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The Non-Justiciable War on ‘Woke’ at the Law Society of Alberta

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Decision Commented On: *Song v The Law Society of Alberta*, [2025 ABKB 525 \(CanLII\)](#)

Back in February 2023, a group of Alberta lawyers petitioned for a special meeting of the Law Society of Alberta (LSA) to hold a vote seeking to remove the LSA’s powers to require its members to engage in continuing professional development and specifically, remove the requirement to complete an Indigenous cultural competency program called ‘The Path’. The petition was defeated at that special meeting: 2,609 votes against the resolution to 864 votes in favour of the resolution. See the ABlawg posts about the special meeting: [Law Society of Alberta to Hold a Special Meeting to Debate its Power to Mandate Indigenous Cultural Competency Training](#) and [Fighting Over History at a Special Meeting of the Law Society of Alberta](#).

This post comments on a September 2025 decision on an application for judicial review brought by Roger Song, an initiator of the petition in 2023, again challenging the LSA’s power to require continuing professional development, Indigenous cultural competency, as well as the Law Society’s Code of Conduct provisions on discrimination and harassment. Legal counsel for Mr. Song was the political cause lawyering organization the Justice Centre for Constitution Freedoms (JCCF). The JCCF was in the news [recently because their president and litigation director were disbarred for hiring a private investigator to follow a Manitoba judge](#). The JCCF’s political views are a blend of [socially conservative Christianity](#) and anti-government libertarianism and these political views were central to the argument made in *Song v The Law Society of Alberta*.

The application for judicial review was dismissed, with the applicant’s major argument rejected as non-justiciable. This post describes the judicial decision, the details of the non-justiciable political argument behind the legal challenge, and concludes with thoughts on the Alberta government’s ominous forthcoming legislative changes to the LSA’s mandate.

Summary of the Decision

The application for judicial review was filed in November 2023, heard by Justice S.L. Kachur in May 2025, with a decision issued in September 2025. The application challenged the validity of the LSA’s decisions under the *Legal Profession Act*, [RSA 2000, c L-8 \(LPA\)](#) to “(i) enact Rules 67.2, 67.3, and 67.4 dealing with a [continuing professional development] program and mandatory [continuing professional development], and (ii) amend Part 6.3 of the Code dealing with discrimination, harassment, and sexual harassment” on jurisdictional and constitutional grounds (at paras 1, 5, 22-26, 41 and 76).

The applicant argued the LSA was advancing particular “political objectives” related to “Anti-Constitutional Ideologies” (at paras 24, 94) and based on this argument, the applicant combined the jurisdictional and constitutional arguments together. Justice Kachur rejected the arguments about the “political objectives” of the LSA as not justiciable and without factual basis:

I agree with the LSA that the “Political Objectives” raised by the Applicant are the Applicant’s subjective interpretations of what the LSA believes and his own assumptions about the LSA’s motivations. The Applicant’s own views of the beliefs and motivations of the LSA are not subject to judicial review because there is no factual or legal basis for the claim. Policy choices must be translated into law or state action in order to be justiciable, either for being ultra vires or for being contrary to the Charter: *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 105. The Applicant is raising political questions about ideological and policy considerations that are not susceptible to resolution through the judicial process: see Lorne M Sossin & Gerard Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed (Toronto: Thomson Carswell, 2024) at 322. (at para 30)

Justice Kachur noted the applicant’s “political objectives” argument had major flaws. It relied on definitions in a glossary note made by the LSA and only linked to the LSA website (at para 32), the opinions of academic commentators not directly related to the LSA (at para 33).

The Applicant argued that the “political objectives” of the LSA were an unconstitutional threat to the rule of law, and that this fell into an exception to reasonableness set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) (at paras 39-42). But having rejected the “political objectives” arguments as non-justiciable, Justice Kachur found there was nothing exceptional to the case and that the standard of review was reasonableness, following the Supreme Court’s recent guidance on the review of regulations in *Auer v Auer*, [2024 SCC 36 \(CanLII\)](#) (at paras 43-50).

The applicant sought to compel the production of legal opinions prepared for the law society, and to submit affidavits from Song and from a report of a purported expert on social justice ideologies. This material largely related to the “political objectives” arguments, and so Justice Kachur found the bulk of this material was irrelevant and therefore not admissible, except for portions of Song’s affidavit that related directly to his claims of a breach of his *Charter* rights (at paras 52-64).

Justice Kachur then considered whether the *LPA* enabled the LSA to make rules requiring continuing professional development. The applicant argued that because Alberta’s *LPA* does not have a public interest clause, the LSA is limited to the specific powers granted in the Act and cannot engage in “proactive enforcement of member compliance” with law society requirements (at para 72).

