

## LAWYERS IN A WARMING WORLD

CAROL LIAO\*

*Climate change is the great disrupter of humanity, and the Canadian legal profession is at an inflection point. This article begins by briefly outlining the self-governing legal profession's duties in Canada to uphold and protect the public interest in the administration of justice, including ensuring competencies. It then chronicles, and engages in a comparative analysis of, climate change-related resolutions and actions taken across 15 legal bars, societies, and associations around the world and situates those actions to current measures in Canada. In addressing some of the barriers found within self-regulatory bodies and voluntary associations for Canadian lawyers, the article then provides a basic primer for lawyers to understand the growing significance of climate change impacts on legal systems and civilizations and its potential to undermine legal rights. It identifies further areas of research that are needed regarding legal competencies in understanding climate-related risks and opportunities in relation to lawyers' duty of care to their clients in Canada. Rapid developments in the law and evolving risk registers in response to a warming world are creating new understandings of what constitutes climate competent lawyering. This article lays the groundwork for further work in climate-related actions for the Canadian legal profession.*

### TABLE OF CONTENTS

I.	INTRODUCTION . . . . .	2
II.	THE SELF-GOVERNING LEGAL PROFESSION AND THE PUBLIC INTEREST MANDATE . . . . .	4
III.	CLIMATE ACTION FROM BARS, SOCIETIES, AND ASSOCIATIONS AROUND THE WORLD . . . . .	8
A.	INTERNATIONAL BAR ASSOCIATION . . . . .	10
B.	AMERICAN BAR ASSOCIATION . . . . .	12
C.	G7 RESOLUTION ON CLIMATE CHANGE . . . . .	14
D.	JAPAN FEDERATION OF BAR ASSOCIATIONS . . . . .	14
E.	LAW SOCIETY OF ENGLAND AND WALES . . . . .	15
F.	LAW COUNCIL OF AUSTRALIA . . . . .	16
G.	GENERAL COUNCIL OF THE BAR (ENGLAND AND WALES) . . . . .	17
H.	COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE . . . . .	17
I.	NEW ZEALAND LAW SOCIETY . . . . .	18
J.	ORDEM DOS ADVOGADOS DO BRASIL . . . . .	19
K.	LAW SOCIETY OF NORTHERN IRELAND . . . . .	19

\* Associate Professor, Peter A Allard School of Law, University of British Columbia (UBC); UBC Sauder Distinguished Fellow, Peter P Dhillon Centre for Business Ethics, UBC Sauder School of Business; Chair, Canada Climate Law Initiative; Co-Director, UBC Centre for Climate Justice. My sincere thanks to Hasan Alam and Terri-Lynn Williams-Davidson, KC, the co-movers of Resolution 4 at the 2023 Annual General Meeting of the Law Society of British Columbia; the Federation of Asian Canadian Lawyers (FACL) BC, including David How, Steven Ngo, and the FACL BC Advisory and Advocacy Committees 2022–2023 and 2023–2024. Thank you to the editors and anonymous peer reviewers of the *Alberta Law Review* for their invaluable comments, and to Martin Shi, Jenaya Copithorne, Wynona Klemt, Justin Chhuor, and Tinashe Muzah for exceptional research assistance.



IV.	THE STATE OF CLIMATE COMPETENT LAWYERING IN CANADA	20
A.	CANADIAN BAR ASSOCIATION	21
B.	LAW SOCIETY OF BRITISH COLUMBIA	24
C.	BARREAU DU QUÉBEC	28
D.	LAW SOCIETY OF NEW BRUNSWICK	29
V.	CLIMATE CHANGE, LAW, AND THE LEGAL PROFESSION	29
A.	IMPACTS ON CIVILIZATIONS AND LEGAL SYSTEMS	30
B.	IMPACTS ON THE LAW AND LEGAL PRACTICE	33
VI.	CONCLUSION: “ON A HIGHWAY TO CLIMATE HELL”	37

## I. INTRODUCTION

By virtue of their training, lawyers are accustomed to being risk-averse. They are often the advisors intentionally or inadvertently counselling their clients against innovation and change, favouring tradition, precedents, and caution.<sup>1</sup> But increasingly, that resistance is being met with demands to evolve and address humanity’s greatest challenge: climate change. The United Nations Intergovernmental Panel on Climate Change (IPCC), representing 195 member countries and reflecting the consensus of hundreds of scientists, has held it “unequivocal that human influence has warmed the atmosphere, ocean and land” and that greenhouse gas (GHG) emissions contribute to global warming.<sup>2</sup> The Supreme Court of Canada has given judicial notice of climate change and acknowledges that it is “an existential threat to human life in Canada and around the world.”<sup>3</sup> The urgency in addressing climate change via the science is clear; that science is settled and long understood.<sup>4</sup> The struggle now is on values, culture, and ideology,<sup>5</sup> for which lawyers play a meaningful part.

This article explores the growing international clarion call and emerging consensus that lawyers must be prepared to adopt new understandings of climate competent lawyering in this period of global warming. In addition to mandated bars and law societies, professional associations where membership is voluntary serve as a collective voice for lawyers. Efforts to combat climate change may be perceived as more “top-down” when coming from the bars and law societies that have the power to regulate the profession and ensure compliance, whereas climate initiatives may be perceived as persuasive “bottom-up” measures through these voluntary professional associations. Successful climate resolutions from either signal the direction of much needed priorities from within the legal profession, and many bars, societies, and associations around the world have been active in responding to and preparing for climate change, including climate mitigation and adaptation. Nonetheless, attempts to reshape the legal profession towards more climate competent lawyering have also been contested, particularly in Canada.

<sup>1</sup> Deborah L Rhode, *The Trouble with Lawyers* (New York: Oxford University Press, 2015); Jordan Furlong, “Why Lawyers Don’t Innovate” (20 August 2013), online (blog): [perma.cc/C4YL-YXA7]; Simon Lewsen, “Give Me Paper or Give Me Death: Why Law Firms Need to Embrace Innovation,” *The Globe and Mail* (15 November 2023), online: [perma.cc/J7W9-W5UR].

<sup>2</sup> Valérie Masson-Delmotte et al, eds, *Climate Change 2021: The Physical Science Basis: Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press, 2021) at 4.

<sup>3</sup> *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 171.

<sup>4</sup> Masson-Delmotte et al, *supra* note 2; NASA, “Scientific Consensus,” online: [perma.cc/6GZC-JJXC]; Naomi Oreskes, “The Scientific Consensus on Climate Change” (2004) 306:5702 *Science* 1686.

<sup>5</sup> Andrew J Hoffman, “Climate Science as Culture War” (2012) 10:4 *Stanford Soc Innovation Rev* 30.

The Canadian legal profession itself is no stranger to climate initiatives, with the first climate resolution dating back to 2011. However, past climate resolutions at law societies and associations have focused on urging *the government* to act on climate change, such as mandate GHG emissions reductions. In terms of climate resolutions regarding the legal profession itself, those resolutions have been met with far more resistance. This is even though profession-specific climate resolutions in Canada to date have been put in terms of positive, voluntary actions and contribute to how the legal profession can ensure lawyers acquire certain minimum competencies aligned with their duties to uphold and protect the public interest in the administration of justice. Despite the numerous challenges of climate change facing lawyers and the legal profession, Canadian law societies and associations in Canada have been slow or reluctant to act.

Nevertheless, climate resolutions and climate action from bars, societies, and associations are not new, nor innovative at this point, as these initiatives are intensifying around the world. Climate competent lawyering is not radical, but increasingly necessary and arguably a matter of fiduciary obligation for lawyers moving forward in this age of the Anthropocene.<sup>6</sup> Research on the growing demand for guidelines for lawyers is nascent, and the role of lawyers in this climate crisis is quickly evolving. At the 2022 United Nations Climate Change Conference (COP27) in Egypt, representatives across various bars, societies, and associations met at two events to discuss the role of lawyers in the climate crisis, and shared how the legal profession is in a moment of collective learning around the world. The legal profession is “building the plane while flying” as lawyers learn to live within this epoch of human history and climate calamity.<sup>7</sup> The impacts of climate change are fundamentally undermining legal rights, and have the potential to undermine entire legal systems, in ways that must engage lawyers.<sup>8</sup>

This article first briefly outlines the self-governing legal profession and public interest mandate of Canadian law societies in Part II, with a focus on the Law Society of British Columbia (LSBC) given recent controversial amendments by the provincial government aimed at addressing governance failures of the profession in upholding the public interest. Part III then chronicles and engages in a comparative analysis of climate resolutions and actions taken by 15 bars, societies, and associations around the world, including relevant background, context, and precedents. These actions are then juxtaposed with the progress in Canada in Part IV, where the state of climate resolutions and action (or lack thereof) in the Canadian legal profession is analyzed.

Organizations are paying attention to, and being motivated and influenced by, climate actions and knowledge sharing across other bars, societies, and associations as the world moves closer to tipping points in Earth systems. Part IV ends with a basic primer for lawyers

---

<sup>6</sup> For an excellent synopsis of climate conscious lawyering: Brian J Preston, “Climate Conscious Lawyering” (2021) 95 *Austl LJ* 51.

<sup>7</sup> For an example of legal professionals openly conceptualizing how the legal profession should evolve to address the present and existential threat of climate change: United Nations Climate Change - Events, “Utilizing the Law as a Key Tool Toward Addressing Climate Change and Promoting Equity” (12 November 2022), online (video): [perma.cc/N6FN-ZCKP]. See also International Bar Association, “Legal Associations and Bars at COP27: What Happened in Sharm El-Sheikh and What’s Next?” (14 December 2022), online: [perma.cc/H8QT-4HFJ] [International Bar Association, “COP27”].

<sup>8</sup> As further addressed in Part IV. My thanks to the anonymous peer reviewer who eloquently framed this point.

to understand the growing significance of climate change impacts on legal rights and its potential to destabilize civilizations and undermine financial and legal systems. It concludes by identifying knowledge gaps that remain in understanding lawyers' fiduciary obligations in Canada amidst this climate crisis and offers recommendations for further research in addressing legal climate competencies as Canada enters these pivotal years in Earth's climate history.<sup>9</sup>

## II. THE SELF-GOVERNING LEGAL PROFESSION AND THE PUBLIC INTEREST MANDATE

It is a statutory privilege for lawyers to govern themselves and oversee the legal profession through a self-regulatory body. In 1797, the then-Law Society of Upper Canada (now the Law Society of Ontario) was the first to be granted self-governing status by the legislature.<sup>10</sup> This power was unprecedented at the time, as it replaced the standard practice of judicial regulation of lawyers.<sup>11</sup> The new governance structure ensured that only lawyers admitted to the Law Society of Upper Canada could practice law, subject to its own rules and regulations.<sup>12</sup> In this historical context, John Pearson noted that three essential characteristics of the self-governing profession emerged, specifically: (1) a unique combination of knowledge and skills; (2) a professed commitment to duty above self-interest or personal gain; and (3) independence from external interference in the affairs of the profession.<sup>13</sup> Eventually, self-governance of the legal profession would become standard practice across Canada.

Within each province, the legal profession is governed by a *Law Society Act* or *Legal Profession Act*<sup>14</sup> that outlines its relevant governance structure and mandate. Using the provincial jurisdiction of British Columbia to highlight the innards of these Acts, the LSBC is created and governed by the British Columbia *Legal Profession Act*, with the object and duty to “uphold and protect the public interest in the administration of justice” by:

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,

<sup>9</sup> Hoelsing Lee et al, *Climate Change 2023: Synthesis Report* (Geneva: Intergovernmental Panel on Climate Change, 2023) at 24.

<sup>10</sup> John Pearson, “Canada’s Legal Profession: Self-Regulating in the Public Interest?” (2015) 92:3 Can Bar Rev 555 at 557.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.* at 558. It should be noted that Asian and Indigenous peoples were excluded from joining the legal profession in British Columbia at this time: Working Group on Racial Equality in the Legal Profession, *Racial Equity in the Legal Profession* (Canadian Bar Association, 1999) at 3 (“Chinese, Japanese, South Asian and Aboriginal people in British Columbia were prohibited from becoming members of the Law Society of British Columbia until 1947, and 1948 for Japanese people”).

<sup>13</sup> Pearson, *supra* note 10 at 561.

<sup>14</sup> As an exception to these common titles, the Quebec statute is the *Act respecting the Barreau du Québec*, CQLR 2022, c B-1.

- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.<sup>15</sup>

Each law society in Canada includes a similar public interest mandate. In particular, the LSBC's 2021–2025 Strategic Plan affirms its mission to serve the public interest “by regulating the competence and integrity of legal service providers, promoting the rule of law and lawyer independence, and improving access to justice,” as well as its vision of promoting “a culture of innovation and inclusivity” in carrying out its regulatory functions.<sup>16</sup> These statements illustrate the LSBC's shared understanding of its public interest mandate and its strategic priorities in that regard.

Nevertheless, the ability of the LSBC to effectively carry out this public interest mandate has received considerable scrutiny over the years, having been examined both internally and externally, particularly in the context of the access to justice crisis. In 2012, the LSBC conducted a third party review which commissioned a Governance Review Task Force and Watson Advisors to evaluate its governance structure and practices.<sup>17</sup> The extensive list of recommendations from that report included items relating to the public interest mandate, emphasizing that “in order to maintain [the legal profession's self-regulatory] privilege, the Benchers must ensure the public interest always comes first and this requires the best possible governance framework.”<sup>18</sup> That same year, the LSBC created a Legal Services Providers Task Force which recommended that, in order to protect and uphold the public interest, the LSBC should absorb the regulation of notaries, provide certification for paralegals, and create a regulatory framework for other legal service providers.<sup>19</sup> In 2019, the LSBC then erected a Futures Task Force to survey the future of legal practice and regulation, undoubtedly resting on the proposition that “[a] legal profession that is incapable of achieving outcomes that resonate with what society expects is one in which the public will eventually lose confidence.”<sup>20</sup>

In July 2021, the LSBC commissioned Harry Cayton, an advisor on professional regulation and governance and former Chief Executive Officer of the United Kingdom's Professional Standards Authority (PSA), to conduct an independent review of the governance structure of the LSBC.<sup>21</sup> The Cayton Report was subsequently published in November 2021,

<sup>15</sup> *Legal Profession Act*, SBC 1998, c 9, s 3.

<sup>16</sup> Law Society of British Columbia, “Strategic Plan 2021–2025,” online (pdf): [perma.cc/6HSU-BWZ2].

<sup>17</sup> The Law Society of British Columbia, *Final Report of the Governance Review Task Force: Recommendations and Results* (Vancouver: Law Society of British Columbia, 2012) at 10.

<sup>18</sup> *Ibid* at 5.

<sup>19</sup> The Law Society of British Columbia, *Final Report of the Legal Service Providers Task Force* (Vancouver: Law Society of British Columbia, 2013) at 6.

