlawfully withheld settlement funds that belonged to the client." Reports of misconduct increased dramatically.[71] If, as the commentary by the Law Society of Upper Canada suggests, "evidence of minor breaches may, on investigation, disclose a more serious situation," lawyers should be required to report other lawyers' misconduct.

Self-Screening of Complaints

The Law Society's website is designed to have complainants screen themselves out on a number of fronts. Complainants are encouraged to talk to their lawyer or the lawyer's firm to see if they can resolve their complaint informally before they approach the Law Society. The website further states: "Please keep in mind that all information provided to the Law Society will be forwarded to the lawyer for his or her response." The first step in the complaint process is described thus: "The file is assigned to a staff person who discloses your complaint to the lawyer and decides if there is a basis for investigation (for example, whether the Law Society has jurisdiction under the Legal Profession Act to review the matter). If there is no basis for investigation, the file will be closed at this stage."[72] The website reader is not told that the Rules allow the Executive Director to "decline to identify the complainant or the source of the complaint" when notifying the lawyer about the complaint.[73]

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[69] There are, however, things from which a whistleblower cannot be protected. The whistleblower at the law firm of Lang Michener in Toronto, whose complaint led to the disbarment of Martin Pilzmaker, "lost his professional place–his niche in the legal establishment, his daily routine, 'the best secretary in Ontario,' and, of course, some of the good friends he had made over a life in the profession. They do *not* forgive him;" Margaret Cannon, "The Whistle-Blower" (October, 1990) *Saturday Night* 36 at 45. The debates surrounding whistleblowing are beyond the scope of this paper. See, for example, Jim Redden, *Snitch Culture: How Citizens are Turned into the Eyes and Ears of the State* (Venice, CA: Feral House, 2001).

[70] This requirement followed an alleged fraud where a lawyer failed to discharge mortgages resulting in claims against the Law Society's compensation fund, "expected to exceed $50 million;" Wyng Chow, "Law Society Tightens Rules Over Real Estate Activities" *Vancouver Sun* (8 August 2003) G5. The new rules are discussed in "A Look at Current Conveyancing Issues" (May-June, 2003) 3 Benchers' Bulletin 16.

[71] Rhode, *supra* note 9 at 159 and 162-3.

[72] "You and Your Lawyer," online: Law Society of British Columbia http://www.lawsociety.bc.ca; accessed June 19, 2003.

[73] *Law Society Rules*, Rule 3-5(5).

Further self-screening can take place by reading a shaded box list of what the Law Society has "no authority to" do. It includes: "Regulate the amount of a lawyer's bill; Give legal advice; Pay compensation; Intervene in a court proceeding; (...) Insist that a lawyer take a case, remain on or withdraw from a case or do something specific in a case; Make a finding that a lawyer was negligent."[74]

> The website elaborates on fee conflicts:
> If your concern is about fees, you may contact the Registrar's office at the Supreme Court closest to you about having the bill reviewed. See the blue pages in your phone book for the Supreme Court registry phone numbers or see the B.C. Supreme Court website at http://www.courts.gov.bc.ca/SC/Registrar.lpa.html for details of the fee review process. Alternatively, the Law Society offers a fee mediation program that is an informal alternative to a fee review by the Registrar.[75]

It does not mention that excessive or inappropriate billing may be a form of misconduct.

The Number and Type of Complaints

Between 1984 and 1988, the Law Society received an average of 788 complaints per year or approximately 14 complaints per 100 lawyers.[76] In 1988, the Chair of the Discipline Committee commented that the percentage of complaints per lawyer was very high (16 % for 1986; 15 % for 1987; and 13 % for 1988), as compared to ten of the states with percentages varying from 4 % to 13 %, with half of them under 10 %. He wrote, "on a brighter note, the percentage is decreasing."[77] The percentages did not, however, continue to decrease. The Law Society received an average of 1260 complaints per year between 1989 and 1994 (approximately 18 per 100 lawyers), and an average of 1484 complaints per year between 1995 and 2000 (approximately 17 per 100 lawyers). This data shows a slight increase in the number of complaints per 100 lawyers from the mid-1980s; however, some of this increase could simply be the result of changes in recording practices of both complaints and the number of lawyers.[78]

The most common complaints to the Law Society (other than those classified as "miscellaneous") over the twelve year period for this study (1989-2000) were dissatisfaction with legal work (14.5 %), failure to

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74 "You and Your Lawyer" *supra* note 73.

75 *Ibid.*

76 Calculated from numbers of complaints from Brockman & McEwen, *supra* note 3 at 14 and members of the Law Society in good standing from the Law Society.

77 David H. Guile, Q.C. "Discipline Committee" in *The* Law Society *of British Columbia Annual Report, 1988* (Vancouver: Law Society of British Columbia, 1988) 10 at 12.

