

“A Cold-Blooded Effort to Bolster up the Legal Profession”: The Battle Between Lawyers and Notaries in British Columbia, 1871–1930

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Notaries in British Columbia have managed to retain authority to offer to the public legal services that, in other Canadian jurisdictions (except for Quebec), have been arrogated to the exclusive domain of lawyers. A conceptual framework of professionalization and inter-professional rivalry developed by Anne Witz can be applied to the battles that took place between lawyers and notaries in British Columbia from 1871 to 1930. By the late 1920s, it appeared as though lawyers were winning the battle, when they moved the dispute from the Legislative Assembly to the courts.

Les notaires de la Colombie-Britannique ont réussi à conserver l'autorité sur l'offre de services juridiques que les avocats se sont arrogés ailleurs au Canada (sauf au Québec). Un cadre conceptuel de professionnalisation et de rivalité inter-professionnelle mis au point par Anne Witz peut être appliqué aux batailles que se sont livrées les avocats et les notaires de la Colombie-Britannique de 1871 à 1930. À la fin des années 20, les avocats semblaient remporter la bataille lorsqu'ils transportèrent le conflit de l'assemblée législative aux tribunaux.

DESPITE THEIR LOW numbers,¹ notaries in British Columbia have managed to maintain the right to provide services which have, in many other

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¹ The number of possible notaries in British Columbia was fixed by statute in 1981 at 322, at a time when there were 4,500 lawyers in the province. However, in 1929 Edmund C. Senkler, secretary of the Law Society, swore an affidavit *In the Matter of the Application for Enrollment as a Notary Public by Mr. John Alexander Stewart* stating that there were 1,000 notaries, compared to 600 lawyers, in British Columbia. British Columbia Archives and Records Service (hereafter BCARS), MSS 948, series VIII, vol. 43, file 43, affidavit sworn June 25, 1929. It is possible that the number of notaries was exaggerated. Bernard Hoeter discovered that the 1950 list of 800 notaries was

jurisdictions, been arrogated to the exclusive domain of lawyers.² Today, notaries in British Columbia, following a Notary Preparation Course of 15 to 18 months by distance education and statutory examinations,³ are allowed to conduct real estate transactions, prepare mortgage and refinancing documents, draft wills, attest signatures, administer oaths and affidavits, take statutory declarations, authenticate copies of documents, draft business contracts and builders' liens, and prepare powers of attorney.⁴ In other

meaningless because the "registrar duly recorded all new commissions but the list implied that notaries neither retired, resigned nor died". Bernard Hoeter, "Signed, Sealed and Delivered: A Short History of Notaries, Scribes, Tabellios and Scriveners and other Learned Men of Public Faith Together with a Practical Review of the Evolution of Law and Notarial Procedure in Particular in Connection with the Development of Western Civilization as we Know it Today for the Benefit of Notarial Candidates and Other Interested Readers" (unpublished manuscript, Vancouver, 1991), p. 198. How the number of notaries came to be fixed at 322 in 1981 is discussed elsewhere: Joan Brockman, " 'Better to Enlist Their Support Than to Suffer Their Antagonism': The Game of Monopoly Between Lawyers and Notaries in British Columbia, 1930-1981", *International Journal of the Legal Profession*, vol. 4, no. 3 (1997), pp. 197-234. The statute was amended in 1993 to allow for 323 notaries in the province, in recognition of a notarial seal that had not been counted in 1981 (personal communication from Dr. Bernard Hoeter and Mr. Stan Nicol, January 22, 1999).

- 2 Hamish Gow surveyed the role of notaries in Canada, Australia, New Zealand, South Africa, and the United Kingdom and Ireland in 1972 and concluded that "in the common law countries, [notaries'] principal function for the last three centuries ... has been to act as authenticators of the due execution of important documents. ... In the Province of British Columbia, for peculiar and historical reasons they have been permitted to become conveyancers without any of the controls or educational requirements imposed in the Province of Québec and civil law countries." Hamish Gow, "In the Matter of 'Notaries'", *Advocate*, vol. 31 (1973), p. 173.
- 3 Candidates also go through a screening process, in which the Society of Notaries Public investigates their educational background, commissions a financial character report from an investigative agency, and corresponds with character references. Although candidates are not required to have any education beyond high school graduation, the society prefers that they have a college diploma or university degree. Preference is also given to those who have some experience in the work of notaries. Articling is not required; however, the society strongly recommends that a candidate article with a notary public. The entire educational process takes up to two years and costs approximately \$10,000. Information taken from "Education and Membership Information" provided by the Society of Notaries Public to prospective applicants.
- 4 This list is taken from a brochure printed by the Society of Notaries Public of British Columbia, "What a Notary Public Can do For You". Section 18 of the *Notaries Act*, RSBC 1996, c. 344, provides that notaries in good standing with the society may do the following:
 - (a) draw instruments relating to property which are intended, permitted or required to be registered, recorded or filed in a registry or other public office, contracts, charter parties and other mercantile instruments in British Columbia;
 - (b) draw and supervise the execution of wills
 - (i) by which the testator directs the testator's estate to be distributed immediately on death,
 - (ii) that provide that if the beneficiaries named in the will predecease the testator, there is a gift over to alternative beneficiaries vesting immediately on the death of the testator, or
 - (iii) that provide for the assets of the deceased to vest in the beneficiary or beneficiaries as members of a class not later than the date when the beneficiary or beneficiaries or the youngest of the class attains majority;
 - (c) attest or protest all commercial or other instruments brought before the member for attestation or public protestation;

provinces with the exception of Quebec, notaries are limited to administering oaths and authenticating documents.⁵ How notaries came to share these services with lawyers in British Columbia provides an interesting example of how rivaling professions can end up collaborating for their mutual benefit.

In the late 1800s and early 1900s, notaries and lawyers lived in relative harmony in British Columbia. It was not until the early 1920s that lawyers tried to eliminate notaries from the legal terrain. The notaries responded by resisting and fortifying their own profession. Newspapers frequently used military analogies to describe the animosity that existed between the two professions before 1930.⁶ After 1930, the two professions worked together in greater harmony, with a great deal of privilege-trading between these supposedly rival occupations.⁷

The work of Anne Witz can be used, with some elaboration, to develop a conceptual framework of professionalization and inter-professional rivalry to explain the inter-occupational conflicts and resolutions between lawyers and notaries in British Columbia. The state, represented by both the Legislative Assembly and the courts, was often the key to resolving such disputes. However, power was often exercised in favour of either notaries or lawyers in the Legislative Assembly because both professions had insider politicians who fought strongly for the interests of their respective professions. The early harmony that existed between the notaries and lawyers was disrupted

(d) draw affidavits, affirmations or statutory declarations that may or are required to be administered, sworn, affirmed or made by the law of British Columbia, another province of Canada, Canada or another country;

(e) administer oaths;

(f) perform the duties authorized by an Act.

Lawyers in British Columbia on the Law Society's practising list can use the title notary public, and they have all the powers of a notary public (*Legal Profession Act*, RSBC 1996, c. 255, s. 31). For a discussion of notaries in the United States, see Michael L. Closen and G. Grant Dixon III, "Notaries Public From the Time of the Roman Empire to the United States Today, and Tomorrow", *North Dakota Law Review*, vol. 68 (1992), p. 873.

5 Notaries in Quebec (which has a civil law system) "have exclusive jurisdiction over mortgages, marriage contracts, transfer of a deceased person's property, and declaration of joint ownership". They share jurisdiction with lawyers in other areas of civil, business, and commercial law; however, they do not litigate and cannot be appointed as judges. Vincent Moier, "Ask a General Practitioner", *National* (October 1997), p. 48. See Benito Arruñada, "The Economics of Notaries", *European Journal of Law and Economics*, vol. 3, no. 5 (1996), p. 37, for a discussion of Spanish notaries, who also work in a civil law system.

6 Newspaper accounts used words associated with war: "War Waged Against Notary Public Bill", *Victoria Daily Colonist*, December 12, 1925, p. 1; "Ancient Feud Over Notaries Opened Again", *Victoria Daily Times*, March 6, 1928, p. 5; "Laymen of House Hear Battle on Lawyers' Powers", *Victoria Daily Times*, December 14, 1925, pp. 1, 3; "Notaries Bill is Withdrawn Under Fire", *Vancouver Daily Province*, December 15, 1925, p. 15.

7 Discussed in Brockman, "'Better to Enlist Their Support'". Lawyers and notaries also had agreements and disagreements with other occupations, but these are not discussed here.

by a number of skirmishes that occurred between 1922 and 1930. The Law Society scored its first major victory with the passing of legislation in 1927 which served to restrict severely the growth in the number of notaries by moving the battles from the legislature to the courtroom.

To sort out this history, I examined Law Society files kept in the archives in Victoria, newspaper reports, *Journals of the Legislative Assembly of British Columbia*, and amendments to the *Inferior Courts Practitioners Act*, the *Legal Professions Act*, and the *Notaries Appointment Act*. I also had the opportunity to talk to Dr. Bernard Hoeter, a historian and secretary of the Society of Notaries Public from 1969 to 1986. While not providing an exhaustive account of the history of the relationship between notaries and lawyers, the result of this investigation mirrors Witz's work in focusing on the various strategies used by both occupations to deal with inter-occupational conflict and on the role of the state and the courts in responding to them.