<sup>20</sup> The Law Society of British Columbia, *Anticipating Changes in the Delivery of Legal Services and the Legal Profession: The Final Report of the Futures Task Force* (Vancouver: Law Society of British Columbia, 2020) at 4.

<sup>21</sup> Harry Cayton, *Report of a Governance Review of the Law Society of British Columbia* (November 2021) at 32, online (pdf): [perma.cc/TRH3-SRRS] [Cayton, *Law Society*]. See also Professional Standards Authority, “Our Standards,” online: [perma.cc/XJA8-WEL9]. Cayton had previously been commissioned by the British Columbia government and British Columbia Ministry of Health in 2018 to review British Columbia's health sector, after a series of complaints against professional health regulators (Harry Cayton, “An Inquiry into the Performance of the College of Dental Surgeons of British Columbia and the Health Professions Act” (December 2018), online (pdf): [perma.cc/8U2P-B55N]).

which evaluated both the strengths and weaknesses of the LSBC's governance.<sup>22</sup> Several weaknesses identified in the Cayton Report directly engaged with the public interest mandate which are worth noting here. In particular, Cayton found that there was a lack of public engagement and consideration of public interests in decision-making, as well as a lack of transparency, conflicts of interest, and disregard for "strategic objectives in favour of the interests of [the] members."<sup>23</sup> Cayton found that the LSBC often does not articulate how it understands and applies the public interest mandate in designing and implementing its policies, posing interpretative difficulties.<sup>24</sup> This ambiguity can give rise to confusion and skepticism when it is not obvious how a policy is meant to serve the public interest, especially in relation to the LSBC's function of "supporting and assisting lawyers in fulfilling their professional duties," as provided in section 3(e) of the *Legal Profession Act*.<sup>25</sup> Areas of insufficient transparency included Benchers' confidential advice to lawyers and their declaration of interests.<sup>26</sup> Conflicts of interest also arose from various sources, including: (1) the electoral process under which elected Benchers serve a short term of two years and practically are only held accountable to voting members of the LSBC rather than the public interest;<sup>27</sup> and (2) the voting process in the annual general meeting (AGM) itself as it involves lawyers, not ordinary members of the public whose interest the LSBC is required to protect.<sup>28</sup> The protection of the public interest, thus, has proven to be a challenging task for the LSBC given its governance structure. The ways in which such interest is considered and upheld by the LSBC are often wanting and in conflict with professional self-interest.

In March 2022, the British Columbia Ministry of Attorney General announced its intention to establish a single regulator over the legal professions, including lawyers, notaries public, and paralegals, in an effort to "modernize the regulatory framework for legal service providers."<sup>29</sup> The new single regulator would replace the current LSBC and its board would involve a different composition of elected and appointed directors under new procedures.<sup>30</sup> Importantly, with an "enhanced focus on [the] public interest," a central objective of establishing the single regulator is to achieve this separation by rejecting the membership based character of the current regulators, where members have the power to introduce, approve, or oppose directives.<sup>31</sup> Instead of its members, the new regulator would be held accountable to the public, to the extent that it would only have an advocacy role under the public interest mandate.<sup>32</sup>

The Ministry's proposal considered the Cayton Report, including its findings on potential conflicts of interest in the LSBC as a membership organization and on the composition of

---

<sup>22</sup> Cayton, *Law Society*, *ibid.*

<sup>23</sup> *Ibid* at 30.

<sup>24</sup> *Ibid* at 20.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid* at 24, 29.

<sup>27</sup> *Ibid* at 15, 18.

<sup>28</sup> *Ibid* at 14.

<sup>29</sup> British Columbia, *Legal Professions Regulatory Modernization: Ministry of Attorney General Intentions Paper* (Victoria: Minister of Attorney General, September 2022) at 1. The single regulator model is also similarly found in the province of Ontario.

<sup>30</sup> *Ibid* at 3–11.

<sup>31</sup> *Ibid* at 17.

<sup>32</sup> *Ibid.*

Benchers in the current governance structure.<sup>33</sup> The Ministry also acknowledged the LSBC's adoption of many of Cayton's recommendations.<sup>34</sup> At the LSBC's Bencher meeting on 10 March 2023, Don Avison, KC, Executive Director and Chief Executive Officer of the LSBC, discussed the likely implementation of the single legal regulator initiative and indicated that LSBC staff are currently preparing for the implementation and a "period of transition."<sup>35</sup> Leading up to and since Bill 21 received Royal Assent on 16 May 2024, amending the *Legal Profession Act* to bring lawyers, notaries public, and paralegals under this single regulator, claims of violations as to lawyer independence in the province reached a fevered pitch.<sup>36</sup> The LSBC and Trial Lawyers Association of British Columbia (TLABC) have subsequently filed a lawsuit arguing such amendments are unconstitutional.<sup>37</sup> Many other organizations and individuals have publicly weighed in on the debate as to whether the effect of the Bill 21 amendments will finally ameliorate the access to justice crisis or wreak havoc on the independence of the legal system.<sup>38</sup> The LSBC and TLABC sought injunctive relief to prevent the transitional provisions under the *Legal Profession Act* from causing immediate and irreparable harm to the public interest in the administration of justice, which was denied on 17 July 2024.<sup>39</sup> It is anticipated that the first stage of the constitutional challenge advanced by the LSBC and TLABC will be heard in early 2025.<sup>40</sup>

This recent history of the LSBC functions as a reminder that one of the original justifications for a self-regulatory legal profession is to allow for the profession to better serve the public interest in the administration of justice, and how that mandate should be prioritized. The mandate is about, among other things, "a professed commitment to duty above self-interest or personal gain."<sup>41</sup> Courts have provided some guidance on interpreting the LSBC's public interest mandate. The Supreme Court of Canada in *Law Society of British Columbia v. Trinity Western University* held that the LSBC's "overarching statutory duty: upholding and maintaining the public interest in the administration of justice ... necessarily includes upholding a positive public perception of the legal profession."<sup>42</sup> Thus, maintaining the public interest and upholding a positive public view of the profession — including ensuring competency and protecting the rights and freedoms of all persons per section 3 of the *Legal Profession Act* — is a statutory and legislated concern for the legal profession.

<sup>33</sup> *Ibid* at 11.

<sup>34</sup> *Ibid*.

<sup>35</sup> Law Society of British Columbia, "10 March 2023 Bencher Meeting Minutes" (28 April 2023) at 6, online (pdf): [perma.cc/PX26-NJ42].

<sup>36</sup> Bill 21, *Legal Professions Act*, 5th Sess, 42nd Parl, British Columbia, 2024 (third reading 15 May 2024). For a list of the Law Society of BC's public statements and responses to Bill 21: Law Society of British Columbia, "Updates and Timeline: Single Legal Regulator Legislation" (9 July 2024), online: [perma.cc/92D4-VUZF].

<sup>37</sup> *Law Society of British Columbia v British Columbia (Attorney General)* (17 May 2024), Vancouver S-243258 (BCSC) (Statement of claim, *Law Society of British Columbia*).

<sup>38</sup> See e.g. Aidan Macnab, "BC's Bill 21 Aids Access to Justice, Sacrifices Independence of Legal Profession, Say Lawyers," *Canadian Lawyer* (6 May 2024), online: [perma.cc/K9RR-74UB]; Brook Greenberg, "Comment: B.C. Embeds Mental Health Stigma and Discrimination in Legal Regulation," *Times Colonist* (9 May 2024), online: [perma.cc/U7VD-XM6R]; Jamie Maclaren, "B.C.'s Legal Professions Act Moves the Dial on Access to Justice," *Vancouver Sun* (20 June 2024), online: [perma.cc/WZ7G-NTYK].

<sup>39</sup> *Law Society of British Columbia v British Columbia*, 2024 BCSC 1292.

<sup>40</sup> Law Society of British Columbia, "Law Society Proceeds with Litigation Against Legal Professions Act After Court Declines to Grant Injunctive Relief" (17 July 2024), online: [perma.cc/K6UD-QDY4].

<sup>41</sup> Pearson, *supra* note 10 at 561.

<sup>42</sup> 2018 SCC 32 at para 40 [emphasis in original].

The access to justice challenges and findings in the Cayton Report were used by the province to justify the eventual restructuring of the governing regulation of the British Columbia legal profession, to some lawyers' great chagrin and doubt as to such motivations. As the amendments to the *Legal Profession Act* in British Columbia begin to be litigated through the courts, the Canadian legal profession as a whole may need to take stock on how it manages its public interest mandate in light of the existential threat of climate change, as discussed further in Part V, and as seen throughout other bars and law societies around the world in this next Part III.

### III. CLIMATE ACTION FROM BARS, SOCIETIES, AND ASSOCIATIONS AROUND THE WORLD

Climate change is increasingly impacting standards of legal competency in not just the familiar terrain of environmental law, but progressively across all fields of law. While previous opponents to climate initiatives involving the legal profession have often portrayed climate resolutions as social agendas or political tools,<sup>43</sup> the discussion has changed dramatically in the face of limited time, greater public consciousness, and tangible evidence. The connection between the legal profession's public interest mandate and public demands for climate change mitigation, adaptation, and greater climate competency is becoming more evident as bars and associations around the world begin to develop initiatives to raise competencies and prepare for the great disruptor of climate change.

This Part provides a brief snapshot of the state of climate resolutions and climate actions taken to date from bars, societies, and associations around the world, including specifically from the International Bar Association, American Bar Association (and state bars of Oregon, California, and New York), Conseil National des Barreaux (France), Consiglio Nazionale Forense (Italy), Japan Federation of Bar Associations, Law Society of England and Wales, Law Council of Australia, General Council of the Bar (England and Wales), Council of Bars and Law Societies of Europe, New Zealand Law Society, Ordem dos Advogados do Brasil, and Law Society of Northern Ireland. These bars, societies, and associations have all passed climate resolutions, adopted climate statements, created special committees and task forces, or issued climate change guidelines for their members, acknowledging that the legal profession has a relevant role to play in addressing climate change locally, nationally, and internationally.

---

<sup>43</sup> See e.g. Steve Major, "Counterpoint: The Case Against the Proposed CBA Resolution for 'Climate Justice,'" *CBA/ABC National* (26 May 2020), online: [perma.cc/XSH2-B4R7] [Major, "Counterpoint"].



**TABLE 1:  
CLIMATE ACTION BY BARS, SOCIETIES,  
AND ASSOCIATIONS AROUND THE WORLD**

<b>Organization</b>	<b>Action</b>	<b>Date</b>
International Bar Association	Created Climate Change Justice and Human Rights Task Force	November 2012
	Adopted Climate Crisis Statement	5 May 2020
	Multiple Continuing Legal Education Programs, Reports, and Issuance of Model Climate Change Statute	2012-Present
American Bar Association	Updated Sustainable Development Resolution (from 1991 and 2003)	12–13 August 2013
	Updated Climate Change Resolution (from 2008)	12–13 August 2019
	Adopted Environmental Justice Resolution	9–10 August 2021
Conseil National des Barreaux les Avocats (France)	Signed Joint G7 Climate Change Resolution	17 May 2021
Consiglio Nazionale Forense (Italy)	Signed Joint G7 Climate Change Resolution	17 May 2021
Japan Federation of Bar Associations	Signed Joint G7 Climate Change Resolution	May 17 2021
	Issued Climate Crisis Declaration	5 October 2021
Law Society of England and Wales	Signed Joint G7 Climate Change Resolution	17 May 2021
	Adopted Climate Change Resolution	28 October 2021
	Issued Milestone Climate Change Guidance for Members	19 April 2023
Law Council of Australia	Adopted Climate Change Statement and Policy	27 November 2021
General Council of the Bar (England and Wales)	Created Bar Sustainability Network	2021
	Created Climate Crisis Working Group	April 2022
Council of Bars and Law Societies of Europe	Created Environment and Climate Change Committee	22 February 2022
	Adopted Climate Change Statement	16 February 2023
New Zealand Law Society	Created Climate Change Law Subcommittee	March 2022
Ordem dos Advogados do Brasil	Created Special Committee on Climate Change and Environmental Disasters	8 March 2022
Law Society of Northern Ireland	Adopted Climate Change Resolution	20 October 2022

These legal bars, societies, and associations are listed in chronological order by organization based on their first overt action towards climate literacy, competency, or action for the legal profession, and offer important insights and precedents for other bars, societies, and associations to consider moving forward.

## A. INTERNATIONAL BAR ASSOCIATION

In 2012, the International Bar Association (IBA) implemented a Climate Change Justice and Human Rights Task Force.<sup>44</sup> Recommendations put forth by the Task Force over the years included the creation of two reports: “Achieving Justice and Human Rights in an Era of Climate Disruption” (2014) and “Model Statute for Proceedings Challenging Government Failure to Act on Climate Change” (2020).<sup>45</sup> Both were focused on competencies and actions lawyers could take to advance climate justice within society.

On 5 May 2020, the IBA released a Climate Crisis Statement calling on lawyers to discuss climate crisis issues with clients, participate in future legislative and policy reform related to the climate crisis, and take steps to reduce their own environmental footprint in the practice.<sup>46</sup> A summary of the IBA statement includes encouraging lawyers to:

1. “Act in accordance with professional conduct rules” and rule of law by considering taking a climate conscious approach<sup>47</sup> in the daily legal practice, advising clients of risks involved when acting contrary to climate goals, encouraging corporate clients to disclose risks arising from the climate crisis and contribute to climate dispute resolutions, with an emphasis on pro-bono work for those most negatively affected by the climate crisis.<sup>48</sup>
2. “Engage with current and future legislative and policymaking efforts to address the climate crisis.”<sup>49</sup>

---

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.* See also International Bar Association Climate Change Justice and Human Rights Task Force, *Achieving Justice and Human Rights in an Era of Climate Disruption* (London: International Bar Association, 2014); International Bar Association Climate Change Justice and Human Rights Task Force, *Model Statute for Proceedings Challenging Government Failure to Act on Climate Change* (London: International Bar Association, 2020).

<sup>46</sup> International Bar Association, “Climate Crisis Statement” (5 May 2020), online (pdf): [perma.cc/73BE-GU6N] [International Bar Association, “Crisis Statement”].

