

A Sign of Things to Come? Legal and Public Policy Issues Raised by the Supreme Court of Canada Decision in *Green v. Law Society of Manitoba*

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I. INTRODUCTION

This article examines legal and policy issues arising out of the Supreme Court of Canada's decision in *Green v. Law Society of Manitoba*.¹ Despite some preliminary questions related to the merits of why leave to appeal was granted, the policy and legal issues addressed in *Green* mark it as a significant case.

The Court's examination of standard of review and the public interest authority of law societies are potentially important precedents for upcoming cases.² More broadly, this litigation touches on several policy issues, including mandatory education for judges and rules governing how

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¹ 2017 SCC 20, 407 DLR (4th) 573 [*Green*].

² As a capitalized term, 'Law Society' refers to the legal regulator in Manitoba, whereas, 'law societies' is used to refer to legal regulators in Canada in general, some of which, like the Nova Scotia Barristers Society, do not use the more generic term.

judges can return to practice.³ Generally, the *Green* decision also highlights a concern about the variable nature of access to justice in Canada.

Ultimately, this case may prove an important step in the Court's approach to the regulation of the legal profession in several upcoming cases. Together, the legal and policy issues raised in *Green* make it an important marker in the development of the law and, perhaps, a sign of things to come.

A. Background

Sydney Green was a Manitoba lawyer and a prominent former politician.⁴ Green graduated from the University of Manitoba Law School and was called to the Bar in 1955.⁵ He had a long and varied career as a labour lawyer, politician and provincial Cabinet Minister throughout the 1970's and 1980's.⁶ After politics, Mr. Green returned to the practice of law where he also served as a Manitoba Law Society benchler.⁷

Starting January 1, 2012, the Manitoba Law Society approved a twelve hour mandatory CPD rule for practicing lawyers.⁸ Mr. Green did not report his CPD activities for 2012 and 2013. The Law Society contacted Mr. Green in 2014 to advise that he had sixty days to comply with the mandatory CPD requirement, failing which he would be suspended. Mr. Green did not reply to this 2014 communication from the Law Society, or

³ Such as are currently set out in Rule 7.7 of The Federation of Law Societies of Canada, National Code of Professional Conduct, Federation of Law Societies of Canada, 2017, at rule 7.7, [National Code of Professional Conduct].

⁴ The Legislative Assembly of Manitoba, "MLA Biographies - Living" (2017) *The Legislative Assembly of Manitoba* (website), online: <https://gov.mb.ca/legislature/members/mla_bio_living.html>.

⁵ See generally, Sydney Green, *Rise and Fall of a Political Animal: A Memoir* (Winnipeg: Great Plains Publications, 2003).

⁶ See, for example, "Manitoba's Progressive Party ready to contest its first election", *The Leader-Post* (13 November 1981), B11, online: <<https://news.google.com/newspapers?id=f49VAAAIBAJ&sjid=0z8NAAAIBAJ&pg=1356,3555910>>.

⁷ *Green*, *supra* note 1 at para 6.

⁸ *Ibid*, as set out by the Court at paras 8 & 9, citing The Law Society of Manitoba, *Rules of the Law Society of Manitoba*, Winnipeg: Law Society of Manitoba, 2002, at rules 2-80 (8), (12), & (13) [Rules of the Law Society of Manitoba].

report any CPD activities. Consequently, in July of 2014, Green was suspended from the practice of law.⁹

Before the lower courts, Green challenged his suspension using two arguments.¹⁰ He first asserted that the Manitoba Law Society lacked jurisdictional authority to make a CPD program mandatory or to suspend a lawyer who failed to comply. He also challenged the legitimacy of the rules created by the provincial Law Society to implement the CPD program as a matter of procedural fairness and natural justice. Both the Queen's Bench and the Court of Appeal rejected these arguments.¹¹ Prior to the hearing at the Supreme Court, Mr. Green abandoned the first jurisdictional grounds of appeal.¹² Mr. Green appealed to the Supreme Court of Canada, which granted leave on December 10, 2015.¹³

B. The Supreme Court of Canada Decision

1. *The Majority*

In a decision written by Justice Wagner, the majority of the Supreme Court rejected Mr. Green's appeal.¹⁴ The Supreme Court determined the

⁹ Green, *supra* note 1 at para 11. Though the regulator subsequently agreed not to enforce the suspension until litigation was resolved.

¹⁰ Mr. Green also initially made an argument under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11 [*Charter*], which appears to have been abandoned on subsequent appeal, Manitoba Court of the Queen's Bench, 2014 MBQB 249 at para 36, (2014) 313 Man R (2d) 19.

¹¹ *Ibid* at paras 18, 25 & 36.

¹² Justice Wagner noted that Green had conceded the legal authority of the Law Society to make these rules at the Court of Appeal (Green, *supra* note 1 at para 15), though this argument does not appear in the Court of Appeal judgment itself 2015 MBCA 67, 319 Man R (2d) 189.

¹³ Decision granting leave to appeal available online: *Sidney Green v Law Society of Manitoba*, 2015 MBCA 67, leave to appeal to SCC granted, online: <<https://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/15673/index.do>>. The Court also granted a motion by the Federation of Law Societies to intervene in the matter on May 13, 2016.

¹⁴ Green, *supra* note 1. The majority in this case included McLachlin C.J., along with Moldaver, Karakatsanis, Wagner, and Gascon JJ.

standard of review applicable to the validity of rules made by a law society was ‘reasonableness’.¹⁵

The Court also found the language of the enabling legislation conferred a “broad discretion”,¹⁶ for benchers to act reasonably as elected officials, responsible to the legal profession to whom the rules exclusively apply.¹⁷ Here, the Court analogized law society rule-making to the legislative function of municipal councils.¹⁸

In applying standard of review principles, the majority determined that since the Manitoba Law Society was acting “pursuant to its home statute in making the impugned rules,” ‘reasonableness’ was the appropriate approach.¹⁹ The Court also noted the regulator’s institutional expertise to decide on policy and procedures to govern the legal profession.²⁰

Justice Wagner considered the reasonableness of the mandatory CPD requirement in light of the general public interest mandate of the Law Society, the specific statutory obligation of the regulator to act in the public interest, and past cases that have construed law society rule-making authority broadly.²¹ The majority gave “considerable latitude” for the Law Society to make rules on its interpretation of the statutory public interest mandate.²²

The majority found both the rules creating the mandatory CPD program in Manitoba, and a penalty of suspension for failure to comply, to be reasonable. Justice Wagner also determined that the right to practice

¹⁵ *Ibid.*

¹⁶ Rules of the Law Society of Manitoba, *supra* note 8; Green, *ibid* at para 22.