Conceptual Framework

Anne Witz, in *Professions and Patriarchy*, provides a useful conceptual framework for examining the history of lawyers and notaries in British Columbia in terms of actors and their social sources of power.⁸ She conceptualizes professional projects as "strategies of occupational closure which seek to establish a monopoly over the provision of skills and competencies in a market for services". Witz is of the view that professional projects are historically specific and that her conceptual framework may or may not reflect what has happened in professions other than the ones she examined in England (doctors, midwives, nurses, radiologists, and radiographers). Her framework, however, is very useful as a starting point from which to examine the professional projects of notaries and lawyers in British Columbia. Witz points out that demarcationary strategies are highly dependent upon access to external sources of power. In the case of notaries and lawyers, both depended upon this support, but it shifted, over time, from the notaries to the lawyers. In addition, inter-occupational conflicts, or "jurisdictional disputes" as Andrew Abbott refers to them, are ongoing and often contested.⁹

Witz charts four major strategies of occupational closure which deal with

8 Anne Witz, *Professions and Patriarchy* (London and New York: Routledge, 1992), p. 52. The minor modifications made to Witz's model are not a criticism of her model, as she recognizes that not all professional projects will be the same. Witz incorporates much of the work on professional projects that came before her (see chap. 1–2). However, she focuses on actors and their resources, rather than conducting a macro-analysis similar to some of the other historical works on the professions. See Harold Perkin, *The Rise of Professional Society: England Since 1880* (London and New York: Routledge, 1989), for an example of an alternative approach.

9 Andrew Abbott, *The System of Professions* (Chicago and London: University of Chicago Press, 1988). Also see Keith M. Macdonald, *Sociology of the Professions* (London: Sage Publications, 1995).

both intra- and inter-occupational conflicts and issues. Exclusionary strategies are aimed at internal politics or intra-occupational control, designed to maintain control over members and limit access to the occupation. Exclusionary strategies are sometimes countered by inclusionary strategies by the subordinate group, which tries to win entry to the group from which it is excluded.¹⁰

In contrast, demarcationary strategies, which are relevant to this case, are designed for inter-occupational control, to exclude adjacent occupations from performing specified tasks.¹¹ Demarcationary strategies are not intended to exclude the subordinate group from membership in the dominant group, but are designed either to incorporate the subordinate group's activities into the dominant group's jurisdiction (elimination of the subordinate occupation) or to deskill the subordinate group in order to restrict its activities: to contain and control it, and to ensure that it is subordinate to the dominant occupation. Witz describes these incorporation and deskilling strategies as the "end" or "mend" approaches to the subordinate occupation.¹² I have found that deskilling can also take place on a geographic level; members of the subordinate group can be limited to practising in areas where the dominant group cannot place its own practitioners. I refer to this as geographic deskilling. Both incorporation and deskilling tactics were tried by lawyers against notaries in their demarcationary efforts.

The dual closure strategy of the subordinate group is an effort to resist the demarcationary strategy, not because its members want to be (in this case) lawyers, but because they want to be included in the structure of legal services — to have part of the action. In Witz's analysis, some groups are accommodative in terms of their reaction to deskilling, accepting subordination to the dominant occupation,¹³ whereas others are revolutionary and attempt to re-skill, then to secure and expand their territory. In addition to resisting the dominant group (usurpation), the subordinate group will consolidate its own position and limit membership through its own exclusionary strategies.¹⁴ It will also engage in demarcationary strategies to exclude other, even more subordinate groups from occupational activities, thereby solidifying its existing territory.

According to Witz, both autonomous and heteronomous means are necessary for an occupation to maintain cognitive exclusivity and a professional monopoly of services.¹⁵ Autonomous means (generated internally) include, for example, training and testing through professional schools and the

10 Witz, *Professions and Patriarchy*, p. 48.

11 *Ibid.*, pp. 46, 197.

12 *Ibid.*, pp. 104, 197.

13 *Ibid.*, p. 105.

14 *Ibid.*, pp. 48–50.

15 *Ibid.*, p. 58.

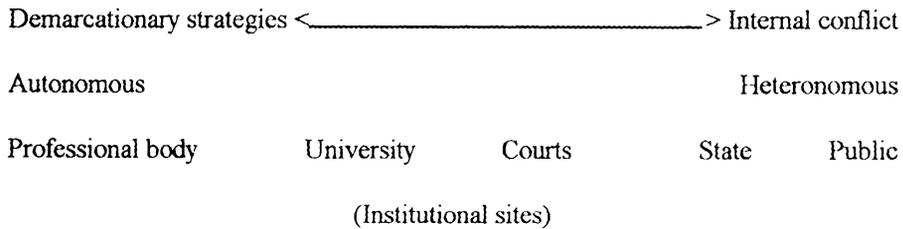


Figure 1: Institutional Sites for Demarcationary Strategies Used by Lawyers and Notaries in British Columbia

university (referred to as credentialist tactics), and heteronomous means (generated through other social groups, in this case requiring the cooperation of the state) include such measures as registration or licensing (referred to as legalistic tactics).¹⁶ Witz uses the distinction between autonomous means and heteronomous means, in part, to illustrate that the subordinates (women in the professions she studied) were far more successful when employing legalistic tactics through heteronomous means (the state) than they were in trying to break through the barriers raised by professional groups and the universities (autonomous means and credentialist tactics).

Witz identifies the institutional locations of professional projects as professional schools and the modern university (autonomous means) and the state (heteronomous means).¹⁷ Figure 1 elaborates on the demarcationary aspects of Witz's model and creates a continuum. At the autonomous end of the continuum is the professional body, followed by the university, then the courts, the state (represented by the Legislative Assembly), and finally the public, at the extreme heteronomous end of the continuum. Witz talks of the state as the weaker link in the institutional chain of male privilege.¹⁸ It might be argued, however, that an appeal to the public in terms of mobilizing political support is an even weaker link in professional power. It is also important to note that, once the law is created by the state, the male-

16 *Ibid.*, p. 67. Witz relies on Johnson's work regarding the dependence of the professions on the state, but also recognizes that men and women have unequal access to external resources (p. 192). T. Johnson, *Professions and Power* (London: Macmillan, 1972); T. Johnson, "The State and the Professions: Peculiarities of the British", in A. Giddens and G. Mackenzie, eds., *Social Class and the Division of Labour: Essays in Honour of Ilya Neustadt* (Cambridge: Cambridge University Press, 1982). Likewise, lawyers and notaries had unequal access to the Legislative Assembly, but this unequal access at first appeared to be in the notaries' favour, then tipped in favour of the lawyers. However, inter-occupational conflict continues today.

17 Witz, *Professions and Patriarchy*, p. 59.

18 *Ibid.*, p. 210.

dominated judiciary interpret it.¹⁹ For example, judges in a number of provinces across Canada and other parts of the world interpreted “persons”, in legislation governing admissions to the bar, to mean men only, when deciding whether women could be admitted.²⁰ Likewise, the legal profession relied on the judiciary to interpret legislation so that notaries would not be appointed, or would have great difficulty being appointed.

A consideration of dual membership, or interlocking players who work in more than one institutional site, needs to be added to Witz’s model for the purpose of this analysis. During the early twentieth century in Canada, it was not uncommon for lawyers who served as attorneys-general to be appointed directly to the bench. Some lawyers resigned their political seats for judicial appointments. A key player in the effort to restrict the services provided by notaries was Alexander Malcolm Manson, a Liberal member of the Legislative Assembly from 1916 (with one brief interruption) until 1935, when he resigned his seat and was appointed to the bench. During his reign as Attorney-General from 1922 until 1928, he instigated the first major battle between lawyers and notaries. Manson’s programme for the demise of notaries did not end when he was appointed a judge of the Supreme Court of British Columbia.

The “state” is often seen as a monolithic entity. However, most legislative assemblies operate not only in face of opposition members, but also in face of resistance from within the governing political party. Speaking against Attorney-General Manson’s 1922 bill to eliminate notaries were two of his colleagues in the Liberal cabinet — John Hart, Minister of Finance, and Thomas Dufferin Pattullo, Minister of Lands. Pattullo, a financial businessman from Dawson and later Prince Rupert,²¹ had been a notary for some 15 years, and he strongly objected to Manson’s bill. Manson, in return,

19 The law gives lawyers a greater say in politics than any other occupational group, save (perhaps) professional politicians. See T. C. Halliday, *Beyond Monopoly* (Chicago and London: University of Chicago, 1987). Furthermore, the political power of judges has been expanded in Canada with the introduction of the *Charter of Rights and Freedoms*, to the point where some claim that politics has been legalized in Canada. See Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Thompson Educational Publishing, 1994). There are numerous views on this. See Joel Baakan, *Just Words: Constitutional Rights and Social Wrongs* (Toronto: University of Toronto Press, 1997).

20 See, for example, Constance B. Backhouse, “‘To Open the Way for Others of My Sex’: Clara Brett Martin’s Career as Canada’s First Woman Lawyer”, *Canadian Journal of Women and the Law*, vol. 1, no. 1 (1985), p. 1; Joan Brockman, “Exclusionary Tactics: The History of Women and Minorities in the Legal Profession in British Columbia”, in Hamar Foster and John P. S. McLaren, eds., *Essays in the History of Canadian Law: Volume VI, British Columbia and the Yukon* (Toronto: Osgoode Society, 1995), p. 508; Mary Jane Mossman, “Feminism and Legal Method: The Difference it Makes”, *Australian Journal of Law and Society*, vol. 3 (1986), p. 30; Lois K. Yorke, “Mabel Penery French (1881–1955): A Life Re-Created”, *University of New Brunswick Law Journal*, vol. 42 (1993), p. 3.