78 For example, the figures prior to 1995 include all members in good standing. When the Law Society introduced a non-practising category in 1994, an increasing percentage of the Law Society's members became non-practising (from 6.5 % in 1994 to 11.4 % in 2000). Prior to 1994, some lawyers who were not practising would still pay their practice fee in order to remain a member of the Law Society. It is therefore difficult to determine a consistent denominator for comparisons before and after 1994.

communicate (8.5 %), delay/inactivity (5.8 %), conflict of interest (5.7 %), unpaid creditor/disbursement (5.6 %), fees (5 %), error or negligence (4.4 %), and withholding files or funds (3.4 %).[79] In 1999, the Law Society reported that a review of complaint statistics indicated that "nearly 40 % of complaints are service-related, including general dissatisfaction with legal services, delay and inactivity, failure to communicate, failure to follow client instructions and concerns about fees, rudeness, and sloppy practice."[80] As with the 1988 study (data from 1978-1988), and consistent with the literature discussed in the Introduction, disciplinary bodies hear more complaints about performance and fees, than about misconduct which might require an investigation and sanctions.[81]

The Law Society has made an effort to deal with complaints about fees and dissatisfaction with legal work. The most frequent complaint during the 1988 study (excluding the "other" category) was about fees, which varied from 11-29 % of complaints between 1978 and 1988.[82] Such complaints were reduced to 5% between 1989 and 2000, with little variation over the years. It is unclear whether this reduction was real or illusory. In 1990, the Treasurer wrote, "[o]f the 800 complaints received last year by the Law Society, we categorized 160 of them as 'fee complaints.' But the reality is that about 600 of them had a fee dissatisfaction component."[83]

In an effort to deal with complaints about fees, the Law Society began an informal fee mediation programme in 1977.[84] It is not clear when the programme stopped operating, but it was still in existence in 1989 and probably ended shortly thereafter.[85] In that same year, the Law Society made brochures available that would assist lawyers in clarifying their fees.[86] In 1990, the Treasurer of the Law Society called on its members to reduce disputes about fees. In order to reduce the "mismatched expectations" between lawyers and clients and the "misunderstandings about how fees will be calculated" he made four recommendations to his colleagues: 1) reduce retainers to writing; 2) set a budget; 3) bill on an interim basis; and 4) improve communications with clients.[87] In 2000, the Law Society

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79 Figures are calculated from the Law Society's Annual Reports; however, there are some difficulties with comparing some of the specific categories from one time period to the next because the method of classifying complaints has changed over the years.

80 "Managing your Client Relations: A Key to Successful Practice" (January-February, 1999) 1 Benchers' Bulletin 10 at 10. This is consistent with the statistics from 1989-2000; 40 % of the complaints fell into the categories listed is this article.

81 Brockman & McEwen, *supra* note 3 at 14-15.

82 *Ibid.* at 14-15.

83 Robert H. Guile, "Let's Reduce Disputes About Fees" (March, 1990) 2 Benchers' Bulletin 2 at 2.

84 "Fee Mediation Program" (November, 1983) Benchers' Bulletin 5.

85 "Call for Fee Mediators" (July, 1989) 6 Benchers' Bulletin 6. In 1999, the Deputy Executive Director noted that the fee mediation programme "was carried out in the 1980s;" "Discipline Committee Proposes Reviving Fee Mediation" (May-June, 1999) 3 Benchers' Bulletin 6 at 6.

86 "Clarifying Fees With Clients" (April-May, 1989) 4 Benchers' Bulletin 4.

87 Guile, *supra* note 84 at 2-3.

reintroduced a fee mediation programme.[88] The Law Society's website presently refers the public to the Registrar's office at the Supreme Court if they want to have their bill reviewed, and also to the Law Society's mediation programme as "an informal alternative to a fee review by the Registrar."[89]

The percentage of complaints about dissatisfaction with legal work increased from 10 % between 1989 and 1991 to 20 % between 1998 and 2000.[90] The Law Society has made several efforts to respond to these complaints and to resolve some of them through informal means. In 1990, it introduced a Telephone Complaint Resolution system in which a staff member would attempt to informally resolve disputes between lawyers and clients that did not involve serious professional misconduct or incompetence. The benefits for both lawyers and clients would be "the speed, informality and good will from a client as a result of a successfully resolved complaint." It was reported that the Discipline and Competency Committees would monitor the effectiveness of the system during the following year.[91] It is unclear how this system worked; however it appears from the Law Society's annual reports that the Law Society focussed on clearing up the backlog of cases over the next few years. In 2000, the Law Society announced a repeat of two main initiatives to streamline complaints, the fee mediation programme (discussed above) and telephone resolution: "In suitable cases, Law Society staff will attempt to resolve a complaint by telephone in lieu of conducting a traditional form of investigation that requires an exchange of correspondence."[92]

Statistics on complaints suffer from a number of problems. As illustrated above, the definition and classification of a complaint can be very subjective when the complainant has a number of concerns. Any programme designed to decrease complaints can, by advertising its services, actually temporarily increase complaints because more people with complaints see an avenue to air them. Overall, complaints about service and fees fit within the Law Society's mandate[93] and funnel in behaviour that may not otherwise be resolved. In the long run, such programmes should actually increase consumer satisfaction and decrease the number of complaints.

