Censure by the Membership of the Law Society: An Alternative Accountability Mechanism for the Attorney General?

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ABSTRACT

While the law society has the ability to discipline the Attorney General, that ability is rarely used and its outcome is unpredictable. One alternative mechanism for the accountability of the Attorney General comes from British Columbia in 2002, when the membership of the Law Society of British Columbia approved a motion to censure then-Attorney General Geoff Plant. In this note, I recount this odd moment in Canadian legal history and assess its lessons going forward. I ultimately conclude that the unavoidable, if unwarranted, appearance of political activity by the law society outweighs the effectiveness of a censure as an accountability mechanism for the Attorney General. However, such a censure would be significantly less problematic if it came from an advocacy organization for the legal profession, such as the Canadian Bar Association or one of its branches.

Keywords: *Attorney General; censure; accountability; politics; professional regulation*

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INTRODUCTION

The provincial Attorney General is a unique politician, being both a practicing member of the law society (in their role as Attorney General) and the Minister responsible for the law society and the administration of justice more generally (as Minister of Justice). The Canadian legal ethics literature on the Attorney General largely focuses on a single mechanism of accountability: law society disciplinary proceedings. This focus is understandable and defensible. Among other factors, the law society as a regulator has the unique power to disbar lawyers.[1] Nonetheless, it is also worthwhile to consider alternative accountability mechanisms – particularly because Canadian law societies have used that disciplinary power over the Attorney General very rarely. In this article, I explore a historical example of one potential alternative accountability mechanism: the censure of the Attorney General by the membership of the law society.

In the early 2000s, the British Columbia government of Gordon Campbell made significant spending cuts. Campbell's Attorney General, Geoff Plant, was heavily criticized for two main measures. The first, closing several courthouses, earned him a stern letter from the Chief Justice of the provincial court.[2] The second measure, dramatic cuts to legal aid, made him even more a focal point of anger for the bench and bar.[3]

Attorney General Plant was never disciplined by the Law Society of British Columbia for these measures. However, the law society membership (which is to say, the British Columbia bar itself) held a special meeting at which a motion censuring Plant for the legal aid cuts passed easily. This censure was the first of its kind in British Columbia, and appears to have

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1 *Krieger v Law Society of Alberta*, 2002 SCC 65 at para 58, on the power of disbarment to protect the public interest: "Only the Law Society can protect the public in this way."

2 See e.g. Canadian Press, "Unprecedented protest by B.C. judges" *The Red Deer Advocate* (11 April 2002) A7, quoting a 14 February 2002 letter from Provincial Court Chief Judge Carol Baird Ellan to Attorney General Geoff Plant: "It is my duty to advise you that in this matter you have left the judiciary without options, and you have lost the confidence of the judges". The dispute was largely resolved with a memorandum of understanding: Law Society of British Columbia, "Chief Judge and Attorney General discuss courthouse closures" *Benchers' Bulletin*, (2002) 2002:2 (March-April) 9 at 9, online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_02-04.pdf> https://perma.cc/CY5W-TDV5.

3 See e.g. below note 24 and accompanying text.

been the only one in Canada. Nonetheless, this censure has been virtually ignored in the Canadian legal literature. This story provides important lessons about the relationships among the Attorney General, the law society, and the legal profession itself.

This article is organized in 4 parts. In Part 1, I explain why accountability for the Attorney General is important and I identify the limitations of law society discipline as an accountability mechanism for the Attorney General. Against this backdrop, in Part 2 I recount the events around the Plant censure and draw some lessons from the censure and those events. Then in Part 3, I assess a censure by the law society membership as an alternative accountability mechanism. I also compare and contrast another potential mechanism, which is a censure by an advocacy organization such as the Canadian Bar Association and its branches. I then conclude in Part 4 by reflecting on the implications of my analysis.

I. ACCOUNTABILITY FOR THE ATTORNEY GENERAL

In this part, I explain why accountability for the Attorney General is important and identify the limitations of law society discipline as an accountability mechanism for the Attorney General.

A. *The importance of accountability*

Accountability for the Attorney General under the law of lawyering promotes the rule of law.[4] As the Supreme Court of Canada re-affirmed in *Reference re Secession of Quebec*, one aspect of the rule of law is that "the law is supreme over the acts of both government and private persons. There is, in short, one law for all."[5] In the specific context of the Attorney General and the law of lawyering, the rule of law requires that the Attorney General is held accountable for misconduct just as other lawyers are held accountable. (As I will discuss below, there are some constitutional

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4 See Andrew Flavelle Martin, *Legal Ethics and the Attorney General: A Canadian Analysis* (Toronto: University of Toronto Press, 2025) at 118 [Martin, *Canadian Analysis*]: "The primary consideration against disciplinary immunity is that it is contrary to the rule of law."

5 *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 71, 161 DLR (4th) 385, citing approvingly from *Manitoba Language Rights Reference*, [1985] 1 SCR 721 at 747-52, 19 DLR (4th) 1.

limitations on law society discipline of the Attorney General that do not apply to other lawyers.)

Moreover, the powers and high profile of the Attorney General mean that any misconduct is highly visible and potentially especially harmful. As the Hearing Committee of the Law Society of Alberta recently noted in *Law Society of Alberta v Madu*, "[n]ot only are Attorneys General some of the highest-profile lawyers in the country, but they also face unique tensions and pressures that bring their duties as lawyers into stark relief."[6] Accountability mechanisms, such as discipline, allow the law society to fulfill its statutory mandate to protect the public interest.[7]

B. *The limitations of law society discipline as an accountability mechanism*

While law society discipline is the obvious and most commonly used accountability mechanism for violations of the law of lawyering, law society discipline of Attorneys General is rare. There are several factors, legal and otherwise, that may explain this rarity.

There have only been three instances in which a law society attempted to discipline an Attorney General for misconduct while in office. Two of

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6 *Law Society of Alberta v Madu*, 2024 ABLS 20 at para 157 [*Madu* merits], penalty at 2025 ABLS 11 [*Madu* penalty], quoting approvingly from Andrew Flavelle Martin, "The Lawyer's Professional Duty to Encourage Respect for – And to Improve – the Administration of Justice: Lessons from Failures by Attorneys General" (2023) 54:2 Ottawa L Rev 247 at 251. See also the text of the reprimand issued, at para 44 of the penalty reasons: "At the time of the events in question, you held the position of Minister of Justice and Solicitor General. You were one of the highest profile lawyers in Alberta, if not also Canada. All of the foregoing duties and responsibilities equally applied to discharge of your duties in that role, which you yourself have acknowledged was one which garnered a great deal of authority to be exercised appropriately and cautiously."

7 See e.g. *Legal Profession* Act, SBC 1998, c 9, s 3 [*Legal Profession Act*]: "It is the object and duty of the society to uphold and protect the public interest in the administration of justice by…". See also *Law Society Act*, RSO 1990, c L.8, s 4.2, para 3 [*Law Society Act*]: "The Society has a duty to protect the public interest." See also Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline* (Toronto: Thomson Reuters, 2025) (looseleaf updated June 2025, release 2), ch 26 at § 26:1, online: Westlaw (Thomson Reuters Canada): "The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession."

those were unsuccessful.[8] The appeal period for the third attempt has not yet elapsed as of the time of writing, although that use of the disciplinary process has been heavily criticized.[9] While any law society regulatory steps short of discipline are invisible to the public, Allan Rock has recently written that no such incidents occurred during his time at the Law Society of Upper Canada (as it then was).[10]

There are several potential legal factors that explain the rarity of law society attempts to discipline the Attorney General.[11] First, there are no successful precedents. Second, there seems to be a persisting misconception that the law society cannot discipline the Attorney General.[12] Third, there are several legal and constitutional limitations on such discipline, although those limitations are narrow in scope. Parliamentary privilege provides absolute immunity for anything legislators, including the Attorney General,

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8 *Wagner (Re)* (4 November 1966), (Barreau de Montréal), rev'd *Wagner c Barreau de Montréal* (28 November 1966), Montréal 723–178 (Qc SC), rev'd *Barreau (Montréal) c Wagner* (1967), [1968] BR 235 (CA); *Law Society of Yukon v Kimmerly*, [1988] LSDD no 1 (Yk LS). These decisions are discussed in Martin, *Canadian Analysis*, *supra* note 4 at 31-41.