21 John Neil Sutherland, “T. D. Pattullo as Party Leader” (MA thesis, University of British Columbia, 1960), p. 4.

chastised his cabinet colleagues for speaking out against government bills.²²

These internal disagreements in the Legislative Assembly, and also among members of the judiciary, were quite common and are represented by the “internal conflicts” arrow in Figure 1. It was probably not a coincidence that Pattullo, when he became premier in 1933, passed over Manson and appointed a young lawyer (Gordon Sloan) as Attorney-General.²³ Attorneys-general were most often appointed from the ranks of the legal profession;²⁴ in some cases the treasurer of the Law Society was appointed as the Attorney-General and held both positions simultaneously. Whether appointed to the bench or elected to the Legislative Assembly, lawyers did not forget that they were lawyers, and often spoke to members of the Law Society to reiterate their common ground and to support their profession within the confines of their judicial or political duties. While there is less evidence of it, notaries took the same approach to their professional colleagues.

The Dispute Develops

Prior to British Columbia joining Confederation in 1871, notaries were appointed by the governors of the colonies of British Columbia and Vancouver Island.²⁵ The first legislation governing notaries in the new province allowed the Lieutenant-Governor “to appoint, from time to time, as he thinks fit, ... one or more Notaries public”. Every notary was given the “power to attest all commercial instruments ... for public protestation, and otherwise act as usual in the office of Notary” and was appointed “during pleasure”.²⁶ According to contemporary case law, notaries derive their authority from the legislation and from common law, and therefore the laws of England as they existed on November 19, 1858, apply.²⁷

22 “Premier Promises Notaries Redress”, *Victoria Daily Colonist*, December 13, 1922, pp. 1, 3.

23 Martin Robin, *Pillars of Profit: The Company Province, 1934–1972* (Toronto: McClelland & Stewart, 1973), pp. 11–12. However, Robin was of the view that Pattullo owed a debt to Manson.

24 The legal profession mobilized to ensure that the Attorney-General was legally trained. See, for example, BCARS, MSS 948, series VIII, vol. 45, file 56, Annual Meeting of the Law Society of British Columbia, 1939, p. 40.

25 The preamble to the first *Notaries Act*, SBC 1872, states, “whereas it has been considered doubtful whether the Governors of the former Colonies of British Columbia and Vancouver Island had the power to grant Commissions for making Notaries Public; And whereas it is advisable to remove all doubt upon the subject, and as well to confirm all such Commissions and Appointments as have been already issued and made ...”. There is evidence that notaries worked in what is now British Columbia as early as 1864, and by 1875 there were 40 notaries (Hoeter, “Signed, Sealed and Delivered”, p. 195).

26 *Notaries Appointment Act*, SBC 1872, s. 2.

27 *The Law Society of British Columbia v. Gravelle and the Society of Notaries Public of British Columbia*, October 9, 1998, BCSC A964141, Vancouver Registry. In this case, the court decided that notaries in England were not allowed to probate wills in 1858, and so it followed that British Columbia notaries were not allowed to do so. In an earlier case, the British Columbia Court of Appeal decided that, since notaries were not allowed to incorporate companies in 1858, neither were British Columbia notaries. See *Reference re Society of Notaries Public of British Columbia* (1969), 69 WWR 475.

In 1884 the *Notaries Appointment Act* was amended so that the Lieutenant-Governor in Council could make “appointment for the whole or any part or parts of the Province, and may be during pleasure, or for such period as the Lieutenant-Governor in Council may think fit”.²⁸ While English notaries during this time were required to undergo a five-year or seven-year apprenticeship,²⁹ such requirements were not introduced into Canada. There was no infrastructure set up to accommodate such training, and the office in Canada was “neither so important nor so remunerative that the appointments [could] be restricted to persons with such qualifications”.³⁰

By 1893 the legislation in British Columbia required notaries to be examined on their qualifications by a judge of the Supreme Court of British Columbia, or of the County Court, or by “such other person as may from time to time be appointed in that behalf by the Lieutenant-Governor”. The Lieutenant-Governor in Council could make regulations for such examinations and certifications. In addition, notaries now had to be British subjects. Bernard Hoeter is of the view that the introduction of judicial examinations “emancipated notaries from political patronage and became the cornerstone of B.C.’s modern notarial profession”.³¹

The legislation was amended in 1900 so that the Lieutenant-Governor in Council was again limited, as he had been prior to 1884, to appointing notaries “for the province”. This jostling back and forth between whether notaries were appointed “for the province” or for “part of the province” (limited geographically in their practice) did not become a major factor in the dispute between notaries and lawyers until 1927.

In 1910 the Legislative Assembly repealed the requirement that notaries be examined by judges, and the change raised some concerns in the legislature. The Liberal opposition accused the Conservative government of trying to secure control of such appointments to exercise them for political gain. Attorney-General William J. Bowser replied that the bill did not increase the powers of the government because, under the old legislation, the government could still refuse to appoint someone who had passed the examinations. However, once they had passed the examinations, it was “difficult or embarrassing to refuse” their appointments. Although the verbal exchanges focused on the political aspects of the dispute, in that the judges were being

28 *Notaries Appointment Act*, SBC 1884, c. 23, s. 2.

29 C. W. Brooks, R. H. Hemholz, and P. G. Stein, *Notaries Public in England Since the Reformation* (London: The Society of Public Notaries of London, 1991), chap. 5.

30 J. Eades Ward, *History of Notaries and the Notaries of Canada* (Vancouver: The Society of Notaries Public of British Columbia, 1937), p. 12. Ward was the first secretary of the Society of Notaries Public of British Columbia in 1927 and served until 1939 (Hoeter, “Signed, Sealed and Delivered”, p. 197). Ward, with permission, used large extracts from Bernard Wallace Russell, *Office and Practice of a Notary of Canada* (Toronto: Carswell Company, 1927), and a similar quotation is found in Russell’s book, p. 12.

31 Hoeter, “Signed, Sealed and Delivered”, p. 195.

appointed by a Liberal government in Ottawa and there was a Conservative government in British Columbia,³² the Attorney-General (for the most part) defended this amendment on the grounds that the government should be allowed to screen out applicants who were unfit. However, he did make one brief reference to the notion that the judges should not be passing judgement on the number of notaries appointed.³³ In 1909 there were 89 notaries in the county of Vancouver.³⁴

The number of notaries in the province was likely not a concern for lawyers prior to the early 1900s, because there were so few lawyers. The first lawyer in the colony of Vancouver Island arrived in 1858, and, when lawyers first organized a law society in 1869, there were only 14 members.³⁵ The call and admission of lawyers was under the control of the courts until 1874, when it was turned over to the Law Society.³⁶ One factor in the limited number of lawyers was Judge Mathew Baillie Begbie, who was appointed a judge in the colony of British Columbia in 1858, around the time of one of the first gold rushes in the province. Judge Begbie, who in 1861 expressed hope “that a sufficient number of duly educated practitioners may arrive from the Mother Country”, resisted both American and Canadian trained lawyers.³⁷ Until the opening of law schools in Victoria and Vancouver in 1914 (under the direction of the Benchers of the Law Society), the training of lawyers took place through an apprenticeship which varied in quantity and quality, followed by examinations set by the Law Society.³⁸

The earliest complaint about notaries appears in the early 1900s and concerned their involvement in the naturalization of Japanese. The major opposition to this naturalization was directed at restricting or preventing the Japanese from obtaining fishing licences and from working in the mines.³⁹

32 The situation might have been aggravated by the appointment of James Alexander Macdonald as the Chief Justice of British Columbia in 1909. Prior to his appointment, Macdonald had spent six years as leader of the Liberal provincial opposition. In addition, the Attorney-General had to deal with other infighting on the bench. See David R. Verchere, *A Progression of Judges: A History of the Supreme Court of British Columbia* (Vancouver: University of British Columbia Press, 1988), chap. 12–13.

33 “Bringing Notaries Within Range of the Machine”, *Victoria Daily Times*, January 29, 1910, p. 10; “Brewster Objects”, *Victoria Daily Colonist*, February 2, 1910, p. 1.

34 Hoeter, “Signed, Sealed and Delivered”, p. 195.

35 Verchere, *A Progression of Judges*, pp. 45–46.

36 Alfred Watts, *A History of the Legal Profession in British Columbia, 1869–1984* (Vancouver: Law Society of British Columbia, 1984), p. 50.

37 Quoted in *ibid.*, p. 48. See also Verchere, *A Progression of Judges*, p. 28. The anti-Canadian bias also existed on Vancouver Island.

38 See W. Wesley Pue, *Law School: The Story of Legal Education in British Columbia* (Vancouver: Faculty of Law, University of British Columbia, 1995), chap. 1–2. There were also lawyers in British Columbia who had been trained in England and Ontario (Osgoode Hall Law School); see Pue, *Law School*, p. 22. The law schools shut down during part of World War I. Although they reopened in 1919, Victoria’s was closed in 1923 and Vancouver’s in 1943. See Pue, *Law School*, p. 60.

