

**FRAUD AMONG LAWYERS IN BRITISH COLUMBIA: A DESCRIPTIVE  
ANALYTICAL APPROACH**

by

**Annette Leah de Beer**

B.A. Simon Fraser University, 1982

THESIS SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF ARTS (CRIMINOLOGY)  
in the School  
of  
Criminology

© Annette Leah de Beer 1987

SIMON FRASER UNIVERSITY

October 1987

All rights reserved. This work may not be  
reproduced in whole or in part, by photocopy  
or other means, without permission of the author.

APPROVAL

Name: Annette Leah de Beer

Degree: MASTER OF ARTS (CRIMINOLOGY)

Title of thesis: Fraud Among Lawyers in British Columbia: A  
Descriptive Analytical Approach

Examining Committee:

Chairman: John Ekstedt

~~Margaret A. Jackson~~  
Senior Supervisor

~~Judith Osborne~~

~~Jerome Ziskrout~~  
External Examiner  
Counsel to Law Society of B.C.

Date Approved: September 1987

PARTIAL COPYRIGHT LICENSE

I hereby grant to Simon Fraser University the right to lend my thesis, project or extended essay (the title of which is shown below) to users of the Simon Fraser University Library, and to make partial or single copies only for such users or in response to a request from the library of any other university, or other educational institution, on its own behalf or for one of its users. I further agree that permission for multiple copying of this work for scholarly purposes may be granted by me or the Dean of Graduate Studies. It is understood that copying or publication of this work for financial gain shall not be allowed without my written permission.

Title of Thesis / ~~Project~~ / ~~Extended~~ / ~~Essay~~

Fraud Among Lawyers in British Columbia: A

Descriptive Analytical Approach

Author:

(signature)

Annette Leah deBeer

(name)

Sept 14/87

(date)

## ABSTRACT

The purpose of this thesis is to examine the issues deemed necessary for an understanding of the phenomenon of fraud among lawyers in British Columbia. These issues include the role of lawyers, the definition of fraud, the socio-political and economic structures of the profession which may facilitate illegal behaviour among lawyers, and the historical traditions and socialization processes of lawyering which encourage the manifestation of such deviant conduct. As a result of unique placement in the corporate and politically elite spheres of society, lawyers as a professional group are given relatively large amounts of autonomy to function in a seductively lucrative economic environment. In addition to these factors, discussion is next directed in the thesis to the motivations of the lawyer offender. It is through the lawyer's position that the "normal" activities of daily practices are facilitated or converted into illegal or fraudulent activity. However, this can only occur in conjunction with the independent actions of the individuals themselves.

In order to establish a theoretical foundation for the analysis, a crime facilitative model yielded from the white collar crime literature was employed to permit an integration of these various factors. A facilitative theory principally suggests that criminal activity will occur when members capitalize on the weaknesses of the system, although the system

may not benefit from it.

The problems associated with the detection, investigation, and prosecution of lawyer fraud are then discussed, followed by a consideration of the internal disciplinary procedure and the methods available for enforcement. The substantive policing issues are dealt with in order to indicate how the existing provisions for monitoring have made it difficult to implement legislation concerning such cases. Finally an empirical examination of actual cases occurring in British Columbia between 1976 and 1986 concludes the thesis.

Recommendations which emerge from the overall examination highlight the use of peer review, training courses on ethical standards and disciplinary enforcement, legal education for the public, and some form of public review mechanism for cases of lawyer fraud.

DEDICATION

To Ab, for your patience

## QUOTE

There is no calling in this world placing higher demand on human conduct than that of the lawyer. Perpetually involved in the adversary system, lawyer against lawyer, client against client, constantly schooling himself to be objective in his approach to any problem, he is inevitably subject to all the temptations of "the world, the flesh of the Devil". Coping as he must with his own personality he also has to reckon with the imperfections of human character reflected by his client (who normally wants everything his way) and the other side who wish all the advantages to come to them. Superimposed on all this is the confidence and trust of his client, his brother lawyer, and of the Court - all of which the lawyer must have and completely discharge (Watts, 1984).

## ACKNOWLEDGEMENTS

The completion of this thesis is due in part to the efforts and guidance of a number of people. To my supervising committee who were of great support in assisting and directing my progress. My special thanks to Dr. Margaret Jackson, my senior supervisor, for her guidance and accessibility. She supplied constant support. Thanks also to Professor Judith Osborne for her advice, helpful criticism, and meeting my deadlines.

I would also like to express my appreciation to Jerome Ziskrout, prosecuting attorney for the Law Society of British Columbia, for agreeing to act as my external examiner. As well, to John Ekstedt for chairing the defence.

Gratitude goes to David Williams for his constant encouragement and for retyping countless drafts.

I am also indebted to Bryan Ralph, Deputy Secretary of the Law Society of British Columbia, for the invaluable demographic material he supplied. Without his assistance this thesis would not have been possible.

Thanks are also extended to many friends who provided encouragement in their own special ways and who put up with my constant work. To Karen, Esther, Hanif, Ruth and Sherry.

To my parents, without their continual moral support, and emotional guidance, this thesis would not have been completed.



Beth, my dearest friend, and sister, thanks for never losing faith in my ability; and Dave for supplying the necessary support and humour along the way.

And to Ab for realizing my need to complete this thesis and having the patience to wait.

## TABLE OF CONTENTS

Approval .....	ii
Abstract .....	iii
Dedication .....	v
Quote .....	vi
Acknowledgements .....	vii
List of Tables .....	xii
I. Introduction .....	1
Statement of the Problem .....	1
Definition of Fraud .....	4
The Purpose of the Study .....	7
II. The Concept of White Collar Crime .....	11
The White Collar Crime Literature .....	12
Definitions of White Collar Crime .....	12
Causal Theories of White Collar Crime .....	25
Crime Facilitative Model .....	37
III. Theories of Lawyering from a Crime Facilitative Perspective .....	41
The Nature of a Profession .....	42
Studies of Misconduct in the Legal Profession .....	49
Conclusion .....	70
IV. The Origin and Growth of the Legal Profession .....	72
Introduction .....	72
Development of the Legal Profession in North America ...	77
The Evolution of the Law Society of British Columbia	87
The Evolution of the Canadian Bar Association .....	88

	The Evolution of the British Columbia Bar .....	91
	Legal Ethics and Professional Conduct .....	98
	Conclusion .....	103
V.	Personal Motivations and Environmental Opportunities ..	106
	Introduction .....	106
	Motivation and Opportunity .....	110
	Personal Motivational Factors Among Lawyers .....	111
	Personal Gain .....	112
	"Professional" Career Motives .....	116
	Corruption .....	117
	Opportunity Factors Within the Legal Profession .....	119
	Issues of Self-Regulation .....	120
	Monopoly of Information and Knowledge .....	123
	Loss of Supply Control in the Legal Profession .....	127
	Opportunity Factors Within the Social Structure .....	130
	Deterioration of the Economy .....	130
	Relaxation of Social Attitudes and Values .....	134
	Conclusion .....	135
VI.	Problems of Discipline and Enforcement .....	138
	Introduction .....	138
	Establishing Professional Standards .....	143
	Identifying Cases of Alleged Incompetence .....	145
	Procedures for Investigating Complaints .....	148
	Counting Professional Deviance in Canada .....	153
	Reasons for Disbarment .....	157
	Explanations Offered By Lawyers .....	163
	Previous Career History .....	169

Issues of Discipline .....	173
Conclusion .....	178
VII. Conclusion .....	181
Introduction .....	181
Recommendations .....	185
Peer Review .....	186
Training Courses on Ethical Standards and Disciplinary Enforcement for Lawyer Discipline .	189
Legal Education of the Public .....	195
Public Review .....	196
Concluding Statements .....	198
APPENDICES .....	203
Appendix A .....	204
APPENDIX B .....	205
APPENDIX C .....	206
APPENDIX D .....	207
APPENDIX E .....	208
APPENDIX F .....	209
Bibliography .....	210
Statutes Cited .....	218
Newspaper Articles .....	218
Personal Interviews .....	220

## LIST OF TABLES

Table		Page
1	Lawyers Disbarred Between 1976-1986 .....	156
2	Behaviour Leading To Disbarrment .....	159
3	Reasons For Behaviour Leading To Disbarrment .....	164
4	Number in Firm When Disbarred .....	167
5	Age of Lawyer When Disbarred .....	172
6	Years in Practice When Disbarred .....	173

CHAPTER I  
INTRODUCTION

Statement of the Problem

The study of white collar crime has tended to concentrate on individual offenders, the personal circumstances associated with their deviant behaviour,<sup>1</sup> and society's reaction to them as individuals (Wheeler, 1976). Only recently have criminologists become aware that at least some deviant behaviour can be seen as a result of the individual's membership in, or contact with, certain systems, typically industries or professions (Needleman & Needleman, 1979). Such systems are seen as criminogenic (Leonard & Weber, 1970) because elements of their internal structures - economic, legal and organizational - have a role in generating criminal activity within the system. The deviant behaviour, usually but not always involves relatively high status individuals, is seen as a "normal" by-product of legitimate organizational activity (Leonard & Weber, 1970).

The systems involved do not force their members to engage in deviant activity, but they present tempting structural conditions - high incentives combined with low risks - that promote and facilitate crime by members in this "crime facilitative" system (Needleman & Needleman, 1979). However, the

-----  
<sup>1</sup>The author has used "crime" and "deviance" interchangeably. Both refer to the broad range of illegal and unethical behaviour as laid out in th Criminal Code and the codes of conduct within the legal profession.

organization may not necessarily benefit from the crime it promotes through its structural conditions. The crime may even be seen as an "unwelcome but necessary cost of doing business" (Needleman & Needleman, 1979: 7). The measures necessary to control internal crime that are found by system policy makers are potentially even more damaging to one of the system's goals, that of profit making of members within the system. Therefore, the structural conditions favouring crime are allowed to persist.

From recent research, students of criminological theory are familiar with such occupational structures such as the medical profession, the auto industry, and government that seem to invite white collar crime - fraud in the legal profession appears to be another similar system. Recent studies in Canada and the United States show an increasing interest in the examination of the legal profession in order to understand the "elite world of deviance and crime" (Arthurs, 1970; Carlin, 1966; Tuohy in Evans & Trebilcock, 1982; Handler, 1967; Hazard, 1967, 1978; MacFarlane, 1980; Parker, 1982; Reasons & Chappell, 1985, 1987; Rieter, 1978).

It had generally been assumed that, because of the high socio-economic status and their code of ethics, members of the legal profession would engage in only a small amount of deviant activity. In his classic work on white collar crime, Sutherland (1949) did not discuss lawyers to any great extent. The author suggests he assumed lawyers were more ethical than other

professionals and had no need to engage in deviant activity. However, based on a preliminary analysis of the above studies, the view that crimes by lawyers are uncommon is becoming much less popular. These studies suggest that fraudulent practices are much more wide spread than was previously assumed.

What is it about the legal profession which makes engaging in fraudulent conduct somewhat "safe" and financially attractive? The answers to these questions are hard to come by in a profession that has traditionally been closed to external examination. It is the intent of this thesis to study a specific area of wrongdoing by lawyers, namely fraud, in an attempt to answer some of the above queries. In this thesis the major issues involved in the understanding of lawyers who engage in fraud and the problems associated with its detection, investigation and prosecution will be examined within a facilitative theory of deviant behaviour. It is hypothesized that the profession with its wide range of functions and its high degree of autonomy allows facilitation by lawyers to engage in fraudulent acts.<sup>2</sup>

-----  
<sup>2</sup>This model is most consistent in explaining the material dealing with lawyers who engage in fraudulent forms of behaviour. The model does not fit all the material, but, it is seen as the most appropriate approach. This model is not suggesting that the Law Society of British Columbia, the policing body of the legal profession, supports such misconduct. On the contrary, however, the measures necessary to control the violations may require the implementation of certain measures. These measures may be perceived by the members as a threat to the legal profession's independent autonomy and functioning.



In Canada, lawyers generally enjoy high socio-economic status, substantial power and prestige in society as part of the economic and political elite (Aeurbach, 1976; Black, 1987; Keddie, 1978; MacFarlene, 1980; Porter, 1965; Reasons & Chappell, 1985, 1987; Stern, 1980). This creates problems in policing lawyers, including discovering when an offence has occurred and in assembling evidence required to prosecute the offender. These are seen as providing difficulties, more so than in the case of an investigation and prosecution of an individual in a less powerful profession or situation. The legal profession, through its structural and organizational conditions, may facilitate and perpetuate fraudulent activities, without the support of its regulatory organization - the Law Society of British Columbia.

Direct observational data is difficult to obtain in an organization as closed as the legal profession. However, the examination of literature, interview data, and case histories of disbarred persons, kindly provided by Bryan Ralph, Deputy Secretary of the British Columbia Law Society, have allowed the author to analyze the incidence of fraud from the years 1976 to 1986.

#### *Definition of Fraud*

One problem inherent in Canadian fraud law is its complexity. As the Working paper published by the Law Reform Committee indicated:

Basically the law is based on a simple notion that exploitive dishonesty should be forbidden. On this foundation however, there has been constructed a mass of artificial, technical and detailed provisions whose complexity is undefinable and highly detrimental (1979: 11).

The report noted that the complexity of fraud was due in large part to the *ad hoc* decisions that had been made by courts and legislators over the years. The Commission, as a result, in their recommended legislation suggested the definition include, "Fraud consists of dishonestly inducing someone by deceit or other similar means to part with property or to suffer financial loss. It therefore covers dishonest appropriation by deceit - cases where the owner is deceived into willingly parting with property or causes any person or the public to suffer a financial loss."<sup>3</sup> It includes a) larceny by trick; b) false pretenses; c) obtaining credit by fraud and d) fraud now covered by section 338 of the Criminal Code which states,

Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security (1987: 351).

For the purpose of this thesis, fraud defined according to point D is most relevant. In conjunction, the definition implies fraud

-----  
<sup>3</sup>Deceit means any false representation as to past, present or future; Unfair non-disclosure arises where: i) a special relationship where the victim is relying on the accused, or ii) conducted by the accused creating a false impression in the victim's mind, or iii) circumstances where non-disclosure would create a false impression in the mind of a reasonable person; Unfair exploitation means exploitation of i) another person's mental deficiency, or ii) of another person's mistake intentionally or recklessly induced by the accused, or iii) of another person's mistake induced by unlawful conduct of a third party acting with the accused (1979: 19).

can be, misappropriation with consent, induced by deceit. It seems the victim of fraud is tricked into consenting.

The legal definition comprise two elements, *mens rea* (mental intent) and *actus reus* (physical act). These concepts are fundamental to the study of criminal law and fraud. By law the Crown must establish beyond a reasonable doubt that both elements were present for the fraud to have occurred.

If a lawyer is found guilty of fraud (that occurs in his or her role as a lawyer) as laid out in Section 338 of the Criminal Code he or she is guilty of professional misconduct as laid out in the Barristers and Solicitors Act. The form of discipline by the Law Society will most always be in the form of disbarment in cases of professional misconduct involving fraud, although the lawyer may not always be convicted of a criminal offence. <sup>4</sup>

General categories of fraudulent behaviour by lawyers can be seen to include the following, as defined in this thesis.<sup>5</sup>

1. Improper use of clients' trust funds in some capacity:  
(trust fund irregularities and violations) misappropriation of trust funds; received money in trust and did not deposit

-----  
<sup>4</sup>The following discussions include both unethical and illegal behaviour (grouped as "deviant behaviour" for ease of discussion in this thesis) defined by professional regulations/codes of conduct, eg. Barristers and Solicitors Act and criminal law defined by statute. Therefore fraud could include violations of ethical codes of professional conduct and criminal statute. The definition of fraud is less tentative than other forms of deviance because of the visibility of its actions and making its detectability greater than other forms of deviance.

<sup>5</sup>Adapted from Arthurs, 1970.

into trust account; transferred from trust account; trust account is overdrawn; and

2. Forgery/Fraud: creating fictitious spending, overcharging a client; misrepresentation to a client of procedures which did not take place. For example, forging a mortgage document which does not exist. The connection between this activity and conversion of clients' funds to one's own use can be seen in the case in which a mortgage is not placed, though false papers are given to the client and the money received by the lawyer would then be used for other purposes.

### *The Purpose of the Study*

This thesis attempts to examine lawyers who engage in fraud within the context of the legal profession in British Columbia. To better understand this form of deviance, a discussion of the development of white collar crime literature and how it pertains to lawyer fraud will be the focus of the next chapter. It will attempt to explain fraud in terms of white collar crime theories; to pull together the issues which affect the facilitation of fraud within the profession.

The scope and nature of fraud by lawyers raises some — pertinent questions for those theorists who seek a general explanation of criminal behaviour. Chapter III will summarize the specific studies in the United States and Canada dealing with deviant behaviour by lawyers. A final analysis will be presented in terms of a political economy of lawyering (ie.

issues of supply and demand, stratification, power and status of lawyers) and to relate these issues to a crime facilitative theory. The chapter will examine the source, the political and economic features which produce such a crime facilitative structure.

An overview of the legislation and enforcement of fraud over the last three hundred years will be the focus of Chapter IV in order to provide an historical context to the subject. A general introduction to the Canadian legal system and the issue of ethics will be presented as related to this thesis, as well as a discussion of the evolution of the English legal structure. Special attention will be paid to those historical events which have shaped the legal profession in British Columbia.

In taking the position that a crime facilitative environment exists, the next step is to ask "what factors motivate lawyers to engage in fraud?" It is apparent that the study of personality and motivations of the offender would be worthwhile since it is very often the position of the lawyer by which the "normal" structure of the socio-economic activity is converted into deviant activity. In conjunction with motivation it is necessary to look at the opportunity factors within the profession and society which are available to lawyers allowing them to manipulate their environment and engage in fraud. In Chapter V arguments will be presented indicating that it is the socio-economic structure of society which allows lawyers to engage in fraud, in conjunction with the independent actions of

the individual to convert the possibilities into realities.

Chapter VI deals with the policing, regulation and enforcement responsibilities of the regulatory agency for lawyers in British Columbia. This chapter further deals with the proceedings and sanctions for fraud control. Have adequate sanctions been provided? Substantive conduct issues will be dealt with to point out how existing provisions concerning procedures and sanctions have made an attempt to implement legislation concerning fraudulent activity. But, it must be questioned as to whether current regulations are being enforced in such a way as to minimize fraud in the legal profession. The policing practices of the Law Society, the regulatory and enforcement body for lawyers in British Columbia, will be examined. It is really an issue of self-enforcement, based on self-policing within a broad framework of control. The goal of Chapter VI is to shed light on the frequency and acceptability of the above practices. The questions of how members of the organization are selected for investigation, and on what basis, are essential to the understanding of the present enforcement and regulation strategies in the profession. It is noted that the Law Society does not condone such fraudulent activity, in fact, quite the opposite. However, the measures taken by the Law Society, to control internal crime, would be a vast undertaking and prohibitively expensive. Furthermore, the Society is unlikely to have the full support of some of its members, the government or business organizations, to which they have been

historically tied.

Where possible, case law has been used to illustrate issues through example. Information was obtained from case files secured from the Law Society of British Columbia. Demographic information on the twenty-nine lawyers disbarred between 1976 and 1986 were analyzed.

Despite protests from the legal profession to the contrary (Blue Sky Committee, 1978), some authors consider fraud to be a growing problem in the legal profession as a whole. Arguably, it is a function of self-interest, training, a competitive marketplace a professional association concerned with remaining autonomous and a concern by lawyers to maximize financial rewards for its members. Lawyers are socialized through the socio-economic and political structure of society into subscribing to values which stress economic and material concerns.

With this kind of base, the concluding chapter progresses to the final goal of raising issues that will be required for the consideration of reformation of the regulations dealing with fraud. Beyond recommendations for change, the chapter closes with a final discussion and argues for further research into the phenomenon of lawyer fraud. It is clear that more information is needed.

## CHAPTER II

### THE CONCEPT OF WHITE COLLAR CRIME

In consideration of the phenomenon of fraud committed by lawyers, this chapter focuses on the origin and development of white collar crime theories and relevant arguments to which such a topic may be applied. Before undertaking a study of lawyers and fraud in British Columbia in terms of a white collar crime model, it is essential that the definition and causes of what may constitute that type of crime be clarified. White collar crime is itself a large and complex subject area, and although it will be examined at length here, the effort is neither exhaustive nor definitive. Rather, those areas which allow for the possible linkage between white collar crime and lawyers' fraudulent behaviour will be discussed. An attempt has been made to cast the issues in a chronological and theoretical perspective.

Usually considered a financial crime, white collar crime can take many forms. These may include stock price manipulation<sup>1</sup>, wash trading<sup>2</sup>, or fraudulent real estate and mortgage deals. Of primary concern in this thesis is a financial crime which involves the misuse of clients' trust funds or financial assets

---

<sup>1</sup>This involves the buying or selling of a security to create a false or misleading pattern for the purpose of raising or depressing the price of a stock.

<sup>2</sup>The buying and selling of a security by the same interested party which gives the impression of market activity and price rise.



already in one's possession for one's own use. In this thesis what is at issue is clients' funds held in trust by a lawyer. The material is organized into three major categories which follow:

1. a socio-psychological definition affecting white collar crime activity;
2. an occupational definition affecting white collar crime activity; and
3. an organizational definition affecting white collar crime activity.

The intention in the first section is to provide the reader with a chronological review of the major definitions that have been expounded concerning white collar crime. The reader must initially be aware of what may be considered to constitute white collar crime and the problems associated with it before he or she can understand its relationship to the behaviour of lawyers who commit fraud.

## The White Collar Crime Literature

### *Definitions of White Collar Crime*

White collar crime as an idea, was first suggested by Ross (1907) and reaffirmed by Morris (1935) who referred to criminals of the upperworld. However, it was Edwin Sutherland who coined the term "white collar crime" and described it as a unique form of illegal behavior (Sutherland, 1940:1-12).

Sutherland commenced his investigations into "white collar crime" shortly after the appearance of the first edition of his book, The Professional Thief, in 1937. His belief that the current theories of crime placed too much emphasis upon those types of offences which were prevalent among the poor, sparked his interest in this field. He also noted that current theories neglected the crimes committed by members of the middle and upper classes. Illustrating the difficulty in developing a concrete definition of white collar crime, Sutherland had to modify his ideas and reconstruct the boundaries of behaviour which would be included in the concept.

Sutherland (1949) categorized various violations which had previously been treated as civil wrongs (ie., the conduct of corporations), as criminal. Sutherland's (1949) idea of white collar crime included many activities that were not technically criminal but violated civil laws or "rules of the game" (i.e., false and deceptive advertising, price fixing, fee splitting by lawyers and others).<sup>3</sup> As a result, crime should no longer be defined solely as the illegal activity of blue collar, lower class and disturbed persons, but should also include the behaviour of business people of good social standing and class, such as lawyers. The distinguishing mark of white collar criminals, as Sutherland perceived them, was that their principal work was lawful, and their criminal activity was a deviation. He argued that these violators damage social welfare

-----  
<sup>3</sup>Much of this behaviour described by Sutherland has, subsequent to his writings, been "criminalized".

just as much as other, more "traditional" criminals.

Sutherland attempted to transform most of the traditional theories of crime causation. He noted, "one cannot explain white collar crime through poverty or any other traditional social crime theory" (1949: 132). Sutherland couched his theoretical approach in terms of "differential association". He explained:

...the hypothesis of differential association is that criminal behaviour is learned in association with those who define such behaviour favourably and in isolation from those who define it unfavourably, and that a person in an appropriate situation engages in such criminal behaviour if, and only if, the weight of favourable definitions includes the weight of the unfavourable definitions (Sutherland, 1949:234).

Sutherland, then, developed his definitions of white collar crime based on data he had assembled of violations of regulations of the 70 largest manufacturing, mining and mercantile corporations in the United States. These included: activities in restraint of trade; misrepresentation in advertising; infringement of patents, trademarks and copyrights; unfair labour practices; rebates; financial fraud and trust violations; and violation of wartime regulations.

There were, however, problems with Sutherland's concept of white collar crime. It was extremely wide ranging from bribery and embezzlement, to often contradictory conduct rarely treated as criminal (Goff, 1984). For example, he defined what he meant by "white collar crime" in several ways. At one point it was:

...'acts' committed by a person of respectability and high social status in the course of his legitimate occupation (Sutherland, 1949:6).

On another occasion he stated:

...the white collar criminal is defined as a person with high socio-economic status who violates the laws designed to regulate his occupational activities (Sutherland, 1949:511).<sup>4</sup>

This led one commentator to note:

Thus, in the first definition, embezzlers can be seen as white collar criminals and yet in the second definition they are excluded as white collar criminals. As a result white collar crime has been given a variety of meanings (Gibbons, 1979:63).

With regard to lawyers, therefore, Sutherland's first definition would apply, yet problems would arise with the specificity of the definition. Its vagueness definitely hampers a complete and thorough understanding. Nonetheless, Sutherland's research has significantly contributed to most of the existing lay concepts of white collar crime. Most studies of white collar crime that have appeared since Sutherland's research seem to include a variation on his theme, often noting that crime among the business communities is more complex than Sutherland may have suggested.

Since Sutherland's initial work, the study of white collar crime has progressed significantly. Other sociologists have advocated the term "occupational crime" to refer to illegal business activities (Block and Geis, 1967; Newman, 1958;

-----  
<sup>4</sup>Other writings by Sutherland on white collar crime include: "White Collar Criminality" American Sociological Review 5: 1-12; Sutherland, E.H. and Donald Cressey. 1960. Principles of Criminology. Chicago: Lippincott; "Crime and Business", Annals of the American Academy of Political Science, 217 (September 1941) :112-118; "Is White Collar Crime, Crime?", American Sociological Review, 10 (April 1945) :132-139.

Quinney, 1964). These authors included in their classifications a wider range of factors indicating the kind of occupations, source of employment, the position and structure of the occupation in the social structure, and the occupational role of the offender should be included (Quinney, 1964).

Newman (1958), for example, noted that Sutherland's emphasis on high social status resulted in the exclusion of a host of other occupation-related crimes that are similar to his white collar offences in that:

1. a person's legitimate occupation provides the context, and sometimes the motivation, for the offence; and,
2. the offence and offender escape official processing at the hands of the authorities.

Newman (1958) said that:

Farmers, repairmen and others in essentially non-white collar occupations could through such illegalities as watering milk for public consumption, making unnecessary repairs on television sets, and so forth, be classified as white collar violators (Newman, 1958:52).

Newman (1958) therefore, defined white collar crime's chief criterion as a crime when occurring as part of a deviation from the violator's occupational role. He saw white collar crime as markedly different, both legally and socially, from conventional crime. For Newman, the controversy over criminological appropriateness centred around three major issues:

1. Are the laws and violations in question really crimes?
2. Can the behaviour of the offenders involved be equated with the conceptual meanings of criminal behaviour, particularly

since violators do not think of themselves as common criminals?

3. What is to be gained, other than confusion and imprecision, by the reformulation of definitions of crime to include behaviour customarily "punished" civilly or by administrative action rather than by conventional and probably more precise, criminal procedures? (Newman, 1958: 51).

This broader notion of occupational crime thus included criminal activities committed by anyone in connection with their occupation, which would indeed include lawyers who are committing violations but do not see themselves, necessarily, as criminal.

Following on from this work, Quinney (1964) also noted the concept of white collar crime, as articulated by Sutherland, covered a rather wide, and often uncertain range of behaviours. As a result, he was not clear what behaviour constituted white collar crime.<sup>5</sup> Quinney, like Newman, (1958) proposed a delineation of the concept of white collar crime to include all violations which occur in the performance of the occupation regardless of the social status of the offender. For Quinney, the essential point of the crime, whether seen as white collar

-----  
<sup>5</sup>Ambiguities were present, as a result of sloppy definitions. What constituted a real occupational location? Perhaps past research tended to concentrate too much on the particular status group and not enough on the occupation. Are positions and organizations that deal in the provisions of illicit goods and services considered occupational? For example, is a pharmacist who occasionally distributes illegal narcotics to be considered a white collar criminal?

or occupational crime was that it occurred in a legitimate occupation but violated the legal and commercial codes established by statute. The scenario in which a lawyer misappropriates trust funds of a client, certainly fits the above definition.

A further refinement in occupational crime was suggested by Bloch and Geis (1967), who proposed that differentiation of such crime should be on the basis of the nature of the occupation. They recognized three categories of occupational crime:

1. Those committed by independent individuals and professionals such as doctors and lawyers;
2. Those of employees against corporations (or government); and
3. Those committed by policy-making officers of corporations.

The latter class includes behaviour such as conspiracies to set prices, misrepresentation of merchandise, labour exploitation and other illegal activities (Block and Geis, 1967:402).

This categorization creates a much more adequate definition of occupational crime as it takes into account other variables which may contribute to an explanation of the behaviour among lawyers. For example, included in this categorization would be the relationship between the social structure, criminal law, occupational norms and criminal behaviour.

Up to this point, definitions of white collar crime focussed primarily on the crime committed by a person in a position of trust for personal gain (Goff & Reasons, 1986). Emphasis was

placed upon individuals and their needs, goals, attitudes and behaviours in the explanation of particular acts. This has generated criticism that such an individualistic and largely social-psychological approach had not placed enough emphasis on the effect of organizations on daily life (Goff & Reasons, 1986). It had been noted that, by making the distinction between white collar and organizational crime, one can recognize the influence public and private organizations have on society in general (Goff & Reasons, 1980). This is particularly relevant when discussing the legal profession because of its influence in shaping the social and economic structures in society. As a result it was suggested that organizational deviance should be among the empirical and methodological interests of future sociological works (Ermann & Lundman, 1978; Goff & Reasons, 1978, 1986; Reasons & Purdue, 1981; Schragger & Short, 1978).

In other words, when looking at lawyers as a subject group in the study of white collar crime, too much emphasis has been placed on the psychological attributes of the fraudulent lawyer, rather than looking at what motivators are present in the political economic organizations of society in which legal structures must operate, which may promote deviant activity.

Schragger and Short (1978) in their analysis of crime in an organized setting pointed out that there are two weaknesses in traditional treatments of deviant behaviour within the perspective of white collar crime:



First, treatments focus on offences whose impact is economic and intended to gloss over a large group of offences with serious physical, if often unintentional effects. By emphasizing the wide effects of white collar crime, they deviate attention from offences with substantial effects upon individuals; and,

Second, these theories also fail to deal with peculiar characteristics of illegal behaviour in organizational settings. They view the individual as a criminal agent, whether actions are taken on behalf of, outside of, or against organizations. Yet, it is often impossible to determine individual responsibility for illegal actions committed in accordance with the operative goals of the organizations. Consideration of both these issues – the impact of organizational behaviour and the characteristics of crimes committed in organizational settings – would provide a framework for identifying a class of illegal actions or organized crimes (Schrager and Short, 1978:407).

Schrager and Short (1978) propose a working definition of organizational crime in an attempt to override the methodological and ideological problems created by the conception of "white collar crime". It tends to be considered a catch-all phrase, blurring the issues and thus not making it particularly useful in any study of deviance.

In addition, Ermann and Lundman (1978) noted the study of deviance and social control could be expanded to recognize that:

- 1) Organizations not just individuals committed deviant acts; and 2) other organizations have responsibilities for preventing or controlling that deviance (1978:55).

Ermann and Lundman (1978) present a model for analyzing deviance in light of the above statement. They consider organizational deviance as referring to actions directed to an organization which is labelled as deviant because it violates the normal expectations of the organization. They go on to say that this

action is elite supported. Ermann and Lundman's definition concentrates on organizational rather than individual aspects of deviant behaviour. Four types of organizations followed from the above definition. The type most applicable to this thesis concerns the service oriented organizations, such as the legal profession, where the prime beneficiaries are the clients. As stated by Ermann and Lundman (1978), clients are often unable to judge the adequacy of the service rendered and thus the lawyer is able to violate the trust of the vulnerable client, a problem endemic to the legal profession in general.

In a further study of organizational crime, Goff and Reasons (1978) defined white collar crime to mean "suite crime". By "suite crime", Goff and Reasons stated:

...illegal behaviour which occurs in the business suites of the corporate, professional and civic elites of society. Such crimes as misrepresentation of advertising price fixing, fraudulent financial manipulations, illegal rebates, misappropriation of public funds, splitting fees, fraudulent damage claims, failure to maintain safety standards, and the violation of human rights are examples of suite crimes (1978:2).

These types of offences are largely carried out by persons representing an organization and are committed for individual or collective benefits. They noted this definition of "suite crime" still leaves much to be explained regarding the scope and nature of the offences. They felt the need to study the phenomenon was due in part to the increasing power large organizations and professional elites have over society, lawyers comprising a significant portion of the membership in both (to be discussed

in Chapter III). For Goff and Reasons this apparent lack of accountability in the corporate sphere increases the depersonalization of individuals confronted by this corporate power and reduces scrutiny of corporate activities.

Reasons and Purdue (1981), also analyzed organizational offences and divided them into three categories according to the type of crime. Their classification included, (a) economic crimes; (b) human rights crimes; and (c) violent personal injury crimes. This, they hoped, would result in a conceptual typology for categorizing organizational crimes for further analysis.

