LARGE LAW FIRMS AND CAPTURE: TOWARDS A NUANCED UNDERSTANDING OF SELF-REGULATION

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The limited academic literature on regulation of the legal profession argues that law societies should further regulate large law firms. This article takes a countervailing position and submits that as a result of complex regulatory-like infrastructure that already exists within large firms, the law society has a weak incentive to regulate these firms. Large law firms develop and maintain their own codes of conduct and internal monitoring systems. While the rules of professional conduct serve as a baseline regulatory regime, large law firms have strong incentives to implement as or more stringent rules and relatively weak incentives to capture the law society.

Les écrits universitaires, peu nombreux, portant sur la réglementation de la profession juridique soutiennent que les barreaux devraient réglementer davantage les grands cabinets. Le présent article adopte un point de vue contraire et fait valoir qu'étant donné l'infrastructure complexe de type réglementaire existant déjà au sein des grands cabinets, les barreaux ont peu de motifs pour réglementer ces entreprises.

Les grands cabinets élaborent et tiennent à jour leurs propres codes de conduite et de systèmes de suivi. Bien que les règles de déontologie constituent un régime réglementaire de base, les grands cabinets ont plusieurs avantages à mettre en oeuvre des règles aussi strictes, sinon plus strictes, notamment afin de ne pas éveiller l'intérêt des barreaux.

1. Introduction

Lawyers in Canadian provinces self-regulate. That is, they govern their own profession by being elected as benchers to a governing body called the "law society" or "barristers' society." With a relatively small contingent of

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lay benchers, lawyers are vested with responsibility for the adoption of rules and policies, as well as the adjudication of disputes.[1] In fulfilling their duties, both lay and non-lay benchers must have regard to the rule of law and to access to justice for their communities.[2] During their tenure at the law society, benchers are permitted to continue to practice law or work in other sectors of the legal profession; indeed, many do so. The self-regulatory structure of the legal profession thus potentially gives rise to a "capture" problem: Is the law society working in the public's interest, or in the interest of individual lawyers and law firms?[3]

Capture theory contemplates the existence of "private interest" regulation. Stigler defines "regulatory capture" as a circumstance where "regulation is acquired by the industry and is designed and operated

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1 In Ontario, the benchers of the Law Society of Upper Canada consist of eight lay benchers selected by the Lieutenant-Governor-in-Council (of the Ontario government), twenty elected benchers from inside Toronto, twenty elected benchers from outside Toronto, five paralegal benchers elected by licensed paralegals, and some ex-officio benchers including former Attorneys General of Ontario and former Treasurers of the Law Society. See "Benchers", online: Law Society of Upper Canada <www.lsuc.on.ca/with.aspx?id=1136>. See also *Law Society Act*, RSO 1990, c L8 [*Law Society Act*]. Lay benchers are appointed to defend against the charge that the Law Society benchers would be biased in favour of their fellow lawyers in disciplinary proceedings and in matters regarding the Law Society at large; see Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997* (Toronto: University of Toronto Press, 1997) at 324. To some extent, lay benchers can be likened to independent directors on a corporate board. Note also that law societies have investigative and prosecutorial staff that operate more or less at arm's length from the elected governing body (called "Convocation"). The actual discipline panels that hear complaints include non-lawyers and perhaps also non-benchers. In 1968, James Chalmer McRuer, a bencher and judge of twenty years who then became Ontario's royal commissioner inquiring into the province's civil rights, produced the McRuer Report; see JC McRuer, *Royal Commission Inquiry into Civil Rights: Report No 1* (Toronto: Queen's Printer, 1968). The report argued that organizations governing certain professions – particularly lawyers, doctors, and engineers – should be subject to stricter regulation and oversight. Moore, *ibid* at 283, later suggested that the Report was well-received and given serious consideration in the Office of the Attorney General. Consequently, the Report and the contentions put forth within can be seen as contributing to the changes to the Convocation, which included an increase in the number of benchers (the number of benchers was increased in 1970).

2 This is true in both a normative and an empirical sense. Support for the latter can be found in the *Law Society Act*, *ibid*, s 4.2: "The Society has a duty to act so as to facilitate access to justice for the people of Ontario."

3 See Noel Semple, Russell G Pearce and Renee Newman Knake, "A Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Divergent Regulatory Regimes in Australia, England/Wales, and North America" (2014) 16:2 Legal Ethics 258 at 264-66. See also Ernesto Dal Bó, "Regulatory Capture: An Overview" (2006) 22:2 Oxford Rev Econ Policy 203.

primarily for its benefit."[4] Livermore and Revesz explain that capture occurs "where organized interest groups successfully act to vindicate their goals through government policy at the expense of the public interest."[5] Helm describes capture as a process whereby vested interest groups bias regulators and governments to act in their interests, rather than the broader public interest.[6] Capture undercuts the aims of public interest regulation,[7] contrary to the mandate of law societies, which, like other administrative agencies, are legally bound to "advance the cause of justice" and "protect the public interest."[8]

What are lawyers' incentives to capture the regulator? Economic theory would suggest that lawyers as self-interested rational actors have captured the legal profession, especially given that the profession is self-regulated. Capture of the legal profession may indeed persist in practice; law society benchers continue their employment at law firms while serving as benchers, and have an opportunity to promote a firm's objectives even at the expense of the public interest.[9] A lawyer may seek to ensure that regulatory initiatives benefit herself or the law firm where she is currently employed. In the long-term, the lawyer may envision continuing practice at another firm, and may wish to signal similar interests and loyalties to her desired cohort of potential law firms. The lawyer may wish to ensure that the interests of lawyers in a particular practice area are represented and determinative in the policy-making process.[10]

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4 George J Stigler, "The Theory of Economic Regulation" (1971) 2:1 Bell J Econ & Mgt Sci 3. For contemporary application of Stigler in the Canadian context, see Noel Semple, *Legal Services Regulation at the Crossroads: Justicia's Legion* (May 8, 2013), online: <http://ssrn.com/abstract=2262518 or http://dx.doi.org/10.2139/ssrn.2262518>.

5 Michael A Livermore and Richard L Revesz, "Regulatory Review, Capture and Agency Inaction" (2012) Geo LJ 1336 at 1340.

6 Dieter Helm, "Regulatory Reform, Capture, and the Regulatory Burden" (2006) 22:2 Oxford Rev Econ Policy 169 at 174.

7 Jean-Jacques Laffont and Jean Tirole, "The Politics of Government Decision-Making: A Theory of Regulatory Capture" (1991) 106:4 Q J Econ1089.