¹⁷ Green, *ibid* at para 23; see also: *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2, [2012] 1 SCR 5.

¹⁸ Green, *ibid* at para 21.

¹⁹ *Ibid* at para 24.

²⁰ *Ibid* at para 25.

²¹ *Ibid* at paras 29 - 31, citing *Pearlman v Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869, 75 Man R (2d) 81; *Ryan v Law Society of New Brunswick*, [2003] 1 SCR 247, 257 NBR (2d) 207; *Canadian National Railway Co v McKercher LLP*, 2013 SCC 39, [2013] 2 SCR 649.

²² Green, *supra* note 1, at para 24, citing *Agaira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559; and further analyzed through paras 32-42.

law was statutory, rejecting a claim by Mr. Green that a suspension deprived him of some ‘common law right’ as a legal professional.²³

Justice Wagner also noted that a suspension for failure to comply with the mandatory CPD rule was not, or not only a disciplinary action, but was instead “administrative in nature” and that “reasonable members of the public would understand that a temporary suspension...is not akin to a more serious disciplinary suspension”.²⁴ In this respect the Court also noted that a suspension for failing to comply with the CPD requirement does not result in public notice, or appear in a lawyer’s disciplinary record.²⁵ A similar kind of suspension, for not filing fees, also does not provide for a hearing and can be remedied through compliance.²⁶

The majority concluded that suspension under the rules was not mandatory in Manitoba. In this case, Justice Wagner noted some practical discretion resided with the Chief Executive Officer of the Law Society,²⁷ since a year had passed before Mr. Green was contacted and asked to comply with the rules. In observing different procedures in place in other jurisdictions for CPD, the majority also noted that “there is no magic formula” to making rules to implement a mandatory education program,²⁸ and found the Manitoba Law Society rules reasonable.²⁹

2. *The Dissent*

Justice Rosalie Abella wrote the dissent, joined by Justice Suzanne Coté. The dissent judgment accepted the authority of the Law Society to create a program of mandatory CPD and to suspend lawyers for non-compliance. However, the dissent turned on the issue of the right to automatically suspend a lawyer for non-compliance within the mandatory CPD rule in Manitoba. Justice Abella concluded that an automatic

²³ *Green, ibid* at para 49.

²⁴ *Ibid.* The court states it is not ‘disciplinary’ at para 59, but then proceeds in the next para to say CPD does not relate “solely to the competence of lawyers”, implying it does relate in part to ‘competence’, which generally may be subject to discipline. See also para 60, which then restates proposition that non-compliance is not “on its own” grounds for incompetence.

²⁵ *Ibid* at para 61.

²⁶ *Ibid* at para 63.

²⁷ *Ibid* at para 64.

²⁸ *Ibid* at para 66.

²⁹ *Ibid* at para 67.

suspension in this case impaired the public's confidence in a particular lawyer,³⁰ and also unreasonably undermined confidence in the profession.³¹

Justice Abella characterized breaches of the mandatory CPD rule as “failing to attend classes”, and observed that suspension for minor rule breaches touched on the law society's “duty to protect the public from the erosion of trust in the professionalism of lawyers.”³² In such cases, the “perception” of professionalism is also important, and “professional delivery [of services] must not only be done, it must be seen to be done.”³³

The dissent differed with the majority as to whether the Law Society had any discretion in responding to a lawyer who was non-compliant with the CPD program.³⁴ It characterized suspension for non-compliance as a more substantive “competence” issue rather than purely as an administrative proceeding.³⁵ Justice Abella also noted there was no opportunity for written response, no capacity for the Law Society to informally resolve the complaint,³⁶ and no chance for representation by counsel. She also pointed out that the Law Society of Manitoba did not provide for exemptions or waivers of the requirement,³⁷ and that because the process and sanctions were non-discretionary, no resort to judicial review was available.

Citing both Lord Denning and Justice Dickson,³⁸ Justice Abella highlighted the disciplinary nature of the Manitoba Law Society's process by emphasizing the possible harm to a suspended lawyer's reputation, and to the profession, as well as personal economic costs. She noted “the reason for suspension does not magically transform a punitive consequence into an administrative one”,³⁹ and concluded by stating that

³⁰ *Ibid* at para 72.

³¹ *Ibid* at paras 81 – 82.

³² *Ibid* at para 74.

³³ *Ibid* at para 79.

³⁴ *Ibid* at paras 84 – 87.

³⁵ *Ibid* at para 90.

³⁶ *Ibid* at paras 87 – 88.

³⁷ *Ibid* at paras 91 – 93.

³⁸ *Ibid* at para 94.

³⁹ *Ibid* at para 95, also noting the rules require the Law Society to notify the Chief Judges of Manitoba's courts and all members of the Law Society.

the procedures to enforce the mandatory CPD program in Manitoba were “unreasonable”, and potentially sanctioned lawyers “arbitrarily.”⁴⁰

II. DISCUSSION OF LEGAL ISSUES

The *Green* case raises a preliminary question of why leave to appeal was granted, which brings into focus the longstanding policy of the Court not to provide reasons for its leave to appeal decisions. A second legal issue considered below is the determination of standard of review, and a third is the Court’s treatment of the ‘public interest’ function of legal regulators in Canada.

A. Policy and Legal Dimensions for Granting Leave

In considering the significance of the *Green* case, Alice Woolley has noted “Rarely have so many judicial resources been spent on a case worthy of so little.”⁴¹ This observation raises a real question about how leaves are granted and why an appeal was allowed in these circumstances. The reasons why the Supreme Court of Canada chooses to hear certain matters is the subject of some scholarship,⁴² and leave to appeal is rare, with only between ten and fifteen percent of all applications granted leave.⁴³

Leaves are granted on the basis of several factors, set out generally in the *Rules of the Court*,⁴⁴ though articulated in more detail in case law.⁴⁵ In

⁴⁰ *Ibid* at paras 96 – 98.

