Patterns of Ethical Reasoning in the Protection of the Public Interest - A Case Study in Legal Ethics

J. Archibald
McGill University

Introduction

Central to any professional body is its role in protecting the public against professional errors and the abuse of power by practicing professionals. Legal recourse against professionals alleged to have violated rules of professional practice or codes of ethics follows a communication pattern that allows parties in conflict to present arguments before putatively disinterested tribunals comprised of peers, laypersons, or both as part of a deliberative decision-making process.

To protect public interest, governments tend to put in place rules of professional conduct that provide consumers of professional services with a means of recourse against deontological errors. Legal frameworks define possible parties to such disputes and procedures to follow in order to gain redress in cases of alleged ethical misconduct. In some jurisdictions, this is left to self-regulatory professional organizations while allowing for appeals through judicial or administrative processes. This model presents some dangers in terms of the public's right to unbiased protection in that the boundary between self-regulation and self-interest is sometimes nebulous. In jurisdictions where a profession such as law is entirely self-regulated, one may argue that the system is biased. Benjamin H. Barton has metaphorically commented, "Foxes make poor custodians of henhouses" (Liptak, 2007, p. 1).

Central to this discussion is the relationship between self-interest and public interest. In theory, professionals licensed to practice in the public domain have a responsibility to act in the public interest while representing the interests of their clients. Practicing lawyers are, in this sense, officers of the court and are duty-bound to bring no harm to either the state or their clients. In doing so, they must forego their own self-interest with the exception of the right to be paid for their services and the need to establish an area of recognized expertise. To strike a balance between these two poles is to define the nature of legal practice. Should the practice lead to alleged harm, those who suffer from deleterious action on the part of a practicing professional have a right to seek redress from their grievance under the prevailing rules regulating the practice of law.

It is often assumed that the requirements for entry are necessary since they theoretically limit access to professional practice by virtue of the fact that new entrants have been screened through a variety of selection processes foreseen in the structure and governance of the profession. More specifically, these barriers to entry include, but are not limited to, educational requirements, admissions examinations, mentorship programs, internships, orientation programs and compulsory or reported continuing

professional up-grading. It is generally assumed that new entrants have been sensitized to ethical issues and the expected levels of deontological behavior no matter what the jurisdiction.

It could be assumed that lawyers are decent, publicly spirited folk. Unfortunately, it appears that public esteem for the profession is low; moreover, the number of cases brought before disciplinary committees of the Bar in various jurisdictions seems to be on the increase, and backlogs of appeals in such cases have created procedural logjams. None of this helps to enhance the image of decency that lawyers would like to foster. The barriers to entry noted above seem to have done little to resolve what appears to be an endemic problem. Indeed, some contend that the legal corporatism spawned by the "brothers" of the Bar has exacerbated the problem (Barton, 2001).

Barton cites a number of scholarly works indicating that the texts regulating professional behavior, through codes of ethics, review procedures, and the like have been crafted by members of the legal community whose unstated agenda may indeed be self-interested collective protectionism rather than a will to protect the public interest. Such views hold that this form of self-interest is no more than a masked procedure designed to protect a socio-economic elite (Auerbach, 1976) to the benefit of its own members. A preliminary conclusion is that present forms of ethical regulation are clear evidence of a market failure in the profession. As a result, calls for reform are legion (Wilkins, 1992; & Rhode, 2000). Of particular interest is Deborah Rhode's view that regulation in the legal profession has escaped accountability to client publics. Indeed, she holds that this heretofore inwardly focused profession has "compromise[d] the public interest" (Rhode, p. 50) and must now be held accountable to the public in a more transparent manner. This is seen as one of her major contributions to the debate on legal ethics in the North American context (Martyn, 2001).

Reforming a Flawed Process

Calls for reform go to the very basics; many feel that the initial barriers to professional practice, the law school curriculum, and the bar examination itself do little to ensure that the apprentice lawyer masters the ethical aspects of professional practice. More attention is generally paid to technical updating issues in continuing legal education because of the law's dynamic evolutionary nature. Ethics seems to be a neglected fundamental in both initial and continuing legal education, and this at the expense of the public interest. The problem is compounded in self-regulating bodies whose members come from the same professional body.