39 This appears to be the dominant objection in the newspaper articles; however, the opposition members also accused the governing party of allowing such naturalizations to gain the vote of the

In 1901, on the recommendation of Captain Tatlow, a member of the Legislative Assembly, the notarial commissions of Mr. Thicke and Mr. McLean were abrogated for the “wholesale” naturalization of Japanese persons “in the most irregular way”.⁴⁰ There was evidence that, of the 613 naturalization papers issued in the year, 307 were sworn before Mr. Thicke and 309 before Mr. McLean. In addition, Mr. Thicke “had been drumming up a business in the way of naturalizing” Japanese, in that he asked the health inspector for information on all the Japanese boarding houses in the city.⁴¹ One line in the debates hinted at the relationship between notaries and lawyers. In response to the accusation that prominent friends of the government had been implicated in the frauds, Mr. Eberts responded that “prominent members of the legal profession were not in the business of naturalizing Japanese”.⁴² This leaves the impression that notaries were perhaps more sympathetic to the plight of the less fortunate, who may have been shunned by some lawyers.⁴³

In 1908 a lawyer from Cranbrook, British Columbia, wrote to the secretary of the Law Society complaining about “a great deal of abuse” taking place by non-lawyers acting for people under the *Inferior Practitioners Act* [*sic*] and asking that the act no longer apply in the West Kootenay region because there was a sufficient number of lawyers in the area.⁴⁴ Despite these complaints, no confrontations had yet arisen between the two professions, which had co-existed in relative harmony from the time before

Japanese. There were also some concerns that the two notaries were being used as political scapegoats. According to W. Peter Ward, *White Canada Forever*, 2nd ed. (Montreal and Kingston: McGill-Queen’s University Press, 1990), there had just been an “unprecedented tide of Oriental immigrants” into the province in 1899 and 1900, and the politicians recognized “the political utility of prejudice” (pp. 55–56).

40 “Fraudulent Naturalization”, *Victoria Daily Colonist*, March 12, 1901, p. 5. The concern appeared to be that the Japanese were “depriving white men of work”.

41 “Those Cancelled Commissions”, *Vancouver Daily Province*, April 11, 1901, p. 4.

42 “Fraudulent Naturalization”, *Victoria Daily Colonist*, March 12, 1901, p. 5. See also “Commissioners may be Cancelled”, *Vancouver Daily Province*, January 11, 1901, p. 5; “Rattling Speech”, *Vancouver Daily Province*, March 12, 1901, pp. 1, 3.

43 This class distinction between the clients of lawyers and the clients of notaries was confirmed by Dr. Bernard Hoeter in a conversation on October 19, 1998. Dr. Hoeter was commissioned as a notary in British Columbia in 1960 and was the secretary of the Society of Notaries Public of British Columbia from 1969 to 1986. It may also be that notaries were drawn from a different social, and perhaps ethnic, group than lawyers. Notaries had roots in the community and often dealt with immigrants who required notarized documents and translation services. Lawyers were most often from England and likely did not speak a second or third language. In 1909 Victoria law students asked the Law Society to establish a law school in Victoria rather than Vancouver, because “Victoria as the home of proportionately greater leisure and moneyed class of people would probably furnish a relatively greater number of students than Vancouver”. BCARS, MSS 948, vol. 40, file 15, Letter to the Law Society, May 27, 1909. Notaries have always claimed to offer more personal service at a lower fee than lawyers and were likely more accessible to the working class and small entrepreneur.

44 BCARS, MSS 948, series 8, vol. 40, file 14, G. H. Thompson to Secretary of the Law Society, received October 29, 1908. The *Inferior Court Practitioners Act*, RSBC 1897, c. 54, is discussed *infra*.

British Columbia joined Confederation in 1871. Discontent among lawyers was growing, however. In 1919 the *Canada Law Journal*, in looking for remedies for unauthorized practice, reproduced a section from an article written for the United States which read in part:

A suggestion recently made ... is that every lawyer should be *ex officio* a notary public, and that the office of notary should be confined to members of the legal profession. While the position of notary has lost much of its ancient dignity it still retains functions which are capable of use in the perpetuation of fraud. The restriction of these functions to members of a learned profession subject to professional discipline would largely do away with the antedated acknowledgements and similar frauds which the practitioner occasionally encounters.⁴⁵

Lawyers in early British Columbia, who were mostly from England, started out with the power of professional status behind them — to the extent that it existed at that time.⁴⁶ Lawyers were legally trained, although this was mostly through apprenticeship. Notaries in British Columbia were businessmen (mostly real estate agents). Although there were professional notaries (for example, the scriveners of London, England, were legally trained, as were notaries in Quebec), early notaries in British Columbia did not have professional standing or any special training. They garnered their authority from political appointments, and such appointments were made to facilitate business and other transactions, including the conveyance of property.⁴⁷ The early resistance by Judge Begbie to non-British lawyers may have been one factor which allowed notaries to gain a strong foothold in the province in the conveyance of property, which elsewhere was being taken over by lawyers.⁴⁸ Another factor may have been British Columbia's geography and natural resource-based economy. There was an insufficient

45 "Unauthorized Practice of Law", *Canada Law Journal*, vol. 55 (1919), p. 376.

46 British Columbia became a province in 1871, after, the anti-professional Jacksonian era in the United States and after the more formal organization of the legal profession in England. See W. Wesley Pue, "Trajectories of Professionalism? Legal Professionalism After Abel", *Manitoba Law Journal*, vol. 19 (1990), pp. 394–398, and "Moral Panic at the English Bar: Paternal vs. Commercial Ideologies of Legal Practice in the 1860s", *Law and Social Inquiry*, vol. 15, no. 1 (1990), p. 49. However, the professions in Canada did not escape criticism in the nineteenth century. See Michael Bliss, *A Living Profit* (Toronto: McClelland & Stewart, 1974), in which he quotes the *Canadian Manufacturer* (1893) as stating that the training of professionals was seen as the "educating of rich men's children — for which the country had no possible use" (p. 118).

47 M. P. Aidan Butterfield, "Those Indomitable Notaries of British Columbia", *Professional Administrator* (1986), p. 21; W. E. Burns, "Report Prepared for the Committee on Encroachments on the Lawyers' Sphere of Activities", *Year Book Canadian Bar Association* (1928), p. 367.

48 In 1915 Manitoba had managed to limit notaries to administering oaths, attesting to documents, and giving notarial certificates. "Report of Joint Committees on Encroachments and Publicity", in Conference of the Governing Bodies of the Legal Profession of Canada, *Programme and Handbook* (1931), p. 33.

number of lawyers to cover the small communities that sprung up around mining, fishing, and forestry in a very mountainous province. However, by the early 1920s, some lawyers were feeling the economic repercussions of sharing legal services with notaries.⁴⁹

Lawyers Attempt to Eliminate Notaries Through Incorporation, 1922

The first major skirmish between notaries and lawyers in British Columbia was instigated by Attorney-General Alexander Manson on December 8, 1922, during John Oliver's reign as Liberal premier.⁵⁰ Although referred to as a "prominent and able lawyer", Manson was never a Bencher of the Law Society, except in his capacity as Attorney-General. As such, he was quite concerned about the plight of lawyers. In 1924, in a talk to the Victoria Bar Association, he acknowledged that the practice of law "was neither as plentiful nor as profitable as it had been some years ago". Part of these problems stemmed from "in roads of notaries public upon the proper province of qualified lawyers".⁵¹ Some of his hostility towards notaries may have been because of his early law practice in the town of Prince Rupert,

49 Lawyers, who were forced by the government to accept women into the legal profession in 1912, were also concerned that women might add to the competition of providing legal services. See Brockman, "Exclusionary Tactics". However, there appears to have been little fanfare over the first woman notary. After numerous enquiries (some still ongoing), I have been unable to determine who the first woman notary was. In 1960, when Bernard Hoeter became a notary, he recalls that there were two women and approximately 250 men (personal communication).

50 "Manson to Cut Down on Notaries for Public Good", *Victoria Daily Times*, December 9, 1922, p. 7; *Journals of the Legislative Assembly of British Columbia*, 1922, p. 166. Alexander Manson was first elected to the Legislative Assembly in 1916. In 1922 he was appointed to the cabinet as Attorney General. He was re-elected in 1933 and resigned his seat for his appointment to the British Columbia Supreme Court in 1935. He was forced to retire in 1961, following an amendment to the *Constitution Act* in 1960 that required federally appointed judges to retire at the age of 75 (Verchere, *A Progression of Judges*, p. 155). His career as Attorney-General from 1922 to 1928 was riddled with controversy, ranging from his criticism of employers who did not give preference to white employees ("Want Orientals out of Industry", *Victoria Daily Colonist*, June 3, 1922, p. 3; "Let Orientals Go Home, Says Manson", *Victoria Daily Times*, June 3, 1922, p. 28) to an investigation by the Law Society of his department withholding a report on the sanity of an accused (Mr. Yamamoto) who was convicted of murder and sentenced to hang ("Bencher's Probe Charges Against Attorney General", *Vancouver Evening Sun*, July 17, 1925, p. 1). He also faced calls for his resignation over the investigation of Wong Foon Sing, charged with the murder of Janet Smith ("Manson Gives House Facts in Defending Conduct of Janet Smith Investigation", *Victoria Daily Times*, November 17, 1925, p. 2). As a judge he was known as the modern "hanging judge", and the mother of a man he sentenced called him, amongst other things, a "miserable, rotten, sadistic old bastard". The rest of her "epithets remain unprintable". George L. Murray, "Manson's Last Case", *Advocate*, vol. 42 (1984), p. 407.

51 "Attorney-General Defends Lawyers", *Victoria Daily Colonist*, February 8, 1924, p. 3. Manson suggested that unemployed lawyers might find work in the business of developing natural resources in the province. He also thought lawyers were "peculiarly equipped" for public office. While Manson may have been spurred on by the various bar associations with which he kept in touch, he was not above taking on such projects with greater personal enthusiasm than one might expect from a politician. His anti-Japanese and anti-Chinese comments were particularly cutting.

from 1908 until 1916. As mentioned earlier, Pattullo, one of his Liberal colleagues who voted against his anti-notaries bill, was from Prince Rupert.