8 *Law Society Act*, *supra* note 2.

9 This article will not address whether self-regulation of the legal profession warrants reform. There are many articles on this topic, however. See e.g. Richard F Devlin and Porter Heffernan, "The End(s) of Self-regulation?" 45:5 Atlanta L Rev 169. See also John Pearson, "Canada's Legal Profession: Self-Regulating in the Public Interest?" (2013-14) 92 Can Bar Rev.

10 Also, most disciplinary complaints relate to sole practitioners and small law firms that lack the universal regulatory-like structure and so the law society complaint, investigative and disciplinary branches focus much more on these practices. The greater proportion of complaints may be a reflection of the greater number of lawyers working for sole practitioners or small firms. Data is necessary on whether complaints against small firms are disproportionately larger given their larger market share. There has been much debate on the issue of small firms facing more complaints than large firms; see

Large law firms, defined in this article as firms with 50 or more lawyers, are the subjects of analysis because large firms increasingly dominate the market for legal services. Law firms have become "omnipresent in the legal profession"[11] and have now replaced sole practitioners as the primary form of legal service provider. According to *Legal Week*, some of the largest firms, known as the "Seven Sisters," have fundamentally dominated the legal market in Canada for several decades.[12] The extent of large law firm domination is evident in more than mere market share; an increasing percentage of practitioners are working in medium- to large-sized firms. Almost half of all Canadian legal practitioners work in firms with over ten lawyers and a quarter belong to firms with 50 to 75 lawyers.[13] Internationally, large law firms are also ubiquitous; the largest global law firm (Baker McKenzie) has 4,100 lawyers with offices in 46 countries. The next 15 largest firms have more than 1,700 lawyers each, with revenues exceeding US $1 billion per firm.[14]

Large and small firms can be further differentiated by the nature of their clients. Large law firms generally serve sophisticated corporate clients with greater ability to negotiate for proper representation through their better knowledge of legal service and the greater likelihood that they will become repeat legal clients. Small firms serve relatively smaller clients with less negotiating power and less ability to manage their relationship with their firms. The law society thereby spends comparatively greater time and effort overseeing the conduct of small firms with smaller

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Michael McKiernan, "Does LSUC target small-firm lawyers?" *Law Times* (14 November 2010), online: Law Times Online <http://www.lawtimesnews.com/20101115952/headline-news/does-lsuc-target-small-firm-lawyers>.

11 See Adam M Dodek, "Regulating Law Firms in Canada" (2011) 90:2 Can Bar Rev 383 at 385; see also Ronald J Daniels, "The Law Firm as an Efficient Community" (1992) 37 McGill LJ 801 (on the nature of large law firms as an organizational construct).

12 Emma Sadowski, "Canada: Canada's Sisters in Law" *Legal Week* (28 May 2009), online: Legal Week <http://www.legalweek.com/legal-week/analysis/1163926/canada-canada-sisters-law>.

13 Dodek, *supra* note 11 at 386; see also Federation of Law Societies of Canada, "2007 Law Societies Statistics", online: Federation of Law Societies of Canada <http://www.flsc.ca/_documents/2007-Statistical-Report.pdf>.

14 John Flood, "The Re-landscaping of the Legal Profession: Large Law Firms and Professional Re-regulation" (2011) 59:4 Current Sociology 507 at 511-2, citing IFSL (International Financial Services London), *Legal Services 2009* (February 2009), online: TheCityUK <http://www.thecityuk.com/assets/Uploads/Legal-Services-2009.pdf>. See also: "100 Largest Law Firms in the World", online: Ranker <http://www.ranker.com/list/100-largest-law-firms-in-the-world/business-and-company-info>.

clients presumably to compensate for smaller clients' greater need for protection.[15]

The limited academic literature on regulation of the legal profession argues that law societies should further regulate large law firms.[16] This article takes a contrary position and submits that as a result of complex regulatory-like infrastructure that already exists within large firms, law societies have a weak incentive to regulate these firms. Large law firms develop and maintain their own codes of conduct and internal monitoring systems. While the rules of professional conduct serve as a baseline regulatory regime, large law firms have strong incentives to implement as or more stringent rules and relatively weak incentives to capture the law society.[17] Additional law society regulation directed at them may be superfluous in light of the fact that they voluntarily implement their own rules.

This article contends that the legal profession is subject to what is here termed "external self-regulation" and "internal self-regulation." External self-regulation refers to a regulatory regime in which a separate governing body comprised primarily of lawyers governs legal organizations and the profession in general. By contrast, internal self-regulation refers to law firms' internal governance structures. External and internal self-regulation are not mutually exclusive but are complementary; law societies may mandate a minimum regulatory bar for the profession while law firms can set the bar higher, as appropriate for the individual firm.[18] As a result of

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15 Following the disbarments of three sole practitioners on November 5, 2010, the *Law Times* published an article addressing this issue; see McKiernan, *supra* note 10.

16 See Dodek *supra* note 11.

17 The Australian (appropriate management systems) and English (outcomes focused regulation) regulatory approaches have firms, rather than individual lawyers, as the focus of regulation. There is cogent evidence that causing firms to develop protective policies and procedures is more effective than after-the-fact discipline of individual lawyers based on codes of conduct; see Ted Schneyer, "On Further Reflection: How 'Professional Self-Regulation' Should Promote Compliance with Broad Ethical Duties of Law Firm Management" (2011) 53 Ariz L Rev 577 (that reactive regulation through codes of ethical conduct is less effective than proactive, management-based regulation). This paper argues that large client demands and protection of firm reputation provide incentive for large firms in Canada to voluntarily adopt this approach to regulation.

18 Lawyers are also subject to judicial oversight. While some academics, like Benjamin Barton in the US, argue that judicial regulation is essentially equivalent to self-regulation given that there is an inherent "lawyer-judge bias" that may emulate capture, Salyzyn argues that courts can act as aggressive and progressive regulators; see below for further discussion of this issue. See Benjamin H Barton, *The Lawyer-Judge Bias in the American Legal System* (Cambridge, UK: Cambridge University Press, 2011); Amy Salyzyn, "The Judicial Regulation of Lawyers in Canada" (2014) Dal LJ [forthcoming], online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2520302>. Lawyers are

internal self-regulation, a province's law society can focus on regulatory issues facing other legal service providers, including small firms, sole practitioners and paralegals who do not operate under such a regime.[19]

This argument implies that large law firms voluntarily set higher standards than those contained in the law society's rules and that large firms rigidly monitor potential violations of these rules from within. In theory, these firms may be setting lower standards with less stringent regulation. But they have strong incentives pulling them in the opposite direction, including reducing agency costs and client risk through internal regulation, signaling higher quality service to increase their client base and preserving reputational capital – their brand – by avoiding the appearance of ethical conflict. These incentives suggest that the public interest may be well-served when both external and internal self-regulation are in place.