The protection of the public and, consequently, client protection against unethical practices are recognized objectives of legal practice; however, it may be asked how the attainment of these objectives is measured and if third disinterested parties should have a role to play in this measurement. Basic legal education and admissions examinations measure potential, not the practicing lawyer's ability to meet the objectives set *ab initio*. Furthermore, continuing legal education does little to ensure on-going compliance.

Members of the Bar responsible for maintaining the ethical behavior of their licensed peers are not above suspicion. Indeed, "regulation of attorney discipline is a low priority for bar associations" and

suffers from neglect, underfunding, crushing backlogs, and excessive secretiveness (Barton, 2003, pp. 1208-1209). This hardly bodes well for legal professionals whose public image is increasingly embattled and in whom public confidence is on the wane. Consequently, any reform initiative must address a host of issues ranging from an ethos of benign neglect to a credo of blatant self-interest at the expense of the public. Lawyers from the Inns of Court to today's Schools and Faculties of Law have been educated, licensed, admitted to practice, and judged by their own "brothers" with little or no external review. This trend carries through to the disciplinary process where ethical issues come to the fore.

During the post-certification period, lawyers admitted to the Bar are in a position to offer their services to the public; it follows that this public deserves some degree of protection from professional errors and abuse. Client protection becomes an issue not only of public order, but also of internal standards of ethical practice no matter whether the client is an employer in the case of those acting as in-house counsel to companies and other organizations, corporations, governments or individuals requiring legal services in both civil and criminal matters.

Client protection is no longer a problem contained within the borders of one particular state. Globalization of client interests and, indeed, of the practice of law itself has had a profound structural impact on professional practice. One case may involve several jurisdictions at the same time and call into play different or competing standards of ethical behavior. Two sectors particularly sensitive to this evolutionary change are international investment banking and international media; legal practitioners must exhibit multifaceted ethical competence in such situations. Standards of client protection are vague in the post-certification period given the assumption that the initial barriers to entry have succeeded in weeding out those who have not learned and internalized the summarily taught principles of ethical practice. It is often assumed that clients – corporate, governmental, or private – are what marketing specialists call "programmed customers" in that they know how to choose the best professionals in the market conditions familiar to their own organizations or lives. Current experience tends to indicate that these consumers are not as well "programmed" as one might have assumed, and that they deserve a higher level of client protection. The backlog of deontological cases noted above indicates that these basic lessons need reinforcement and should benefit from a renewed commitment on the part of the Bar and public authorities to protect the public.

Designing the Framework

The prevailing model for adjudicating ethical cases remains inward looking in that peers are judged by their own peers both in the first instance and upon appeal. This is known as the self-regulating model. For the purposes of this reflection, let us now turn to a jurisdiction where a modified self-regulating model has been put in place and maintained.

Under the influence of the consumer protection movement and the reform of public institutions, the Government of Quebec adopted in 1973 an overarching law designed to govern the practice of professions within its own jurisdiction. The purpose of the law was to "protect the public" (*Code des professions*, 2008, Article 12). The Professional Code established, in fact, what has come to be known as the "professional system," a set of laws, regulations, by-laws, and organizations charged with one

uniform objective.[i] Legislators and regulators enacted an informative framework that "updated existing beliefs about the [potential] harmfulness of [professional] activities" (Dharmapala & McAdams, 2003, p. 28) and provided a means of recourse for aggrieved members of the public.

This system was designed to manage the same barriers to entry discussed above. The initial barriers constituted shared responsibilities with other public sectors, especially education. Universities were deemed to bear the initial responsibility for professional education, and usually the terminal diploma in a professional educational program gave access to a professional designation and to rights of practice. It was assumed that new entrants in the regulated professions knew how to practice ethically. The Code stipulated that one of the required by-laws to be adopted by each professional body was a code of ethics. Each regulated profession has a code of ethics in the form of a by-law drafted in conformity with government standards and with force of law after its publication in the *Official Gazette*, which offers a delay for public comment and objections to be filed before the regulation may be brought into force. Consequently, the public – in theory at least – is aware of the standard imposed on any given member of a regulated professional body.