Manson's 1922 bill reintroduced the requirement that prospective notaries take an examination before a judge of the Supreme Court, County Court, or some alternate person appointed by the Attorney-General, rather than by the Lieutenant-Governor.⁵² This amendment would allow the legal profession (through the Attorney-General, who was most often a lawyer) an extraordinary power over notaries, through the conduit of the state. Manson's bill further stated that each notarial commission would expire four years after December 31 in the year it was issued and that, when a commission expired, the notary might be reappointed "upon satisfying the Attorney-General that a Notary Public is needed for the public convenience in the place where the applicant resides and intends to carry on business".⁵³ Those notaries who became lawyers could be reappointed as notaries without further qualification. All commissions, other than those given to lawyers, were to expire on December 31, 1926.⁵⁴ Debate arose on the bill during the Friday evening sitting of December 8; it was adjourned to the next sitting,⁵⁵ and debate resumed again on December 13. Unlike his earlier comments about notaries taking business away from lawyers, Manson's rationale for his bill in the Legislative Assembly was that notaries were doing legal work for which they were not trained, and as a result they were jeopardizing their clients' rights.⁵⁶

In Witz's model, this attempt at incorporation was a demarcationary strategy, carried out through a heteronomous means (the state), which is predicted to be the most successful approach. In this case, the lawyers had the added advantage of having the bill introduced in the Legislative Assembly by one of their own members. If successful, Manson's bill would have resulted in the incorporation of services provided by notaries into the exclusive domain of lawyers, and notaries who were not lawyers would have disappeared in four years.

The notaries responded to Manson's bill with a countervailing political tactic through the state and also mobilized key members of the business community. Members of the Realty Board, the Vancouver Board of Trade, and other businessmen descended upon Premier Oliver (a former farmer and

52 Bill 83, *An Act Respecting Notaries Public* (1922), s. 4.

53 *Ibid.*, s. 6 and 7.

54 *Ibid.*, s. 11. Section 8 required all notaries to indicate on all their documents the date on which their commissions expired, and failure to do so could result in a fine not exceeding \$10, following summary conviction.

55 *Journals of the Legislative Assembly of British Columbia*, December 8, 1922, p. 174.

56 "Manson to Cut Down on Notaries for Public Good", *Victoria Daily Times*, December 9, 1922, p. 7. The legislation at that time stated that notaries had the power to attest all commercial instruments and "otherwise act as is usual in the office of Notary". RSBC 1911, c. 173, s. 3.

labourer)⁵⁷ and the Attorney-General. They objected to the bill on the basis that it would cause a great deal of hardship and inconvenience to real estate agents and the public, who would be required to conduct all conveyancing through lawyers. Some also objected to the fact that the bill would, in effect, create a lawyers' monopoly. In addition, much to the chagrin of Manson, two of his fellow cabinet ministers (T. D. Pattullo, Minister of Lands, who had passed the exam 15 years earlier and did not want to rewrite it, and John Hart, Minister of Finance) supported the deputation in their objections to Manson's bill. Premier Oliver promised that their concerns would be taken into consideration.⁵⁸

While Manson's bill on notaries was held in abeyance, his bill to amend the *Inferior Courts Practitioners Act* passed. This legislation, enacted in 1873, allowed anyone who was not a barrister or solicitor, but who was on the provincial voters' list, to appear in any county or magistrate's court and act as advocate of any party in the proceedings, "notwithstanding such person shall not have been duly admitted as an attorney or barrister by the Supreme or any other Court of British Columbia, any rule, order, statute, or other law to the contrary notwithstanding". This was an exception to the monopoly on court appearances granted to lawyers under the *Legal Professions Act*. In 1896 the act was amended so that it did not apply to specified urban areas, including the cities of Victoria, Vancouver, New Westminster, and Nanaimo, thus enforcing the lawyers' monopoly. The act was again amended in 1922 so that it did not apply "within the territorial limits of any incorporated city or municipality within which two or more members of the Law Society of British Columbia are in actual practice".⁵⁹ Manson was quoted as having said that it was "only fair to the struggling lawyers in small towns that they should have whatever business was going".⁶⁰ While Manson had failed to eliminate notaries through incorporation, he had successfully limited some of their work through this amendment, restricting their practice through geographic deskilling.

Lawyers Attempt to Deskill Notaries, 1925

Manson's 1922 bill died, and on June 24, 1924, the Liberals were returned to office, with Manson again as Attorney-General. On December 7, 1925 (almost three years to the day after Manson's 1922 bill), Ian MacKenzie, a lawyer and Liberal member from Vancouver,⁶¹ introduced a bill, on the request of the

57 James Morton, *Honest John Oliver* (London: J. M. Dent and Sons, 1933). Jean Barman, *The West Beyond the West: A History of British Columbia* (Toronto: University of Toronto Press, 1991), described him as a "proponent of simpler values in an increasingly complex age" (p. 236).

58 "Premier Promises Notaries Redress", *Victoria Daily Colonist*, December 13, 1922, pp. 1, 3.

59 SBC 1922, c. 18, s. 2.

60 "Struggling Lawyer is Given a Chance", *Victoria Daily Times*, December 14, 1922, p. 13.

61 Mackenzie, who graduated from the University of Edinburgh in 1913 and was called to the bar in 1919, was noted in the newspapers for his opposition to the immigration of Japanese persons. In 1922

Bar Association, to restrict the services of notaries “in such matters as lawyers claim involve the possession of technical knowledge”.⁶² Bill 46 stated that, notwithstanding anything in the legislation or the terms of a commission, “a Notary Public shall be limited to attesting all commercial instruments that may be brought before him for public protestation, and to taking acknowledgements, oaths, and affirmations, and declarations”.⁶³ This amendment would have limited notaries to those activities to which lawyers had successfully limited them in other provinces (except Quebec). The bill was, as the newspapers noted, “instantaneously” opposed, and one Conservative member, Cyrus Peck, explained that he had his “knife out” for such bills.⁶⁴

The bill was referred to a select committee of five non-lawyers. This time, the Chamber of Commerce and the Real Estate Board were joined by the chartered accountants, and they rallied against the anti-notaries bill. A delegation of about 60 professional and business men descended on Victoria to protest the legislation before the committee. In addition to arguing that

Mackenzie promoted amendments to the Constitution which would allow British Columbia to prohibit Asiatics from acquiring property or proprietary interests in the province (“Boldness Urged by Mackenzie for Oriental Problem”, *Victoria Daily Times*, November 22, 1922, p. 18; “Would Ban Orientals from Living Here”, *Victoria Daily Colonist*, November 22, 1922, p. 7; “Ian Returns to Practice Law in City”, *Vancouver Daily Province*, July 13, 1949, p. 2). In 1924 he promoted the immigration to Canada of “hundreds of hardy Scotch fishermen” who could “outstrip the Japanese as fishermen” (“Ask Government to Bring Hardy Hebrideans Here”, *Victoria Daily Times*, February 22, 1924, pp. 1, 2). In the 1930s and 1940s Mackenzie continued his campaign as Liberal member of the House of Commons, and he was appointed to the Senate in 1948. See, for example, “No Japs for B.C. Mackenzie’s Pledge”, *Vancouver Sun*, September 19, 1944, p. 13. He died in 1949, at the age of 59 (“Mackenzie Devoted His Life to Canada”, *News-Herald* [Vancouver], September 4, 1949, p. 2). One of the reviewers of an earlier version of this paper asked whether anti-Asian racism may have been a theme that underscored the occupational rivalry between the notaries and lawyers. While this appeared to be a factor in the 1900 episode, anti-Asian racism was so widespread in British Columbia that it is difficult to determine whether this was the case. The first Asian notary was not appointed until 1950. See Brockman, “‘Better to Enlist Their Support’”, p. 210.

62 “Laymen of House Hear Battle of Lawyers’ Powers”, *Victoria Daily Times*, December 14, 1925, pp. 1, 3; “Notaries Bill Stoutly Opposed”, *Vancouver Sun*, December 8, 1925, p. 2.

63 Bill 46, *An Act to Amend the “Notaries Act”* (1925); *Journals of the Legislative Assembly of British Columbia*, December 7, 1925, p. 105. A companion bill, Bill 45, *An Act to Amend the Legal Professions Act* (1925), would have expanded the definition of the practice of law to include, among other activities, “counselling or advising upon any question of law, examining or reporting upon any title to property, and drawing or revising any document intended or required to be registered, recorded, or filed in any public registry or office of record, and drawing or revising any will or testamentary document”.