<sup>47</sup> Terms such as “climate conscious” and “climate competent” are used throughout this article, the meaning of which is dependent on the context deployed within that particular bar, society, and association, and its jurisdiction, but there has been evident convergence between these terms. The Honourable Judge Brian J Preston, Chief Judge of the Land and Environment Court of New South Wales, defines climate *conscious* lawyering as “an active awareness of the reality of climate change and how it interacts with daily legal problems,” requiring lawyers to recognize the impact of climate issues in everyday legal practice and actively consider climate crisis consequences: Preston, *supra* note 6 at 52. He also notes: “A climate conscious approach demands, first, actively identifying the intersections between the issues of the legal problem or dispute and climate change issues and, second, giving advice and litigating or resolving the legal problem or dispute in ways that meaningfully address the climate change issues” (*ibid.*). See also Kim Bouwer, “Net Zero Rule of Law: Climate Consciousness and Legal Education” (10 March 2022), online (blog): [perma.cc/D9PE-36LU]. Climate *competent* lawyering has been used interchangeably with climate conscious lawyering by advocates. John Dernbach, Irma Russell, and Matthew Bogoshian note how “climate competence requires lawyers to have a basic understanding of how climate change is transforming, and will continue to transform, the physical world. It also requires lawyers to understand how climate change is affecting, and will likely further affect, law and law practice, and to integrate that knowledge into their law practice.” (John C Dernbach, Irma S Russell & Matthew Bogoshian, “The Lawyer’s Duty of Competence in a Climate-Imperiled World” (2024) 92:4 UMKC L Rev 859 at 871). See also David Estrin, “Climate Conscious Lawyering” (3 February 2021), online (blog): [perma.cc/N9C7-FS3A].

<sup>48</sup> International Bar Association, “Crisis Statement,” *supra* note 46 at 2.

<sup>49</sup> *Ibid.*

3. “Support and engage with the [United Nations Sustainable Development Goals],” and use the rule of law to address climate change, “which all lawyers should already respect and promote.”<sup>50</sup>
4. Recommend “that bar associations, law societies and similar bodies” worldwide educate about the climate crisis and develop educational tools for qualified lawyers.<sup>51</sup>
5. “[A]s influential figures and thought leaders within society, to live responsibly in the face of the climate crisis” in their personal and professional lives including taking steps to reduce their own environmental footprint and support these changes in the workplace.<sup>52</sup>

Jonathan Cocker, a Toronto-based partner at Borden Ladner Gervais LLP who worked on the IBA statement, noted that lawyers should “move forward more proactively” and could ally with other professional bodies to promote initiatives to combat the climate crisis, such as those in the scientific, academic, or medical fields.<sup>53</sup> The IBA statement has been referenced in several subsequent climate resolutions and reports across jurisdictions.

On 9 May 2022, the IBA released another publication titled “Legal Aspects of Climate Change Adaptation.”<sup>54</sup> The report focused on adaptation to climate change as one of the pillars of the Paris Agreement,<sup>55</sup> with respect to three key areas: climate change-related migration, food security, and technology. The report recognized that populations displaced by adverse effects of climate change currently suffer “a lack of international legal recognition.”<sup>56</sup> It encouraged the development of laws and policies to address climate displacement risks and explored the potential of regular labour migration.<sup>57</sup> The report also recommended developing a global governance regime for sustainable development to protect the right to food, taking into account the complexity of interrelated policies on climate, food, energy, and trade.<sup>58</sup> Finally, it recommended that institutions and policymakers consider incorporating technology transfer into standards for green loans, adaptation tax credits, private lending, and financial reporting, as well as developing robust accounting measures for climate finance.<sup>59</sup>

The IBA has led panel discussions on the role of the legal profession in climate change, including at COP27 in 2022, and at COP28 in 2023, along with the American Bar

---

<sup>50</sup> *Ibid* at 3.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> Katie Kouchakji, “How the Climate Crisis is Changing the Legal Profession” (28 September 2021), online (blog): [perma.cc/7RVT-VRTS].

<sup>54</sup> International Bar Association, “IBA Report on Climate Adaptation Focuses on Legal Aspects to Bring About Successful Implementation” (9 May 2022), online: [perma.cc/E5K4-8E3L].

<sup>55</sup> *Paris Agreement*, being an Annex to the *Report of the Conference of the Parties on its Twenty-First Session, held in Paris from 30 November to 13 December 2015: Addendum Part Two: Action Taken by the Conference of the Parties at its Twenty-First Session*, UNFCCC, 2015, UN Doc FCCC/CP/2015/10/Add.1 (entered into force 4 November 2016).

<sup>56</sup> The IBA Working Group on Climate Change Adaptation, *Legal Aspects of Climate Change Adaptation* (London: International Bar Association, 2021) at 28.

<sup>57</sup> *Ibid* at 69–70.

<sup>58</sup> *Ibid* at 6–125.

<sup>59</sup> *Ibid* at 1–190.

Association (ABA), Ordem dos Advogados do Brasil, and the Law Society of England and Wales.<sup>60</sup> At the COP28 panel were active discussions on the legal capacity building across nations, regulatory steps taken by bars and law societies regarding climate change, the rise of climate conscious lawyering, and the need for assembling best practice examples on advising clients on climate-related issues.<sup>61</sup>

## B. AMERICAN BAR ASSOCIATION

While the ABA did not adopt a climate resolution addressing the role of the legal profession until 2019, the ABA House of Delegates adopted its first climate resolution in February 2008, which resolved that the ABA urge the United States government and Congress to enact a federal cap-and-trade legislation to fight climate change.<sup>62</sup> The ABA House of Delegates then in 2011 passed a resolution calling for policy discussions on climate change with federally-recognized Indigenous nations,<sup>63</sup> and provided a conceptual framework on sustainable development that is designed to meet Goal 13 of the United Nations Sustainable Development Goals, which encourages taking urgent action to combat climate change and its impacts.<sup>64</sup>

On 12–13 August 2019, the ABA issued subsequently updated and more expansive resolutions that include the role of the legal profession.<sup>65</sup> The House of Delegates voted unanimously in favour of a further climate resolution, Resolution 111, which has four main parts. Namely, it urged: (1) federal, state, local, territorial, and tribal governments, and the private sector, to recognize their obligation to address climate change and take action to reduce GHG emissions to net-zero or below as soon as possible; (2) Congress to enact legislation that would utilize legal mechanisms to address climate change; (3) the United States government to engage in international discussions and take part in agreements to reduce GHG emissions and adapt to climate change; and (4) lawyers to take on pro bono activities to reduce GHG emissions and to advise clients of risks and opportunities related to climate change.

Thus, while the 2008 version only urged for action on the part of the United States government and Congress, Resolution 111 explicitly called for lawyers to play a role in efforts to reduce climate change and to advise clients of climate-related risks and opportunities. Further, this updated 2019 Resolution 111 differed in other ways. It urged for the adoption of “a wide range of legal measures to both reduce greenhouse gas emissions and to adapt to climate change.”<sup>66</sup> Also, rather than solely addressed to the federal government, it addressed federal, state, local, territorial, and tribal governments, as well as the private

---

<sup>60</sup> International Bar Association, “Law Associations to Co-Host Event at COP27: The Role of the Legal Profession in the Climate Crisis,” (18 October 2022), online: [perma.cc/M5W8-A2A8].

<sup>61</sup> International Bar Association, “Law Associations to Hold Half Day Event at COP28 on 8 December 2023” (14 November 2023), online: [perma.cc/44R8-QQQH].

<sup>62</sup> American Bar Association, “Resolution 111” (12–13 August 2019) at 1, online (pdf): [perma.cc/S3GS-LX8G] [ABA, *Resolution 111*]; American Bar Association, “Resolution 109” (11 February 2008), online (pdf): [perma.cc/2PSB-X4TZ].

<sup>63</sup> ABA, *Resolution 111*, *ibid* at 16, 9.

<sup>64</sup> American Bar Association, “Resolution 105” (12–13 August 2013), online (pdf): [perma.cc/BA7T-W8JK]; United Nations Department of Economic and Social Affairs, “Goal 13: Take Urgent Action to Combat Climate Change and its Impacts,” online: [perma.cc/P96V-BQHS].

<sup>65</sup> ABA, *Resolution 111*, *supra* note 62.

<sup>66</sup> *Ibid*.

sector. It also used updated evidence from the scientific community on the driving factors behind climate change and its consequences.

At its 2021 AGM, the ABA then adopted Resolution 513 to build and support Resolution 111 on climate change by advancing environmental justice principles through legislation and policy.<sup>67</sup> It further urged the legal community to include and consider the perspectives of vulnerable populations as stakeholders in environmental justice decision-making and implementation. Resolution 513 was referenced as evidence of the ABA's commitment to environmental justice in a letter to the Biden administration expressing its support for Resolution 48/13, a measure adopted by the United Nations Human Rights Council that "for the first time recognizes having a clean, healthy and sustainable environment as a human right."<sup>68</sup>

Members of the ABA Section of Environment, Energy and Resources (SEER) were given observer status to attend COP26 in 2021.<sup>69</sup> Members saw this as a step forward in turning Resolution 111 into action, as one aim of the resolution was for the government to engage in international discussions on climate change. SEER had the goal for COP27 to have greater participation of law organizations and to determine ways to make law an integral part of the discussion. COP27 was the first time the ABA attended the conference for the purpose of advancing the role of the legal profession amidst the climate crisis, and the ABA indicated that it would not be the last.<sup>70</sup>

## 1. STATE BARS

It is important to note the activities of state bars in the United States. The ABA at COP27 noted five state bars that were actively taking various climate actions: Maryland, Washington DC, Hawaii, Oregon, and New York.<sup>71</sup> The latter two bars and the State Bar of California, each of whose activities are publicly available, are included here.

In 2009, the Oregon State Bar was the first state bar regulator to add a Sustainable Future Section devoted to the relationship between sustainability and the practice of law, acknowledging the "daunting challenges of climate change."<sup>72</sup> The Sustainable Future Section aimed to collaborate with the Oregon State Bar on the implementation of sustainable practices and provide continuing legal education programs and resources on sustainability topics, including an annual conference for lawyers committed to addressing the climate emergency. Further, in October 2009, the Board of Governors added the goal of sustainability to the Oregon State Bar bylaws in article 26 (now article 20).<sup>73</sup> The bylaw

---

<sup>67</sup> American Bar Association, "Resolution 513" (9–10 August 2021), online (pdf): [perma.cc/3W6M-N7JR].

<sup>68</sup> Amanda Robert, "Should the UN Establish a Right to a Healthy Environment? ABA Urges US to Vote Yes," *ABA Journal* (29 March 2022), online: [perma.cc/X7E7-2P6R].

<sup>69</sup> Amanda Robert, "ABA Observers Will Share Their Takeaways from the UN Climate Change Conference in Glasgow," *ABA Journal* (24 November 2021), online: [perma.cc/2D6P-7CSH].

<sup>70</sup> John C Dernbach, Tracy D Hester & Amy L Edwards, "ABA Encourages Climate-Conscious Lawyering at COP27," *ABA News* (3 March 2023), online: [perma.cc/3E25-CSBW].

<sup>71</sup> International Bar Association, "COP27," *supra* note 7.

<sup>72</sup> Oregon State Bar, "Sustainable Future Section," online: [perma.cc/M6K8-WVB7].

<sup>73</sup> Oregon State Bar, "Oregon State Bar Bylaws," online: [perma.cc/2G35-QJRU].

defined sustainability as the ability to meet present needs without compromising the future generation's ability to meet their own needs.<sup>74</sup>

The State Bar of California implemented its Lawyers Eco-Pledge and Law Office Sustainability Policy in 2008, which recognized the contribution of the legal profession to natural resource consumption and waste production, creating a substantial impact on the environment.<sup>75</sup> The policy pledged a commitment to educating lawyers and law firms about sustainable practices, including reducing paper, water, and energy usage, and using sustainable products and services, and provided a voluntary policy that California lawyers were invited to sign.<sup>76</sup>

Finally, the New York State Bar Association indicates on its website that it has established a Global Climate Change Committee educating lawyers and clients about the threat of climate change and its accompanying legal issues and implications, and while promoting the goal of decarbonizing New York's economy.<sup>77</sup>

### C. G7 RESOLUTION ON CLIMATE CHANGE

On May 17, 2021, representatives of the legal profession from four member countries of the Group of Seven (G7) signed a resolution on climate change.<sup>78</sup> Signatories to the resolution include the Law Society of England and Wales, Conseil National des Barreaux (France), Japan Federation of Bar Associations, and Consiglio Nazionale Forense (Italy). The resolution called on governments of the signatory countries to “[b]uild awareness in the legal profession of climate change and [to] encourage firms to raise awareness to their clients and to take specific action” regarding emission reduction and in support of the relevant 2050 net-zero targets.<sup>79</sup> The resolution also requested the respective governments to “[e]ncourage promulgation of training materials and professional guidelines developed by bars and law societies to support” law firms and legal professionals “in developing their organisational internal policies on sustainability and [emission reduction].”<sup>80</sup>

### D. JAPAN FEDERATION OF BAR ASSOCIATIONS

On 5 October 2021, the Japan Federation of Bar Associations, the national regulator of lawyers, issued a Declaration to Aim for a Sustainable Society Averting Climate Crisis.<sup>81</sup> The Declaration highlighted the increase of extreme weather conditions associated with climate change, and recognized the climate crisis as “a human rights issue of extreme gravity” that

---

<sup>74</sup> *Ibid* at 31.

<sup>75</sup> California Bar Journal, “Lawyers Urged to Sign the Eco-Pledge” (7 November 2008), online: [perma.cc/7VPG-MNTW].

<sup>76</sup> State Bar of California, “State Bar of California Lawyers Eco-Pledge and Law Office Sustainability Policy,” online (pdf): [perma.cc/ZR9U-TVQQ].

<sup>77</sup> New York State Bar Association, “Global Climate Change Committee,” online: [perma.cc/GR4F-PTVF].

<sup>78</sup> Japan Federation of Bar Associations, “G7 Bars Meeting: Resolutions on Climate Change” (17 May 2021), online: [perma.cc/29JF-3D4Y] (signed by the United Kingdom, France, Japan, and Italy).

<sup>79</sup> *Ibid*.

<sup>80</sup> *Ibid*.

