

**Lawyer-Politicians and Law Societies: Navigating the Intersection between
Democracy and Accountability**

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I. Introduction

Lawyer-politicians are common in the Canadian political landscape. Sixteen of the twenty-three prime ministers Canada has had since Confederation practiced law before entering politics.¹ Given lawyers' proclivity for analytical reasoning and their immersion in legal thinking, the pursuit of a political career tends to be a logical progression from the practice of law.² However, a lawyer's transition to elected political office presents challenges to a law society's continued exercise of regulatory purview over lawyer-turned-politicians. The political bickering, adversarial zeal, and various dubious practices which characterize the political realm place law societies in a conundrum: how does a law society properly balance the need to give due regard to a lawyer-politician's democratic mandate while preserving the authority to hold them accountable for ethical breaches? I will argue that striking the proper balance between a law society's commitment to democracy and its jurisdiction over lawyer-politicians warrants the limiting of actionable complaints to conduct that has a clear nexus to the practice of law.

II. Law Societies and the Rationale for Regulatory Discipline: A Primer

The starting point to contending that law societies must calibrate their approach to complaints lodged against lawyer-politicians is recognizing the value of regulatory discipline and oversight. Law societies promulgate professional rules of ethical conduct to protect the legal profession's standing and appearance of respectability with the public. One manifestation of those rules is the requirement that a lawyer's private and professional life must reflect "favorably on the legal profession, inspir[ing] the confidence, respect and trust of clients and of the community."³ The importance of safeguarding the public's confidence in the legal profession is not merely some grandiose supposition aimed at romanticizing the practice of law: the entire architecture and machinery of the justice system actually

¹ Library of Parliament, "Prime Ministers of Canada," online: <https://lop.parl.ca/sites/ParlInfo/default/en_CA/People/primeMinisters>. See also Adam M Dodek, "Lawyers, Guns and Money: Lawyers and Power in Canadian Society" (2010) Social Science Research Network at 17.

² Ralph Chatoor, "Making the Transition from Lawyer to Lawyer-Politician in Canada: An Exploratory Study." (2012) 35:2 Manitoba Law Journal at 87– 88.

³ The Law Society of Alberta, *Code of Conduct*, Alberta: LSA, 2023, Ch 2.1, commentary 2.

relies on the citizenry's willingness to have sufficient respect for legal actors such as lawyers. As one legal ethics scholar puts it, lawyers have a "near monopoly over the delivery of legal services,"⁴ giving lawyers a crucial role in the administration of justice. It is therefore sensible that law societies would have a vested interest in guarding against lawyers' misconduct that would tarnish the profession's reputation.

The desire to enhance the profession's reputation is particularly heightened when considering the disproportionate negative perception of lawyers compared to other occupations. As a 2012 Ipsos poll found, "lawyers were considered less trustworthy than airport security guards, plumbers and even journalists — and only slightly ahead of auto mechanics and taxi drivers."⁵ In Gavin Mackenzie's *Lawyer and Ethics: Professional Discipline and Ethics*, he argues that lawyers' bad behavior in both their professional and personal lives is partly responsible for the negative public perception towards the profession:

More than ever before, the qualities associated with lawyers include a preoccupation with money; egocentricity...patronizing, condescending, arrogant; and tendencies to turn everything into a debate to be won.... In the view of many members of the public, [lawyers] are mercenaries rather than patriots.⁶

In addition to such negative attributes associated with lawyers, the public has increasingly viewed members of the profession as "parasites, hired-guns of large corporations...motivated by greed and neglect of the public good."⁷ The desire to rehabilitate and reinvigorate public trust in the legal profession sheds light on why law societies require lawyers to adhere to robust ethical rules.

This imperative to preserve the public's confidence in the profession is the same justification for why Canadian law societies adamantly assert disciplinary jurisdiction over lawyer-politicians. The *Model Code of Professional Conduct*, along with the *Code of Conduct* law societies developed for each

⁴ Dodek, *supra* note 1 at 4.

⁵ Tristin Hopper, "Campaign aims to boost Canadians' plummeting trust in lawyers, but is that even possible?", *The National Post* (2013), online: <<https://nationalpost.com/news/canada/campaign-aims-to-boost-canadians-plummeting-trust-in-lawyers-but-is-that-even-possible>>.

⁶ Gavin Mackenzie, *Lawyer and Ethics: Professional Discipline and Ethics*, 4th ed. ed (Thomson Carswell, 2006) at 2.