64 “Notaries Bill Stoutly Opposed”, *Vancouver Sun*, December 8, 1925, p. 2. Cyrus Peck worked in the Klondike and then became a general agent and broker in the salmon canning industry in northern British Columbia. He was first elected to the federal Parliament in 1917, lost his seat in 1921, and sat in the B.C. legislature from 1924 to 1933 (“Legendary Peck, VC Honored by ‘His Own’”, *Victoria Daily Colonist*, September 28, 1956, p. 13). At his death in 1956, Peck was remembered as the “only man in the British Empire to win the Victoria Cross in the First World War while a member of Parliament” (“Cy Peck, First War VC, Dies at 85”, *Vancouver Sun*, September 28, 1956, p. 3).

real estate agents would be robbed of business, the delegation spoke against a monopoly by lawyers “who may charge what they like for much work that is now done gratuitously for the people, and will throw that phase of business back to remote times, and deprive British Columbia of the reputation it has set up of having improved on the law of England in the direction of making it simpler for the people to understand”. The lawyers were accused of combining “to rob [the real estate men] of a good deal of their living” and were compared to an octopus, out to “grab everything in their reach”. The delegation also objected to the fact that the real estate world (most of the notaries were in the real estate business at this time) had not been given notice that the bill was being introduced, and asked that it be delayed. One delegate promised a protest from every municipality in British Columbia.⁶⁵

The notaries made a number of concessions before the committee. They were prepared to leave the drafting of some documents entirely in the hands of lawyers and to reintroduce examinations for new notaries. The lawyers appearing before the committee took the view that restricting the practice of notaries was for the “protection of the public”, and one lawyer provided the committee with a list of mistakes that had been made by incompetent, non-legally trained persons. He added that the public had recourse for the mistakes of lawyers, but not those of notaries.⁶⁶ In addition, the lawyers argued that British Columbia notaries were not properly trained or qualified for the work they did.⁶⁷

Mackenzie’s bill was withdrawn on December 17, 1925, following a tentative agreement, reached before the committee on December 15, on three recommendations of the committee to the House. First, existing commissions would be reviewed and all inactive ones cancelled. Second, future commissions would not be issued without examinations. Third, notaries would not draw up wills, bills of sale, or chattel mortgages, and these activities would be in the exclusive domain of lawyers.⁶⁸

At the same time that he withdrew his bill, Mackenzie introduced Bills 81 and 80. Bill 81 stated that everyone who applied to become a notary public, other than a member of the Law Society of British Columbia, should write an examination set by the Inspector of Legal Offices.⁶⁹ Bill 80 made it an offence for anyone other than a member of the Law Society of British Columbia to “draw or revise any will or testamentary document, or any

65 “Big Delegation Voices Protests on Notary Bill”, *Victoria Daily Colonist*, December 15, 1925, p. 6.

66 *Ibid.* The Law Society was set up to investigate complaints against lawyers, whereas no similar arrangement existed for notaries.

67 “Laymen of House Hear Battle on Lawyers’ Powers”, *Victoria Daily Times*, December 14, 1925, pp. 1, 3.

68 *Journal of the Legislative Assembly of British Columbia*, 1925, p. 140; “Notaries Bill is to be Withdrawn”, *Victoria Daily Colonist*, December 16, 1925, p. 5.

69 Bill 81, *An Act to Amend the “Notaries Act”* (1925), s. 2.

chattel mortgage or bill of sale”.⁷⁰ Mackenzie withdrew these bills on December 18, following “assurances from notaries and lawyers that they would get together at a friendly conference ... and settle the matters outstanding between them”. Mackenzie was of the view that “the Legislature could ratify the agreement reached, if it saw fit to do so”.⁷¹ The matter was left until February 1927.

Efforts to deskill notaries and limit their services to the public were thus unsuccessful, even with the lawyers’ advantage of having an Attorney-General who was strongly in favour of eliminating notaries. The public campaign launched by the notaries and supported by real estate agents, accountants, and members of the governing Liberal party was sufficient to ensure that the threatening bills were withdrawn. In addition, these efforts failed because the Premier, a former farmer and labourer, appeared sympathetic to the notaries’ cause.

The effect of the 1925 skirmish was to bring the notaries together. The Society of Notaries Public of British Columbia organized its first convention on August 12, 1926, and was incorporated on November 2 of the same year. At their first convention, the newly elected president of the society announced that they had “not been organized for the protection of our own interests but for those of the general public of this province”.⁷² Without appearing to see the contradiction, he also stated that the fight over the bills introduced in the legislature had had the effect of uniting the notaries into one body.

Re-Skilling and Exclusionary Tactics, 1926–1927: Professionalization or Death of an Occupation?

While the notaries and lawyers had reached an agreement on three general principles in 1925, lawyers had the advantage of having Attorney-General Manson in charge of drawing up the legislation. This he did in consultation with the bar.⁷³ Manson introduced his bill on February 24, 1927, and it was referred to a committee of the House as a whole.⁷⁴

The new legislation created a “Roll of Notaries Public”, to be kept at the office of the registrar of the Supreme Court in Victoria.⁷⁵ Under section 4, every notary in the province had to enrol before September 7, 1927; after that date, any person not on the roll who acted as a notary was guilty of a summary conviction offence and was liable to a fine not exceeding \$300.

70 Bill 80, *An Act to Amend the “Legal Professions Act”* (1925), s. 2.

71 “Notaries Bill Withdrawn”, *Vancouver Sun*, December 19, 1925, p. 3; “New Legislation on Power of Notaries”, *Victoria Daily Times*, December 19, 1925, p. 4.

72 “Elect Loutet Head of New Association”, *Vancouver Daily Province*, August 12, 1926, p. 7.

73 “Amendments to the Notaries Act Get Second Reading”, *Vancouver Daily Province*, February 26, 1927, p. 3.

74 Manson may have been assisted by the fact that Premier Oliver was sick during this period. He died in office on August 17, 1927.

75 *Notaries Act* (1926–1927), c. 49, s. 2.

It was also an offence for a notary to practise outside the notary's authorized area or to act beyond any specified limits or conditions (section 10). Everyone not enrolled under section 4 had to apply to the registrar and pay a \$10 fee. The legislation also required that applicants be British subjects who had resided within the province for three years immediately prior to their applications (section 5). These exclusionary efforts all but guaranteed that notaries from other provinces could not move their businesses to British Columbia. While this might benefit existing notaries, it could also have the effect of severely restricting the replenishment of notaries in the province.

Under the new legislation, applications to become notaries would be made to the British Columbia Supreme Court, and the Court,

if satisfied that the applicant is a fit person, and that there is need of a Notary Public in the place where the applicant desires to practise, shall order that the applicant be examined in the duties of a Notary Public and that, if found qualified on such examination, the applicant be enrolled as a Notary Public; and the order shall define the area within which the applicant shall, upon enrolment, be authorized to practise.⁷⁶

The Chief Justice of the Supreme Court was given the power to make rules under the legislation and to appoint three persons to conduct the examinations. This was the first time the legislation referred to appointing notaries when "there is need of a Notary Public".

At second reading on February 25, Manson told the legislature that "the commission of notary public [had] somewhat degenerated until it became a convenience for a private office, rather than a service for the public" and that the bill was intended to regain lost status for the notaries.⁷⁷ Despite the earlier agreement before the special committee of non-lawyers and Manson's rhetorical support, the bill met with opposition. It was opposed by Conservative member Cyrus Peck from the Islands and Henry Perry, a Liberal member from Prince George.⁷⁸ Peck complained that it was the same legislation as that introduced a year ago — it was the "same wolf under new sheep's clothing. ... A cold-blooded effort to bolster up the legal profession by limiting to lawyers' work which can very well be done by ordinary men." He added, "a man would have a fat chance of becoming a notary [under the proposed legislation] unless

⁷⁶ *Ibid.*, c. 49, s. 6.

⁷⁷ *Ibid.*; "To Raise Notary Public Standard", *Victoria Daily Times*, February 26, 1927, p. 12.

⁷⁸ Henry (Harry) Perry, a newspaper publisher from Prince George, was first elected as a Liberal member to the Legislative Assembly in 1920, defeated in 1928, and re-elected in 1933. He was Speaker of the House from 1933 to 1937 and was defeated in 1949. He died in 1959, at the age of 70. "Veteran of B.C. Politics, Harry Perry Dies, Aged 70", *Vancouver Sun*, December 28, 1959, p. 28. Robin, *Pillars of Profit*, also described him as a "broker of insurance and real estate" (p. 66) and "the maverick from Prince George" (p. 190).

he were a lawyer.”⁷⁹ Perry’s objection was much broader. He objected to creating a monopoly and restricting young men who wanted to earn a living. The new educational requirements for applicants only created a monopoly for existing notaries. He added, “we’re professionalizing everything. Where is it going to end?”⁸⁰

The Minister of Lands, T. D. Pattullo, himself a notary, denied that the bill would create a monopoly for notaries.⁸¹ A stout opponent to Manson’s 1922 bill, Pattullo was prepared to accept this one. He had underestimated his opponent, perhaps caught up in the exclusionary strategies which might benefit his profession and not fully understanding the potentially devastating effect. The new legislation was discussed in five sittings before it was finally passed on March 7, 1927.

Having failed to incorporate notaries’ activities into lawyers’ monopoly on legal services, Manson actually assisted notaries in one aspect of professionalization, by setting up barriers to entry (part of an exclusionary strategy) and engineering the re-skilling of their profession. However, there is a fine balance between exclusionary strategies that result in the professionalization of an occupation and those that result in its death. While Manson’s rhetoric was supportive of the professionalization of notaries, his legislation was more in line with a strategy for their demise. One could perhaps speculate that Manson, in bringing notaries under the power of the Supreme Court, was anticipating his own appointment to the Court in 1935. In 1928 William Ernest Burns, the chairman of the Committee on Encroachments on the Lawyers’ Sphere of Activities, described the passage of the 1927 legislation to the Canadian Bar Association as action obtained by the legal profession “with great difficulty”, in light of the “vested rights” held by the notaries.⁸²

Rules Imposed by Chief Justice Under the *Notary Act*, 1927: Re-skilling or Elimination?

On September 30, 1927, Chief Justice Hunter⁸³ issued what were referred

79 “Members Protest Legislation on Notaries Public”, *Victoria Daily Times*, March 1, 1927, p. 16; “Notaries Bill Raises Storm”, *Vancouver Daily Province*, March 1, 1927, p. 9.

80 “Notaries Public Bill Criticized”, *Victoria Daily Colonist*, March 1, 1927, p. 6. He also referred to barbers and hairdressers, who were trying to professionalize at this time.

81 “Attempts to Kill Notary Bill Fail”, *Victoria Daily Times*, March 2, 1927, p. 16.