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88 "Law Society puts Priority on Improving Complaints Practices" (May-June, 2000) Benchers' Bulletin 8.

89 Online: Law Society of British Columbia http://www.lawsociety.bc.ca/ accessed June 9, 2003.

90 From 1981 to 1988 it had ranged from 10-18%; Brockman & McEwen *supra* note 3 at 14.

91 "Telephone Complaint Resolution" (January-February, 1990) 1 Benchers' Bulletin 7 at 7.

92 "Law Society puts Priority on Improving Complaints Practices" (May-June, 2000) 3 Benchers' Bulletin 8 at 8.

93 In reintroducing the fee mediation programme, the law Society stated, "While many complaints do not ultimately merit a regulatory response from the Law Society, it is necessary for the Law Society to review each one in fulfilling its regulatory responsibility;" "Law Society puts priority," *ibid.* at 8.

The Funneling Process: Funnel Out

The concept of "funnel out" looks at how offenders might escape disciplinary action once they enter the system, and the potential leniency of penalties imposed on those who are formally sanctioned. In addition to the funneling out that occurs through the intake process discussed above, there are three additional hurdles that a complaint must jump over before a lawyer is disciplined by the Law Society: 1) the Professional Conduct Department, 2) the Discipline Committee, and 3) a Hearing Panel. As discussed in the section on the disciplinary process, complaints can take a couple of side trips before they make it to the end of the process. They can be referred to the Practice Standards Committee for remedial measures or they can be referred to the Conduct Review Subcommittee for informal resolution.

The Professional Conduct Department

Staff in the Law Society's Professional Conduct Department handle initial complaints. Table 2 (appendix) sets out the outcome of complaints and public enquiries to the Law Society between 1995 and 1997, and 1998 and 2000. The dispositions in the two time periods were similar. Overall, 51.6 % of the complaints were described as unfounded[94] or unprovable, 18.5 % were outside the Law Society's jurisdiction,[95] and 11.4 % were reconciled. Only 9.4 % were referred to the Discipline Committee, and 1.7 % were referred to the Practice Standards Committee.[96] There is no discernible trend over this six year time period.

The Discipline Committee

If a complaint is referred to the Discipline Committee, it faces further hurdles. The Discipline Committee, which acts much like a prosecutor, considers recommendations made by the staff and decides how to proceed with the complaint. Although complaints are carefully scrutinized by staff before they are referred to the Discipline Committee, additional screening takes place at the Discipline Committee. Table 3 (appendix) shows that between 1992 and 2000, only 23.5 % of the complaints sent to the Discipline Committee resulted in a citation being issued; 45.1 % were sent for conduct reviews, 21.5 % resulted in reprimands from the chair, and 9.9 % were referred for audits. Conduct reviews are used "when a lawyer's conduct

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[94] Unfounded means they do not require intervention because they do not involve professional misconduct, conduct unbecoming or incompetence and are "not serious enough to be considered by the Discipline or Competency Committee;" Don Thompson, Maureen F. Fitzgerald, & David Newell, *Disciplinary Process: Part I, Complaints* (Vancouver, British Columbia: Law Society of British Columbia, 1995) at 6.

[95] A study of complaints between 1991 and 1994 reported that complaints outside the Law Society's jurisdiction are primarily fees (complainants are told to appeal to the registrar) or lawyers' negligence (complainants are told to retain another lawyer); Thompson *et al. ibid.* at 7.

[96] These figures are similar to the ones in a study conducted by the Law Society for the years 1991-1994: 8 % of complaints were referred to the Discipline Committee and 2 % to the Competency Committee; Thompson *et al. ibid.* at 6.

needs correction, but is not serious enough to merit a discipline hearing."[97] The focus of this confidential review is on having the lawyer recognize and resolve a problem. Complainants are advised of the decision, and if the issue is not resolved a citation can be issued against the lawyer. Over the nine year period there was a slight trend away from issuing the more formal process of a citation.

Table 4 (appendix) shows the citations and conduct reviews as a percentage of total complaints over a longer period, 1989-2000. The trend during this time period and between this time period and the 1988 study is also away from the more formal process of a citation and towards the more informal process of a conduct review. Only 2.9 % of complaints result in a citation between 1989-2000 (down from 4.6 % of complaints between 1978 and 1983, and 4.8 % between 1984 and 1988) and 5 % of complaints result in a Conduct Review (up from 4.4 % of complaints between 1978 and 1983, and 3.6 % between 1984 and 1988).[98]

The Disposition of Citations

Assuming there is a citation (which occurs for 2.9 % of complaints; and 23.5 % of the cases referred to the Discipline Committee), the lawyer still stands a good chance of having the citation rescinded. Table 5 (appendix) shows that 30.3 % of citations issued between 1989 and 2000 were rescinded. An identical percentage was rescinded between 1978-1988.

There is still the possibility that a Hearing Panel will dismiss the citation – 4.6 % of citations were dismissed between 1989 and 2000, down from 6.9 % between 1978 and 1988. The percentage of admissions and publications increased from 14.1 % between 1978 and 1988 to 20.1 % between 1989 and 2000, and the percentage facing a penalty decreased slightly from 46.2 % in the 1988 study to 44.9 % in this study. As was found in the 1988 study, the trend over time is towards the more informal processes.