<sup>81</sup> Japan Federation of Bar Associations, “Declaration to Aim for a Sustainable Society Averting Climate Crisis” (5 October 2021), online: [perma.cc/H3QT-6KC9].

requires collective action.<sup>82</sup> Mindful of the energy and environmental policies of the Japanese government with the goal to achieve carbon neutrality by 2050 in accordance with the Paris Agreement, the Declaration called on the government to provide details in legislation regarding GHG emission reduction and the transition to renewable energy, and to support a just transition for community and industry stakeholders.<sup>83</sup> In addition, the Declaration expressed the Japan Federation of Bar Associations' commitment to reduce energy consumption in its operations.<sup>84</sup>

## E. LAW SOCIETY OF ENGLAND AND WALES

The Law Society of England and Wales, which is the professional association for solicitors in the jurisdiction, released a climate change resolution in October 2021.<sup>85</sup> The resolution referred to the United Kingdom's ratification of the Paris Agreement, the IPCC's call for "immediate, rapid and large-scale" emission reduction in its 2021 report, and the IBA's 2020 Climate Crisis Statement.<sup>86</sup> The resolution vowed to "develop plans and take rapid action" relying on science-based reduction targets, and to provide education and guidance to solicitors on climate change and its relevance in legal practice.<sup>87</sup> It also urged solicitors to advise clients of climate-related risks and opportunities and approach any legal matter with reference to its climate impact, and also urged law firms and organizations to undertake and report on measures to reduce emissions in their operations.<sup>88</sup> Moreover, the resolution encouraged the legal industry to take "a holistic and proactive approach" in addressing climate change, in relation to legal practice areas, pro bono activities, access to justice, and engagement with policy and legislation.<sup>89</sup> Prior to the resolution, in July 2022, the Law Society of England and Wales welcomed the High Court's ruling that the British government must revise its net-zero strategy to demonstrate how key emissions reduction targets will be met.<sup>90</sup>

Significantly, on 19 April 2023, in accordance with its climate change resolution, the Law Society of England and Wales published milestone guidance for its solicitors to understand and assess the relevance of climate change in legal practice.<sup>91</sup> The guidance emphasized that solicitors will "need to understand and measure the [GHG] emissions associated with [their] business operations to identify the primary source of emissions" properly.<sup>92</sup> Furthermore, the guidance provided explanations of science-based reduction targets, climate change risks, and the current climate disclosure requirements for organizations, with solicitors' professional

---

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> Law Society of England and Wales, "Creating a Climate-Conscious Approach to Legal Practice" (28 October 2021), online [perma.cc/4957-3B3T].

<sup>86</sup> The Law Society of England and Wales, "Climate Change Resolution" (2021) at 2, online (pdf): [perma.cc/4E6N-GS3D].

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> Law Society of England and Wales, Press Release, "Rule of Law Pivotal to Climate Action" (20 July 2022), online: [perma.cc/63BT-LZEH]. See also Damien Gayle, "Court Orders UK Government to Explain How Net Zero Policies Will Reach Targets," *The Guardian* (18 July 2022), online: [perma.cc/WPX9-SA9F].

<sup>91</sup> Law Society of England and Wales, "The Impact of Climate Change on Solicitors" (19 April 2023), online: [perma.cc/T4J8-AHQ7].

<sup>92</sup> *Ibid.*, s 1.1.

duties, functions, and strategies in undertaking an advisory role.<sup>93</sup> In particular, the guidance warned against greenwashing, stating that “marketing, pitch and other materials that communicate [the] organisation’s approach to climate change should not mischaracterise or overstate [the] organisation’s targets, or progress made against them,” as this could lead to regulatory sanctions.<sup>94</sup>

## F. LAW COUNCIL OF AUSTRALIA

On 27 November 2021, the Law Council of Australia (LCA) released its Climate Change Policy (the Policy), which addressed the impact of climate change and the LCA’s role in educating legal professionals about the implications of climate change.<sup>95</sup> The Policy recognized the role of legal professionals in advising clients about the legal implications related to climate change and emphasized lawyer participation in the development of mitigation and adaptation measures and in promoting the rule of law. The Policy further addressed the legal implications of climate change, including changing legal demands, increased climate litigation, the need for education and skill development, and operational considerations such as reducing the legal profession’s own environmental footprint.<sup>96</sup>

The Policy is consistent with the LCA’s Strategic Plan 2021–2026, which consists of four main objectives: championing the Australian legal profession both federally and internationally, safeguarding the rule of law, advancing the integrity of the legal profession, and advocating on behalf of the LCA’s Constituent Bodies.<sup>97</sup> In the context of climate change, the Strategic Plan required the LCA and its constituents to consider these four objectives.<sup>98</sup> Additionally, the Policy referenced compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* as an international framework with legal implications for climate change.<sup>99</sup> The LCA referenced the IBA’s Climate Crisis Statement in their accompanying Legal Implications of Climate Change: Background Paper.<sup>100</sup>

On 27 July 2022, the Australian federal government introduced its Climate Change Bill 2022 and the LCA made a submission to the Senate Environment and Communications Legislation Committee’s inquiry into the bill.<sup>101</sup> This submission was informed by the LCA’s Climate Change Policy, which included a commitment to advocate for federal climate change legislation on behalf of the legal profession.<sup>102</sup> Of note, the New South Wales Young Lawyers, the “largest body of young and newly practising lawyers ... and law students, in

---

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*, s 1.5.

<sup>95</sup> Law Council of Australia, “Climate Change Policy: Policy Statement” (27 November 2021) at 3–4, online (pdf): [perma.cc/V4T4-739K] [Law Council of Australia, “Climate Policy”].

<sup>96</sup> *Ibid.* at 8–9.

<sup>97</sup> Law Council of Australia, “Strategic Plan 2021–2026” (9 July 2021), online: [perma.cc/8U7H-PMMF].

<sup>98</sup> Law Council of Australia, “Climate Policy,” *supra* note 95 at 13.

<sup>99</sup> *Ibid.* at 6; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/61/53 (2007) [UNDRIP].

<sup>100</sup> Law Council of Australia, *Legal Implications of Climate Change* (Braddon, Austl: Law Council of Australia, 2021) at 131.

<sup>101</sup> Law Council of Australia, “Climate Change Bill 2022 (Cth) and Climate Change (Consequential Amendments) Bill 2022 (Cth),” online: [perma.cc/Z3K3-SG3N].

<sup>102</sup> “Law Council of Australia, “Climate Policy,” *supra* note 95 at 1–10.



Australia,” released their own Climate Change and the Law Policy Statement on 1 November 2019.<sup>103</sup>

### G. GENERAL COUNCIL OF THE BAR (ENGLAND AND WALES)

The General Council of the Bar (the Bar Council), which is the professional association for barristers in England and Wales, recognized the climate crisis as one of its policy issues and that it is the legal profession’s duty to “join the global effort” to address climate change.<sup>104</sup> The Bar Council has resolved to “support all barristers’ chambers in achieving Net Zero, with an expectation that all sets with 20 members or more will have done so by 2030 at the latest.”<sup>105</sup> To achieve this, the Bar Council launched the Bar Sustainability Network in 2021 to help legal professionals transition to “a more sustainable way of working.”<sup>106</sup> The Bar Council has taken specific steps in its operations, such as sourcing renewable electricity and monitoring and reducing waste, to illustrate its environmental commitment to achieve net-zero, reduce adverse environmental impacts, and ensure regulatory compliance.<sup>107</sup>

The Bar Council also established a Climate Crisis Working Group in April 2022, as part of its Pro Bono and Social Responsibility Committee, to provide support and practical solutions to legal professionals in achieving net-zero emissions and tackling the climate crisis.<sup>108</sup>

### H. COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE

On 16 February 2023, the Council of Bars and Law Societies of Europe (CCBE), representing over one million European lawyers from 31 member countries and 11 associate and observer countries, issued a statement setting out its commitments to addressing climate change and advising its members on this urgent matter.<sup>109</sup>

The CCBE outlined how the statement is motivated by Article 1 of the Framework Convention on Climate Change, the ratification of the Paris Agreement by the European Union, and various court and tribunal decisions regarding climate change matters.<sup>110</sup> The CCBE stated its commitment to develop goals aimed at: (1) taking consideration and action relevant to its own contribution to global warming; (2) encouraging bar members to create their own committees to take action in mitigating climate change; and (3) providing guidance and education to lawyers on how to take into account the impact of their legal practice on the climate crisis.<sup>111</sup> Additionally, the CCBE recommended ways in which bars and law societies can create a “climate conscious legal practice” by undertaking to provide continuing legal education on matters related to climate change, advising clients about disclosures of climate-

<sup>103</sup> The Law Society of New South Wales Young Lawyers, “Climate Change and the Law: Policy Statement” (1 November 2019), online (pdf): [perma.cc/MCR9-VMKH].

<sup>104</sup> The Bar Council, “Climate,” online: [perma.cc/QRU9-9P93].

<sup>105</sup> *Ibid.*

<sup>106</sup> The Bar Council, “Bar Sustainability Network,” online: [perma.cc/JE6B-GSXS].

<sup>107</sup> The Bar Council, “The Bar Council’s Environmental Commitment,” online: [perma.cc/F7JR-GBHS].

<sup>108</sup> The Bar Council, “Pro Bono and Social Responsibility Committee,” online: [perma.cc/RR4M-GWAU].

<sup>109</sup> Council of Bars and Law Societies of Europe, “CCBE Initial Statement on Climate Change” (16 February 2023) at 1, online (pdf): [perma.cc/PX45-QVKC].

<sup>110</sup> *Ibid* at 1–2.

<sup>111</sup> *Ibid* at 3.

related risks and opportunities, and adopting initiatives to reduce GHG emissions produced in daily legal practice.<sup>112</sup> The CCBE has since introduced the Environment and Climate Change Committee to address environmental and climate change issues in accordance with the CCBE's missions and that of the legal profession.<sup>113</sup>

## I. NEW ZEALAND LAW SOCIETY

While the New Zealand Law Society does not have an official policy or resolution related to climate change, the Lawyers for Climate Action NZ Inc. called for the New Zealand Law Society to adopt a resolution on climate change in January 2022.<sup>114</sup> The call for action borrows language from the 2021 Law Society of England and Wales resolution.<sup>115</sup>

In March 2022, the Board of the New Zealand Law Society approved the establishment of the Climate Change Law Subcommittee which will provide advice to the Board related to climate change laws and will consider the work of the New Zealand government Climate Change Commission<sup>116</sup> to determine future initiatives and provide continuing legal education to practitioners.<sup>117</sup> In August 2022, following its call for a climate resolution, Lawyers for Climate Action NZ Inc. was invited to make a submission to the Independent Review Panel, commissioned by the New Zealand Law Society in 2021 to review its regulatory framework, on how regulatory reforms should take into account climate change.<sup>118</sup> Lawyers for Climate Action NZ Inc. subsequently made and published its submission, which highlighted lawyers' influence on climate change, their obligations to address it, and the New Zealand Law Society's leadership role to engage with and recognize such obligations in the context of international actions to date.<sup>119</sup> In March 2023, the Independent Review Panel published a final report that examines the state of professional regulation in New Zealand and possibilities of reform, including the consideration of climate change in determining regulatory objectives and professional obligations.<sup>120</sup>

---

<sup>112</sup> *Ibid.*

<sup>113</sup> Council of Bars and Law Societies of Europe, "Environment and Climate Change Committee," online: [perma.cc/4AUS-XZDG].

<sup>114</sup> Letter from Jenny Cooper & Debra Dorrington to Tiana Epati, "Call for NZLS Resolution on Climate Change" (27 January 2022), online: [perma.cc/3TTA-W7Y6].

<sup>115</sup> *Ibid.* at 2.

<sup>116</sup> New Zealand Government, "Climate Change Commission" (6 July 2021), online: [perma.cc/GKD5-6TMU] (the Climate Change Commission is an independent Crown entity that provides advice to the New Zealand Government on climate issues).

<sup>117</sup> New Zealand Law Society, *Transforming for the Future: Annual Report 2021/2022* (Wellington: New Zealand Law Society, 2023) at 22.

<sup>118</sup> New Zealand Law Society, "Independent Review" (9 March 2023), online: [perma.cc/A2UU-K97J]; Lawyers for Climate Action, "LCANZI Newsletter: August 2022" (5 August 2022), online: [perma.cc/9EYK-JW6J].

<sup>119</sup> Jenny Cooper, Debra Dorrington & Zoe Brentnall, "Lawyers for Climate Action New Zealand Inc: Submission to the Independent Legal Review Panel on the Regulation of Lawyers" (31 August 2022), online (pdf): [perma.cc/C8CE-RRFD].

<sup>120</sup> Ron Paterson, Jane Meares & Jacinta Ruru, *Regulating Lawyers in Aotearoa New Zealand* (Wellington: New Zealand Law Society, 2023) at 99, 105.

## J. ORDEM DOS ADVOGADOS DO BRASIL

The Ordem dos Advogados do Brasil (OAB) created the Special Committee on Climate Change and Environmental Disasters on 8 March 2022.<sup>121</sup> On 29 September 2022, the Committee met to discuss the call of notice of the National Council of Justice, an institution that quantifies climate and environmental damages in Brazil. The call of notice aimed to promote public consultation including technical and legal clarifications regarding these environmental and climatic damages.<sup>122</sup> On 9 March 2023, the Committee held its International Seminar on Advocacy and Disaster Law, citing the increasing frequency of environmental disasters and the need for legal advocacy in preventing such occurrences, as well as the importance of lawyers in relation to climate change matters and that “the OAB, together with its lawyers, will undeniably play a leading role in preventing the risk of disaster.”<sup>123</sup> The OAB participated along with the IBA, ABA, and Law Society of England and Wales in COP27. More recently on 23 May 2023, the OAB (São Paulo) announced the creation of a Permanent Forum on Climate Change and Environmental Disasters in collaboration with the national section.<sup>124</sup>

Of note is the growing interest in linking climate and the legal profession within Brazil and Latin America. The Latin American Climate Lawyers Initiative for Mobilizing Action (CLIMA), a legal network of hundreds of lawyers and law students dedicated to understanding the development of climate change in Latin America, began a pilot project in Brazil in 2019.<sup>125</sup> Inspired by the Paris Agreement, the goal of CLIMA is to support legal experts in the dissemination of knowledge and development of legal frameworks to create a decarbonized and climate-resilient economy across Latin America. Some of CLIMA’s activities include working with major stakeholders in climate policy development, workshop promotion, training courses and webinars on climate-related matters, and helping ensure companies disclose climate-related risks.<sup>126</sup>

## K. LAW SOCIETY OF NORTHERN IRELAND

In October 2022, the Law Society of Northern Ireland published its Resolution on Climate Change.<sup>127</sup> The resolution recognized the ratification of the Paris Agreement by the United Kingdom and Ireland in 2016 and the *Climate Change Act 2022* of Northern Ireland as the legal basis for the mitigation of climate change.<sup>128</sup> The resolution resolved to support lawyers in reducing their own carbon footprint and provide guidance on how to take into account the

<sup>121</sup> José Alberto Simonetti & Felipe Sarmiento Cordeiro, “PORTARIA no. 069/2022” (8 March 2022), online (pdf): [perma.cc/647H-GZWX].

<sup>122</sup> “Comissão de Mudanças Climáticas e Desastres Ambientais debate edital do CNJ,” *Conselho Federal da OAB* (29 September 2022), online: [perma.cc/QJF8-JKTG].

<sup>123</sup> “Desastres ambientais e impacto na advocacia são tema de seminário,” *MinutoMT* (9 March 2023), online: [perma.cc/DG85-EXCA] [translated by author].

<sup>124</sup> Rosa Ramos, Marina Gadelha & Cintia Donato, “As mudanças climáticas estão na pauta da OAB SP,” *Jornal da Advocacia* (23 May 2023), online: [perma.cc/EQT5-9MKA].