82 W. E. Burns, “Report of Committee on Encroachment on the Lawyers’ Sphere of Activities”, *Minutes of the Proceedings of the Annual Meeting of the Canadian Bar Association*, 1928, p. 367. Burns was called to the bar in 1900 and practised in Vancouver. He was a Bencher of the Law Society from 1922, until he was made a life member in 1944. He served as treasurer of the Law Society from 1938 to 1940. Watts, *History of the Legal Profession*, p. 93; “W. E. Burns Passes at 72”, *Vancouver Daily Province*, January 2, 1946, pp. 1, 6.

83 Hunter practised law in Ontario for three years before he was called to the bar in British Columbia in 1892. He was appointed Chief Justice of British Columbia in 1902 and held that position until his death in 1929 at the age of 65. “Chief Justice of the B.C. Supreme Court Dies Here”, *Victoria Daily Times*, March 15, 1929, p. 1. Verchere, *A Progression of Judges*, comments that he “was marred by his inability to control his taste for liquor” and that this “much diminished” his work on the court (p. 114).

to as “drastic new regulations” under the *Notaries Appointment Act*, setting out examination requirements for both new applicants and established notaries who had not enrolled by the deadline of September 7. New applicants and established notaries who missed the deadline would be required to write examinations on real property, personal property, mercantile law, wills, trusts and trustees, contracts, and dominion and provincial statutes related to these topics. They would have to receive at least 60 per cent to pass, and supplemental exams would be allowed in only two areas. The rules also allowed for persons to appear at and oppose applications by potential notaries.⁸⁴ The arrangement was announced as a “compromise between the rival claims of notaries and lawyers”.⁸⁵

Many were less than satisfied with the arrangement. The deadline for notaries to register passed, and many notaries’ commissions lapsed without their knowledge. The deadline had not been announced through the news media, and many did not hear about it until Chief Justice Hunter’s rules regarding examinations of notaries were made public. In October the notaries again rallied their forces to ask the Legislative Assembly for an extension. It was estimated that over 150 notaries had missed the deadline.⁸⁶

Reactions to the Attorney-General’s tactics (one might easily assume he foresaw the outcome of his legislation) were mixed. After much media speculation as to whether Manson would actually support the existing notaries in their request for an extension, he managed to get front-page coverage when he introduced the first bill of the session on January 24, 1928, which gave notaries until May 7 to register.⁸⁷ On the negative side, the government was criticized for not publishing the deadline in advance, wasting the time and effort of all concerned, and inconveniencing the public.⁸⁸ In addition, the simple introduction of legislation to extend the deadline reopened the debate over the 1927 legislation. Again there was conflict within the Liberal government. At second reading on February 14, 1928, Perry, the Liberal member from Prince George, objected to the original legislation because it “had for its object the creating of a monopoly for lawyers, and the notaries who were then on the list”. He was unhappy with the grandparent clause, but would have had less objection if existing notaries were also required to write examinations. Peck, a Conservative from the Islands, again agreed with Perry, saying that this was an attempt

84 “Rules to Put B.C. Notaries on New Plane”, *Victoria Daily Times*, September 30, 1927, p. 1. The rules are reproduced in Ward, *History of Notaries*, pp. 17–19. The rules actually state that a person has to receive at least 50% in each examination, with an overall average of 66%.

85 “Notaries Must Know B.C. Law”, *Vancouver Daily Province*, September 30, 1927, p. 1.

86 “Petition Will Be Presented”, *Victoria Daily Colonist*, October 21, 1927, p. 1; “Notaries Seek New Chance to Retain Position”, *Victoria Daily Times*, October 12, 1927, p. 9; “Ex-Notaries Seek Relief”, *Victoria Daily Colonist*, November 13, 1927, pp. 1, 2.

87 “Manson Moves to Restore Seals to B.C. Notaries”, *Victoria Daily Times*, January 24, 1928, p. 1.

88 Editorial, *Victoria Daily Colonist*, October 21, 1927, p. 4.

to eliminate notaries so that all the work would end up in the hands of lawyers.⁸⁹

The debate resumed on February 14 and continued on February 23; the bill finally passed on March 5, 1928. At one point, Perry moved to repeal the 1927 legislation, but he was declared out of order by Ian Mackenzie, the chair of the committee (Mackenzie was the person who had introduced legislation in 1925 and later withdrew it after the issue was put before a select committee of non-lawyers). Perry also moved that licensed real estate agents and justices of the peace should be allowed to execute conveyance documents. The motion was defeated 21 to 20 in a test vote in committee.⁹⁰ Again, Perry declared that the legislation was “simply an attempt by the lawyers in collusion with the notaries to create a monopoly.”⁹¹ He was also concerned that the strict qualifications would result in no new notaries being appointed.

Lawyers, including R. H. Pooley (the Conservative opposition leader) crossed party lines to support Attorney-General Manson’s bill against the attack by Liberal party member Perry and others.⁹² Following the passing of the legislation, a notice in the newspaper warned notaries to register by May 7, 1928.⁹³ In this case, loyalty to one’s profession was seen as more important than loyalty to one’s political party. Perry had “no hesitation in saying that the [1927] bill was brought about by collusion between the existing notaries and the lawyers.”⁹⁴ It was also supported by collusion between Liberal and Conservative lawyers.

Moving the Disputes from the Legislative Assembly to the Courts, 1928–1930

The state, in this case in the form of the Legislative Assembly, can be seen as one of the heteronomous means whereby an occupational group achieves professional status. Lawyers and notaries in British Columbia had the additional advantage of strong insiders to support their profession, regardless of party politics. When the 1927 legislation moved the battle away from the legislature to the courts (towards the autonomous end of the demarcationary continuum illustrated in Figure 1), this gave lawyers an added advantage. Lawyers, not notaries, sit as judges in the courts. Having gained the legislation, the lawyers took their battles to the courtrooms.

In July 1928 the Law Society successfully appealed a decision of the County Court in Cranbrook which enrolled John Alexander Stewart as a

89 “Notaries Public Bill is Debated”, *Victoria Daily Colonist*, February 15, 1928, p. 3.

90 “Notaries Act Nearly Killed”, *Victoria Daily Colonist*, March 6, 1928, p. 12.

91 “Ancient Feud Over Notaries Opened Again”, *Victoria Daily Times*, March 6, 1928, p. 5; “Notaries Act Nearly Killed”, *Victoria Daily Colonist*, March 6, 1928, p. 12.

92 *Ibid.*

93 “Notaries to Register Here”, *Victoria Daily Times*, March 20, 1928, p. 14; “Notaries Warned to Register Now”, *Victoria Daily Times*, April 20, 1928, p. 1.

94 “Notaries Act Nearly Killed”, *Victoria Daily Colonist*, March 6, 1928, p. 12.

notary, subject to his passing the examinations.⁹⁵ The Law Society made three arguments: that the County Court judge had no jurisdiction to make the order, even though he was acting as a judge of the Supreme Court; that there was no evidence that the area in which Stewart wanted to practise needed a notary; and that the Law Society had not received proper notice of Stewart's application. The British Columbia Court of Appeal found that the County Court lacked jurisdiction in the case; only the British Columbia Supreme Court could enrol notaries.⁹⁶

One year later, Stewart applied again to become a notary, this time before Chief Justice Morrison.⁹⁷ As a civil servant (a provincial assessor), Stewart had found "very many occasions during [which] it would have proved of great benefit to the public" if he had been a notary. In addition, he had "no intention of practising as a Notary Public in a competitive sense with other Notaries but simply ... to be of aid to the public generally, where it is inconvenient or difficult for those residents in remote districts to obtain advice".⁹⁸ The Law Society's affidavit stated that there were over 1,000 notaries and over 600 lawyers in British Columbia, with a considerable number of articling students who would be seeking locations of practice. There were already five notaries and three lawyers located in Cranbrook, and the Law Society had never had any complaints or information that would indicate another notary was required in the area.⁹⁹ A supplemental affidavit pointed out that there were 21 notaries and lawyers within a 21-mile radius of Cranbrook.¹⁰⁰

When the matter came for hearing, the Chief Justice commented that he did not think there would be any objection to the application. Percival Robert Leighton, counsel for the Law Society, pointed out that the Law

95 "Law Society Wins Appeal", *Victoria Daily Times*, July 5, 1928, p. 1.

96 *The Law Society of British Columbia v. Stewart* (1928), 40 BCR 401.

97 Mr. Justice Aulay Macaulay Morrison was a Liberal member of the House of Commons from 1896 until 1904, at which time he was appointed to the British Columbia Supreme Court. He served as Chief Justice from 1929 to 1942. Verchere, *A Progression of Judges*, wrote that some people saw him as a "judicial bully who enjoyed misusing his power on the bench" (p. 120). In 1911 Mr. Justice Morrison had dismissed Mabel Penery French's application for a writ of *mandamus* to compel the Law Society to accept her application to be admitted to the bar, because the act only allowed for persons to be admitted. See Brockman, "Exclusionary Tactics"; Yorke, "Mabel Penery French". Morrison must have been somewhat sympathetic to notaries, as he spoke at one of their lunch meetings in 1938 ("Stamp of Notary Symbol of Trust", *Vancouver Daily Province*, February 26, 1938, p. 15).

98 BCARS, MSS 948, series VIII, vol. 43, file 43, J. A. Stewart's Affidavit *In the Matter of the Notaries Act and In the Matter of the Application for Enrollment as a Notary Public by John Alexander Stewart*, sworn June 22, 1929.