The law regulating the Bar (*Loi sur le Barreau*, Chapitre B-1) and the Code provide the regulatory framework for managing lawyers' ethical behavior. This framework sets the stage for client protection by delineating the requirements of a review process designed to ensure the on-going ethical behavior of members of the Bar as well as the unique role of the syndic, an official of the Bar with powers similar to those of an investigating magistrate (Articles 109, 112, 117, 121-123).

Reviewing the Custodians of Ethical Behavior

Anyone requesting a formal opinion from the Review Committee concerning a decision made by the syndic not to refer a case to the Disciplinary Committee has the right to a review. Requests must be made within thirty days following the receipt of the syndic's decision not to pursue the matter. The committee must give its opinion within ninety days following the receipt of the request (Article 123.4). But the volume of requests has created a backlog of cases which exceeds the committee's ability to review cases within the regulatory timeframe. This is not atypical of the prevailing situation in North America.

The standard file for revision is prepared by the Bar's registry. The file is comprised of the following elements: (1) the original complaint, (2) the response to the complaint filed by the member of the Bar accused of an offense, (3) the response of the original complainant to the member's defense as presented in his response to the initial complaint, (4) the syndic's decision including most usually his reasoning in the case, (5) the request for a review of this decision and (6) any supporting documentation for the committee's consideration. Each file may vary in content, but the necessary elements are (1), (4), and (5). Most files submitted for review are quite voluminous consisting of between 150 and 800 pages.

When the committee sits to review a case, it may reach a number of possible decisions concerning the opinion, which is the result of the members' deliberations. In fact, there are four types of opinions that may be given by the Review Committee:

1. the committee may conclude that there is no reason to seize the Disciplinary Committee of the case;
2. the committee may propose a continuation of the investigation by the syndic, his associate, or staff;
3. the committee may propose that the syndic refer the case to the Professional Inspection Committee; or
4. the committee may conclude that the case should be referred to the Disciplinary Committee and recommend someone to act as the syndic in order to lay the complaint before the committee (Article 123.5).

Reviews often involve conflicts that have not been resolved at an earlier date. These may have their origin in an institutional conflict or an unresolved issue between a client and a member of the Bar.

The Review in Practice

One such case arose from a hearing during which the plaintiff felt that the opposing party's legal counsel had acted improperly before the Small Claims Court. The case is particularly interesting in that plaintiffs have the right to represent themselves before the court, and, conversely, defendants have no statutory right to representation (Article 959). Consequently, the presiding judge must ensure equity during the proceedings and protect the rights of all parties to the conflict, which he must seek to resolve with dispatch.

The review in question was of a procedural nature in that the defendant cannot by law be represented by a lawyer; the presiding judge examines any witnesses who may appear before the court and is bound to hear both parties without bias. Since the court's decisions are final and cannot be appealed (Article 984), it is easy to understand that a claimant who is not satisfied with the outcome of a case may seek other remedies offered through the legal system. The case under consideration came before the Review Committee simply because of the fact that the plaintiff had no other recourse against the perceived harm allegedly visited upon him by "brothers" at the Bar.

The basis of the complaint before the committee was deontological in nature since the plaintiff felt that there was a conflict between the established rules of civil procedure (*Code de procédure civile*, Chapitre C-25) and the Bar's Code of Ethics (*Code de déontologie des avocats*).

In this case, the plaintiff based his case on articles 2.00.01 and 2.01 of the Code of Ethics that focus on lawyers' responsibilities to the public, including the protection thereof – even in situations of potential conflict. More specifically, lawyers are expected to respect the law by upholding it. Furthermore, their ethical behavior requires that they act with dignity, integrity, honor, respect, moderation, and courtesy. This may be interpreted to mean that lawyers are duty-bound to respect the Code of Civil Procedure as

it applies to Small Claims Court, and that they must subscribe to standards of behavior, which are fundamental to the profession's Code of Ethics.