Goff and Reasons (1986) in a later study, make a distinction between white collar crime, emphasised by traditional criminology, and organizational crime. They argue that making the distinction allows one to grasp more clearly the impact of the organizations upon individual lives in three general categories: as workers, consumers; and members of the general public. They have a similar categorization of organizational crimes as outlined by Reasons and Purdue (1981) and note that the public is regularly victimized by organizations, many times without realizing the victimization.

They indicate that in order to understand why employers, consumers and the public are victims of organized crimes we need to analyze the nature of our political economy. Ours is a capitalist political economy, its major features include corporate ownership, profit growth and concentration (Reasons &

Purdue, 1981: 37-38).

Although the organizational crime literature described above does not bear directly on lawyers who defraud, it does aid in the understanding of the phenomenon in general. These definitions have specified the concepts in white collar crime thus making it more applicable to the scope of this study - lawyers who defraud. One can see as the thesis progresses that lawyers may engage in various forms of white collar crime as a result of factors found in the organization of the social environment, rather than just individual psychological factors.

A review of the white collar crime definitions makes it apparent that the differences existing amongst them are not easily overcome. They include a broad range of behaviour extending from the personal emphasis of Sutherland's definition, to an occupational perspective in the 1960's; to one looking at the organizational structures which can be further examined within a specific political economy model allowing for further modification of related factors in the larger socio-political environment; It is important to consider all of these factors which may induce a lawyer to engage in fraud.

Generalizations can be made about the basic common factors and characteristics of early theorists. However, later definitions tend to clarify many of these initial concepts. There was a realization by many theorists that it was not only the personal attributes which may have motivated the individual,

but also the larger social environment, including the structure within which the criminal operated.

To summarize this discussion, despite the clarifications and modifications of the conception of white collar crime is still such that many of the definitions are broadly based and vague. "White collar crime", as conceived, generates attempts to create all inclusive definitions which, in the final analysis, are still inadequate in the study of fraud in the legal profession. It seems that all behaviour apart from the commonly perceived crimes (robbery, theft, assault etc.) have been placed under the heading of white collar crime, and thus have been seen as sharing causal factors. This is simply not the case. Geis and Stoddard (1980), in a more recent work concerning the definitions of white collar crime, commented on the difficulties of definition:

...we have deliberately avoided the conceptual and terminal issues involved in white collar crime definitions. Instead we have relied on an intuitively satisfying understanding of white collar crime as a normal term that encompasses a wide range of offences, abuses and crimes whose outer boundaries are as yet ill drawn and perhaps not precisely definable (1980:5-6).

After having identified the nature and scope of "white collar crimes" to include more of the well defined concepts, this study can now move on to explore the causes of white collar crime in specific reference to fraudulent activity among lawyers.

## *Causal Theories of White Collar Crime*

Causal theories, by their nature, are intended to fully explain a relationship between two or more factors under examination. The explanation is to leave little doubt as to development of one factor as a direct consequence of the existence of the other. Essentially, the relationship is one of cause/effect. It is extremely difficult to obtain these kinds of results in the world of social science, yet this has not and will not deter social scientists from pursuing such a lofty goal. The myriad of social factors which play one against the other in social relationships are in many ways endless. The attempts to find "the cause" of a particular form of behaviour, then, is an exercise in reducing the factors to the lowest common denominator.

There has been much study and discussion on the cause or causes of white collar crime. At this point it is important to focus on the more prevalent theories that have originated from attempts to understand what influences white collar crime in our society, specifically those factors that relate to an understanding of lawyers who commit fraud.

Generally, Sutherland (1949) put forth the argument that in certain businesses and occupations, law breaking was seen as normative. Individuals in these occupations, being isolated from possible other areas where criminal activity was not prevalent, learned attitudes, values, motives and techniques favourable to

this type of crime. Law breaking occurred because of various disorganizing factors within the general culture, such as excessive competition and the emphasis on success rather than on the means of succeeding.

In general, this theory viewed white collar crime as a natural product of conflicting values within our society. The white collar criminal was an individual who, through association with colleagues, defined the offence as "normal", and learned to accept and participate in the illegal practices of his occupation. The emphasis was on "crime as learned behaviour" rather than on viewing it as a personal deficiency. Sutherland's (1949) analysis of white collar crime led him to conclude that "white collar crime is organized crime". Sutherland viewed crime as a social artifact and not a natural phenomenon.

This would apply to those lawyers who are largely influenced by their social circumstances. This behaviour may indeed be learned as a part of professional training, and not just as a result of a pathological deficiency. Crime may be created in the legal profession by the high social and economic expectations lawyers have, as professionals in a society which places importance on materialism and conspicuous consumption.

Clinard (1946, 1952), agreed to some extent with Sutherland's (1949) differential association hypothesis, in that most violations appear to have their origins in the behaviours learned in association with others. But, in his study of World

War II black market operations he argued that it did not account for all cases of law breaking, at least where black market violations were concerned. Further, it did not adequately account for personal differences in legal conformity within many businesses. Clinard (1946) noted that more attention should be paid to certain personality traits of the individual violators. He said:

Such a theory does not adequately explain why some individuals who were familiar with the techniques and the rationalizations of black market violations and were frequently associated with persons similarly familiar did not imagine such practices...it is suggested that some, but by no means all, persons tended to accept or reject black market opportunities according to their basic personality make up. Some of these general personality patterns... were egocentricity, emotional insecurity or feelings of personal inadequacy, negative attitudes toward other persons in general. The relative importance of status symbols of money as compared with nationalism and the relative lack of importance of one's personal, family or business reputation (Clinard, 1946: 258-270).

Robert Lane (1953), in his study of the business world also supported Sutherland's differential association theory regarding white collar criminals, in general, by noting the consistency of law violations in certain firms, even when the management had changed several times. He stated: "...it seemed to be the position of the firm rather than any intentional qualities of its management which led it to violate" (Lane, 1953: 151-165).

Clinard (1952) and Lane (1953) noticed, however, that criminality among businessmen and business organizations was more complex in character, and not as personality situated as was suggested by Sutherland's (1949) account. This pattern is



also applicable to the legal profession. For example, lawyers may be familiar with the techniques needed to commit fraud yet not all engage in deviant activity.

Cressey's (1952) study of embezzlement seriously questioned the usefulness of differential association theory in explaining what causes white collar crime. He found that contacts with criminal patterns were not fostering further learning of the techniques of trust violations. He concluded that:

...it is doubtful that it can be shown empirically that the differential association theories apply or does not apply to crimes of financial trust violations or even to other kinds of criminal behaviour (1952: 52).

Not all theoretical literature concerning white collar crime has been directed to differential law breaking. In fact, some criminologists have been more concerned with accounting for the existence of crime in the upper echelons of society, rather than the variation in offence rates within a business or profession (Hartnung, 1950; Taft, 1956, 1960). This literature is important to the study of the legal profession in that it concentrates on causes of crime as occurring in elite segments of society, of which lawyers are a large part, rather than that solely concentrated in the business or corporate structure.

Hartnung's (1949, 1950) investigations of wartime regulation violations in the meat industry utilized Sutherland's (1949) suggestion that white collar crime was a result of "social differentiation". Hartnung pointed to different set of subcultural values within a common set of economic and political

ideals as the basis for such violations.

Further, Taft (1964), taking into account the larger social structure, stressed the "exploitative" nature of our society and saw white collar crime as a social class variation of common motives and practices. He said:

...American culture demands that we be individualists, conformers, materialists, and so on, but the way in which we strive for these culturally determined goals are determined by the ways which are approved in these primary groups. The underprivileged slum dweller joining a gang commits the 'no collar' type of crime. The businessman joining rotary becomes a non-criminal competitor, if possible, but a white collar criminal if such a course is essential to his prestige. Some fortunate people are able to achieve success without exploitation of his fellows, but those, we hold, are a minority, not a majority, because any system well-nigh compels most of us to be exploitative (Taft, 1964: 273).

Taft (1964) in a later study reinforced the idea that general culture can be the cause of crime:

Our society involves the relative tolerance, acceptance and wins the approval of exploitative behaviour of the white collar type or that of non-criminal exploiter (1964: 276).

For Taft (1964), then, the social system compelled business institutions to be exploitative.

To this stage in the discussion, white collar crime has come to mean business or economic crimes that involve violations of regulatory statutes and are committed, at least in part, for the benefit of the business organization. While these references do not relate directly to the legal profession they are, nonetheless, instructive in providing a well rounded approach to the causes of professional crime.

The study of the causes of both white and blue collar crime had been dominated by a focus on individual offenders, and the personal circumstances associated with these organizational violations (Wheeler, 1976). However, a renewed interest in the study of white collar and occupational crime occurred in the late 1970's, which led to further recognition of corporate organizational crime (Casey, 1982; Goff and Reasons, 1978; Reasons, 1974; Snider, 1978; Snider and West, 1982; Wheeler, 1976). As stated previously, the organizational crime literature tended to concentrate on external factors, particularly on the effect the social environment has on the workings of occupations. Large scale corporations like to have predictable environments to eliminate instability. Thus, in limiting competition, mergers and monopolies often occur. All of these factors give rise to certain ideologies which become legitimized in the business and professional communities. Profit is an ideological goal in our society, and an acceptable goal in the legal profession. There is, of course, the goal attainment of profit where the means are achieved through normal profit channels. But if the environment seems unstable or the profit outcome unsure, then different, often illegal means, become necessary to maintain these profit margins which may lead to the phenomenon of organizational crime (Needleman & Needleman, 1978). While the legal profession cannot be considered an "corporation" these theories dealing with the structure do provide some insight into the motivation of deviant behaviour among lawyers.

Wheeler (1976) called for the development of a corporate organizational deviance perspective, observing that:

...it was just about a quarter century ago that the late Edwin Sutherland published his little book on white collar crimes, so it is hardly an original idea to return to the topic and related issues.... But it is essential because so little has happened in the intervening process that it is necessary to urge that we redirect our attention from the petty thief to the corporate executive, from the offender who haunts the streets and alleys, to those who frequent the fine restaurants and from the police to the FTC, SEC and the IRS (Wheeler, 1976:526).

The body of work on the causes of corporate crime conducted by Canadian criminologists can be attributed to a few recent sources (Casey, 1982; Goff and Reasons, 1979, 1980, 1986; Reasons, 1974; Reasons and Purdue, 1981; Snider, 1978, 1982; Snider & West, 1980). Even the small amount of research that has been done in Canada and other countries suggest that this form of white collar crime is widespread and may be more detrimental to society than street crime (Casey, 1982). From these studies one may note the emerging perspective on white collar crime which may aid in laying the foundation for discussions in this thesis.

While Edwin Sutherland noted long ago in White Collar Crime (1949) how similar the professional thief and corporate criminal were, Reasons and Goff (1978) write that there is virtually no information on the scope and magnitude of corporate crime in Canada. As a result, in terms of the causes of white collar crime, Goff and Reasons look at the "kinds of people" and "kinds of environment" theories of criminality, noting both have short

comings when applied to "suite crime" specifically because they focus disproportionately on the criminal rather than on the criminal in relation to the environment; or rather they focus on the social structural demands of the environment itself as producing the incentive to engage in deviant activity.

Reasons (1974) notes the early studies of crime concentrated on studying the criminal in order to find the causes of crime. This led to a multitude of explanations of criminal behaviour in the kinds of people who were identified as criminal. In the early part of the 20th century such "kinds of people" theories (Reasons, 1974) emphasized the assumed fact that there were born criminals. In contrast, the most popular "kinds of people" theory today is the belief that those committing crime are psychologically different from those not committing crime. In spite of the lack of supporting data for the psychological abnormality theory, it may still receive a great deal of professional and public support (Goff & Reasons, 1978).

Goff and Reasons (1978) suggest that within the last few decades there has emerged a major competing theory about the causes of criminal behaviour which locates the problem in the criminal's environment. In this approach "kinds of environments" are emphasized in explaining why people commit crime. Here, criminal behaviour is seen as a response to one's environment and not due to internal psychological predispositions. Rather than focussing on these two separate approaches Goff and Reasons state that one should recognize the importance of "power,

politics and people in creating, sustaining and shaping conditions conducive to criminality which are identified with the kinds of environment theories" (1978:26).<sup>6</sup>

In other words, one should concentrate on a more balanced approach which analyzes the influence of the political and economic structure on the individual. This approach should lead to a critical analysis of economic policy rather than of criminal characteristics. Such an emphasis, note Goff and Reasons (1978), produces a focus on power and conflict as essential aspects for understanding what may contribute to white collar crime. Crime occurring in the upper social strata, then, is a rational way to earn profits in capital societies with decreased chance of detection and prosecution, much less conviction (Goff and Reasons, 1978; Snider, 1978, 1982). It will be demonstrated that this is the case with lawyers engaging in fraud.

To reiterate, Goff and Reasons (1978, 1980) emphasise the significance of the state in the study of white collar crime. In capitalist nations such as Canada the dominant economic class controls the state. The dominant economic class, which may be reflected in the business and government sectors, includes among

---

<sup>6</sup>Power, defined by the control of crucial resources, is seen as the key variable in determining the formulation and enforcement of laws. Thus the nature and enforcement of laws against corporate crime depend on the relative strengths of the economic elite (who control the material resources and the corporations) as well as other elites who control political resources (Turk, 1973).

its members, a large proportion of lawyers.<sup>7</sup> Thus, it follows that the legal system will principally reflect the values and concerns of that particular class.

Casey (1982) also looking at corporate crime, suggests that what is known of the nature and incidence of this type of crime is small in comparison to the data compiled on street crime. He suggests, as have Goff and Reasons (1978), that the Canadian elite have been able to arrange their affairs with only minimal state interference. He suggests a great deal more research must be directed to the study of corporate crime and to other white collar crimes committed by the powerful in our society.

Snider and West (1980) also analyzed this double standard of justice and located white collar crime within the economic power of business and its ideological domination. Snider (1978) notes that traditional criminal law ensures a degree of social order, essential for capital accumulation to take place, while anti-business laws serve primarily as a legitimation function in appearing to restrain business. The result is weak enforcement of the laws at a business level. Their findings support the idea that it is the private sector that influences the Canadian economy and that the government must secure the confidence of the corporate elite, not vice versa. It will again be suggested that this corporate elite is comprised of a large number of lawyers.

-----  
<sup>7</sup>See Chapter IV for the number of lawyers who comprise corporate and political sectors of society.

From these studies we can see another emerging perspective on white collar crime which may have relevance for this thesis. The following studies outline the elements of domination and power of social and economic organizations, such as the legal profession, within the social fabric of North American society. Recognizing this impact, it must not be dismissed or underemphasized. It is not enough to examine the personal attributes of lawyer deviance, one must also examine the attributes within the legal profession and the society in which it operates, to determine the factors which may facilitate the fraudulent behaviour.

In a further elaboration as to what may cause white collar crime, Abel (1981), MacFarlane (1980), Snider and West (1980), and Reasons and Chappell (1985, 1987)<sup>8</sup> realize that in order to understand Canadian law and crime we need a theory with an historical perspective, based on a Canadian political economy tradition. This theory explains that it is difficult to understand white collar crime as originating from defective egos or impoverished backgrounds (Reasons & Chappell, 1987). One needs to look at the social organization of professions, corporations, and society as a whole in order to understand the deviance in the upper social strata and in particular, the legal profession. Reasons and Chappell (1985, 1987) note that lawyers belong to a corporate and political elite. This relationship between the political, as well as economic and social power has

-----  
<sup>8</sup>The political economy of Canada theorists will be further discussed in the following chapter.



been well documented by other sources (Adam & Lehey, 1981; Clement, 1975; Foster, 1975; Galanter, 1983; Nioso, 1982; Scott, 1975). What results is a politically and economically powerful, closed, self-perpetuating legal subculture.

Chappell and Reasons (1985, 1987) support Macfarlane (1980) who also demonstrates that a large amount of the legal profession comes from well-established families which have access to power. This power extends into the area of corporate business and politics. She argues that we should consider the legal profession in terms of a political economy perspective in Canadian society. This may provide a greater understanding of the dynamics of deviant behaviour engaged in by lawyers.

One should, therefore, look to the political economy and the social organization of the professions and not just to the characteristics of the offence or nature of the violations when analyzing lawyers engaging in fraud. Certain professions have opportunities to commit criminal activity, depending on the roles, relationships, responsibilities and resources available in our economically based society. Thus, white collar crime can be seen as rational behaviour within a capitalistic society with low probability of detection, apprehension, conviction and sanction (Gordon, 1970). The structure of the legal profession and its place within the social strata provides the opportunities to engage in deviant behaviour by members of the profession.

As this chapter has demonstrated, difficulties exist with the theoretical approaches to define and clarify the causes of white collar crime in terms of the legal profession. The individualistic approaches often failed to explain the reasons why some lawyers engaged in fraud and others did not. It also negates the social influences of the larger society. The organizational and political economy perspectives, also do not adequately distinguish between those lawyers committing fraud and those who do not. Why is it, for example, that all lawyers are subject to similar training, similar career expectations yet only some engage in fraud? From this difficulty encountered in the discussion of white collar crime in general, an attempt will be made to provide a more modest approach to explain fraud within the legal profession. The occupational, political and economic factors which push some lawyers toward fraud will be discussed in terms of a crime facilitative theory (Needleman & Needleman, 1979).

#### *Crime Facilitative Model*

What is needed, then, is a model to cover systems with looser, more competitive market structures (such as the legal profession) which may generate white collar crime as a result of certain structural and organizational factors found within society and within the profession itself (Needleman & Needleman, 1979). The facilitative model can be identified as focussing on factors which may facilitate criminal behaviour in a professional system such as law. This model is characterized by

systems whose enforcement mechanisms do not allow deviant activity, but it occurs as a result of the lack of effective constraining mechanisms.

From criminological and sociological research, we are familiar with systems in business and government having the characteristics described above which seem to invite white collar crime. Specific examples of this may include political bribery, medical fraud, insurance frauds, securities frauds, and the like (Goff and Reasons, 1978). This categorization necessarily includes the fraudulent activities of lawyers discussed in this study.

When members within a professional system violate laws and regulations designed to constrain their autonomy, at least three issues are raised. First, those charged with enforcing laws have to develop tactics to deal with the expertise of those in the professional organization.<sup>9</sup> Second, punishing a law-violating member may result in the withdrawal of a service to innocent parties. Third, the intelligence and often the social standing of the member and his or her ability to cast shady actions in a decent light makes effective detection and prosecution of violations difficult. This is a problem common to lawyers who defraud and to other white collar crimes in general (Pontell, Jesilow & Geis, 1982).

-----  
<sup>9</sup> Compounded here, is the fact that the legal profession is a self-policing organization, an element which is discussed in greater detail in Chapter VI.

When lawyers engage in fraud they violate both professional norms and the law. This behaviour fits the classification that Katz (1979) has labelled "pure" white collar crime:

In the purest white collar crimes, white collar social class is used: (1) to diffuse criminal intent into ordinary occupational routines so that it escapes ambiguous expression in any specific, discrete behaviour; (2) to accomplish the crime without incident or effects that furnish presumptive evidence of its occurrence before the crime has been identified; and (3) to cover up the culpable knowledge of participants through concerted action that allows each to claim ignorance (1979:435).

As this thesis will argue, it is fairly easy for lawyers to diffuse criminal intent into ordinary occupational routines while participating in the professional system. Members of the legal profession, as a group, enjoy a high level of political and economic autonomy which makes the search for evidence of wrongdoing both difficult and complex. Moreover, information from clients does not provide substantial or conclusive proof in most cases.<sup>10</sup>

The profession's upper echelons undoubtedly do not compel lawyers to break the law. There are, however, extremely tempting structural conditions – high incentives and opportunities coupled with low risks – that encourage and facilitate crime by system members (Needleman and Needleman, 1979).

-----  
<sup>10</sup>The client is often unaware the lawyer has engaged in some form of deviant conduct. If the client is aware he or she is rarely familiar with legal intricacies necessary to prove the lawyer's incompetence. The exception to this is the case of trust fund irregularities, where because of the visibility of the evidence there is often proof.

In this system, termed crime "facilitative", the legal profession does not necessarily benefit from the crime it inadvertently promotes through its structural conditions. The conduct is regarded as unwelcome by the system's regulators. Nonetheless, the measures necessary to control internal crime may be felt by the system members to be potentially even more damaging to their goals. In most cases, this is the goal of profit making. Therefore, the structural conditions favouring crime are not easily alleviated by the regulators. The crime facilitative system involves criminal activity that is an "unwelcome but seemingly unavoidable cost of doing business in a society so profit oriented". (Needleman and Needleman, 1979).

As termed by Needleman and Needleman:

...crime facilitative systems, in which structured conditions encourage illegal acts by members of the corporate system and/or those they come in contact with as customers or clients. The crime is incidental to the organizational goals (Needleman and Needleman, 1979: 526).

To understand more fully this subtle form of criminogenesis, the thesis will now undertake an examination of a professional group which may be subject to this form of white collar crime: lawyers in British Columbia. First, however, it is necessary to examine the legal profession more generally.

## CHAPTER III

### THEORIES OF LAWYERING FROM A CRIME FACILITATIVE PERSPECTIVE

Very few areas of social organization and organizational behaviour can be fully understood without first comprehending the impact of the legal factors. The nature of the legal system, of which lawyers are obviously an integral part, is to an increasing extent of considerable interest to social scientists. Society considers law to be one of the most prestigious of the professions and as such its members play a prominent role in the social processes which allow a complex society to function (Schur, 1968).<sup>1</sup> And yet a discrepancy arises with the existence of another perception of the public where lawyers are seen as untrustworthy. This view battles with the profession's positive reputation of trust and confidence.

Upon initial examination of the legal profession it is vital to clarify the distinctions between it and other occupations in order to appreciate the dynamics which may produce a crime facilitative model within the legal profession.<sup>2</sup>

This chapter will examine the relevant studies in the United States and Canada which have dealt with the deviant behaviour of lawyers. The examination will include those writers who have

-----  
<sup>1</sup>Schur stresses the importance of the inter-relationship between law and society.

<sup>2</sup>The author is not suggesting that other professions are not crime facilitative, only that this thesis pertains to those forces within the legal profession which may be significant to this process.

studied lawyers and the legal profession from a personal socio-structural and organizational points of view, as well as the more recent studies of the profession by theorists of political economy. An attempt will be made to examine the major characteristics that might be linked to the behaviour. The research indicates that there are features of the legal profession which may indeed facilitate fraud. This chapter will discuss the etiological theories of such fraudulent activity: the structural, social, political and economic factors discussed briefly in Chapter II which may produce such a crime facilitative environment in the legal arena.

### The Nature of a Profession

It is necessary to begin with a discussion of the nature of professions and its role in establishing and maintaining ethical and acceptable behaviour among lawyers. In the study of professions Larson (1977: xviii) notes the major characteristics as:

...professionalization is thus an attempt to translate one order of scarce resources, special knowledge and skills into another, social and economic rewards. To maintain scarcity implies a tendency to monopoly; monopoly of expertise in the market, monopoly of status in a system of stratification.

The sociological theories of professions have traditionally been focussed on the functionalist approach. This analysis has dominated the discussions of the societal role and status of professions in terms of certain characteristics. Emphasis has

generally concentrated on the professional claim to special knowledge and ethical responsibility, which in turn allows for regulatory autonomy, economic monopoly, codes of ethical conduct, education and a sense of purpose (Hazard & Rhode, 1985).

Talcott Parsons (1952, 1954, 1962) provides groundwork and a general discussion of the functionalist nature and meaning of a profession and can be easily identified as work relating to the legal profession. According to Parsons the central distinction between professions and other vocations arises from their functional characteristics rather than the personal objectives of their members. For Parsons (1954), professions exercise "independent trusteeship as part of the cultural tradition of society" (Keddie, 1978: 9). He argued that the distinguishing characteristics of professional roles are:

1. a socially-valued organized body of knowledge;
2. technical competence based on prolonged education;
3. exclusion of the non-qualified from the occupation; and
4. a body of non-qualified clients.

Parsons' (1954) analysis focussed on the requirements of professional role behaviour which he thought allowed the profession to function efficiently, serve the interests of the clients and satisfy the needs of the wider social system (Keddie, 1978). He suggested that the professional role is functionally specific. The area in which the professional, in this case "lawyer", is supposed to have the technical knowledge



and competence is well specified. (Abel, 1980, 1981; Aeurbach, 1976; Keddie, 1978; Parsons, 1954; Stern, 1980). For Parsons (1954) "functional specificity" is necessary because the profession is supposed to exercise authority and control of the client. The authority and control is, in turn, based on superior knowledge normally obtained through educational training. With this training the lawyer is deemed qualified to inform the client what is appropriate under specific legal circumstances (Keddie, 1978). It is, Parsons notes, an authority based on consent, on the expectations following the lawyer's advice, and is theoretically to be done in the client's best interest, with the Bar acting as a mechanism of social control.

A further suggestion is that the element which sets professions apart from other occupational roles within the socio-economic hierarchy, is the profession's "collectivity orientation" (Keddie, 1978). Thus the profession's knowledge and expertise cannot be evaluated by the client who, in many cases, must simply trust the judgement made by the professional (Abel, 1980, 1981; Stern, 1980). Keddie also notes that professionals have a monopoly of practice within their area of specialization and in return for this monopoly of practice the professional is expected to show an interest in the client.<sup>3</sup> This idea lends support to the profession's collectivity orientation and acts as

-----  
<sup>3</sup>A monopoly arises when an individual or group has an exclusive privilege of selling a commodity. It assumes that others are equally capable and competent to sell that commodity, but for some reason the government has favoured one individual group (Public Interest Advocates of B.C., Annual Report. 1986)

a justification by its members for its monopoly of practice and self-regulation.<sup>4</sup>

Another characteristic of many of the professions is that they act as agents of social control (Keddie, 1978). The professional lawyer, for example, according to Parsons (1962), fulfills two functions of social control. These are, 1) in advising clients of their responsibility, lawyers are placed in a distinct advantage because of their social stature, their specialized knowledge and their monopoly over legal information; and 2) by being involved in the construction and implementation of policy and law, lawyers have a role in the social control of other members of society.

A result of these social control functions is that they allow the lawyer a certain amount of freedom in dealing with clients which would not be allowed in other situations (Keddie, 1978). For example, in the process of dealing with clients' trust funds, the lawyer is privileged to private knowledge on which he or she could capitalize. Parsons (1954, 1962) assumes that such a role strain, arising from conflicting loyalties to the personal and client interests, is minimized by functional specificity of this professional/client relationship. This is achieved by the social control over the professional exercised by professional ethics and by the general legitimacy given to professionals acting within their roles in society (Keddie,

-----  
<sup>4</sup>This issue will be discussed in greater length later in the chapter and is supported by Abel, 1980, 1981; Stern, 1980.

1978).

Contrary to Parsons (1954), there is support that such role strain described above is not always resolved in the most functionally specific manner, which may lead to a crime facilitative environment (Carlin, 1966; Handler, 1967; Keddie, 1978). Parsons tends to present an ideal model of the professional role concentrating on the factors which aid in the effective delivery of legal services; effective delivery of legal services in terms of client and societal interests. In order to do this, Parsons must assume that generally the professions do in fact operate as he says. That is there is a general consensus in society as to the value of the professional role, and there is a complement between the requirements of the professional practice and other institutional arrangements in western society (Keddie, 1978). This may not necessarily be the case (Abel, 1980; Aeurbach, 1976; Arthurs, 1971; Hughes, 1971; Johnson, 1972; Porter, 1965; Reuschmeyer, 1964).

For example, historically, the professions have been allowed to police themselves under an arrangement that Reuschmeyer, (1964) describes as a "bargain model",

Professions strike a bargain with society in which trust, autonomy from lay control, protection from lay competition, and high status are exchanged for individual and collective self control designed to protect the interests of both the clients and the public. (Keddie, 1978: 132).

Again, both the adequacy and the idea of professions that is the basis of Parsons model, and the capability of the

professions to uphold their end of the bargain, can be questioned in Reuschmeyer's analysis. Reuschmeyer (1964: 20) noted that for lawyers, the complexity of role obligations is complicated by a number of factors resulting from the distinctive characteristics of law and the legal profession.

That is, the lawyer must successfully coordinate the potentially conflicting role expectations of the courts, clients and colleagues which may not coincide (Keddie, 1978). As a result loyalty may often be divided between the interests of the client and those of the legal system as a whole, causing conflict. These competing role expectations, when coupled with the specialized nature of legal knowledge, which in itself may permit that lawyer a great deal of flexibility and the added problem of trust regarding the confidentiality of information, can make the concept of social control within the legal profession difficult (Johnson, 1972; Parker, 1982). Difficult as well, is the nature of professional self-regulation by lawyers. Lawyers propose that only colleagues are qualified to judge the quality of their work and they rely on the internal controls to a large extent. This internal maintenance of the standards of professional conduct over the selection and training of new members creates difficulty in outsiders' attempts to judge competence. Further, several studies have indicated the lawyer's place in the stratified system of the legal subculture (specifically the Bar) may affect personal and professional behaviour, and create experiences of role conflict. Especially

where a lawyer is engaged in a practice where the support or pressure from colleagues is minimal (Aeurbach, 1971; Carlin, 1966; Handler, 1967; Keddie, 1978; Parker, 1982) and the ability to exercise power with respect to avoiding or bringing about disciplinary action is difficult (Arthurs, 1971; Auerbach, 1976; Carlin, 1966; Handler, 1967).

A further problem in Parsons' analysis arises from the assumption that membership criteria to the profession are based primarily on hard work and achievement. Rather, studies will indicate that lawyers have been delineated along class, cultural and social origins to a great extent rather than just hard work and academic achievement, as membership criteria (Aeurbach, 1976; Arthurs, 1971; Porter, 1965; Reasons & Chappell, 1985, 1987). This social class imbalance has resulted in a form of occupational control whereby the attitudes and values of the members is oriented to the dominant class, who in turn, control the dominant political and economic institutions in North American society (Aeurbach, 1976; Arthurs, 1971; Casey, 1982; Keddie, 1978; Reasons & Chappell, 1985, 1987).

A review of these issues then, demonstrates that membership in the legal profession is no guarantee, as Parsons (1954, 1962) suggests, either of professionally competent<sup>5</sup>, ethically sound

-----  
<sup>5</sup>Competence is defined and easured by the extent to which an attorney is 1) specifically knowledgeable about the field in which they practice; 2) performs the tasks of such practice with skill; 3) manages such a practice efficiently; 4) identifies issues beyond their competence relevant to the matters undertaken, bringing these to the client's attention; 5) properly prepares and carries through the matters undertaken;

or acceptable behaviour by lawyers. Accordingly, these issues emphasize the need for analyzing lawyer/client relationships and the role of professions in North American society. The nature and structure of the legal profession itself may create the incongruity between membership and competence and thus may encourage a crime facilitative environment.<sup>6</sup>

### Studies of Misconduct in the Legal Profession

The problems of lawyer misconduct posed above are not new. They have been discussed within the legal profession and among academics as to the origins and incidence of such professional misconduct. Some theorists have viewed this misconduct as caused either by inadequate socialization or training to professional standards or by a personal inadequacy in meeting these standards (Carlin, 1966; Clinard, 1952; Handler, 1967; Sutherland, 1940). The underlying assumption is that commitment to professional norms and values can be learned in the course of professional training. It is a belief system based on the assumption that legal teaching and education can influence one's ethical behaviour. The traditional assumption is that, if the rules were properly defined, effectively internalized and actively

-----  
<sup>5</sup>(cont'd) and 6) is intellectually and physically capable (Law Society of B.C. Annual Report, 1985).

<sup>6</sup>The problems surrounding competency, ethicality and legality of professional behaviour are not just limited to the legal profession (Reasons & Chappell, 1987). Refer to Mitford (1963), Reuschmeyer (1973), the studies of Quinney (1963) and Wilson, Chappell & Lincoln (1986) which have demonstrated that they are common to many professions.

enforced, they would be observed (Keddie, 1978). This traditional view sees professional norms on a personal pathological basis as existing separate from the social and organizational context within which they were meant to operate. Any deviation from these norms is seen as the responsibility of the practitioner.

For example, Carlin (1966)<sup>7</sup>, in his study of infractions amongst lawyers of the New York City Bar, viewed professional misconduct as a result of inadequacies in the Canons of Ethics and in the machinery for their enforcement. The usual response has been to update the Canons in an attempt to increase the effectiveness of the disciplinary measures. The legal profession, noted Carlin, tended to look at the problem of unethical conduct as being alleviated through the rules or norms which were seen as valid instruments of social control.

Handler (1967), in his replication of Carlin's work reached a similar conclusion regarding the ethical conduct among the metropolitan Bar of a "prairie city". He did find fewer violations of ethical norms than did Carlin. However, this was explained in part by the rigid stratification of the New York Bar, which in turn reflected the size and status of the city.

Other studies moved beyond the personal, pathological explanations to look at the broader social structure of

-----  
<sup>7</sup>Carlin (1966); Handler (1967); Hazard (1978); and Parker (1982) represent the majority of the empirical studies in the United States dealing with lawyer misconduct.

professional misconduct and less at individualistic factors as contributing to the deviance. These studies suggest that a lawyer's place within the social strata of the legal profession has some effect on his or her attitudes toward professional misconduct and ethics.