99 BCARS, MSS 948, series VIII, vol. 43, file 43, Edmond C. Senkler's Affidavit *In the Matter of the Notaries Act and In the Matter of the Application for Enrollment as a Notary Public by John Alexander Stewart*, sworn June 25, 1929.

100 BCARS, MSS 948, series VIII, vol. 43, file 43, Edmond C. Senkler's Affidavit *In the Matter of the Notaries Act and In the Matter of the Application for Enrollment as a Notary Public by John Alexander Stewart*, sworn July 8, 1929.

Society was opposing the application, and that this was “an important test case”.¹⁰¹ On July 9, 1929, the Chief Justice asked for written arguments. Counsel for Stewart filed his argument of four and a half pages, which contained a mix of facts and legal arguments, on July 15.¹⁰² Stewart agreed not to compete with notaries in Cranbrook, and his counsel made a special plea for small operators:

[T]he small operator, the hand logger, prospector and the man living and trading on the frontier and in the wilds has greater need of advise [*sic*] and assistance than the large operator. The small operator is entitled to have his [*sic*] bills of sale, deeds, mortgages, leases licences, permits applications declarations of compliance with the mining lumbering and agricultural laws of the Province properly and thoroughly completed to protect his small interests from forfeitures [*sic*], seizures, fines and defaults.

In addition, Stewart’s lawyer argued that there was no opposition from other notaries, and “therefore it was proper to assume that the notaries are favourable to the application”.¹⁰³

Morrison made his decision to enrol Stewart on July 19, three days before the Law Society planned to file its six and one half pages of written argument. No deadline had been set to file arguments. The document prepared by the Law Society in the *Stewart* case is perhaps telling of what had occurred between 1922 and 1928. In his draft submission, Leighton made the following argument:

3. Here in B.C. owing to the previous practice of granting a Notary’s commission to almost anybody who was willing to pay the fee of \$20.00 there are over 1000 notaries who are not qualified lawyers but are in direct competition with the legal profession. It is that condition which the Notaries Act of 1926–27 was designed to rectify.

4. The Act clearly intends that where no question of public interest is involved the Court shall see that the existing members of the Legal Profession, at least as much as the existing Notaries, are not injured by indiscriminate competition.

101 BCARS, MSS 948, series VIII, vol. 43, file 43, letter from P. R. Leighton to E. C. Senkler, July 23, 1929. Leighton emigrated from England in 1908 and was called to the bar in British Columbia in 1922. He retired from practice in 1951 and died the following year. “Nos Disparus: Percival Robert Leighton”, *Advocate*, vol. 10 (1952), p. 155.

102 The argument for Mr. Stewart indicates that the original was signed by “P. McD. Kerr”. There is no indication that Kerr was involved with Stewart’s earlier application, and Kerr received no publicity from this case. In all likelihood, Kerr was Paul McD. Kerr, a B.C. barrister, who was nominated as the federal Liberal candidate in South Vancouver in 1926. “Liberals Name Kerr in South Vancouver”, *Vancouver Daily Province*, August 7, 1926, p. 5.

103 BCARS, MSS 948, series VIII, vol. 43, file 43, written argument of Mr. Kerr, Counsel for the applicant, *In the Matter of the Notaries Act and In the Matter of the Application for Enrollment as a Notary Public by John Alexander Stewart*, July 15, 1929.

Later he submitted that the *Notaries Appointment Act* was passed “to remedy a condition complained of by the Legal Profession” (para.19). Stretching the realm of law and logic, Leighton argued that:

9. ... what the Court must be satisfied of is that there is need of a Notary, not that there is need of a barrister or of a solicitor or of a Commissioner of Oaths. Unless it appears that there is work to be done which only a Notary can do, which cannot be done by a solicitor, or by a Commissioner or a J.P. or by anyone at all except a Notary there is no need for the appointment of a Notary.

10. ... We have against the application the evidence of the Secretary of the Law Society that he has not received any complaint or information that would indicate any need for an additional Notary at Cranbrook. By virtue of his official position Mr. Senkler would be the most likely person to know if there is any opening for a lawyer in the district and if there is no call for a lawyer now that all lawyers are also Notaries it is to be presumed that there is no call for a Notary.

Leighton argued that it was the intent of the legislature that notaries only be appointed if, among other things, “there [was] no prospect of the situation being remedied in the near future through the admission of students already articulated for the long apprenticeship required of lawyers” (para. 24). He pointed out that “every [notarial] appointment makes it that much more difficult for a fully-qualified lawyer to open an office in the smaller settlements” (para. 25). By not relying on section 19 of the *Notaries Act*, Stewart was “really seeking power to carry on a legal practice as a side line to his official duties, offering as a sop to the established lawyers a promise that he will only exercise the power away from the city of Cranbrook” (para. 16).

Leighton recommended that the Law Society appeal Chief Justice Morrison’s decision, on the basis that he had not been given an opportunity to file a reply. He felt “very strongly that there [was] ground for an appeal on the point that there was no evidence, on which the judicial discretion could properly be exercised, that there [was] a need for a Notary in Cranbrook”. He was also concerned that, since this was the first case under the new act, it should be appealed if at all possible. He wrote, “it is still more important that the vague theory that every little hamlet that is not big enough to have a lawyer of its own is entitled to have a Notary, should not receive judicial sanction.”¹⁰⁴ The Law Society’s committee on notaries decided not to appeal the case.¹⁰⁵

104 BCARS, MSS 948, series VIII, vol. 43, file 43, letter from P. R. Leighton to E. C. Senkler, July 23, 1929.

105 BCARS, MSS 948, series VIII, vol. 43, file 43, letter from E. C. Senkler to A. H. MacNeill, Treasurer of the Law Society, November 28, 1929.

Even though the lawyers lost this case and a new notary was appointed, the overall effect of the 1927 legislation was that the notaries were too successful at setting up exclusionary barriers to their profession (such as examinations, the requirement that applicants be British subjects, and the three-year residency requirement). Their exclusionary strategies were successful, in part, because of the assistance of Attorney-General Manson and other lawyers who drafted the legislation and the Chief Justice of the Supreme Court who made the rules. While the notaries did not lose much in terms of territory through their accommodative response to the lawyers' demarcationary strategy, they lost in terms of increasing their presence in the realm of legal services.

In March 1931 Manson, now a member of the Liberal opposition to Premier Simon Fraser Tolmie's Conservative government, asked Attorney-General Pooley how many notaries had been appointed under the Attorney-General's department since August 20, 1928 (when the Conservatives became the governing party). Pooley informed the House that two people had passed the examinations set under the *Notaries Appointment Act* since it had come into effect four years earlier.¹⁰⁶ The lawyers had truly succeeded in severely restricting the growth in the number of notaries in British Columbia by assisting notaries to re-skill to the point where educational barriers were too stringent to allow for many new appointments.

Concluding Comments

Anne Witz's model of demarcationary strategies can be applied, with some modifications, to the early relationship between lawyers and notaries in British Columbia. While Witz's concept of sites of institutional mobilization (universities and professional bodies for autonomous means and the state for heteronomous means) are useful, these sites need to be located along a continuum, and the courts and the public need to be included as important institutional loci for professional closure. For example, the mobilization of public interest against the 1922 and 1927 anti-notary bills illustrates the importance of extending the continuum of institutional loci to the public.

It must also be recognized that individual actors may move from one institutional site to another, or belong to two or more simultaneously, and that often there are conflicts within each institutional site that can affect the form or outcome of professional projects. In addition, actors in any particular institutional site may not necessarily meet the expectations of their occupational or political affiliates. At times, the politicians voted along political lines; at others they crossed political lines to vote with their occupational group. While the lawyers managed to move decisions from the Legislative Assembly to the courts (to the autonomous end of the continuum), judges did not necessarily make decisions that were obviously in the

¹⁰⁶ *Journals of the Legislative Assembly of British Columbia*, March 15, 1931, p. 74.

best interests of the lawyers. Witz's model is very useful as a starting point in examining the early history of notaries and lawyers in British Columbia, but it is important to plot the more multidimensional aspects of this relationship to allow for the interaction of players, the movement of players from one institutional location to another, and unexpected decisions that do not necessarily fit the model.

The early history of notaries and lawyers started out with two professions living in relative harmony. Throughout the 1920s, the two professions engaged in battles involving the courts, the Legislative Assembly, and the public. The lawyers were, indeed, successful in their "cold-blooded effort to bolster up the legal profession". It is somewhat ironic that they were successful, in part, because they assisted the notaries to professionalize to the point where it was virtually impossible for the notaries to expand or maintain their numbers. However, professional projects are always in flux. After 1930 the two professions became more cooperative and tried to negotiate a resolution to their conflicts, although both also worked on public relations and their own internal professionalization. In the 1970s and early 1980s, the Law Society had to deal with internal conflict over how it dealt with notaries.¹⁰⁷ The battles and agreements are far from over.¹⁰⁸

107 See Brockman, "'Better to Enlist Their Support'" for the period 1930–1981.

108 In 1993 a motion at the annual general meeting of the Law Society to "explore the feasibility of amending legislation to place notaries public under the jurisdiction of the [Law] Society" was defeated. The chair of the Notaries Committee reassured members that the society would oppose the expansion of notaries into corporate and probate law (*Benchers Bulletin*, October 1993, p. 8). In 1995 the Law Society and the B.C. Branch of the Canadian Bar Association launched an advertising programme in Kelowna, B.C., "in the context of an aggressive negative media campaign by the BC Society of Notaries Public". In 1997 it was reported that the advertising campaign "had minimal impact on public opinion or behaviour". *BarTalk*, vol. 9, no. 6 (December 1997), p. 9.