The Imposition of Penalties

Table 6 (appendix) shows the penalties imposed as a result of citations between 1989 and 2000. Fines were the most frequent form of penalty 32.4 % (as compared to 18.7 % in the 1988 study), followed by reprimands (28.1 %, compared to 24.6 % in the 1988 study), and suspensions (23.2 %, compared to 29.1 % in the 1988 study). Only 8.1 % were disbarred (compared to 20.9 % in the 1988 study), and 8.1 % resigned (compared to 6.7 % in the 1988 study). The greatest changes over the two studies were the substantial increase in the use of fines from the first to the second, and the

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97 Robert Johnston, "Treasurer's Notes: How Should We Give Public Issues a Public Response" (May-June, 1994) 4 Benchers' Bulletin 2 at 2.

98 A study in England found that "typically less than 2% of all complaints against solicitors will reach the Tribunal;" Mark R. Davies, "Solicitors, Dishonesty and the Solicitors Disciplinary Tribunal" (1999) 6(2) *International Journal of the Legal Profession* 141 at 143.

substantial decrease in disbarments. There was also an increase in the use of reprimands and resignations, and a decrease in suspensions.[99]

Developments in Self-Regulation in Other Jurisdictions

In the United Kingdom, the government has taken a number of steps to intervene in the legal professions'[100] self-regulation in order to respond to consumer dissatisfaction. Seneviratne describes this "readjustment [as] yet another example of the renegotiation which is taking place between the profession, the state and consumer movements, a generalised realignment which is changing the old order of professionalism."[101] An independent Ombudsman [sic], who cannot be a lawyer, oversees how the Law Society's Office for the Supervision of Solicitors (OSS), the General Council of the Bar, the Institute of Legal Executives, the Council for Licensed Conveyancers, and the Chartered Institute of Patent Agents deal with complaints. Persons dissatisfied with how their complainants are handled by the professional SROs may complain to the Office of the Legal Services Ombudsman (OLSO). "The Ombudsman has powers to recommend that the professional body reconsider the complaint. She may also recommend that the professional body and/or the lawyer complained about pay compensation for loss, distress or inconvenience. The Ombudsman has a further power to make binding orders for the payment of compensation, although she uses this power only in exceptional cases."[102]

For the year 2001-2002, the OLSO was satisfied with 93% of the complaints about the Bar Council, but only 58% of the 1629 complaints about the OSS.[103] The Annual Report provides a scathing review of the OSS's inability to regulate up to expected standards and describes its performance as a complaint handler as "consistently shaky" and its plans for reform as "remarkably" and "disappointingly unambitious."[104] Overall, the OLSO recommended a reconsideration in 277 cases. Forty-eight percent of the 188 reconsiderations that had taken place at the time of the Report resulted in a finding or partial finding in favour of the complainant, and in 70% of these cases the complainant received some financial benefit (compensation from the lawyer, bill reduced, etc.).[105] The Report expressed doubt that the Law Society could meet "the demand for complaint-handling arrangements which

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99 The imposition of penalties and the factors the tribunal considers are examined in greater detail in Brockman and Murdoch, *supra* note 12.

100 Legal services are now provided by barristers and solicitors, each with their own self-governing body, as well as legal executives, licensed conveyancers and patent agents; online: Legal Services Ombudsman: http://www.olso.*org Annual Report of the Legal Services Ombudsman, 2001/02 The Regulatory Maze*; accessed June 8, 2004.

101 Mary Seneviratne, "Consumer Complaints and the Legal Profession: Making Self-Regulation Work?" (2000) 7:1 *International Journal of the Legal Profession* 39 at 39. Also see Alan A. Paterson, "Professionalism and the Legal Services Market" (1996) 3:1&2) *International Journal of the Legal Profession* 137; Richard Moorhead, "Third Way Regulation? Community Legal Services Partnership" (2001) 64:4 Mod. L. Rev. 543.

102 Online: Legal Services Ombudsman, *supra* note 101 at 2.

103 Online: Legal Services Ombudsman, *supra* note 101 at 7.

104 *Ibid.* at 4, 7 and 28.

105 *Ibid.* at 21-22.

focus on consumer redress rather than disciplinary purity," and questioned its future in self-regulation, given its inability to provide something so "fundamental."[106] It then chastized the OSS for inaccurate and unreliable statistical measures and commented that its target-driven behaviour had "lost sight of the main objective – that is, sustained and continued improvement in their complaint-handling activities."[107]

A new Ombudsman took over in 2003, and mostly agreed with the comments from the previous one; however, satisfaction with how the OSS handled complaints rose to 67 %. Nevertheless, she notes that in reviewing material from the past fifteen years she was "struck by how little tangible progress" was made by the professional SROs.[108] The newly created Customer Redress Scheme by the OSS, which was designed to resolve simple complaints more quickly and informally, was too slow, and it was "not being operated from the customer-focused perspective that was originally intended, but [was] in fact concerned with solicitors' regulatory and disciplinary issues."[109] She comments that professional SROs "have been warned on countless occasions that self-regulation is a privilege, not a right – and that it can be taken away if it is no longer warranted." She cites the move away from self-regulation for the police as an example of what might happen when SROs fail to live up to expectations.[110]