Again, Carlin (1966), by looking at the social organization of lawyers not only saw professional misconduct as arising from inadequacies of the Canons of Ethics and in their enforcement, but also linked to the status of a particular lawyer within the profession. He concluded that those marginal to the profession were less ethical and those with higher status adhered more to the ethical norms laid out by the profession.<sup>8</sup> Furthermore, location in the stratification system of the Bar was, for Carlin (1966), the most important determinant for the lawyer to engage in misconduct (1966: 170). It seems those with higher status adhered more to those professional ethical norms while those with lower status were less likely to adhere to the ethical norms. This could be reflected in the size of the firm where solo practitioners were found to rank lowest on ethics. In other words, those lawyers who were more established economically and socially were less likely to commit deviant activities than those lawyers struggling to maintain a constant level of income and a regular clientele and those who had other members of the profession to act as a "watch dog" on the lawyer's behaviour.

---

<sup>8</sup>This has also been supported in later studies by Arthurs (1970), Handler (1967), Rieter (1978).



Thus, it may be argued that the structural idiosyncracies of the professional hierarchy are to be the focus of the debate in this discussion rather than personal idiosyncracies of lawyers. The traditional criminological question could then be changed from "what kind of individual would perpetrate such behaviour?" to a question of "what kinds of social and situational factors may influence an individual's deviant or conforming behaviour?" In terms of white collar crime theory one can move beyond Sutherland's personal pathological explanation to Goff and Reasons'x suite crime.

Similarly, Hazard (1978) in his examination of the social organization of lawyers found that the traditional approaches to organized professions, such as law, have assumed that a typical code of professional ethics presupposes that its members practice in an environment where their competence and integrity must be maintained among their professional colleagues, as a matter of professional survival. Although still an individualistically focussed approach, Hazard (1978) realizes that further attention should be directed to what the professional brings to the practice of law from the world in which he or she was socialized. He points out that little or no attention was given to the control of the lawyer's actions, except to emphasize the need for more effective internalization of the professional norms to counteract situational pressures. His perspective was to focus on how the social organization of the profession affects the ethical behaviour of lawyers.

A feature which may facilitate crime within this organizational structure, is the market for legal services which is highly competitive, particularly in the area of legal practice calling for more general skills. Therefore, it may be that the lawyers who work in this general type of practice require a level of legal skills which often overlap with other occupational groups such as realtors, accountants, and notaries public. This overlap may result in intense competition and a struggle to survive by many of these lawyers. In addition these practices are characterized by an intermittent demand for their legal services. Lawyers who handle low to middle income clients realize it is non-repeat work and they are continually forced to look for new clients (Stern, 1980). Consequently some of the lawyers who face these market conditions may find it difficult to maintain their ethical and professional standards. On the other hand, the "good" lawyers are able to work for larger firms who have repeat clients, rather than the poorer clients, and thus ensure a steadier type of employment.<sup>9</sup> Whereas the lawyers, not in the larger "elite" firms, are often forced to generate business from the lower income client. This, of course, means less income for the lawyer which may be an inducement for many to engage in deviant and often fraudulent activities.

Thus, the structure and stratification of the legal profession as laid out by Carlin (1966) and Hazard (1978), may

-----  
<sup>9</sup>The larger law firms require a greater degree of technical expertise. Thus a "good" lawyer is often one who specializes to handle the firm's complexities (Arthurs, 1970).

contribute to undermining the professional integrity of lawyers, often leading to a crime facilitative situation. This may be particularly plausible in the case of lawyers setting up practice in a highly competitive market who do not have connections, political and/or economic, which can be relied on as a back-up during difficult times.

Although these studies may be more convincing than the studies focussing on the individualistic aspects of lawyers<sup>10</sup>, they also have certain limitations. They underemphasize the fact that the violations can be seen as an outcome of a negotiation process between a lawyer, society and some organization charged with the investigation and of those alleged cases of misconduct (Parker, 1982).

Socio-political and economic determinants of society which may promote legal misconduct have been the focus of more recent investigations (Aeurbach, 1976; Arthurs, 1970; Johnson, 1972; Keddie, 1978; Klein, 1984; MacFarlane, 1980; Reasons & Chapell, 1985, 1987). Such a focus is necessary for a more complete understanding of the inter-relationship between law as a profession and society. It is important to look at the issues of "stratification of power, supply and demand, legitimation of

-----  
<sup>10</sup>The individualistic aspect was based on the ideology that one could be whatever one wanted, based on equality and opportunity. This would exist regardless of race, class, or any other variable. Thus, this "free will" approach assumes that failure rests with that person. Students of criminology have focussed for years, on the personal attributes of those engaged in deviant behaviour. This focus tends to suppose that certain types of people commit certain acts.

need vis-a-vis recruiting and self-policing, and the status of lawyers" (Reasons & Chappell, 1985). These theorists shift the emphasis from the individual approaches outlined above, and examine the legal profession in terms of the constraints imposed by a larger society in which it must operate.

These studies discuss the need for a structural analysis in terms of a political economy of lawyering. A major element of these determinants as described in the Canadian study by Reasons & Chappell (1985) may be a shared social status between the lawyer and the client. The American studies include Aeurbach (1976), Arthurs (1971), Hughes (1971), Johnson (1972), Klein (1984), and Reuschmeyer (1964). They note the fact that in many cases certain clients and lawyers come from a high social class and this may enhance the authority of the professional, not just as a result of technical competence, but also that of shared social status.

Reuschmeyer (1964), in his comparative study of the American and German Bars reiterates the importance of the status lawyers and of preserving the socio-economic control within the legal profession in North America. This status acts as a strong determinant of professional misconduct, at least for the American lawyers, he felt. Reuschmeyer notes:

that in contrast to its American counterpart, the German anivalschaft does not even in its lower strata in the large cities appear to have the comparable pockets of structural deviance defined by the field of practice, status of practitioners and types of clients (1964: 192).

Reuschmeyer's (1964) work is of particular interest because he attributes the difference between the American and German Bars, (the greater efficiency of the latter), to greater homogeneity, in terms of norms, values and commitments and lesser stratification of the German Bar. For Reuschmeyer (1964), there are varying conceptions of justice and divergent interests which are not randomly distributed in the social structure, but associated depending on one's socio-economic strata, religion, ethnicity, and so on, is evident. This, notes Reuschmeyer, should lead to a debate regarding the professional/client relationship and the role of lawyers as a professional group in society.

Hughes (1971) again emphasizes the social status of lawyers and the role of the legal profession in establishing membership criteria, in deciding upon standards of educational attainment for aspiring members, and in establishing a code of professional ethics to govern the behaviour of its members (Keddie, 1978). This is reflected in the profession's claim that only they can judge the quality of their representation and thus should be allowed to police themselves. Professional associations, then, especially in law, have acquired a great deal of freedom in the maintenance of standards of professional conduct and over selection and training of new entrants depending on social class determinants. Hughes (1971) cautions the reader about the dangers of such freedoms on who will be recruited into the profession. He noted the street membership criteria, based on

class and ethnic determinants may create a conservative influence, resulting in a profession resistant to external pressure or criticism.

Johnson (1972) elaborated on this<sup>1</sup> with the suggestion that the lawyer may be able to exert greater authority over a client than is justified because of the gap in legal knowledge between them (Keddie, 1978). This gap is based on the assumption the client accepts that authority to be legitimate. Johnson argues that the emergence of the profession was a form of occupational control and was facilitated in the 19th century by the fact that professionals and their major clients (including government) came from similar class positions and thus a shared ideology. There were, in other words, social structural factors which permitted this development of consensus between the legal profession, clients and government as to the "rules of the game" (Keddie, 1978). Johnson argues that such a consensus is unlikely to emerge if the lawyer (or client) comes from a different social strata where similar norms concerning professionalism are not so entrenched. Traditionally, any conflict in the area has been resolved in favor of professionals because they possess the greater power by virtue of their position in society as part of the political and economic elite. This relationship between political, economic and social power within our capitalist economy has been well documented.<sup>11</sup>

---

<sup>11</sup>See for example, Clement, 1975; Foster, 1975; Newman, 1975.

A further perspective on the professional status of the lawyer in society is provided by Aurbach's (1976) inquiry into the legal profession. He began his historical analysis around the turn of the century when corporate lawyers and university law professors emerged as "elite protectors of professional interests". The objective of this elite, noted Aurbach, was to structure the legal profession in terms of admission, ethics, discipline and legal services, to serve the dominant political and economic elite of its own members. Elite lawyers, he concluded, preserved their professional status by stratifying their profession according to race, religion, class and sex, and by restricting their clientele to those who could afford legal services. Aurbach's (1976) research prompts readers to consider whether professional status can be justified or if the time has come for increased public regulation of practice of law. One of the basic premises of a democracy is the concept of equality of opportunity. Thus ideologically, anyone no matter which race, gender, religion or ethnic origin, would have the same opportunity to achieve greatness. This is an issue which is being currently debated both among academics and within the profession itself. It seems that perhaps this idea has come of age.

Finally, Klein (1984) also noted that lawyers are part of the occupational elite of North American society, and socio-economic background helps determine the likelihood of one becoming a lawyer.

The fact that aspiring lawyers are socialized into a strong identification with their professional group has a great impact on the structure of the profession and has been documented (Abel, 1981; Aeurbach, 1976; Carlin, 1966; Hazard, 1978; Reasons & Chappell, 1985, 1987). As stated earlier, a further problem is created when the professional, as a lawyer, is expected to be both client and colleague oriented, while deriving a good part of his or her social identity from the values of the colleague group (Keddie, 1978). The danger is the colleague group orientation may have a conservative influence in that it breeds solidarity in the form of a closed self-perpetuating legal structure, mirroring upper-class, conservative concerns. As such, it is often resistant to any external pressures which may arise.

It should not be forgotten that the entrance into the legal profession is governed by the norms of achievement. Recruitment into the profession is based to a large extent on achievement criteria. Allowance, however, has also been made for class background, ethnicity, and gender which also seem to be important factors in Canada. Access to university education is dependent to a great extent on wealth and class background. For example, there is considerable evidence to show Canadian law schools contain a disproportionate number of students from upper income families. A study of the first year class at Osgoode Hall Law School in 1971-72 found that 51% of the students come from the upper 20% of the income bracket, while less than 5% come



from the lower 20% of the income bracket (Levy, 1973).

In another study based on 1961 data, seventy-five percent of Canadian lawyers came from families whose father had a white collar occupation, while twenty-five percent had fathers in professional and technical occupations.

Two of the earliest Canadian empirical studies examining this social class phenomenon among lawyers were Arthurs (1970) and Arthurs (1971). They also found the legal profession was socially stratified and had not opened its doors to people from the lower social strata. In fact Arthurs (1971) goes on to say this professional elite governed the membership of the legal profession in Ontario. This problem continued until the mid 1960's where the Benchers, according to Arthurs (1971), occupied a position analogous to that of absolute monarchy, self-perpetuating and all powerful.

A more recent study by Keddie (1978) of the British Columbia legal profession revealed that approximately two-thirds of the lawyers had fathers who were managers, proprietors of their own businesses or professionals, while only 17% of the general labour force had fathers who engaged in this occupation (Keddie, 1978).

Keddie (1978), in his study of lawyers, also found that not all races, or social classes have equal opportunity in entering the legal profession. Those of British and Northern European origin were slightly overrepresented among the lawyer

population. As the study indicated this imbalance was not an indicator of the legal profession itself, but rather one of the social system in which it operated. He notes the belief that one can be what one wants to be in North American society, regardless of race or social class is false. Keddie (1978) further noted that given the power and influence the political and economic elite (of which lawyers are considered a large part) possess in making and enforcing rules; it makes sense these rules will mirror the desires of that elite and be less favourable to those not among the elite membership.<sup>12</sup>

Evans and Trebilcock (1982), a professional organizations committee, in their more recent research, represented the first serious attempt to scrutinize the activities of the legal profession in Ontario. Their study revealed that the Law Society of Upper Canada as a professional body had been responsive to issues involving client and public interest. However, they further reinforced the belief that lawyers were predominantly from the upper income strata with access to power. Evans and Trebilcock (1982) went on to say the mechanisms of public accountability by the legal profession must be developed, but that resistance to these control mechanisms by members within the profession was strong.

-----  
<sup>12</sup>Lawyers constitute the single largest occupational group among legislators according to Keddie (1978) and further supported by Adam & Lahey (1981); Galanter (1983); Klein (1983); Nioso (1982); Reasons & Chappell (1987).

Visano (1985) also noted a class domination in Canada in terms of representation by lawyers, as well as in the courts, depending on one's economic advantage. This in turn is dependent on one's position in the socio-economic strata in society. He viewed one's financial resource as limiting one's use of the legal system. Thus lawyers and the legal profession are, according to Visano, restrictive depending on one's position in the social hierarchy. According to Visano, for a complete understanding of law one needs to understand the place held by institutions in society within the context of cultural values and ideologies.

As well as preventing the legal profession from gaining economic benefit from individuals of the working or middle class origins, and minority ethnic groups, this social class imbalance in who is represented and in the recruitment process means that attitudes and values of members of the legal profession are one-sidedly oriented toward the dominant institutional arrangements and our society (Keddie, 1978).<sup>13</sup> This has an important bearing on the legal profession, both with regard to their activities as lawyers and also in their extra-professional activities, since they are heavily represented in governmental and corporate bodies (Abel, 1981; MacFarlane, 1980; Galanter, 1985; Nioso, 1982; Porter, 1965; Reasons & Chappell, 1985,

---

<sup>13</sup>The author is not suggesting that there is a rigidly enforced race, gender or class bias in the profession, only that one must acknowledge a bias exists. While both Canada and the United States have made efforts in recent years to alleviate the disparity it is still a class based opportunity structure.

1987).

Porter (1965), in his analysis of the structure of the social class and power and its relationship to Canadian society, demonstrated as other studies have, that lawyers form a large part of the economic elite providing a strong link between the corporate and political world. Porter noted members of the large, more prestigious law firms often find themselves on the boards of major corporations providing legal advice to the board, thus creating an interdependency between the legal, corporate and political worlds. Further the membership to this elite group was comprised of a large number of individuals of upper class origins (Keddie, 1978). As a result lawyers, with their close involvement in the corporate and political elite, provide a conservative tone which has characterized the profession as a whole (Porter 1965).<sup>14</sup> Porter (1965) was, at the time investigating the adequacy of a political economy perspective. Parenthetically, this occurred rather earlier than when theorizing became popular.

MacFarlane (1980) also noted the importance of examining the organization and the relationship between professions, politics and corporations in order to understand lawyer misconduct and

-----  
<sup>14</sup>This relationship has been well documented. Veltmeyer (1983) for example, examined the historical development of capitalism, the world capital system, and Canada's role within it. Tiger and Levy (1977) trace the origin and development of our present legal system in terms of the struggle between the rising capitalist society and the declining feudal structure and what effect this evolution of change has had on the ideas of law in our present society. Friedman (1964) also looked at the evolution of economic power, the State and law.

white collar crime. She notes what has already been well documented, that legal professionals come from the well established families which have easy access to power. This access extends into business and politics. Thus MacFarlane went beyond the traditional functionalist view and instead looked at the legal profession not only in terms of the implications of social class structure but also in terms of the balance of political and economic power in our capitalist society. She focusses on the need to recognize the legal profession in terms of the political economy within Canadian society, indicating that it is this political economy structure which allows lawyers to engage in fraudulent activity with less fear of detection and apprehension.

Abel (1981) presented an analysis that provided the model for MacFarlane. He noted that all occupations under capitalism, including lawyers, are compelled to seek market control. The struggle for such control is political as well as economic. These occupations have maintained this high degree of control over the supply of services in the 19th and 20th centuries as will be documented in Chapter IV. He further argued that the values and ideals are subject to the interpretation of the dominant judiciary and the legal profession generally. As a result, this status quo with its accompanying values, and socio-economic system from which the bulk of the legal profession is drawn, and from whom it obtains much of its livelihood, will be reflected in the legal system. In this sense

the role of a lawyer can often be seen as a political one (Abel, 1981). This, Abel noted, is not to negate the diversity of views within the profession but it suggests the dominant view is probably a conservative one.

Reasons and Chappell (1985, 1987) suggest a more structural analysis in terms of a political economy of lawyering than Abel (1981) and MacFarlane (1980). It was suggested by these authors, that lawyer misconduct should be understood in terms of the social organization of the legal profession. As they note, lawyers in our capitalist society are the most powerful occupational group in the political and corporate sphere and the practice of law in Canada, and North America generally, tends to be a business enterprise. The nature of law is very much a part of the economic activity of both countries. (Snyder, 1980; Tiger & Levy, 1977). Reasons and Chappell go on to say that decisions are, in fact, made by such corporate elite. Such economic activity affects the political economy of lawyers since they are so closely linked with economic activity.

Reasons and Chappell (1985, 1987) focus on the issue of supply and demand, stratification of the power of lawyers in our society, and issues of self-policing in their articles. They concur with past studies noting the persistence of inequality within the social strata which allows the legal profession to control the socio-economic and political balance of power in North America. For Reasons and Chappell (1985, 1987), it is a profession that is becoming increasingly specialized,

bureaucratized and growth oriented, in terms of the supply and demand issue. They note that the legal profession has and continues to have a monopoly in terms of supply and knowledge. It is a closed and stratified profession which includes control over the production of lawyers.<sup>15</sup>

The issues of stratification as presented by Reasons and Chappell (1985), agree with the theories of Galanter (1985) and Nioso (1982), who pointed to the increase in the rise of the mega-stratified firms characterized by high fees. These firms in turn are controlled by an elite group of lawyers specializing in corporate law. This tends to attract a more affluent type of client. In The Economy of Canada: Who controls it?, Nioso (1982), identified the major Canadian law firms, by city, in 1975. Ranging from 19 to 76 in number, he documented their ties to the corporate elite<sup>16</sup> He found sixty-three percent of the graduates, practicing in law firms that had Benchers on staff, belonged to elite firms. It would therefore appear that another characteristic of elite firms is the presence of Benchers (Adam & Lahey, 1981; Reasons & Chappell, 1985).<sup>17</sup>

-----  
<sup>15</sup>They see the current "over supply" as a factor in the amount of increased misconduct among lawyers. It is this over supply which contributes to behaviour that violates ethical and legal codes and may lead to subsequent disbarment. This issue will be discussed in greater detail Chapter V.

<sup>16</sup>He noted that eighty-one percent of the major Canadian companies researched had at least one lawyer on their board of directors.

<sup>17</sup>An elite firm was defined as one in which one or more partners served as directors or senior executives of a dominant corporation in Canada (Reasons & Chappell, 1985, 1987).

These elite stratified firms may, therefore, dominate politics as well as be recognized as figures of the corporate elite. Reasons and Chappell (1985) in their analysis of the Canadian parliamentary guide of 1982-83 found that the members of parliament for whom complete biographical data was available, lawyers comprised thirty-two percent of the inner circle of power. Further, forty-six percent of cabinet ministers have law degrees. This attests to the fact that lawyers are one of the most powerful occupational group in political circles. The authors indicate that a select group of lawyers have access to important power resources because of their position as lawyers and members of the corporate and political elite, and as a result will continue to control the basic social, political and economic arrangements. How, Chappell and Reasons ask, can this power be justified?

This chapter has suggested that there is much evidence of misconduct by lawyers, and yet it has largely been ignored by the profession not by intent, but by the necessity given the inherent difficulties of structure. The political economy approach to studying deviant behaviour by lawyers is of significant value in attempting to understand the crime facilitative environment in which lawyers, as professionals, operate. As Reasons and Chappell (1985, 1987) suggest one must look to the social organization of the professions, corporations and society in terms of social cultural determinants in order to understand the upper world of deviance and crime.



Not only does a select group with select criteria become lawyers, but they also represent select groups of clients. Bloom (1968) and Stern (1980) for example, point to the American middle class as being "victimized" by the American legal profession because they lack significant money, property and general group power in state legislatures; and thus, their concerns are often not addressed.

Bloom (1968) specifically refers to the inadequacy of existing safeguards for funds held in trust, or collected by lawyers from the middle class group of clients. He also notes there is limited likelihood of restitution when the lawyer does engage in misconduct such as fraud.<sup>18</sup>

Stern (1980) also examining the client representation issue, posed three questions. First, he focussed on the extent to which the legal profession mirrored the concerns of business and corporate interests. Second, to what extent do lawyers serve only the "peak of the pyramid" leaving the majority of the population unrepresented; and third, if legal services are unfairly distributed, to what degree is that caused and perpetuated by the Bar? His response to all three questions was that legal services strongly favoured the well established in society. He noted the American Bar Association admits "it has long been aware that the middle 70% of the population is not

-----  
<sup>18</sup>This is the situation in many cases despite there being a compensation fund (also known as the Special Fund) with the Law Society for clients who have been financially abused by their lawyers. The fund in British Columbia will be discussed in more detail in Chapter VI.

being reached or served adequately by the legal profession" (Stern, 1980).

Chapters I and II also brought to the attention the fact that the inadequacies and limitations exist in the theoretical approaches dealing with deviant activities among professionals.<sup>19</sup> The personal orientation, for example, often did not adequately explain why well-trained lawyers engage in fraud. The political economy perspective also has limitations, in that it does not distinguish between those lawyers who engage in fraud and those who do not. Why is it that all lawyers go through similar educational programs, and career experiences and yet, only some engage in fraudulent behaviour? This dilemma is a theme that is discussed in detail in the following chapters.

The political economy approach does, however, contain the potential to move the study of lawyers beyond the limitations of previous criminological theory. This is not to suggest that it provides all the answers. Rather, it has only provided new directions of inquiry which may challenge the traditional forms of examining the status quo and crime. What is needed is a more well-rounded approach which includes to a certain extent the individual's place within the socio-economic hierarchy, as well as the influence of the legal profession within the

---

<sup>19</sup>The empirical studies dealing with the extent of lawyer deviance in Canada will be discussed in greater detail in Chapter VI. To include them here would be redundant. However, it is important to note that these studies reflect similar results of those U.S. studies noted in this chapter (Carlin, 1966; Handler, 1967; Parker, 1982).

socio-economic and political spheres.

## Conclusion

The preceding considerations have caused attention to be focussed on the autonomy, competence and overall commitment the legal profession has to the wider community. Social dissention over the nature of justice, and class differentiation among clients suggests that law, as a professional occupation, does not always function in a socially beneficial manner. Rather it is a system of conflict in our capitalist society and we can place the power of the legal profession along social, political and economic lines within this society.<sup>20</sup> These considerations, suggest the author, lead to a crime facilitative environment. Lawyers as part of a privileged occupation enjoy a great deal of autonomy with limited interference from the controlling structures in society, as will be demonstrated in the following chapters. If interference occurs, lawyers often attempt to block the process, enabling them to maintain autonomous control and consolidate their power base, creating an environment which facilitates criminal activity.<sup>21</sup>

Perhaps it would be useful to examine some of the above mentioned dynamics within the professional legal structure in an

-----  
<sup>20</sup>The evidence has been presented that lawyers comprise a large part of the economic and corporate elite and play a prominent role in Canadian politics.

<sup>21</sup>The Law Society does not attempt to block the process. Rather, this is done through the members.

historical context. The development of the legal profession in the last two centuries may explain many of the perceived problems facing those studying the facilitative structure within the legal profession allowing for the fraudulent activities outlined in this study.

## CHAPTER IV

### THE ORIGIN AND GROWTH OF THE LEGAL PROFESSION

#### Introduction

While the last two centuries are perhaps the most instructive in understanding the legal profession today, the history of the legal profession, which spans at least two thousand years is nonetheless important. Early legal advocates began appearing before Greek tribunals, and legal counsellors began drafting legislation and handling responsibilities for commercial matters, by the mid fourth century B.C. as the complexity of social-structural factors demanded. However, this group of individuals did not constitute a "professional" community in the contemporary sense of the term noted earlier. The distinctions between law and entertainment were often blurred, ethical standards were almost non-existent and formal education and discipline were lacking (Hazard & Rhode, 1985).

In comparison, Roman history gave rise to a somewhat more professionalized tradition of advocates and advisors. Between the first and third centuries A.D., associations of advocates subject to professional training and discipline formed around the courts of major centres. They also systematically developed a body of knowledge and skills that had significant impact on ~~the~~ the evolution of Roman law (Hazard & Rhode, 1985).

In England the development of a professional community developed more slowly. Before the Norman invasion, legal disputes were settled informally through communal adjustments or, more formally, through trials by ordeal (Hazard & Rhode, 1985). Ordeals were a form of adjudication based on the divine intervention in which the accused was generally at a considerable disadvantage. For example, in ordeals by water, defendants who sank when thrown in the water, were presumed innocent and those who rose to the surface were guilty, and punished accordingly. Under trial, a major issue was the credibility of the accused, which was established through oath by a specified number of individuals. In order for their oath to be valid they had to complete their recitation without any verbal slips (Hazard & Rhode, 1985).

When the Normans invaded England, they brought with them their history of both trial by combat and trial by jury. As the latter form of adjudication gradually took hold, and a sounder philosophy of legal jurisprudence developed, a stronger role for advocates also developed (Hazard & Rhode, 1985: 28). From these beginnings emerged the stratified professional class that Holdsworth (1938) describes (cited in Hazard & Rhode, 1985). In England as in other Western countries, the legal profession was dominated by a political and economic elite employed in solving complex business and corporate problems. This resulted in the early establishment of a stratified professional legal class. It is contended in this thesis that this stratification still

exists today as was outlined in Chapter III. In the 18th century the order of precedence "which usually obtains among the practicers" was noted as follows,

1. The King's premier serjeant (so constituted by special patent);
2. The King's antient serjeant (or the eldest among the king's serjeants);
3. The King's advocate-general;
4. The King's attorney-general;
5. The King's solicitor-general;
6. The King's serjeants;
7. The Queen's counsel with the Queen's attorney and solicitor;
8. Serjeants at law;
9. The recorder of London;
10. Advocates of the civil law; and
11. Barristers.<sup>1</sup>

There was a relatively small membership within these various groups of the legal profession. The serjeants, the largest group were still regarded as the higher order of the profession and, in theory, they alone were qualified to hold judicial office in the common law courts (Holdsworth, 1938).

The qualification was that they were to be Barristers, which again narrowed the field of possible entrants and considerably stratified the profession (Holdsworth, 1938). The judges and the serjeants were organized in the serjeants' inns; the King's

-----  
<sup>1</sup>Holdsworth (1938) cited in Hazard & Rhode, 1985: 29.

counsel, Barristers and students who were preparing for the bar were organized in the Inns of the Court and Chancery. It was a recruitment of training through apprenticeship at the Inns of the Court (Holdsworth, 1938).

The attorneys and solicitors were organized and disciplined partly by the legislature, partly by the judges acting under statutory power, partly by jurisdictional authority over the officers of their courts, and partly by an informal body called "the Society of Gentlemen Practicers in the Courts of Law and Equity" (Holdsworth, 1938: 30-31). The society was formed and developed in the 18th century. Those who practiced in the Ecclesiastical Courts and the Courts of Admiralty, were organized and disciplined partly by the ordinances issued by the Archbishop of Canterbury and partly by the courts in which they practiced. The monopoly over control of the machinery of the Courts and providing private counsel to parties, in terms of their legal queries, gave the profession a great deal of freedom and power in dealing with the matters of a client and other public concerns.

At the beginning of the 18th Century, attorneys and solicitors, though initially different formed one homogeneous class (Holdsworth, 1938). In theory, the attorneys were specifically connected with the common law courts, but since most attorneys were also solicitors, the differences between them were no longer that great. It was in this century that these classes of legal practitioners took the form common to



those studying the legal profession in Britain, that of Barristers and Solicitors. This evolution resulted partly from enactments of the legislature and the rules of the courts, and partly from the growth of the Society of Gentlemen Practicers in the Courts of Law and Equity (Holdsworth, 1938).

In the British system, in an attempt to keep the Barristers position supreme, the function of the Barrister and Solicitor were separate within the profession and from the client. The legal burden of the newly developed economic system was given to the Solicitors. They were not trained to practice before the courts, but were skilled in interpreting the law, drafting documents, organizing business enterprises and managing all the matters relating to finance, while the Barristers were trained and privileged to practice in Court (Berle, 1933 In Hazard & Rhode, 1985).

It was in 1729 the parliament passed a comprehensive Act for the regulation of attorneys and solicitors.<sup>2</sup> This Act and the later Acts which supplemented it, are the bases of many of the provisions of the modern statute law which governs lawyers today in North America (Holdsworth, 1938). The act set out the qualifications for admission as an attorney or Solicitor. The candidate for admission had to take the oath set out in the Act, and become enrolled in the court or courts in which he intended to practice. The judges, before they could admit a candidate were required to examine in ways and means they thought proper,

-----  
<sup>2</sup>Barristers and Solicitors Act

to test fitness and capacity to act as an attorney. Any future candidates were to have been articulated by a contract in writing for five years before they were capable of being admitted. It was specifically provided that these rules of admission were not to allow the judge of any court to admit a larger number of attorneys "than by the ancient usage and custom of such court hath been heretofore allowed" (Holdsworth, 1938: 31). Thus, regulations and limitations on the practice of law, by socially prominent organizations began early and their influence remains apparent in present practice.

The cohesive nature of the legal profession in England found its way to the North American profession in the earlier days of the colony. Thus, the lawyers in England involved in the financial and political circles of power maintained this standing in North America, although not without some initial difficulty (Berle, 1933).

#### Development of the Legal Profession in North America

Few of the earliest settlers were lawyers.<sup>3</sup> This may be because in some of the colonies no lawyers were welcome. Boorstin, (1958: 197) commented that "ancient English prejudice

-----  
<sup>3</sup>In North America no formal distinction between Barrister and Solicitor was made. In theory all lawyers were alike, all had the same privileges and all were qualified to do the same work. In fact however, an informal distinction was made here as well with one branch of the profession doing most of the matters related to business, while another concentrated on litigation and court cases (Berle, 1933).

against lawyers secured new strength in America and distrust of lawyers became an institution." The distrust of lawyers seems evident today in remarks about opportunists and ambulance chasers. Distrust of lawyers originated from a number of sources. Some colonists who had been oppressed in England carried with them a strong dislike for all employees of government. Merchants and others wished to govern without intermediaries. The colonies wanted a social order which was arranged in a form similar to England. The legal profession with its special privileges and principles, and its private language, seemed more of a hinderance than a help to efficient government. The Quakers, for example, were opposed to an adversary system, in principle. They looked upon lawyers "as sharp, contentious and unnecessary people" (Friedman, 1973 in Hazard & Rhode, 1985).

In the 18th century this sentiment continued against the usefulness of lawyers in Canada. The lower classes had come to identify lawyers with the upper class, a sentiment well founded in part due to the stratification of the legal profession in the "old" world. The governors, on the other hand, were less certain of this loyalty to the class structure, and sometimes were afraid of the influence and power of lawyers. This sentiment again, was due in part to the fact that in the early history of North America there was a tradition that lawyers were the most fit for politics and other influential spheres (Friedmann, 1964). They came to occupy dominant positions early in the

Canadian economic and political history analagous to the affluent industrial and financial sectors of England or America. Their services in the formation of early Canada are exemplified through achievements of men like Prime Ministers John A. MacDonald and Sir Wilfred Laurier, who helped mold the economic and political institutions of the country.<sup>4</sup> How strong the resentment against lawyers was and how deep it went is difficult to judge. There is some evidence, however, as suggested, that hatred directed toward this professional group, did exist.

If lawyers were considered evil in 18th century North America, they were a necessary evil. As the colonies grew it was extremely difficult to make do without lawyers. Emphasis on legitimate legal practice was important because of the of makeshift alternatives which were present (Friedman, 1973). Practical tests of English law which circulated in the colonies provided information for laymen or lay judge, enough to run a local court (Friedman, 1973). But as economic and social relationships requiring specialized knowledge became more common within society, and problems arose requiring greater legal skill, lawyers began to appear in great numbers. Courts were in session, merchants were drawn into litigation, land documents had to be written and the more skill the better (Friedman,

-----  
<sup>4</sup>Between 1867 and 1950 about one-third of all members of parliament in Canada were lawyers; while between 1940 and 1960, twenty-four percent of provincial premiers were lawyers. From confederation in 1867 to 1960 approximately half of all federal cabinet ministers were lawyers. To date, seventy-five percent of Canadian Prime Ministers have had legal training (Reasons & Chappell, 1985, 1987).

1973). So, men trained in law who came from England found a ready market for their services, as did the layman with a limited knowledge of law. In the literature there are continual reference to complaints about unauthorized lawyers (Watts, 1985; Hazard & Rhode, 1985). These complaints arose against "ambulance chasers" and shysters just as they had more than a century later. Lawyers were criticized for their incompetence, and it was quite difficult to distinguish between lawyers and those with only some legal training. However, in spite of these obstacles, a competent, professional Bar, dominated by successful lawyers, began to develop in most major communities in North America by 1750 (Friedman, 1973); they developed partially to centralize and control the growth of the profession and to ensure the maintenance of high standards.