9 *Madu* merits, *supra* note 6. See e.g. Gideon Christian, "The Law Society of Alberta Trial of Minister Madu – What Has Race Got to Do With It?" *Slaw* (blog) (28 November 2024), online: <https://www.slaw.ca/2024/11/28/the-law-society-of-alberta-trial-of-minister-madu-what-has-race-got-to-do-with-it/>; Faith-Michael Uzoka, "The Law Society of Alberta's decision on Kaycee Madu is unjust" *Policy Options* (19 November 2024), online: <https://policyoptions.irpp.org/magazines/november-2024/alberta-madu/> https://perma.cc/2LEV-SWRV.

10 Allan Rock, "Foreword", in Martin, *Canadian Analysis*, *supra* note 4, xiii at xiv: "In my own experience as a past Chair of the Discipline Committee and subsequently Treasurer [CEO] of the Law Society of Ontario, I cannot recall a circumstance in which we considered applying the discipline lens of the licensing body to a critical examination of the words or deeds of an Attorney General."

11 I am not prepared to assume that Attorneys General are more (or less) ethical than lawyers generally.

12 See e.g. Brent Cotter, "The Prime Minister v the Chief Justice of Canada: The Attorney General's Failure of Responsibility" (2015) 18 Leg Ethics 73 at 77 ("Ironically, if Mr. MacKay's conduct were not sheltered by rules of law that make most of the decisions of the Attorney General unreviewable, it would surely constitute sanctionable behaviour on the part of the law society of which he is a member."), as critiqued in Martin, *Canadian Analysis*, *supra* note 4 at 3-4.

say or do in the legislative assembly.[13] The exercise of prosecutorial discretion by Crown attorneys is unreviewable by courts or law societies absent bad faith,[14] as its exercise by the Attorney General directly would be. I have suggested elsewhere that law societies may be reluctant to discipline Crown attorneys because of uncertainty over the scope of prosecutorial discretion.[15] This reluctance would also apply to the Attorney General. The province of Ontario also provides the Attorney General with statutory immunity for actions in office.[16]

There are also policy factors that may explain why the law society rarely attempts to discipline the Attorney General. First, law societies may worry that disciplining an elected politician will create a public perception that law societies are politicized and thus not an impartial regulator of the profession in the public interest.[17] Second, law societies may also worry that any such discipline will prompt a political backlash or pushback that may result in the legislature, at the suggestion of the government, reducing the self-regulatory powers of law societies.[18] This seems to be what Michael Bryant recently referred to as regulators' "fear of social consequences".[19] Third, law societies may determine that such discipline is a distraction from their core functions of protecting clients against harm like misappropriation of client funds.[20] Similarly, Bryant has suggested that law societies may not

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13 See *Canada (House of Commons) v Vaid*, 2005 SCC 30, as discussed in Martin, *Canadian Analysis*, *supra* note 4 at 110-111.

14 *Krieger v Law Society of Alberta*, *supra* note 1 at paras 51-52, as discussed in Martin, *Canadian Analysis*, *supra* note 4 at 110.

15 Andrew Flavelle Martin, "Twenty Years After *Krieger v Law Society of Alberta*: Law Society Discipline of Crown Prosecutors and Government Lawyers" (2023) 61:1 Alta L Rev 37 at 47-48 [Martin, "Twenty Years"].

16 *Law Society Act*, *supra* note 7, s 13(3) ("No person who is or has been the Attorney General for Ontario is subject to any proceedings of the Society or to any penalty imposed under this Act for anything done by him or her while exercising the functions of such office."), discussed in Martin, *Canadian Analysis*, *supra* note 4 at 112-113.

17 Martin, *Canadian Analysis*, *supra* note 4 at 144.

18 *Ibid* at 144-145.

19 Michael J Bryant, "Foreword", in Martin, *Canadian Analysis*, *supra* note 4, xvii at xx [Bryant in Martin].

20 Martin, *Canadian Analysis*, *supra* note 4 at 144.

consider the conduct of the Attorney General important to fulfilling their mandate.[21]

C. *Alternative accountability mechanisms*

To summarize, accountability for the Attorney General for violating the law of lawyering is important, but law society discipline of the Attorney General is rare for legal and practical reasons. Whether or not that reluctance is unfortunate or problematic, it seems unlikely to change. Thus, it is appropriate and indeed necessary to explore and assess alternative accountability mechanisms for the Attorney General. For example, I recently suggested that Parliamentary accountability mechanisms should be expanded to better capture misconduct by the Attorney General.[22] In this context, one potential mechanism is a censure by the law society membership. I explore and assess that mechanism here based primarily on the experience of Geoff Plant as Attorney General for British Columbia.

II. THE CENSURE OF ATTORNEY GENERAL GEOFF PLANT BY THE MEMBERSHIP OF THE LAW SOCIETY OF BRITISH COLUMBIA

In this part, I recount the events around the Plant censure and draw some lessons from the censure and those events. I also consider a similar motion at the 1994 Annual General Meeting of the Law Society of British Columbia, calling for the resignation of non-lawyer Attorney General Colin Gabelmann over legal aid changes, which was abandoned at the last minute.

A. *The special meeting: Three competing resolutions*

The Special Meeting was initially scheduled for April 26, 2002, but it was adjourned to May 22 because the unanticipated turnout exceeded the

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21 Bryant in Martin, *supra* note 19 at xx: "I do believe that ignorance is more the culprit [behind failing to hold Attorneys General to the standards of lawyers] than political expediency.... Ignorance by the regulators, whose benchers too quickly dismiss Attorneys behaving badly as trivial politics, rather than daring to sharpen their constitutional legal quivers, aiming them at the quasi-judicial officers, without fear of social consequences."

22 Martin, *Canadian Analysis*, *supra* note 4 at 147-153.

capacity of the venue.[23] There were three resolutions proposed for the May meeting. The first motion, proposed by Michael Mulligan, held Plant responsible for the legal aid cuts, noted his previous position when in opposition that the tax on legal services should not be re-allocated away from legal aid, and concluded by stating that Plant "has failed to uphold and protect the public interest in the administration of justice" and that "the Law Society of British Columbia has lost confidence in Mr. Plant as the Attorney General of British Columbia":

> 1. WHEREAS Geoff Plant, the Attorney General, publicly condemned the former government for profiting by $15 million from the legal aid system by diverting funds collected pursuant to the special tax that was imposed on lawyers' accounts;
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> WHEREAS Mr. Plant stood up in the legislature on May 11, 2000 and said the following: "I'm sure we can quibble about the numbers, but the larger public policy question still remains. Isn't there something wrong with the government taking all this money from legal accounts as a result of a tax which was imposed, the justification of which was for legal aid, yet it doesn't actually really direct all of that revenue into the legal aid system;
>
> WHEREAS Mr. Plant now plans to divert more than $48.5 million a year in funds collected from the special tax on lawyers' accounts away from the provision of legal aid;
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> WHEREAS Mr. Plant's plan to divert these funds will leave thousands of British Columbians who are poor, disadvantaged, and disproportionately female without legal representation;
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> WHEREAS Mr. Plant has failed to uphold and protect the public interest in the administration of justice:
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> THEREFORE the Law Society of British Columbia has lost confidence in Mr. Plant as the Attorney General of British Columbia.[24]

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23 See e.g. Ian Mulgrew & Jim Beatty, "Big turnout delays lawyers' vote on A-G: Meeting set to discuss non-confidence postponed" *The Vancouver Sun* (13 April 2002) A3, 2002 WLNR 8179134; Mark Hume, "B.C. lawyers flock to debate to censure Attorney-General" *The National Post* (13 April 2002) A4, 2002 WLNR 8173226; Law Society of British Columbia, *Benchers' Bulletin*, "Special General Meeting reset for May 22" (2002) 2002:2 (March-April) 8 at 8, online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_02-04.pdf> https://perma.cc/CY5W-TDV5.