<sup>125</sup> Latin American Climate Lawyers Initiative for Mobilizing Action, “Solving the Climate Crisis Through a Legal Lens,” online: [perma.cc/PL3A-XKNY].

<sup>126</sup> *Ibid.*

<sup>127</sup> Law Society of Northern Ireland, “Resolution on Climate Change” (October 2022) at 1, online (pdf): [perma.cc/EN3A-8LSS].

<sup>128</sup> *Ibid.* at 1.

impact of climate change in daily legal practice.<sup>129</sup> It also urged lawyers to advise clients on how to mitigate the climate crisis in their business and on any legal risks or liabilities where a client negatively contributes to climate change.<sup>130</sup> Additionally, the resolution urged law firms to periodically audit their own carbon impact, report publicly on the steps taken to mitigate climate change, and support climate change dispute resolutions and pro bono activities related to climate change.<sup>131</sup>

---

The above overview of 15 bars, societies, and associations across jurisdictions, collectively governing or representing millions of lawyers around the world, suggests that the recognition of the role and relevance of the legal profession in addressing the climate crisis is growing. Law societies and associations are paying attention to, and being motivated and influenced by, the actions taken in other organizations and jurisdictions. Leadership of significant and notable law societies and associations around the world has helped raise the global baseline in climate competent lawyering and modernized the agenda for the legal profession as a whole.

#### IV. THE STATE OF CLIMATE COMPETENT LAWYERING IN CANADA

Part IV chronicles the recent activities of the Canadian legal profession in addressing climate change, including resistance and ambivalence to such activities. Resolutions at annual general meetings are but one form of climate action led by members to signal priorities within a profession and embolden leadership to pursue a course of action. A climate resolution put forth at the Canadian Bar Association (CBA) in 2021 failed. Climate resolutions put forth at the LSBC in both 2022 and 2023 also failed. However, in 2022 the Barreau du Québec approved a climate resolution that largely mirrored the 2022 LSBC resolution, and in 2024 published a guide on eco-responsible practices for legal services. The Law Society of New Brunswick Executive Council in 2022 also resolved to strike a task force to look further into the issue of climate change.

---

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid* at 2.

<sup>131</sup> *Ibid* at 3.

**TABLE 2:**  
**CLIMATE RESOLUTIONS AND ACTION BY LAW SOCIETIES**  
**AND ASSOCIATIONS IN CANADA**

Organization	Action	Date
Canadian Bar Association	Adopted Climate Resolution (Urging Governments to Act)	13–14 August 2011
	Failed to Pass Climate Leadership Resolution (for the Legal Profession)	17 February 2021
Law Society of British Columbia	Failed to Pass Climate Resolution	22 June 2022
	Failed to Pass Climate Resolution	27 June 2023
Barreau du Québec	Adopted Climate Resolution & Created Social and Environmental Responsibility Working Group	17 June 2022
Law Society of New Brunswick	Partially Adopted Climate Resolution & Created Climate Change Task Force	2 December 2022

Despite the recent small, yet significant, signals at two provincial law societies, and regardless of the member resolutions and their results, Canadian law societies and associations have not independently taken up the mandate in any significant manner.

#### A. CANADIAN BAR ASSOCIATION

At its AGM on 13–14 August 2011, the CBA Council passed Resolution 11-05-A “enjoining governments to take immediate action to develop comprehensive national regulations on climate change including mandatory GHG emissions reductions and carbon pricing.”<sup>132</sup> The resolution was targeted at the “patchwork” nature of environmental policies in Canada at the time.<sup>133</sup> It recognized that Canada was in need of a national climate strategy for its future in “a carbon-constrained global economy,” given the profound environmental and economic implications of climate change.<sup>134</sup> In the same year, CBA delegates attended the 2011 COP17 in Durban, South Africa.<sup>135</sup>

These external actions taken by the CBA to address climate change inaction by Canadian governments as well as the paucity of environmental law were seemingly uncontroversial. However, that proved not to be the case for resolutions requiring the CBA and legal profession to look inward at its own climate inaction. It is unclear whether this present difficulty is limited only to the profession’s inability to look inward, or whether the

<sup>132</sup> CBA Advocacy, “Canadian Environmental Protection Act and Federal Environmental Initiatives” (August 2022) at 2, online (pdf): <[www.cba.org/CBAMediaLibrary/cba\\_na/SecurePDF/Public%20Interest/canadian-environmental.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/SecurePDF/Public%20Interest/canadian-environmental.pdf)>.

<sup>133</sup> Canadian Bar Association, “Climate Change, Resolution 11-05-A” (14 August 2011), online (pdf): [[perma.cc/ZX6R-7LQX](http://perma.cc/ZX6R-7LQX)].

<sup>134</sup> *Ibid.*

<sup>135</sup> CBA Advocacy, *supra* note 132 at 2.

discussion about climate change itself has become more polarized in Canada since 2011.<sup>136</sup> At the CBA's 2020 AGM, a climate leadership resolution was proposed by Lawyers for Climate Justice, self-described as a multidisciplinary group of lawyers from various disciplines "focused on advancing climate justice within the legal profession in Canada."<sup>137</sup> That year, voting was impeded by technical difficulties, the initial results were nullified, and the resolution was retabled for the following year.<sup>138</sup>

The subsequent 2021 climate leadership resolution referenced the previous Resolution 11-05-A, the ratification of the Paris Agreement by Canada, and the IPCC's call for "rapid and far-reaching transitions" to combat global warming.<sup>139</sup> It also noted the disproportionate impacts of climate change on Indigenous and racialized peoples, and along the dimensions of poverty and gender. In particular, the 2021 resolution identified the critical role of lawyers in climate action. It urged lawyers to participate in pro bono work related to emission reduction, climate adaptation, and advocacy, to advise their clients of climate-related risks and opportunities, and to reduce emissions in their own legal practice according to "available resources and geographic location."<sup>140</sup> The resolution also urged the CBA to adopt a definition of climate justice to ensure the protection of rights related to the environment and necessary efforts of mitigation and adaptation in accordance with human rights and Indigenous rightsholders. Furthermore, CBA branches, sections, and committees were to "consider climate justice and the impacts of climate change in their submissions regarding potential law reform and in developing educational programming."<sup>141</sup>

This climate leadership resolution generated tense debates and strong public opposition within the CBA. Ranjan Agarwal, a then-partner at Bennett Jones LLP, expressed concern that the resolution was "divisive" and would give the CBA the appearance of having a social agenda.<sup>142</sup> Steve Major, another partner at Bennett Jones LLP and the then-Co-Chair of the Canadian Energy Executive Association, wrote two opinion editorials in the CBA National Magazine against the resolution, the first when it was proposed in 2020, and the second in response to the 2021 resolution. Major argued that the resolution was unrelated to, and often inconsistent with, the mission, vision, and values of the CBA, which, according to him, emphasize diversity of membership, independence of the bar, national and international representation of the legal profession, and promotion of its members' interests.<sup>143</sup> It should be noted here that the latter position prioritizing the CBA's promotion of members' interests is in contrast to the law societies' public interest mandate as regulatory bodies for the legal profession.

<sup>136</sup> See e.g. Max Falkenberg et al., "Growing Polarization Around Climate Change on Social Media" (2022) 12 *Nature Climate Change* 1114 (investigates the discussion around the United Nations Conference of the Parties on Climate Change (COP) using Twitter data from 2014 to 2021, noting a fourfold increase of right-wing activity relative to pro-climate groups from COP21 to COP25 relative to pro-climate groups).

<sup>137</sup> Lawyers for Climate Justice, "About Us," online: [perma.cc/88XX-MTTR].

<sup>138</sup> Brent Dowdall, "Vote on Climate Justice Leadership Nullified and Retabled for Next AGM," *CBC/ABC National* (24 February 2020), online: [perma.cc/CUQ6-627D].

<sup>139</sup> Lawyers for Climate Justice, "Climate Leadership Resolution" (17 February 2021), online: [perma.cc/C7TE-W6VX].

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> Brigitte Pellerin, "Be It Resolved: Resolutions from the 2021 CBA Annual General Meeting," *CBA/ABC National* (18 February 2021), online: [perma.cc/Q5B2-W6QF].

<sup>143</sup> Steve Major, "Why We Must Reject the Climate Justice Resolution," *CBA/ABC National* (8 February 2021), online: [perma.cc/9RC6-7TDV] [Major, "Why We Must Reject"].

Major warned that the CBA “must be wary of falling prey to ... ideological pursuits” by “special interest groups like those seeking ‘climate justice.’”<sup>144</sup> He criticized the proposed definition of climate justice as “nebulous, verbose, and open to a multitude of interpretations and meanings.”<sup>145</sup> He also pointed out that “the subject area of climate is complicated, nuanced, and political.”<sup>146</sup> More frankly, with regard to his motivation to reject the resolution, Major acknowledged his defence of Canadian energy and his assumption that “after years of damage created by the largely foreign-funded environmental movement, the term ‘climate justice’ really just means ‘kill Canadian oil and gas.’”<sup>147</sup> The 2021 resolution was also publicly rejected by the CBA Alberta Branch.<sup>148</sup>

Meredith James, then a lawyer at Woodward & Company LLP, penned two articles in support of the resolution, including one co-authored with Aladdin Diakun in *Law360*; both are members of Lawyers for Climate Justice.<sup>149</sup> In these articles, James reiterated the points in the resolution regarding the urgent need for a response from the legal profession in relation to climate change, the demand for competency regarding climate-related risks and opportunities, and the disproportionate impacts on Indigenous populations and other historically marginalized groups. She also noted:

It is well past time that we join other professional associations, such as the Canadian Medical Association, Ontario Society of Professional Engineers, Planning Institute of British Columbia, British Columbia Society of Landscape Architects, and others, in recognizing our part in finding solutions to the climate crisis that reduce inequality and advance justice.<sup>150</sup>

In the end, the resolution failed at the 2021 AGM; no voting results were published.<sup>151</sup> The defeat of the 2021 resolution was a great disappointment for many. Brian Hebert, Chair of CBA’s Aboriginal Law Sections, expressed regret at this result and compared it with the success of the ABA Resolution just two years prior. He cautioned that “we might try to ignore climate change, but it’s happening all around us.”<sup>152</sup>

Since that time, the CBA British Columbia Branch (CBABC) President, Aleem Bharmal, KC, has acknowledged the growing demand for climate competency in legal practice, and hints at possible future action to be taken by the CBABC to address climate competency in lawyering. In his CBA April 2023 *BarTalk*, he shares with his constituents that “[a]lthough it might not seem obvious, at first blush, how climate change might affect one’s legal practice, especially when that practice is not more directly linked to environmental issues, it is amazing how pervasive the impacts of climate change can, in fact, be.”<sup>153</sup> Bharmal noted

<sup>144</sup> Major, “Counterpoint,” *supra* note 43.

<sup>145</sup> Major, “Why We Must Reject,” *supra* note 143.

<sup>146</sup> Major, “Counterpoint,” *supra* note 43.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> Meredith James, “The Legal Profession’s Duty to Respond to Climate Change,” *CBA/ABC National* (4 February 2021), online: [perma.cc/QK5E-G2JL]; Meredith James & Aladdin Diakun, “Three Reasons Why Lawyers Should Engage with Climate Change” (16 February 2021), online (blog): [perma.cc/MAW8-M8WP].

<sup>150</sup> James, *ibid.*

<sup>151</sup> Brigitte Pellerin, “Be it Resolved: Resolutions from the 2021 CBA Annual General Meeting,” *CBA/ABC National* (18 February 2021), online: [perma.cc/L8XX-UKCW].

<sup>152</sup> *Ibid.*

<sup>153</sup> Aleem Bharmal, “Lawyers and Climate Change” (April 2023), online (blog): [perma.cc/NNJ5-UK73].

that the CBABC will strive to remain an indispensable resource in keeping lawyers up-to-date on the latest crises affecting the legal profession.<sup>154</sup> In June 2023, the CBA hosted an event, “Climate Change: Intersectional Impacts and Solutions.”<sup>155</sup>

## B. LAW SOCIETY OF BRITISH COLUMBIA

A climate resolution appeared at the 2022 LSBC AGM built on the CBA climate leadership resolution with a number of modifications and additions. The resolution, moved by Hasan Alam, 2021–2022 President of the Federation of Asian Canadian Lawyers (FACL) British Columbia and lawyer at the British Columbia General Employees’ Union, and Yuki Matsuno, lawyer at Southern Butler Price LLP, notes that in *Reference re Greenhouse Gas Pollution Act*, the Supreme Court of Canada recognized climate change as a global threat, its particular impact in Canada and on Indigenous peoples, and the need for national and international action in tandem.<sup>156</sup> It also referenced the IPCC’s call to limit global warming to close to 1.5°C.<sup>157</sup> With respect to Indigenous peoples in particular, the resolution referred to the adoption of *UNDRIP* under the *Declaration on the Rights of Indigenous Peoples Act* and protecting the rights and freedoms of all peoples under the mandate of the LSBC under the *Legal Profession Act*.

The 2022 resolution affirmed that lawyers have an important role in addressing climate change and urged the LSBC to encourage lawyers to engage in activities relating to climate adaptation, mitigation, and advocacy, to support law and policy that address climate change, to advise clients of climate-related risks and opportunities, and to make efforts to reduce the climate impacts associated with their law practice.<sup>158</sup> The resolution also requested that the LSBC create an advisory committee or task force to evaluate the relation between the legal profession and climate change in view of developing future educational programs and guidelines for legal practice, and provide disclosure of the climate impacts of the LSBC’s operations and a corresponding action plan.<sup>159</sup> Unlike the previous CBA resolution, which included a definition of “climate justice” that led to contentious debate, the 2022 resolution left the definition to be worked out by the future task force or committee.<sup>160</sup> FACL British Columbia publicly supported the resolution.<sup>161</sup>

The 2022 resolution failed, with 42 percent in favour and 58 percent against. The results showed a difference in “yes” or “no” votes at 383 votes, or 2.3 percent of eligible voters.<sup>162</sup> There were 577 abstentions; thus, had most of those abstentions alone voted “yes,” the

<sup>154</sup> *Ibid.*

<sup>155</sup> Canadian Bar Association, “Climate Change: Intersectional Impacts and Solutions (Recording)” (15 June 2023), online: [perma.cc/RU6X-6SDA].

<sup>156</sup> Law Society of British Columbia, “2022 Annual General Meeting: Second Notice” (3 June 2022), online: [perma.cc/X867-HG8Q] [LSBC, “2022 AGM Second”].

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> Jessica Clogg, “Are BC Lawyers Climate Laggards? Climate Resolution Fails at Law Society of BC Meeting,” *Slaw* (18 July 2022), online: [perma.cc/MJP8-87WF].

<sup>161</sup> Federation of Asian Canadian Lawyers British Columbia, “FACL BC Statement Endorsing Resolution 4: Member Resolution on the Role of Lawyers in Addressing Climate Change (Law Society of BC 2022 AGM)” (14 June 2022), online: [perma.cc/QJG9-FLWA].