There were no law schools in the colonies to train these people, most still came from England. All other aspiring lawyers had to learn this trade through apprenticeship (Freidman, 1973). Apprenticeship as formed in England, was seen as a control device as well as a method of training. It kept the Bar small and under the watchful eyes of older lawyers with few meaningful standards for admission to the practice. Rather, admission to practice seemed to be dependent to a great extent on the social background of the particular individual (Abel, 1981; Aurbach, 1976; Arthurs, 1971; Friedmann, 1964; Reasons & Chappell, 1985, 1987).

Thus the cohesive nature of the profession as it was in England in the 18th century found its way to the North American legal profession at this time. While the Bar's primary function was to maintain the dignity and usefulness of the profession it had also become an organization implementing certain mechanisms to protect its autonomy (Berle, 1933).

In the 19th century the role of the lawyer in business and in the social development of the North American society was becoming very apparent. It remained one of the few careers where a person could achieve wealth and status without having to begin with the necessary capital. This coincided with the industrial development of that time and lawyers found themselves involved in the business and corporate world at an increasing rate. As a result, where the Bar did not exert formal control the financially influential lawyers managed to achieve a certain standing and their own form of ethics; while the politically influential lawyers also managed to maintain their standing in the community through influence of the court and government (Berle, 1933).

Many of the established law firms during this time became an annex to financial promoters and industrialists (Berle, 1933). These firms contributed to a legal framework around an economic structure which was developing in the country, largely based on the ownership of industrial property in central Canada and the United States (Berle, 1933; Reasons & Chappell, 1985, 1987; Snyder, 1980; Tiger & Levy, 1972). There was an increasing

concentration in North America of economic and political power in the hands of a few industrialists. <sup>5</sup> Here one can see a closed, stratified professional legal structure beginning to emerge.<sup>6</sup>

### The Legal Profession in British Columbia<sup>7</sup>

The expansion of settlements in the West during the 18th and 19th centuries brought with it great social complexity and new organizational and professional relationships. The need for a mature legal system in the West became apparent (Watts, 1984) and yet it did not materialize until later. Until 1821 economic growth in British Columbia was controlled almost exclusively by the activities of the Hudson's Bay Company. The Company's interests were focussed more on the fur trade than on colonization. During this period, the province of British Columbia was divided into two territories, Vancouver Island, and the mainland and the interior, which in combination were called New Caledonia. In 1803 and 1821 provisions were made by the central government to extend the territorial jurisdiction of the

-----  
<sup>5</sup>Many scholars have analyzed the nature and extent of the interdependency of the Canadian and American economy. For the purpose of this thesis these studies have indicated that Canada was in its original economically dominated by Britain and is was replaced, to a large extent, by the United States. Some have suggested that Canada is a "branch plant" of the United States (Reasons & Chappell, 1985; Veltmeyer, 1983).

<sup>6</sup>The exception to this development was Western Canada where a professional Bar did not establish itself until the middle 1800's.

<sup>7</sup>The author has has relied extensively on Watts (1984) The History of the Legal Profession in British Columbia: 1969-1984, as a source for the material contained in this section of the thesis.

Courts of Justice of Upper and Lower Canada into the Indian territories. These enactments included the territories of British Columbia. However, due to the difficulties arising from distance and the lack of sophistication in the fields of communication and transportation, this legislation had little impact on the administration of the district (Law Society of B.C. Annual Report, 1982). The administration of justice continued under the often disorganized supervision of the Hudson Bay Company's private police force. The influential position of the Hudson's Bay Company in Canadian history illustrates a clear example of corporate concentration and dominance of the legal profession.

The settlement of a boundary dispute with the United States, in 1846, resulted in a change in attitude by the central government in Canada regarding the colonial administration of the West (Watts, 1984). It was decided that there should be a colony of Vancouver Island under the dominance of the Hudson's Bay Company. In 1849 the Barristers and Solicitors Act was introduced for the administration of justice on Vancouver Island.<sup>8</sup> Richard Blanchard, an English Barrister, was the original Governor, from 1849 to 1851, and as such, the first qualified legal person in this area (Watts, 1984). He was not, however, a practicing lawyer. He reported to the Hudson's Bay Company which continued to maintain control over the colony.

-----  
<sup>8</sup>Minutes of evidence taken before the select committee on the Hudson Bay company 15 June 1844 (Watts, 1985).



As a result of the continuing conflicts within the Hudson's Bay Company between the priorities of the fur trading market and the mandate to colonize, the 1849 Act continued to be as useless in extending the law from Upper Canada. Complaints about the division of company loyalties between colonization and the fur trade led to this inquiry in 1856. An indication of the sporadic and lax administration of justice, noted by the inquiry, follows.<sup>9</sup>

question - how was justice administered? Was there any recorder or anyone to administer justice?

Governor - I did it all myself. I had no means of paying a recorder a salary, there were no colonial funds - I had been called to the Bar.

question - and in that capacity, you administered justice there?

Governor - yes.

question - So you were Governor and Justice. Did you have any constables?

Governor - Yes, when I wanted a constable I swore one in.

From its observations the committee recommended *inter alia*, that it should terminate the connection of the Hudson's Bay Company with Vancouver Island as soon as it can be conveniently done as the best means of procuring the development of the great natural advantages of that important country (Minutes of evidence taken before the Select Committee on the Hudson's Bay Company. Cited in Watts, 1984: 2).

The recommendation by the committee resulted in the overall control of the Hudson's Bay Company being terminated in 1858,

-----  
<sup>9</sup>Governor Blanchard's evidence given at the inquiry (Watts, 1984: 2).

both for the colony of Vancouver Island and the new colony of British Columbia. This dominance of the economic and social life of the country may be seen as the early trappings of power and influence among the Canadian corporate elite. Their ultimate impact on the manner and means of development within the country, was demonstrated by the ease with which the Hudson's Bay Company had maintained the Charter for western progress. Such an impact would later prove vitally important in the rise of the legal profession to its current position of trust, within Canadian society.

In August 1858, Parliament renamed the territory known as New Caledonia, to British Columbia and on September 2, 1858 the first Justice of British Columbia, Matthew Baillie Begbie, was appointed (Watts, 1984). The rules concerning the legal profession were established in 1858, whereby Begbie, published an Order in Council giving official recognition to Barristers and Solicitors in the new mainland colony. The rules governing the legal profession had now been established and the importance of barristers and solicitors was finally being recognized. This recognition was outlined in British Columbia's Legal Professions Act on June 18, 1863 (Law Society of B.C. Annual Report 1982). This Act provided the judges of the Supreme Court with the authority to discipline legal practitioners.<sup>10</sup>

-----  
<sup>10</sup>The arrangement was not a successful one. Mr. Justice Begbie responsible for judicial duties was too busy travelling throughout the colony to properly supervise the profession (Watts, 1984).

The first evidence of cohesive movement within the Bar to exercise discipline followed the enactment of this legislation. It involved Felix O'Byrne, a lawyer who had qualified but had not been called to the Bar in England. He was jailed and expelled from the Bar for fraudulent behaviour (Watts, 1984). This was the first documented case of fraud occurring within the legal profession in British Columbia. The outcome of the matter was the formation of British Columbia's first Credentials Committee in 1863, which proved to be the instigate in the cohesion of the practicing members of the Bar (Law Society Annual Report, 1982). It was decided by the resident practicing members that O'Byrne did not have a proper "Certificate of Call" and as a result, was expelled.

Subsequent to the Union of Vancouver Island and the colony of British Columbia, in 1866, the Legal Professions Ordinance of 1867, was enacted as well as various other acts and ordinances at that time, which united the legal profession of the two colonies (Watts, 1984). Until 1868 the primary concerns of the legal profession were discipline and the control of admission by the Court (Watts, 1984). However, as stated earlier, the sole judge was preoccupied with his judicial responsibilities, covering as he did all of British Columbia. Thus, in its early formation the profession was attempting to establish a sense of legitimacy and a degree of influence which would extend throughout the province. Under the circumstances it could be expected that the members would to form an association with the

objective of improving their overall effectiveness and control.

*The Evolution of the Law Society of British Columbia*

By 1869 the members of the Bar and the Supreme Court considered the expediency of establishing a Law Society. The Attorney General convened a meeting of lawyers to form an association to deal with admissions to the profession and the discipline of its members. It was resolved on July 15, 1869 that a Law Society should be established with voluntary membership, having the following objectives:

1. the formation of a law library;
2. the publication of legal decisions; and
3. the regulation of the call to the Bar and administration of the role of attorneys, and of persons practicing in the Supreme Court. (Watts, 1984: 5).

The Law Society continued as an association until 1874 when the members made provisions for the association to become a legal entity. The result was the enactment of the Law Society of British Columbia. This provision was re-enacted in 1877 and maintained until 1884, when a new Legal Professions Act came into force (Watts, 1984). This Act noted that "persons who shall be elected Benchers shall be a body politic and incorporate under the name of the Law Society of British Columbia." (Watts, 1984: 5).

Those entitled to practice law were also entitled to elect Benchers but were not members of the society. In 1895 this

situation was changed by amendments to the Legal Professions Act, and "all those called, admitted and in good standing at the Bar, became members of the Society" (Watts, 1984: 5).

By the end of the 19th century the pattern had been established; it was evident that the status and leadership of the legal profession within the social, business and political communities, was very apparent. This influence continues to the present day.<sup>11</sup>

#### *The Evolution of the Canadian Bar Association*

The movement to create a Bar Association was characteristic of the movement in other professions. The author suggests members wanted to form associations in an attempt to solidify control of their particular specializations in a rapidly changing society. However, in terms of the legal profession, the creation of the Canadian Bar Association was uncertain, with a number of false starts (Watts, 1984). In 1879 the first meeting was held for the purpose of forming a Law Society for the Dominion. No further action was taken at the time and it was not until 1896 that a further meeting was held. This meeting accomplished very little nor did a series of others which were to follow over the next few years (Watts, 1984).

In 1913, the American Bar Association held its first meeting in Montreal. At that time the Canadian Minister of Justice

---

<sup>11</sup>See Chapter VI for a more detailed account of the official framework of the Law Society of British Columbia.

suggested a similar organization being formed for Canada. From this suggestion, action was again undertaken to establish a society (Watts, 1984). As a result, the present Canadian Bar Association was organized in 1914, and in 1921 it was incorporated. The mandate of the organization was intended to consider various contemporary issues with which lawyers were faced. They included such subjects as ethics, legal education, judicial salaries, and matters of the administration of justice. In addition, the discussions by the association in 1921, included a curriculum for law schools, and in 1923, discussions focussed on proposals for public defenders and legal aid (Watts, 1984).

The external relations of the Canadian Bar Association were seen as very important, and clarifying these relations were necessary, as it established itself as an organization. Around this time groups of lawyers attempted to overcome competitive forces in a society through lawyers' unions.<sup>12</sup> As a result the profession moved to raise its standards; defend the stability, order and control, and tried to limit entry into the field and resisted conversion of the profession into a business or trade (Freidman, 1973). The distinctive nature of the legal profession, familiar to present observers, began to develop further from the foundation set in the nineteenth century, and

-----  
<sup>12</sup>Although these groups of lawyers were not to be formal union organizations, as recognized currently, it seems that this term best describes the interests and intensity of the groups at that time. They fought hard to protect the organizational boundaries of the profession and legal responsibility of lawyers from other business interests in society (Friedman, 1973).

parochialism established itself. For the most part, leading lawyers of the larger American and Canadian firms belonging to the Bar were conservative in outlook, Protestant in faith, and old English in heritage. Delineating race, religion, class, culture, gender, educational and social origin became the major membership criteria; rather than just hard work and academic achievement (Aeurbach, 1970; Friedman, 1973; Keddie, 1978; MacFarlane, 1980; Martin, 1982). Others of different ethnic and religious backgrounds sometimes infiltrated the ranks of the larger firms. But generally it was by adopting the attitudes of the dominant culture; that of the conservative, Protestant, English gentleman that one had an increased chance of becoming a lawyer. This tends to reinforce the theory that it was a few politically and economically powerful individuals with the proper specifications who were to control the legal profession. Whether for corporate or private lawyers, it seemed at this time, that many were using the association as a lever of control over professional ethics, educational qualifications and Bar admission. Claiming the right to represent and to police the entire profession they discriminated against the influx of ethnic minority groups (Aeurbach, 1976). This inequality still seems to exist today with an overrepresentation of professionals of British or North European extraction (Aeurbach, 1976; Arthurs, 1970; Arthurs, 1971; Carlin, 1966; Keddie, 1978; MacFarlane, 1980; Martin, 1972).

*The Evolution of the British Columbia Bar*

Since its inception, the Canadian Bar Association has held to its primary objective of being the representative for the legal profession in Canada, speaking out on issues relating to the administration of justice (Watts, 1984). While the mandate has always been wide, it is only since 1945 that the objectives have been defined. Prior to 1945, the main focus in the administration of the profession was at the federal level, with the Canadian Bar Association inviting the provincial branches to discuss relevant matters. In 1944 administrative problems culminated in accusations by the provincial bodies that the Association had failed to demonstrate leadership in matters of public concern and that it had also failed to obtain general support of the profession (Watts, 1984). This confrontation led to greater provincial autonomy of the British Columbia Bar in 1945.

Almost simultaneously, the British Columbia council decided to take action in an attempt to bring the organization and its work more closely linked to members of the Bar. To supplement work done by the standing committees of the Canadian Bar Association, sub-committees were appointed to consider civil liberties, legal education, war work, the administration of criminal law, changes in the statute law, insurance and the administration of civil justice (Watts, 1984). This was the first concerted effort of an organized and responsible British Columbia branch.



In 1945 there were 211 members of the Canadian Bar Association and 604 members of the Law Society of British Columbia (Watts, 1984). It was stated that little was being accomplished in so far as the Canadian Bar Association was concerned, in terms of membership. It was pointed out at that time that if all members of the Law Society were members of the British Columbia Bar they could meet annually and elect members of the B.C. council. After discussions the motion was carried "that this meeting recommend to the Benchers that the fees be increased to \$50 and that the Benchers be empowered to pay them out of annual fees from each member in the Society to the Canadian Bar Association" (Watts, 1984: 21). The motion for universal membership was passed at the 1945 annual meeting, giving the Branch a more influential position in the affairs of the legal profession, but was not acted upon because of a required amendment to the Legal Professions Act. The matter came before the 1946 annual meeting and was again passed. Resulting from the above resolutions the first joint meeting of the Law Society and the Provincial Branch of the Canadian Bar Association was held on July 3, 1947 (Watts, 1984).

The Branch felt it necessary to expand its role in British Columbia for two major reasons. First, the Law Society, until 1948, had been having difficulty coping with the increase in of its basic responsibilities for finance, credentials, discipline, and libraries, while at the same time dealing with many new challenges such as legal aid, continuing legal education and law

reform (Watts, 1984). All this was done with an inadequate administrative structure. Second, the Law Society's system of administration required that the policy for all these matters be decided by the twenty elected Benchers with little or no input from the younger members of the profession. This policy had the effect of centralizing the power with a few highly placed lawyers and had the unanticipated effect of alienating a substantial number of younger but equally capable lawyers (Watts, 1984). Hence, the status quo was well-maintained until 1948, within the ambit of economic and political will of the Benchers, often referred to as the "old boys" network.

The administration of the legal profession remained essentially unchanged until 1967. In that year there was a suggestion from the Law Society Secretariat for the delegation of responsibility between the Law Society and the B.C. section of the Canadian Bar Association. As a result the B.C. Branch became responsible for law reform and continuing legal education in 1968 (Watts, 1984). From this point, then, the responsibilities of the B.C. Branch included commitments toward law reform, continuing legal education, practice law office economics, tax and estate planning for lawyers, minimum fees and tariffs, and so forth. Resolutions at the 1969 Annual Bar Association meetings reinforced these commitments and a new constitution was adopted (Watts, 1984). The constitution provided for a more democratic process than the previous structure of centralized decision-making by the twenty Benchers;

and it further clarified the responsibilities for the administration of the association (Watts, 1984).

Under section 37 of the Legal Professions Act the Benchers, in 1969, transferred a wide variety of responsibility to the B.C. Branch of the Canadian Bar Association (responsibility held previously by the Law Society itself). The Benchers, however, still have the ultimate responsibility and accountability for the usefulness of the legal profession in our society.<sup>13</sup>

The B.C. Branch of the Canadian Bar Association has undertaken a variety of activities since 1969.<sup>14</sup> Over the last eighteen years the Branch has been much more actively involved in many problems directly affecting the public and the legal profession itself. The Law Society and the B.C. Branch of the Canadian Bar Association however, play very different parts. The Law Society must discipline, insuring proper discharge of responsibilities under the Legal Professions Act, while the B.C. Branch of the Canadian Bar Association has the responsibility of administering the smooth operation of legal profession; the operation being more clerical in nature (Watts, 1984). A large

-----  
<sup>13</sup>Given this responsibility the Law Society of British Columbia and its members must be willing to fulfill the obligations and the expectations of the public. If this is not possible it may be necessary to introduce independent measures to ensure that its members remain accountable.

<sup>14</sup>The information on these activities is noted in the annual reports of the Law Society of B.C. It is not the focus here to detail what is in these reports. But instead to outline the committee work that was done on certain important matters. For example, commencing with the responsibility for law reform and continuing legal education.

part of the work of the B.C. Branch of the Canadian Bar Association is directly aimed at assisting the public. It was, however, not until 1971 that it was decided there should be an annual accountability report released to the general public. In 1972 three further resolutions were passed relating to the accountability of the profession (Watts, 1984: 31). They were:

1. that all annual and special meetings of the Branch and all meetings of the provincial council be open to the public;
2. that submissions of the Branch be made available to the public contemporaneously to their presentation to the government; and
3. that regardless of the initiative for law reform, the Council or the Executive committee frame resolutions and comment on the area of law reform and matters of policy for the profession.

The issues of law reform continue to remain an important area for the Branch. This is evident with the passing of a resolution in 1971, which stated, "that a special committee of the British Columbia Branch of the Canadian Bar Association be formed to consider the scope, priorities of subject matter, the appropriate body and manner which a proposal may be best implemented for a full inquiry with respect to the administration of justice, both criminal and civil in the province of British Columbia" (Watts, 1984: 32). This sub-committee included in its terms of reference issues of:

1. The administration of civil justice;

2. The administration of criminal justice;
3. Family law; and
4. Access to legal services, legal aid and the legal profession.

The sub-committee reported back to the annual meeting of the B.C. Branch of the Canadian Bar Association concluding that "what was required was an immediate, systematic and comprehensive review of the administration of justice in British Columbia, in all its aspects and recommendations for reform" (Watts, 1984: 32).

Some of the other accomplishments since the late 1960's of the B.C. Branch have been security legislation, funding for legal aid services and law office management, continuing legal education, the Legal Professions Information Community Relations Program, pre-paid legal services and legal education of the public. From these initiatives it seems that the B.C. Branch of the Canadian Bar Association became more vocal in issues of law reform.

The legal profession is responding to a perceived movement in the community for greater accountability and flexibility among its members. This is apparent in the current work carried out by the B.C. Branch of the Canadian Bar Association, as outlined above. Some may argue, however, that the response is too hesitant and reluctant. It is hoped that they will continue in their efforts to implement programs in attempts to regulate

the profession. As was suggested by Watts (1984), perhaps time has come for the Branch to act as a "shadow cabinet" for the Benchers.

A stronger and more cohesive professional association has been created through the interweaving of the local Bars, county Bars and the British Columbia Branch of the Canadian Association. In October 1985 the legal profession recommended that a new Legal Professions Act be implemented<sup>15</sup> which would replace the Barristers and Solicitors Act (although it was basically the same act with a name change). This was the culmination of four years of inquiry and examination by the Benchers and the profession regarding the role which the profession should take in the future. In June of 1987 the Act received Royal Assent.

The administrative structure of the profession is now firmly in place, having been modified through the years depending upon the political will and the intestinal fortitude of legislators and the legal profession itself. What its effects will be on future law reform remain to be seen. There are and always will be major problems facing the legal profession, the most enduring perhaps, being the assurance of honesty and competency among members - an issue the Law Society seems to emphasize in its annual reports. How the legal profession has chosen to deal with these problems will be the focus of the next section.

-----  
<sup>15</sup>The old Legal Professions Act having been in place from 1863 to 1979, at which point it was replaced by the present Barristers and Solicitors Act.

## Legal Ethics and Professional Conduct

Members of the legal profession are bound by a set of ethical rules. These rules are designed to protect clients from exploitation by lawyers and to provide a framework for lawyers to follow in daily practice. The ethical standards of the Bar are intended to promote the basic standards of practice, but some have questioned their ability to do this effectively (Carlin, 1966; Handler, 1967). Education in legal ethics, the *sine qua non* of the practicing lawyer, has been indifferent, although much attention has been focussed on this issue by Benchers and respective Bar Associations over the past thirty years (Watts, 1984). From 1869 to 1920 it was assumed that the lawyers had somehow acquired knowledge of the unwritten code of ethics and that the law student would acquire this knowledge generally. Little information was offered and little attention paid to standards of appropriate behaviour of lawyers.

Procedures were put in place for elimination of the "guessing game" in 1920. In that year the Canadian Bar Association approved the Canons of Legal Ethics which was adopted in British Columbia in 1921. In 1926 the Vancouver Bar Association suggested that there be a committee on ethics, although no action was taken. The Benchers decided they would not answer the "hypothetical questions" which were proposed by ethical matters. Attempts over the years to form a committee on ethical problems resulted in limited success. However, some

progress was made with the inauguration of panel discussions on the subject by the Victoria Bar Association in 1955 (Watts, 1984).

If the issue of ethics was clouded for lawyers, it was more confusing for the student. In 1931 it was decided to give law students a copy of the Canons of Legal Ethics when called to the Bar. The following year there was the suggestion that, in order to emphasize ethical matters further, lectures on ethics be instituted within the law school curriculum. The suggestion, however, was not followed. It was not until 1954, that students were provided with the Canons of Legal Ethics upon enrollment in law school (Watts, 1984). It was a hesitant beginning to what has become an important issue to the profession. The greater profile of this issue resulted from three main factors:

1. the disappearance of a three year articling system and the abbreviated learning time available in order that ethics would be learned by precept;
2. the greatly increased number of students who required the information; and
3. a change in the concept of legal ethics from the relationship between client and counsel to the broader concept of professional responsibility; to include the responsibility the members carry not only in the daily practice, but also in the general areas of all matters of law affecting the public (Watts, 1985: 37).



If the problem had been identified it was not solved. Over the years the law faculties have often taken the position that the academic field is not the most appropriate place to deal with the issue of ethics. Teaching time for ethics has generally lost out to what is considered to be a subject of greater importance - the black letter of the law.

The impression should not be formed that the situation remains unchanged. There is more emphasis being placed on daily ethical problems by the legal profession. This can be seen by the provisions made by the Law Society of B.C. in recent years. In 1970 the "ethical dilemma" resurfaced when secretary McCallum stated that new lawyers come into the profession with no real understanding of the Code of Ethics, or an appreciation that good ethical conduct was the cornerstone of a lawyer's performance. As a result increased emphasis has been placed on the daily ethical conduct of lawyers over the past twenty years. Guidelines and ethical standards have been developed to ensure ethical conduct and to discipline unethical conduct.

For example, in 1978 the Benchers appointed a director to assist members in office administration, to conduct spot checks of members accounts and, where necessary, to refer matters to committees established by the Law Society. As well as establishing an "insurance fund" and "special fund" to aid unsuspecting clients when a fraud has occurred, the following steps have been taken to improve ethical relations.

From suggestions by secretary McCallum in 1970, a Handbook of Professional Conduct was developed to help standardize appropriate and inappropriate boundaries of legal behaviour in the minds of practicing lawyers, and generally to educate the profession in terms of ethical responsibility. Second, the formal hearing of the Discipline Committee was formed to deal with complaints of unethical behaviour lodged against a member of the legal profession. Third, a Conduct Review Committee, a sub-committee of the Discipline Committee was struck. It is composed of two or more Benchers and examines ethical matters and provides guidance to a member as to future conduct. Fourth, a Professional Standards Committee was formed to deal with and rule on many questions of unauthorized practice, professional misconduct, among other concerns. One of its subcommittees, formed in 1986, to deal with issues of professional conduct meets once a month to consider complaints on ethical matters (Law Society of B.C. Annual Report, 1986). Lastly, a Competence Review Committee was developed to deal with issues of responsibility and legal liability. This committee recognizes that competency infractions should be dealt with in the same way as ethical infractions. The discussions by the committees brought to the surface the dilemmas of ethical practice, but have not solved or alleviated the problems brought on by inexperienced or less law abiding members of the profession. However, they have served to standardize boundaries of competence and of ethical behaviour, to a greater extent. The Benchers realize that if the legal profession is to remain

self-regulating and independent, it has a responsibility to ensure the ethical honesty and competency of its members.<sup>16</sup>

In more recent years there has also been a movement to emphasize the importance of teaching ethical practices; but the effectiveness of these programs in teaching ethics remains much in doubt.<sup>17</sup> For example, in 1982 a pilot project was initiated dealing with professional responsibility of the student. The Professional Legal Training Course (P.L.T.C.) became a ten week program which was aimed at teaching the articling student substantive law, skills training, practice and procedure. However, the course tends to emphasize skill training rather than the various ethical responsibilities which may arise in the students' role as a lawyer. To date the student is still left largely to the assistance he receives from law school tutorials and P.L.T.C. The problem of a satisfactory solution has yet to be achieved.<sup>18</sup> It is necessary to understand that education on ethics and other forms of professional conduct should commence in Law School and carry through the articling period, allowing for the student to fully comprehend its importance.

-----  
<sup>16</sup>Professional standards are also contained in the Barristers and Solicitors Act, their rules, the Professional Conduct Handbook, court decisions, and discipline committee decisions. It is noted by the Law Society that these reference materials set out general principles and that each member of the profession has a responsibility to apply the principles to unique circumstances (B.C. Public Interest Advocates, 1986).

<sup>17</sup>Report on Professional Legal Education and Competence, 1983 cited in Watts, 1985.

<sup>18</sup>Many law schools do not have compulsory courses on ethics which the students must take. At the law schools in British Columbia the course is considered an elective.

Variations in ethical practices of professional groups in modern society have historically presented its members and the general public with a series of philosophical dilemmas which are often difficult to overcome. The position of trust to which society places members of the legal profession, necessitates a superior quality of ethical practice and demands a recognition of its importance in the profession. It appears as though both the public and the legal profession may have been disappointed in the ethical reality of legal conduct.

### Conclusion

Despite protests from the profession, the author considers deviant conduct as perhaps inherently endemic to the legal profession as a whole, because certain weaknesses which have existed since its formation have been exploited. Self interested training, a competitive marketplace and a profession which wants to maximize financial rewards by its members are all values which are well documented and entrenched in the formation of the North American legal profession. Accordingly, much of the fraud arises from the "professional dominance" (Friedman, 1973) of lawyers who are socialized into values stressing self interested material concerns.<sup>19</sup>

-----  
<sup>19</sup>As was discussed in Chapter III, while professionals are motivated by achievement and recognition, the means of attaining and realizing such vary in accordance with occupational roles (Parsons, 1954). There is dissatisfaction among sociologists and criminologists with such a traditional model. Rather what is emerging is the idea that the ability to obtain professional status is linked with the wider social forces and arrangements

A historical review of the legal profession in England and North America was seen as necessary in order to provide a clearer understanding of the profession's dominance in modern society. By outlining its evolution one can see the dominance of the political and commercial structure in the legal profession. In addition to exercising the monopoly of control over the legal machinery, the legal profession became very strongly linked to the financial culture. The persistence of the inequality in the social strata of society suggests that the legal profession will continue to influence the basic social, political and economic arrangements in Canada.

It seems Bar Associations have timidly entered areas of law reform. It was not until the mid 1940's that the Canadian Bar Association expressed their concern for prevention of lawyer fraud or of other legal reform issues. Rarely however, did this concern extend beyond such problems as provision of legal services, to ethics and so forth. Rather, the concentration was on the more technical and professional aspects of the issues; for example, the administration of criminal law rather than the social costs of lawyer fraud. The author is not suggesting that nothing has been done, only that what has been done is perhaps inadequate given the stated problems. Allowances have been made for example to provide the wider availability of legal aid for the public, and compensation for those who may have lost money from the misappropriation of funds. However, the structures

-----  
<sup>19</sup>(cont'd) of power (MacFarlane, 1980; Reasons & Chappell, 1985, 1987; Reuschmeyer, 1964).

which allow for lawyers to proceed with little concern to detection are still present. It seems it has been much easier to treat the symptoms than to get to the structural roots of the problem.

Recommendations by those who adapt a broad approach to fraud stress that prevention might be best accomplished by allowing greater access to the profession to members of low to middle socio-economic groups, and ethnic minority groups (although this has not yet been proven as a valid solution); by curriculum changes in the law schools which emphasize the teaching of ethical conduct; and most importantly, by shifting the emphasis away from the desire to maximize income to an emphasis on more humanistic values. The author realizes that these recommendations will not, in themselves, eliminate fraudulent activity by members of the legal profession. The problems lie in deeply rooted social mores of society and will not be altered so easily. The recommendations are, however, a step in the right direction.

## CHAPTER V

### PERSONAL MOTIVATIONS AND ENVIRONMENTAL OPPORTUNITIES

#### Introduction

In society, and within its specific professional structures, there is often a difficulty with the mechanisms of social control (Schur, 1968). While rules and laws controlling behaviour may provide a certain amount of guidance, there is rarely complete agreement with or adherence to many of the stated procedural structures. Considering the varied and often conflicting personal and societal expectations of professionals, in this case lawyers, it is not surprising that there are, as social theorists (Arthurs, 1971; Hazard & Rhode, 1985; Keddie, 1978; MacFarlane, 1980; Parker, 1982; Reasons & Chappell, 1985, 1987; Reuschmeyer, 1964) have noted certain opportunities in the role of lawyering that may provide the motive for engaging in deviant and often fraudulent behaviour.<sup>1</sup> Conflicts of interest among lawyers as professionals and other societal factors may provide the opportunity for such misconduct.

Focussing on fraud perpetrated by the members of the legal profession allows the author to examine a group of well-educated, often well paid individuals whose motivations do

-----  
<sup>1</sup>This thesis is primarily concerned with fraud as including improper use of client's funds in some capacity (trust fund irregularities and violations); thus violating ethical codes of professional conduct and, in most instances, the Criminal Code as well, as noted in the introduction to the thesis.

not correspond with the more traditional explanations of deviant behaviour. The nature of fraud committed by lawyers does raise some important questions for theorists who seek general explanations of deviant behaviour. Past explanations of the behaviours describe and seek a "cause" for deviant behaviour as residing within the individual lawyer. Included in this personal/pathological approach is the frequently refined notion that fraud and other deviant activities are committed by lawyers and other professionals because of inherent personal factors and motivations.

In contrast to this approach it has been suggested in this thesis that fraud and other forms of deviant behaviour by lawyers are not committed just by pathologically deviant individuals. But fraud should be seen in terms of the structure of society itself and the lawyers' influential position within this social strata as part of the political and economic elite.

As discussed in Chapter III, Reasons and Chappell (1985, 1987) directed our attention to lawyers who, as professionals, are placed in a position of trust in society. Those who are expected to be beyond reproach and to whom members of society entrust their most sensitive affairs. They proceed to suggest the lawyers, as members of the elite business and political sector in society, may not be interested in an individual's affairs as they are in maintaining their influential position over those who have placed trust in their position.



Difficulties existed with both personal and political economy approaches for explaining white collar crime as was emphasized in Chapter II and III. A more modest approach to explain fraud in the legal profession will avoid the "all or nothing" or "one of the other" approaches. It should be realized that personal motivations as well as features of the legal profession and the larger social structure may push some lawyers toward fraud.

As a proponent of a broad political economy perspective, based on personal and socio-structural determinants it can be suggested that fraud within the legal profession is facilitated by the lack of legal ethical training of law students, the basic monopoly of knowledge maintained by the profession, the high career expectations of lawyers built into the professional structure and the low probability of detection, conviction and sanction. The latter is seen as a major factor given the self-regulating nature of the profession and the influence a lawyer is able to exert in the corporate and political spheres of society. All these factors create an environment which, implicitly at least, encourages some lawyers to engage in fraudulent activities to maximize their income.

The lawyer is supposed to perform in an ethical manner as a professional. Yet this individual is responsible for dealing with a variety of personal and professional problems of his or her own as well as those of the client. These interests, which are often complex, may cause elements of conflict, expectation

and greed to arise (Schur, 1968). Earning a good living is difficult in British Columbia's fluctuating economic state and often the lawyer has access to information about clients or the structure of the system which could easily be turned to a financial advantage. Yet, theoretically, the lawyer is not to be self-serving; the interests of justice and the client are to be paramount.

Epitomizing the above approach to the problem Thio (1983) suggests the more power one has, the higher the aspirations. The basis of the argument is that the professional with the prestige maintains standards at a level generated by the "upper echelons" in that profession. Lawyers, so the argument goes, experience frustration because they are socialized to expect high incomes, being in a profession which is highly motivated to the raising of this income and in many cases those expectations are not fulfilled or even attainable.