24 Michael T Mulligan to Members of the Law Society of British Columbia, "RE: Special

A second part of this Mulligan resolution stated that "the Law Society of British Columbia demands that the Attorney General uphold and protect the public interest in the administration of justice, immediately cease the diversion of funds from the provision of legal aid, and allocate 100% of the revenue received through the special tax on legal services and from the federal government to the provisions of legal aid."[25]

In a letter to the profession explaining his motion, Mulligan invoked their individual and collective professional obligations:

> As a profession, *we have an obligation to uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons.* Failing to intervene where the Attorney General proposes to proceed in the manner he has would be *a failure to meet those professional obligations*.... We must respond *as a profession*.[26]

Note the emphasis, both in the explanatory letter and the text of the resolution itself, on the obligations of the profession to the administration of justice.

A shorter competing motion, proposed by Geoffrey Cowper,[27] recognized that Plant was a member of Cabinet and rejected what it described as "any criticism or attacks of a personal nature directed at the Attorney General":

> BE IT RESOLVED:
> 1. that the Law Society recognizes that the Attorney General is sitting as a member of the Executive Council for the Province of British Columbia and is exercising a public office as a member of the Government of British Columbia; and
> 2. while the allocation of monies to the Ministry of the Attorney General from the Government of British Columbia and the allocation of monies to programs within that Ministry are matters of public policy which merit full public debate, the Law Society must refrain from and

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General Meeting of the Law Society concerning the *diversion* of funds from legal aid" (22 February 2022) [Mulligan letter], enclosure to LSBC, "Notice to the Profession: Special General Meeting" (un-dated) [Notice to the Profession].

25 *Ibid*.

26 Mulligan letter, *supra* note 25 [emphasis added].

27 Cowper was described in the media as "Plant's friend and former law partner": Ian Mulgrew, "B.C.'s lawyers censure A-G over legal aid cuts: 'Do the right thing', Plant urged after unprecedented vote" *The Vancouver Sun* (23 May 2002) A1, 2002 WLNR 8144093 [Mulgrew].

> discourage any criticism or attacks of a personal nature directed at the Attorney General.[28]

In the letter explaining this motion, several lawyers portrayed the Mulligan motion as concerningly political and personal, and beyond the available and appropriate authority of the Law Society:

> The non-confidence motion… includes terms which are not only critical of Government policy, but seek to have the members of the Law Society condemn the Attorney General in his actions as a member of the Government. The resolution is also premised upon the proposition that the Attorney General has engaged in the diversion of funds dedicated to legal aid.
>
> [M]embers of the Law Society must, in our view, recognize the proper boundaries of democratic debate and the proper role of the Law Society itself.....
>
> The non-confidence motion is an attempt to publicly censure the Attorney General, which is a measure outside the powers or proper province of the Law Society. We believe the members of the Law Society should reject an action which is so political in character....
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> .... The nonconfidence motion goes far beyond either what is appropriate or wise. We ask the members of the Society by passing the accompanying resolution to reject the personal and political aspects of the proposed non-confidence motion and to state this Society's recognition of the Attorney General's difficult but important role as both chief legal officer and Minister of the Government.[29]

At the meeting, Cowper emphasized these concerns: "It [the Mulligan resolution] allies us with the worst of our political culture; it allies us with personal attacks; it allies us with incomplete statements that are political in nature. And finally, we don't elect the Attorney General; he doesn't have the office at our confidence. We elect a government, the Premier selects his Attorney and the Attorney fulfills his functions. It is only when his past as

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28 LSBC, "Notice to the Profession: Special General Meeting: Additional resolution and two additional meeting locations" [un-dated].

29 Rose-Mary Liu Basham, QC, et al, to Members of the Law Society of British Columbia, "Re: Resolutions before the Special General Meeting of the Law Society on April 12, 2022" (19 March 2022) enclosure to LSBC, "Notice to the Profession: Special General Meeting: Additional resolution and two additional meeting locations" [un-dated].

a lawyer is in question that we have any purchase over him."[30] Similarly, one lawyer observed after the passage of the Mulligan resolution that "[t]his puts the law society at risk as an independent self-governing body.... Those who voted for the motions passed today betray a deep misunderstanding of the role of the attorney-general in our government."[31]

In Mulligan's response to the Cowper letter, he emphasized that the resolution was not personal and he invoked the role of the law society itself and the related role of the Attorney General as a Bencher of the law society:

> [T]he condemnation of [Plant's] performance... is not in his personal capacity. The vote of non-confidence is to be with respect to his performance in the office of the Attorney General.
>
> Mr. Plant, as the Attorney General, is a Bencher of the Law Society and a Minister of Justice. Pursuant to the *Legal Profession Act*, one of the primary objects of the law society is to uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons. This is also the essence of being a Minister of Justice.[32]

In advance of the meeting, Mulligan defended his focus on Plant specifically: "Plant is the minister of justice, he bears responsibility I say on some of these matters".[33] At the meeting itself, Mulligan would emphasize this point: "[M]y resolutions are not with respect to Mr. Plant in his personal

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30 Law Society of British Columbia, "BC lawyers vote non-confidence in Attorney General" *Benchers' Bulletin* (2002) 2002:3 (May-June/July August) 6 at 7, online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_02-08.pdf> https://perma.cc/A9GH-L7X7 [*Benchers Bulletin* Issue 3]. (This statement implies that the law society has not jurisdiction over the Attorney General for conduct while they are Attorney General.)

31 Mulgrew, *supra* note 27, quoting Kathleen Keating.

32 Michael T Mulligan [untitled and un-dated], enclosure to LSBC, "Notice to the Profession: Special General Meeting: Additional resolution and two additional meeting locations" [un-dated].

33 "Law society members to vote on 3 resolutions: Debate centres on whether to censure attorney-general" *The Vancouver Sun* (22 May 2002) B3, 2002 WLNR 8041744. See also Mark Hume, "Angry Lawyers Censure Minister for legal aid cuts: Historic motion of non-confidence in Attorney General" *The National Post* (23 May 2022) A11, 2002 WLNR 7825377 [Hume, "Angry Lawyers"]: "When access to justice is denied... the Minister of justice must be held accountable. It is not good enough to say it was a government decision."

capacity, but rather in his performance as minister of justice."[34] Mulligan also noted at the meeting that Attorney General Plant was not "a mere politician".[35]

A third resolution, a compromise proposed by Richard Margetts but withdrawn after the success of the Mulligan motion,[36] stated as follows:

> WHEREAS:
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> 1. An efficient and fair justice system is a cornerstone of our democracy, and fundamental to the peace, order, and good government of our society;
> 2. Equal access for all citizens is fundamental to a fair justice system;
> 3. The Government of British Columbia has embarked on a program of fiscal restraint that the Members of the Law Society believe will compromise the foregoing principles.
> 4. The Liberal Part of British Columbia, while in opposition, condemned the application of the Social Services Tax to legal services, and the diversion of those tax revenues from the Legal Aid System;
> 5. The legal profession wishes to continue to work in conjunction with the Attorney General, the Courts and other agencies to ensure the integrity of the justice
>
> THEREFORE BE IT RESOLVED that the members of the Law Society of British Columbia call upon the Government of British Columbia to:
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> 1. Increase funding to the Legal Services Society to ensure availability of legal services to all needy British Columbians;
> 2. Allocate all revenues received on account of the Social Services Tax on legal services to the provision of Legal Aid or to the enhancement of the justice system;
> 3. Consult and work in conjunction with other participants in the justice system, and in particular the legal profession through the Law Society of British Columbia and the Canadian Bar Association (B.C. Branch), to ensure

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34 *Benchers Bulletin* Issue 3, *supra* note 30 at 6. Mulligan continued: "However, to the extent that he [Plant] is made to feel uncomfortable, that pales in comparison to the effect of his plan on the powerless who will be denied access to justice." See also "Law Society Meeting Reconvened", in Canadian Bar Association British Columbia, *BarTalk* 14:3 (June 2022) 1 at 1 [*BarTalk*], again quoting from Mulligan's comments at the meeting: ""We are not here to deal with an individual. We are not here to deal with a mere politician. We are not here to deal with a line item in the budget. There should be no doubt that the focus … is with respect to his performance in the office of Attorney General." Mulligan also emphasized his support for the provincial Liberal party: Ian Austin, "Lawyers trounce attorney-general over cutbacks in legal aid services" *The Vancouver Province* (23 May 2002) A7, 2002 WLNR 8045369.