In the case under consideration, the plaintiff contended that the defendant flouted the law and exhibited behavior that was incompatible with the expectations outlined in the Code of Ethics.

The complaint, as registered by the syndic, focuses primarily on a lawyer who was in the employ of a municipality, the municipality in question being the defendant in the case before the Small Claims Court. (For reasons of confidentiality, the identity of the plaintiff and defendant cannot be revealed.) The claimant wished to recover a sum of money, which he felt he had paid to the municipality under duress. In addition to the primary complaint, the claimant also contended that the judge who heard the case acted improperly and in collusion with the lawyer accused of improper behavior. The complaint against the judge was not receivable since recourse against judges does not follow the same administrative procedure as claims against active members of the Bar. However, in the description of the alleged violation of the Code of Ethics, the plaintiff used examples of the judge's alleged behavior[1] to support his claim that the lawyer in question had acted improperly.

The plaintiff held that the accused "did not respect the law," because he "represented the defendant in Small Claims Court" and that this act "caused him prejudice." Moreover, the claimant stated that the lawyer who acted as putative counsel to the municipality "dishonoured the profession by acting without dignity, respect, integrity, and moderation." The plaintiff lost his case in Small Claims Court and did not recover the monies he claimed in his deposition.

Upon receipt of the initial complaint, the syndic asked the lawyer accused of improper behavior to respond to these allegations.

In his defense, the lawyer recognized that he had been retained by the municipality as its general counsel, and that he alone was charged with the responsibility of representing the municipality before all tribunals. However, he stipulated that in this case he "at no time represented the municipality during the hearing." Other municipal employees who are not members of the Bar presented evidence and defended the municipality during the hearing. Nevertheless, the lawyer recognized that he had "in fact prepared the witnesses," and that he "assisted them" during the hearing in order "to ensure that they were able to make a full presentation of the facts."

Indeed, in describing the actual hearing, the lawyer noted that he "sat quietly in the back of the hearing room." However, after having realized that the employees appearing as witnesses had neglected to present key evidence, the lawyer did, in fact, "speak to the witnesses with the court's permission" in order to remind them of certain facts which should have been introduced into evidence and this with the "full prior knowledge of the presiding judge." He contended that at no time did he examine

[1] The claimant alleged that the judge himself violated the law by allowing a lawyer to represent the municipality, denying access to evidence thereby violating rules of disclosure and knowingly allowing witnesses to perjure themselves in collusion with the municipality's counsel. In the claimant's view, the judge violated his rights and brought dishonour to the judicial system.

witnesses during the hearing. Nevertheless, toward the end of the proceedings, the lawyer noted that one of the witnesses had neglected to refer to a telephone bill which the plaintiff had not seen previously and which would have supported the municipality's position; "with the court's permission" in order to avoid recalling the witness and unnecessarily prolonging the hearing, the lawyer did enter into evidence a copy of the telephone bill in question.

In justifying the transactional nature of his intervention in the courtroom, the lawyer noted that in all small claims cases involving the municipality, he "prepares the case, coaches the witnesses and advises them during hearings and attends the hearings themselves." He contended that, "nothing in the law prevents him from acting in this manner" and that in the present case, he acted "with the permission of the presiding judge." Moreover, in the lawyer's opinion, had his actions constituted a violation of the law or the Code of Civil Procedure, it would have been the presiding judge's responsibility to prevent him from doing so.

At this juncture, it is useful to refer to the Code of Civil Procedure which makes two points very clear:

- governmental organizations may only be represented by administrators or another person who is solely in their employ and who has a contractual employment relationship with the organization;
- exceptionally, when faced with a particularly complex legal issue, the judge, of his own accord or at the request of one of the parties, may allow parties to a case before the Small Claims Court to be represented by counsel, but such a decision on his part requires the prior consent of the Chief Justice (*Code de procédure civile*, Article 959*)*.