<sup>162</sup> Law Society of British Columbia, “2022 Annual General Meeting,” online: [perma.cc/E7FX-68X3] [LSBC, “2022 AGM”].



resolution would have passed. Only 17.5 percent of eligible members voted in 2022; meaning 13,217 out of 16,628 eligible members did not vote.<sup>163</sup>

**TABLE 3:**  
**RESULTS FROM THE 2022 LSBC CLIMATE RESOLUTION<sup>164</sup>**

Member Resolution regarding the Role of Lawyers in Addressing Climate Change. **The motion failed.**

	Advanced Voting	In-Meeting	Total Votes	%
In Favour	963	16	979	42
Opposed	1,346	16	1,362	58
Total Votes	2,309	32	2,341	
Total Abstentions	571	6	577	
Total Participants	2,880	38	2,918	

Public posts regarding the resolution in advance of the AGM suggest some voters, even when acknowledging support for the premise of the resolution, may not have believed that the LSBC is institutionally capable of addressing climate change in any meaningful way.<sup>165</sup> Commenters felt that the resolution “could have a cost for real people fighting for their legal and financial future.”<sup>166</sup> Other comments noted that lawyers are already expected to competently advise clients about laws, thus the resolution was “seeking to affirm the most basic, foundational duty of a lawyer.”<sup>167</sup> Whilst the latter is true, the breadth of change that is occurring around climate and the application of laws suggests some welcome guidance is needed and appropriate, in the form of continuing legal education, reports, and guidelines to further the competency of the legal profession in this quickly evolving, expanding, and disruptive area of law.

Voting results at the 2022 AGM revealed that the decision was ultimately made during the two week advanced voting period which preceded the AGM.<sup>168</sup> Michael Bain, editor of *The Advocate*, commented on the low voter turnout at the 2022 LSBC AGM, noting that not voting sends a poor message to those who participated in LSBC elections or prepared a resolution to be voted on.<sup>169</sup> In particular, it also called into question British Columbia

<sup>163</sup> Law Society of British Columbia, *Annual Report 2022* (Vancouver: LSBC, 2023) at 11 (there were 14,001 practicing, 1,554 non-practicing, and 1,073 retired lawyers registered with the Law Society of British Columbia in 2022).

<sup>164</sup> LSBC, “2022 AGM,” *supra* note 162.

<sup>165</sup> Joel V Payne, “I don’t think we need any more task forces or advisory groups ...” (June 2022), online: [perma.cc/B4D3-FGNA] (comment).

<sup>166</sup> Joel V Payne, “After it is clear the Law Society has a handle ...” (June 2022), online: [perma.cc/9PN6-4Q4W] (comment).

<sup>167</sup> Joel V Payne, “Maybe I’ve left this unsaid” (June 2022), online: [perma.cc/9PN6-4Q4W] (comment).

<sup>168</sup> LSBC, “2022 AGM,” *supra* note 162.

<sup>169</sup> “Entre Nous,” *The Advocate* 81:2 (March 2023) at 169.

lawyers' commitment to the self-regulatory body and governance, where there is always at least the potential for change by democratic means.<sup>170</sup> Bain noted:

Not voting also brings with it an opportunity cost in terms of our sense of community. Voting in the same election is one of the few opportunities that lawyers have to act as a collective for a shared purpose .... Voting is an affirmation that we are part of the same community and fosters a bond that ultimately may help in advancing the objectives that as a profession we should further.<sup>171</sup>

The following year, a new climate resolution was presented at the 27 June 2023 AGM moved by Alam and Terri-Lynn Williams Davidson, member and General Counsel of the Haida Nation and Principal of White Raven Law Corporation.<sup>172</sup> Rather than borrow from language of the failed CBA resolution, the new 2023 LSBC resolution uses the successful Law Society of England and Wales resolution as a precedent, except it was considerably shorter than the Law Society of England and Wales resolution, with minimum asks. These asks included urging the LSBC to adopt science-based targets and “support, inform and encourage” lawyers to engage with climate change mitigation by providing guidance, develop educational tools and resources, and engage with current and future climate change related legislative, regulatory, and policy reform so far as it impacts the practice of law, access to justice, and the rule of law.<sup>173</sup> As with most other climate resolutions seen around the world, it included the creation of a task force or advisory committee to implement and support such activities. Finally, the 2023 resolution asked for the LSBC to report publicly on the climate impacts of the LSBC and its operations, the steps taken to reduce those impacts, and the outcome of such steps.<sup>174</sup>

The 2023 resolution met a similar fate as its predecessor. It lost 41 percent to 59 percent out of 2,164 total votes, while 425 fewer members participated in the voting than the previous year. This second attempt at passing a climate resolution was defeated by an almost identical margin of 374 votes, or 2.2 percent of all eligible voters. In total, only 15 percent of eligible voters participated in the voting (2,493 out of 16,628), 2.5 percent less than the prior year. The percentage of votes against the 2023 resolution was the highest among all seven resolutions voted on at the AGM.

---

<sup>170</sup> *Ibid* at 172.

<sup>171</sup> *Ibid* at 174.

<sup>172</sup> Law Society of British Columbia, “2023 Annual General Meeting: Second Notice” (9 June 2023), online: [perma.cc/PP7P-G7RH] [LSBC, “2023 AGM”] (titled “Resolution 4: Member Resolution submitted by Hasan Alam and Terri-Lynn Williams-Davidson”). See also Canada Climate Law Initiative, “The Legal Community’s Role in Addressing the Climate Crisis” (4 May 2023), online (video): [perma.cc/K499-R7L7] (a panel featuring Dr. Carol Liao, Terri-Lynn Williams-Davidson, KC, co-mover of the resolution along with Hasan Alam, and Bruno Caron, hosted by the Federation of Asian Canadian Lawyers British Columbia).

<sup>173</sup> LSBC, “2023 AGM,” *ibid*.

<sup>174</sup> *Ibid*.

TABLE 4:  
RESULTS FROM THE 2023 LSBC CLIMATE RESOLUTION<sup>175</sup>

Resolution 4: Member Resolution regarding Climate Change. **The motion failed.**

	Advanced Voting	In-Meeting	Total Votes	%
In Favour	879	16	895	41
Opposed	1,253	16	1,269	59
Total Votes	2,132	32	2,164	
Total Abstentions	327	2	329	
Total Participants	2,459	34	2,493	

At the 2023 AGM, the movers Alam and Williams-Davidson were already aware that the resolution had not passed in the advanced voting stage, and the relatively small number of voters at the AGM would not have made the difference even if all in attendance had voted in the affirmative, which they did not.

In her statement, Williams-Davidson directly tied the intersection of climate change and human rights. She noted that “ethical obligations arise not only from the particular laws and rules imposed on lawyers by regulatory bodies, but also from the legal profession’s special status as a profession. Mere compliance with professional rules does not discharge the obligation to abide by moral and ethical principles.”<sup>176</sup> She shared how over two years, she had served in various capacities including the Truth and Reconciliation Advisory Council of the LSBC, the Indigenous Advisory Council for the Federation of Law Societies, and as co-chair of the Task Force on Indigenous Engagement in Regulatory Matters, and that in 2015, the Benchers of the Law Society committed to reconciliation. She closed by linking climate-related action to the protection of rights and freedoms, particularly for Indigenous peoples whose livelihoods and territories are most directly impacted by climate change, stating:

Territories are not just about sustenance, but about a way of life; they provide traditional ecological knowledge, ancient practices, and allow for the transmission of intergenerational knowledge and Indigenous Laws. All are necessary for our collective survival in Canada. Therefore, if this resolution is passed and a Task Force is formed, a component of their work would necessarily look at the intersection of human rights (and reconciliation with Indigenous Peoples), with climate change and our profession.

...

<sup>175</sup> Law Society of British Columbia, “Annual General Meeting,” online: [perma.cc/38LG-Z4KR].

<sup>176</sup> Terri-Lynn Williams-Davidson, Address (delivered at the Law Society of British Columbia Annual General Meeting, 27 June 2023) [unpublished draft on hand with author and cited with permission].

Regulation that fails to recognize these interconnections is one that fails to properly serve Indigenous Peoples. We became lawyers to advance justice, and this resolution will help to define our path forward as a legal profession.<sup>177</sup>

### C. BARREAU DU QUÉBEC

A climate resolution for the Barreau du Québec (the Barreau) AGM was advanced by Bruno Caron of Miller Thomson LLP and voted on 17 June 2022.<sup>178</sup> With some nominal differences in the preamble, the resolution in French largely mirrored the 2022 LSBC resolution. Like the latter, the Barreau Resolution left the definition of “justice climatique” to be determined by a future advisory committee or working group.<sup>179</sup> It passed during the live vote with 72 percent of votes in favour. It should be noted that there was no online advanced voting available for the Barreau AGM, which may have been a factor in its high approval relative to that of LSBC.

Following adoption of the resolution, the Barreau incorporated the resolution into its strategic priorities and has undertaken several actions to date.<sup>180</sup> The Barreau has provided training in “the social and environmental responsibility of professional orders” to the Barreau board and management, as well as agreed to practice sustainable investment in its financial management, and relaunched the internal Green Committee to “improve the environmental record of the Maison du Barreau [the office of the Barreau du Québec].”<sup>181</sup> In addition, a Social and Environmental Responsibility Working Group was established to develop a policy and action plan for the implementation of the resolution.<sup>182</sup>

In June 2024, the Barreau published “Guide des meilleures pratiques écoresponsables pour les services juridiques” (Guide to Best Eco-Responsible Practices for Legal Services), prepared in collaboration with the Centre québécois de développement durable and the Jeune Barreau de Québec, the latter of which is noted as the instigator of the project.<sup>183</sup> The Guide is said to be “in addition to the actions undertaken by the Barreau du Québec following the adoption of [the 2022] resolution [and] ... [t]he Board of Directors of the Barreau has included social and environmental responsibility among its strategic and priority issues.”<sup>184</sup> The Guide aims to assist lawyers to “reduce the environmental impact of their activities, improve the attractiveness and loyalty of their workforce and customers, actively contribute to economic vitality of their community and promote their organization” with measures organized around 17 issues inspired by the BNQ21000 Québec standard for sustainable development in business in reducing one’s carbon footprint.<sup>185</sup>

---

<sup>177</sup> *Ibid.*

<sup>178</sup> Barreau du Québec, “Assemblée générale annuelle des membres,” online: [perma.cc/L6E7-RPHV]; Barreau du Québec, “Résolution soumise par Me Bruno Caron” (17 June 2022), online (pdf): [perma.cc/R9HS-6PVG].

<sup>179</sup> *Ibid.*

<sup>180</sup> Barreau du Québec, “Le Conseil d’administration en fait un dossier stratégique prioritaire et des actions sont mises en branle” (14 December 2022), online: [perma.cc/4Y2V-CHAY].

<sup>181</sup> *Ibid.* [translated by author].

<sup>182</sup> *Ibid.*

<sup>183</sup> Barreau du Québec, “Publication du *Guide des meilleures pratiques écoresponsables pour les services juridiques*” (19 June 2024), online: [perma.cc/WD9Q-MZTF] [translated by author].

<sup>184</sup> *Ibid.*

<sup>185</sup> Barreau du Québec, *Guide des meilleures pratiques écoresponsables pour les services juridiques* (Québec: Jeune Barreau de Québec, 2024) at 4 [translated by author].

## D. LAW SOCIETY OF NEW BRUNSWICK

The Law Society of New Brunswick (LSNB) Executive Council partially adopted a climate resolution on 2 December 2022, moved by Erik Homenick of Homenick Law.<sup>186</sup> Like the Barreau Resolution, the content of the LSNB Resolution is substantially similar to the 2022 LSBC Resolution. Only Section 2 of the resolution was adopted by the Executive Council (comprised of 30 members<sup>187</sup>), under which the LSNB resolved to set up a task force to study the role of lawyers in addressing climate change with the goal of furthering educational programs, defining climate justice, and developing educational programs (as aforementioned, the whole of this resolution was also accepted by the Barreau and rejected by the LSBC).

The vote was carried out in person and was not unanimous (there is no official count available), with a small number of council members expressing hesitation over the climate justice language and whether the resolution was more appropriate at the voluntary bar association level.<sup>188</sup> Nevertheless, section 2 of the LSNB Resolution passed with a sizeable percentage of the vote, and the first meeting of the task force is scheduled in July 2023. The task force is the first climate-focused mandate at LSNB to date.

---

Canada is at an inflection point in terms of climate-related actions by its provincial and national legal societies and associations. As seen in Part III, while the role and relevance of the legal profession in addressing the climate crisis is recognized and growing around the world, members of law societies and associations in Canada have signalled through their votes that they are less inclined to have their representative bodies take any climate-related actions, nor even erect a task force to investigate the issue further. Nevertheless, given the tangible evidence each year of the world reaching crucial tipping points leading to irreversible change, it may be anticipated that Canadian lawyers will soon need to receive some guidance as to how to competently fulfill their basic foundational competencies given the intensified growth and development of climate-related laws and policies, as outlined next in Part V, along with its complexity, and the mandate of the legal profession itself.

## V. CLIMATE CHANGE, LAW, AND THE LEGAL PROFESSION

Human civilization depends upon a stable climate, and climate change differs due to the systemic and interconnected risks that act as a risk multiplier, which has implications for legal and regulatory systems.<sup>189</sup> The available climate science is vast, as are the lenses for understanding climate-related risks across different sectors of society and the interrelated impacts across industries and communities locally, nationally, internationally, and globally.

---

<sup>186</sup> *Law Society Act, 1996*, SNB 1996, c 89, s 22(3) (the council of LSNB may pass resolutions without a general meeting of the Law Society); *Legal Profession Act, supra* note 15, ss 4(3), 6(3) (Benchers of Law Society of British Columbia may pass resolutions without a general meeting of the Law Society).

<sup>187</sup> Law Society of New Brunswick, "Council Members," online: [perma.cc/VZG4-XDY9].

<sup>188</sup> Thanks to Erik Homenick, mover of the 2022 LSNB resolution: Erik Homenick, "LSNB Resolution" (23 May 2023) via oral communication [communicated to author].

<sup>189</sup> Hui-Min Li et al, "Understanding Systemic Risk Induced by Climate Change" (2021) 12:3 *Advances in Climate Change Research* 384.

Part V does not attempt to capture all the foreseeable risks, nor could it, but provides a brief and basic primer for lawyers to gain an understanding of the growing significance of climate change on civilizations and legal systems, and how climate change has the potential to fundamentally undermine legal rights and influence every practice area of law in some manner, possibly in unsuspecting ways. Part V.A explores some of the broader and interconnected ways that climate-related risks are impacting financial and legal systems. Part V.B then identifies the contours of understanding climate competent lawyering and the need for further sharpening of that understanding, offering some agenda items in the furtherance of developing climate competent lawyering for the legal profession in Canada.