35 *BarTalk*, *supra* note 34 at 1.

36 Margetts was then the LSBC past president: Mulgrew, *supra* note 27.

> cost-effective and efficient delivery of legal and judicial services for all people of British Columbia.[37]

Margetts elaborated in media interviews, emphasizing again that the issue was with the government's choices, for which it would be wrong to single out the Attorney General:

> I think Mr. Mulligan's resolution seeks to single out the attorney-general and lay responsibility for what is taking place at his feet.
>
> I think you'll find that most members of the profession don't agree with that. The attorney-general is one of a number of ministers and members of the government who are pursuing a program, a political program, for which the administration of justice just forms one part. It is the government juggernaut, for want of a better way of putting it, that concerns me more than the specific actions of the attorney-general.
>
> My concern is this – the debate should not be whether the attorney-general has done or has not done the right thing.... The debate in my mind for our profession to have is whether or not this government is properly respecting and properly ensuring the good function of the judicial system.[38]

Even if the original resolution places too much blame and responsibility – indeed, all of the blame and responsibility – on the Attorney General for a choice made by Cabinet, the compromise Margetts resolution conversely seems to overcorrect by placing all the blame on the government and absolving the Attorney General of responsibility as a member of that government, not to mention any individual responsibility as a lawyer and as the Attorney General. Recall that Mulligan explained that the Attorney General should bear individual responsibility as a Bencher and as the Minister of Justice.[39]

Some in the media explicitly portrayed the original April meeting as a schism in the British Columbia bar. For example, Robert Matas in *The Globe and Mail* wrote that "[h]undreds of business lawyers from downtown Vancouver firms streamed into a noon-hour meeting yesterday to take on

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37 "Resolutions submitted by members for consideration", enclosure to LSBC, "Notice to the Profession: Special General Meeting: Wednesday May 22, 2002 (Call to order: 1:30 PM" [un-dated].

38 Ian Mulgrew, "Lawyer tries to prevent others from censuring attorney-general" *The Vancouver Sun* (20 May 2022) B1, 2002 WLNR 7969615.

39 See above note 32 and accompanying text.

hundreds of criminal and family lawyers who aim to censure Attorney-General Geoff Plant for cutting back financing for legal aid."[40]

The Mulligan resolution passed easily, with 754 votes for and 325 against.[41] The second part of the Mulligan resolution, calling on the Attorney General to restore legal aid funding, also passed, with 717 votes for and 83 against.[42]

B. *The aftermath*

While Mulligan seemed confident that the censure would sway the Attorney General, Plant appeared unmoved both before and after the passage of the Mulligan resolution. In advance of the meeting, Mulligan told the bar that "It's unprecedented.... If the man has any sense of history, he wouldn't want to be the first Attorney-General condemned by the Law Society. He should take that very seriously."[43] At the April meeting, Mulligan made a similar comment: "The vote will not remove the attorney-general from office, but it will give thinking people great pause when you have this sort of turnout from the law society."[44] Indeed, some in the media anticipated that the censure would be "a political embarrassment for Mr. Plant and the Liberal government."[45]

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40 Robert Matas, "B.C. lawyers split over censure of A-G" *The Globe and Mail* (13 April 2002) A11, 2002 WLNR 12092970.

41 *Benchers Bulletin* Issue 3, *supra* note 30 at 6.

42 *Ibid* at 6.

43 Mark Hume, "B.C. lawyers debate censure of minister: Attorney-General under fire for plans to cut legal aid" *The National Post* (28 March 2002) A4, 2002 WLNR 7942531. See also Austin, *supra* note 34: "I strongly hope the attorney-general takes very seriously the message that the law society has sent him today. I would encourage him to do the right thing."

44 Ian Mulgrew & Jim Beatty, "Too many lawyers, vote on A-G put off: 'We simply can't cope' with record high turnout, organizer says" *The Vancouver Sun* (13 April 2002) A3, 2002 WLNR 8177062. Contrast Lousie Dickson, "Lawyers plan rallies over cuts in legal aid" *Victoria Times Colonist* (29 October 2011) A6, 2011 WLNR 22294579, quoting lawyer Barclay Johnson: "It's a show of solidarity, but these things really haven't impressed the government in the past.... If the Law Society of B.C. could censure Attorney General Geoff Plant over legal aid issues, what's going to come out of this?"

45 See e.g. "Lawyers censure Attorney-General" *The National Post* (23 May 2002) A11, 2002 WLNR 7891466. See also Hume, "Angry Lawyers", *supra* note 33.

Nonetheless, Plant appeared unconcerned. Asked in the legislative assembly, "Will the Attorney resign if the non-confidence vote is successful and passed?",[46] Plant made it clear that he would not resign: "I hold my office because the Premier has seen fit to repose in me his trust. So long as I am able to provide the Premier with some indication that I deserve his trust, I have expectations that I will continue to hold this office."[47] Earlier on the day of the censure, he told reporters that "Well, I'm not that concerned about it [the Mulligan resolution], frankly. I think the majority of lawyers in British Columbia recognize that the justice system is not immune from financial reality, and we have to find a way to deliver a justice system that works for British Columbians with less money than we had."[48] Similarly, after the vote he indicated the that censure would have little impact (at least on him): "I don't think the vote changes anything in terms of my responsibilities. I'll get up tomorrow and continue to my job as attorney-general, to be responsible for the administration of justice in British Columbia and work within limited amounts to provide the best access to justice that we can in British Columbia."[49]

In fairness to Mulligan, it was reasonable to believe or hope that the censure would have an impact on Plant and possibly on the Cabinet. A similar motion at the 1994 LSBC AGM, calling for the resignation of non-lawyer Attorney General Colin Gabelmann over legal aid changes, was

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46 Legislative Assembly, Province of British Columbia, *Official Report of the Debates of the Legislative Assembly (Hansard)*, 37 Parl, 3d sess, 5:3 (28 March 2002) at 2316 (Jenny Way Ching Kwon).

47 Legislative Assembly, Province of British Columbia, *Official Report of the Debates of the Legislative Assembly (Hansard)*, 37 Parl, 3d sess, 5:3 (28 March 2002) at 2316 (Hon Geoff Plant).

48 Hume, "Angry Lawyers", *supra* note 33.

49 Mulgrew, *supra* note 27. See also David Beers, ed, *Liberalized: The Tyee Report on British Columbia under Gordon Campbell's Liberals* (Vancouver: New Star Books, 2005) 64 at 69: "When the Law Society of BC officially censured Geoff Plant, arguing that the attorney-general's cuts to legal aid threatened the administration of justice, the Liberals shrugged it off." Indeed, Plant was open that financial considerations were the driver for the cuts. See also 68, quoting Geoff Plant: "But the real challenge was that we ran out of money. The [LSS] budget reduction was part of the overall government commitment to eliminating the deficit and balancing the budget."

abandoned at the last minute with what Gabelmann called a "compromise".[50]

C. *The (almost) precedent: The Gabelmann motion of 1994*

The Gabelmann matter was reasonably similar, in that it stemmed from a dispute over restructuring legal aid. Instead of merely non-confidence, however, it called for Gabelmann's resignation.[51] (It is not clear that once crossed the Rubicon of non-confidence, a call for resignation has much additional impact.) The most important difference with the Plant motion is that the Gabelmann motion was withdrawn.