Having completed his investigation into the matter, the syndic then responded to the initial complaint. He first took care to explain to the complainant that the Bar's primary responsibility in this case was to investigate the behavior of the lawyer accused of a violation of the Code of Ethics. Even though the complaint raised issues of a seemingly deontological nature, these were, in the syndic's view, "more of a procedural nature"; consequently, the issue does not fall within the purview of the Bar, but rather within that of the court. "It would have been the judge's responsibility to intervene had he felt that the introduction of evidence by the municipality's counsel would have caused prejudice to the plaintiff in the case before him," explained the syndic. The complaint, it was felt, does not, therefore, fall within the Bar's jurisdiction. As a result of his investigation and assessment, the syndic saw no reason to refer the case to the Disciplinary Committee. However, the complainant was informed that, according to Article 123 of the Professional Code, he may request the opinion of the Review Committee.

Within the month, the complainant signaled that he wished "to appeal the syndic's decision."

Manifestly exercised by the syndic's dismissal of his claim, the claimant in a tone of near disbelief stated: "I certainly hope that in keeping with its Code of Ethics, the Bar would not want to have in its ranks a lawyer who does not uphold the law." He then went on to remind the committee's registrar that the municipality's legal counsel did not have the authority to present arguments before the court, nor to introduce evidence. Moreover, in the complainant's view, the lawyer accused of the infraction acted

"deliberately and with malice aforethought by knowingly violating the law." As to reinforce his indignation, he concluded, "and he knew what he was doing."

A hearing committee comprised of three individuals, two members of the Bar and a member appointed by the Professions Board, met to review the documentary evidence and the complete file as described above. No witnesses were heard. After deliberation, the Review Committee concluded in a consensual decision that *in strictu sensu* no deontological error had been committed by the lawyer himself and that no further action would be taken in this case. This is to say that the syndic will not be authorized to investigate further, that the Disciplinary Committee will not have the opportunity to study the accused lawyer's behavior, and that no professional inspection will ensue. In other words, the Review Committee's opinion constitutes exoneration.

The Review Committee's reasoning reposed almost solely on the fact that the lawyer had been authorized by the presiding judge to approach the court and to introduce evidence on behalf of the municipality that had retained his services. The hearing committee's opinion was reached through a deliberative process, which focused on procedural issues and the role played by the presiding judge. During the deliberations, it was stated that if any action at all were to be taken, it should be against the presiding judge; however, the Review Committee did not have the legal authority to initiate any action, or to request an investigation of the judge's behavior.

During the hearing committee's deliberations, the member representing the public interest noted that by virtue of the lawyer's experience in Small Claims Court and his knowledge of civil procedure, he was perfectly aware of the functioning of the system and the ways in which the system could be manipulated in order to gain an advantage for his client. In fact, the lawyer knowingly sought permission to intervene, and by securing such permission gained the ability to introduce evidence detrimental to the plaintiff's case. In terms of the public interest, this gave the accused an undue advantage and violated the spirit, if not the letter, of the Code of Civil Procedure, the breach of which constituted in the external member's view a violation of the lawyer's responsibility to "uphold the law" and to act with integrity. Further, he argued that the lawyer's behavior was most likely symptomatic of a recurring pattern and that it would serve the public interest to investigate the lawyer's practice in greater detail with a view to modifying a behavior pattern which in the present case seemed to work against the public interest in a judicial mediation designed to provide the aggrieved parties with a level playing field for dispute resolution. The "brothers" at the Bar took the opposite view contending that the lawyer acted under the procedural authority of the presiding judge and that his individual behavior had been authorized by the system. The majority view prevailed, and no further action was taken.

Deliberative Decision Making

The Review Committee's hearings are deliberations in the true sense of the word and they follow a deliberative, collective decision-making process highly valued under the Condorcet jury theorem. Indeed, by adding a member to the hearing committee from outside the closed group, *i.e.* the Bar, one should increase the possibility of reaching a correct decision in matters coming before this type of collective acting as a deliberative tribunal and dispute resolution mechanism.