These are just a few of the issues faced by the legal profession which are being discussed in this thesis. An examination of the personal motivations of the lawyer, the opportunity structures within the legal profession itself and the opportunity factors present within society-at-large will be the focus in this chapter. Before discussing these phenomena in more detail a case scenario will be provided, as described by Black (1987) in order to provide the reader with a preliminary glance into the world of lawyer fraud.

## *Case Scenario*

Ed Phillips has been a lawyer for twenty years, specializing in commercial and matrimonial law. In 1980 the Law Society of Upper Canada discovered he had carelessly invested some clients' money in the stock market, and he was told this could lead to disbarment.

As a result, Phillips turned to alcohol and cocaine in his despair. These took their toll and he began making errors, his once thriving law practise quickly deteriorated. Phillips needed to guarantee income to pay the bills and subsequently helped himself to money from his clients' trust funds. He did have intentions of replacing it. However, over a four year period Phillips misappropriated over \$200,000. Eventually Phillips turned himself in to the Law Society. He was disbarred, charged and convicted of fraud, theft and breach of trust. Sentenced to two years, he served six months before being released on parole. (Black, 1987)

This case is not unique. Phillips met other inmates while incarcerated who were also lawyers, disbarred for crossing the line between legitimate and illegitimate legal practices. A discussion of what might facilitate and encourage such behaviour may now follow.

### Motivation and Opportunity

This chapter will discuss the motivation and opportunity factors separately giving the reader a clearer understanding of the aspects which are to be included in each concept. There are a great many divergent factors which can affect a lawyer's decision to engage in fraudulent activity. Due to the complexities involved in the analysis of the motivational and opportunity factors, it may be more useful to outline each of the factors individually.

## Personal Motivational Factors Among Lawyers

It has been demonstrated that the concept of motivation is difficult to operationalize and analyze (Horozowski, 1981; Silverman, 1971; Sittek, 1986). This is more problematic when one is looking at motivation in terms of an explanation of deviant behaviour. Motivation is dependent on environmental as well as psychological stimuli (Silverman, 1971). It is these two sets of stimuli which can directly influence a lawyer's decision to engage in fraudulent behaviour.

As discussed by Horozowski (1981), motivation is comprised of a variety of elements which have a bearing on the decision-making process of an individual who is engaging in such a deviant activity.

The word chosen for the intellectual antecedent of the decision to act is motivation and the name for the internal component is impulsion. Motive can be defined as an idea, or thought of as a given state of facts - in the past, present or future - under the influence of which we make our decision to act in a certain way. Impulsion is the emotion that accompanies the motive in the process of making the decision. Motivation can be reserved for the much wider area of all psychological aspects of any causative factors (1981: 51).

Motives can include "hundreds of different factors, most of them psychic in nature" (Horozowski, 1981: 51). A confusing aspect in the analysis of criminal motivation is the relationship between the motive and the intention. As Horozowski stated:

The arousal of a motive and impulsion before making a decision (which is reflected in the intent to act in

thoughts concerning methods for the performing of the actions) is a complex psychic process (1981: 52).

Although the specification of motives is important in examining criminal behaviour, it is of less concern to the legal profession than the intention to act<sup>2</sup> However, outlining the concept of motive for this thesis is important as it allows for further analysis of the criminal.<sup>3</sup> The motive to commit fraud only becomes a criminal offence of fraud as defined by Section 338 of the Criminal Code or an ethical offence defined as professional misconduct by the Barristers and Solicitors Act. The following discussion on the variety of motivational factors which influence lawyers to engage in fraudulent activity will be examined.

#### *Personal Gain*

In a situation involving personal gain, lawyers may engage in fraud for a variety of motivations, all of which are in the specific self-interest of the lawyer. The major motivational factor in many cases is the financial reward associated with the deviant behaviour (Arthurs, 1971; Black, 1987; Ziskrout, 1987). The fraud, however, can be committed for intangible benefits such as power and prestige.

-----  
<sup>2</sup>See introduction for the Criminal Code definition including the concepts of *Mens Rea* and *Actus Reus*.

<sup>3</sup>As was noted earlier, personality should be analyzed in the examination of deviant behaviour however, it is not the only determinant.

No one psychological type commits fraud, but those who do share some characteristics. From the data obtained from Black (1987) and the cases obtained from the Law Society of British Columbia, the follow pattern emerges.<sup>4</sup> Usually they are male, in their mid-forties, they tend to hold university degrees and are in solo firms or are partners in a small firm. Somewhere along the line they have encountered a formidable obstacle, ie. money shortage, marital problems, job stress, alcohol, or drugs. Many deviant lawyers and other white collar criminals have suffered a personal loss which, directly or indirectly, contributed to the decision to defraud. Under pressure to perform financially and socially, they engage in fraud using their technical knowledge and expertise to perpetrate the theft (Arthurs, 1970; Black, 1987).

While these characteristics are shared by many individuals who commit fraud, it must be cautioned that this kind of personal analysis has serious limitations. It is likely that these characteristics are more artifacts of a highly parochial and rigidly structured hierarchy of business or profession rather than inherent traits of a "classical" criminal. It stands to reason that in a traditional and conservative profession such as law, individuals who commit fraud are likely to be male, to be well-established (in their mid-forties) and to hold university degrees (at least one). Further investigation into the structure in which they operate is imperative.

-----  
<sup>4</sup>See Chapter VI for a more detailed account of the personal histories of those convicted of fraud.

There are, as Straub and Widom (1984) and Sittek (1986) noted in their studies of computer crime, two types of offenders who commit fraud for personal gain. These categories are instructive in understanding this behaviour among lawyers. The first type of offender expresses primarily economic reasons often beyond his or her control. In the majority of these instances, the lawyer engages in the fraudulent activity as a means of alleviating personal problems which may be directly attributable to financial difficulties. In many of these cases of lawyers committing fraud it is out of financial desperation. Many become involved when they become financially strapped (Arthurs, 1971; Black, 1987 Law Society of B.C. Annual Report, 1982).

One can identify a number of different motivational factors leading to this type of fraud (Arthurs, 1970; Black, 1987). The first type of lawyer engages in fraudulent behaviour often when they perceive their personal circumstances reaching intolerable levels; and they turn to fraud and other forms of criminal activity in a sporadic fashion when they see it as the only feasible solution to the particular problem.<sup>5</sup>

There are a variety of motivations directing one's energies toward the solution of personal problems which are created most often by financial difficulties. The state of the sagging general economy has been cited by a spokesman for the legal

-----  
<sup>5</sup>This situation being very similar to the "insurmountable problem" described by Cressey (1953) in his study of Embezzlers, Other People's Money.

profession, in which a record number of bankruptcies had occurred in B.C. over the last few years, as the main reason for lawyers using clients' funds.<sup>6</sup> The motivation to overcome these obstacles often manifests itself through deviant behaviour, more specifically, fraud. This group of lawyers does consider their behaviour to be deviant but see it as the only alternative to alleviate the problem.

The second type of offender tends to pose a greater threat to the stability of the profession. As in the first type, the fraudulent activity is primarily motivated by financial concerns, but here it is not necessarily limited to resolving the pressing personal problems which may be present. Rather, this offender rationally plans and executes the fraudulent activity mainly for the financial reward associated with it (Straub & Widom, 1984; Sittek, 1986). In this instance the lawyer can be seen as an opportunist and will initiate the fraud because of the "perfect opportunity" presents itself. Here the major motivational factor for engaging in fraudulent activity is opportunity. Rarely is it initiated because of financial difficulties, as with the first type. This type of offender has the ability to take advantage of his or her professional position and status with less chance of being detected. Often it is the extent of a lawyer's skill and knowledge, as well as familiarity with the legal system that allows him or her to

-----  
<sup>6</sup>See Chapter VI for an elaboration. Also note, as a related issue, Appendix F, regarding statistics on financial difficulties of members of the Law Society of B.C.



engage in some form of fraudulent behaviour with less risk of detection. It should be noted that this type of offender is probably not as prevalent as the first type, who engages in the fraudulent activity to alleviate personal financial problems.

*"Professional" Career Motives*

In this instance, the lawyer engages in fraudulent activity for a wide variety of motivational reasons (Sittek, 1986). The motivation directing this group of lawyers, who can be seen as "professional career criminals" (Sutherland & Cressey, 1960) revolves around a value system which does not provide the stigma associated with deviant behaviour. Sittek (1986) views professional career criminals having a value system in which deviant behaviour is a way of life. This "professional" aspect of career criminality allows the offender to rationalize his or her deviant behaviour in that occupation. Sutherland and Cressey (1960) note:

The term professional when applied to criminal refers to the following things: the pursuit of crime as a regular day-to-day occupation; the development of skilled techniques and careful planning in that occupation; and the status among criminals. The rationality of a professional criminal extends beyond the acquisition of manual and social skills necessary for illiciting the crime itself. It includes the planning, prior location of spots and victims, and prior preparation for avoiding punishment in case of detection. It is the rational system for making these arrangements as well as the use of these skills which distinguishes the professional thieves from the ordinary thieves (1960: 277-278).

It is unlikely that those "career criminals" are present in high numbers in the legal profession. The amount of career

criminality is not that evident, in so far as fraud is concerned. But, nonetheless, examples do exist which demonstrate that certain lawyers do engage in frequent fraudulent activity. The major motivational factor, once again, is the financial reward associated with the fraudulent behaviour. Again, lawyers are able to engage in this behaviour by way of their privileged and elitist status as professionals in the social structure, making detection and apprehension problematic in all but the most blatant cases of fraud.

### *Corruption*

The corrupt lawyer is perhaps the most devious and destructive type of offender. He or she is motivated simply by greed. Few involved in the fraudulent activity see themselves as committing a crime; in all but the technical sense. Rather they believe that they are reaping some rewards after long hard years of paying their dues in the business world (Black, 1987). They are able to rationalize their behaviour by suggesting that many others engage in fraud and remain undetected, or they believe that the system is a kind of game to be manipulated and ultimately beaten by their expertise (Sittek, 1986).

The type of lawyers engaged in such fraudulent activity embody the ultimate in free enterprise, capitalism gone wrong. They look at themselves as entrepreneurs, noted by Black in the Financial Post,

We operate in a highly competitive capitalist economy and getting ahead is measured by the amount of

successful capital accumulation you're able to make. The line between legitimate and illegitimate ways of accumulating capital is sometimes very fine. These men are basically con men preying on the public's gullibility (1987: 58).

A great majority of lawyers possess extensive occupational power and are capable of committing fraud, not only because of the public's gullibility but because of the closed professionally organized type of environment in which they operate (Abel, 1981; Arthurs, 1970; MacFarlane, 1980; Reasons & Chappell, 1985, 1987). Lawyers have the skill and knowledge to perpetrate the fraud vis-a-vis their professional position in the legal structure and in society. They occupy this strategic position with very little effective external and limited internal control mechanisms. Because of this they are easily able to convert their position of trust into deviant activities.

Whatever the classification of the lawyer as a white collar criminal, there is a similar and essential element to the scheme: trust. Clients trust them, which provides ample opportunity within the structure of the profession to engage in fraud.

In this profit-oriented society, experts who appear who have the need, opportunity or greed may succumb to the temptations, whether the person be a stock broker, lawyer or accountant (Black, 1987). It is particularly difficult in the legal profession where trust is the key ingredient to the profession operating effectively. The next section of this thesis will

expand on this theme.

Once the trust is there, there are going to be people who are tempted to abuse that trust. Its unfortunately human nature (Black, 1987: 60)

### Opportunity Factors Within the Legal Profession

Along with the personal variables some investigators have indicated that there may be a variety of organizational characteristics of the legal profession itself which may facilitate fraudulent behaviour among lawyers (Abel, 1981; Keddie, 1978; Reasons & Chappell, 1987; Rieter, 1978). In many cases the occupational position may provide the opportunity which would not normally be available to those outside the occupational setting (Sutherland, 1949). The special knowledge which accompanies a lawyer's position may provide more of an opportunity to engage in deviant activity (Abel, 1981; Schur, 1968). Lawyers occupy key positions of trust as part of their professional status and a person in such a position can abuse this privilege. The structure of the profession allows for such exploitation and abuse through minimal review and detection procedures. The ability of the lawyer to perpetrate a fraud extends throughout the profession and is not just limited by their position in the the occupational hierarchy or by personal circumstances and motivations, although they do play a role (Abel, 1981; Arthurs, 1970; Handler, 1967; Keddie, 1978; Sittek, 1986). That is, as has been demonstrated, those lawyers who have top positions do not necessarily possess the greatest potential

for fraudulent behaviour. In fact the reverse seems to be the case (Arthurs, 1970; Carlin, 1966; Handler, 1967).

Identification of other specific vulnerabilities in the profession itself may lead to an understanding of the fraudulent activities engaged in by lawyers.

### *Issues of Self-Regulation*

Lawyers as professionals occupy an elitist position in society with few effective internal and external controlling mechanisms.<sup>7</sup> The independence of the legal profession is often considered a factor allowing for the perpetration of fraud. As a system based on the rule of law, the profession has sought to regulate conduct within the confines of its own ranks through stated ethical norms. However, the operation of this system must be questioned. Familiarity with legal intricacies and procedure may actually promote fraudulent behaviour (Aeurbach, 1976; Hazard & Rhode, 1985; Schur, 1968; Visano, 1985).

Kraus and MacGahan (1979) maintain that an individual's perceived risk of detection is greatly influenced by the policies advanced by the professional institution. Such opportunities direct deviant behaviour, define professional ethics and attitudes, and clarify and articulate internal controls (Sittek, 1986). The amount of regulatory mechanisms may

-----  
<sup>7</sup>The policing body for lawyers in British Columbia, the Law Society of B.C., acknowledges that less than ten percent of those lawyers who engage in deviant activity are apprehended (Ziskrout, personal interview January 1987). This is discussed in greater detail in Chapter VI.

aid in the extent of fraudulent activity among lawyers. The low perception of detection and risk may further act as an incentive for lawyers to engage in fraud. If the assignment of costs involved in the commission of a fraudulent act is based on this perceived risk of detection, and lawyers are aware of this low probability, it may act as a primary inducement.

The reality that the controls are minimal has been, and continues to be, an important factor in the detection of fraud in the legal profession. It is strongly suggested that weak controls in the profession may facilitate fraudulent and other deviant activity which otherwise may not occur precluded because of a fear of detection (Arthurs, 1971; Reasons & Chappell, 1985, 1987; Snider & West, 1980).

The tradition of the legal profession in British Columbia has preferred a limited amount of external intervention.<sup>8</sup> These controls stand in stark contrast to the controls placed on other forms of more "traditional" criminal activity such as robbery or murder where the visibility of the offence dictates easier extension of external control. In the case of the latter forms of control the assumption is that people are not self-regulating and that without formalized criminal law anarchy would follow (Snider, 1978). In the legal profession the emphasis is placed on self regulation with enforcement achieved through the Law Society itself. It is an organization which is responsible for

-----  
<sup>8</sup>The various forms of controls introduced will be discussed in detail in Chapter VI.

policing its own members. This ultimately raises the question of objectivity.<sup>9</sup> When the law makers must police the law breaking of its own members there are inherent difficulties.<sup>10</sup>

As Arthurs (1971) noted, the legitimacy of self-regulation in the eyes of the public can be seen most clearly in the limited ability of lawyers to consistently discipline misconduct among their peers, an essential ingredient in the claim of professional status. The professional disciplinary process is almost completely reactive. Clients are unaware of misconduct except in the most blatant of cases and the professionals are reluctant to report each other. The Law Society of British Columbia reacts only when a lawyer is reported by either a client, or in rarer instances, the secretary can initiate a complaint, another lawyer or policing agent. Lawyers fill less than one-quarter the total number of complaints received. The majority of the complaints come from the public. Even when clients feel they have a claim they often do not fill out a complaint because the process which they must go through is an arduous one. Even though it requires only filing a letter it is

---

<sup>9</sup>This concern has recently surfaced in Calgary and in the Lower Mainland of British Columbia in the form of a citizens' group "Victims of Law Dilemma" (V.O.L.D.). The citizens have stated they must take action to ensure that the provincial governments develop reforms to protect the public against the illegal and unethical conduct of lawyers. One matter of consideration by V.O.L.D. is creation of lay representation within the Law Society. To be discussed in Chapter VII.

<sup>10</sup>Several professions are worthy of attention here. The medical profession for example is exploring this area with similar difficulties (Reuschmeyer, 1964; Wilson, Lincoln & Chappell, 1986).

suggested that most individuals would <sup>find</sup> this an intimidating action. Seventy-six percent do nothing; twenty-two percent speak only to the lawyer or the firm; and two percent complain to the Law Society of British Columbia. From this small number of reported complaints the Law Society appears to be very cautious.<sup>11</sup>

This leads to the debate regarding the utility of self-regulatory agencies administering sanctions in an attempt to control the deviant behaviour of those within their profession. It is well known that the political and corporate elite in Canadian society wish to retain their influence within the profession, while trying, simultaneously, to improve its image in the public eye. This role conflict is often difficult to reconcile. How does a profession satisfy society at large and the members of the political and corporate elite without over-penalizing and constraining its own members in the attempt to be all things to all people?

*Monopoly of Information and Knowledge*

Deviant activity involving professional opportunity is directed toward the identification and exploitation of vulnerabilities within the profession (Needleman & Needleman, 1979; Reasons & Chappell, 1987; Sittek, 1986). Normally

-----  
<sup>11</sup>This seems evident in the fact that only twenty-nine lawyers have been disbarred from the profession over the last ten years. Only in the most blatant circumstances, most involving cases of fraud, does the Law Society disbar. Rather they prefer to reprimand or suspend. One recent example would be the Volrich case in British Columbia.



associated with the offender's occupational position is a level of skill and knowledge and trust. For example, Sutherland (1940) described how economically powerful individuals could abuse their positions of trust within organizations in the pursuit of criminal objectives. He observed that many of the crimes committed by respected citizens in society involve the violation of delegated or implied trust - a fundamental ingredient in the monopoly of knowledge and power which results from the acquisition of socio-economic and professional status.<sup>12</sup>

As stated earlier, originally through the apprentice system, and more recently through educational institution, legal knowledge as a commodity, has been subject to monopolization and concentration for its exchange value (Reasons & Chappell, 1985). However, as Chapter III indicated in recent years the production of lawyers and the conditions of practice have been eroded. This loss of market control over the years through increased membership of the Bar may be partially attributed to the increased deviance in the profession.

The lawyer is able to gather a great deal of information concerning the case and the client. He or she is often aware of the client's specific needs and can often acquire knowledge of the client's vulnerabilities. Clients must rely on lawyers to

-----  
<sup>12</sup>For a facilitative model to apply, most fraudulent activity occurs within an organized setting. The legal profession is no exception and is organized with the key positions of trust as part of this setting. A lawyer in such a position of trust is therefore in a powerful position to convert that trust into knowledge.

supply them with knowledge and information concerning the intricacies of their case. The lawyer acquires this authority through a monopoly of legal knowledge. In general then, a lawyer who engages in fraudulent activity is aware of the vulnerabilities of the client and the system and is able to diffuse the criminal intent by way of his or her knowledge, into their professional routines (Newman, Jester & Articulo, 1978).

Many fraudulent activities engaged in by lawyers involve a violation of trust, as stated above.<sup>13</sup> However, one of the primary ingredient in such violations remains the monopoly of legal knowledge which helps to solidify the power of the legal profession. The skill and knowledge which are necessary to a lawyer provide an opportunity to commit fraud, in many instances, without the awareness of the client, thereby violating the trust granted to them. Because of the high degree of occupational autonomy associated with the monopoly of knowledge, it is relatively easy for lawyers to exploit the weaknesses of the client. The lawyer, for example, may misrepresent situations to the client, alter records, accounts and so forth.

As noted earlier, the increasing influence of other professionals such as accountants and notaries public has had a serious consequence on the loss of information and knowledge

-----  
<sup>13</sup>Although in the case of fraud the potential for the activity being detected is much greater than with other forms of lawyer misconduct because of the visibility of the offence ie. the physical evidence.

control. At this point, the legal professional no longer has the complete monopoly of legal information. This shared knowledge among lawyers and other capable professionals has tended to diffuse the knowledge base in that a client may now seek out the assistance of a lawyer or another professional depending on the particular issue at hand. Lawyers may still be consulted in the area of real estate, family, civil and criminal litigation. There are, however, a number of issues which are not being taken up by lawyers, but are serviced by other qualified groups. These include consumer advocacy, employment, landlord and tenant matters, social security and welfare (Yale, 1982). It has been suggested therefore, that the outcome is a situation where lawyers must engage in a competitive market for clients if they are to survive.

The above example demonstrates the ease with which a lawyer may violate a professional trust. It also demonstrates how the application of the job related skills can be used to perpetrate the fraud. White collar crimes are rarely detected since they are afforded the protection of their professional status, in addition to the manner in which such activity is presented to the public and their subsequent perceptions of its seriousness. Through the control of knowledge and information lawyers come to possess a highly centralized control of services. This leads us to the third argument dealing with the occupational factors; the issue of supply control.

## *Loss of Supply Control in the Legal Profession*

All occupational groups in capitalist societies must operate in terms of supply and demand (Abel, 1981). They do this by trying to control the factors of production. The struggle for this market control is both political and economic. The impact of the competitive market pressure cannot be over-emphasized (Abel, 1981; Casey, 1982; Goff & Reasons, 1981; Reasons & Chappell, 1985, 1987; Snider, 1978, 1982). In the nineteenth and twentieth centuries the legal profession had the market control. As indicated in Chapter III. However, this control has been eroded over the last few years by the diluting of low level services to other occupational groups (Accountants, Notaries Public). The legal profession no longer has a monopoly on legal services. The profession has attempted to regain this control but has not been entirely successful. This loss of market control has had an effect on the individual lawyer's ability to stay in business, or maintain the current "market share".

The legal profession had attained a professional monopoly which existed for well over one hundred years (Aeurbach, 1976). Since World War II, however, this professional control over the supply of lawyers decreased as academic education became the dominant avenue into law, rather than through apprenticeship.<sup>14</sup>

This loss of control can be seen by changes in the size of the legal profession in Canada. Between 1970 and 1980 the legal

---

<sup>14</sup>For further information on this point refer to Chapter IV.

profession in Canada doubled in size from approximately 15,000 lawyers to over 30,000. The number of full-time undergraduate law students rose from 2,896 in 1962-63 to 9,351 in 1976-77, remaining relatively stable since then, with almost 3,000 law students graduating annually (Research Council of Canada, 1983). In British Columbia, the number of practicing lawyers has risen dramatically with over three hundred people being called to the Bar as Solicitors, each year in British Columbia (Annual Reports, 1979-1986).<sup>15</sup>

This loss of supply control, and increase in the number of practicing lawyers, has had the effect of increasing competition among lawyers. There are more of them to service a population which has remained relatively stable. The result: lawyers may be tempted to engage in fraudulent activity as a matter of professional survival.

A related feature which may facilitate crime within this organizational structure, is the market for legal services, requiring general legal skills, is highly competitive. Therefore, it may be that the lawyers who work in this general type of practice require a less sophisticated level of legal skills, which often overlap with other occupational groups such as realtors, accountants and notaries public. This overlap may result in intense competition and a struggle to survive by many of these lawyers. In addition these practices are characterized

-----  
<sup>15</sup>In 1986, for example, a total of 381 applicants were called to the Bar in British Columbia (Law Society of B.C. Annual Report, 1986)

by an intermittent demand for their legal services. Lawyers who handle low to middle income clients realize it is non-repeat work and they are continually forced to look for new clients (Stern, 1980). Consequently, some lawyers who face these market conditions may find it difficult to maintain their ethical and professional standards. On the other hand, the "good" lawyers are able to work for larger corporations who have repeat clients, rather than the poorer clients, and thus ensure a steadier type of employment.<sup>16</sup> Whereas the lawyers, not in elite upper income firms, are often forced to generate business from the lower income client. This, of course, means less income for the lawyer which may be an inducement for many to engage in fraudulent activities.

Finally, as a result of the loss of supply control, income for lawyers has failed to keep up with the income rate in recent years (Abel, 1981; Reasons & Chappell, 1987; Stager, 1983). Young lawyers graduate expecting a high income, however, with the increased numbers this is not likely to be the case. Lawyers may often be tempted to engage in misconduct to support this "lower" income.<sup>17</sup> As an outcome, then, the loss of substantial control over the production of legal services may force the individual lawyer to absorb the over-production. One mechanism of overcoming this is to engage in fraudulent activity as a

-----  
<sup>16</sup>The larger law firms require a greater degree of technical expertise. Thus a "good" lawyer is often one who specializes to handle the firm's complexities (Arthurs, 1970).

<sup>17</sup>This issue will be dealt with at length in the next section of this thesis.

matter of professional survival.

### Opportunity Factors Within the Social Structure

The discussion so far has dealt with issues resulting from personal factors, or factors directly relating to the legal profession itself. Lawyers, however, are also influenced by changes relating, not just to the nature of their profession, but also to the dynamics of the larger society in which they must function. There has been an overall increase in social complexity. This area, which in itself can facilitate fraud within the legal profession can be divided into the following two components for ease of discussion:<sup>18</sup>

1. the deterioration of the economy; and
2. relaxation of social attitudes and values.

#### *Deterioration of the Economy*

Economic problems have developed or intensified in Canada over the last few years. The Law Society acknowledges the economic recession of the early 1980's and the disastrous real estate market that accompanied it; are primary factors and these will be felt by some of its members for years. Prior to 1985 the Law Society of British Columbia averaged one case per year of lawyers in financial distress. But by the end of 1985 there were more than 100 files opened for members who were financially insolvent or bankrupt. The staff of the Law Society received

-----  
<sup>18</sup>Adapted from Keddie, 1978.

dozens of other inquiries from lawyers in financial difficulties (Law Society of B.C. Annual Report, 1985). In the Law Society's 1986 annual report, the Discipline Committee noted that the number of claims in bankruptcy more than doubled over the previous years and the number of Financial Advisory Panels that were held, also increased.

The resulting "hard times" can be offered as an explanation for misconduct in the legal profession. For example,

Some lawyers who in past may have turned down shady deals are now accepting them because they cannot afford to decline any business (Carey, 1981).

Another investigator noted,

as Mr. Justice Armys of the Ontario Court of Appeal told a group of lawyers and students recently, professional standards get lax in a bad economy. Competition among lawyers can lead to client stealing and the principle of complete frankness in lawyer/client relationships is endangered (Strauss, 1983: 7).

As mentioned, the living standard of lawyers has been threatened by such factors as inflation, economic stagnation and declining productivity<sup>19</sup> The following extracts from Keddie's (1978) interviews are characteristic of these sentiments.

Inflation is a major concern. The price level, particularly when it comes to housing, etc., has had an impact in the last few years. It is probably the greatest area of economic concern. (1978: 47)

Lawyers perceive that a redistribution of income has taken

-----  
<sup>19</sup>Keddie (1978) in his study of lawyers in B.C. noted that 40% of lawyers he interviewed commented that the living standards of Canadians in general were threatened by these factors. The present situation has not altered very much.



place in Canadian society.<sup>20</sup> They perceive a narrowing of the wage gap between the blue collar occupations and the professional lawyer. In Keddie's (1978) study lawyers saw their income as declining, while in other occupations it is rising. This could result in lawyers engaging in borderline or fraudulent activity in an attempt to keep pace with the standard of living they think they should have. Very few lawyers saw this rise in blue collar wages in positive terms. In fact the majority were critical in their evaluation, often linking the strength of unions to problems of inflation and low productivity, and contributing to the deterioration of the economy in general.

A related factor is the rise of credit and purchasing power available to people in our society (Keddie, 1978; Nader, 1987). The rise of credit and availability of goods over the years has caused a problem, not only for lawyers, but for society in general. The inherent danger, of course, is the possibility of over extension with credit.<sup>21</sup>

Lawyers generally come from a certain social group where economically, they are socialized into believing material wealth and status are attainable because of the nature of their profession. However, this may no longer be the case. In a

-----  
<sup>20</sup>In Keddie's study a large percentage of lawyers thought this to be the case.

<sup>21</sup> Interview with Ralph Nader, on Tass, public television program in Holland on May 2, 1986

deteriorating economy, lawyers suffer just as any other wage earner. They may see the only solution to be the generation of extra income from questionable sources in order to support the lifestyle to which they have become accustomed.<sup>22</sup>

The most direct economic change in the practice of law can be seen in terms of increasing costs of doing legal work. Overhead costs have risen for lawyers as a result of such factors as high salaries for support staff and the increasing complexity of the law which requires the lawyer to devote more time to each individual case. The special status of a lawyer (that of an independent professional governed by the ethics of service) is being eroded by the necessity of becoming highly cost conscious. This increasing cost has had an impact on the notion of professionalism. Law is becoming more of a business rather than a profession.<sup>23</sup>

Thus there is a dilemma within the profession. In an attempt to reduce costs and overheads, and to increase efficiency, there is perhaps an incentive to engage in fraudulent activity. Something of the special quality of a professional is lost. The notion of professionalism has been eroded in an attempt to maintain a high standard of living in our declining economy.

-----  
<sup>22</sup> A spokesman for the legal profession, in which a number of bankruptcies had been reported, indicated one reason for the misuse of client funds being related to state of the economy (Still, 1982).

<sup>23</sup> The Law Society of British Columbia established a special committee in 1985 dealing with this concern of a lawyer as a businessman (Law Society of B.C. Annual Report, 1985).

## *Relaxation of Social Attitudes and Values*

In a discussion of changes of attitudes, values and lifestyles, and their impact on the working environment, Keddie(1978) found that just over half the lawyers referred to changes in attitudes and morals of people, changes often lumped under the phrase the "permissive society". The view that society has become more permissive was reflected in Keddie's interview with lawyers:

..."some people call it freedom- a much more open society." or "It has changed society in which many of the basic principles are no longer held"(1978: 65).

The increase in the lawyers who commit fraud, as mentioned, is thought in part to be attributed to a "weakening moral fibre in our society" (Black, 1987; Keddie, 1978). The decline of the popularity of religion and the high rate of family breakdown and divorce, may have led to skewed perceptions as to what is ethically or morally correct.

Thus, the general aspects of changing values in the wider society may be linked to increased violations by lawyer in terms of deviant<sup>1</sup> conduct. This relaxation of values could be attributed to an increase in the amount of misconduct among legal professionals. Often, changes in general cultural values result in a breakdown in respect for the law, even by lawyers. The Victorian moral code held to be binding in the past and a general respect for authority (ie. government and policing organizations), has declined (Keddie, 1978).

A partial explanation of the rise in deviant activity among lawyers may be the alienation and sense of anonymity which accompanies rapid urbanization and mechanization of modern society. An example of such views follow:

The pressure of urban areas has increased disproportionately. Within this comes a variety of dissociations, one of the major ones being the loss of geographic affinity. If the population is mobile and transient, then the roots are fractured (Keddie, 1978: 68).

### Conclusion

This chapter has reviewed the factors contributing to the relative ease with which fraud may be perpetrated by those within the legal profession. In assessing the factors that shape the lawyers' situations one must combine both personal motivations, organizational factors of legal practice and the social dynamics within which they must operate. It is not expected that the framework developed in this chapter will entirely explain the many factors which may contribute to violations of conduct by the members of the legal profession. The aim was rather to introduce a sufficient level of understanding about the professional dynamics so that future research into fraudulent conduct can be seen in a more comprehensive perspective. As well, it was intended to direct some attention to the manner to which one may apply a crime facilitative perspective to the issue.

As has been demonstrated, the organizational structure and administration of the legal profession contains implicit fiscal

incentives for those in the profession to take advantage of an opportunity when it arises. The structure of the legal profession, incorporated with the need for profit maximization, thus provides an environment conducive to abuse and exploitation. If members of the profession were less profit-oriented in their approach to the practice of law, such a model may be more difficult to apply.

It appears that strategies to control the profession and deal with the issue of fraud must contend with the following facilitative structures:

1. a professional environment in which lawyers have been socialized to strive for and desire higher profits;
2. a complex world of specialized knowledge, power and financial involvement which makes most forms of misconduct difficult to detect and control, and at the same time makes it convenient for those involved to abuse the system by taking advantage of their social position; and
3. a regulatory system which may invite misconduct by lawyers.

It should be noted that the elements described in this chapter are largely inherent aspects of our economic society. This suggests that lawyers engage in fraudulent conduct for financial reward and are sufficiently sophisticated to capitalize on elements within the profession. With the framework established, a number of critical questions must be raised as to the manner of societal response and directions for future investigations. The most crucial question which must be

addressed relates to the relative extent to which the role of regulations and enforcement agencies have played in controlling fraud, and their attempts to deal with the limitations placed upon them by the profession itself. The profession implements policies and procedures which are intended to regulate behaviour of members; however, given the amount of autonomy which each member possesses, these measures are often difficult to enforce. In order to have a better understanding of how these agencies may inadvertently aid in the facilitation of fraud, we turn to the focus of Chapter VI, discipline and enforcement.