But what about capture? Do these firms capture the law society? This article postulates that because they internally self-regulate, large law firms have a lower incentive to capture the regulator than economic theory might suggest. To be clear, it is not the case that large law firms have no incentive to capture. As rational actors, they may indeed see the benefits of playing an important role in setting policy and overseeing the profession generally. Corporate law firms have large, sophisticated clients that are the primary source of revenue for the firm. They have a different reward system for their lawyers from sole practitioners and small firms. Large law firms typically have solicitor-oriented practices in corporate and securities law. They may have litigation practices, but these practices tend to service the firm's corporate clients. It stands to reason that large law firms, and benchers from within their ranks, have different views about public policy,

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also arguably "regulated" by their own corporate clients, who are starting to impose requirements on their outside counsel pertaining to conflicts of interest and diversity, among others, in order to better serve their own respective clients. See e.g. Peter Lattman, "Clients Demand Diversity at Law Firms", *The Wall Street Journal* (28 December 2006), online: Wall Street Journal Law Blog <http://blogs.wsj.com/law/2006/12/28/clients-demand-diversity-at-law-firms/> (corporate client cuts a competing law firm out of bidding for legal work for lack of diversity); Christopher J Whelan and Neta Ziv, "Law Firm Ethics in the Shadow of Corporate Social Responsibility" (2013) Geo J Leg Ethics 153.

19 Ontario, The Law Society of Upper Canada, *Task Force on Paralegal Regulation*, *Report to Convocation* (Toronto: The Law Society of Upper Canada, 2004), online: The Law Society of Upper Canada <http://www.lsuc.on.ca/media/convsept04_paralegal_report.pdf>; Ontario, The Law Society of Upper Canada, *Final Report of the Sole Practitioner and Small Firm Task Force*, (Toronto: The Law Society of Upper Canada, 2006), online: The Law Society of Upper Canada <http://www.lsuc.on.ca/media/convmarch06_solepracfinal.pdf>.

mandatory continuing legal education, errors and omissions (E&O) insurance and what law schools ought to teach their graduates.

Large law firms do not dominate governance of the profession in terms of pure numbers,[20] and disciplinary measures are not taken against lawyers from these firms relative to lawyers from small firms and sole practices.[21] Large firms are not significantly over-represented among elected benchers at present and they do not form the majority of law society benchers. Large firms stand at the fringe of law society governance; they are not the focus of regulation and their members do not directly control its governance through voting power. But what incentives do large firms have to affect law society governance through other means? What incentives might propel large law firms to remain on the fringe of law society governance? Why does law society discipline tend to focus more on small rather than larger firms? To what extent is capture theory relevant to an analysis of these issues? This article puts forward an understanding of large law firm governance that assists in examining these questions.

Specifically, the article argues that incentives to capture are lower when a large law firm internally self-regulates because the firm has its own monitoring system to ensure that its lawyers remain in compliance with existing rules and sets in place rules and practices that exceed those required by the law society. The article further suggests that as large law firms choose to internally self-regulate, relatively smaller firms may develop an incentive to self-regulate as well, given competitive pressures to attract and retain clients. The possibility of all firms moving towards voluntary self-regulation is compelling, especially in light of stratification of the bar.

Following this introduction in Part 1, Part 2 examines capture theory in relation to law firms, evaluating the assertion that the legal profession is by definition "captured," since members of the profession regulate themselves. Part 3 argues that large firms are highly sophisticated and effectively self-regulate, having weak incentives to capture the law society.

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20 Of elected benchers who are lawyers in Ontario, 20 are from Toronto and 20 are from outside Toronto. See "Benchers", online: Law Society of Upper Canada <www.lsuc.on.ca/with.aspx?id=1136>. Of those 40 benchers, 9 or approximately 22% are from large firms (Bennett Jones, Blakes, BLG, Faskens, Gowlings, McCarthys). Information regarding large law firms can be found at "Largest Law Firms in Canada", online: Law Times <www.lawtimesnews.com/201102281829/headlin-news/largest-law-firms-in-canada>.

21 See Harry Arthurs, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" (1995) 33 Alta L Rev 800; Alice Woolley, "Regulation in Practice" (2012) 15 Legal Ethics 243.

Part 4 analyzes the issue of optimal regulation, contending that the presence of incentives to set higher standards than the baseline suggests movement towards, not against, an optimal point. Part 5 concludes the argument.

2. Law Firms and Capture

Capture theory in the legal context begins with the assertion that, because lawyers regulate themselves, the regulator is likely captured. Lawyers, and the firms in which they work, may pursue self-serving regulation more strongly than the public will pursue regulation in its own interest. Capture theory further proposes that the public is hampered by a collective action problem: the public may well value the regulation more, but simply be unable to organize action. The larger the group, the smaller the per capita benefit or loss accrued by any individual from regulation.

In the legal profession, the size of the market for legal services is arguably as large as the public, resulting in low per capita benefit and minimal incentives for each member of the public to push for stricter regulation.[22] It is inefficient and prohibitively expensive for the public to vote on every regulatory proposal. Law societies and other professional organizations therefore serve a useful function: they centralize administration and help resolve this collective action problem.[23] They also lower monitoring costs (because all law firms are regulated), exhibit greater flexibility (because the rules are less formal and may be easier to amend) and lower costs to members of the profession.[24]

In regulated industries, such as utilities, an often-cited disadvantage to the public's interest is the "revolving door" between public regulators and private sector firms, which can give rise to the capture problem.[25] The term "revolving door" refers to a party's changing roles, either when an

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22 Access to justice is a salient issue and one that has received increasing attention over the past five years or so; see Amy Salyzyn, "Canadian Law Societies and the Promotion of Effective Ethical Infrastructure in Law Practices" (2013-14) 92 Can Bar Rev.

The fact that some people, including those in the middle class, cannot afford legal services suggests that the size of the market is not as large as the public as a whole; see Michael Trebilcock, Anthony Duggan and Lorne Sossin, eds, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012).

23 Stigler, *supra* note 4 at 10.

24 Andrew Green and Roy Hrab, *Self-regulation and the Protection of the Public Interest*, (Ontario Panel on the Role of Government, June 2003) [unpublished].