## A. IMPACTS ON CIVILIZATIONS AND LEGAL SYSTEMS

The United Nations IPCC has provided different emissions scenarios based on the planet crossing various temperature thresholds in the future. An optimistic scenario of limiting temperature increases to the guardrails of “well below 2°C ... [preferably] 1.5°C” as set out in the Paris Agreement, could contain the most catastrophic impacts of climate change.<sup>190</sup> Attaining that goal will require a rapid and substantial reduction in global GHG emissions: net-zero emissions by 2050 or sooner and negative emissions thereafter.<sup>191</sup> Failing that, a 2°C scenario of global warming would mean a profoundly disrupted climate, with increased extreme weather events including frequent heat waves, storms, higher sea levels, and greater climate-related migrations, pandemics, extinctions, and deaths. A doubling of global GHG emissions by 2050, and thus a 4.4°C scenario, would be a vastly different world than we know now. It would be catastrophic.<sup>192</sup>

As extreme weather events have become more prevalent,<sup>193</sup> including uncontrolled wildfires, sea level rise, smoke-filled air, and massive crop failures,<sup>194</sup> more than 170 countries have introduced national policies and laws on climate change mitigation and adaptation.<sup>195</sup> There is growing global consensus that climate change is a financially material business risk capable of upending economic systems. The Sustainability Standards Advisory Board estimates 68 of 77 industry subsectors are materially affected by climate risk; this is 89 percent by market capitalization or US\$445 trillion exposed.<sup>196</sup> The world economy is set to lose up to 18 percent of gross domestic product (GDP) from climate change if no action

---

<sup>190</sup> *Paris Agreement*, *supra* note 55.

<sup>191</sup> See Michael Oppenheimer et al., “Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities” in Hans-Otto Pörtner et al., eds, *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* (Cambridge: Cambridge University Press, 2019) 321 at 324; Masson-Delmotte, *supra* note 2 at 21.

<sup>192</sup> Masson-Delmotte, *ibid.*

<sup>193</sup> See e.g. United States Environmental Protection Agency, “Climate Change Indicators: Weather and Climate” (1 August 2022), online: [perma.cc/2FDE-292M].

<sup>194</sup> Masson-Delmotte, *supra* note 2; Andrew Freedman, “Extreme Weather Patterns Are Raising the Risk of a Global Food Crisis, and Climate Change Will Make This Worse,” *The Washington Post* (9 December 2019), online: [perma.cc/4U9B-AH7W]; Jordan Salama, “Earth Is on Fire,” *Scientific American* (1 January 2021), online: [perma.cc/B6JK-4ZFH]; NASA Earth Observatory, “World of Change: Global Temperatures,” online: [perma.cc/TN6Z-JJB8].

<sup>195</sup> The London School of Economics and Political Science, Press Release, “More than 170 Countries Have National Policies on Adaptation to Manage the Risks of Climate Change Impacts” (9 December 2019), online: [perma.cc/2HR8-ZQZA].

<sup>196</sup> SASB Standards, *Climate Risk: Technical Bulletin* (San Francisco: IFRS Sustainability, 2023).

is taken.<sup>197</sup> The Canadian Climate Institute estimates that climate change could reduce Canada's real GDP by between 5.2 and 12.4 percent by 2095.<sup>198</sup> Seemingly unaffected parts of the world are rapidly shrinking as institutions and organizations face mounting expectations to lessen negative externalities and prepare for a net-zero carbon future. Demands are coming from all directions, across a wide range of stakeholders — including governments, investors, regulators, industry professionals, labour unions, and youth.

There has been a swift implementation of climate disclosure requirements around the world. In Canada, a heavily resource-based economy, its own legislative commitments include the *Net-Zero Emissions Accountability Act*<sup>199</sup> as well as the 2030 Emissions Reduction Plan,<sup>200</sup> and other developing legal and regulatory acts in response to the climate crisis. The Canadian federal government has issued several measures aimed at achieving a net-zero carbon economy by 2050 with the promise of bringing mandatory climate-related reporting for public companies in line with the Taskforce on Climate-Related Financial Disclosures,<sup>201</sup> which has been endorsed by the Office of the Superintendent of Financial Institutions, Canada's federal bank regulator.<sup>202</sup> What this means is that climate disclosures are increasingly becoming an access to capital issue, and thus a material concern for all stakeholders and their agents, including their lawyers.<sup>203</sup>

As reflected in Figure 4.1 below, per the Taskforce on Climate-Related Financial Disclosures, climate-related financial risks include physical acute and chronic risks which can cause, among other things, direct damage to property, stranded assets and new capital expenditures, productivity changes, and diversion of investments; they increase costs, exacerbate employee safety, and lead to greater migration and conflicts, elevated insurance risks, credit default risks, liquidity risks, and operational risks from supply chain disruptions. Transition risks to a low-carbon economy can include, and be driven by, changes in consumer, client, and investor preferences, changes in regulation and government policies, and unanticipated writedowns in carbon-intensive industries. It includes market risks in the repricing of financial instruments, legal liability risks from failures to disclose material climate risks to clients, investors, and stakeholders, and failures to mitigate or adapt to these climate-related risks and opportunities.

---

<sup>197</sup> Swiss Re Group, Press Release, “World Economy Set to Lose Up to 18% GDP from Climate Change if No Action Taken, Reveals Swiss Re Institute’s Stress-Test Analysis” (22 April 2021), online: [perma.cc/YFH7-BJN8].

<sup>198</sup> Dave Sawyer et al, *Damage Control: Reducing the Costs of Climate Impacts in Canada* (Canadian Climate Institute, 2022) at 48.

<sup>199</sup> *Canadian Net-Zero Emissions Accountability Act*, SC 2021, c 22.

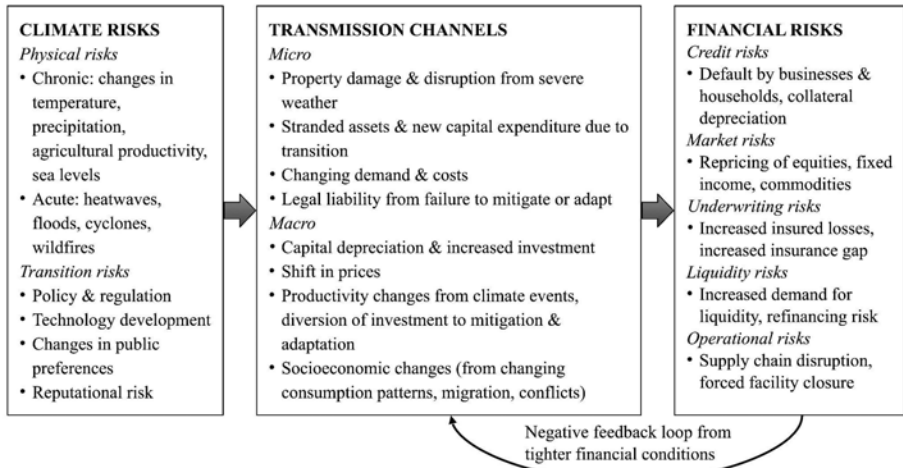
<sup>200</sup> Environment and Climate Change Canada, *2030 Emissions Reduction Plan: Canada’s Next Steps for Clean Air and a Strong Economy*, Catalogue No En4-460/2022E-PDF (Ottawa: ECCC, 2022).

<sup>201</sup> *Ibid.*

<sup>202</sup> Bank of Canada, *Bank of Canada Disclosure of Climate-Related Risks 2022* (Ottawa: Bank of Canada, 2022).

<sup>203</sup> Marta Modelewska & Dan Storey, “Gaps in Climate Disclosure Will Hit Corporate Access to Capital” (12 October 2021), online: [perma.cc/BN38-T3SA].

**Figure 4.1:**  
**Climate-Related Financial Risk Transmission Channels**<sup>204</sup>



Social inequities — including unequal access to food, housing, healthcare, education, technology, and employment — have become more pronounced, not less, due to climate change.<sup>205</sup> Climate change has had and will continue to have disproportionately negative effects on Indigenous peoples and their territories,<sup>206</sup> along with racial disparities,<sup>207</sup> gender-differentiated impacts,<sup>208</sup> unbalanced harmful effects on the Global South,<sup>209</sup> and greater detriments on the poor, elderly, disabled, children, and the most marginalized in our communities.<sup>210</sup>

Amidst this climate emergency, not only are legal and regulatory systems evolving, but justice systems are also being physically disrupted due to climate change. The Canadian Interagency Forest Fire Centre declared 2023 to be Canada’s worst wildfire season in history,<sup>211</sup> where courts also found themselves evacuating in response to wildfire activity. For example, in August 2023, all 20,000 residents in Yellowknife, Northwest Territories were ordered to evacuate due to wildfire risk, including the Northwest Territories judiciary and its citizens participating and held by the justice system.<sup>212</sup> On 22 February 2024, at the Mid

<sup>204</sup> Image and content derived by the Canada Climate Law Initiative from the Task Force on Climate-Related Financial Disclosures, *Guidance on Scenario Analysis for Non-Financial Companies* (Task Force on Climate-Related Financial Disclosures, 2020) at 48.

<sup>205</sup> Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, UNGA, 10th Sess, UN Doc A/HRC/10/61 (2009) at 1. United Nations Department of Economic and Social Affairs, “UNPFII Mandated Areas: Environment,” online: [perma.cc/2GX8-FFUY].

<sup>206</sup> Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E Tendayi Achiume, UNGA, 77th Sess, UN Doc A/77/549 (2022). UN Women, “How Gender Inequality and Climate Change are Interconnected” (28 February 2022), online: [perma.cc/7HXS-SLAH]; Food and Agriculture Organization of the United Nations, “Gender-Differentiated Impacts of Climate Change,” online: [perma.cc/USJ7-AKMZ].

<sup>207</sup> Erika Strazzante, Stéphanie Rycken & Vanessa Winkler, “Global North and Global South: How Climate Change Uncovers Global Inequalities” (27 October 2021), online: [perma.cc/34FV-S7VC].

<sup>208</sup> Leonardo Yip, “How Marginalised Groups Are Disproportionately Affected by Climate Change” (9 November 2022), online: [perma.cc/47AA-5XAA].

<sup>209</sup> Canadian Interagency Forest Fire Centre, *Canada Report: 2023 Fire Season* (CIFFC, 2023) at 3.

<sup>210</sup> Dustin Jones, “Out-of-Control Wildfires in Canada Force All 20,000 Residents of Yellowknife to Flee,” *NPR News* (17 August 2023), online: [perma.cc/KMT5-PFX8].



Winter Conference on Northern Climate Change and the Law hosted by the Yukon Canadian Bar Association, Chief Justice Smallwood of the Supreme Court of the Northwest Territories shared how the wildfires upended their court system and impacted the legal profession, reflecting on how the legal system was forced to be portable at a moment's notice, trial evidence was vulnerable, and access to justice was severely hindered due to delays in court operations. Since then, the Northwest Territories courts have again issued directives to cancel operations in response to evacuation orders, as recently as May 2024. The 2024 fire season in Canada is currently expected to potentially be as bad as or worse than 2023, due to the earlier start in the wildfire season, with holdover fires from the previous year appearing two to three months earlier than usual.<sup>213</sup>

While concern over the drastically changing climate is not a new phenomenon, the Canadian legal profession has lagged in proactively addressing climate change relative to many of its international counterparts. Holding the global average temperature to well below 2°C above pre-industrial levels in accordance with the Paris Agreement and warnings from the IPCC will require the involvement of lawyers, given the magnitude and scale of climate impacts and that lawyers will be a part of every stage in the energy transition. The impact of the law as interpreted, advised, and applied by the lawyers will continue to frame the conversations ahead.

## **B. IMPACTS ON THE LAW AND LEGAL PRACTICE**

The IBA Climate Crisis Statement notes that the legal profession “must be prepared to play a leading role in maintaining and strengthening the rule of law and supporting responsible, enlightened governance in an era marked by a climate crisis.”<sup>214</sup> Included in its recommendations is the demand for law societies to develop practical educational tools and best practice guidelines, and to encourage lawyers and legal practices to actively support, engage with, and record their efforts in combating the climate crisis. Whether lawyers choose to take an active role in the energy transition towards a net-zero carbon economy or not, lawyers are obliged to understand climate-related risks and opportunities in the context of any material impacts on their field of law and the legal profession generally. The losses over climate resolutions in the past three years at the CBA and LSBC may signal some particular challenges within the Canadian legal profession, specifically apathy, a lack of consensus or increased polarization, or a lack of understanding regarding: (1) the appropriate mandate of the representative regulatory and voluntary organizations; (2) lawyers’ duty of care to their clients in terms of climate competency; and (3) the interconnectedness of climate competency and commitments to Indigenous reconciliation in Canada. These challenges may serve to demarcate further research agenda items of the Canadian legal profession moving forward in this climate emergency.

First, to competently advise one’s client pursuant to the rules of conduct at the law society and in the jurisdiction that the lawyer resides in, the lawyer must be able to speak credibly on issues that impact their field of practice. The lawyer bears a duty to provide their client

---

<sup>213</sup> Benjamin Shingler, “Canada at Risk of Another Devastating Wildfire Season, Federal Government Warns,” *CBC News* (10 April 2024), online: [perma.cc/Z8T7-CBM8].

<sup>214</sup> International Bar Association, “Crisis Statement,” *supra* note 46 at 1.

with truthful, unvarnished advice, even if their client does not want to hear it. Rule 2.1-3(a) of the British Columbia Code of Conduct, for example (which is similar across provincial codes), states that a lawyer “should obtain sufficient knowledge of the relevant facts and give adequate consideration to the applicable law before advising a client, and give an open and undisguised opinion of the merits and probable results of the client’s cause.”<sup>215</sup> If a client is not interested in hearing such advice, that does not make the advice unneeded or untrue. It is in the best interests of the client for lawyers to provide sound competent legal advice, whether the client enjoys the advice or not. The legal profession’s duty to uphold and protect the public interest includes ensuring that lawyers remain competent for the challenges that lie ahead. The public interest mandate of the legal profession should likely include, at minimum, climate competency for lawyers in serving their clients, and one would contend that express actions to mitigate and adapt to climate change would also fall squarely within such mandate. In fact, inaction by the legal profession in this regard may offer a compelling example of governance incapacity and highlight the weaknesses laid out plainly in the Cayton Report issued to the LSBC.