CHAPTER VI  
PROBLEMS OF DISCIPLINE AND ENFORCEMENT

Introduction

To provide the empirical support for a number of issues of concern to this thesis we turn to an examination of data compiled on British Columbia lawyers who commit fraud. The data include all cases of lawyers disbarred in the province from 1976-1986.<sup>1</sup> Particular emphasis is placed on cases of misappropriation and other trust fund irregularities, as these appear to be offences most often cited as grounds for professional misconduct and disbarment.<sup>2</sup> In addition to this consideration, the formal disciplinary process of the legal profession in British Columbia is discussed. One of the goals of this empirical study will be an attempt to identify factors which may have contributed to the behaviour leading to the disbarment.

The data in this chapter are based on twenty-nine files of the lawyers disbarred from the Law Society of British Columbia in a ten year period. Twenty-three of these lawyers were

-----  
<sup>1</sup>The author wishes to acknowledge the cooperation of Jerome Ziskrout, prosecuting attorney for the Law Society of British Columbia and Bryan Ralph, Deputy Secretary of the Law Society of British Columbia, for allowing access to the information discussed in this chapter.

<sup>2</sup>Improper use of funds and misappropriation complete the major categories of fraudulent behaviour. For further explanation of these categories please refer to Chapter I.

disbarred for offences involving violations of a client's funds, in some capacity. For present purposes they have been grouped together under a category of fraud. As Arthurs notes,

any consideration of the behaviour and the circumstances surrounding the misconduct must take into account the rules governing a lawyer's conduct and the enforcement of those rules by the Law Society. Without those rules, which reflect the Society's values, the profession would be in jeopardy (1970: 235).

Arthurs (1970) goes on to say that not all the values are considered equally important. The value basic to the group's survival as an autonomous entity, are the rules rated as most important. Thus, the greatest penalty (ie. disbarment) is reserved for those offences which the legal society perceives as threatening this autonomous existence.

It will be demonstrated as the chapter progresses that misappropriation and other trust fund irregularities (the major fraud category) are seen as a clear threat to the group's autonomy. It may be suggested that, in order to maintain the trust of the general public, the legal profession must be seen to be effectively disciplining its membership for serious violations of that trust. Therefore, the sanction for the most serious violation, trust fund misuse would be the most stringent possible - disbarment. If the public is satisfied with the results of this self-regulation then the profession may continue to function as it does presently. If it becomes apparent that the profession is not disciplining its membership effectively, and that fraudulent activity is widespread, then that freedom of autonomy may soon dissolve. This is the point at which



proponents of the political economy perspective criticize the enforcement practices of the profession. If there is little likelihood of detection and sanction there is the possibility that some lawyers may see this as an easy and relatively safe way of making money. Hence, the structure of the profession may be facilitating the fraudulent activity. Subsequently, lawyers who engage in this form of misconduct are most often subject to disbarment. Carlin (1966) concluded that only about two percent of the lawyers who violated general ethical boundaries were processed by the disciplinary machinery. Nader & Green (1974) also noted a low incidence in detection and discipline of lawyers. Ziskrout (1987) also noted that only about ten percent of those who violate the rules in British Columbia are processed by the disciplinary machinery.<sup>3</sup>

The following analysis represents one of the first studies in British Columbia to analyze data in terms of some of the major issues presented in the previous chapters.<sup>4</sup> The analysis must be considered preliminary. Some demographic and attitudinal information was not available to the author, although such information is not seen a crucial to the analysis.

---

<sup>3</sup>This implies the broad range of unethical behaviour is not limited to those involving trust fund irregularities.

<sup>4</sup>The earlier study in B.C. done by the Blue Sky Committee (1977) which provided data from 1968 to 1977 on misappropriation or wrongful conversion of client's funds by lawyers practicing in B.C. was cursory and brief in its examination.

## Official Framework: The Law Society<sup>5</sup>

As this is a study of lawyers who have misused clients' funds in some capacity, which led to the penalty of disbarment, it is important to turn first to the framework within which these rules were made in order to determine how the decision to penalize is structured. The Law Society was established by provincial statute governing the legal profession in British Columbia. It is responsible for such matters as:

1. Administering the affairs of the legal profession in British Columbia;
2. Establishing standards of admissions to the Bar;
3. Setting and collecting annual fees;
4. Arranging errors and omissions insurance;
5. Legal aid; and
6. Disciplining lawyers (Gall, 1983).

The Barristers and Solicitors Act of British Columbia, delegates to the Law Society of British Columbia the responsibility of governing the legal profession. According to the Act every lawyer must be a member of this professional society. This is in keeping with the English tradition upon which the Canadian legal profession is modelled. Thus the profession is self-governing both by tradition and by statute.

In 1986, amendments were drafted for revisions to the Barristers and Solicitors Act, however they died on the order

-----  
<sup>5</sup>For an account of the evolution of the Law Society of British Columbia refer to Chapter IV.

paper. A revised version entitled the Legal Professions Act was introduced in May of 1987. Bill 25 will replace the Barristers and Solicitors Act. As noted by Attorney General Brian Smith,

the circumstances affecting the practice of law have changed so dramatically since the last significant revision to the Barristers and Solicitors Act in 1955 that a major revamping of the guiding legislation is necessary (Gary Mason, The Vancouver Sun, May 14, 1987).

The bill will be introduced with the aim of providing the Law Society with an improved ability to deal with matters related to competence, discipline, and financial responsibility of the lawyers. In practice, self-government means that the Law Society sets standards for admission to the profession (credentials), sets standards of professional conduct for practicing lawyers, and disciplines lawyers who violate these standards. (The legislation does not set out specific rules of conduct concerning enforcement which lawyers must follow, so the Law Society's power to make rules governing its members is actually the power to fix standards of professional behaviour (Arthurs, 1970: 236).) The query has been raised as to whether exclusive reliance should be placed upon internal self-regulating mechanisms, as well intentioned as those mechanisms are. Perhaps they do not achieve the optimum solution to the regulation of lawyer misconduct. Several writers have come to the conclusion that internal regulation of the profession does not, in itself, assure adequate minimum standards for performance (Arthurs, 1970; Belobaba, 1978; Rieter, 1979). Rieter (1979), for example, stresses the need for improvement of these internal policing mechanisms and recognises the need for some form of external

review:

The professions would do well to refrain from claiming total supervision of the processes for dealing with (professional) incompetence. The public is now too wise to allow the fox to guard the henhouse (Belobaba, 1978: 6).

### Establishing Professional Standards

The Law Society has disciplinary jurisdiction only where the lawyer involved has been "found guilty of professional misconduct" or of "conduct unbecoming a Barrister or Solicitor" (Rieter, 1979: 56). The Law Society regards "professional misconduct" as referring to "misconduct in the course of a member's professional activity such as in the handling of trust funds" and considers the "conduct unbecoming a Barrister and Solicitor" as "private misbehaviour which reflect upon the honour of the Bar" (Rieter, 1979: 57). Misuse of clients' funds, and other trust fund irregularities, would, by their very nature, constitute "professional misconduct" and be sanctioned accordingly - usually in the form of disbarment. There are rules therefore, which, if breached, will result in a member of the society being considered guilty of professional misconduct and sanctioned. The rules are outlined in the following sources:

1. the legal profession of British Columbia is governed by a provincial statute which defines standards of conduct required of a lawyer and outlines the methods of discipline;
2. Canons of Ethics, established by the Benchers of the Law Society of British Columbia; and

3. the Law Society has specific rulings in order to provide guidance to the members of the profession on particular areas of ethical uncertainty (Gall, 1983).

It is important to note that these reference materials set out basic principles and are not intended to be all inclusive. They are meant to be used as guidelines rather than set standards of conduct. Neither in the Professional Conduct Handbook, nor in any other official document are there specific penalties established for the infraction of rules. There are penalties that the Benchers can impose, such as, maximum fines, reprimands, suspension or disbarment, but it does not specify which are to be imposed for which specific acts (Arthurs, 1970). Thus, it is a situation of rules attached to varied penalties, which in most cases is left up to the discretion of the Law Society, depending on the factors of the particular case.

There is, however, an exception to this generalization and that concerns the rules dealing with the proper management of clients' trust funds. This can stand as proof of the Law Society's interest in this particular area. The Benchers<sup>6</sup>, for example, have developed specific Handbook rulings for dealing with representation of multiple parties in conveyancing transactions, and are currently drafting a rule prohibiting

-----  
<sup>6</sup>Every two years lawyers of the province elect twenty-five of their colleagues to serve as Benchers of the Law Society. They are elected by County and the number elected from each county is based on the number of practicing lawyers (Annual Report, 1985: 8). The Benchers act as a Board of Directors who meet once a month and serve without remuneration. For a breakdown of membership by County in B.C. see Appendix A.

lawyers from participating in business ventures with clients. The Benchers have also recently appointed a committee to ensure the security of clients' trust funds in pooled accounts. A plan was considered for the security of the funds, not in the form of a lawyer/client transaction, but rather through a guarantee of a Planning Committee that the funds were safe from theft, and dissipation (Bencher's Bulletin, 1985).

### Identifying Cases of Alleged Incompetence

Studies of the legal profession (Arthurs, 1970; Rieter, 1978; Swan, 1982) indicate that there are three principle sources of information on lawyers who commit fraud and other deviant activities: the record of complaints by clients, another lawyer or the police made to the Law Society of British Columbia, claims against the insurance fund and random spot audits conducted by the Law Society.<sup>7</sup>

The first has a serious weakness in constituting a comprehensive recording of the nature and extent of deviant behaviour among lawyers. For example, in British Columbia between the number of public complaints about lawyers have varied considerably, but a dramatic increase has occurred in the number of complaints lodged against Law Society members since 1978.<sup>8</sup> Those complaints taken seriously (those which result in

-----  
<sup>7</sup>Form and audit reports are filed by every lawyer routinely, but this would probably not generate discovery of misconduct.

<sup>8</sup>For a review of the statistics of complaints in recent years,

formal citation to the lawyer and appearance before a Discipline Hearing Committee) comprised an average of less than 4% of all complaints.<sup>9</sup> Thus over 95% of the complainants, on average, did not result in formal citation or negative sanction. Reasons and Chappell (1985) in their study, went further and examined the outcomes of formal citations and found an even smaller percentage than the Law Society, of those complaints had public sanctions as a result.

As previously indicated, when a member of the legal profession is disbarred or suspended, or has limitations of practice imposed, the provincial Barristers and Solicitors Act requires public notification. Between 1971 and 1982 those disbarred averaged only two per year. Given this, it is not surprising that some lawyers may be in favour of keeping the self-policing system they now have.

It has been frequently hypothesized that many clients are unaware of professional disciplinary agencies to which they can turn for assistance (Belobaba, 1978). In addition, they may be unaware that their lawyer has performed in an incompetent manner. They are unable to judge the quality of service which has been provided. Therefore a filtering effect takes place which may stop some potential complainants from proceeding. The

-----  
<sup>8</sup>(cont'd) see Appendix C. One must view this in light of overall litigation rates in British Columbia, which also seems to have a parallel increase.

<sup>9</sup>For a review of the results of these citations in recent years, see Appendix D.

Law Society of British Columbia puts complaints against lawyers into the context of discipline. The Law Society does, as previously mentioned, take active notice and demonstrates great concern for misconduct regarding trust funds and similar financial matters relating to a practice.

The existence of a special insurance fund for lawyers in British Columbia provides the second source of information about the amount of deviant activity which occurs within the profession. The Law Society has three funds, the special fund, the general fund and the liability insurance fund for lawyers.<sup>10</sup> The number of complaints against the fund has increased steadily since its inception. There was for example, a problem with getting an insurance company to cover the high payouts in 1982 because of an increased amount of claims (Law Society Annual Report, 1982). The report indicated that the profession will have a hard time finding another carrier noting, "insurers ready to take on this kind of insurance are rare and will certainly withdraw as claims mount beyond the premium income" (Still, 1982) The decision by a Montreal insurer to opt

-----  
<sup>10</sup>Unlike some other professional organizations, the Law Society requires that every practicing lawyer purchase liability insurance. The compulsory coverage is \$200,000 per occurrence with a \$400,000 annual aggregate. Since 1984 the liability insurance committee has mounted an aggressive loss prevention program publishing comprehensive practice checklists and manuals, and sponsoring free seminars on law office management and loss prevention techniques (B.C. Public Interest Advocates, 1986). The Law Society has a committee which exclusively deals with liability insurance. In 1986 the Liability Insurance Committee had the option to buy a three year discovery period insurance policy allowing the Society to overcome past problems in regards to liability insurance.



out of malpractice insurance for B.C. lawyers "comes in the wake of a spate of costly fraudulent acts by members of the legal profession across Canada" (Still, 1982). In 1986 there were seven claims made from the special fund for a total of \$356,081.42. To compound the issue, liability insurance premiums are increasing at a rapid rate as noted by client complaints, and there are questions of accuracy in measurement.<sup>11</sup>

A third source by which the Law Society becomes aware of misconduct is through unannounced spot audits conducted by the Law Society. Auditors check the trust accounts of clients and may in the process discover irregularities. The Law Society has an experienced auditor to conduct most investigations. This source is important to note but, as it currently exists, does not uncover a great deal of misconduct.

#### Procedures for Investigating Complaints

As stated, most disciplinary matters first arise as written complaints from a client, another lawyer or the police. The disciplinary process of the Law Society consists of two procedures: the informal complaint, and the formal complaint.

-----  
<sup>11</sup>It should be noted that 70% of the claims arise out of administrative errors by lawyers and 30% of from the lawyer's lack of knowledge or ignorance of the law (The Vancouver Sun, 1982).

A claim can only be triggered by a written complaint from a client. If a client cannot determine if there has been negligence or incompetence, then no claim will be filed and no record can be made.

The informal complaint procedure is the most frequently used, where allegations of misconduct are brought to the attention of the Society. The permanent staff of the Law Society is the first to be notified about a lawyer's behaviour as a result of a complaint. The staff conduct a detailed examination of the complaints and counter-complaints. They can dismiss the complaint if they feel that it is not warranted. If the complaint has merit they make recommendations to the full Disciplinary Committee (Law Society Annual Report, 1979). It should be mentioned that the Law Society of British Columbia has been a leader in the country in this regard. If the Society feels that the complaint has merit, the lawyer in question is sent a copy of the complaint and a reply is requested within ten days (Discipline Digest, 1983). Failure to reply in itself constitutes professional misconduct. When the reply is received with the lawyer's explanation, it is considered by the Assistant Secretary of the Law Society (Discipline Digest, 1983). If the lawyer's explanation seems satisfactory, the complainant is so advised and the matter is closed. At this point the process largely involves the clarification of the circumstances in which the alleged conduct occurred.

If the complaint cannot be resolved at this stage it will be referred to the Conduct Review Committee. In some cases, generally those not involving trust fund violations, an informal conduct review hearing before two Benchers may settle the issue (Discipline Case Digest, 1983). This is one stage at which a

decision is made as to whether the behaviour is considered professional misconduct (Arthurs, 1970).<sup>12</sup>

In the most serious complaints, dealt with by the formal complaint process, the Society's Discipline Committee will order that an inquiry be held. Investigation of the complaint may reveal for example, a lawyer's delay, neglect, or failure to inform a client about the progress of the case. In these instances, the member is notified that a citation is to be issued and the case is assigned to Law Society counsel. These hearings are conducted in the same manner as a trial.<sup>13</sup>

There are a number of decisions the Benchers can reach, although guidelines about these stated penalties are vague as seems, to be the case in many sentencing issues. They may decide to dismiss the complaint, if for example there is insufficient evidence to indicate misconduct or "poor practice".<sup>14</sup> The remaining possibilities, as previously noted, are, a reprimand by the Discipline Committee; fines up to \$10,000, suspension for a specified period of time; impose conditions of practice; resignation or the ultimate sanction of disbarment (B.C. Public Interest Advocates, 1986).

-----  
<sup>12</sup>The Law Society of B.C. receives over 1000 complaints from clients a year; from this approximately 15% of the membership received correspondence from the Deputy Secretary asking for an explanation (Discipline Digest, 1983).

<sup>13</sup>The trials normally run three days and can be costly. For example, a hearing in 1981 cost \$25,000 (Sedenius, 1982).

<sup>14</sup>Poor practice may be defined by negligence, poor business management etc. These cases do not usually involve trust fund violations.

As the Law Society states, reprimands by the Discipline Committee itself is usually reserved for the cases that do not involve serious breaches of misconduct. Reprimands are generally issued in cases involving instances of poor practice. In this instance the Discipline Committee will require an undertaking by the lawyer who is told to change his or her behaviour.

The reprimands may or may not be made public, and if they are, the lawyer's name is not always mentioned.<sup>15</sup> It seems the reporting depends on whether the Law Society views the inappropriate behaviour as a serious matter. If it does, as often is the case in trust account violations, the naming of the lawyer will be used as a form of punishment. Notices of suspensions are published in the newspaper and the B.C. Legal Reports, stating the individual's name, period of suspension and the reason for the suspension.<sup>16</sup> In the cases of disbarment the lawyer cannot be employed in any capacity by another lawyer, nor can there be any shared office space. Thus both livelihood and reputation are affected (Arthurs, 1970: 238).

-----  
<sup>15</sup>In December 1982 the Benchers resolved to authorize the publication of the names of members who had been disciplined, subject to the Discipline Committee's discretion to ensure anonymity where "it was appropriate." The exceptions would be disbarments or suspensions. Identification of disbarred members may be limited to the Discipline Digest (Discipline Digest, Law Society Acts and Rules, January 1983).

<sup>16</sup> Publicity of the offence can serve a useful purpose. It makes the public more aware of and confident in the impartiality of the disciplining agency. The effect may be overcome some of the constraints clients have in reporting and thereby increase the efficiency of the discipline process.

The most difficult aspect of the entire process is to determine whether the lawyer's conduct amount to a disciplinary offence. While the British Columbia governing statute defines the standards of conduct expected of a lawyer, its wording is general and provides little guidance as to what specific instances constitutes a disciplinary offences. The exception, as earlier stated, would be those cases involving misappropriation and most other trust fund violations, which by their very nature lead to disciplinary action and disbarment.

When misappropriation or other trust account violations are involved it is considered to be the most serious form of professional misconduct and thus the formal complaint process is initiated. In the case of trust account violations, the Society may appoint an outside chartered accountant to do an independent audit of the financial records of the suspected lawyer. At this time if there is any reason to suspect the commission of a criminal offence, the circumstances are reported to the R.C.M.P. commercial crime unit on the instruction of the Benchers (Discipline Digest, 1983). A notice is also sent to the lawyer advising him or her to make records available to the Law Society auditor or an agent. The auditor's report is then sent to the Law Society Secretary outlining the nature of the lawyer's practice, methods of bookkeeping and the apparent disposition of the money which was the subject of the complaint.

If there is evidence of trust fund irregularities, the Chairman of the Discipline Committee or any three Benchers may

order a citation. Upon receiving the citation, a formal notice of complaint, the Committee sets a hearing date. The procedure for the hearing is the same as in other cases. Section 47 of the Barristers and Solicitors Act then empowers any three of the Benchers to order the interim suspension of the member, pending the outcome of the discipline hearing. At the hearing the lawyer is usually present as is the Secretary of the Law Society, the investigating auditor and the complainant. The Discipline Committee and the lawyer's counsel question the witness. Evidence is analyzed by the Benchers to determine that the lawyer's behaviour amounts to professional misconduct. The Committee then decides on the disposition for the case. In order to profile of the cases in which a lawyer was accused of mishandling of clients' funds, all such cases of disbarred lawyers between 1976 and 1986 were examined.

#### *Counting Professional Deviance in Canada*

The earliest empirical study examining the conduct of Canadian lawyers was Arthurs (1970). She found that the largest majority of disbarred lawyers examined, was for violations of financial trust of their clients and subsequently received the most severe sanctioning. She concluded that solo practice, prior complaints, poor school performance and typical life problems contributed to the behaviour which violated ethical and legal codes leading to disbarment.

Reiter (1978) in a later analysis of disciplining of lawyers than Arthurs (1970) looked at the complaint process of the Law Society of Upper Canada. His more extensive study concentrated on the competence related complaints between 1975 and 1977. Again, solo practitioners and two-firm partners were over-represented. However, this focussed primarily in the real estate and litigation fields. The most important factor in this study was according to Reiter, the complaint history. There seemed to be a filtering effect due the fact that complaints had to be in writing, compounded by the uncertainty of the client as to the availability of the complaint mechanisms.

Keddie in his 1978 study of the legal profession in British Columbia concluded with a note from the managing editor of the Global Television Network on the class-based nature of Law Society discipline. He pointed out that the *Law Society refused to come down hard on legal competence, but does emphasize punishing lawyers who steal from clients' funds* (Keddie, 1978).<sup>17</sup>

#### Analysis of Investigations<sup>18</sup>

-----  
<sup>17</sup>As stated in the introduction, this type of deviant behaviour is often found to be criminal and/or the basis of negligence suits. Therefore violations of commercial undertakings which is both unethical and illegal receives the most severe sanctioning. Of the twenty-nine lawyers receiving the most severe sanctioning by the Law Society twenty-three (79%) involved the misappropriation of clients' funds and related activities. A large majority of the disbarred lawyers violated the financial trust of their clients through illegal and unethical actions.

<sup>18</sup>All statistical data used here were obtained from the case files of the twenty-nine disbarred lawyers, kindly provided by

Twenty-nine lawyers were disbarred during this period. If one were to look more closely at the numbers of those disbarred, a fairly stable pattern would emerge, with the exception of 1983.

The number of disbarments almost doubled in 1983, and such a figure may not be solely attributed to the increased number of practicing lawyers. Rather, that period may reflect, in part, intensified surveillance as well as a changed attitude by the profession toward defaulting lawyers<sup>19</sup> (Annual Report, 1983: 11).

The most significant single factor to note is the decrease of the number disbarred in 1984, notwithstanding an increase in the membership of 12.5% over the previous two years. Perhaps this is in part due to the tougher appreciation of discipline rules as referred to in the 1983 report, and particularly the publication of such cases in the Discipline Cases Digest which may act as a deterrent (Annual Report, 1984: 6). On the other hand, it was noted that there was a substantial increase over the three year period (1982-1984) in complaints of delinquencies such as, mishandling of trust funds. This in turn could contribute to the increase in disbarments (Annual Report, 1984: 6).

-----  
<sup>18</sup>(cont'd) the Law Society of British Columbia. It must be noted that no statistical significance of the ~~the~~ number of complaints was recorded.

<sup>19</sup>1983 was a year of growth for the Law Society. They added a second chartered accountant and another member of the discipline committee to screen complaints of lawyer misconduct.



Table 1

## Lawyers Disbarred Between 1976-1986

Year	No. Disbarred
1976	2
1977	2
1978	4
1979	0
1980	1
1981	4
1982	3
1983	7
1984	2
1985	1
1986	3
	-----
TOTAL	29

There was about a thirty percent increase in conflict of interest complaints in 1986 although it is interesting to note that there was a decrease in complaints against serious offences, such as conflict of interest and other forms of professional misconduct in 1985 from 1984. Complaints against mishandling trust funds remained fairly stable in 1986 although 1985 showed an increase by 83% over 1984 and by 175% over 1983 (Appendix E). This does not however, reflect an increase in the number of disbarments in 1985. No information was available regarding the validity of the complaints; perhaps it can be said that a little knowledge is a dangerous thing, and clients are lodging complaints when they should not.

As the percentage of complaints regarding the handling of trust funds increased, it is also noted that the number of members in financial difficulty increased. There were, for

example, thirty-four cases dealt with by the Financial Advisory Panels in 1986 compared to twenty-nine cases in 1985 and sixteen in 1984. (Law Society of B.C. Annual Report, 1986). This tends to support the literature which states many of the cases of fraud were precipitated by the financial difficulties of a particular lawyer (Arthurs, 1970; Carey, 1982; Carlin, 1966; Strauss, 1983; Ziskrout, 1987).<sup>20</sup>

### Reasons for Disbarment

In the following tables the kinds of infractions which brought about disbarment will be examined more closely. The analysis is based on research both from the current study and on previous research regarding discipline in the Canadian legal profession (Arthurs, 1970) and similar findings of a later Canadian study (Reiter, 1978).<sup>21</sup>

If one considers the first two charges of Table 2 as part of the same overall behaviour category of fraud<sup>22</sup>, it can be noted that 23 (79%) lawyers were disbarred for improper use of trust fund accounts or other fee related activity. In most cases money was received and used for the lawyer's own purposes. The concentration of discipline in one area could indicate that the

-----  
<sup>20</sup>See Chapter V which indicated there was a dramatic increase in the number of lawyers in financial difficulty since the early 1980's. This problem is persisting.

<sup>21</sup>American empirical studies with similar findings include Carlin, 1966; Parker, 1982.

<sup>22</sup>Refer to Chapter I for a complete explanation of the fraud categories.

Law Society places great importance on these cases involving trust violations.<sup>23</sup>

There may be two reasons for this attention, 1) trust violations are easier to discover; or 2) they are harder to ignore. Both are probably the case. It could be said that if the Law Society were not so rigid in dealing with this particular problem it would probably be dealt with by an external regulatory agency<sup>24</sup> (Arthurs, 1970). It seems that violating these rules poses a serious threat to the profession and its autonomy. Perhaps this is one reason the profession deals so stringently with trust fund violations.

In the sixteen cases of improper use of trust funds , it seems the behaviour was primarily debt or greed related. Another prominent reason, as Arthurs (1970) indicates, seems to be the breach of trust resulting from the lawyer's outside investments in land developments and other companies.

If one looks at the trust fund cases which are theft and greed related, a consistent pattern emerges. In 1981, a lawyer

---

<sup>23</sup>Table 2 adapted from Arthurs (1970: 240) who uses similar offence categories.

<sup>24</sup>In a 1986 Law Society pamphlet it was stated that the society was in favour of appointing lay benchers as external controllers. The Law Society recommended to the B.C. legislature the appointment of three lay benchers. In May 1987 the Attorney-General introduced a bill providing for such a appointment, although it did not take into account the Society's recommendations for a procedure to appoint the individuals. Both the government and the Law Society hope that these appointments will further open the workings of the legal profession to public scrutiny accountability, despite their different approaches.

Table 2

Behaviour Leading To Disbarment		
Behaviour	No. Disbarred	%
Improper use of Clients' Trust funds	16	55.2
Forgery or Fraud	7	24.2
Neglect	3	10.3
Other (Assault, Murder, Drugs)	3	10.3
TOTAL	29	100.0

was convicted of five counts of theft involving more than \$200,000, and subsequently disbarred. According to the evidence he had misappropriated the money from his client's trust funds. By his own admission the funds were to "maintain a style of living that was beyond his means" (Bohn, The Vancouver Sun, March 28, 1981). In the same year, a Vancouver lawyer was charged after an investigation by the R.C.M.P. commercial crime section and disbarred for theft of \$77,249.82 in the case of a deceased client (The Vancouver Sun, August 14, 1982). Crown counsel stated the lawyer used the money for personal obligations. In 1982, another lawyer was disbarred after pleading guilty to criminal breach of trust in converting \$494,877 belonging to 22 of his clients, for his own use. Also in 1982, a lawyer was disbarred because of theft of \$9,118.56 from her trust account over a two month period. The funds were almost exclusively used to pay debts. (The Province, 1982).

In 1986 and 1987 there were four more cases which appeared in The Vancouver Sun with a similar pattern. The most recent occurred in March of 1987 when a lawyer was found guilty of wrongful conversion and misconduct in the handling of a client's trust funds. It was found he converted the funds to his own use. In February of 1986 a lawyer was charged with breach of trust and theft of \$430,823 over a two year period. The Crown prosecutor stated that documented evidence submitted by the accountant clearly showed that the accused used the money to benefit himself.<sup>25</sup> A further case in 1986 involving \$23,000 of misappropriated funds prompted John Hall, lawyer for the Law Society, to note that the funds were "clearly appropriated for the use of himself [the lawyer] and his wife without any proper documentation and without proper permission of his client."<sup>26</sup> It seems that self-interested material concerns rank highly in terms of trust fund violations and similar forms of fraud. Another factor which also emerges is that of the lawyer's interest in investments which are not job related.

Examples involving trust irregularities arising as a result of outside investments would include the following cases. In

-----  
<sup>25</sup>See "\$50,000 Bank Loan was Irregular, Lawyer's Trial Told." The Vancouver Sun, February 21, 1986. A6; "Pair's Inheritance Gone in Four Months, Accountant Transfers" The Vancouver Sun, February 22, 1986. B14; "Trial Told Lawyer Was at Wits End" The Vancouver Sun, February 27, 1986. B6; "Lawyer's Clear Trial Cited in Defence" The Vancouver Sun, March 4, 1986. A8.

<sup>26</sup>"Lawyer Faces Probe By R.C.M.P. Commercial Crime Squad" The Vancouver Sun, January 29, 1985. A8; "Lawyer Can't Explain Use of Trust Accounts" The Vancouver Sun, November 25, 1985. B3; Still, 1986; Trask, 1986).

1982, a lawyer was found guilty of conspiracy, fraud and theft in respect to property transactions, and disbarred. When passing sentence, the judge cited previous cases in which the court disbarred lawyers because they betrayed the trust which they had been granted. The judge found that because of financial problems the lawyer agreed to raise money through illegal transactions involving property (Still, 1982). Other cases involving outside developments include a conflict of interest case in which a lawyer was held liable for a breach of trust when he acted for both parties in a land transaction (Volkart, 1982).

Another case in 1983 involved a Victoria based lawyer who was ordered to pay \$274,173.02 for breach of trust in dealing with a client whom he induced to finance a speculative real-estate development (Needham, 1983). The lawyer was in a situation that required him to advise the client to obtain independent legal advice. Instead the lawyer used the knowledge of his client's real-estate transaction to benefit a venture of his own, at the expense of the client. A final case involved an individual convicted of defrauding clients of more than \$350,000 in 1986. Funds were used in an attempt to "bail out" the lawyer's failing real-estate investments. Twenty properties were involved, which have since been sold at a loss or foreclosed. The lawyer said he only intended to borrow the trust funds to save his investments.

The seven forgery/fraud cases would include examples of borrowed money put against a mortgage property, or forgery of

transferred signatures. The connection between this activity and the conversion of trust funds to one's account can be seen when a mortgage is not placed, or through false papers given a client, and the money used by the lawyer for his or her own purposes. For example, In 1986, a Kamloops lawyer was charged with forgery and uttering a forged document, in relation to a stock transaction. The lawyer sold a phony 20,000 share certificate to a couple looking for a retirement nest-egg (The Vancouver Sun, February 1, 1986).

The neglect cases involved those cases in which a lawyer is generally negligent in the affairs of the client and the practice of law. In the cases described here, the lawyer was given a fee then delayed or neglected to provide the pertinent information. The general problems presented in neglect cases may be allegations of undue delay, failure to communicate, poor quality of representation, or excessive fees for services rendered. For example, one lawyer was disbarred in 1979 for neglecting the affairs of a client. The allegation of mishandling appears to have been alcohol-related and in 1986 a lawyer was found guilty of professional misconduct in that he neglected the affairs of his clients and seriously neglected his practice. Again alcohol was cited as a contributing factor.<sup>27</sup>

-----  
<sup>27</sup>The Benchers, in 1981, began a program to assist members with personal problems caused job deterioration, alcohol, drug or other emotional problems faced by lawyers (Watts, 1984). The services of "Interlock" were retained and involvement of members could result in self-referral, or more formal referral mechanism through the Discipline or Competence Committees.

The remaining three cases of those members disbarred involved a variety of activities constituting professional misconduct, but not involving misappropriation or other irregularities or violations of trust funds. Rather, murder and other illegal behaviour was cited as reason for disbarment.

### Explanations Offered By Lawyers

A variety of explanations have been offered by lawyers, in this sample, to justify their fraudulent or deviant activity. They are outlined in the following table.<sup>28</sup>

The investments category includes debts from investments, so that the "personal debts" category can be considered a separate one (Arthurs, 1970). Investments in these cases involved, for example, land development schemes, property transactions, company development schemes and finance companies.

The classification of cases of mental illness, alcohol and drugs leading to disbarment were included only if these factors could be directly attributed to the lawyer's decision to commit fraudulent activity. As noted earlier, the reasons why lawyers engage in fraudulent behaviour are varied.<sup>29</sup> The pattern which can be seen in these cases indicates that the lawyers in

-----  
<sup>28</sup>Table 3 adapted from Arthurs (1970)

<sup>29</sup>The particular files analyzed from the Law Society relating to hearings are not generally open for examination by the public however, certain information was made available for the purpose of this thesis.



Table 3

## Reasons for Behaviour Leading to Disbarment

Explanation	No. Disbarred	%
Investments	8	27.6
Personal Debt	8	27.6
Mental Illness	1	3.4
Alcohol or Drugs	2	6.9
Poor Lawyer" (unable to run office, mistakes)	2	6.9
Miscellaneous	5	17.3
Unknown	3	10.3
	TOTAL	29
		100.0

question were deeply in debt, and used their clients' funds to satisfy that debt. In other cases mental illness or excessive use of alcohol impaired the lawyer's sense of judgement and caused the squandering of funds which had been entrusted to him (Blue Sky Committee, 1977).

