

HANDOUT 3: Lawyer Independence

What Does “Lawyer Independence” Mean?

The term “lawyer independence” means that lawyers are able to act in their client’s best interest without fear of interference. A lawyer must be free to put the client’s interest first, free from political or governmental influence, pressure or control. The legislature does not decide who can become a lawyer nor can it prevent a lawyer from practicing law or representing a particular client.

Lawyer independence is often presumed to confer a right upon lawyers. In reality, however, it is a public right necessary to protect the rule of law. The public has a right to obtain legal advice from a lawyer whose primary duty is to his or her client, not to any other person and especially not to the state.

Lawyers owe a duty of loyalty (including confidentiality) to their clients. Loyalty, however, must be balanced with the lawyer’s professional obligations as a member of the legal profession and his or her duty of integrity and honesty as an officer of the court. For example, although lawyer-client communications are privileged (i.e. no one, including the state, can force a lawyer to disclose them), there is an exception where a crime involving death or serious bodily harm is imminent. In that case, public interest in preventing the crime takes precedence over public interest in protecting lawyer-client privilege.

In order to practice law in BC and at the same time preserve lawyer independence, a lawyer must be a member of the Law Society of BC, which is the self-regulating body of lawyers and is independent of the government. If concerns exist about a lawyer’s conduct or competence, those concerns are investigated and adjudicated by the Law Society, which can fine, suspend, or (in the most serious cases) “disbar” a lawyer. If a lawyer is disbarred, his or her membership in the Law Society is terminated, meaning he or she may no longer practice law. Self-regulation carries with it responsibilities to ensure that appropriate sanctions are placed on lawyers who do not properly discharge their professional obligations.

Why is Lawyer Independence Important?

Lawyer independence is essential to a fair judicial system and to preserving Canadians’ fundamental rights and freedoms. In *LaBelle v. Law Society of Upper Canada*, the Ontario Superior Court held:

“The legal profession has a unique position in the community. Its distinguishing feature is that it alone among the professions is concerned with protecting the person and property of citizens from whatever quarter they may be threatened and pre-eminently against the threat of encroachment from the state. The protection of rights has been a historic function of the law, and it is the responsibility of lawyers to carry out that function. In order that they may continue to do so there can be no compromise in the freedom of the profession from interference, let alone control, by the government...”

Lawyers must be independent in order to advise citizens about their responsibilities regarding a law or a government action. It would be impossible to do this if the society that governs lawyers was under the day-to-day control of legislature. It is important that the public perceive the legal profession as separate from and independent of the government, otherwise it will not have confidence that lawyers can truly represent citizens in their dealings with government.

It is important to note, however, that lawyers are still expected to act professionally in connection with statements they make or positions they advance in court. There may be circumstances where allegations of unprofessional conduct by a lawyer in connection with such matters could be investigated by the Law Society (but not by the government or by the courts) and, if proven, disciplinary consequences could be imposed on the lawyer for professional misconduct. This is an example of how self-regulation works and protects the public interest.

Recently, the Law Society of Upper Canada’s Task Force on the Rule of Law and Lawyer Independence concluded that the Canadian Constitution provides protection for the principle of lawyer independence. The independence of lawyers should not be taken for granted.

To preserve lawyer independence, lawyers, judges, the public and the legislature must agree that independence is essential to the proper administration of justice in a democratic society.