⁷ Paul Simon, "Ethics in Law and Politics" (1996) 28:2 Loy U Chi LJ at 225.

respective provincial jurisdiction, provide that lawyer-politicians are not exempted from acting ethically:

A lawyer who holds public office must, in the discharge of official duties, adhere to standards of conduct as high as those required of a lawyer engaged in the practice of law.⁸

The law societies' determination to hold lawyers and lawyer-politicians alike to the same rules of professional conduct "springs from the lawyer's status as a professional person, plac[ing] the lawyer upon a societal pedestal."⁹ More importantly, considering that lawyer-politicians are more visible to the public eye given their public office, the likelihood of bringing the profession into disrepute is elevated. As Dodek observes, "if we begin with the three branches of government – executive, legislative and judicial – lawyers have a monopoly over one branch (judicial), dominance over another (executive) and prominence in another (legislative)."¹⁰ From this line of reasoning, therefore, a lawyer-politician who voluntarily decides to keep his membership in the law society *cannot* disown the behavioral standards expected of all lawyers.

Parallel to the view of Canadian law societies, legal ethics expert Andrew Martin staunchly contends that lawyer-politicians cannot simultaneously keep their law license and check their professional ethical duties at the door upon taking a political office. After all, lawyers who assume elected public office "voluntarily agreed to be held to a higher standard of conduct than [they] otherwise would be."¹¹ Hence, opting to retain one's privilege to be a member of a law society will necessarily entail *the same* professional and ethical duties expected of those practicing law who do not hold public office.

⁸ The Federation of Law Societies of Canada, *Model Code of Professional Conduct*, Ottawa, 2023, Ch 7.4-1. See also: Law Society of Alberta, *supra* note 2 at Ch 7.4-1.

⁹ Beverley G Smith, *Professional Conduct for Lawyers and Judges*, 4th ed. ed (Maritime Law Book, 2011) at ch.11, commentary 2.

¹⁰ Dodek, *supra* note 1 at 17.

¹¹ Andrew Flavelle Martin, "Legal Ethics Versus Political Practices: The Application of the Rules of Professional Conduct to Lawyer-Politicians" (2012) 91:1–3 Canadian Bar Review at 25.

III. Law Societies and Commitment to Democracy

While all lawyer-politicians should be subject to the disciplinary jurisdiction of their respective law societies, preserving a law society's allegiance to democracy calls for a limiting of actionable misconduct to ethical violations that are directly related to legal practice. Generally, law societies have a broad assertion of regulatory oversight over a lawyer's life, including conduct which takes place in a lawyer's private life that has no relationship with the practice of law. For instance, when a lawyer is convicted of an indictable offense, the law society has authority to automatically suspend the lawyer's license, regardless of whether the offense was committed in the course of practicing law.¹²

When addressing complaints lodged against lawyer-politicians, however, a law society must acknowledge and adapt its rules to reflect its commitment to the democratic process. In addition to ensuring all lawyers are "soldiering on in the cause of justice"¹³ a law society has an obligation to uphold reverence for democracy. The importance of democracy figures prominently in the Law Society of Alberta's *Code of Conduct*, recognizing on its preface that "lawyers have traditionally played a vital role in the protection and advancement of individual rights and liberties *in a democratic society*."¹⁴ Significantly, therefore, the law society takes cognizance of their role as an institutional guardian of democracy.

An inherent aspect of honoring and safeguarding democracy is having profound respect and confidence in the electoral process. In *Reference re Secession of Quebec*, the Court articulated the inherent relationship between the principle of democracy and having due regard for the will of the Canadian voters:

The consent of the governed is a value that is basic to our understanding of a free and democratic society...It is the law that creates the framework within which the "sovereign will of the people" is to be ascertained and implemented. *To be accorded legitimacy, democratic institutions...must allow for the participation of, and accountability to, the people, through public institutions created under the Constitution.*¹⁵

¹² *Legal Profession Act*, RSA 2000, c L-8, s 83(7).

¹³ *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at 1270, 121 NR 1.

¹⁴ *Code of Conduct*, *supra* note 3 at 1 [emphasis added].

¹⁵ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 at para 67, 161 DLR (4th) 385.