⁴¹ See Alice Woolley, “Justice For Some” (13 April 2017), *ABlawg* (blog), online: <<http://ablawg.ca/2017/04/13/justice-for-some/>> [Woolley, “Justice for Some”].

⁴² See Emmett Macfarlane, *Governing From the Bench*, (Toronto: UBC Press, 2013) [Governing]; particularly the author’s discussion at 78 – 89, which also considers Roy B Fleming, *The Tournament of Appeals: Granting Judicial Review in Canada in Canada* (Vancouver: UBC Press, 2004) [Tournament]; see also e.g., Ian Greene et al, *Final Appeal: Decision Making in Canadian Courts of Appeal* (Toronto: James Lorimer, 1998); Peter McCormick, “Party Capability Theory and Appellate Success in the Supreme Court of Canada, 1949 – 1992” (1993) 26:3 *Canadian J of Political Science* 523; FL Morton & Avril Allen, “Feminists and the Courts: Measuring Success in Interest Group Litigation in Canada (2001) 34:1 *Canadian J of Political Science* 55.

⁴³ *Governing*, *ibid* at 78-79. The Supreme Court’s average acceptance rate is 10 – 15 percent, based on 500 – 600 applications received annually and “the tradition has been for the panels of three to retain the final word on whether a case will be heard”.

⁴⁴ See Rules of the Supreme Court of Canada, SOR/2002-156 at r 25(1) (c) (ii) which requires applicants to identify the “public importance” of issues raised, and (iii)

this case, there was little if any ‘conflicting jurisprudence’, which is one factor that would have justified granting leave. The provincial regulation of lawyers has some ‘national scope’, another factor, but courts have recognized a longstanding and wide authority for law societies to regulate the Canadian legal profession.⁴⁶ Moreover, the existence of mandatory CPD for lawyers has been widely accepted across Canada.⁴⁷

At first glance then, the facts of the case seem straightforward, the law uncomplicated and, but for this case, largely uncontested. Also, the Court does not usually provide reasons for granting or denying applications,⁴⁸ which has been justified in the past as a way to ensure the Court’s “flexibility” in “allocating its scarce judicial resources”.⁴⁹ Given recent improvements in the Court’s efficiency, declining caseloads and the provision of additional resources available to Supreme Court judges, the historical justification for not providing reasons on leave applications may be less convincing now than in the past.⁵⁰ In the end, the lack of clarity

requires identification of the potential constitutional validity or inoperability of a law.

⁴⁵ See *R v Hinse* [1995] 4 SCR 597, 130 DLR (4th) 54 [*Hinse*].

⁴⁶ Including to sanction lawyers for matters that may not be explicitly set out in law, see *AG Can v Law Society of BC* [1982] 2 SCR 307, 37 BCLR 145, also known as the “Jabour” decision. See also Thomas Harrison, “Independence and CPD in the Camp Inquiry & the Green Appeal” (30 September 2016), *Politics, Law and Life* (blog), online: <<http://politicslawlife.blogspot.ca/2016/09/independence-cpd-in-camp-inquiry-green.html>> [Harrison, “Independence and CPD”].

⁴⁷ As noted in Factum of the Intervener, Federation of Law Societies of Canada in *Green*, *supra* note 1 at para 18, which sets out the various statutory regimes, online: <http://www.scc-csc.ca/WebDocuments-DocumentsWeb/36583/FM030_Intervener_Federation-Law-Societies-Canada.pdf>.

⁴⁸ Governing, *supra* note 42 at 81.

⁴⁹ *Hinse*, *supra* note 45 at para 8.

⁵⁰ Current statistics, from 2006 to 2016 available at the Supreme Court website (see: “Statistics 2006-2016” (28 February 2017), *Supreme Court of Canada* (website), online: <<http://www.scc-csc.ca/case-dossier/stat/index-eng.aspx>>) support the characterization that the Court has had its “fastest productivity level in a decade”, Governing, *supra* note 42 at 77. At the time of *Hinse*, *ibid*, the court usually heard over a hundred matters a year, but in recent times has averaged well below. In 2016 it heard only 63 matters. The Court is increasing clerk resources available to each judge by 25%. See Mallory Hendry, “Changes coming to SCC law clerks program” (19 April 2010), *Canadian Lawyer & Law Times* (blog), online: <<http://canadianlawyermag.com/legalfeeds/3781/changes-coming-to-scc-law-clerks-program.html>>.

about why leave was granted in *Green* may be a case in point for why it might be advisable for the Supreme Court to re-consider its general practice not to provide reasons in leave to appeal matters.⁵¹

One possible explanation for why leave was granted is the issue of the constitutional role of the Bar raised by this case.⁵² For example, the Supreme Court has recently identified a common law constitutional basis for the Bar in relation to the obligations to clients.⁵³ In both written and oral submissions though,⁵⁴ the argument about a connection between legal practice and the common law was not substantially further developed. Consequently, it is unsurprising that the Court later gave short shrift to Mr. Green's argument and found instead that, in this instance, a right to practice law is wholly statutory.⁵⁵

However, questions about the nature of Bar independence continue to be considered and refined by Canadian courts.⁵⁶ Other cases have

⁵¹ Summaries prepared by staff lawyers were apparently available by written request up until recently, *Governing*, *supra* note 42 at 79. The author requested these summaries, but was advised by the Supreme Court that the practice to make them available on request was no longer in place, email dated 2 May 2017, on file with the author.

⁵² The *Green* case, *supra* note 1, also did not touch on any question involving Aboriginal rights, another possible consideration in granting leave, *Governing*, *ibid* at 79, citing text of a speech delivered by John Sopinka, "The Supreme Court of Canada (Toronto, 10 April 1997) in Brian A Crane and Henry S Brown, *The Supreme Court of Canada Practice* (Toronto: Thomson Canada, 2008) at 482.

⁵³ *Canada (AG) v Federation of Law Societies*, 2015 SCC 7, [2015] 1 SCR 401. The Court identified part of the duty of loyalty, the duty of commitment to a client's cause as a new principle of fundamental justice. The recognition of the common law principle further reinforces an emerging viewpoint that independence of the Bar is an important unwritten constitutional principle. See Professor Patrick Monahan, now a Superior Court judge in Ontario, in Patrick Monahan, "The Independence of the Bar as a Constitutional Principle in Canada" in Law Society of Upper Canada, ed, *In the Public Interest: The Report and Research Papers of the Law Society of Upper Canada and the Independence of the Bar* (Toronto: Irwin Law, 2007) [LSUC, Public Interest], at 117 [Monahan, Independence].

