

“IN THE PUBLIC INTEREST”: THREATS TO SELF-REGULATION OF THE
LEGAL PROFESSION IN ONTARIO, 1998-2006

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IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
DOCTOR OF THE SCIENCE OF LAW

PAUL DOUGLAS PATON

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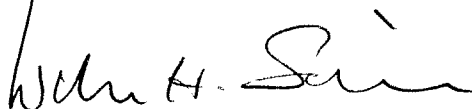
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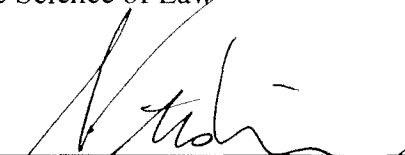
Professor Deborah L. Rhode, Principal Adviser

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ABSTRACT

Challenges during the period 1998-2006 to the traditional self-regulatory authority of the Law Society of Upper Canada, the body responsible for the regulation of legal services in the province of Ontario, Canada, have prompted a consistently defensive reaction focused on the preservation of the status quo rather than on the public interest. The purpose of this study is to explore that reaction and to determine whether the legal profession in Ontario continues to merit the privilege of self-regulation. It asks whether government should delegate self-regulatory authority to a profession whose response to significant change is to retrench, to ask how the public interest is being served, and to assess what institutional change is necessary. Three case studies about regulatory responses to events facing the profession serve to illustrate the issues and problems. These include the debate over the introduction of multidisciplinary practices (MDPs), the reaction to proposals for liberalized international trade in legal services at the General Agreement on Trade in Services (GATS), and the failure by the Law Society to respond adequately to ethical challenges facing corporate counsel in the post-Enron era.

The dissertation situates these Canadian examples in international context by analyzing them in light of recent developments in England and Australia that represent the effective end of self-regulation in those jurisdictions. Similarly, the study explores the three cases in the context of the direction by the United States Congress to the U.S. Securities and Exchange Commission to regulate lawyer conduct where there was a perceived failure of self-regulation in the public interest in the aftermath of Enron. The three cases are synthesized as cumulatively constructing a potential threat to self-regulatory authority, and as part of a pattern of change facing regulation of the legal profession in the public interest internationally.

Approved for publication:

By: Deborah L. Rhode

For School of Law

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