When examining the reasons for this fraudulent behaviour leading to disbarment one point clearly emerges; that is , the contrast between what a lawyer "ought to do" and what these lawyers actually did (Arthurs, 1970; Stern, 1980).

In cases where the information could be obtained, the disbarred lawyers denied violating the trust granted to them. Rather in several cases, they indicated that they had only "borrowed" the funds to meet expenses and had every intention of

paying them back. One lawyer, echoing thoughts of other lawyers, told the court, "It seemed too easy to be theft. I was borrowing and was going to pay it back." (The Vancouver Sun, October 7, 1982). This demonstrates that the inconsistency between the ideal of what "lawyers ought to do" and what these lawyers did has certainly not been made clear in their minds.

Stern (1980) supports this conception that lawyers often "borrow money" to alleviate monetary burdens and personal debts. In these examples one can see how the trust ethic can be temporarily "suspended" by any particular lawyer. As was stated earlier the number in financial difficulty continued to increase in 1986. The Law Society is very much aware of the financial constraints placed on many of its members as a result of the economic recession that has affected all areas of the province. The economic situation placed much greater demand on the Law Society and its staff. One such area concerned the whole process of advising and monitoring insolvent and bankrupt lawyers. As a result the Discipline Committee in 1985 adopted a new policy in the administration of the rules relating to bankruptcy. They imposed a higher standard upon lawyers with respect to the payment of their creditors than generally results from a proposal under the Bankruptcy Act, as a condition of granting leave to continue practice. The Committee now takes the position that in the absence of irresponsible or other improper conduct, it should not second guess the decision of creditors and the Bankruptcy Court (Law Society of B.C. Annual Report, 1985: 8).

As Arthurs (1970) notes, lawyers do provide "personal reasons" for the fraudulent behaviour which resulted in disbarment. But there are other external reasons based on the circumstances in which the lawyers practiced. For example, Arthurs asks, "What aspects in the legal lives of these lawyers could be seen as producing strains which contributed to deviant behaviour in this area?" (1970: 243). The British Columbia data are consistent with other observations to the extent that lawyers who were disbarred were generally what might be called "marginal" lawyers (Carlin, 1966; Handler, 1967). What Arthurs refers to as marginal involves generally two factors: (a) primarily solo practice, and general practice, and (b) involvement in extra-legal business (1970: 243). The following table indicates the number of lawyers in the firm when the lawyer was disbarred.

Table 4

## Number in Firm When Disbarred

Size of Firm	No. Disbarred	%
Disbarred lawyer alone	19	65.5
Disbarred lawyer plus 3	1	3.4
Disbarred lawyer plus 4	1	3.4
Disbarred lawyer plus 5	1	3.4
Disbarred lawyer plus 8	1	3.4
Disbarred lawyer plus 10	1	3.4
Disbarred lawyer plus 11	1	3.4
Disbarred lawyer plus 15	1	3.4
Unknown (Practice, out of province or country)	3	10.3
TOTAL	29	100.0

As can be seen from the above table, 65.5% for whom there was data were solo practitioners, supporting Arthurs' (1970) and Watts' (1984) conclusions that solo practitioners are disproportionately represented in the disbarment statistics. One could suggest then, that those in solo practice may be more likely to become involved in fraudulent or other deviant behaviour which may then lead to disbarment. The files indicate that the complaints about a lawyer's practice most often arise in cases of the solo practitioner. The indication that this is less prevalent in firms with more than one member may imply that there is a "control" mechanism in place in the form of an informal "watch dog" phenomena by other lawyers. Here trust

funds are not as readily available for personal use by the lawyer. Informal control and monitoring mechanisms may exist simply because other lawyers in the firm may be on guard against deviant practices of his or her peers. By and large the data seem to indicate that it is a solo lawyer who is not under the watchful eye of colleagues (as would occur in a larger firm) who may be most susceptible to fraudulent activity (Arthurs, 1970; Berger, 1979; Blumberg, 1967; Carlin, 1966; Reiter, 1977; Rueschmeyer, 1964).

Further, lawyers in solo practice, as noted in Chapter IV, may be more influenced by the client's sporadic demands than lawyers in larger firms. These lawyers usually deal with non-repeat clients who are not nearly as profitable for the lawyer as a "regular" or repeat client. Thus, the lawyer is continually searching for new clientele in order to maintain the practice and a certain level of income. For these lawyers, then, the pressures and opportunities to rely on their clients' funds increases, which may lead to the need for money and subsequently, misuse or misappropriation of those funds.

General practice is considered a less technical form of law than corporate or tax law. The latter deals with complex cases that rely on the highly technical training of the lawyer. As stated earlier in the thesis, many of the functions or problems that a general practitioner may handle, can also be handled by other occupational groups such as notaries public, real estate brokers and insurance companies (Arthurs, 1970). Thus the

lawyers involved in the general practice are in a marginal position between the legal profession and the business world. This marginality and the subsequent stiff competition between the "professions" may force some lawyers to engage in fraudulent activity in order to supplement an already fluctuating income (Arthurs, 1970; Berger, 1979; Carlin, 1966).<sup>30</sup>

### Previous Career History

The focus now shifts to an examination of the specific career factors, which may provide further clues to the reasons underlying the fraudulent behaviour of lawyers. Arthurs questions, "Was disbarment the first encounter with the Law Society, or does it appear that they had been practicing in such a way that the behaviour which resulted in disbarment was a "logical" sequel to prior events?" (1970: 248).

There are a number of indicators of prior difficulties in practice; that is, the complaints record, hearings and number of audits a lawyer may have. These three records have proven to be good indicators of the previous conduct of the disbarred lawyers in this study. Seventy-six percent of the twenty-nine lawyers disbarred had complaints lodged against them with the Law Society prior to the specific infraction for which they were

-----  
<sup>30</sup>A suggested reason large firms tend to be proceeded against infrequently may be due to the method of policy used by the law profession. In a study of businessmen it was discovered that dissatisfied clients of large firms would first speak to the lawyers and if that did not resolve the concern, they would then report their complaint to the Law Society (Yale, 1982).

disbarred. Of those with complaints on their record 12 (54.6%) were the subject of between one and five complaints; 4 (18.1%), between six and nine complaints; and 6 (27.2%) had ten or more complaints lodged against them.<sup>31</sup> There does appear to be a difference between those with prior complaint records and those without. They had a similar type of law practice and were disbarred for trust fund violations.

Twenty-one percent of the disbarred lawyers had had a previous hearing by the Law Society. The Law Society investigations at the hearings often revealed an inconsistency in the lawyer's behaviour, but it was resolved without the lawyer being disbarred. In terms of the disbarred lawyers, accounts which were audited prior to disbarment constituted 11 of the 29 cases (38%). Again investigations resulting in the auditing of lawyers accounts may have uncovered practices such as negligence in the handling of cases or indications of conversion, but not enough to warrant disbarment. However, the decision to disbar is partially promoted by the fact the lawyers had previous encounters with the Law Society's discipline Committee (Arthurs, 1970; Ralph, 1987). The part played by prior encounters with the society seems to be substantial. It appears it is the "recidivist" marginal lawyer who is under the greatest risk. This is consistent with the literature on the prediction of behaviour; the best predictor of future behaviour is past behaviour (Kahneman & Tversky, 1982).

---

<sup>31</sup>In three of the cases involving 10 or more complaints the lawyers has 21, 23, and 30 complaints respectively.

To this point the chapter has concentrated on the difficulties disbarred lawyers experienced in practice. Some demographic information about these lawyers may provide further information and assist the reader in relating the data from this study to that of previous work. Berger (1979) found the younger, less experienced lawyers tended to be involved in general law and as they became more experienced in practice they tended to specialize in corporate and real estate law. In this study information was obtained from the Law Society of B.C. regarding the age of the lawyer when disbarred as well as the number of years the lawyer had been in practice to see if a similar pattern can be established. These are set out in Tables 5 and 6.

The average age of the disbarred lawyers on which there was information was forty-six. This is slightly older than the average age of thirty-eight for all lawyers in British Columbia in 1986 (57% under 40) (Appendix B).<sup>32</sup> The largest age category of those disbarred, as noted, is between 35 and 44 years of age. Lawyers in this category have been in practice for approximately fifteen years. At this point in a career, an individual may already possess characteristics which may contribute to disbarment (Arthurs, 1970). For example, the lawyer may have accumulated debts through the years of studying and the establishment of an practice and from, perhaps, beginning to raise a family. The peak earning period, which for many lawyers begins in the mid forties may not yet have arrived and

-----  
<sup>32</sup>The two lawyers age 71 and 87 may have skewed the average somewhat.



Table 5

## Age of Lawyer When Disbarred

Age	No. Disbarred	%
25-34	5	17.2
35-44	9	31.1
45-54	8	27.6
55-64	4	13.8
65 or older	2	6.9
unknown	1	3.4
TOTAL	29	100.0

frustration may set in as the expectations from the years of schooling fail to be fulfilled.

Looking at the number of years a lawyer was in practice before disbarment the conclusions of Arthurs (1970) may again be supported.

Table 6

## Years in Practice When Disbarred

Years in Practice	No. Disbarred	%
2 to 10	7	24.1
11 to 20	12	41.4
21 to 30	8	27.6
31 or more	2	6.9
TOTAL	29	100.0

Those in practice for thirty-one years or more constitute the smallest percentage and correspond to those lawyers in the fifty-five and over age category. Eleven to twenty years of practice appear to be the most common category for the disbarred lawyer, but those who had been in practice for more than eleven years exhibited a higher percentage of disbarred lawyers.

### Issues of Discipline

The first section of this chapter examined the rules and standards of conduct, and the enforcement rights of the Law Society. It was emphasized that different penalties and discipline procedures applied to similar infractions of the law except in cases involving fraudulent related activity. The important factor to note in these situations was simply the dynamics of the particular case. It has been argued earlier that

these varied penalties depend to a great degree upon the extent to which the infraction is seen to threaten the independent autonomy of the profession. Therefore, those deviant activities which are acknowledged as serious forms of misconduct by the majority of the profession and society-at-large are punished most severely - in this instance the twenty-nine cases outlined in this report. Twenty-three of those cases resulting in disbarment involved fraudulent behaviour as defined in this thesis.

If one examines the official rules of the legal profession in British Columbia there is, as previously noted, special concern with the rules respecting trust fund violations.<sup>33</sup> When a lawyer has violated responsibility for funds entrusted to him or her by a client, the rules are actively enforced as this analysis has shown (23 of 29 cases). This representation of trust fund violations showing up in disbarment statistics is not a phenomenon which is exclusive to British Columbia. Arthurs (1970), in Ontario, recorded that 83% of the disciplinary cases from 1945-1965 involved clients' financial interests. Carlin (1966) in a similar study of the New York Bar disciplinary cases from 1929-1962 also found trust fund violations to be disproportionately represented as did Handler in his 1967 study.

-----  
<sup>33</sup>An example of this is evident in the policy which allows a lawyer to resign from membership with admission of guilt, in the more serious cases, with the undertaking never to apply for admission in another jurisdiction without advising the Law Society. This is the case *with the exception of the theft of trust funds*.

Why do trust fund violations seem so important to the profession when other violations do not? It has been recognized that these violations seem to be penalized more than other types of violations.

Arthurs (1970: 261) in an attempt to answer this question examined two features of the legal profession, (a) its members have a monopoly to render legal services; and (b) they are trusted by their clients. The first part of this analysis is that the monopoly which the lawyers have been given is not absolute or complete. Society can impose a number of sanctions on a professional group and its members. For example, clients can take their business to lay people rather than to lawyers as noted in the previous discussion of the diffusion of general legal skills among other occupational groups. The government can also intervene and remove the privilege of self-regulation from the legal profession. To protect its independence the profession is forced to remain sensitive to the concerns of clients and to public criticism. Second, Arthurs asks, if lawyers are "trusted persons" how can this trust obligation be policed? If one looks at the data from the Law Society of B.C., the majority of the complaints considered upon investigation were dismissed (Law Society of B.C. Annual Report, 1986: 8).<sup>34</sup> The Law Society, in most cases, found the lawyer's work to be satisfactory. The lawyer may not have reported to the client as much as one may have expected, or other complications may have arisen, but,

-----  
<sup>34</sup>It may be useful to refer to Appendices C,D, & E, for elaboration.

nonetheless the job was done.

The above comments point to the difficulty in enforcing discipline. The major problem lies in the fact that in many instances the client (the public), as mentioned previously, is not in a position to know whether there has been a violation committed by the lawyer, as a "trusted" authority. When the client asks the lawyer to provide a service, the person is asking because the lawyer is apparently the only competent individual to provide that service. The lawyer is considered an expert and is to handle the case in the best way he or she knows how. It is difficult for the client to judge the services received from the lawyer, such as in the cases of neglect. For example, these cases would involve the less serious violations of ethical practices engaged in by the legal profession. Neglect in handling cases includes delays, loss of right to act through a missed specified period, inadequate recovery, and collusion in certain cases all constitute neglect and no doubt occur within the legal profession (Arthurs, 1970; Belobaba, 1978).

Hence, there are difficulties in assessing and detecting the "negligence" aspects of specific cases. Often the Law Society may find it difficult to evaluate information given to them by dissatisfied clients, or other lawyers when there are few or no objective facts. Second, in the case where the lawyer may have missed a limitation period, or other similar circumstance in the processing of a case, the client may never know (Belobaba, 1978). The client may have been informed that the case was lost.

Trust funds are a different matter, however, and would be considered more serious than those cases where there is just alleged neglect. In these cases the client (as a lay person) is often able to judge whether a violation has occurred. It is relatively easy to conclude that the client/lawyer trust has been violated when the client requests the return of the money entrusted to the lawyer and the money is not to be found.<sup>35</sup> Because of the high visibility of this type of offence the threat of sanction from the public and from government is evident. Therefore, the profession does its best to control this type of violation. The profession acknowledges to the public the lawyer's responsibility in this area by instituting a compensation fund from which the clients may be reimbursed for any misappropriation or wrongfully converted funds. As can be imagined, however, this fund is not a pot of gold and in many cases the compensation is only partial.

British Columbia was the first province to recognise the necessity of a compensation fund for clients<sup>36</sup> and introduced such a fund in 1949. Known as the "Special Fund", it was established pursuant to section 7(1) of the Barristers and Solicitors Act. The Benchers assess all members of the

-----  
<sup>35</sup>In cases of trust fund violations it may be more obvious to the client that a violation has occurred. This tends to support the hypothesis that trust fund violations are penalized more severely because of the high visibility of the case; they threaten the stability and the autonomous status of the profession.

<sup>36</sup>These clients had suffered losses through misappropriation of funds or wrongful conversion by any member of the Law Society (McColl, 1980).

profession a given amount each year to be applied to the fund. The essence of the scheme was to give the Benchers broad discretion over the payment of the fund.<sup>37</sup> All provincial Law Societies have some form of reimbursement fund to provide for those who fall victim to lawyer fraud. Historically, such reimbursement funds began in the late 1930's because the profession feared that the legislature would require bonding of lawyers (Reasons & Chappell, 1985). This intrusion into the professional autonomy was viewed quite negatively by lawyers, since bonding companies would be allowed to say who could practice law. However, the breach of those who would violate ethical norms threatened the profession's public image and made it necessary to implement such a fund.

### Conclusion

This chapter has concentrated on the issues involving disbarred lawyers in British Columbia. An overview of the data illustrates an overrepresentation of solo lawyers and small firm partners. The most likely candidate for disbarment is a solo practitioner who has had several complaints lodged against him or her. Concurring with past empirical studies on lawyers who

---

<sup>37</sup>In 1949 the Law Society of British Columbia established the first fund in Canada to compensate clients who suffer loss through a lawyer's misappropriation of funds, and thus can be seen as a forerunner in this respect. Every lawyer in the province contributes to the fund (\$295 in 1986) which has a self assured retention of \$2.5 million and supplementary indemnity bonds up to an annual limit of \$15 million (B.C. Lawyers Public Interest Advocates, 1986).

defraud, this study indicates that lawyers working in large firms tend to be proceeded against less frequently. The reasons for this may be as follows. First, the busy solo or small firm practitioner may take on more work than can be handled or work which may be too difficult. Second, the lawyer may operate without proper supervision to ensure proper performance. Third, the small firm practitioner may not be as subject to peer review and thus perhaps less likely to be deterred from engaging in this form of misconduct. The consequences may be a poor quality of representation negligence or charging of excessive fees. The problems of deviant behaviour may result from a lack of skill or knowledge, but more likely, as in the majority of the 29 cases analyzed, it may be the marginal or solo lawyer who seems more likely to be subject to formal policing activities and punishment because of poor performance caused by financial difficulties or greed.

As most of the cases involved lawyers who were disbarred for misappropriation of funds, or other violations of clients' funds, a discussion of enforcement and discipline of this type of misconduct was seen as necessary. The overrepresentation of the trust fund violations to the exclusion of "other" violations suggests that the Law Society considers the former much more serious than the latter, thus requiring sanction. This demonstrates that the Law Society is attempting to deal with the incidence of misconduct within the profession. But, the author surmises that there are difficulties, structural and political,



which are often beyond their control. Changes to the profession to make it less financially profitable to engage in fraud, are possible, ie. increased detection procedures. However, these changes may merely be cosmetic, what is needed is a change in the structural expectations of society and of the lawyers themselves; a monumental task the Law Society could not nor is not responsible for undertaking. By his own admission, the prosecuting attorney of the Law Society indicated that the enforcement mechanisms are detecting only the most blatant cases. What then is to be done in an attempt to control or at least deal with the problem of fraud committed by lawyers? Suggestions in this vein are the subject of the concluding chapter.

## CHAPTER VII

### CONCLUSION

#### Introduction

Criminologists traditionally have paid little attention to the issue of crime and fraud in the legal profession. However, largely because of heightened public concern and exposure of such activity in recent years, academics and regulatory agencies have begun to examine this form of crime more extensively in the legal as well as other professions.

The present study examined the issues surrounding the phenomenon of lawyers who engage in fraudulent activities; the socio-political and economic structure of the profession which may facilitate the illegal behaviour among lawyers; the historical setting which facilitates the fraud; and the nature of the incentives and the motives which may encourage fraud. The extent of internal discipline and the methods available for enforcement of such activity were then reviewed followed by an empirical examination of actual cases occurring in British Columbia between 1976 and 1986.

It seems clear through this examination that there is a problem of such misconduct among members of the legal profession. It was postulated, however, that this situation will exist within any group as large as the legal profession (contrary to what many criminological studies have written). It

is difficult to be accurate about either the exact number of those engaging in fraudulent activity or the precise nature of such behaviour. What is possible to conclude from the study is a compilation of some of the socio-cultural, organizational and economic factors within the legal profession which appear consistent with the crime facilitative theory of white collar criminality. To reiterate from the earlier discussions, a facilitative theory principally suggests that criminal activity will occur when system members take advantage of the structured weaknesses inherent within it, although the system itself may not necessarily benefit.

That few lawyers are treated as "common criminals" is apparent from observing the policing of fraud in British Columbia. The lack of financial convictions, penalties and suspensions of lawyers who abuse the system make it difficult to ascertain the effectiveness of existing sanctions against fraudulent activity. Several problems exist in the mechanisms for determining and investigating misconduct among lawyers in British Columbia. Throughout this thesis it has been demonstrated that the factors leading to fraud in the legal profession are:

1. A social environment in which the structure, organization and administration of the profession contain certain implicit monetary incentives to engage in fraud by its members. The nature of trust funds incorporated with the need for profit maximization provides for a crime

facilitative environment;

2. Generally, lawyers enjoy high social status and exercise substantial political and economic power. This complex world of specialized knowledge, power, prestige and financial involvement makes misconduct difficult to detect and control. At the same time, making it convenient for those involved to abuse the system and engage in fraud by taking advantage of this political, social and economic position;
3. A regulatory system which invites misconduct by lawyers because the procedures used in detecting, verifying and investigating fraud are limited. The high level of autonomy and the self-policing aspects of the profession make the search and detection of fraud difficult and complex; and
4. Finally, it is suggested that there may be a lack of appropriate punishment and publicity which could be a significant reason why engaging in fraud lacks any substantive deterrent value.

It is fair to say that:

The lawyer who commits a malpractice in the representation of his clients...is protected by a maze of ancient legal privileges which make it virtually impossible for the injured client to be made whole (Belobaba, 1978: 65).

In summary, this thesis has attempted to go beyond verifying the characteristics of lawyer fraud; and instead attempts to place the characteristics within the larger social framework in which these individual lawyer operates.

Comprehension of these individualistic, organizational and structural approaches to lawyers engaging in fraudulent conduct was assisted by an examination of the machinery for detecting and investigating this type of behaviour. If the profession, through its autonomy and regulatory mechanisms, rationalizes such misconduct, support could be added to the perspective which places the facilitation of fraud within the structure of the legal profession. This is not to suggest the profession's governing body is comfortable with the amount of deviance that exists, quite the opposite, in fact, rather the cultural and structural conditions of the profession and of society make it difficult for the internal regulators to combat the fraud. It is to the issues surrounding policing of fraud in the legal profession that the remainder of this concluding chapter will now turn.

One may hypothesize that if there is a sufficient level of fraud in the legal profession that is undetected, the development of incentives, or programs, to discourage this fraud would be warranted. These would involve methods for discovering the misconduct so that those members engaging in the deviant activity can be identified, and steps taken to alleviate the incidence. However, concentration of efforts in this direction can be seen as quite difficult in a time of fiscal restraint, and may pose a threat to the profession's autonomy. At the same time these incentives would be intended to encourage the maintenance of high standards of conduct while reducing the

number of violations in a system that facilitates deviant behaviour.

The recommendations to be discussed regarding the legal profession have their limitations. However, if fraud and other forms of misconduct are to be controlled in the legal profession, then existing methods detecting and of sanctioning behaviour must be supplemented. Some of these alternatives have been previously considered (the use of lay Benchers). Unfortunately it is still too early to test their effectiveness. However, there are others that may be implemented and their potential effectiveness can be discussed.

### Recommendations

As has been demonstrated and acknowledged by the author, the factors involved in the identification of deviant behaviour among lawyers are difficult to discover and complex. Identifying those cases involving trust fund violations, for example, are dealt with through the formal disciplinary process; but most other violations are resolved informally through peer review, public review, and educational up-grading. The next section will look at the adequacy of these legal services in detecting and controlling fraudulent behaviour.

Evidence presented in this thesis has suggested that peer review, as it presently exists, is a somewhat ineffective method in handling fraud within the legal profession. All methods for bringing evidence of fraud or other forms of misconduct by lawyers to the attention of the Law Society depend primarily upon the actions of non-lawyers. This process exists even with the information supplied by the special insurance fund.<sup>1</sup> As stated, the Law Society views professional misconduct in connection with clients' funds as very serious, but in the majority of cases, the Law Society can only act after the client has registered a complaint.<sup>2</sup> A lawyer's books and accounts are also subject to spot investigations by auditors appointed by the Law Society, but again, the important point is that the Law Society normally does not begin to act unless it has received a formal complaint from a client.<sup>3</sup>

In agreement with other studies (Belobaba, 1978; Rieter, 1978; Swan, 1982), the present study suggests that a more effective method of controlling fraud would be to develop

-----  
<sup>1</sup>As noted in the previous chapter the Law Society of British Columbia has for many years maintained a special fund to reimburse clients who suffered financial losses through misappropriation or the wrongful conversion of funds by a lawyer.

<sup>2</sup>Although the secretary may react upon knowledge of misconduct.

<sup>3</sup>There were sixteen spot audits conducted in 1986, and thirteen in the first five months of 1987 by the Law Society. It was felt that more audits should have been instigated but the Law Society did not have the available staff. (personal interview, Bryan Ralph, August 1987).

alternate, proactive measures by which fraud could be discovered without the need to rely primarily on a complaint from a client. This may alleviate some of the negative, reactive aspects of the disciplinary process and serve to assist in the actual prevention of fraud.

Lawyers have the training necessary for them to recognise misconduct more readily than many clients. Very few complaints are submitted to the Law Society by members of the profession under the current system. This fact has been cited as a problem by nearly every disciplinary agency in North America (Arthurs, 1970; Belobaba, 1978; Carlin, 1966; Reiter, 1978). Therefore, perhaps members could be held responsible for policing their colleagues on a non-voluntary basis (Swan, 1982). The question then becomes, "how is a member to be chosen for investigation or monitoring?" In determining who should be investigated a number of factors would have to be considered (Swan, 1982: 361).

1. The cost of such a program. The greater the number of investigations the higher the cost of the program. This is a cost the entire profession must bear and in times of fiscal restraint, the author acknowledges that this could present difficulties;
2. The need for complete information on the patterns of competence and incompetence in the profession; and
3. The need for the program to discourage misconduct by making the risk of engaging in this types of activity substantial enough to serve as a deterrent.



The program could include the following features:

1. A certain number of spot audits on lawyers, to be conducted in any one year. These would not just be based on client complaints, but would be initiated on a random basis throughout the province. Keeping in mind fiscal constraints, the proportion may vary from 5% to 10% of the professional population. The sixteen spot audits conducted by the Law Society in 1986 came to a total cost to the Special Fund of \$8,233. The Law Society acknowledges the importance of increased spot audits but realizes the financial constraints of such an undertaking (Bryan Ralph, August 1987);
2. Increased publicity of those members sanctioned for misconduct to act as a deterrent. In 1983 the Benchers added article 6.3 to the Barristers and Solicitors Act, authorizing the publication of the names of the disciplined members; facts of the case; the decision of the Hearing Committee; its reasons; and the penalty imposed. These reports are circulated in the Case Digest. The member can ask to seek anonymity, except in cases where they are disbarred. Then publication is automatic. Perhaps a more "media blitzed" program to inform the public of those lawyers who have been disciplined for other less serious violations could act as a further deterrent.
3. The methods discussed would be used to identify areas of practice where the amount of deviant activity is higher in the legal profession as a whole, such as trust fund violations (Reiter, 1978).

The Law Society Benchers have instituted (in 1983) a system of Complaint Review Panels to examine a member's professional conduct record. The underlying theme is to improve the Complaints Review System in order to respond quickly to complaints, effectively review the complaint, and improve professional skills of those members found to be performing incompetently. The long term effect this program has on the actions of the members and the enforcement of ethical standards remains to be seen. In 1986 eight Complaint Panels were held. The Competency Committee responsible for the Complaint Review Panels relies on office reviews by experienced practitioners as well as reviews by The Law Society's Director of Law Office Management, to identify member's practice habits. It must be acknowledged that the Law Society is becoming aware of its responsibility to take action to improve the competence of its members in the public's best interest.

*Training Courses on Ethical Standards and Disciplinary Enforcement for Lawyer Discipline*

Historically the legal profession, in conjunction with universities, have been held responsible as educators of its members and this education remains critically important in terms of professional conduct and ethical attitudes. There should be greater emphasis on the law school and continuing legal education courses focussing on the individual lawyer's responsibility to assist the profession's efforts to police itself by reporting instances of professional misconduct to the

Law Society; an issue also noted by Swan (1982). The limited availability of training courses on ethical standards and disciplinary enforcement is reflected in the absence of any compulsory courses dealing with ethical training at the Law School level. There are professional responsibility courses given at the law schools but they are not compulsory.<sup>4</sup> This is seen as detrimental to the overall deterrent effect of the disciplinary enforcement process. The lawyer who may be tempted to engage in serious forms of misconduct may be less likely to be deterred if there has been no formal indoctrination of a set of professional standards, particularly because it may be perceived that it is not an important issue to the profession as a whole.<sup>5</sup>

This is not to suggest that nothing has been done in terms of educating law students. As stated earlier on this thesis, in the summer of 1982 a pilot project was implemented to deal with professional responsibility and ethics. The object of the project was to increase the law students' awareness in law school on matters concerning ethics in the legal profession. In

---

<sup>4</sup> As noted in Chapter IV the Law Society's educational committee suggested in 1985 that the law schools and the profession need to emphasize ethics; yet no suggestions were made as to how this should be done.

<sup>5</sup>The author acknowledges that teaching ethics is only a partial solution to the problem. Law students enter university with an already established concepts of what they consider to be within the realm of ethical behaviour. These concepts hopefully have been well formulated through the student's socialization processes. There is a distinct relationship between the concept of professionalism and the expectation that there is an associated adherence to a certain standard of ethical behaviour.

1983 the Professional Legal Training Course (P.L.T.C.) was implemented. It consisted of a ten week program for articling students aimed at teaching a balance of substantive law, skills training and practice, and procedural law (Law Society of B.C. Annual Report, 1983). The program was evaluated in 1986 and it was recommended that P.L.T.C., as it presently exists, should be continued. It was seen to stand as a prototype for skills training program for articling students in Canada. Yet, the teaching of ethics still take a back seat to the other "more practical" substantive law issues dealt with in the course.

However, this does not preclude the benefits a formal course on ethics could have in terms of decision-making or dilemma resolution development for an individual. The achievement of professionalism in behaviour is encouraged with such instruction; through exercises in ethical thinking, confrontations with difficult moral decisions. As a result, it is thought that the concept of professionalism will be instilled along with the expectation that there is an associated adherence to a certain standard of behaviour.

The Law Society stated in 1985 that one of the main purposes of law school was to prepare the student for the practice of law, with an emphasis on a broad education and ethics. But how realistic that education of ethics is as an integral part of professional responsibility, is a question still rarely addressed by the professionals.

In terms of Continuing Legal Education (C.L.E.) courses for the profession, it has been suggested that every member attend a specified number of hours of continuing legal education. Several jurisdictions in Canada and the United States have such a requirement directed to other professions (Swan, 1982). The author acknowledges that these programs are not a guarantee of professional competence but benefits and rewards could be achieved from such programs. One of the benefits may simply be a greater respect in the community through a higher profile of issues important to the public. The Law Society is doing, and would also be seen to be doing, something to combat the problem of fraudulent and other deviant behaviour committed by lawyers.

In British Columbia there is a well established C.L.E program which has continued to expand in its scope and quality over the years. In 1984 a committee of Benchers considered the imposition of low level mandatory C.L.E. for lawyers, but it was not implemented as it was suggested that

It is no use having a compulsory church parade if you know the guys in the back row are playing crown and anchor (Law Society Annual Report, 1984: 13).

It was however, suggested that where the Competence Committee of the Law Society identifies a need for compulsory education, this should be imposed on the individual member or members.

As of 1986, the C.L.E. has been responsible for implementing more than 200 courses, seminars and workshops for practicing lawyers. It has the highest per capita attendance ratio for any similar organization in North America.

The Competence Committee in conjunction with the Education Committee of the Law Society developed a Remedial Studies program initiated in 1985 which is tailored to individualized up-grading for particular lawyers. This program is geared to those lawyers with a specified substantiated number of complaints on their record. The scheme's objective is to create an educational program for a member followed by appropriate testing and review by the Competence and Discipline Committees of the Law Society. However, the Law Society realizes, as does the author, that resolving issues of conduct by members of the legal profession is a difficult process.

In the fall of 1986 the Remedial training program got fully underway. It must be acknowledged that it is the first of its kind in North America. Each participant (who was referred informally) is tested to identify difficulties in his or her skills or practice habits, and a remedial program is then designed for that member. It can involve skills up grading, substantive law upgrading or management and accountant training. The program uses the services of the Society's law offices, management staff and peer review (Annual Report, 1986).

It is seen to be the view of the legal profession in British Columbia that this present scheme of the remedial legal education, as outlined above, is adequate for persons found incompetent and unsatisfactory in practice. They tend to be cautious about proposals for mandatory legal education. One may perhaps steal the thunder of a summer project of the Law Society

which is evaluating the performance of lawyers and the structure of the C.L.E. and ponder whether the courses are getting at the serious cases of misconduct (ie., fraud). These courses are not mandatory, and concentrate on skills training rather than ethical training. Are the lawyers taking the courses the "competent" ones, serious about upgrading, while the less competent or less ethical stay at home and attempt to balance their cheque books?

The Law Society acknowledges the difficulty of resolving incompetent and unethical conduct and that little work has been done on the issue within the profession (Law Society of B.C. Annual Report, 1986). The Law Society further realizes that it is just beginning to understand the causes of misconduct and remedial approaches which may help. Other professional organizations in British Columbia and other American jurisdictions tackle such topics as regular compulsory retraining, and skills testing and compulsory legal education. The legal profession in British Columbia is moving in this direction. Yet progress is hesitant and those steps still concentrate on curing or aiding the individual lawyer, rather than focussing on the changes in the environment or the structure of the legal profession which may be altered to become less crime facilitative.

## *Legal Education of the Public*

It is important that more information be provided to clients about legal services. Even the most informed clients have indicated a need for additional information about services being supplied, the type and quality of work promised, and most importantly, the availability of redress and complaint mechanisms (Belobaba, 1978). The legal profession must be held responsible for this deficiency at least to some degree. What is needed is to increase public awareness of available complaint mechanisms and procedures they can pursue if they feel they have been a victim of misconduct.