The text of the motion, proposed by Kathryn Ford and Phil Rankin, read as follows:

> WHEREAS the membership of the Law Society of B.C. has lost confidence in the ability of Colin Gabelmann to discharge his functions as the Attorney General of British Columbia;
>
> AND WHEREAS the Attorney General has demonstrated his inability to discharge his functions by misleading the House and the Bar regarding the delivery of, and funding for, legal aid in this province;
>
> AND WHEREAS the Attorney General has consistently refused to deal in a meaningful way with the Law Society of B.C., the Canadian Bar Association, and the Association of Legal Aid Lawyers, over the issue of delivery and funding of legal aid services;
>
> AND WHEREAS the administration of justice requires an Attorney General who has the confidence and trust of the Bar;

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50 Neal Hall & Frances Bula, "Legal aid deal called a happy compromise" *The Vancouver Sun* (24 September 1994) A3, 1994 WLNR 3002974; See e.g. Editorial, "Friendly Persuasion" *The Vancouver Province* (26 September 1994) A16, 1994 WLNR 3328181; Tom Barrett, "Legal groups lament non-lawyer named as attorney-general" *The Vancouver Sun* (6 November 1991) B6, 1991 WLNR 2838370. See also Vaughn Palmer, "Lawyers put Mr. Gabelmann on trial" *The Vancouver Sun* (23 September 1994) A18, 1994 WLNR 3008077 [Palmer], quoting the text of the resolution: "Whereas the membership of the law society of B.C. has lost confidence in the ability of Colin Gabelmann to discharge his functions as attorney-general of B.C. . .. be it resolved that the law society demand Colin Gabelmann resign as attorney-general of B.C." As Palmer put it: "For the 200 or so lawyers expected to attend today's meeting of the Law Society, the agenda provides three opportunities to cause the A-G some pain, ranging from embarrassment to outright humiliation."

51 Another difference is that it was at an AGM, not a special meeting.

> BE IT RESOLVED THAT:
>
> The Law Society demand that Colin Gabelmann resign as Attorney General of British Columbia.[52]

(Attorney General Gabelmann vigorously disputed the allegation that he had misled, and I include these allegations only for context.) Note that here the motion positions "the confidence and trust of the Bar" in the Attorney General as necessary for "the administration of justice". In contrast to the Plant censure resolution, which noted that "Mr. Plant has failed to uphold and protect the public interest in the administration of justice", the Ford and Rankin motion about Gabelmann makes no explicit reference to public confidence or the public interest – instead, its language is all about the Bar itself.

According to the minutes of the AGM, Ford withdrew the motion because "[i]t represented a concern on the part of some members about the relationship between the Bar and the Attorney General .... [but] [s]he now believed that a new relationship with the Attorney General had been established, and she was optimistic that it would be a good one in the future."[53]

What is perhaps more interesting are the reasons for which the Benchers, at their meeting preceding the AGM, did not support the motion: "Resolution No. 2... is not one that is appropriate to the Annual General Meeting of the Law Society. It was unduly confrontational and unduly affects negotiations between Benchers and government. The publicity surrounding such a motion would be in the interest of no one."[54]

In contrast, the Benchers at their meeting a few months earlier had found it appropriate to pass two resolutions of their own criticizing the legal aid restructuring bill:

> BE IT RESOLVED that the Law Society rejects the proposed restructuring of the Legal Services Society board of directors contemplated by Bill 55 and instructs the Treasurer to inform the Attorney General that the Benchers would prefer not to appoint directors to the board pursuant to the Bill 55 proposals.

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52 Law Society of British Columbia, *Notice to the Profession* (22 August 1994) at 2; Law Society of BC, *Minutes of the Annual General Meeting of 23 September 1994* at 3-4 (Resolution Number 2) [*Minutes*].

53 *Ibid* at 3-4 (Resolution Number 2).

54 Law Society of British Columbia, *Revised Minutes of Meeting of Benchers of 9 September 1994* at 8, quoting Mr. G.D. Burnyeat, Q.C. [Burnyeat Minutes].

> BE IT RESOLVED that the Law Society of British Columbia urges the Attorney General to withdraw Bill 55 or ensure that it not be proclaimed until proper consultation has taken place.[55]

These motions were perhaps less 'confrontational' that the AGM motion that would have called for the resignation of the Attorney General, but they would seem to squarely engage the law society with a political position. Moreover, the Treasurer himself was sharply and openly critical of the proposed bill and the Attorney General himself: "The Attorney General clearly lacks confidence in the legal profession and its governing body.... Prospects for the future seem bleak... for the historically good relationship between the Law Society and the government, particularly with the office of the Attorney General."[56]

D. *Lessons*

What lessons can be drawn from the Plant and Gabelmann affairs?

First, and perhaps most important, is that a censure by the law society membership may have little apparent impact on the Attorney General. Recall that Plant was stoic or even nonplussed, at least in his public-facing reactions. Moreover, recall his statements that, as Attorney General, he required only the confidence of the Premier. Nonetheless, the Gabelmann affair suggests that the Attorney General may be influenced by the prospect of a censure.

The second lesson is that censuring the Attorney General for decisions in their official role, including decisions of Cabinet in which the Attorney General participates, risks creating a public apprehension that the law society holds a political view and applies that view in its regulation of the profession. The law society, as the independent regulator of the provincial legal profession, should both be impartial and apolitical (and thus objective) and be seen as impartial and apolitical (and thus objective). Recall here the motivations for the Cowper resolution, as explained by Cowper and by other supporters of the legislation: "It [the Mulligan resolution] allies us with the worst of our political culture; it allies us with personal attacks; it

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55 Law Society of British Columbia, "Benchers oppose restructuring of LSS board" *Benchers' Bulletin*, No 5 (July-August 1994) 1 at 2, quoting from the Benchers' Meeting of 8 July 1994.

56 Law Society of British Columbia, "Treasurer's Notes: Government's legal aid agenda: a reason to protest" *Benchers' Bulletin*, No 5 (July-August 1994) 2 at 3.

allies us with incomplete statements that are political in nature."[57] As one Cowper supporter noted, this action may promote pushback against self-regulation: "[t]his [resolution] puts the law society at risk as an independent self-governing body".[58] Moreover, the Attorney General and the government enjoy democratic legitimacy and take a broader perspective than the law society.[59]

The third lesson is that the censure process can demonstrate – and exacerbate – factional conflicts within subsets of the bar. Recall that the family and criminal lawyers supported the Plant censure, while the corporate bar opposed it, and that this division was emphasized in the media coverage.[60]

III. Analysis: Censures as Alternative Accountability Mechanisms for the Attorney General

In this part, I use the content from the previous Part to assess a censure by the law society membership as an alternative accountability mechanism to law society discipline of the Attorney General. I also consider a censure by an advocacy organization, such as the Canadian Bar Association, as a related alternative.

E. *Censure by the law society membership*

At the outset, it is important to emphasize the distinction between the disciplinary processes of the Law Society of British Columbia and the resolutions of the membership of that law society. Although a censure may resemble a reprimand, the two are very different in their nature and effect. A disciplinary reprimand is a penalty following a finding of misconduct or conduct unbecoming. In other words, it follows from being reprimanded that the lawyer violated their obligations sufficiently to constitute misconduct or conduct unbecoming. But a censure, like the Plant censure,

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57 *Benchers Bulletin* Issue 3, *supra* note 30 at 7.

58 Mulgrew, *supra* note 27, quoting Kathleen Keating.

59 Martin, *Canadian Analysis*, *supra* note 4 at 111: "[W]hile a law society may have views about the appropriate design and funding of the legal aid system, such views would not be determinative and would certainly not be any more legitimate than those of the Attorney General or her ministry."

60 See above note 40 and accompanying text.

is issued independently of any disciplinary process and does not necessarily (or appropriately) include or imply a finding of professional misconduct or conduct unbecoming.

Recall from Part 1 that there are several factors that may explain why law society discipline is rarely used as an accountability mechanism for Attorneys General. There are at least three legal factors: an absence of successful precedents, a misperception that the law society cannot discipline the Attorney General, and at least three kinds of legal immunity that bar law society discipline (parliamentary privilege, prosecutorial discretion, and statutory immunity). There are also several policy or practical factors: creating a public perception that law society and its disciplinary processes and actions are politicized; provoking legislative retaliation against the powers of the law society or even against self-regulation itself; and detracting from core regulatory priorities that protect the public against tangible harm, such as misuse of trust funds.

