

# Regulatory Objectives of the Law Society of Alberta

## Executive Summary

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## Regulatory Objectives of the Law Society of Alberta

### Statement of Regulatory Objectives

The core purpose of the Law Society of Alberta (“Law Society”) is to regulate the legal profession in the public interest.

The Law Society views its core purpose as an active obligation and duty to uphold and protect the public interest in the delivery of legal services. The public interest, as it applies to the work of the Law Society, will be upheld and protected through the following regulatory objectives:

- a) Protect those who use legal services;
- b) Promote the independence of the legal profession, the administration of justice and the rule of law;
- c) Create and promote required standards for the ethical and competent delivery of legal services and enforce compliance with those standards in a manner that is fair, transparent, efficient, proactive, proportionate and principled;
- d) Promote access to legal services; and
- e) Promote equity, diversity and inclusion in the legal profession in the delivery of legal services.

The Law Society will have regard for these regulatory objectives when discharging its regulatory functions.

### Regulatory Purpose of the Law Society – Regulate in the Public Interest

1. In Alberta, the legal profession is self-regulating, meaning a board (called the Benchers) consisting of 20 lawyers elected by the legal profession and four appointed members of the public governs the affairs of the Law Society. The Benchers establish the *Rules of the Law Society of Alberta* (the “Rules”) that regulate lawyers in the province. The Law Society receives the authority to regulate the legal profession through legislation called the *Legal Profession Act*<sup>1</sup> (the “Act”), but otherwise the Law Society regulates the profession independently of the government.
2. The core purpose of the Law Society is to regulate the legal profession in the public interest. The Law Society sees this as an active duty to uphold and protect the public interest in the delivery of legal services. This requires the Law Society to put the interests of the public ahead of the interests of the lawyers it regulates.
3. The “public interest” refers to society at large. The actions that lawyers take have the potential to affect not only the clients they represent, but also society as a whole. Likewise, many decisions and actions taken by the Law Society have the potential to impact the societal view of the legal profession and the profession’s role in the legal system.

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<sup>1</sup> Revised Statutes of Alberta 2000 Chapter L-8.

## What are Regulatory Objectives?

4. In order to better articulate how it will regulate the legal profession in a manner that upholds and protects the public interest, the Law Society has developed a set of regulatory objectives that it will use as a guide for all of its activities. In other words, the regulatory objectives of the Law Society set out the purpose and parameters of lawyer regulation.
5. This executive summary is intended to assist both those regulating the legal profession and those being regulated to better understand the relationship between the regulator and the profession and its importance to the public interest. It is also intended to provide clarity to the public to understand the role of the Law Society, the purpose of lawyer regulation, and how that regulation relates to them.
6. The Law Society will use these regulatory objectives as a guide when making regulatory, governance and operational decisions. However, these regulatory objectives will not serve as a checklist of objectives that each decision or initiative of the Law Society must achieve. That will not be possible in every case, given limitations imposed by resources, time, the mandate of the Law Society and other factors outside of the Law Society's control. In fact, there may be times when two or more of the regulatory objectives conflict with one another. In these cases, the Law Society will weigh the costs and benefits of aligning with each objective.
7. The regulatory objectives have not been ranked and appear in no particular order. There is a great deal of overlap between the objectives, and they should be read as a collective whole rather than as separate objectives. Together, they illustrate the Law Society's understanding of its mandate to regulate the legal profession in the public interest.

## Regulatory Objectives of the Law Society

### a) Protect those who use legal services

8. People often seek legal services in times of distress, making them vulnerable and sometimes unable to discern whether they are receiving quality services. To protect those accessing the services of a lawyer, the Law Society has put several proactive measures in place through standards and programs for lawyers to promote ethical and competent practice. The Law Society will strive to ensure its standards for legal service providers continue to be appropriate and effective, through an understanding of the current legal services marketplace and the risks to those who use legal services.
9. Legal services are increasingly being delivered by different types of providers, and through an array of different means, and the Law Society recognizes that it has a role to play in ensuring that the public understands the differences in the options available to them, and the protections or risks that come with accessing legal services in different ways. Where the Law Society believes it is in the public interest to do so (meaning, it would not cause harm) it will work with non-traditional providers to ensure the services they provide to the public are safe.