25 Andrew Baker, "Restraining Regulatory Capture? Anglo-America, Crisis Politics and Trajectories of Change in Global Financial Governance" (2010) 86:3 Int'l Affairs 647 at 647.

individual subject to regulation joins the regulator or vice-versa.[26] In the legal context, a more nuanced conception of the revolving door is useful since the roles of the regulator and the regulated may be concurrent as well as sequential; lawyers serving as benchers can maintain their current practice. These lawyers may suffer from trying to serve many masters: most prominently, the law society to which they were elected and the law firm where they practice, while also serving their clients' legal needs.

The revolving door concept suggests how capture can occur, but it does not explain how some interest groups may be more effective than others in capturing the regulator. Laffont and Tirole argue that effective capture is the result of better information. Firms that have more information than the public or the regulator itself may be better able to capture regulation. A firm may do so by restricting the flow of information[27] about, for example, transactions in which it is involved or internal policies that it plans to institute in response to regulatory initiatives.[28]

An information asymmetry persists between the law and large law firms, which leaves open the possibility that large law firms can capture the law society. The information asymmetry is multifaceted, relating to large firms' knowledge of the internal operations of their firm, recent substantive changes to the law and the implications of these changes, and legal issues in complex transactions that require specific expertise. Pearce and Wald emphasize that information asymmetry is a unique feature of the relationship between the law society and large firms. They depict the relationship as being the "bread and butter of Big Law's reputational capital and [the] source of their high fees."[29] The large corporate client may also have a significant resource advantage over the individual practitioners at a large law firm, giving them ample ability to pressure individual large firm lawyers to skew proceedings in their favour at the

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26 Dal Bó, *supra* note 3 at 217. See also Yeon-Koo Che, "Revolving Doors and the Optimal Tolerance for Agency Collusion" (1995) 26:3 RAND J Econ 378; David J Salant, "Behind the Revolving Door: A New View of Public Utility Regulation" (1995) 26:3 RAND J Econ 362.

27 Sidney A Shapiro, "The Complexity of Regulatory Capture: Diagnosis, Causality, and Remediation" (2012) 102:1 Williams U L Rev 221 at 222.

28 Shapiro, *ibid*, argues that in extreme cases, firms may be able to influence lawmakers to achieve what Shapiro calls "deep capture" – the elimination of regulation entirely. Regulation in the legal profession appears to be a permanent fixture and so it seems unlikely that regulation will be eliminated.

29 Russell G Pearce and Eli Wald, "The Relational Infrastructure Of Law Firm Culture And Regulation: The Exaggerated Death Of Big Law" (2013) 42:1 Hofstra L Rev 109.

expense of the public interest or even of ethical conduct. Thus capture by Big Law is possible, at least in theory.

Large law firms operating at the forefront of a particular issue or area of law will see developments in the law before the law society will observe or adapt to them. Large law firms structure initial public offerings (IPO), going private transactions, takeover bids (TOB) and defensive tactics used by the board in the context of these transactions, for example. The law society may find it difficult to regulate these large law firm activities because they often include many characteristics that are atypical in nature. Nevertheless, there are some common characteristics in every IPO or TOB that may require certain behaviour over and above the general principles of conflicts of interest and confidentiality.[30] Yet the law society's rules of professional conduct say nothing about such transactions or the ethics they may warrant. By contrast, sole practitioners and small firms tend to deal with more established areas of the law. The rules of professional conduct specify lawyers' obligations in the context of certain transactions, such as mortgage and real estate transactions, but do not contain the same level of specificity with regards to corporate and securities transactions, in which large law firms specialize.

Large law firms have a significant informational advantage over the law society with regards to these issues. Disclosure often depends on the specific facts of the case and the strategy the client wishes to take with regards to disclosing information that may reveal its business operations. Developments in new securities, such as derivatives, or new technologies may bring forward issues that the law society has not anticipated. Furthermore, securities issues may require relatively advanced financial expertise that the law society is less equipped to handle than large business law firms.

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30 The Law Society of Upper Canada prosecuted two lawyers from a large law firm for conflict of interest in acting on behalf of Hollinger International as well as Conrad Black. In October 2013, the decision of a panel of the Law Society Tribunal dismissed allegations of conflict of interest against the lawyers with costs against the Law Society. See *Law Society of Upper Canada v Dorothy Elizabeth DeMerchant*, 2013 ONLSHP 0153, [2013] LSDD No 145 [*DeMerchant*]; *Law Society of Upper Canada v DeMerchant*, 2014 ONLSTH 91, [2014] LSDD No 89 (the tribunal awarded costs to DeMerchant of $250,000); *Law Society of Upper Canada v Darren Elliot Sukonick*, 2013 ONLSHP 0152, [2013] LSDD No 146 [*Sukonick*]; *Law Society of Upper Canada v Sukonick*, 2014 ONLSTH 90, [2014] LSDD No 100 (the tribunal awarded costs of $250,000 to Sukonick). See also Drew Hasselback, "Law Society absolves lawyers DeMerchant and Sukonick after seven-year legal battle over Hollinger work", *Legal Post* (17 October 2013), online: Legal Post <http://business.financialpost.com/2013/10/17/law-society-absolves-hollinger-lawyers-after-seven-year-legal-battle/>.

One might argue that the persistence of such information asymmetries indicates that large firms need more oversight than small firms, not less.[31] In other words, if large law firms have this informational advantage, the law society might need to ensure that those firms do not take improper advantage of it. As argued in the next section, however, although large law firms have certain informational advantages over the regulator, they also have countervailing incentives to self-regulate internally and, as a result, veer away from capturing the law society.