⁵⁴ See *Green v Law Society of Manitoba*, 2017 SCC 20 (Factum of the Appellant at para 42); *Green v Law Society of Manitoba*, 2017 SCC 20 (Oral submissions, Appellant).

⁵⁵ *Green*, *supra* note 1 at para 49. Though in the British tradition the Bar of the Inns of the Court never enjoyed statutory recognition, see Philip Girard, "The Independence of the Bar in Historical Perspective: Comforting Myths, Troubling Realities" in [LSUC, Public Interest], *supra* note 53, 45 at 50 - 51.

⁵⁶ See Thomas Harrison, "The Emerging Principle of Independence of the Bar in

raised similar issues about how legal professional regulation functions in Canada.⁵⁷ In light of this litigation, some of it pending, the Supreme Court may have granted leave in the *Green* case as a potential “strategic” opportunity to further develop the law in this area.⁵⁸ Several of these cases are considered in the next section in the context of two significant legal developments in the *Green* decision.

B. Standard of Review

1. ‘Reasonableness’ as the Standard for Law Society Rule-Making

The *Green* case determined that the rules of a law society should be reviewed on a standard of reasonableness. It is surprising that the *Green* case is the first to establish the standard of review by the Supreme Court for a rule created by a Canadian law society.⁵⁹ Given the distinctive nature of Canadian legal regulators and their important role in legal professional governance,⁶⁰ it seems remarkable that such a matter has never been

Canada”, (7 July 2016), *Politics, Law and Life* (blog), online: <<http://politicslawlife.blogspot.ca/2016/07/the-emerging-principle-of-independence.html>>.

⁵⁷ Including the scope of law society public interest authority, in regulating “civility”, in *Groia v Law Society of Upper Canada*, 2016 ONCA 471, 131 OR (3d) 1 [*Groia*], scheduled for hearing at the Supreme Court on 6 November 2017. See Supreme Court of Canada, “Scheduled Hearings”, (16 January 2017), *Supreme Court of Canada* (website), online: <<http://www.scc-csc.ca/case-dossier/info/hear-aud-eng.aspx?ya=2017&ses=01&submit=Search>>; or the public interest function of law societies in Canada to accredit legal training that may conflict with human rights and the Charter, see *Law Society of British Columbia v Trinity Western University and Brayden Volkenant*, decision granting leave to appeal available online: *Law Society of British Columbia v Trinity Western University, et al*, 2016 BCCA 423, leave to appeal to SCC granted, online: <<https://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/16437/index.do>>.

⁵⁸ Though such “strategic” approaches by Canadian Supreme Court judges may be less pervasive or less apparent, Tournament, *supra* note 42 at 95.

⁵⁹ *Green*, *supra*, note 1 at para 19.

⁶⁰ North America is arguably the “last bastion of traditional notions of self-regulation of the legal profession”, see Alice Woolley, *Understanding Lawyers’ Ethics in Canada*, (Markham: LexisNexis, 2011) at 4. In Canada, self-regulatory independence of the Bar also has distinct features, such as lawyer elections and a system of statutorily authorized regulatory bodies, run largely by lawyers; see also Noel Semple, *Legal Services Regulation at the Crossroads: Justitia’s Legions*, (Cheltenham, Edward Elger

considered directly by the highest Court. It may be that it is first time the Court has considered the standard because more focus has been on reviewing the disciplinary decisions of law societies, rather than on the validity of the rules themselves.

Notwithstanding this possible lack of previous attention, the majority decision undertook an “analytically robust reasonableness review” in justifying the use of a ‘reasonableness’ standard in this case.⁶¹ The identification of a reasonableness standard in this context is not unexpected given a similar standard is used to review law societies’ disciplinary decisions.⁶² However, the *Green* case may also represent a shift in direction, away from a recent emphasis on a categorical approach in determining the standard of review, towards a more flexible consideration of context.⁶³

The possible shift in this case illustrates an ongoing debate in Canadian administrative law about the extent to which the Supreme Court may apply a variable standard in its deference to administrative decision-makers. On the one hand, the Court has previously rejected the idea that its application of the ‘reasonableness’ standard changes.⁶⁴ On the other hand, the contextual consideration of factors in *Green* may have the result that the Court may be “more reluctant to interfere in some administrative decisions than in others”.⁶⁵ In other words, if the

Publishing: 2015), particularly discussion at chapters 8, 9, & 10.

⁶¹ Paul Daly, “Continuing Standard of Review Development: *Green v. Law Society of Manitoba* 2017 SCC 20”, (31 March 2017), *Administrative Matters* (blog), online: <<http://www.administrativelawmatters.com/blog/2017/03/31/continuing-standard-of-review-development-green-v-law-society-of-manitoba-2017-scc-20/>> [Daly].

⁶² See e.g. *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395.

⁶³ Daly, *supra* note 61, citing *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 SCR 293.

⁶⁴ Recently, for example, in *Wilson v Atomic Energy of Canada*, 2016 SCC 29, [2016] 1 SCR 770. The Court’s position on this issue has not been consistent, as noted by Woolley, “Justice for Some”, *supra* note 41.

⁶⁵ Woolley, “Justice for Some”, *ibid*. This assertion descriptively situates this case, but abbreviates a complex and extended discussion about the nature of administrative law in Canada and the challenges of developing consistent and coherent standards of review. For a cogent analysis of this considerable challenge see, Justice David Stratas, “The Canadian Law of Judicial Review: A Plea for Doctrinal Coherence and Consistency” (17 February 2016), online <<https://ssrn.com/abstract=2733751>>.

contextual factors highlighted by Justice Wagner in *Green* were to change in future cases, the Court may apply a different standard.⁶⁶

2. *Applying the Reasonableness Standard in Upcoming Litigation*

The question of law society reasonableness in relation to its rule-making authority will likely be important in the pending case involving Ontario lawyer Joseph Groia.⁶⁷ In that instance, the Court will be considering law society disciplinary sanctions, arising out of claims that Mr. Groia inappropriately breached his professional civility obligations. The term “civility” appears throughout the 2016 Ontario Court of Appeal judgment in *Groia* and both the dissent and majority decisions in *Groia* found that “civility” was “enshrined” in the province’s professional rules.⁶⁸ However, the term “civility” does not appear in the professional rules, nor is the concept defined in either statute or regulation in Ontario.⁶⁹

In *Green*, the majority also considered that the Law Society was acting within its statutory authority to make “rules” to establish a “presumption

⁶⁶ Which could lead to a substantially different outcome depending on the circumstances. See Daly, *supra* note 61 for the Court’s possible recent shift to a contextual approach.