New South Wales took a slightly different approach to realigning the disciplinary processes of its legal professions. People with complaints about barristers or solicitors are referred to the Office of the Legal Services Commissioner (OLSC), which is run by the Legal Services Commissioner who is a lawyer. The OLSC "oversees and participates in a co-regulatory disciplinary system with the Law Society of New South Wales (the solicitors' professional body), the New South Wales Bar Association (the barristers' professional body) and the Department of Fair Trading (licensed conveyancers' professional body)."[111] Cases are assessed and resolved by the OLSC through mediation or the Administrative Decisions Tribunal, or referred to the SROs for action. In 2001-2002, the OLSC referred 27.5 % of complaints to the SROs, down from 31.6 % the year before.[112] Complainants

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106 *Ibid.* at 11.
107 *Ibid.* at 24-26.
108 Legal Services Ombudsman, *Annual Report of the Legal Services Ombudsman 2002/2003: Taking Up The Challenge* at 7, online: Legal Services Ombudsman http://www.olso.org accessed August 7, 2003.
109 *Ibid.* at 11.
110 *Ibid.* at 13.
111 The OLSC was created by statute in 1994, independent from the legal professions, and reports to Parliament through the Attorney General; online: Office of the Legal Services Ombudsman http://www.lawlink.nsw.gov.au/olsc1.nsf/pages/olscwhatwedoindex; accessed August 10, 2003. It is funded by interest from lawyers' trust accounts; online: Office of the Legal Services Ombudsman http://www.lawlink.nsw.gov.au/olsc1.nsf/pages/faq; accessed August 10, 2003.
112 Some of these complaints are between solicitors; Office of the Legal Services Commissioner, *Annual Report 2001-2002* at 2 and 5; online: Office of the Legal Services Ombudsman http://www.lawlink.nsw.gov.au/olsc1.nsf/pages/paper_index; accessed August 10, 2003.

who are dissatisfied with the decision of the SRO can request a review by the OLSC. The focus of the OLSC is to assist lawyers in becoming more consumer-oriented through client-centred management techniques. It hopes that this problem-solving approach will reduce complaints in the long term and increase consumer satisfaction with legal services.[113]

South of the border there is also a movement towards a more consumer-oriented approach to resolving complaints (asking whether the conduct met client expectations or harmed the client) rather than the more regulatory approach (asking whether the lawyer violated some standard or rule).[114] The American Bar Association's Standing Committee on Professional Discipline evaluates the state of discipline in any jurisdiction if invited by its highest court. It uses its *Model Rules for Lawyer Disciplinary Enforcement* (MRLDE) as an evaluation tool. Recently it examined the regulation of lawyers in California. It recommended that the administration of the Chief Trial Counsel (prosecutorial functions) and the State Bar Court (adjudicative functions) be transferred from the State Bar to the Supreme Court, because "when elected bar officials control all or parts of the disciplinary process, the appearance of impropriety or of conflicts of interest is created, regardless of the actual fairness and impartiality of the system."[115] It also recommended that complaint analysts in the Intake Unit receive more formal, and continuing, education in mediation and public relations because "this is the first, likely the only, contact the public may have with the discipline system."[116] The Report also complements the State Bar for providing public access to disciplinary matters through its website.

Although the United States has a very different type of system for regulating lawyers, in that the state courts usually have jurisdiction over lawyers' discipline, the courts delegate many aspects of the disciplinary process to the state bars.[117] Rhode suggests that while the lawyers and judges who control the disciplinary processes are well intentioned, "lawyers and former lawyers who regulate other lawyers cannot escape the economic, psychological, and political constraints of their position. Without external checks, these decision makers too often lose perspective about the points at

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[113] Office of the Legal Services Ombudsman, *Annual Report 2001-2002*, *ibid.* at 11. For a study of the professions reception to these changes and other issues see Christine Parker, "Converting the Lawyers: The Dynamics of Competition and Accountability Reform" (1997) 33:1 Australian & New Zealand Journal of Statistics 39; Christine Parker, "Competing Images of the Legal Profession: Competing Regulatory Strategies"(1997) 25(4) Int. J. Soc. L. 385; Christine Parker, "Justifying the New South Wales Legal Profession: 1976-1997" (1997) 2:2 Newcastle L. Rev. 1; Parker, *supra* note 5 at 122-139.

[114] Allen Blumenthal, "Attorney Self-Regulation, Consumer Protection, and the Future of the Legal Profession" (1993) 3:2 Kan. J.L. & Pub. Pol'y 6.

[115] American Bar Association, *California Report on the Lawyer Regulation System* (June 2001) at 20; online: American Bar Association http://www.calbar.ca.gov/calbar/pdfs/abareport01.pdf; accessed August 15, 2003.