Second, it is important to note again that climate change impacts on the law and legal practice are not sequestered to the traditional field of environmental law. As briefly outlined previously in Part V.A, the continued ripple effects of a warming world will be profound, and lawyers will need to stay up-to-date on rapidly evolving laws affecting their fields, including changing regulations, litigation strategies, contractual provisions, new contracts (for instance, nature-based global emissions offset futures contracts), and financial instruments (for instance, green bonds), as well as advise clients on legal risks in the transition to a decarbonized economy. Lawyers will be key drafters in facilitating the transactions, resource development projects, and renewable energy projects that are vital to a just transition. They will be the ones defending human rights and Indigenous rightsholders, representing parties in greenwashing and corporate accountability claims, and partaking in new constitutional and regulatory challenges. They will increasingly need to understand GHG emissions, as well as upskill and reskill to be able to help their clients understand these evolving legal and regulatory demands and how to mitigate and adapt in this climate emergency.

Even unsuspecting fields such as family law and criminal law are potentially impacted by climate change, and lawyers will be better served to be conscious of these changing realities. Climate migration, custody, and children’s rights, as well as the gendered impacts of climate change in the workplace, increasingly will require family lawyers to address climate-related risks in the family unit.<sup>216</sup> Along with the emergence of climate crime and ecocide,<sup>217</sup> prisoners’ safety and rights engage criminal lawyers as prison conditions deteriorate due to

---

<sup>215</sup> Law Society of British Columbia, *Code of Professional Conduct for British Columbia* (Vancouver: Law Society of British Columbia, 2013).

<sup>216</sup> See e.g. Jessica Rizzo, “The Children’s Hour: Climate Change, Law, and the Family” (2021) 27:2 *Hastings Env’t LJ* 79. See also Cristina Colón, Elizabeth Ferris & Lucy Szaboova, *Guiding Principles for Children on the Move in the Context of Climate Change* (New York: United Nations Children’s Fund, 2022) at 1.

<sup>217</sup> Adam Branch & Liana Minkova, “Ecocide, the Anthropocene, and the International Criminal Court” (2023) 37:1 *Ethics & Intl Affairs* 51; Katie Babson, “Ecocide: the Fifth International Crime” (12 April 2022), online: [perma.cc/HC67-RMR3].

rising temperatures.<sup>218</sup> Disruptions in global supply chains, insurance risks, and the increased health implications of climate change engage municipal lawyers, labour lawyers, corporate/commercial lawyers, personal injury lawyers, and so on. In addition to specific changes across legal fields, the legal sector itself will need to look inwards at its own collective carbon footprint and the business of law and align with other industries in transforming to sustainable practices. Thus, the Canadian legal profession would be better served if practice guidelines began to develop across fields to better prepare lawyers for the changes ahead as climate change increasingly undermines our financial and legal systems and changes the way legal rights are viewed.

It is important to convey the significance of what is changing. Environmental, Social, and Governance principles have become mainstream expectations,<sup>219</sup> and governments and organizations are facing a potential “tidal wave” of climate litigation, with over 2,940 cases filed worldwide which in recent years has signalled a trajectory of exponential growth, and landmark cases frequently altering the global legal landscape.<sup>220</sup> Courts are increasingly affirming the scientific evidence on climate change, that its harmful effects are reasonably foreseeable, and that entities producing GHG emissions can be held responsible for failing to sufficiently reduce emissions. Plaintiffs are willing to try new, creative, and innovative legal arguments across the court system, administrative tribunals, and non-judicial bodies, and some are willing to pursue claims and cases even where the prospect of winning is limited. The pace of climate litigation is steadily growing and diversifying, showing no signs of slowing down as the world warms and the desire for accountability increases.<sup>221</sup> Rapid developments in the law and evolving risk registers in response to a warming planet are potentially creating new understandings of evolving duties of care and climate competent lawyering, and these developments mean lawyers must engage.

The Honourable Chief Justice Brian Preston of the Land and Environment Court of New South Wales has suggested several ways for lawyers to implement a “climate conscious” approach into everyday legal practice, including providing holistic legal advice outlining climate-related risks and opportunities, and incorporating climate considerations in lawyers’ ethical thinking and responsibilities.<sup>222</sup> In the context of corporations and director fiduciary obligations and climate change, the knowledge gap has been significantly lessened due to continual policy work and research produced by legal scholars such as Janis Sarra, Cynthia

---

<sup>218</sup> Nazish Dholakia, “Prison Is Already Hell, and Climate Change is Making it Worse” (6 July 2022), online: [perma.cc/FH3Y-VEQD]; Aryn Baker, “‘Air Conditioning is a Human Right.’ Heat-Related Prison Deaths Are Rising Due to Climate Change,” *Time* (22 May 2023), online: [perma.cc/CD9D-9K9T]; Daniel WE Holt, *Heat in US Prisons and Jails: Corrections and the Challenge of Climate Change* (New York: Sabin Centre for Climate Change Law, 2015) at 1.

<sup>219</sup> See e.g. Elizabeth Pollman, “The Making and Meaning of ESG” (2022) European Corporate Governance Institute, Working Paper No 659/2022.

<sup>220</sup> Sabin Centre for Climate Change Law, “Climate Change Litigation Databases,” online: [perma.cc/DZ6M-4GS3] (as of August 2023, there are 2,066 reported cases in the US and 880 globally, for a total 2,946 based on Climate Case Chart reporting).

<sup>221</sup> See e.g. Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2023 Snapshot* (London, UK: Grantham Research Institute on Climate Change and the Environment & Centre for Climate Change Economics and Policy, 2023); Terry Slavin, “Comment: Rising Tide of Climate Litigation Sweeps up Holcim and Danone, Along with Shell” (14 February 2023), online: [perma.cc/6W25-UDT6]. See also Beate Sjäfell & Carol Liao, eds, *Research Handbook on Accountability and Corporate Sustainability* (Cheltenham, UK: Edward Elgar) [forthcoming in 2024].

<sup>222</sup> Preston, *supra* note 6 at 52–54, 61. See also note 45 for a brief discussion on the terminology of “climate conscious” and “climate competent” lawyering.

Williams, the Canada Climate Law Initiative,<sup>223</sup> and its knowledge sharing with the Commonwealth Canada Law Initiative, along with collaborative work from legal experts and the public issuance of Canadian legal opinions affirming that climate change must be put on the board agenda, otherwise directors are at risk of breaching their fiduciary duties.<sup>224</sup> Building upon current research for corporate fiduciaries, new knowledge is needed to identify lawyers' specific fiduciary obligations to their clients in the context of climate change, which may help to spur greater action from law societies across Canada, along with sustaining research for the development of milestone practice guidelines and continuing education for all lawyers.

Next, the linkage between legal climate competency and the protection of the rights and freedoms of all persons under the legal profession's public interest mandate also cannot be ignored. Law societies in Canada have affirmed actions and developed programs in response to the Truth and Reconciliation Commission Call #27.<sup>225</sup> The LSBC climate resolutions in 2022 and 2023 made that direct connection in the preambles, noting how Indigenous territories are disproportionately impacted by climate change and how British Columbia has enacted the *Declaration on the Rights of Indigenous Peoples Act*.<sup>226</sup> In doing so, the British Columbia government has affirmed that *UNDRIP* applies to British Columbia laws, and that Indigenous peoples "have the right to the conservation and protection of the environment, the productive capacity of [and spiritual relationships with] their lands or territories and resources, and the protection of Indigenous laws."<sup>227</sup> As noted by Williams-Davidson at the 2023 LSBC AGM:

An important aspect of reconciliation that the Courts and the legal profession have not yet tackled is the relationship between climate change and human rights ... Indigenous Peoples are literally on the frontlines of climate change. Climate change threatens the integrity of Indigenous territories, thereby threatening Indigenous Peoples' wellbeing, culture, and rights, making Canada's — and this Law Society's — commitment to reconciliation unattainable.<sup>228</sup>

Accounting for the rights and interests of Indigenous peoples is integral in the shaping of a climate competent legal profession. Voting down a climate resolution two times at the LSBC did not assist with public perceptions,<sup>229</sup> nor advance the task of establishing evolving and needed competencies for the legal profession in the context of climate change and its impacts on Indigenous rightsholders. Regardless of whether any future climate resolutions at other law societies and associations across Canada pass or not, law societies in Canada may be obliged to act to ensure these competencies and protected freedoms are upheld, particularly for Indigenous rightsholders under the *Declaration on the Rights of Indigenous Peoples Act* in British Columbia, and Canadian law societies' commitments to truth and reconciliation.

<sup>223</sup> Canada Climate Law Initiative, "Who We Are," online: [perma.cc/65C3-JDMP].

<sup>224</sup> Hansell LLP, "Climate Change Risk on the Boardroom Table" (6 June 2022), online (pdf): [perma.cc/AK9F-VYHJ].

<sup>225</sup> Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: TRCC, 2015) at 3.

<sup>226</sup> *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44.

<sup>227</sup> LSBC, "2022 AGM Second," *supra* note 156.

<sup>228</sup> Williams-Davidson, *supra* note 176.

<sup>229</sup> Graeme Wood, "B.C. Lawyers Reject 'Climate Conscious Lawyering' Policies," *Business in Vancouver* (30 June 2023), online: [perma.cc/CH4V-JPAP].

Finally, the business of law is changing. Climate change is creating new demand for lawyers at every stage of the decarbonization process. Partners at prominent law firms are recognizing this demand, with one publicly noting, “You see the numbers required — five times the wind developments, five times the solar developments.... We will need five times the lawyers, accountants, environmental consultants. We need a call to arms in the professional services.”<sup>230</sup> Law firms seeking to recruit the next generation of lawyers will also need to recognize that millennials and Generation Z are reportedly placing heightened value on sustainability initiatives and have expectations that businesses — including in the business of law — be responsible for contributing positively to society.<sup>231</sup> These younger generations of lawyers and clients also have a willingness to either reward or punish businesses based on those contributions.<sup>232</sup> Unavoidable pressures are mounting for the legal profession to usher in a new era of climate competent lawyering. How effective the world is in mitigating GHG emissions today will dictate the legacy left for future generations. The next few years will be important in how the Canadian legal profession mitigates and adapts to this changing environment, both literally and ideologically.

## VI. CONCLUSION: “ON A HIGHWAY TO CLIMATE HELL”

We are in the fight of our lives.

And we are losing.

Greenhouse gas emissions keep growing.

Global temperatures keep rising.

And our planet is fast approaching tipping points that will make climate chaos irreversible. We are on a highway to climate hell with our foot still on the accelerator.<sup>233</sup>

– United Nations Secretary General  
António Guterres, 7 November 2022

Climate change is a human crisis. It is a systemic, wicked problem creating risks across society and economic sectors. At this critical juncture in our climate history, the next few years will be quite telling as to the direction of the Canadian legal profession in its engagement as a collective to protect the public interest with respect to climate change. As chronicled in this article, at least 15 bars, societies, and associations around the world have begun to publicly respond to this call, recognizing the role and responsibilities of the legal profession in this epoch of human history.

Member resolutions at law societies in Canada are one method of emboldening regulatory bodies to act. Lawyers in Canada have had chances to signal their commitments, and thus

<sup>230</sup> Katie Kouchakji, “How the Climate Crisis is Changing the Legal Profession” (28 September 2021), online: [perma.cc/7RVT-VRTS].

<sup>231</sup> Seoyeon Kim & Lucinda Austin, “Effects of CSR Initiatives on Company Perceptions Among Millennial and Gen Z Consumers” (2020) 25:2 *Corporate Communications* 299.

<sup>232</sup> Teresa McGlone, Judith Winters Spain & Vernon McGlone, “Corporate Social Responsibility and the Millennials” (2011) 86:4 *J Education for Bus* 195. See also Carol Liao, ed, *Corporate Law and Sustainability from the Next Generation of Lawyers* (Montreal: McGill-Queen’s University Press, 2022).

<sup>233</sup> António Guterres, “Secretary-General’s Remarks to High-Level Opening of COP27” (7 November 2022), online: [perma.cc/5RDH-JSKK] [emphasis added].

far efforts at the CBA and LSBC have failed. But the 2022 LSBC resolution itself inspired climate resolutions at the Barreau and LSNB, despite its own failure to pass. Continued climate actions at the Barreau and LSNB could provide the impetus needed in the country to move the dialogue forward. Climate education falls squarely within Canadian law societies' mandate to protect the public interest "by setting and enforcing standards of professional and ethical conduct for lawyers," particularly in ensuring lawyers stay competent in a rapidly changing world.<sup>234</sup> Climate competencies from lawyers are becoming table stakes in this climate emergency. That includes recognizing the disproportionate impacts climate change has on Indigenous peoples, the legal profession's commitments to truth and reconciliation, and its duties to protect the public interest as competent lawyers, responsible professionals, and global citizens.

The troubling climate scenarios humanity will have to live through depend on what is done today. Lawyers bear a duty to provide clients with undisguised, sound, and competent advice, and climate change is rapidly accelerating shifts in the law that are affecting lawyers across all practice areas. Though at times it is seemingly an invisible profession, lawyers' work permeates within society and the economy as it facilitates, directly and indirectly, virtually every transaction, and the rights, protections, and values held dear. Raising the baseline in the delivery of legal services will have a notable impact on the nation's transition to a decarbonized economy. Canadian law societies and associations that are cognizant of this growing demand for knowledge may begin to capitalize on shared learning and the cross-pollination of climate governance within the legal profession. They should begin those necessary discussions on how to ensure the Canadian legal profession does not lag behind the rest of the world in climate competencies. Achieving foundational changes within the Canadian legal profession will likely require multiple stages of extensive community engagement and inclusive collaboration aimed at expanding the current landscape of academic and professional discourse on climate conscious lawyering.

When the 2022 LSBC resolution was pending, this author published a Tyee op-ed stating that lawyers cannot ignore climate change.<sup>235</sup> Those words remain true. Lawyers may privately lament the future as forest fires, smoke-filled skies, and heat domes become inevitable annual occurrences throughout British Columbia, and indeed much of North America as was seen in the summer of 2023.<sup>236</sup> That "private" and individual closed off lament will not suffice any longer. Lawyers do not have to suffer from cognitive dissonance in the way they practise law versus mitigating climate change risks for future generations. Law societies must open the floodgates to grant lawyers active permission and opportunities to combat the climate crisis as a profession, collectively, as one of many things that must be done in this climate emergency.

---

<sup>234</sup> Law Society of British Columbia, "About Us," online: [perma.cc/3AEH-PHMG].

<sup>235</sup> Carol Liao, "Lawyers Can't Ignore Climate Change," *The Tyee* (15 June 2022), online: [perma.cc/8H7K-UVUR].

<sup>236</sup> Amy Smart, "Heat Domes and Wildfires: New Approach Needed in Extreme Weather Fight, Report Author Says," *Global News* (24 July 2021), online: [perma.cc/HU8W-WY2X]; Charles O Stanier, Gregory Carmichael & Peter S Thorne, "North America's Summer of Wildfire Smoke: 2023 Was Only the Beginning," *The Conversation* (1 September 2023), online: [perma.cc/C75K-GT89].