The Court's remarks underscores the significance of respecting the will of the electorate in preserving democracy. It follows then that the law society's allegiance to democracy necessarily requires considerable deference to voters' will when it comes to holding lawyer-politicians accountable. Indeed, preserving and defending democracy naturally includes having confidence in the voters' ability to vote out errant public officials, thereby cleansing the political landscape of unethical individuals. Law societies must thereby carefully calibrate its zealousness when assessing whether it should either act on a complaint or move to discipline a lawyer-politician, dispelling the perception that the will of voters is being sidelined. As the Supreme Court of Canada eloquently puts it, "in a constitutional democracy such as ours, protection from legislation that some might view as unjust or unfair properly lies...in the ballot box."¹⁶

The Law Society of Alberta's decision to proceed with a full disciplinary hearing of the complaints against Tyler Shandro, a Calgary-based lawyer who served as Alberta's Minister of Health and Minister of Justice, illustrates how a law society runs the risk of being perceived to undermine democracy. One of the complaints pertained to an alleged tense exchange between Minister Shandro and Dr. Mukarram Zaidi on the doctor's driveway. Dr. Zaidi states that Shandro, who was Minister of Health at the time, came to his personal property to intimidate him for posting a photo on social media which mocked and criticized the Minister.¹⁷ Another complaint against Shandro relates to an incident in which he obtained the personal phone numbers of two doctors through Alberta Health Services, contacting them after working hours following a protest they held at a hospital event. While it could be argued that the Minister's behavior in both instances was indicative of poor judgment and a lack of

¹⁶ *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para 66.

¹⁷ Dr. Zaidi posted a mean-spirited meme which includes a photo of Shandro with a cartoon bubble caption stating, "So every Albertan that I can kick off health care is another client we can sign up for Vital Partners! We're going to be RICH!" The meme arose from Dr. Zaidi's allegation that there was conflict of interest involving Shandro, his wife Andrea Shandro and a supplementary health benefits corporation which they co-own: See Jonny Wakefield, "Shandro hearing Day 1: Doctors testify about tense exchanges with Alberta's then-health minister", (2023), online: <<https://edmontonjournal.com/news/local-news/shandro-hearing-day-1-doctor-testifies-about-exchange-with-albertas-then-health-minister>>. See also Charles Rusnell, "Alberta health minister accused of berating Calgary physician, 'intimidating' citizens", *CBC News* (2023), online: <<https://www.cbc.ca/news/canada/edmonton/alberta-minister-tyler-shandro-behaviour-vital-partners-1.5511288>>.

political foresight, it is incumbent upon the law society to refrain from intervening in such matters, allowing the voters to decide on election day whether to punish Shandro for his political misbehavior.

It is worth emphasizing that none of the complaints pertained to Minister Shandro's legal practice nor to his behavior towards a legal client. By the same token, none of the doctors who complained to the Law Society of Alberta were Shandro's legal clients to which he owed the core professional obligations under the *Code of Conduct* such as the duty of confidentiality and the duty to act as a trusted fiduciary. Rather, the incidents fell squarely within Minister Shandro's public conduct and political activity in his capacity *as a politician*. The ostensible political dynamic from which these law society complaints arose should be sufficient for the law society to abstain from exercising its disciplinary jurisdiction over Shandro, owing to the danger of being perceived as imposing external judgments on the electorate's choices. As journalist Jamie Sarkonak puts it, the Shandro disciplinary hearings raises the question of whether it is "the regular masses [which] ultimately decide who should run [the province]"¹⁸ or the "lawyerly star chamber...not elected by the general public."¹⁹ Sarkonak's comment, though cynical, highlights the tension a law society creates when it decides to weigh in on an issue that has little to no clear relation to a lawyer-politician's *legal* practice.

Some might retort that lawyer-politicians cannot have it both ways: if they choose to engage in the "obfuscation, misleading statements, name-calling, and other ethically dubious practices that are commonly accepted as the status quo of the political arena,"²⁰ they must relinquish their license to practice law. After all, as the Manitoba Court of Appeal puts it, "the practice of law is a privilege"²¹ contingent on one's ability to meet the stringent rules of the lawyers' regulatory body. Professor Martin, arguing in favor of equal rules for professional conduct expected of lawyers and lawyer-politicians alike

¹⁸ Jamie Sarkonak, "Alberta's law society usurps public by going after Tyler Shandro", *The National Post* (2023), online: <<https://nationalpost.com/opinion/jamie-sarkonak-albertas-law-society-usurps-public-by-going-after-tyler-shandro>>.

¹⁹ *Ibid.*

²⁰ *Martin*, *supra* note 11 at 2.