The legal profession of British Columbia has attempted to initiate the general public as to the avenues they can pursue to have their rights recognized under the law. This has been done in terms of the access to legal information through symposiums, media programs, Dial-a-Law, "Open House" days in the Law Courts, and more particularly through legal aid and referral. The referral plan makes the law and the lawyer more easily available to persons who could or should seek legal advice, but for some reason are hesitant to do so.

While the profession may be held somewhat responsible, they are not wholly responsible; it is also up to the public to seek out remedies which are already in the community, and in the case of fraud, to take advantage of the complaint procedures of the Law Society. However, given that the legal profession is much



more familiar with the services offered, and the services required, they should be the ones to continue to initiate some organized means of achieving the goal.

### *Public Review*

It is suggested that lay persons be used in conjunction with peer review as an effective way to detect and control misconduct in the legal profession. The argument about peer review mechanisms is that they may be biased in favour of the lawyer. One alternative is to allow public input and authority into the decision-making process directed toward the implementation of new policies as well as the disciplining of lawyers found guilty of professional misconduct.

A review board could be set up composed of an equal number of lawyers and non-lawyers. This composition of individuals would provide the best "mix", that is the legal knowledge necessary to understand the proceedings and technical complexities of the issues with an impartiality in dealing with those issues. It may be assumed that members of the legal profession will be more concerned with not engaging in inappropriate behaviour when the chances of being detected are higher with the more visible review. This committee would hopefully pursue a more aggressive surveillance code of misconduct than is presently the case.

It is possible to identify several useful functions which could conceivably be performed by lay representation (Lang,

1972; Reiter, 1978). The inclusion of members of the lay public could serve to provide an additional perspective on problems addressed by the profession; the differential perspectives by lay persons and lawyers could serve to make the profession more responsive to perceived regulatory inadequacies. It may provide a "window to the general public" (Reiter, 1978) through which the activities of the legal profession could be viewed. The "lifting of the veil of secrecy" behind which the legal profession is often accused of hiding could serve to reinforce public confidence in legal regulation and in the profession generally (Reiter, 1978).

It is important that the lay persons operate in conjunction with the legal professions in the regulatory scheme, partly because of the lack of legal training of the lay observer. For example, in England the lay person (called Lay Observer) is charged with reviewing the process by which the Law Society has disposed of any complaints against a lawyer. But he or she can only act on a written complaint but has a role in seeking information from the client and the accused lawyer (Reiter, 1978). It is suggested that this latitude in discretion be seen as a favourable idea and that lay observers be introduced in British Columbia. Since the Law Society of British Columbia requires written complaints, the availability of independent assistance may prove helpful.

The Law Society of B.C. is not opposed to the idea that lay representation be included on their governing committees. There

are initiatives underway to implement a similar process as England with their adoption of the lay observer. The Law Society has requested an amendment to legislation providing for the appointment of three lay observers (or lay persons) to the Law Society of British Columbia. The Law Society is in favour of the appointees being chosen by an impartial panel.

The benefits of the lay person are clear. Their orientation may enable them to appreciate complaints, and suggest recommendations which may be put in a different perspective than those of the Law Society lawyers. More importantly it should encourage greater accountability of lawyers to their governing body, the Law Society.<sup>6</sup>

### Concluding Statements

This thesis has not relied upon either the medical or the psychological model of deviance to explain the phenomenon of lawyer fraud. Derision has not been cast in terms of the lawyer who is pathologically imbalanced and as a result commits fraud against his or her client, nor is it suggested that the individual so involved may be psychopathic or cognitively deficient in some manner. It has focussed primarily upon a socio-cultural model that looks at the environmental factors

-----  
<sup>6</sup>It must be cautioned when using lay representation that the views held by the lay representatives, may begin to mirror the views of the legal community rather than the general public. As a result their continuing impartiality can be further questioned (Bryan Ralph, August 1987).

within the lawyers' world which might assist this analysis; it has been tied to the context of the structure of the profession and of society itself. The crime facilitative model argues that such factors and opportunities within the structure can combine with pressures to defraud to facilitate the deviant activity. Therefore, for example, certain expectations about lifestyle and standards may pressure the lawyer to take advantage of the opportunities to defraud which are inherent to the pressure, when need or greed arise. More specifically, an economic perspective suggests that the rationale for fraud is money-driven: to maximize earnings.

The Law Society of British Columbia has acknowledged the difficulty for the lawyer to be the client's representative in court, or in a business transaction while at the same time maintaining the necessary independence from the client; this independence, however, is essential to the lawyer's credibility. It realizes that the public will be quite justified in criticizing the profession should there be a high incidence of trust fund violations, or other forms of misconduct.

Given this perspective, the recommendations stemming from the discussion, are not, and should not be directed to curing the deviant lawyer or resocializing him or her, but focusses on actions within that same environment which may be changed to become less crime facilitative. In looking at the lawyering as a profession for example, it is clear it has its own interests to protect in terms of public image or perceived

professionalism.<sup>7</sup> It is an image that is difficult to change considering the political, economic and social mores of the culture in which it operates.

Therefore, one question to be asked is whether the organization is best suited to self-regulation, particularly in times of fiscal restraint when the likelihood of committing fraud may be high and the opportunities are available. Also, if the organization is self-regulating, what forces are at work to produce change in that process? It is unlikely the Law Society would take initiative for radical reform of the present pattern unless there is strong external pressure placed on the profession for accountability and it is unlikely this external pressure will come from government. The Law Society recognizes the need for professional accountability of its members; however, it must balance this desire with the recognition that many of its members as well as members of the political and business elite, may be opposed to radical reform of the existing policies. These changes may be perceived as threatening the autonomy which the members of the profession now enjoy. It ultimately is a dilemma between the best interests of the client and the best interests of members of the profession. Since lawyers largely provide a service to the client, they should, as

-----  
<sup>7</sup>In terms of improving the professions image, the Benchers of the Law Society established a Public Relations Committee in 1986. The role of the committee is to determine the attitudes of the public on certain issues affecting the legal profession. The important factor about this committee is its proactive nature, rather than the traditional reactive approach to how the media and public perceive the profession (Law Society of B.C. Annual Report, 1986).

a profession, live up to the client's expectations. If not, then its right to remain self-regulating should be challenged, a concern the Law Society itself acknowledges.<sup>8</sup>

Other self-regulating bodies have yielded to this challenge. For example, the Toronto municipal police force, as a result of citizen complaints about police behaviour, created a complaint board with lay representation. Hopefully a similar situation will exist in British Columbia in the near future. The argument that lay citizens are not capable of understanding the complexities of lawyering is not a strong one as fraud is regularly adjudged by juries in a court of law.

Lawyers, as professionals, should be sensitive to the axiom that the perception of justice being done is as paramount as the importance of justice being done in reality. In-house regulation, even if done with access to public scrutiny, is not the same as external monitoring and evaluation. In addition, beyond this suggested balancing of discipline, the recommendation for structured random monitoring, such as done for income tax review, seems a sensible plan to implement for at least a "trial" period.

-----  
<sup>8</sup>A subcommittee of the Professional Standards Committee has looked at the issue of conflict of interest between the lawyer and his or her client. As of 1986 a draft ruling was circulated to the legal profession. The draft attempts to standardize real estate procedures, storage of wills and files, to standardize conveyancing fees, bonding of executors, amendments to the Estate Administration Act, and liability of associates. These are a few of the concerns the subcommittee is attempting to address (Law Society of B.C. Annual Report, 1986).

Finally, the point made earlier in the chapter about the need for complete information on the patterns of competence and incompetence in the profession is critically needed. For example, can a "typical" lawyer offender who defrauds be profiled such that the "causative" factors could be clarified and early detection/prevention occur in response - with individual rights and confidentiality concerns still protected? It is left to the lawyers to respond and argue in their own defense what is best for the client and the profession in this area.

## APPENDICES



APPENDIX A

FIRM SIZES

THE FOLLOWING TABLE SHOWS, BY COUNTY THE NUMBER OF SOLE PRACTITIONERS AND THE SIZE OF LAW FIRMS, ACCURATE TO FEBRUARY 6, 1986.\*

County	Number of Lawyers in Firm						Total No. of Firms
	1	2-4	5-9	10-19	20-40	50+	
Vancouver	571	194	62	12	18	5	862
Victoria	91	42	19	5	-	-	157
Naniamo	65	30	7	1	-	-	103
Westminster	125	78	23	3	-	-	229
Kooteney	21	18	3	1	-	-	43
Yale	50	38	9	7	-	-	104
Cariboo	43	20	6	3	-	-	72
Prince Rupert	22	10	1	-	-	-	33
TOTAL	988	430	130	32	18	5	1603

\* Figures taken from the Law Society of British Columbia Annual Report, 1986.

**APPENDIX B**

AGE PROFILE

THE FOLLOWING TABLE INDICATES THE AGE OF ALL ACTIVE AND RETIRED MEMBERS FOR WHOM THE LAW SOCIETY HAS BIRTHDATES ON RECORD. AS OF APRIL 16, 1986 BUT DOES NOT INCLUDE ARTICLING STUDENTS.\*

AGE	NUMBER OF MEMBERS	PERCENTAGE OF PROFESSION	CUMULATIVE PERCENTAGE
25-29	430	7.8	7.8
30-34	1245	22.7	30.5
35-39	1468	26.7	57.2
40-44	984	17.9	75.1
45-49	458	8.3	83.4
50-54	341	6.2	89.6
55-59	236	4.3	93.9
60-64	182	3.3	97.2
65-69	97	1.8	99.0
70+	51	1.0	100.0
<b>TOTAL</b>	<b>5492</b>	<b>100.0</b>	

\* Figures taken from Law Society of British Columbia Annual Report, 1986.

APPENDIX C

STATISTICS OF COMPLAINTS AND DISCIPLINE

THE FOLLOWING COMPARABLE FIGURES APPEAR FOR THE PERIODS  
ENDING DECEMBER 31, 1983, DECEMBER 31, 1984,  
DECEMBER 31, 1985 AND DECEMBER 31, 1986 RESPECTIVELY.\*

	1983	1984	1985	1986
Number of Written Complaints Received	1047	888	747	791
Number of Citations Authorized	41	51	42	34
Number of Citations Heard	32	24	27	21
Number of Citations completed	21	46	40	43
Number of Citations carried over from previous years	47	61	58	40
Number of citations completed from previous years	14	27	23	34
Number of citations in progress	65	60	58	45
Number of conduct reviews authorized	26	19	14	34
Number of complaint reviews authorized	0	0	9	6
Number of complaint reviews held	0	1	5	8

\* Figures taken from Discipline Committee Report Law  
Society of British Columbia, 1986.

**APPENDIX D**

**RESULTS OF CITATIONS COMPLETED\***

1983	1984	1985	1986	
Admissions of Guilt	0	12	4	9
Disbarred	7	2	1	3
Suspended and Assessed Costs	7	4	3	1
Reprimanded, Fined and Assessed Costs	3	1	7	1
Reprimanded	0	0	0	0
Citation Dismissed	1	3	2	4
Citation Withdrawn	0	17	14	6
Citations vacated	0	0	0	12
Found Incompetent	0	0	0	2
Suspended, Fined and Assessed Costs	0	1	1	1
Suspended	0	0	2	0
Permitted to Resign	0	0	1	2
No Penalty Imposed because former member	0	0	4	1
Number of members suspended pending conclusion of hearing	4	10	4	4

\* Figures taken from the Law Society of British Columbia Annual Reports, 1983-1986.

**APPENDIX E**

TYPES OF COMPLAINTS\*

	1983	1984	1985	1986
Fees	244	134	92	90
Mishandling of Trust	12	18	33	34
Unpaid Creditor or Disbursement	33	43	59	75
Delay or Inactivity	83	59	53	42
Failure to Communicate	45	64	40	63
Withholding of File	1	5	10	10
Conflict of Interest	42	61	36	46
Client Dissatisfaction With Legal Service	150	94	73	78
Failure to Follow Client Instructions	39	28	17	24
Error or Negligence	37	42	33	23
Breach of Undertaking	43	29	30	37
Professional Misconduct	144	149	123	113
Personal Misconduct	0	67	46	38
Office Management	5	1	1	0
Holdback of Funds	35	3	7	5
Missed limitation or Court Appearance	12	2	3	2
Advertising	20	41	13	3
Miscellaneous	68	48	76	108
<b>TOTAL</b>	<b>1047</b>	<b>888</b>	<b>747</b>	<b>791</b>

\* Figures taken from the Law Society Annual Reports, 1983-1986.

**APPENDIX F**

**STATISTICS ON FINANCIAL DIFFICULTIES OF MEMBERS\***

	1983	1984	1985	1986
Assignments in Bankruptcy	6	12	15	30
Proposals Under the Bankruptcy Act	5	5	4	4
Informal Proposals	2	1	2	3
Judgements	13	12	17	7
Judgements regarding Foreclosures	3	9	1	0
Orderly Payment of Debts	1	0	0	0
General Financial Difficulties	23	18	20	21
Financial Advisory Panels Held	17	16	29	34

\* Figures taken from Law Society Annual Reports, 1983-1986.

## BIBLIOGRAPHY

- Abel, R. 1980. "Redirecting Social Studies of Law." Law and Society Review, 14: 805.
- Abel, R. 1981. "Toward a Political Economy of Lawyering." Wisconsin Law Review, 5: 1117-1187.
- Adam, Barry D. and Kathleen Lahey. 1981. "Professional Opportunities: A Survey of the Ontario Legal Profession." Canadian Bar Review, 59: 674-686.
- Arthurs, H. 1971. "Authority, Accountability and Democracy in the Government of the Ontario Legal Profession." Canadian Bar Review, 49: 1-23.
- Arthurs, S. 1970. "Discipline in the Legal Profession in Ontario." Osgoode Hall Law Journal, 3: 235-269.
- Aeurbach, J.S. 1976. Unequal Justice: Lawyers and Social Change in Modern America. New York: Oxford University Press.
- Bencher's Bulletin. 1985. Vancouver: Law Society of British Columbia. No. 1, January.
- Black, Deborah. 1987. "In contempt of Corp.: Why White Collar Crime is on the Rise." Financial Post Money Wise Magazine. April: 56-60.
- Berle, A.A.J. 1933. "Legal Profession and Legal Education." Encyclopedia of the Social Sciences, 9: 340-345.
- Bloch, Herbert and Gilbert Gies. 1967. Man, Crime and Society. New York: Random House.
- Bloom, Murray T. 1968. The Trouble With Lawyers. New York: Simon and Schuster.
- Blue Sky Committee. 1978. "How Many Lawyers Steal Clients' Funds?" The Advocate, Spring: 239-241.
- Blumberg, Abraham S. 1967. "The Problem of Law as a Confidence Game." Law and Society Review, 31: 217-228.
- Belobaba, E.P. 1978. Civil Liability as a Professional Competence Incentive. Prepared for the Professional Organizations Committee, Osgoode Hall Law School.
- Boorstin, Daniel J. 1958. "The Americans: The Colonial Experience. In M. Hazard and L. Rhode (eds.) The Legal Profession: Responsibility and Regulation. New York: Foundation Press. 1985.

- Carlin, Jerome. 1966. Lawyer's Ethics: A Survey of the New York City Bar. New York: Sage.
- Casey, John. 1982 "Corporate Crime and the State: Canada in the 1980's." The New Criminologies in Canada. Pp. 100-111.
- Clement, Wallace. 1975. The Canadian Corporate Elite. Toronto: McClelland and Stewart.
- Clinard, Marshall B. 1946. "Criminological Theories of Violations of War Time Regulations." American Sociological Review, 11: 258-270.
- Clinard, Marshall B. 1952. The Black Market. New York: Holt, Rinehart and Winston.
- Cressey, Donald. 1952. "Application and Unification of the Differential Association Theory." Journal of Criminal Law, Criminology and Police Science, 43: 43-52.
- Cressey, Donald. 1953. Other People's Money. Glencoe, Ill.: The Free Press.
- Demographic Survey of Canadian Lawyers #1 1978 to 1979. 1979. Earl Berger Ltd. Toronto.
- Discipline Case Digest. 1983. Vancouver: Law Society of British Columbia. No. 3, August 1983.
- Ermann, David M. and Richard J. Lundman. 1978. "Deviant Acts by Complex Corporations: Deviance and Social Control at the Organizational Level of Analysis." The Sociological Quarterly , 19: 55-67.
- Evans, R.G. and M. Trebilcock. (eds.) 1982. Lawyers and Consumer Interest: Regulating the Market for Legal Services. Toronto: Butterworths.
- Foster, Peter. 1975. The Canadian Establishment Toronto: Seal Books.
- Fraud in Commercial Transactions. 1982. Vancouver: Continuing Legal Education Society.
- Friedman, Lawrence. 1973. "A History of American Law." In M. Hazard and L. Rhode (eds.) The Legal Profession : Responsibility and Regulation . New York: Foundation Press. 1985: 31-37.
- Friedmann, Wolfgang. 1964. Law in a Changing Society. Penguin Books.



- Galanter, Marc. 1983. "Mega Law and Mega Lawyering in Contemporary United States." In Robert Dingwall and Philip Lewis (eds.) The Sociology of Professions: Lawyers, Doctors and Others. New York: MacMillan Press.
- Gall, Gerald L. 1983. The Canadian Legal System. Toronto: Carswell.
- Gibbons, D.C. 1979 The Criminological Enterprise: Theories and Perspectives. Englewood Cliffs: Prentice Hall.
- Gibbons, D.C. 1982. Society, Crime and Criminal Behaviour. Englewood Cliffs: Prentice Hall.
- Geis, Gilbert and E. Stoddard. (eds.) 1980. White Collar Crime: Theory and Research. Beverly Hills: Sage.
- Goff, Colin and Charles F. Reasons. 1980. "Corporate Crime: A Cross Material Analysis." In Gilbert Geis and Ezra Stodard (eds.) White Collar Crime: Theory and Research. Beverly Hills: Sage.
- Goff, Colin and Charles F. Reasons. 1978. Corporate Crime in Canada: A critical Analysis of Anti Combines Legislation. Scarborough: Prentice Hall.
- Goff, Colin and Charles F. Reasons. 1986. "Organized Crimes Against Employers, Consumers and the Public." In Brian MacLean (ed.) The Political Economy of Crime. Toronto: Prentice Hall. Pp. 204-231.
- Gordon, David. 1970. "Class, Capitalism and Crime." Crime and Delinquency 31: 163-183.
- Handler, J.F. 1967. The Lawyer and His Community. Madison: University of Wisconsin Press.
- Hartung, Frank E. 1950. "White Collar Offences in the Wholesale Meat Industry in Detroit." American Journal of Sociology, 56: 23-34.
- Hartung, Frank E. 1949. Law and Social Differentiation. Ann Arbor Michigan.
- Hazard, M. and L. Rhode. 1985. The Legal Profession: Responsibility and Regulation. New York: Foundation Press.
- Holdsworth, William. 1938. "A History of English Law." In Hazard, M. and L. Rhode (eds.) 1985. The Legal Profession: Responsibility and Regulation. New York: Foundation Press.

- Horowitz, David. 1981. Economics, Special Opportunity, Conduct and Crime. Toronto: Lexington Books.
- Johnson, Terence. 1972. Professions and Power. London: MacMillan Press.
- Jones, E. "Social Origins of Four Professions: A Comparative Study." International Journal of Comparative Sociology, 17: 143-163.
- Kahneman, D. and A. Tversky. 1982. Judgements Under Uncertainty: Heuristics and Biases. Cambridge: University of Cambridge Press.
- Katz, Jack. 1979. "Legality and Equality: Plea Bargaining in the Prosecution of White Collar and Common Crimes." Law and Society Review, 13: 431-459.
- Keddie, Vincent. 1978. Lawyers and Social Change: A Study of the Legal Profession in British Columbia. Submitted to the Law Foundation of British Columbia. Vancouver.
- Klein, Mitchell S.G. 1984. Law, Courts and Policy. Englewood Cliffs: Prentice Hall.
- Kraus, Leonard and Aileen MacGahan. 1979. Computer Fraud and Counter Measures. Englewood Cliffs: Prentice Hall.
- Lane, Robert. 1953. "Why Business men Violate the Law." Journal of Criminal Law, Criminology and Police Science, 44: 151-165.
- Lang, Otto. 1972. "Lawyers in an Open Society." Chitty Law Journal, 20: 289-292.
- Larson, M.S. 1977. The Rise of Professionalism: A Sociological Analysis. Berkley: University of California Press.
- Law and Learning. 1983. Report to the Social Sciences and Humanities Research Council of Canada by Consultive Group in Research and Education in the Law. Ottawa: Supply and Services.
- Law Reform Commission of Canada. 1979. Theft and Fraud Report 12. Ottawa: Supply and Services.
- Law Society of British Columbia. 1986. British Columbia Lawyers: Public Interest Advocates. Vancouver: Law Society of British Columbia.
- Law Society of British Columbia Annual Report. Vancouver: Law Society of British Columbia. 1979-1986.

- Leonard, William and Marvin G. Weber. 1970. "A Study of Criminogenic Market Forces." Law and Society Review, 4: 407-424.
- MacGill Hughes, Helen. 1971. Social Organizations. Boston: Allyn and Brown.
- MacFarlane, Diane. 1980. "The Legal Profession in Canada: A Research Perspective and Prospectus." Chitty Law Journal, 28: 50-59.
- McColl, Bruce. 1980. "The Special Fund and Entitlement Payment." The Advocate, 38: 111-116.
- Merton, Levy. 1972. "Who from What, Where? A Report on the Average Osgoode Student." Obiter Dicta, August 28, 1972.
- Mitford, Jessica. 1963. The American Way to Death. Greenwich: Fawcett.
- Morris, Albert. 1935. Criminology. New York: Longmans Green.
- Nader, Ralph. 1986. Interview on Tass. Public Television Program, The Netherlands. May 2, 1986.
- Nader, Ralph and Mark Green. (eds.) 1974. Verdict on Lawyers. New York: Thomas Y. Cromwell.
- Needleman, Martin and Carolyn Needleman. 1979. "Organized Crime: Two Models of Criminogenesis." The Sociological Quarterly, 20: 517-528.
- Newman, Donald J. 1958. "White Collar Crime" An Overview and Analysis." Law and Contemporary Problems, 23: 50-64.
- Newman, Graeme, J. Jester & D. Articulo. 1978. "A Structural Analysis of Fraud." In E.E. Flynn and J.P. Conrad (eds.) The New and Old Criminology. New York: Praeger.
- Newman, Peter C. 1975. The Canadian Establishment. Toronto: McClelland & Stewart.
- Noiso, Jorge. 1982. The Economy of Canada: Who Controls It?. Montreal: Black Rose Books.
- Parker, Graham. 1977. An Introduction to Criminal Law. Toronto: Methuen.
- Parker, Jerry. 1982. "Social Control and the Legal Profession." In Peter Wickman and Timothy Dailey (eds.) White Collar and Economic Crime. Lexington, Mass: D.C. Heath.

- Parsons, Talcott. 1952. A Sociological Look at the Legal Profession. University of Chicago Law School. University of Chicago Press.
- Parsons, Talcott. 1954. "The Professions and Social Structure." In Essays in Sociological Theory. Pp. 43-46.
- Parsons, Talcott. 1962. "Law and Social Control." In W. Evans (ed.) Law and Sociology. New York: Free Press. Pp. 56-72.
- Pocket Criminal Code of Canada. 1987. Toronto: Carswell.
- Pontell, Henry, Paul Jesilow and Gilbert Geis. 1982. "Policing Physicians: Practitioner Fraud in a Government Medical Program." Social Problems, 30: 117-125.
- Porter, J. 1965. The Vertical Mosaic: An Analysis of Social Class and Power in Canada. Toronto: University of Toronto Press.
- Quinney, Richard. 1963. "Occupational Structure and Criminal Behaviour: Prescription Violation by Retail Pharmacists." Social Problems, 11: 179-185.
- Quinney, Richard. 1964. "The Study of White Collar Crime: Toward a Reorientation in Theory and Research." Journal of Criminal Law, Criminology and Police Science, 55: 285-295.
- Reiter, Barry J. 1978. Discipline as a manner of Assuring Continuing Competence and Tables of Discipline Activities by Professions. Ontario: Professional Organizations Committee of Ontario.
- Report on Professional Legal Education. In Watts A. History of the Legal Profession in British Columbia: 1869-1984. Vancouver. Evergreen Press. 1984.
- Reasons, Charles (ed.) 1974. The Criminologist: Crime and the Criminal. Pacific Palisades, California: Good Year.
- Reasons, Charles and Duncan Chappell. 1985. "Crooked Lawyers: Towards a Political Economy of Deviance in the Profession." In Thomas Fleming (ed.) The New Criminologies in Canada. Toronto: Oxford University Press. Pp. 206-222.
- Reasons, Charles and Duncan Chappell. 1987. "Continental Capitalism and Crooked Lawyering." Crime and Social Justice, 20: 38-59.
- Reasons, Charles and William D. Purdue. 1981. The Ideology of Social Problems. Palo Alto, California: Mayfield.

- Reuschmeyer, Deitrich. 1964. "Doctors and Lawyers: A Comment on the Theory of the Professions." Canadian Review of Sociology and Anthropology, 1: 17-30.
- Reuschmeyer, Deitrich. 1973. Lawyers and Their Society: A Comparative Study of the Legal Profession in Germany and the United States. Cambridge Mass.: Harvard University Press.
- Schroeder, Oliver J. Lawyer Discipline: The Ohio Story. Cleveland: Ohio Legal Institute. 1967.
- Scott, George. 1975. "The Lawyer and Politics." Ansul, 7: 78.
- Shrager, Laura S. and James F. Short. 1978. "Toward a Sociology of Organized Crime." Social Problems, 25: 407-419.
- Schur, Edwin. 1968. Law and Society: A Sociological View. Toronto: Random House.
- Silverman, Robert E. 1971. Psychology. New York: Appleton Century Crofts.
- Sittek, George. 1986. Computer Related Crime: A Criminological Model of Analysis. Unpublished M.A. Manuscript. Simon Fraser University. Burnaby, B.C.
- Snider, L. 1978. "Corporate Crime in Canada: A Preliminary Report." Canadian Journal of Criminology, 21: 142-168.
- Snider, L. 1982. "Traditional and Corporate Theft: A Comparison of Sanctions." In Peter Wickman and Timothy Dailey (eds.) White Collar Crime. Lexington, Mass.: D.C. Heath. Pp. 235-258.
- Snider, Laureen and W. Gordon West. 1980. "A Critical Perspective on Law and the Canadian State: Delinquency and Corporate Crime." In Richard Ossenberrg (ed.) Power and Change in Canada. Toronto: McClelland and Stewart. Pp. 199-245.
- Snyder, Francis. 1980. "Law and Development." Law and Society Review, 14: 723-810.
- Stager, David. 1983. "The Market for Lawyers in Ontario: 1931 to 1981 and Beyond." Canada - United States Law Journal, 6: 113-124.
- Stern, Phillip. 1980. Lawyers on Trial. New York: Times Books.

- Straub, Dietmar W. Jr. and S.C. Widom. 1984. "Deviance by Bits and Bytes: Computer Abusers and Control Measures." In S.H. Finch and G.G. Dougall (eds.) Computer Security: A Global Challenge. North Holland: Elsevier. Pp. 91-101.
- Sutherland, Edwin H. 1937. The Professional Thief. Chicago: University of Chicago Press.
- Sutherland, Edwin H. 1940. "White Collar Criminality." American Sociological Review, 5: 1-12.
- Sutherland, Edwin H. 1941. "Crime and Business." Annals of the American Academy of Political Science, 217: 112-118.
- Sutherland, Edwin H. 1945. "Is White Collar Crime, Crime?" American Sociological Review, 10: 132-139.
- Sutherland, Edwin H. 1949. White Collar Crime. New York: Dryden Press.
- Sutherland, Edwin H. and Donald Cressey. 1960. Principles of Criminology. Chicago: Lippincott.
- Swan, John. 1982. "Regulating Continuing Competence." R.E. Evans and M. Trebilcock (eds.) Lawyers and Consumer Interest: Regulating the Market for Legal Services. Toronto: Butterworths. Pp. 351-379.
- Taft, Donald R. and Ralph W. England. 1964. Criminology (3rd Edition). New York: MacMillan.
- Thio, A. 1983. Deviant Behaviour. Boston: Houghton Mifflin.
- Tiger, M. and M. Levy 1977. Law and the Rise of Capitalism. New York: Monthly Review Press.
- Tuohy, Carolyn J. 1982. "Public Accountability of Professional Groups: The Case of the Legal Profession in Ontario." In Robert G. Evans and Michael Tribilcock (eds.) Lawyers and Consumer Interest: Regulating the Market for Legal Services. Toronto: Butterworths.
- Turk, Austin. 1973. "Law, Conflict and Order: From Theorizing to Theories." Canadian Review of Sociology and Anthropology, 31: 4-5.
- Veltmeyer, Henry. 1983. "Late Capitalism, Corporate Power and Imperialism." In J. Paul Grayson (ed.) Introduction to Sociology: An Alternative Approach. Toronto: Sage.

- Visano, Larry. 1985. "Crime, Law and the State." In Thomas Flemming (ed.) The New Criminologies in Canada. Toronto: Oxford University Press.
- Watts, A. 1984. History of the Legal Profession in British Columbia: 1869-1984. Vancouver: Evergreen Press.
- Wheeler, Stanton. 1976. "Trends and Problems in the Sociological Study of Crime." Social Problems, 21: 525-533.
- Wilson, Paul R., Robyn Lincoln and Duncan Chappell. 1986. "Physician Fraud and Abuse in Canada: A Preliminary Examination." Canadian Journal of Criminology, 28: 129-145.
- Yale, Janet. 1982. "Public Attitudes Toward Lawyers: An information Perspective." In R. Evans and M. Trebilcock (eds.) Lawyers and Consumer Interest: Regulating the Market for Legal Services. Toronto: Butterworths. Pp. 33-63.

*Statutes Cited*

- Barristers and Solicitors Act. R.S.B.C. 1849. Ch. 12 & 13.
- Legal Professions Act. R.S.B.C. 1863 no. 47, 26; 1885 no. 3, 28, 29; 1874 no.18, 37; 1884 Ch. 18, 47; 1895, Ch. 29; 1946 Ch. 38; 1969 Ch. 15.
- Legal Professions Ordinance, R.S.B.C. 1867 no. 73, 30; 1868 no. 102,31. Victoria, B.C.

*Newspaper Articles*

- Bohn, Glenn. "Lawyer Jailed for \$200,000 Theft." The Vancouver Sun, March 28, 1981. C2.
- Carey, Elaine. "Lawyers who Stoop to Fraud, Eroding Faith in the Profession." Toronto Star, January 26, 1982. A10.
- "Fifty Thousand Dollar Bank Loan was Irregular, Lawyer Trial Told." The Vancouver Sun, February 21, 1984. A8.
- Hendrickson, Bob. "Lawyer Jailed Five Years for \$494,877 Theft." The Province, October 7, 1982. A4.
- "Law Society of British Columbia Affords Sound Protection of Clients." The Vancouver Sun. April 1, 1985.
- "Lawyer Can't Explain Use of Trust Accounts." The Vancouver Sun, November 25, 1985. B3.

- "Lawyers Clear Trail Cited in His Defence." The Vancouver Sun ,  
March 4, 1986. A8.
- "Lawyer Faces Probe by R.C.M.P. Commercial Crime Squad." The Vancouver Sun, January 29, 1985. A8.
- "Lawyer Guilty." The Vancouver Sun, August 14, 1982. A9.
- "Lawyer Jailed 15 Months." The Vancouver Sun, February 11, 1986.  
A7.
- "Lawyer Suspended." The Province, January 4, 1982. D8.
- Mason, Gary. "Law Society Lay Members Plan Queried." The Vancouver Sun, May 14, 1987. B6.
- Needham, Phil. "Judge Orders Lawyer to Pay \$274,173 for Breach of Trust." The Vancouver Sun, January 5, 1983.
- "Pairs Inheritance Gone in Four Months, Accountant Transfers." The Vancouver Sun, February 22, 1986. B14.
- Sedenuis, Derek. "Group Seeks to Curb Lawyer Abuse." Victoria Times Colonist. August 5, 1982.
- Still, Larry. "Lawyer Fraud too Costly for Insurers." The Vancouver Sun, October 20, 1982.
- Still, Larry. "Suspended Lawyer Gets Year for Swindle." The Vancouver Sun ." May 19, 1982.
- Still, Larry. "Hearing Paints Image of City Lawyer." The Vancouver Sun, April 26, 1986.m
- Strauss, Marina. "The Fuzzy Issues of Ethics and the Law." The Globe and Mail. February 3, 1983. A7.
- Trask, Peter. "Lawyer Caught Unaware." The Vancouver Sun, March 7, 1986. A15.
- "Trial Told Lawyer was at Wits End." The Vancouver Sun, February 27, 1986. B6.



Volkart, Carol. "Plan to Review Lawyers Conflict Case." The Vancouver Sun, April 7, 1982.

Personal Interviews

Bryan Ralph, Deputy Secretary of the Law Society of British Columbia. Interviews March 1987, May 1987 and August 1987.

Jerome Ziskrout, Prosecutor for the Law Society of British Columbia. Interview January 1987.