Justice Kachur found in favour of the LSA, finding the LSA was enabled to require continuing professional development, as subsection 7(1) of the *LPA* provides the Benchers plenary powers not restricted to the powers specifically listed under subsection 7(2), and that subsection 6(n) allowed the Benchers of the law society to “take any action and incur any expenses the Benchers consider necessary for the promotion, protection, interest or welfare of the Society.” Justice

Kachur determined this was consistent with past caselaw on the authority of law societies: primarily *Law Society of British Columbia v Trinity Western University*, [2018 SCC 32](#) and *Green v Law Society of Manitoba*, [2017 SCC 20](#) (at paras 86-95) – noting in particular that the Supreme Court had written that continuing professional development “programs have in fact become an essential aspect of professional education in Canada.” (*Green v Law Society of Manitoba*, [2017 SCC 20](#), at para 108) Justice Kachur concluded that “[t]he decisions to mandate training generally and to mandate Indigenous cultural competency training specifically are consistent with the text, context, and purpose of the *LPA*.” (at para 115)

Justice Kachur then considered whether the LSA had the authority to enact part 6.3 of the [Code of Conduct](#) on ‘Discrimination and Harassment’, and easily concluded that it did. The change to the rules “was to keep Alberta’s Code consistent with the Federation’s Model Code and to address ongoing issues within the legal profession related to discrimination and harassment.” (at para 122) Justice Kachur saw no merit in the applicant’s argument that the language of discrimination and harassment was impermissibly vague, as those terms are familiar to law and lawyers (at paras 127-130) and the Code of Conduct rules on discrimination and harassment clearly inside the jurisdiction of the LSA and consistent with other legislation on harassment in workplaces (at paras 124-126).

Justice Kachur then turned to the *Charter* arguments, finding that the *Charter* arguments were inherently connected with the “political objectives” arguments, and that the applicant was arguing “broadly that the LSA is imposing their “Political Objectives” and “theories” on him.” (at paras 135-136, 149)

For *Charter* section (2)(a) freedom of conscience and religion, Justice Kachur noted that the CPD requirement was basically a form, with flexible content and few specific requirements (at paras 142-143), and that “The Path provides a base-level understanding of the history of Indigenous peoples in Canada, commentary on some of the sociolegal issues facing Indigenous communities today, and the ways in which both past and present histories may impact the practice of law.” (at para 145). The Path did not require the applicant to “leave his faith and religion behind and subscribe to the beliefs set out in The Path.” (at para 145)

For *Charter* section (2)(b) freedom of thought, belief, opinion and expression, Justice Kachur found the code of conduct’s general rules against harassment and discrimination did not infringe these rights, although infringement of these rights could be argued in specific cases where the law society brought sanctions (at paras 155-156).

Justice Kachur dismissed the application, noted the “law society had been completely successful”, and did not vary the ordinary rules on costs (at paras 162-163).

The “Political Objectives” Argument and Justiciability

One feature that makes this decision unusual is that the applicant was able to challenge all of the LSA actions they tried to, and only a particular argument was found to be non-justiciable. Typically, an action or decision is found non-justiciable in the sense it cannot be challenged on any basis. (See for example *Black v Canada (Prime Minister)*, [2001 CanLII 8537 \(ON CA\)](#); *United*

Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) v Mark's Work Wearhouse Ltd., [2025 FC 1647 \(CanLII\)](#)) The applicant was allowed to indirectly pursue their political goal in court (albeit unsuccessfully), but the applicant was not allowed to directly pursue their political goal.

In finding the “political objectives” argument was not justiciable, Justice Kachur rejected nearly the entirety of what the applicant had attempted to argue and so the finding on justiciability largely determined the outcome. Most of Justice Kachur decision reads as if the case had been argued as an ordinary jurisdictional issue cognizable to Canadian law. This creates a disconnect between Justice Kachur’s decision focused on ordinary jurisdictional issues and statutory interpretation, and the materials filed by the applicant that are overwhelmingly about the unusual “political objectives” argument. The “political objectives” argument was the heart of the applicant’s argument: more than 130 pages of the applicant’s [204 page brief](#) were dedicated to the “political objectives” argument.