²¹ *Doolan v Law Society of Manitoba*, 2016 MBCA 57 at 83.

outside legal practice, points out that lawyer-politicians chose to keep their law license. And, as such, those who “find these ethical constraints unacceptable are free to surrender their licenses.”²²

To buttress this argument, Prof. Martin refers to cases such as *Yoshimura* and *Re Bayly* where the fact that the lawyer held a political public office did not dissuade the law society from taking disciplinary measures. In *Yoshimura*, the Supreme Court of the State of Hawaii upheld the Hawaii Bar's Office²³ suspension of Mr. Yoshimura—a city councilor who happened to be a lawyer. The state bar recommended Councilor Yoshimura's suspension for lying both to the media and to the state bar's ethics committee regarding his condition when his car struck another vehicle. In reality, Councilor Yoshimura already made an admission to the police that he was driving impaired when he collided with the vehicle. The Supreme Court of Hawaii strongly castigated Councilor Yoshimura's deception, stating that “[w]e view a lawyer's misrepresentations as a matter of extreme gravity, particularly when the lawyer holds public office.”²⁴ At first glance, this decision is persuasive authority supporting the view that lawyers, regardless of holding political office, must strictly adhere to the profession's ethical rules.

The problem with this example is that Mr. Yoshimura, in addition to lying to the media, *also lied* to the state bar, bringing his misconduct closer to the practice of law. In stark contrast to Councilor Yoshimura, Minister Shandro's questionable conduct did not involve deceiving, misleading, or obstructing the law society's investigatory function. Shandro's confrontation with Dr. Zaidi and his obtaining the personal contact information of two other doctors without their express consent bear little resemblance to Shandro's legal practice. If anything, Shandro's conduct is arguably more aligned within the realm of scandalous political behavior rather than his professional obligations as a lawyer *vis-a-vis* a legal client or the law society. As his conduct was closer to his political activity as a cabinet minister, the Law Society of Alberta's allegiance to democracy ought to have compelled the institution that addressing this string of incidents should be best left to voters come election time.

²² *Martin, supra* note 11 at 4.

²³ The Hawaiian Office of Disciplinary Counsel is the equivalent of a provincial law society in the Canadian context. It has jurisdiction to discipline registered lawyers for ethical infractions.

²⁴ *Office of Disciplinary Counsel v Yoshimura*, ODC 99-511-6341, (Hawaii Supreme Court: 2002).

Minister Shandro's situation is also dissimilar to the facts in *Bayly (Re)* where Mr. Bayly, a political advisor to the Northwest Territories government, stood idly by as the Deputy Premier recorded his phone conversation with an ethics commissioner. The Northwest Territories Law Society held that Mr. Bayly's failure to inform the commissioner that she was being recorded was "unbecoming [of] a barrister and solicitor."²⁵ The Law Society proceeded with a full hearing on the ethical infraction and found Mr. Bayly guilty. However, the persuasive value and the applicability of this precedent to Minister Shandro's circumstance is tenuous at best as Mr. Bayly's public office was an *appointed* one. As the Law Society readily admitted, Mr. Bayly's position at the government was an "at pleasure appointment,"²⁶ making him accountable only to the Premier of the Northwest Territories.

Given that Mr. Bayly did not represent any constituency that could impose electoral consequences for his misconduct, the mechanisms of oversight provided by the law society was likely the primary, if not the only, means through which he could be held accountable. The salient point is that the Northwest Territories Law Society's decision to conduct full hearings on Mr. Bayly's conduct, and to cite him for the ethical breach, did not run the risk of riding roughshod over the will of the electorate in that jurisdiction. Unlike Mr. Bayly, Minister Shandro has a specific democratic mandate. As a member of the Alberta Legislative Assembly, he is directly accountable to his constituency, reducing the necessity for the law society's intervention when he behaves in a morally and ethically questionable manner that is unrelated to the practice of law. The Law Society of Alberta thereby courts the hazard of being perceived as circumventing the democratic process for entertaining those complaints.

Unlike *Yoshimura* and *Re Bayly*, the Yukon Law Society's decision in *Kimmerly* is clearly more analogous to the surrounding context in Minister Shandro's case. *Kimmerly* stands for the proposition that a law society should ensure that a lawyer-politician's public misconduct is sufficiently tethered to their legal practice before prosecuting the individual for behaving on the margins of expected ethical

²⁵ *Bayly (Re)*, 2002 CanLII 53208 (NWT LS).

²⁶ *Ibid.*

conduct. The central issue in *Kimmerly* was whether Roger Kimmerly, Yukon's Minister of Justice from 1985–1989, deserved the law society's censure. Minister Kimmerly criticized a sitting judge who covered a newly-minted territorial coat of arms mounted behind the judge's bench using a lawyer's black robe.²⁷ The judge, deeply skeptical of any attempts to encroach on judicial independence, reasoned that the crest was "a symbol of the government and, as a judge, I must not be seen as a servant of the Yukon government."²⁸ Speaking to a local news outlet, Minister Kimmerly called the judge's actions "silly" and the "kind of thing that brings the court and the judiciary into public ridicule and contempt."²⁹ His public criticism of a sitting judge prompted a complaint against Minister Kimmerly to the Law Society of Yukon, seeking to deem his conduct worthy of a formal reprimand.