3. Large Law Firms and Internal Self-Regulation

Large law firms exercise command and control over their lawyers through managing partners, executive committees and compensation committees. They also provide education about ethics rules through student training about the firms' priorities and the importance of client relationships and teamwork;[32] and administer internal oversight mechanisms developed

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[31] Indeed, this argument underlies divergent regulatory schemes in other jurisdictions. As Adam Dodek notes, "Regulatory reforms in Australia were motivated in part because of perceived inadequacies with the law societies' handling of scandals involving large firms;" see Dodek *supra* note 11 at 420. Australia has moved from a complaints based process to a system focusing on compliance obligations (*ibid*). This latter system entails audits, and "[i]t is understood that from time to time audits will discover findings that warrant disciplinary action; however, the primary purpose is to encourage practitioners and directors to implement and improve appropriate management systems;" see Dodek, *ibid*, citing Christine Parker and Adrian Evans, *Inside Lawyers Ethics* (Port Melbourne, Australia: Cambridge University Press, 2007) at 247. As well, both New Jersey and New York have begun to regulate law firms; in New York, such provisions have been in place since 1996 and are quite expansive; see Dodek, *ibid* at 415. Both states have "firm responsibility provisions […] located within the general supervisory duties pertaining to partners and supervisors," but there has been a severe "dearth" of actual enforcement of such provisions; see Dodek, *ibid* at 417. As Malcolm Mercer notes, "In Nova Scotia and British Columbia, the law societies now have the jurisdiction to directly regulate law firms as well as lawyers. In Nova Scotia, fundamental regulatory issues are being addressed such as outcomes-focused regulation, a risk management framework for regulation and whether regulated legal services can properly be delivered by non-lawyers and alternative business structures;" see Malcolm Mercer, "Interesting Things Happening in a Small Country – Self-Regulation and Principled Pragmatism", *Slaw* (14 January 2014), online: Slaw.ca <http://www.slaw.ca/2014/01/13/interesting-things-happening-in-a-small-country-self-regulation-and-principled-pragmatism/> referencing Victoria Rees, Nova Scotia Barristers' Society, *Transforming Regulation and Governance in the Public Interest*, (28 October 2013), online: <http://nsbs.org/sites/default/files/cms/news/2013-10-30transformingregulation.pdf>.

[32] *Ibid*, citing Shahid Javed Burki and Guillermo E Perry, *Beyond the Washington Consensus: Institutions Matter* (Washington, DC: World Bank, 1998); Narcis Serr and Joseph E Stiglitz, *The Washington Consensus Reconsidered: Towards a New Governance* (New York: Oxford University Press, 2008).

within the law firms themselves.[33] Over and above these operational constructs, large law firms internally self-regulate. They supervise and manage their lawyers more tightly than law society rules require,[34] effectively carrying on a form of self-regulation within the broader self-regulatory framework of the legal profession itself.

Large law firms are hubs of professional regulation.[35] Their relationship with the law is dynamic as they operate at the forefront of the law; large law firms both affect and are affected by the regulatory environment in which they do business. They affect the law as leaders in interpreting corporate law, which make them "indispensable to government, finance and

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33 See Elizabeth Chambliss, "The Nirvana Fallacy in Law Firm Regulation Debates" (2005) 33 Fordham Urb LJ 119 (on the growth of law firm bureaucracy).

34 Elizabeth Chambliss and David B Wilkins, "Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting" (2002) 1:1 Hofstra L Rev 691 at 692 (large law firms adopt organizational policies to better ensure compliance with existing rules of conduct). See also Elizabeth H Gorman, "Professional Self-regulation in North America: The Cases of Law and Accounting" 8:5 (2014) Sociology Compass 491. Gorman notes:

> Although formal social control has traditionally been the domain of professional associations, law firms are increasingly establishing their own formal social control systems […] Fortney's (1996) study of Texas law firms found that the majority prohibited or limited partners' investments in clients' business ventures or their acceptance of roles that could create conflicts of interest, such as trustee or corporate director of another entity. Large percentages of respondent firms also required compliance with prescribed procedures for accepting new business, determining fees, and billing clients. In half of surveyed firms, lawyers engaged in general monitoring of each other's work at department meetings and 34 percent had designated a partner or committee for such general peer review. Approximately three quarters of respondent firms had named a partner or committee to address ethics and malpractice problems as they arose. In subsequent qualitative research on 44 large law firms based in several different US cities, Chambliss found that such "compliance specialist" roles within firms are becoming more clearly defined and professionalized.

35 Flood, *supra* note 14, citing Patricia J Arnold, "Disciplining Domestic Regulation: The World Trade Organization and the Market for Professional Services" (2005) 30:4; Accounting, Organizations and Society 299; David J Cooper and Keith Robson, "Accounting, Professions and Regulation: Locating the Sites of Professionalization" (2006) 31:45-6 Accounting, Organizations and Society 415; Roy Suddaby, David J Cooper and Royston Greenwood, "Transnational Regulations of Professional Services: Governance Dynamics of Field Level Organization Change" (2007) 32:4-5 Accounting, Organizations and Society 333; Roy Suddaby, Royston Greenwood and Celeste Wilderom, "Introduction to the Journal of Organizational Behavior's Special Issue on Professional Service Firms: Where Organization Theory and Organizational Behavior Might Meet" (2008) 29:8 J Econ Behavior and Organization 989. Flood writes in relation to the United Kingdom, but the argument is also applicable in the Canadian context as well. See also Daniels, *supra* note 11.

business … in the private ordering of cross-border transactions, e.g. joint ventures, capital markets and mergers and acquisitions."[36] They are active in the policy-making sphere and may seek to change laws to suit their own particular practices,[37] such as in the fields of securities regulation and central bank policy.[38] They are less involved in law practices that fall into more settled types of regulation, such as real estate and trusts.[39]

Under the rules, for example, lawyers are not permitted to borrow money from their clients except in certain circumstances, such as if the client's business is a lending institution.[40] Law firms have an obligation to preserve their clients' property.[41] Lawyers are prohibited from acquiring confidential information from a client and then acting against that client's interests, including taking on a new client whose interests are directly adverse to the original existing client.[42] Even after the relationship with the original client has ended, and the lawyer is no longer acting for that client, the duty of loyalty persists, and the lawyer cannot take on a client whose interests are adverse to those of the original client.[43]

Perhaps because large law firms have been involved in some of the leading cases on conflicts of interest,[44] they have honed their internal self-

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36 Flood, *supra* note 14 at 512, citing John Flood and Fabian P Sosa, "Lawyers, Law Firms and the Stabilization of Transnational Business" (2008) 28:3 Northwestern J Int'l L & Bus 489. The development of the income trust as an investment vehicle illustrates this point well; see Anita I Anand and Edward Iacobucci, "An Empirical Study of the Governance Choices of Income Trusts" (2011) 8:1 J Empirical Leg Stud 147.

37 Flood and Sosa, *ibid* at 511.

38 *Ibid*, citing Burki and Perry, *supra* note 32; and Serr and Stiglitz, *supra* note 32.

39 Flood, *ibid* at 513. Flood writes that, "For the large law firms […] their regulatory burden is of a different kind. Global law firms are less involved in activities that fall into reserved categories […]".