Deliberative decision making has traditionally been recognized as an optimal process in resolving disputes in judicial or quasi-judicial matters especially in institutional settings (Stearns, 2002, pp. 2-3). Indeed, by inserting legitimate outside views within a hierarchically structured system, it could be argued that the probability of reaching a correct decision should increase given the availability of informed perspectives on the issue at hand in the decision-making process (p. 25). All admissible documentary evidence may be presented so as to permit the decision-makers – in this case the members of a review tribunal - to make fully informed assessments of the facts and to contribute assessments based on pooled information and the members' experiential and theoretical knowledge before reaching a level of understanding that allows for the disposition of a case. (James, 2004)

Every party in cases of alleged legal ethical misconduct, including the complainant or complainants, the accused and the syndic may make depositions to support or infirm the action brought in such disciplinary cases.

The pattern of presentation is often set; however, the presentation of facts and reasoning may vary. Nevertheless, the facts and argumentation are weighed by the members of the Review Committee in a collective deliberative process intended to produce a fair and reasonable outcome with respect to the committee's overriding charge of protecting the public interest. The complementary role of peers and laypersons in resolving issues before the committee is reflective of the professional system's intended informative framework. At issue is the ability of deliberants to come to an understanding of facts and questions which would lead to reasonable outcomes. This is very much a question of effective communication and the potential effects of language use on both process and outcome.

Notwithstanding the social utility of the somewhat utopian framework put in place by legislators in 1973 and the continued allegiance to the framework legislation's overriding objective, the model is not always entirely effective. Members of the public appointed by the Professions Board play an active role in the formulation and adoption of regulations and by-laws, and their in-put in these larger groups certainly helps to ensure that Boards of Directors and Administrative Committees reach "correct" decisions and implement the most appropriate policies according to their shared collective knowledge and deliberative decision-making processes. As noted above, the public interest plays, once again, an active deliberative role toward the end of the regulatory process when the Review Committee has the opportunity to express an informed opinion on action to be taken in cases of alleged ethical misconduct by members of the Bar.

The understanding of this process is important in the management of professional ethics insofar as the alleged lack of ethical behavior on the part of practicing professionals may lead to their disbarment, that is, their exclusion from practice.

Conclusion

The deliberative decision-making process as described above is fraught with difficulties that may, despite the manifest good will of deliberants, lead to "incorrect" decisions and, indeed, expose the public to on-going levels of risk.

In his work on deliberative decision making in relation to the Condorcet jury theorem, Cass Sunstein has underscored some fundamental problems which may be applied to the case cited above.

The intent of the review procedure as set-up by the Professional Code was to make "full use of dispersed information" (Sunstein, 2006, p. 75) in a deliberation which should be able to draw upon the expertise and experience of the in-group while at the same time benefit from the expertise and experience of persons external to the in-group with the understanding that the latter had been in control of the investigatory and decisional process starting with the filing of the original complaint. The expected knowledge sharing should in all cases increase the probability of the committee's ability to reach "correct" decisions which would "protect the public" given that the committee's decisions are expected to play a role in remedying and avoiding the "harmfulness" of both past and predictable unethical behavior.

More specifically, the deliberative decision-making model followed by the Review Committee has several failings. The process tends to amplify members' errors or lack of judgment in that the majority of members follow heuristics familiar to in-group members; these heuristics carry with them built-in professional biases. As a result, in-group members often fail to elicit information that other committee members are in a position to contribute to the information shared and fail, therefore, to take full advantage of outside perspectives. Thirdly, given the effect of plurality decision making, the in-group's inbred reasoning tends to create a cascade effect and effectively block countervailing arguments or analytical processes. Finally, the combined effect of these characteristics tends to polarize collective decisions and marginalize valid countervailing positions worthy of consideration. As a consequence, the group as a whole fails to ensure that the full committee knows collectively what the individual members know and may then make decisions based on imperfectly shared information and knowledge and compiled errors of judgment.

These problems are clear in the case cited above and are, unfortunately, symptomatic of a number of other cases brought before hearing committees of the Review Committee. It seems clear that the fox is still the custodian of the henhouse.