A censure by the law society seems to share some of these risks but reduce others. The legal risks are still present because the action is still taken by the law society. In particular, a resolution by the membership could presumably be judicially reviewed in a similar manner as a decision of the Board of the law society on the basis that it violated parliamentary privilege or improperly reviewed prosecutorial discretion.[61] Whether such a censure resolution would be barred by statutory immunity would depend on the language and interpretation of the statutory provision. Recall the language of the Ontario provision: "No person who is or has been the Attorney General for Ontario is subject to any proceedings of the Society or to any penalty imposed under this Act for anything done by him or her while exercising the functions of such office."[62] In the absence of cases applying this provision, there would be a reasonable argument that a censure resolution by the membership is a "proceeding of the Society".

Like discipline, the censure of a politician, particularly a sitting Cabinet member, could prompt pushback against the self-regulation of the profession as delegated through provincial legislation.[63] Recall again the

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61 See e.g. *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32, which began as a judicial review of the Benchers' decision not to approve Trinity Western's proposed law school.

62 *Law Society Act*, *supra* note 15, s 13(3).

63 See here by analogy Martin, *Canadian Analysis*, *supra* note 4 at 35-36, discussing how

concerns that the censure would embroil the law society in politics and risk the self-regulation and independence of the law society.[64] Any seemingly political stances could also decrease public confidence in the law society and its ability to objectively regulate the legal profession in the public interest. Moreover, given these risks weighed against the legal (and apparently normative and political) meaninglessness of a censure, it may simply not be in the rational interests of the law society and the profession. In this respect, Harry Arthurs' theory of "ethical economy" in law society discipline may apply somewhat in parallel to a censure; in other words, the risks of a censure may outweigh the benefits to the law society and its reputation and mandate.[65]

Indeed, a censure by the law society membership may be more easily characterized and dismissed as political and biased than law society discipline. Law society discipline is a formal adversarial process with fairly clear rules, a body of reported decisions, an impartial adjudicator, and an established mechanism for judicial review or appeal. The lawyer has the ability to respond to allegations and defend themselves, and those submissions must be taken into account by the decision-maker in written reasons for their decision. A censure by the law society membership lacks these hallmarks of procedural fairness and legitimacy. While the procedural fairness and legitimacy of law society discipline can be disputed, they are more difficult to question than the corresponding aspects of a censure by

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Attorney General Claude Wagner, after being disciplined by the Barreau, proposed limiting the jurisdiction of the Barreau. See also e.g., Martin, "Political Practices," *supra* note 4 at 27: "A different policy concern is whether enforcement of ethical rules against lawyer-politicians could result in a backlash by legislators against law societies, and possibly against self-regulation itself."

64 See *Benchers Bulletin* Issue 3, *supra* note 30 at 7, and Mulgrew, *supra* note 27, quoting Kathleen Keating, as both discussed in the text accompanying notes 30 and 31 above. See also the Benchers' opposition of the resolution calling for Gabelmann's resignation: Burnyeat Minutes, *supra* note 54 [emphasis added] "[The resolution] was unduly confrontational and *unduly affects negotiations between Benchers and government*. The publicity surrounding such a motion would be in the interest of no one."

65 Harry Arthurs, "Why Canadian Law Schools Do Not Teach Legal Ethics" in Kim Economides, ed, *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart, 1998) 105 at 112, as quoted e.g. in Martin, "Twenty Years", *supra* note 15 at 47: "[T]he profession's treatment of discipline reflects a tendency to allocate its scarce resources of staff time, public credibility and internal political consensus to those disciplinary problems whose resolution provides the highest returns to the profession with the least risk of adverse consequences."

the law society membership. Moreover, the statutory authority of the law society to discipline lawyers is set out in legislation. Lawyer discipline is clearly within the institutional capacity of the law society. In contrast, the institutional legitimacy of the law society, through its membership, to censure a lawyer is questionable. Recall the concerns expressed by supporters of the Cowper resolution:

> [M]embers of the Law Society must, in our view, recognize the proper boundaries of democratic debate and the proper role of the Law Society itself..... The non-confidence motion is an attempt to publicly censure the Attorney General, which is a measure outside the powers or proper province of the Law Society.[66]

These considerations make a censure more vulnerable to reasonable criticism, as well as unreasonable but compelling criticism, than law society discipline. Indeed, a populist Attorney General could frame a censure as a badge of honour demonstrating that they have opposed, and rankled, the elitist legal profession by standing up for the interests of the general public, even more so by using "taxpayer" language instead.[67] Although Plant did not invoke or evoke populist motivations, in his comments around the censure he seemed to be reasonably successful in portraying legal aid cuts as a responsible measure that was good for the province and, by extension, for the public: "I think the majority of lawyers in British Columbia recognize that the justice system is not immune from financial reality, and we have to find a way to deliver a justice system that works for British Columbians with less money than we had." In other words, the views of the law society and its membership are far from determinative, even where they purport to be defending the public interest.

While a censure by the membership against the Attorney General may still appear to be politically motivated, the law society leadership – and their

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66 See above note 29 and accompanying text. See also Amy Salyzyn, "Bad Ballots: Down With Direct Democracy in Law Society Governance" (23 September 2024), *Slaw* (blog), online: <https://www.slaw.ca/2024/09/23/bad-ballots-down-with-direct-democracy-in-law-society-governance/>, quoting Harry Cayton, *Report of a Governance Review of the Law Society of British Columbia* (25 November 21) at 14, 5.3, online: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/GgovernanceReview-2021.pdf> perma.cc/2CEX-J2ZL: "these [membership resolutions] are governance arrangements you would expect to see in the structure of a Trades Union or political party rather than an oversight body accountable to the public." (Thanks to Adam Dodek for bringing this blog to my attention.) Cayton at 14, 5.3 also refers to "[t]his sense of the Society as an association rather than a regulator".

67 Hume, "Angry Lawyers", *supra* note 33.

supporters in the media and politics, if any – can argue that the censure by the law society membership does not reflect the views or attitudes of the law society leadership or affect the credibility and objectivity of that leadership. Indeed, where a censure such as the Plant censure is adopted despite very public strong and principled opposition from a large portion of the bar, it is even easier for the law society leadership to disassociate itself from that censure. In other words, for better or for worse, a censure or other action by the law society membership may also provide the law society itself with an opportunity to disassociate itself from the actions of the membership that does not apply to law society discipline. It is unclear, however, whether this distinction would be meaningful in the view of the profession or the general public.[68]

What are the other disadvantages of a censure by the law society membership? Amy Salyzyn has argued more generally against these kinds of meeting resolutions by law societies.[69] She argues that these are contrary to the public-interest mandates of law societies and that they do (and should) decrease public confidence in law societies as regulators of the legal profession and indeed confidence in the legal profession itself.[70] These resolutions, in substance and process, are lawyer-centric and often unrelated to the mandate of the law society to protect the public interest and the administration of justice.[71] Moreover, they require law societies to re-

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[68] Consider here that the proposed Gabelmann censure explicitly referred to the "membership of the Law Society of British Columbia" (Palmer, *supra* note 50: [emphasis added]: "Whereas *the membership of the law society of B.C.* has lost confidence in the ability of Colin Gabelmann to discharge his functions as attorney-general of B.C. . .. be it resolved that the law society demand Colin Gabelmann resign as attorney-general of B.C.""). ") whereas the Plant censure did not use that language (see above note 24 and accompanying text.)

[69] Salyzyn, *supra* note 66.

[70] See e.g. *ibid*: "To the extent that some lawyer-initiated resolutions are perceived as self-dealing or as being self-centred, law societies risk being seen as out of touch, protectionist, and clubby guilds rather than as modern professional regulators focused on protecting the public interest."