**b) Promote independence of the legal profession, the administration of justice and the rule of law**

10. The existence of an independent legal profession, free from government influence, supports a rule of law culture which in turn supports the proper administration of justice.<sup>2</sup> These are crucial elements of a free and democratic society. The rule of law requires that both government officials and citizens be bound by the law and act consistently with the law.<sup>3</sup> The administration of justice refers to the public's confidence in the laws, legal institutions and public authorities of society. It is in the public interest to have an effective legal and court system, that supports the concept of equal justice for all within an open, ordered and impartial system.
11. The Law Society's independence from the government provides a check and balance in the legal system to ensure that transparency, accountability and the rule of law are upheld, including in instances where citizens find themselves in opposition to the government. There can be no functional judiciary without an independent arm of lawyers who act free of political pressure and motivations.<sup>4</sup>
12. Lawyers and legal regulators have an ethical duty to make efforts to improve the administration of justice and to maintain public confidence in the overall effectiveness of the legal system.<sup>5</sup> The Law Society carries out its regulatory duties in a manner consistent with the rule of law. It takes opportunities to support the rule of law and improve the administration of justice when they arise.

**c) Create and promote required standards for the ethical and competent delivery of legal services and enforce compliance with those standards in a manner that is fair, transparent, efficient, proportionate, proactive and principled**

13. One of the primary roles of the Law Society is to ensure that the legal services provided by lawyers in Alberta are ethical and competent. The *Act* provides that the Benchers may make Rules to set requirements and standards for the profession and that the Law Society may impose a sanction on a lawyer for failing to meet those standards. The Law Society takes proactive steps to educate and assist lawyers in achieving the goals of competent and ethical practice and the vast majority of lawyers comply with these standards. In instances where lawyers fall short, the Law Society has mechanisms to impose sanctions and to demonstrate to the profession the importance of adhering to their professional requirements.
14. The Law Society aims to enforce these standards in a manner that is fair, proportionate, efficient, transparent, principled and proactive. The purpose of disciplining lawyers is to protect the public, the legal profession, and legal institutions against lawyers who have

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<sup>2</sup> Terry et al., *supra* note 2 at pp. 2735-2736.

<sup>3</sup> Brian Tamanaha, *A Concise Guide to the Rule of Law*, (St. John's University School of Law: 2007) at p. 3.

<sup>4</sup> *R v Sussex Justices*, [1924] 1 KB 256.

<sup>5</sup> Law Society of Alberta, *Code of Conduct* (Calgary: April, 2018) at s. 5.6. See also Solicitor's Regulation Authority, *Approach to regulation and its reform: Policy statement*, (Solicitor's Regulation Authority: 2015) at pp. 2-3.

demonstrated an unwillingness or an inability to comply with professional standards.<sup>6</sup> This is another tool to support the rule of law, the proper administration of justice and the independence of the legal profession, while also protecting members of the public who might be harmed by incompetent legal services or conduct unbecoming of a lawyer.

**d) Promoting access to legal services**

15. Another important aspect of upholding the rule of law and the proper administration of justice is the availability and accessibility of legal services. It is in the public interest for all people to have access to the legal services they require.<sup>7</sup> If the public does not have access to legal services or to comprehensible and reliable information about the legal system, their confidence in the system will be eroded. Access to legal services is most commonly related to the cost of legal services, but involves many other issues relating to availability, quality, and barriers caused by factors such as geography, language, literacy, disability and cultural differences.
16. The Law Society supports non-profit organizations and lawyers who facilitate access to legal services and public legal information and education initiatives. It collaborates with other stakeholders to look for ways to improve access to the legal system overall and encourages innovative and proportionate approaches to the delivery of legal services. The Law Society works to make its own processes accessible and easy to comprehend. Finally, the Law Society strives to maintain an understanding of the changing legal services market, from the perspective of both those providing and using legal services, to better understand whether its regulatory requirements are creating unnecessary barriers to legal services.

**e) Promoting equity, diversity and inclusion in the legal profession and in the delivery of legal services**

17. The Law Society believes it is in the public interest for the legal profession to be representative of the population it serves. This is connected to accessibility of legal services, in that the public should have a meaningful choice in who represents them. This is particularly true in the case of groups who might be underrepresented in society, have cultural or language barriers to working with certain lawyers or firms, or simply feel more comfortable having someone who understands their culture representing them, particularly in cases where that person might be in a vulnerable legal situation.
18. The Law Society will look for ways to remove regulatory barriers to entry, retention and advancement in the legal profession and ensure a level playing field for all who seek to serve the public as part of the legal profession. The Law Society will also consider ways to be more inclusive in its own processes, consulting with underrepresented or vulnerable groups in the public and the profession to better understand how cultural differences may have an impact on interactions with the Law Society. The Law Society will promote cultural competence both within the organization and in the profession.

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<sup>6</sup> Charles Wolfram, *Modern Legal Ethics* (West Publishing: 1986) at p. 79.

<sup>7</sup> See Brent Cotter, *Thoughts on a Coordinated and Comprehensive Approach to Access to Justice in Canada*, (2012) 63 U.N.B.L.J. 54 at p. 67; and Lucinda Vandervort, *Access to Justice and the Public Interest in the Administration of Justice*, 63 U.N.B.L.J. 125 at p. 125.