40 Law Society of Upper Canada, *Rules of Professional Conduct*, rule 3.4-31, amending Law Society of Upper Canada, *Rules of Professional Conduct*, rule 2.06(4). The new Federation of Law Societies of Canada's *Model Code of Professional Conduct* came into effect on 1 October 2014 and, as it relates here, is identical to the old rules.

41 Law Society of Upper Canada, *Rules of Professional Conduct*, rule 3.5, amending Law Society of Upper Canada, *Rules of Professional Conduct*, rule 2.07 (coming into effect on 1 October 2014).

42 *MacDonald Estate v Martin*, [1990] 3 SCR 1235; *R v Neil*, 2002 SCC 70, [2002] 3 SCR 631, 218 DLR (4th) 671; *Strother v 3464920 Canada Inc*, 2007 SCC 24, [2007] 2 SCR 177; *Canadian National Railway Co v McKercher LLP*, 2013 SCC 39, [2013] 2 SCR 649 [*McKercher*] (revisiting the "bright-line" rule applying to conflicts of interest among current clients articulated in *R v Neil*).

43 *McKercher*, *ibid.*

44 For example in February 2001, Trilogy Retail Enterprises LP (Trilogy) secured more than 70 per cent of the outstanding shares of Chapters Inc (Chapters), thereby

regulatory role.[45] Over and above requirements in the rules of the professional conduct and common law, these firms tend to have infrastructure, applying to both lawyers and paralegals, dedicated solely to potential conflicts of interest that could, if undetected, lead to violations of the common law and the rules of professional conduct. Some firms, for example, have designated full-time partners to oversee the process for taking on new clients, and the potential conflicts that can arise in this process and in the course of a transaction or litigation. These partners also field questions from lawyers within the firm regarding the same and also serve as a resource for clients whose internal counsel have questions relating to ethical issues. Large law firms also have procedures for the taking of funds from clients in escrow and for establishing trust accounts. In other words, rather than leave each lawyer to determine whether her practices within the firm are consistent with law society rules, large law firms impose, monitor and enforce their own rules and procedures to ensure that the lawyer is in compliance. These rules and procedures may be stricter than the rules of professional conduct and the common law.

Large law firms also set professional standards for their lawyers, a responsibility also assumed by the regulator of the profession. Law firms run continuing legal education programs for lawyers and law clerks, summer and articling students, and clients and other stakeholders .[46] They

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frustrating the friendly competing bid of electronics chain Future Shop Limited (Future Shop). At the outset of the transactions, Trilogy was represented by Davies, Ward & Beck LLP (now, Davies Ward Phillips & Vineberg LLP). However, in an Ontario Court of Appeal decision, Goudge JA upheld Farley J's decision that Chapters had met the "sufficiently related" test in showing that it was reasonably possible that Davies received confidential information pursuant to the Chapters retainer; see *Chapters Inc v Davies, Ward & Beck LLP* (2001), 52 OR (3d) 566 [*Chapters*]. A previous retainer in which Davies had acted for Chapters was sufficiently related to the Trilogy retainer, and Davies was required to show that no confidential information was imparted in the earlier relationship which could be relevant to the current retainer. Goudge JA upheld Farley J's conclusion that Davies could not meet this onus and was therefore found to have a conflict of interest requiring the disqualification of Davies from acting on the Trilogy file.

45 Malcolm Mercer suggests that Canada's more proactive approach to self-regulation in the legal profession may be a result of the small size of the country; the inference is that both law societies and law firms in these situations are better able to learn from and proactively mitigate the risks brought to light in the past. This may explain the more active self-regulatory role taken on by many larger firms following the Trilogy incident – given the close corners in which Canadian firms operate, they are better able to learn from the compliance and conflict issues other such firms have dealt with previously; see Mercer, *supra* note 31.

46 These programs may be based on or involve the circulation of articles written by lawyers within the firm as well as newsletters, client memos and the like. Torys LLP, for instance, publicizes different publications by practice area and industry group (for instance, publications are produced under the *Litigation and Dispute Resolution Bulletin*

do this in order to promote professional competency and uphold ethical standards within the firm. Further, the introduction of continuing professional development programs has spurred the development of full-fledged education programs in large law firms to satisfy the programs' popularity.[47] These programs serve a dual purpose for a large law firm: they not only serve as marketing vehicles for the firm to attract clients, but also ensure that lawyers within the firm are kept abreast of recent development in the substantive law and legal ethics.

Apart from sporadic recent exceptions,[48] large law firms and their lawyers have not generally been subject to disciplinary measures by the law society.[49] Of 183 decisions resulting from LSUC disciplinary proceedings that were publicly available in the CanLii database over a three-year period between 2008 and 2011, only 35.5 per cent related to solicitors. Out of these 65 cases, 0.8 percent involved solicitors practicing residential real estate. Only one solicitor in these cases was identified as a

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or *the Intellectual Property Bulletin*). Osler Hoskin & Harcourt LLP, on the other hand, produces "Osler Guides," which include a yearly *Litigation Report* and *Capital Markets Report*.

47 One of which is named "UniversiTorys." Blake, Cassels & Graydon LLP offers a Business Class Leadership Series, being a suite of seminars focused on the enhancement of leadership, coaching, performance and personal development skills. The Professional Development Committee at Davies Ward Phillips & Vineberg LLP works to develop a curriculum that includes seminars and workshops on ethics and professionalism, practice management, client service, and skills development. Stikeman Elliot has a CLE Committee, which develops substantive seminars that are tailored to the needs of associates at the various stages in their careers.

48 *Sukonick* and *DeMerchant*, *supra* note 31. On May 23, a panel of the Law Society Tribunal determined that the two lawyers Sukonick and DeMerchant, each accused of misconduct would receive $250,000 in costs, a fraction of what they were asking for (both placed their legal costs at almost $4 million). This cost award was in spite of the finding by the panel that the LSUC should have known its case had no reasonable chance of success. "In our [i.e. law society panel's] opinion, knowing that it had no evidence to counter that put forward by the lawyers, the law society owed a duty to re-evaluate its case," wrote hearing panel chairman William Simpson in the cost decision. Five factors were considered in the decision to award costs: the willingness of the claimants to cooperate in the investigation; the effort entailed in asking for reconsideration; the detriment to their careers; the fact that both sides conducted themselves professionally; and the fact that LSUC continued to pursue the case despite weak supporting evidence. In determining the specific amount to be awarded, the panel took into consideration costs for the 40 days of the hearing. See also Arthurs, *supra* note 21; Woolley, *supra* note 21.