The “political objectives” argument was extremely unusual, as even the applicant’s counsel noted, saying at the hearing that:

“this is really an extraordinary application whether true or not. If it is true it means that the regulator, including the benchers, are directly violating their prime statutory and constitutional duties and seeking to arrogate democratic power from parliament and putting power into the hands of whatever stakeholders are driving these political objectives. If it is false, it means I stand before you erroneously advancing a wild and irresponsible conspiracy.” ([Transcript of Proceedings](#), at 3-4)

The JCCF posted their [originating application, brief](#), the Transcript of Proceedings, and affidavits ([1](#) and [2](#)) online under the title “[Alberta lawyer challenges law society’s authority to be ‘woke’](#)”. These materials show the “political objectives” argument was a kind of political manifesto made of arguments from far-right podcasts targeting:

- a. critical race theory;
 - b. critical legal theory;
 - c. postcolonialism;
 - d. gender theory; and
 - e. intersectionality,
- (the “Anti-Constitutional Ideologies” which are commonly, collectively, referred to as “social justice”, “political correctness”, “DEI” or “woke”). ([Originating Application for Judicial Review](#), at para 15)

The “political objectives” argument included allegations the law society was targeting Christians (Applicant’s brief, at paras 745-749), and was attacking reason and science (Applicant’s brief, at paras 335-337). The argument bundled scientific empiricism, reason, objectivity, the rule of law, and Christianity as a “western” culture under attack (Applicant’s brief, at paras 375-379). The argument alleges the actions of the law society are based on postmodern theories and “collectivism” – a term from libertarian political theory that bundles together all non-libertarian political and economic systems (Applicant’s brief, at paras 579, 639-641). The applicant argued

that “The Path advocates for the racial segregation of Indigenous Canadians into a collectivist, authoritarian, therapeutic, and post-modern society. (Transcript of Proceedings, at 6; Applicant’s brief at para 640) The applicant sought “an interim and final injunction prohibiting the LSA from the continuation of its Political Objective in any manner.” (Originating Application for Judicial Review, at para 48) The applicant sought to convince the court to accept a massive historical and political worldview, argue that the law society had, either intentionally or inadvertently, accepted an unconstitutional political theory that attacked the Canadian constitution as understood by the applicants, and have the court block any implementation of that political theory.

The “political objectives” argument was a rehash of early cold war McCarthyism, alleging a vast left-wing conspiracy to sow ideas ‘subversive’ to the country had seized control of the law society. (Applicant’s brief, at paras 306, 374-376). Through the lens of this conspiracy theory, the law society requirements to annually fill out a form about professional development and take a one-time five-hour course on the basics of Indigenous history became something comparable to the Chinese cultural revolution.

While I think Justice Kachur was correct to find the “political objectives” argument non-justiciable, the reasons why the “political objectives” argument was non-justiciable are difficult to follow, they include problems with the evidence provided: that the applicant refers to statements by third parties rather than the law society (at paras 32-33) and that the applicant was incorrect about the function of the Continuing Professional Development program and the Professional Development Profile for Alberta Lawyers (at paras 35-37). The discussion of these evidentiary problems muddles the justiciability question – particular problems with the evidence provided make a claim or application fail but do not make it non-justiciable.

However, Justice Kachur also wrote:

Policy choices must be translated into law or state action in order to be justiciable, either for being ultra vires or for being contrary to the Charter: *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 105. The Applicant is raising political questions about ideological and policy considerations that are not susceptible to resolution through the judicial process: see Lorne M Sossin & Gerard Kennedy, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 3rd ed (Toronto: Thomson Carswell, 2024) at 322. (at para 30)

I think this reasoning is correct, although a bit too brief and vague. Political theories can be indirectly challenged by challenging laws, regulations, or state actions that result from the implementation of those political theories. The “political objectives” argument got this backwards, directly challenging political theories and indirectly challenging particular actions supposedly connected with those political theories. Courts are forced to get involved in political disputes all the time, but will do so only indirectly. To understand why this is the case, consider what would have happen if a court did find any political theory unconstitutional: no legislation connected to the theory would be valid, regardless of how democratically it was enacted. The country would be shifted into a state managed pseudo-democracy where only court approved political theories are allowed to shape law and policy. Just like the original McCarthyism, the JCCF’s brand of McCarthyism would destroy democracy in a confused attempt to save it.

Conclusion: Will the Alberta Legislature Intervene?

The applicant [has appealed](#). Regardless of the outcome of this litigation, the Alberta legislature may take action. The premier expressed [an intention to enact legislation in 2025 to limit the power of professional regulatory bodies](#), the [Alberta government is conducting a review of regulated professions](#), and the premier has long [had links to the JCCF](#). The legislature may be preparing to reduce the independence of the Law Society of Alberta on the basis of the JCCF’s “political objectives” argument.

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