⁶⁷ *Groia*, *supra* note 57.

⁶⁸ *Ibid* at paras 119 and 128 and adopted by the dissent at 254.

⁶⁹ An older version of the professional rules from the Law Society of Upper Canada, pre 2014, is under consideration in the *Groia* litigation. However, there is arguably no substantive difference between the old rules and the new rules in respect of the “civility” question. See Law Society of Upper Canada, *Rules of Professional Conduct*, Toronto: Law Society of Upper Canada, 2014. There is reference in two sub-rules in Ontario obliging lawyers to be ‘civil’, currently at 3.2-1 and 5.1-2. These sub-rules are identified respectively as the “Courtesy” rule and the “Quality of Service” rule. The term ‘civil’ is undefined and the term “civility” does not appear in either the rules or the Commentary. The overall concept of “civility” remains unidentified and undefined in either statute or in the professional regulations governing lawyer behaviour in Ontario, see Thomas Harrison, “Civility, Public Interest, Courts, Zealousness & Discretion in *Groia v LSUC 2016*”, (22 June 2016), *Politics, Law and Life* (blog), online: <<http://politicslawlife.blogspot.ca/2016/06/civility-public-interest-courts.html>>. The definitional ambiguity, and the relative rarity of “incivility” both remain significant issues in the scholarship examining lawyer self-regulation in Canada, see Alice Woolley, “Does Civility Matter?” (2008) 46 *Osgoode Hall LJ* 175; and Alice Woolley, “Uncivil by Too Much Civility?: Critiquing Five More Years of Civility Regulation in Canada” (2013) 36 *Dal LJ* 239, which are also cited by the dissent in *Groia*, *supra* note 57 at para 302.

of reasonableness”.⁷⁰ By contrast, when the Supreme Court of Canada considers the applicable standard in *Groia*, a contextual approach may take into account the absence of any specific “civility” rules created by the Law Society of Upper Canada. Consequently, the shift to a contextual approach may be an important factor in determining the standard the Court will use to review this upcoming case.

In determining the standard of review, the Court in *Green* also determined that a presumption of reasonableness applies in instances where a law society acts pursuant to its home statute.⁷¹ This determination, and its connection to the ‘public interest’, is also an important jurisprudential development and is considered in the next section.

C. The ‘Public Interest’ Obligations of Law Societies

Changes in the way the Court approaches standard of review could impact on the way it considers the statutory public interest authority of legal regulators. In reviewing past administrative decisions, courts commonly considered whether the decision-maker acted pursuant to the “interpretation” of its home statute, in which case courts begin their consideration with a presumption of reasonableness.⁷² However, in the *Green* case, the Supreme Court appears to have altered this wording to remove the word “interpretation”, so that a regulator need only act pursuant to its home statute.⁷³ This wording change could have a significant impact in the way the Court approaches reviews, especially in

⁷⁰ *Green*, *supra* note 1 at para 23.

⁷¹ *Ibid* at para 24.

⁷² See e.g., *Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61 at para 41, [2011] SCR 654.

⁷³ Woolley, “Justice for Some”, *supra* note 41; where she notes this distinction in paragraph 24 of the decision; *Green*, *supra* note 1. It ‘appears’ to have been eliminated because later in the same paragraph, the Supreme Court re-inserts the term ‘interpretation’ to say that a law society’s ‘interpretation’ of its public interest mandate must be reasonable. However, as set out *infra*, this apparent change may be significant in a court’s initial determination of whether or not a regulatory body has acted within the purview of its statutory public interest mandate in the first place, which may be considered more strictly than on a standard of simple reasonableness, under either a contextual approach or as a matter of correctness.

relation to judicial review of administrative action in professional legal regulation.

1. *Interpretation of the Statutory ‘Public Interest’ Obligation of Law Societies*

In the past, questions of statutory interpretation by administrative tribunals were generally accorded less deference by the courts.⁷⁴ Following the Supreme Court’s 2008 decision in *Dunsmuir*, judges generally adopted a more deferential approach where an administrative body was interpreting its ‘home’ or enabling statute,⁷⁵ though the “competing approaches” and numerous exceptions continued to “vex” the Court.⁷⁶

If this wording change in *Green* is read narrowly, it could suggest that the Court will focus on the scope of enabling legislation, rather than the reasonableness of an administrative decision-maker’s interpretation.⁷⁷ Eliminating the word “interpretation” may thus be important because it could mean that a presumption of reasonableness would not automatically apply where the scope of underlying statutory authority was an issue. Without an initial presumption of reasonableness, a contextual approach by the Court could result in a different applicable standard,⁷⁸ and a return to a less deferential approach in construing whether an administrative decision-maker has acted in accordance with authority conveyed by their enabling legislation.

2. *The ‘Public Interest’ in Litigation Involving Law Societies*

The scope of statutory authority, and the standard of review of law societies purporting to act in the public interest, will be important issues in future cases. For example, the Ontario Court of Appeal decision in *Groia* also emphasizes the public role and function of law societies.⁷⁹

⁷⁴ Sara Blake, *Administrative Law in Canada* 5th ed (Toronto: LexisNexis, 2011) at 214 – 215 [Blake].

⁷⁵ *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 94-95, [2008] 1 SCR 190.

⁷⁶ Blake, *supra* note 74 at 215.

⁷⁷ But see Woolley, “Justice For Some”, *supra* note 41; which suggests instead that this wording change in *Green* may actually widen the presumption of reasonableness to apply to all administrative actions, including the question of whether a tribunal has acted within its statutory mandate.

⁷⁸ *Supra* notes 68-70 and associated text.