49 There is no definitive empirical data on this point. LSUC's 2012 Annual Report suggests that more than half of claims against lawyers are dealt with at the intake level and do not result in further proceedings. The annual report does not include any assessment, however, of the validity of the claims or of the proportion of claims against

corporate lawyer. Of these same 183 cases, 23 per cent involved barristers whose practices included criminal law, small claims, and family or immigration law. The remaining 41.5 percent dealt primarily with a failure to communicate with the LSUC under Rule 6.02.[50] Moreover, 67 per cent were found to have breached this rule. The data collected demonstrate that a plurality of cases where the Rules were breached by solicitors involved real estate lawyers who were not from large firms. None of the solicitor sanctions arose from commercial transactions or other types of business law. While this data covers only three years and 183 cases, it is at least indicative of the lack of disciplinary sanction that large firms face, as a general matter.[51]

Why is it the case that large law firms have not, generally speaking, faced disciplinary action? A law firm's internal regulatory infrastructure effectively preempts regulatory action against their lawyers by ensuring that they comply with rules of professional conduct. For example, large firms run comprehensive conflict checks when opening new files and have internal policies regarding recommending independent legal advice to related clients. Some large firms also have an internal reporting system for potential violations of the rules of professional conduct (including disciplinary policy if lawyers violate these policies). Still others have "ethics counsel" in place to assist with analyses of these and other issues.[52] These are examples of internal self-regulation, the effect of which is to ensure that lawyers' practices remain consistent with external rules of professional conduct and the common law. There are instances in which Big Law firms behave unethically but they generally successfully monitor and manage conflicts and other potential conduct issues.

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large firm lawyers. Thus, one cannot say for certain whether the law society is unfairly dismissing claims against large law firm lawyers, leading to potential selection bias and under- or over-representation of claims against large firm lawyers. The Law Society of Upper Canada, *LSUC's 2012 Annual Report* (Toronto: The Law Society of Upper Canada, 2012), online: The Law Society of Upper Canada <http://www.lsuc.on.ca/annual-report>.

50 The Law Society of Upper Canada, *Rules of Professional Conduct*, rule 6.02.

51 These statistics confirm several other studies: see H Arthurs "Discipline in the Legal Profession" (1970) Osgoode Hall LJ 235; "Collective Sanctions and Large Law Firm Discipline" (2005) 118:7 Harvard L Rev 2336, citing Ted Schneyer, "Professional Discipline for Law Firms? (1991) 77 Cornell L Rev 1. See Schneyer, *supra* note 18 (on the deficiencies of utilizing an enforcement regime established when solo practice was the norm). If the LSUC finds any violation at all (not just fraud), it can require the lawyer to compensate the victim. However, victims of incompetence are most often compensated through the LSUC-mandated compulsory E&O insurance scheme, without having to trigger disciplinary proceedings or litigation.

52 See Stephen GA Pitel and Jordan McKie, "Solicitor-Client Privilege for Ethics Counsel: Lessons for Canada from the United States" (2013) 91 Can Bar Rev 313.

Admittedly, the relative absence of disciplinary sanctions against large law firms may also be the result of a lenient bench. Barton contends that because judges are themselves lawyers, they have an inherent bias towards favourable judgments in disciplinary actions against fellow lawyers.[53] But this bias would favour all lawyers from firms both big and small. One could argue that the structure of the law society's disciplinary process may also be responsible for the lack of discipline against Big Law. For example, Salyzyn argues that sophisticated parties in malpractice suits may opt for judicial proceedings rather than law society disciplinary systems since, aside from cases of fraud, there is no possibility of compensation through the law society's disciplinary process.[54] This would result in greater discipline in the profession but would not be represented in the data discussed above. The absence of sanctions may also be in part due to the greater power of large clients of large law firms. Large clients are capable of resolving problems without the law society's complaints process and they can better negotiate terms that suit them, preempting undesirable conduct that would give rise to a complaint proceeding. Thus there are reasons other than the persistence of internal self-regulation that large law firms have not been the subject of law society discipline.[55]

Nevertheless, the point remains that large law firms establish internal policies and procedures and thereby regulate their lawyers to ensure that these lawyers violate neither the rules of professional conduct nor the common law. The firm becomes a day-to-day regulator of its lawyers, setting down internal policies about what lawyers can and cannot do. Critics may ask whether internal self-regulation is optimal, detracting from rather than serving the public interest. We turn now to examine this question.

4. Internal Self-Regulation and the Public Interest

This article has argued that because large law firms internally self-regulate, there is generally little reason for the law society to impose disciplinary action against them to address problems that arise in the course of their practices. The law society is aware of certain general characteristics of these law firms, which include internal procedures aimed at: upholding professional and ethical standards, avoiding conflicts of interest, supervising

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53 Barton, *supra* note 18.

54 Salyzyn, *supra* note 22 at 17.

55 Another reason for the lack of law society discipline cases relating to large firms could be that law societies pursue cases after conducting a risk analysis. Woolley's paper, *supra* note 21, explores Harry Arthur's notion that law societies engage in an "ethical economy," where they use their regulatory powers only in high reward/low risk cases, for instance when the offence is more clear cut and the party being disciplined is less able to challenge the regulating body's authority. The result is a potential explanation for the more selective enforcement of governing rules.

legal service provision to ensure clients' needs are well-served, and adapting internal rules to account for changing areas of the law. The minimum regulation set by the law society and the voluntary regulation adopted by firms represent optimal regulation.

Some may argue that we have a level of regulation that is lower than necessary to meet a public interest standard even when large law firms voluntarily self-regulate. To respond to this argument, we must examine factors that augur in favour of law firms' adopting standards that are as stringent or more stringent than the law society's rules. The first and most obvious factor is that firms adopt higher-than-minimum regulation to demonstrate legal compliance and thus avoid liability, since having internal self-regulation in place may shield it from liability. Second, firms may seek to increase their client base by signaling to their clients that the chances of their lawyers violating law society regulations are unlikely. Ethics matter to some clients; they impose requirements on their outside counsel pertaining to conflicts of interest and diversity, among other things.[56] Third, firms may adopt more stringent regulation to reduce agency and other costs, such as the costs that arise from the divergence of interests between partners and other partners or associates, articling students or paralegals. These costs can include insurance premia that would increase if a law firm's lawyers have been found to violate the law society's standards of ethics and professionalism.[57] All of these incentives support a desire by law firms to do more to avoid the reputational damage that can accrue to them if their lawyers breach these standards.