This is not to deny the originality and validity of the decision-making model recommended by the professional system in order to resolve cases of a deontological nature. However, it would seem that by expanding the size of the hearing committee and empowering more sitting members from outside the professional in-group, the probability of reaching "correct" decisions in the interest of the public would be enhanced. Furthermore, the Review Committee does have the power to consult experts; legal ethicists would fall into this category, and they would certainly, just as medical ethicists do in helping

hospital committees to make critical life-sustaining decisions, contribute to the information and knowledge which could be usefully shared by the decision-makers themselves.

It would be in the interest of better ethical decision making and the rather tattered image of the legal profession itself, to change the custodian at the gate.

References

Auerbach, J. S. (1976). *Unequal justice, lawyers and social change in modern America*. New York: Oxford University Press.

Barton, B. (2001). Why do we regulate lawyers: An economic analysis of the justifications for entry and conduct regulation. *Arizona State Law Journal*, *33,* 429.

Barton, B. (2003). An institutional analysis of lawyer regulation: Who should control lawyer regulation – courts, legislatures, or the market? *Georgia Law Review, 37*(4), 1208-1209.

Code de déontologie des avocats. R. R. Q., chapitre B-1, r. 1 (2008). Québec, Éditeur officiel du Québec.

Code de procédure civile. L.R.Q., chapitre C-25 (2008). Québec, Éditeur officiel du Québec.

Code des professions. L.R.Q., chapitre C-26 (2008). Québec : Éditeur officiel du Québec.

Dharmapala, D., & McAdams, R. H. (2003). The Condorcet jury theorem and the expressive function of law: A theory of informative law. *American Law and Economics Review*, *5*(1), 1-31.

James, M. R. (2004). *Deliberative democracy and the plural polity*. Lawrence, Kansas: University Press of Kansas.

Liptak, A. (2007, August 27). With the bench cozied up to the bar, the lawyers can't lose. *The New York Times,* Retrieved July 26, 2009, from http://select.nytimes.com/2007/08/27/us/27bar.html?_r=1&oref=slogin

Loi sur le Barreau. L.R.Q., Chapitre B-1 (2009). Québec : Éditeur officiel du Québec.

Martyn, S. R. (2001).Rhode's reforms: A review of in the interests of justice. *The Georgetown Journal of Legal Ethics, Fall*, 143-153.

Règles de pratique du Tribunal des professions, L.R.Q, Chapitre C-26, r.6.1 (2007). Québec: Éditeur officiel du Québec.

Rhode, D. (2000). *In the interests of justice: Reforming the legal profession*. New York: Oxford University Press.

Stearns, M. L. (2002).The Condorcet jury theorem and judicial decisonmaking: A reply to Saul Levmore. *Theoretical Inquiries in Law*, *3*, 1-26.

Sunstein, C. R. (2006). *Infotopia – How many minds produce knowledge.* Oxford: Oxford University Press.

Wilkins, D. B. (1992).Who should regulate lawyers? *Harvard Law Review, 105*, 799-887.

J. Archibald is the Director of the Department of Translation Studies at McGill University and a member of the *Office des professions du Québec*.

Endnotes

[i] The originality of Quebec's professional system resides in its make-up, the way in which it functions, and its objective of protecting the public. Governed by the *Professional Code* (*Code des professions*), the system is made-up of the Government, the National Assembly, the forty-five professional orders, the Quebec Professions Board (*Office des professions du Québec*), what Wilkins has referred to as a "legislatively created regulatory agency" (Wilkins, 1992, p. 808), and the Interprofessional Council (*Conseil interprofessionnel du Québec*).

The system such as it is known today took shape in 1973 following the adoption of the *Professional Code* and the establishment of the public institutions and regulatory apparatus foreseen in the *Code* itself. The legislature invested the professional orders with self-regulatory responsibilities and recognized thereby each order's relative autonomy.

However, such heavy responsibilities could not be delegated to these bodies without the government's having assured that control mechanisms would be in place to guarantee the protection of the public interest. Consequently, the complete system falls under the oversight of the Quebec Professions Board, which ensures that each professional order fulfils its responsibilities in terms of its public protection mandate.