[116] *Ibid.*

[117] See Leslie C. Levin, The Emperor's Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions" (1998) 48:1 Am. U. L. Rev. 1 at 3-4 for a discussion of the changes following the Clark Commission in 1970.

which occupational and societal interests conflict."[118] She thinks that the public should have more say in regulatory codes and their enforcement, and that the regulation of lawyers has to be far more responsive to consumer concerns.[119] Rhode makes a number of recommendations:

> At a minimum, lawyer complaint records should be open to the public, and the disciplinary agencies should have expanded resources, jurisdiction, and remedial options. For minor grievances involving neglect, delay, and overcharging, the bar should develop alternative dispute resolution systems that satisfy the public, not just the profession. More efforts should be made to identify and deter misconduct through strategies such as random financial audits, free assistance with complaints, and enforcement of rules requiring lawyers to report serious ethical violations. A wider range of sanctions and a greater willingness to impose them are critical, as are better internal ethics procedures and reward structures in organizations that employ lawyers.[120]

With regard to the issue of capture and conflict of interest in self-regulation or judicial oversight, Rhode suggests the creation of an independent regulatory commission, with representation from "consumer regulatory experts, public interest organizations, and competing occupations, as well as bar associations."[121]

In defense of the profession's self-regulatory status, Freidson argues that professionalism (control of work by an occupation) is the third analytical tool for examining how work and services are controlled. The other two ideal types are the free labour market (which relies on competition in the market place and consumer choice to control work) and the rational-legal bureaucracy (which relies on managers to control work).[122] However, "the economically self-interested actions" of self-regulating professions and their "failure to undertake responsibility for assuring the quality of [their] members' work weaken [their] claims and appeared to confirm the truth of the assumptions of consumerism and managerialism."[123] In reality, Freidson believes there should be a mix of the three logics, with policy determining the combination. He believes that the "emphasis on consumerism and managerialism has legitimized and advanced the individual pursuit of material self-interest and the standardization of professional work which are the very vices for which professions have been criticized, preserving form without spirit."[124]

The solution, according to Freidson, is for the professions to justify their economic privilege on the basis of the necessity of credentials and quality of

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[118] Rhode *supra* note 9 at 143-44.
[119] *Ibid.* at 208.
[120] *Ibid.* at 211-12.
[121] *Ibid.* at 212.
[122] Freidson, *supra* note 1 at 179.
[123] *Ibid.* at 190.
[124] *Ibid.* at 181.

work.[125] He sees "monopoly and credentialism [as] the key elements of professionalism's economic privilege."[126] In fact, an economic monopoly within a profession tempers competition among colleagues and allows for quality of professional services.[127] Ethical codes assist in bolstering the trust that clients have in professionals, but the codes are rather ineffective unless there is "vigorous investigation of violations" and appropriate corrective action. The "conspicuous absence" of such enforcement "in all advanced industrial nations" has contributed to the attack on professional status and a decline in the public's trust of professions.[128]

Freidson believes that institutional ethics, that create many of the moral dilemmas that practitioners face at work, are even more important than individual ethics. Institutional ethics must not only allow, but ensure, that professionals use their skill and knowledge to further the public good and quality work. For example, it should be unethical for "practice institutions to provide working conditions that prevent the performance of good work–conditions such as over-heavy caseloads and inadequate space, equipment, and support personnel," and it should be unethical to maximize profit at the expense of quality work. The maximization of profit is "antithetical to the institutional ethics of professionalism"[129]

Conclusion

As this and other studies have shown, the majority of complaints to disciplinary bodies are about lawyers' performance and fees, not about misconduct that might require an investigation and sanctions (although excessive fees fit into both categories). One of the issues SROs face is, how far should their scrutiny be extended? For example, in 1995, a Report to the benchers on complaints raised the question: "Should the Law Society be concerned about quality of legal services and complainant satisfaction as well as the more traditional concerns of ethics and competence?"[130] In other words, does the regulatory bargain that an SRO has with the state include an obligation on the SROs to funnel in performance behaviour and address client satisfaction? Even though the Law Society tries to resolve complaints, it still turns away about 80% of all complaints received, and "approximately 90% are closed at the staff level, without any reference to either the

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[125] Freidson prefers the concept "social closure" to monopoly because the former is broader than a monopoly (privileged economic position). "Social closure of professionalism is based upon competence attested to by the special educational credentials without which one is excluded from membership;" Freidson, *ibid.* at 199.

[126] *Ibid.* at 198.

[127] *Ibid.* at 203.

[128] *Ibid.* at 216.

[129] *Ibid.* at 217-18. It should be noted that for the most part Freidson draws on his knowledge of the medical profession.

[130] Thompson *et al.*, *supra* note 95 at 3. Although law societies have also been criticized for not doing as much to protect the public from incompetent lawyers as it does to protect the public from dishonest lawyers.; MacKenzie, *supra* note 46 at 24-3.

Discipline Committee or the Competency Committee."[131] Evidence from other countries indicates that if law societies do not respond to consumer complaints, other government-created bodies will. It is unlikely that the addition of lay benchers and the opening of the disciplinary process to greater public scrutiny will be sufficient to ward off government intervention.