A central question in self-regulatory regimes is whether private sector actors can effectively protect the public interest.[58] While large law firms have an incentive to implement regulation that is as stringent as the law society's regime, it is not yet clear whether internal self-regulation serves the public interest. In other words, although there are advantages to the firm in internally self-regulating, acknowledging these benefits does not ensure that the public interest is effectively protected. One could argue that the regulated standard is too low and that the higher standard set by law firms is also too low, that is, that neither meet the public interest standard, even one that is difficult to define.

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56 See e.g. Whelan and Ziv, *supra* note 18.

57 Jacquie McNish, "Torys reaches $30-million settlement with Hollinger", *The Globe and Mail* (29 November 2005), online: Investor Voice Online <http://investorvoice.ca/PI/2457.htm>. See also Arnold Ceballos, "$30.25-million settlement highlights need for excess liability coverage", *The Lawyers Weekly* (23 December 2005) online: The Lawyers Weekly <http://www.lawyersweekly.ca/index.php?section=article&articleid=208>.

58 See Green and Hrab, *supra* note 24.

The above complement of incentives suggests that internal self-regulation is likely to move large law firms towards acting in the public interest, rather than away from it. Setting standards lower than the law society's may well drive a firm's clients towards firms that regulate their internal practices more strictly and are clearly well-informed on these issues. The firm would gain a reputation for laxity on important issues, such as conflict checks and escrow and trust fund arrangements. The firm's clients would seek out other firms with whom they would have more confidence, not only to take on the file, but also to carry it through to its conclusion without being ousted because of a violation of the rules of professional conduct or of the common law.[59] There are, therefore, self-interested reasons for the large law firm to exceed the standards of the law society and these reasons also serve the public's interest in a profession that operates with integrity.

The concept of "capture" does not adequately explain the relationship between large law firms and the law society. Rather than seeking to capture the regulator in order to ensure the implementation of rules consistent with their interests, large law firms are more likely to hone their systems of internal self-regulation. Their concern with their reputation in terms of their clients and potential clients is valuable. In terms of their revenues and their reputation, they stand to gain more by implementing and internally enforcing more stringent regulation than the rules of professional conduct dictate. Their livelihood depends on it, in fact. Thus, while their overarching motivation is not necessarily to further the public interest, the effect of their conduct and the system of internal self-regulation that they establish, is to do just that.

This argument, and in particular the phenomenon of internal self-regulation, does not mean that large law firms should be exempted from external self-regulation. Internal self-regulation is voluntary. Some large firms may not adopt it. Some lawyers within large firms may have incentives that cut against adhering to internal standards and towards their own self-interest. They may seek to profit at the firm's expense[60] or they may unwittingly violate the firm's protocols. Furthermore, aside from any potential deficiency in motivation to self-regulate internally, the pressure of clients on firms would support the interests of the clients but may do so at the expense of those of the public. Powerful client interests ensure desirable conduct between the firm and the client, without consideration for the administration of justice or the risk of compromising the rule of law. The threat of undermining its reputation incentivizes the firm to act in a

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59 While this statement may seem extreme, it is when one considers the case law; see *Chapters*, *supra* note 44.

60 *Re Azeff*, 2012 LNONOSC 383, (2012) 35 OSCB 5159.

manner that favours its clients and future clients, but not parties who are unlikely to engage in future dealings with the firm. It is because of such possibilities that external self-regulation, a system that governs all firms, is necessary.[61] It serves as a backstop or check against the potential failures of internal self-regulation. This particular problem of short-term dealings, however, is mitigated by large law firms' diverse client base and their larger public profile. Although large firms are more likely to have powerful client interests, their larger profile with the public puts more of their reputation at stake, giving large firms good reason to treat all clients fairly lest their sullied reputation discourage future business.

A key implication of the present argument, however, is that internal self-regulation in large firms suggests ethical behaviour within large firms. Conversely, the absence of internal self-regulation in other firms implies a greater potential for unethical behavior in those firms. As discussed above, a majority of cases brought before law societies in recent years appears to involve smaller firms and sole practitioners engaged in specific practice areas (such as residential real estate) as opposed to large firms. While the reasons for the law society's disciplinary focus on small firms are complex and manifold, an absence of internal self-regulation may contribute to violations of the *Rules of Professional Conduct*. But these are issues not fully explored here because they require more detailed research, both theoretical and empirical. On the empirical front, a deeper analysis of cases brought by law societies across the country over a substantial time period is an important first step. One needs then to further analyze the stakes in each case of discipline as well. This analysis would require more data than is currently publicly available.[62]

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61 The capture debate with respect to large law firms sets aside discussion of potential capture of the law profession as a whole, in terms of the provision of legal services. For example, the bencher who led the introduction of paralegal regulation to the law society was seen as effective but disloyal to the legal profession and was not reelected. If the "clients" are legal practitioners in general, then the bencher's failure to promote the clients' best interests may have had significant impact on the bencher's reelection chances, causing a type of capture where only benchers loyal to the interests of lawyers will be elected. The conflict of interest issues that can arise in the course of law societies' self-regulating the profession were given significant attention in the debate regarding paralegal regulation. In a 2008 Maclean's article, Susan Koprich, spokesperson for the Paralegal Society of Ontario, described the regulation of paralegals by the LSUC to be analogous to "Burger King regulating McDonald's;" see "Ontario's Paralegals out of Jobs?" *Maclean's* (3 July 2008), online: Canadian Encyclopedia <http://www.thecanadianencyclopedia.ca/en/article/ontarios-paralegals-out-of-jobs/>.

62 See Anita Anand, "Corporate Lawyers and the Rules of Professional Conduct" (2010) 23:1 Nexus (Spring/Summer 2013) 31, online: University of Toronto Faculty of Law <http://www.law.utoronto.ca/news/nexus/nexus-archives>, where the law society is

5. Conclusion

While rational self-interest may suggest that large law firms would seek to capture the law society, these firms have incentives that weigh against capture in this context. Large law firms serve as a supra-regulator, implementing rules that are stricter than those that the law society promulgates. In fact, they have strong incentives that gravitate towards stricter regulation. These incentives include: reducing agency costs, increasing the firm's client base and avoiding the reputational damage that can result from a violation of the rules of professional conduct. In short, large law firms appear to serve a useful role in the system of self-regulation established to govern the legal profession. Their voluntary conduct generally serves the public interest, while also ensuring their own viability.

called upon to release data compiled about its members but which is unavailable in annual reports.