The Law Society of Yukon declined to discipline Mr. Kimmerly, noting that a lawyer-politician's role must be given utmost consideration before proceeding with formal disciplinary action:

A member holding public office is bound by the same standards of professional conduct required of a practicing lawyer. On the other hand, the Committee must not overlook the position in which Mr. Kimmerly found himself. He was an elected member of the legislature and the Minister of Justice, the one person in government obliged to respond in some manner to the actions of the Court in shrouding the Yukon Coat of Arms. One can argue now that softer phrases might have been chosen by the member, but the Committee is not unmindful of the realities of political life.³⁰

The point to stress is that the Law Society of Yukon took notice of Kimmerly's political and democratic mandate. Central to the Law Society's decision is the imperative to balance Kimmerly's ethical obligation to encourage respect for the administration of justice with his "freedom to make fair and reasonable comments in the exercise of his right to speak out"³¹ in defense of his government.

Such insistence on giving lawyer-politicians greater leeway to behave in a manner that would otherwise offend their ethical obligations should be instructive in the ongoing Law Society of Alberta's complaint proceedings against Minister Shandro. Minister Shandro testified that he and his family were

²⁷ Ronald Veale & Andrea Bailey, "The Crest Affair: Judicial Independence and Yukon's Supreme Court" (2020) 50 Northern Review at 222.

²⁸ *Ibid* at 223.

²⁹ *Ibid* at 220.

³⁰ *Law Society of Yukon v Kimmerly*, [1988] LSDD No 1 (QL).

³¹ 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 Law Review at 282.

targeted by “cyberbullying”³² and “vicious personal attacks”³³ which included the mean-spirited meme Dr. Zaidi posted and being called a “liar and a cheat” at a hospital event.³⁴ More importantly, as a cabinet minister, Minister Shandro had a vested interest in defending his government’s policies and actions which prompted those doctors to criticize him to begin with. Although, like what the Law Society of Yukon said about Minister Kimmerly, Shandro’s conduct “may have been impolite and impolitic,”³⁵ demonstrating poor foresight, and “an incredibly thin skin,”³⁶ it bears little to no relationship to his ability to competently practice law. It follows that a law society committed to upholding the principle of democracy and, by extension, the will of the electorate would not be justified in taking disciplinary action in such a situation.

IV. Conclusion

Lawyer-politicians navigate an arena where the risk of violating their law society’s *Code of Conduct*’s rules on civility are significantly greater than if they were merely practicing law. Although lawyer-politicians must thereby remain subject to the disciplinary authority of their law society, the idea that a law society should discipline them as they would any other lawyer is misguided and injudicious. The democratic process serves as a powerful mechanism for holding lawyer-politicians accountable for public improprieties, unethical behavior, and expedient politics. As exemplified in Minister Shandro’s case, he lost his legislative assembly seat in no small part due to the publicity his political scandals and miscalculations attracted.³⁷ By taking disciplinary action only when the lawyer-politician’s misconduct is directly relevant to their legal practice, law societies simultaneously retain their disciplinary jurisdiction over lawyer-politicians and reaffirm their place as a custodian of democracy.

³² Wakefield, *supra* note 17.

³³ Rusnell, *supra* note 17.

³⁴ Bill Graveland & Paige Parsons, “Alberta doctors tell law society hearing that interactions with Tyler Shandro were intimidating | CBC News”, *CBC News* (2023), online: <<https://www.cbc.ca/news/canada/edmonton/tyler-shandro-law-society-alberta-former-health-minister-1.6724671>>.

³⁵ Veale and Bailey, *supra* note 27 at 228.

³⁶ CTV News Staff, “Critics say Alberta health minister used his position to obtain phone numbers for doctors”, *CTV News* (2023), online: <<https://edmonton.ctvnews.ca/critics-say-alberta-health-minister-used-his-position-to-obtain-phone-numbers-for-doctors-1.4882389>>.

³⁷ Michelle Bellefontaine, “Recount confirms UCP’s Tyler Shandro defeated by NDP candidate Diana Batten”, *CBC News* (2023), online: <<https://www.cbc.ca/news/canada/edmonton/recount-confirms-ucp-s-tyler-shandro-defeated-by-ndp-candidate-diana-batten-1.6866615>>.

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