⁷⁹ *Groia*, *supra* note 57; where the historical public interest/purpose is the focus of para

Unlike the situation in the *Green* case though,⁸⁰ there was no direct statutory authority for the Law Society of Upper Canada to act in the ‘public interest’ at the time of the events that gave rise to the proceedings against Mr. Groia.⁸¹ The absence of statutory public interest authority, in addition to ambiguities with respect to ‘civility’, may be important contextual considerations for the Court’s review of law society authority to regulate lawyers for in-court misconduct on this basis.⁸²

Similarly, the question of law society ‘public interest’ authority is also likely to be addressed in the upcoming Supreme Court of Canada case involving Trinity Western University (TWU).⁸³ Under Canada’s federal structure, each province and territory has individual responsibility for the legal profession, and each has a separate legal regulator. The law society in each jurisdiction must therefore determine whether potential applicants meet the requirements for Bar membership. At issue in this case is a community covenant that TWU requires students to sign, prohibiting sexual activity except as between a husband and wife. The accreditation of the law school at TWU has consequently spawned litigation in several provinces from those opposed to accreditation because, it is argued, the community covenant is discriminatory on the grounds of sexual orientation.⁸⁴

1 of the majority judgment.

⁸⁰ Legal Profession Act, *supra* note 8, s 3(1); the purpose of the Manitoba Law Society is to “uphold and protect the public interest in the delivery of legal services with competence, integrity and independence”.

⁸¹ *Groia*, *supra* note 57. See also *Ontario’s Law Society Act*, RSO 1990, c L8 as amended by SO, 2006 ch 21 Schedule C, at s 7; which added a duty to act to protect the public interest at 4.2 (3), effective 1 May 2007. The proceedings in which Groia’s behaviour was impugned occurred in 2002, prior to the incorporation of a public interest statutory obligation. For the ‘public interest’ authority of law societies in common law see e.g., *Canada (AG) v Law Society of British Columbia*, [1982] 2 SCR 307 at 334-336, 355 & 359, 37 BCLR 145 [*Canada v LSBC*]; *Edwards v Law Society of Upper Canada*, [2001] 3 SCR 562, 56 OR (3d) 456; *Finney v Barreau du Quebec*, 2004 SCC 36, [2004] 2 SCR 17.

⁸² *Canada v LSBC*, *ibid*, which suggests absence of a statutory public interest power may be less significant since Courts have long recognized a common law ‘public interest’ authority in professional legal regulation.

⁸³ LSBC, *Trinity Western*, *supra* note 57.

⁸⁴ Prohibited under s 15 of Canada’s *Charter*, *supra* note 10. Most jurisdictions in Canada have accredited the TWU law school, with the notable exception of Ontario. The decision of Ontario’s Law Society not to accredit was upheld by the Ontario

Public interest issues that will be before the court in that case include the protection of individual rights under the *Charter*, the distinct role of law societies in Canadian legal regulation, and the constitutional role of the Bar.⁸⁵ On a wide view of the ‘public interest’, the issues in TWU may also be construed as reasonably within the statutory authority of a Canadian legal regulator. However, if the wording change in *Green* suggests that the Court is returning to a less deferential approach, then the power of law societies to regulate in this area may be more circumscribed. Leave to appeal to the Supreme Court in the TWU matter was granted in February 2017,⁸⁶ and it is currently scheduled to follow the appeal in the *Groia* matter, a few weeks later in November 2017.⁸⁷

In *Green*, the Court compared law societies to municipal authorities, which also suggests a narrow interpretation of regulators’ public interest obligations.⁸⁸ Here, the majority analogized benchers to elected city officials to suggest that they were similarly democratically accountable to the lawyers who elected them.⁸⁹ The Court’s description narrows the traditional characterizations of law societies and lawyers, which are more typically described as playing a broad public and democratic role. At a minimum though, the public purpose of law society regulation obliges

Court of Appeal, *Trinity Western University v The Law Society of Upper Canada*, 2016 ONCA 518, [2016] 131 OR (3d) 113 [LSUC, *Trinity Western*]; see also, *Trinity Western University v The Law Society of British Columbia*, 2016 BCCA 423, [2016] 92 BCLR (5th) 42; *The Nova Scotia Barristers’ Society v Trinity Western University*, 2016 NSCA 59, [2016] 376 NSR (2d) 1.

⁸⁵ Monahan, Independence, *supra* note 53; *Charter*, *supra* note 10.

⁸⁶ LSUC, *Trinity Western*, *supra* note 84.

⁸⁷ LSBC, *Trinity Western*, *supra* note 57, tentatively scheduled on the Supreme Court’s calendar for 30 November 2017. See Supreme Court of Canada, “Scheduled Hearings”, (16 January 2017), *Supreme Court of Canada* (website), online: <<http://www.scc-csc.ca/case-dossier/info/hear-aud-eng.aspx?ya=2017&ses=01&submit=Search>>.

⁸⁸ *Green*, *supra* note 1 at para 21.

⁸⁹ *Ibid* at para 23; known as the “law and liberalism” thesis, see Terence C Halliday & Lucien Karpik, *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries* (Oxford: Clarendon Press, 1997); for a more limited version of this argument in the Canadian context see, e.g., W Wesley Pue, “Death Squads and ‘Directions over Lunch’”, in LSUC, Public Interest, *supra* note 53 at 83. This traditional narrative involving the ‘public interest’ is a central theme and starting point of the majority in *Groia*, *supra* note 57 at para 1.

benchers not just to be accountable to their electors, but to a much wider body, including everyone who depends on the provision of legal services.⁹⁰

Subsequent to its decision in the *Green* case, the Supreme Court revisited the question of the public interest function of law societies. In its June 2017 decision in *Quebec (Director of Criminal and Penal Prosecutions) v. Jodoin*, the Supreme Court also considered issues involving a lawyer facing sanctions for his professional behaviour, though in a criminal context involving the imposition of costs on defence counsel.⁹¹ Though the primary issue in the case involved the judicial authority to sanction lawyer behaviour, the Supreme Court also considered the complementary public role of law societies.⁹²

Here, without reference to its earlier comparison of law societies to municipal councils, the majority of the Supreme Court provided a similarly narrow definition of the primary role of law societies as one of ‘public protection’.⁹³ The Court’s identification of ‘protection’ as the primary function of law societies seems to be another characterization of the legal regulators’ public role. In addition to being different from the description in *Green*, this purpose also potentially varies from the traditional view, which sounds comparable, not to the traditional role of law societies, or to the role of municipal councils, but rather to a modern consumer protection tribunal.