Given the turmoil and realignment in professional SROs occurring throughout the world, it is surprising that the changes to self-regulation in Canada are comparatively so minuscule. It may be that impetus for change in the disciplinary systems of professional SROs follows from pressure on their monopolistic hold on services. Kritzer suggests that it "will become increasingly difficult for professionals to maintain control over regulation of their members as the claims of exclusive knowledge become increasingly untenable."[132] The changes in England, Australia, and the United States all coincided with successful governmental attacks on, or threats to, lawyers' monopoly on legal services. In British Columbia lawyers have been successful in asserting their monopoly to the point of, for example, pushing notaries out of the business of creating and maintaining company records[133] and probating wills,[134] and keeping paralegals at bay.[135] However, there are some indications in Ontario and more recently in British Columbia that the government is making successful intrusions into lawyers' monopoly on legal services. It may be that the dissatisfaction with professional SROs' handling of consumer complaints is fueled by the pressure of competition from the outside, and that therefore recent challenges to the legal profession's monopoly in Canada will be followed by more pressure for professional SROs to respond to consumer complaints in a more direct manner.

According to Freidson, SROs will have to take their half of the regulatory bargain seriously and funnel in and adequately deal with complaints if they are to maintain their self-regulating status and corresponding monopoly on services. The data in this study, which points to more informal processes and less harsh sanctions over time, does not bode well for self-regulation in the legal profession. However, given the activities in other jurisdictions (a break down of monopolies and government intervention in SROs), it is unclear whether better self-regulation by itself will save SROs. While professional self-regulation may not be heading in the direction of H.W. Arthurs' dead

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131 Thompson *et al.*, *supra* note 95 at 5 and 17. This is consistent with data from the United States where approximately 90% of complaints are dismissed "because they lack probable cause or fall outside agency jurisdiction;" Rhode, *supra* note 9 at 159.

132 Herbert M. Kritzer, "The Professions are Dead, Long Live the Professions: Legal Practice in a Postprofessional World" (1999) 33:3 Law Soc'y Rev. 713 at 748.

133 *Law Society of British Columbia v. Siegel*, [2000] B.C.J. No. 1123 (B.C.S.C.).

134 *Law Society of British Columbia v. Gravelle*, [2001] B.C.J. No. 1110 (B.C.C.A.); application for leave to appeal dismissed with costs (without reasons) January 10, 2002; [2001] S.C.C.A. No. 419.

135 *Law Society of British Columbia v. Lawrie*, [1991] B.C.J. No. 2653 (B.C.C.A.). For an exception to this success, see *Law Society of British Columbia v. Mangat*, [2001] 3 S.C.R. 113.

parrot,[136] it is probably poised for major readjustments similar to those taking place elsewhere.

Résumé

L'article analyse le traitement des plaintes contre des avocats par le système disciplinaire de la *Law Society* de la Colombie Britannique, de 1989 à 2000. Il pose aussi un regard sur les contextes changeants dans lesquels ce système a opéré entre le moment d'une enquête antérieure (1978 à 1988) et celle-ci. Le traitement réservé aux plaintes est examiné dans une perspective qui tient compte de la manière dont elles sont entrées (*funnel in*) et ensuite réduites en nombre par le système disciplinaire (*funnel out*). Finalement, l'avenir de l'autorégulation est évalué à la lumière de négociations et d'ajustements de l'autorégulation de la profession qui se sont produits ailleurs.

Abstract

This paper analyzes the processing of complaints against lawyers through the Law Society of British Columbia's disciplinary system between 1989 and 2000. It also examines changes to the context within which the disciplinary system operates, between the time period of an earlier study (1978-1988) and this study. Cases processed by the disciplinary system are discussed in light of a model that examines the process from the perspective of how cases are brought into the system (funnel in), and reduced in number by the disciplinary system (funnel out). Finally, the future of self-regulation is assessed in light of some of the renegotiations and readjustments to professional self-regulation that have taken place elsewhere.

Joan Brockman
School of Criminology
Simon Fraser University
Burnaby, British Columbia, Canada V5A 1S6
brockman@sfu.ca

[136] W.H Arthurs writes, "this parrot of self-regulation is definitely deceased; it is pushing up daisies; it has joined the choir invisible; it is bereft of life; it has met its maker; it is no more; it is bleeding demised." W.H Arthurs, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" (1995) 33:4 Alta L.Rev. 800 at 809.