[71] *Ibid*. See also Cayton, *supra* note 66 at 14, 5.5, 5.6: "Unfortunately, it seems that irrelevant and partisan resolutions from members will continue to be brought forward and to distract and misdirect the Society away from the public interest. My observation of the resolutions put to the annual general meeting and approved in the immediate past is that few if any have relevance to the public interest or to effective regulation but are concerned with the interests of lawyers. Such resolutions are a distraction for the

allocate resources from the day-to-day regulatory and disciplinary processes that go more directly and concretely to their public-interest mandate.[72] Harry Cayton has summarized this role tension as follows:

> Understanding the roles of a professional regulator and of its governing body is an essential first step to effective governance. Many professional regulators in Canada have a dual mandate. If they are an 'association' of professionals as well as a 'regulator' of professionals they have two roles, one to promote the interests of the profession and one to promote the interests of service users. These two roles are frequently in conflict and when governance structures give dominance to the profession over the public then the interests of the profession take precedence. Some regulators such as the Law Society had a dual mandate in the past and still have the residue of that in the way they have been reconfigured as a regulator.[73]

This tension is real and legitimate – and easily weaponized to attack the law society, even where the resolutions are related to the public interest.

In fairness, this particular kind of resolution, critiquing and denouncing the Attorney General for policy decisions that directly affect the administration of justice, appears more closely related to that public-interest mandate of the law society than some examples Salyzyn gives, like climate change.[74] The Plant censure was ostensibly about protecting the public interest in the proper administration of justice. This is a core mandate of the law society.[75] Moreover, such a resolution could be legitimately portrayed as a way in which lawyers responsibly fulfill their professional obligations to protect the administration of justice.[76] Recall

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Benchers and their committees from their strategic plans and proper priorities of the public interest and effective professional regulation."

72 Salyzyn, *supra* note 66.

73 Cayton, *supra* note 66 at 9, 4.3.

74 Thanks to a reviewer on this point. See Salyzyn, *supra* note 66: "To be sure, direct democracy measures can (and have in some instances) more straightforwardly connect to the public interest.... Couldn't we just limit lawyer-initiated resolutions to those which most squarely advance the public interest? One problem with such a suggestion is that it is difficult to contemplate a workable way to impose such a limit. Surely law societies would only engender more controversy if they tried to aggressively gatekeep these processes."

75 See above note 7.

76 Thanks to a reviewer on this point.

that Mulligan, in his explanatory letter to the profession, invoked the individual and collective professional obligations of lawyers.[77]

Nonetheless, I fully agree here with Salyzyn's argument that these kinds of resolutions risk damaging public confidence both in the law societies as regulators of the legal profession and in the profession itself. Where the text of a resolution explicitly invokes the public interest, as does the censure resolution directed at Plant, these concerns would perhaps be lessened but would certainly not be eliminated. The censure resolution damages public confidence in the law society and in lawyers not by prioritizing the interests of lawyers over those of the public, but by appearing to engage the law society in policy questions and even political questions.

A. *An alternative: Censure by an advocacy organization*

In contrast, while a censure by an advocacy organization such as the Canadian Bar Association likely has somewhat lesser heft and impact than a censure by the law society membership, these legal and practical factors largely fall away. First, unlike the law society, the Canadian Bar Association does not exercise any statutory powers. Unlike the law society, the Association is not a public body whose decisions could be challenged under judicial review on the bases of parliamentary privilege or prosecutorial discretion. Likewise, statutory immunity granted to the law society would not constrain the Association. Thus, in the absence of defamatory language in the censure resolution, which should be fairly easy to avoid, there would be no legal recourse available against the Association. All this remains true even if it were the same group of lawyers acting through the Association as a vehicle instead of acting through the law society membership as a vehicle.

As for the practical factors weighing against law society discipline of the Attorney General, these would also apply less, if at all, to a censure by the Canadian Bar Association. Most importantly, there is no institutional capacity or appropriateness issue. As an advocacy organization, public positions on matters of concern to its members are squarely within its role.[78]

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77 Mulligan letter, *supra* note 25 [emphasis added]: "As a profession, *we have an obligation to uphold and protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons.* Failing to intervene where the Attorney General proposes to proceed in the manner he has would be *a failure to meet those professional obligations*.... We must respond *as a profession*."

78 Recall that Cayton, *supra* note 66 at 14, 5.3 refers to law society membership resolutions

With no formal relationship with the law society, any political motivations or appearances from a censure by the Canadian Bar Association would be difficult to attach to the law society. Similarly, it would be difficult for politicians to use a censure by the Association as a reason to decrease the powers of the law society. Finally, while a public denunciation may be outside the core priorities of the law society in pursuit of its statutory mandate to protect the public interest, statements about matters of public concern are part of the core functions of an advocacy organization such as the Association. As with the political factors, all of this remains true even if it were the same group of lawyers acting through the Association as a vehicle instead of acting through the law society membership as a vehicle.

As the primary advocacy organization for lawyers, it is entirely legitimate and expected for the Canadian Bar Association to take policy positions, even those with political implications. Indeed, the board of the BC Association of Social Workers censured Premier Campbell's Minister of Human Resources, former social worker Murray Coell, over cuts and other changes to welfare and other social programs.[79] Interestingly, according to the President of the Association, there were concerns that Coell was actively using his past as a social worker to promote acceptance of changes incompatible with the views of the profession: "given that social justice is fundamental to the values of the social work profession we are concerned that Minister Murray Coell appears to be using his background as a former social work practitioner to gain credibility while promoting legislation that is inconsistent with this basic tenet of social work, thus creating confusion for the public as to his real position."[80] In contrast, the impact of the Plant censure, and the controversy over it, is significant not just because a group of lawyers chose to censure him, but because they did so as the membership of the law society.

What explains why the Plant censure was pursued by the bar through the vehicle of the Law Society instead of the vehicle of the Canadian Bar Association? It appears that the BC branch of the Canadian Bar Association

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as creating "[t]his sense of the Society as an association rather than a regulator". Unlike the law society, which is a regulator, the Canadian Bar Association *is* an association.

79 Canada Newswire, "BC Social Workers Vote to Censure Minister of Human Resources, Murray Coell" (13 June 2002) [Newswire]; Craig McInnis, "Social workers debate censuring minister: Workers critical of changes to B.C. welfare system" *The Vancouver Sun* (13 June 2002) B2, 2002 WLNR 7998298.

80 Newswire, *supra* note 79, quoting Robert Kissner.

was seen as being too cooperative with Plant. On the morning of the initial April meeting of the LSBC membership, the President of the BC CBA Branch announced a joint statement with Plant on "constructive engagement".[81] At its own special meeting in June, the CBA membership approved a motion for that joint statement to be withdrawn.[82]

B. *Additional analysis: Collective decisions*

My focus in this article has been on the vehicle and form of accountability mechanisms for misconduct by the Attorney General, not the conduct to which the mechanism is applied. However, it is worth reflecting on whether the Attorney General should be held accountable, via any mechanism, for collective decisions by Cabinet. It was clear from the opponents of the Mulligan resolution that it criticized the Attorney General individually for a collective decision of Cabinet. Recall that the language of the resolution characterized the cuts as the decisions and actions of Mr. Plant specifically and alone: "*Mr. Plant* now plans to divert more than $48.5 million a year in funds collected from the special tax on lawyers' accounts away from the provision of legal aid;... *Mr. Plant's* plan to divert these funds will leave thousands of British Columbians who are poor, disadvantaged, and disproportionately female without legal representation".[83] Indeed, given the doctrine of cabinet secrecy, Plant may well have argued against these cuts.[84] In this sense, the censure does seem somewhat unfair, or at least problematically drafted. Contrast the Cowper motion, which clearly identifies that the Attorney General is acting as part of the Cabinet ("the Attorney General is sitting as a member of the Executive Council for the Province of British Columbia and is exercising a public office as a member of the Government of British Columbia") and disclaims "any criticism or

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81 *Benchers Bulletin* Issue 3, *supra* note 30 at 6.

82 *Ibid* at 6.