These descriptions of the role and function of law societies in relation to the ‘public interest’ appear inconsistent. The Court has provided only limited explanation of these points in both decisions, so the ultimate determination remains unclear. However, the jurisprudential inclination in both decisions appears to also presage some future possible limits on the public role and function of law societies.

⁹⁰ Also note in Woolley, “Justice For Some”, *supra* note 41; though it does not explore the implications of the comparison in relation to how it might affect future determinations of the regulator’s public interest authority.

⁹¹ 2017 SCC 26, [2017] 408 DLR (4th) 581 [*Jodoin*]. In comparison to the decision in *Green*, the dissent in *Jodoin* was also written by Justice Abella, who was again joined by Justice Coté.

⁹² *Ibid* at paras 22 – 23.

⁹³ *Ibid*.

III. PUBLIC POLICY ISSUES RAISED IN THE *GREEN* APPEAL

From a policy perspective, the *Green* litigation touches on two public policy issues. These issues have received national attention and are now the subject of initiatives that may lead to some important changes in the public administration of the judicial branch of government. These public policy issues are briefly examined in the next two subsections.

A. Mandatory CPD for judges?

The issue of mandatory CPD for lawyers has also become an important concern being considered in the context of judges. At the same time that Mr. Green was before the Court in 2016, similar questions about the need for a mandatory legal education, but in the judicial context, arose in a recent Canadian Judicial Inquiry involving Justice Robin Camp.⁹⁴ In that matter, Justice Camp faced scrutiny about his conduct and language in a sexual assault hearing over which he presided. Justice Camp's behaviour showed that his knowledge and understanding of criminal law was inadequate.⁹⁵ The Inquiry also provoked a more general consideration of whether judges should also be subject to mandatory education to address gaps in legal knowledge. Those opposed claimed mandatory education for judges would breach judicial independence and set a potentially "dangerous precedent".⁹⁶

⁹⁴ See Cristin Schmitz "Cromwell worries judicial gaffes won't be cured through education", (30 September 2016), *Lawyers Weekly* (blog), online <<http://www.lawyersweekly.ca/articles/3023>>. Justice Camp's language in a case where he was presiding over a criminal sexual assault trial at the provincial court, and his lack of understanding about the law in this area ultimately led to a Canadian Judicial Council recommendation that he be removed from the bench, see Canadian Judicial Council, "Canadian Judicial Council recommends that Justice Robin Camp be removed from office", (March 2017), online: <https://www.cjc-ccm.gc.ca/english/news_en.asp?selMenu=news_2017_0309_en.asp>; Harrison, "Independence and CPD", *supra* note 46.

⁹⁵ Justice Camp eventually resigned from the bench, after it was recommended by the Canadian Judicial Council that he be removed from judicial office, see Sean Fine, "Judge in 'knees together' trial resigns after the council recommends he be fired", *Globe and Mail* (9 March 2017), online: <<http://www.theglobeandmail.com/news/national/judicial-council-recommends-justice-robin-camp-be-fired/article34249312/>>.

⁹⁶ See CBC News, "Mandatory training for judges in sexual assault sets dangerous

By comparison, the Court considered and rejected a claim that mandatory CPD for lawyers in some way breached professional rights in *Green*. Similarly, the risks that mandatory legal education for judges might breach judicial independence also seem overstated. The question of whether ‘judges should return to school’ has been the subject of discussion in Canada for many years.⁹⁷ In the legal system, the mandatory imposition of such a requirement must legitimately respect the independent role of lawyers and judges. However, by contrast to Canada, an annual educational requirement has been included within the requirements of judicial office in Britain for the last several years.⁹⁸

In this respect, the use of mandatory education to enhance legal competency,⁹⁹ or perhaps to address things like the quality of judicial writing,¹⁰⁰ appear as valid objectives reasonably within the public purpose of judicial independence.¹⁰¹ Currently, mandatory legal education for

precedent, expert says”, *CBC News* (10 April 2017), online: <<http://www.cbc.ca/news/canada/edmonton/mandatory-judicial-sexual-assault-law-dangerous-precedent-1.4063574>>; quoting University of Alberta’s Professor Lise Gotell.

⁹⁷ See, Allan Hutchinson, “Towards Judicial Accountability – Are the Excuses Getting Lamer?” (1996) 45 UNB LJ 97; Thomas Harrison, “Judicial education doesn’t breach independence, but Bill C – 337 might”, (22 May 2017), *IRPP - Policy Options* (blog), online: <<http://policyoptions.irpp.org/magazines/may-2017/judicial-education-doesnt-breach-independence-but-bill-c-337-might/>>.

⁹⁸ In England judges who hear sexual assault matters must take a mandatory course. See Philip NS Rumney and Rachel Anne Fenton, “Judicial Training and Rape” (2011) 75 JCL 473.

⁹⁹ Generally judges and lawyers, but in the judicial context specifically in the case of Justice Camp.

¹⁰⁰ Which has been the subject of some recent critical commentary in Canada, see e.g., Alice Woolley, “The Problem of Judicial Arrogance”, (20 October 2017), *Slaw* (blog), online: <<http://www.slaw.ca/2016/10/20/the-problem-of-judicial-arrogance/>>; Daniella Muryanka, “The Rise of Lucid Writing in Canadian Law”, (12 January 2017), *The Walrus* (blog), online: < <https://thewalrus.ca/the-rise-of-lucid-writing-in-canadian-law/#.WHgBh3pUBPA.twitter>>; Thomas Harrison, , “Some Pitfalls in Canadian Judicial Writing”, (13 January 2017), *Politics, Law And Life* (blog), online: <<http://politicslawlife.blogspot.ca/2017/01/a-few-pitfalls-in-canadian-judicial.html>>.

¹⁰¹ Which is also not an absolute principle and is subject to limits in the Canadian context, such as on tenure and the requirement that Canadian judges must retire at age 75.

judges continues to be the subject of public discussion and is now the focus of possible federal legislation.¹⁰²

B. Judges Returning to Practice?

A second policy concern raised by the *Green* case is whether and how judges should be permitted within lawyer's professional rules to return to practice once they leave the bench. It has been noted that more and more Canadian judges are now returning to legal practice.¹⁰³ In this case, Mr. Green's counsel was Mr. Charles Huband, a former judge who returned to practice in 2010 following his retirement from the Manitoba Court of Appeal several years earlier.