Appendix

Table 1: Disposition of Complainants' Review Committee[137]

	1994-1997	1998-2000
No further action	378 (80.4%)	536 (91.9%)
Complaint withdrawn	9 (1.9%)	10 (1.7%)
Practice recommendation	4 (0.9%)	-
Referral to Discipline Committee	24 (5.1%)	27 (4.6%)
Referral to Competency Committee	13 (2.8%)	2 (0.3%)
Referred to Staff for Further Investigation	13 (2.8%)	-
Adjournment	6 (1.3%)	-
Written Reprimand or Practice Recommendation	23 (4.9%)	9 (1.5%)
Total	**470 (100%)**	**584 (100%)**
Average per year	**117**	**r195**

Table 2 : Outcome of Complaints and Public Enquiries to the Law Society of British Columbia, 1995-2000[138]

	1995-97	1998-2000	Total
Reconciled/Resolved	558 (11.4%)	628 (11.5%)	1,186 (11.4%)
Minor Misconduct	185 (3.8%)	224 (4.1%)	409 (3.9%)
Minor Error	145 (3.0%)	172 (3.2%)	317 (3.1%)
Referred to Discipline Committee	480 (9.8%)	496 (9.1%)	76 (9.4%)
Referred to Competency/ Practice Standards[139] Committee	78 (1.6%)	94 (1.7%)	172 (1.7%)
Misconduct not established after investigation/unfounded/ unprovable	2,535 (51.8%)	2,816 (51.6%)	5,351 (51.6%)
Outside Law Society's jurisdiction/possible civil remedy	921 (18.8%)	1,029 (18.8%)	1,950 (18.5%)
Total	**4,902 (100%)**	**5,459 (100%)**	**10,361 (100%)**

[137] Numbers are from the Annual Reports of the Law Society of British Columbia, 1994-2000.
[138] Numbers are from the Law Society of British Columbia's Annual Reports, 1995-2000. Although the Law Society reported disposition of complaints prior to 1995, the categories they used varied.
[139] The name of this Committee changed from Competency to Practice Standards in the 1999 Annual Report.

Table 3 : Actions Taken by Disciplinary Committee of the Law Society of British Columbia, 1992-2000[140]

	1992-94	1995-97	1998-2000	Total
Citations	116 (21.8%)	153 (30.4%)	85 (18.2%)	354 (23.5%)
Reprimands/ Admonishment from Chair	148 (27.8%)	77 (15.3%)	99 (21.2%)	324 (21.5%)
Conduct Reviews	217 (40.7%)	236 (46.8%)	225 (48.1%)	678 (45.1%)
Audits	52 (9.8%)	38 (7.5%)	59 (12.6%)	149 (9.9%)
Total	**533 (100%)**	**504 (100%)**	**468 (100%)**	**1505 (100%)**

Table 4 : Citations and Conduct Reviews as Percentage of Total Complaints to Law the Society of British Columbia, 1989-2000[141]

	1989-91	1992-94	1995-97	1998-2000	Total
Complaints	3,581	3,981	4,258	4,646	16,466
Citations	117	116	153	85	471
Citations as % of Complaints	3.3%	2.9%	3.6%	1.8%	2.9%
Conduct Reviews	146	217	236	225	824
Conduct Reviews as % of Complaints	4.1%	5.5%	5.5%	4.8%	5.0%
Admonishments from Discipline Chair	*	148	77	99	324
Admonishments as % of complaints	*	3.7%	1.8%	2.1%	2.5%

* not recorded for this year.

[140] Numbers are from the Law Society of British Columbia's Annual Reports, 1992-2000.
[141] Numbers are from the Law Society of British Columbia's Annual Reports, 1989-2000.

Table 5 : Disposition of Citations 1989-2000, Law Society of British Columbia[142]

	1989-91	1992-94	1995-97	1998-2000	Total
Admissions & Publication	27	16	23	17	83 (20.1%)
Resignations	5	2	4	4	15 (3.6%)
Disbarments	4	4	3	4	15 (3.6%)
Suspensions	4	8	17	14	43 (10.4%)
Fines	8	23	12	17	60 (14.6%)
Reprimands	4	7	21	20	52 (12.6%)
Citation Revisions by Discipline Committee[143] (or vacated)[144]	45	26	19	35	125 (30.3%)
Citation Dismissals by Hearing Panel	0	7	3	9	19 (4.6%)
Total	**97**	**93**	**102**	**120**	**412 (100%)**

Table 6 : Penalties Imposed as a Result of Citations by the Law Society of British Columbia, 1989-2000[145]

	1989-91	1992-94	1995-97	1998-2000	Total
Resignations	5 (20%)	2 (4.5%)	4 (7.0%)	4 (6.8%)	15 (8.1%)
Disbarments	4 (16%)	4 (9.1%)	3 (5.3%)	4 (6.8%)	15 (8.1%)
Suspensions	4 (16.0%)	8 (18.2%)	17 (29.8%)	14 (23.7%)	43 (23.2%)
Fines	8 (32.0%)	23 (52.3%)	12 (21.1%)	7 (28.8%)	60 (32.4%)
Reprimands	4 (16.0%)	7 (15.9%)	21 (36.8%)	20 (33.9%)	52 (28.1%)
Total	**25 (100%)**	**44 (100%)**	**57 (100%)**	**59 (100%)**	**185 (100%)**

[142] Numbers are from the Annual Reports of the Law Society of British Columbia, 1989-2000.
[143] The Annual Report indicates that some of these may be matters referred for conduct review.
[144] This term was not used after 1992.
[145] These numbers were selected from tables of "Dispositions of Citations" from the Annual Reports of the Law Society of British Columbia, 1989-2000.