83 See above note 23 and accompanying text of the Margetts resolution [emphasis added].

84 See e.g. Mulgrew, *supra* note 27, quoting former BC Attorney General Brian Smith: "I had to make a lot of cuts that seemed momentous at the time so I have some sympathy with what Mr. Plant has gone through.... From what I understand, he fought [for more budget money at the cabinet table] and what you see is a lot better than what you would have got if you had someone of lesser experience, integrity and influence. That tells you how bad it would have been if he hadn't been there. He did his best." I note that Plant could have, but did not, choose to resign in order to repudiate his collective responsibility for the decisions of Cabinet. Thanks to a reviewer on this point.

attacks of a personal nature directed at the Attorney General". [85] Likewise, the Margetts motion refers to the funding decisions as decisions of the government, with no apparent involvement of the Attorney General: "The Government of British Columbia has embarked on a program of fiscal restraint that the Members of the Law Society believe will compromise the foregoing principles ["[e]qual access" to "an efficient and fair justice system"]."[86]

However, on further analysis, it is fair and reasonable to denounce the Attorney General for his role in these collective decisions. By accepting his appointment as Attorney General and continuing in that role, Plant lent his credibility and reputation to Cabinet and to the Premier. Moreover, it would not be a dramatic extension of the doctrines of cabinet solidarity and collective responsibility to suggest that just as the Attorney General as a member of Cabinet is responsible for all Cabinet decisions (unless or until they resign), they are likewise also responsible as a lawyer to the law society for all Cabinet decisions (unless or until they resign).[87] The growing tendency to view any minister, especially the Attorney General, as a powerless cog in the political machine should not be unduly reinforced. At a more basic level, the law society has no jurisdiction or moral authority over the Premier or members of Cabinet other than the Attorney General.[88]

IV. REFLECTIONS AND CONCLUSIONS

While alternative accountability mechanisms for the Attorney General are important, a censure by the law society membership is not, on balance,

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85 Cowper resolution, *supra* note 28 and accompanying text.

86 Margetts resolution, *supra* note 37 and accompanying text.

87 See e.g. Peter W Hogg & Wade Wright, *Constitutional Law of Canada*, 5th ed supp, vol 1 (Toronto: Carswell, 2025) at § 9:7: "All cabinet ministers collectively accept responsibility for cabinet decisions. This means that a cabinet minister is obliged to give public support to any decision reached by the cabinet, even if the minister personally opposed the decision within the cabinet and still disagrees with it. If the minister does decide to express dissent in public, then the minister should resign;"

88 With the controversial exception of Cabinet members – other than the Attorney General – who happen to be lawyers. See generally Andrew Flavelle Martin, "Legal Ethics versus Political Practices: The Application of the Rules of Professional Conduct to Lawyer-Politicians" (2012) 91:1 Can Bar Rev 1; Andrew Flavelle Martin, "The Limits of Professional Regulation in Canada: Law Societies and Non-Practising Lawyers" (2016) 19:1 Legal Ethics 169.

a good alternative. The censure of Attorney General Geoff Plant by the membership of the Law Society of British Columbia constitutes a creative but controversial alternative mechanism for accountability. It is fundamentally different than law society discipline. There are solid arguments that such a censure was appropriate and could be again in the future. In particular, a symbolic censure may be less controversial than discipline but still carry some moral authority, whether with the public, the profession, the Premier, or the Attorney General themselves. On the other hand, the risk of politicization is both substantial and unavoidable. Such a censure may also blur, especially to the general public, the distinction between the provincial bar as the law society membership as opposed to the law society as the regulator of the profession. As Salyzyn argues about law society direct democracy more generally,[89] these impacts would be detrimental to public confidence in both the legal profession and in the administration of justice.

A censure by the law society membership carries similar legal and practical risks as discipline by the law society and so is not a viable alternative mechanism to ensure the accountability of the Attorney General. To the extent that a censure is nonetheless warranted (or even necessary), it would be best if done through the vehicle of the Canadian Bar Association (or one of its branches) as opposed to the membership of the law society. Such a censure has less heft and credibility without the imprimatur of the law society, but it poses fewer legal and practical risks and problems to self-regulation and to public confidence in the law society as the regulator of the legal profession and public confidence in the administration of justice more broadly. Such a Canadian Bar Association censure would make clear the view of a major segment of the legal profession without entangling the law society in allegations of unseemly political attacks or attempts to control government lawmaking and financial decisions. In other words, such an Association censure would make clear the view of a major segment of the legal profession without entangling the law society. Other lawyers' groups – such as the Criminal Lawyers' Association or the Advocates' Society– could also appropriately adopt such a censure.

It is less obvious that the law society has moral authority – or authority of any kind – over the non-lawyer Attorney General. The Plant censure is therefore distinguishable from the proposed resolution at the 1994 LSBC

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89 Salyzyn, *supra* note 66.

Annual General Meeting, calling for the resignation of non-lawyer Attorney General Colin Gabelmann.[90] While accountability mechanisms are particularly necessary for the non-lawyer Attorney General, given that the law society has no regulatory or disciplinary powers whatsoever over them,[91] a censure by the law society membership is not a useful alternative. However, a censure by an advocacy organization such as the Canadian Bar Association may be appropriate.

A. *Directions for future research*

The Plant affair also suggests two important areas for future research. First, it reinforces questions of the role of the Attorney General as an *ex officio* bencher of the law society.[92] Recall that Mulligan emphasized Plant's obligations as a Bencher, although not in the text of the censure resolution itself.[93] Does the Attorney General share the legal obligations of all Benchers, or is this role purely symbolic? [94] Or is the desirable position somewhere in between these extremes? While symbols are important, they may also create serious issues of law and policy. It may well be that the Attorney General should no longer be an *ex officio* bencher. These questions are worthy of more attention – and the Plant censure is one data point that should be considered in that analysis.

The Plant censure also reinforces the need for further research on whether the Attorney General should and can face any accountability as a lawyer for policy decisions, both decisions by them individually and by Cabinet collectively on their recommendation, as well as what form that

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90 See above note 50 and accompanying text.

91 Martin, *Canadian Analysis*, *supra* note 4 at 130-131.

92 See e.g. *AG Can v Law Society of BC*, [1982] 2 SCR 307 at 335–6, 137 DLR (3d) 1: "[I]t must be remembered that the assignment of administrative control to the field of self-administration by the profession is subject to such important protective restraints as … the presence of the Attorney General as an *ex officio* member of the Benchers." See *Legal Profession Act*, *supra* note 7, s 4(a). Note that the under the more recent *Legal Professions Act*, SBC 2024, c 26, s 8(1), the Attorney General is not a member of the Board. Also, under s 223(1), the Attorney General is not a member of the transitional board.

93 See above note 32 and accompanying text.

94 For a discussion of the role of the Attorney General as an *ex officio* bencher, see e.g. Martin, *Canadian Analysis*, *supra* note 4 at 19-20 and 183, note 135, quoting *AG Can v Law Society of* BC, [1982] 2 SCR 307 at 335–6, 137 DLR (3d) 1, Estey J.

accountability can and should take.[95] As the Plant affair demonstrates, it may well be that an Attorney General may make or support political or policy decisions that the law society or the bar at large may oppose, or decisions that seem contrary to the spirit or even letter of the professional obligations of the Attorney General as a lawyer. These decisions may squarely affect the administration of justice as well as access to justice. The legal profession may well have informed views that differ from those of the Attorney General and the government. It may be legitimate for the law society to attempt to inform democratic decision-making as a stakeholder by sharing its views and expertise on issues affecting its statutory mandate. Nonetheless, it is unclear that the law society has or should have the legal power and institutional legitimacy to influence decision-making as a regulator by penalizing the Attorney General for these disagreements.[96] In particular, the law society has little if any democratic legitimacy. Thus, as with the Plant affair, some kind of action by an advocacy organization for lawyers may well be appropriate as an alternative accountability mechanism.

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95 See e.g. Martin, *Canadian Analysis*, *supra* note 4 at 111: "A potential third exception to disciplinary jurisdiction is the Attorney General's exercise of policy functions.... Given the protection of policy decisions in tort law, a credible argument could be made that such policy decisions – as well as policy advice – should also be beyond law society discipline."

96 See e.g. *ibid* at 111, giving legal aid funding as an example of such a policy decision: "For example, while a law society may have views about the appropriate design and funding of the legal aid system, such views would not be determinative and would certainly not be any more legitimate than those of the Attorney General or their ministry. The Attorney General's policy decisions about the law society including amendments to its enabling legislation, should even more so be protected from law society supervision."