Mr. Huband's role as counsel for the appellant in this case illustrates a host of legal regulatory challenges that have continued to "stir debate" in this area.¹⁰⁴ These include the possibly untoward perceptions of retired judges appearing before former colleagues, unfairness in lawyer advertising, and the need for more explicit post-judicial service confidentiality guidelines.¹⁰⁵ Like the issue of mandatory CPD, this issue is also the subject of a current public consultation, here by the Federation of Law Societies, which is considering changes to make the rule more restrictive.¹⁰⁶ Whatever the final outcome, given the increasing prevalence

¹⁰² In February 2017, the interim leader of the Opposition tabled Bill C-337, *An Act to amend the Judges Act and the Criminal Code (sexual assault)*, 1st Sess, 42nd Parl, 2017, online:

<<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8792144>>; which would require education in "sexual assault law that includes instruction in evidentiary prohibitions, principles of consent and the conduct of sexual assault proceedings, as well as education regarding myths and stereotypes associated with sexual assault complainants".

¹⁰³ Stephen GA Pitel & Will Barolin, "Revising Canada's Ethical Rules for Judges Returning to Practice" (2011) 34:2 Dal L J 483 [Pitel & Bartolin].

¹⁰⁴ Cristin Schmitz, "Proposed Ethics Rules for Former Judges Stir Debate", (27 February 2017), *The Lawyer's Daily* (blog), online: <<https://www.thelawyersdaily.ca/articles/2612/proposed-ethics-rules-for-former-judges-stir-debate>>.

¹⁰⁵ *Ibid.* See also, Adam Dodek, "Judicial Confidentiality", (13 June 2016), *Slaw* (blog), online: <<http://www.slaw.ca/2016/06/13/judicial-confidentiality/>>; Pitel & Bartolin, *supra* note 103.

¹⁰⁶ See notice of consultation posted at the Federation of Law Societies website, Federation of Law Societies of Canada, News Release, "Consultation Begins on

of judges returning to practice, changes to professional rules to clarify regulation in this area are a welcome improvement to legal governance in this area.

IV. CONCLUSION

There is some legitimate question about why the Supreme Court would choose to grant leave in the *Green* case. However, this recent Supreme Court decision is important for several reasons. The Court's identification of a novel standard of review and its consideration of law society's 'public interest' obligations are substantial additions to the law. These additions take on further significance in light of the prospect that these issues may continue to be refined by the Court. The Court's consideration of legal issues in *Green* may foreshadow its approach to similar issues and provides an interesting glimpse into judicial perspectives on several aspects of professional lawyer regulation in Canada.

From an additional policy perspective, the case also intersects with a couple of concurrent issues in judicial administration. This includes a proposal for mandatory education for judges, which has become the focus of potential federal legislation. Whether for lawyers or judges, the prospect of mandatory CPD appears in the public interest to address gaps in knowledge and to keep abreast of new developments in the law.

Given Mr. Green's representation by a retired judge of Manitoba's Court of Appeal, the case also addresses ongoing concerns about Canadian professional lawyer rules governing how judges can return to legal practice.¹⁰⁷ With mandatory retirement dates and extended lifespans, more and more former judges are maintaining an active presence in Canada's legal community. Yet to date, the rules have provided only a

Model Code Amendments" (2 February 2017), online: <<https://flsc.ca/consultations-begin-on-model-code-amendments/>>; where it is noted that "the proposed rule on Former Judges Returning to Practice would bar former provincial, territorial or federally appointed judges, from communicating with or appearing as a lawyer before any Canadian court or tribunal, without the permission of the law society in the relevant jurisdiction. The proposed rule would permit former judges to mentor, support, coach and teach others how to better advocate before, or correspond with, a court".

¹⁰⁷ Such as are currently set out in National Code of Professional Conduct, *supra* note 3 at r 7.7.

minimal level of guidance with respect to this issue. In this respect, further clarification and direction from legal regulators will address a considerable lacuna in professional lawyer rules.

Mr. Huband's participation as appellant's counsel in this matter also relates to a policy question about access to justice, which touches on why leave to appeal in this matter to the Supreme Court was granted in the first place. Within the Canadian legal system, one "litigant-centred" hypothesis suggests that "upper dogs" or those with higher status, may receive more favourable treatment.¹⁰⁸ Based on empirical research, some have concluded that the "upper dogs" hypothesis has previously not applied at the Supreme Court level.¹⁰⁹

It may be coincidental, but the high profile of a former Court of Appeal judge, acting as counsel to a prominent lawyer and former politician appellant, in combination with the debatable merit of the *Green* case, could be an example of how the Canadian justice system prefers high status litigants. Given the public attention paid to challenges of access to justice, and the difficulties faced by so many in accessing the courts,¹¹⁰ it would be unfortunate if the Supreme Court was reinforcing, by hearing this matter, a systemic trend towards favouring litigants with greater status or social capital.

Whatever else the decision may portend for the future of Canadian law and policy, the case marks the end of a lengthy and distinguished career for Mr. Green. Having lost his challenge before the Supreme Court, he has now resigned from the Manitoba Bar. However, he remains unrepentant in his critical views of the value of lawyer CPD, stating "most lawyers agree" that compulsory legal education is "a sham."¹¹¹

Ultimately, the Supreme Court's consideration of the legal issues in this case are important steps in its approach to questions of professional legal regulation in Canada. Together, the legal and public policy issues

¹⁰⁸ Macfarlane, *Governing*, *supra* note 42 at 80, and *Tournament*, *supra* note 42.

¹⁰⁹ *Tournament*, *ibid* at 57.

¹¹⁰ See, for example, Ontario, Action Group on Access to Justice, "Impact Report" (Toronto: 2017).

¹¹¹ Darren Bernhardt, "Lawyer, 87, retires rather than submit to professional development rules", *CBC News* (30 March 2017), online: <<http://www.cbc.ca/news/canada/manitoba/sidney-green-lawyer-professional-development-court-challenge-1.4047565>>.

raised in *Green* make it an important marker in the development of both the law and policy, and perhaps, a sign of things to come.

