VANCOUVER
20-Oct-26
COURT OF APPEAL
REGISTRY



**COURT OF APPEAL**

BETWEEN:

TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA AND KEVIN WESTELL

APPELLANTS
(PLAINTIFFS)

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA and LIEUTENANT GOVERNOR IN COUNCIL OF BRITISH COLUMBIA

RESPONDENTS
(DEFENDANTS)

**Society of Notaries Public of British Columbia**

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**COURT OF APPEAL**

ON APPEAL FROM the order of Chief Justice Skolrood of the Supreme Court of B.C. pronounced on the 29th day of April 2026.

BETWEEN:

**Law Society of British Columbia**

**APPELLANT**
(Plaintiff)

AND:

**Attorney General of British Columbia**
**Lieutenant Governor in Council of British Columbia**

**RESPONDENTS**
(Defendants)

AND:

**Society of Notaries Public of British Columbia**

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## TABLE OF CONTENTS

TABLE OF CONTENTS ..... 5
OPENING STATEMENT ..... 6
PART 1 - STATEMENT OF FACTS ..... 7
PART 2 - ISSUES ON APPEAL ..... 9
PART 3 - ARGUMENT ..... 9
PART 4 - NATURE OF ORDER SOUGHT ..... 14
APPENDICES: LIST OF AUTHORITIES ..... 15

## OPENING STATEMENT

This appeal raises the constitutionality a new governance structure which would combine the regulation and governance of legal professions — lawyers, notaries public, and paralegals. Madam Justice Horsman has found, and the parties all agree, that the Society of Notaries Public of BC (the "Notaries Society") has a direct interest in this appeal given the impact the appeal will have on its operation and structure.[1]

The appellants' position in this appeal is premised on the notion that an independent Bar forms part of the structure of Canada's Constitution. In essence, the appellants submit that the independence of *lawyers* is infringed by the *Legal Professions Act*, S.B.C. 2004, c. 26 ("Bill 21") and the statute is therefore unconstitutional.

The appellants, however, have not properly framed the scope and nature of the constitutional principles at issue.

The Constitution safeguards the rule of law, guaranteeing the existence and independence of professionals whose work facilitates the rule of law. This work, and the professions who perform this work, have never in British Columbia been limited to advocacy and representation or to lawyers. Rather, as the history of legal professions in the Province demonstrates, the work of legal professions has always been performed by notaries public who are learned legal professionals who facilitate the rule of law, by advising and guiding members of society to organize their affairs in accordance with law.

Accordingly, the Constitution guarantees the independence of *legal professions* and the work they do, and not merely lawyers. If the constitutional guarantee is the independence of legal professions, rather than the independence of lawyers, it follows that co-regulation and co-governance are not necessarily contrary to the Constitution. Viewed from this perspective, the new governance structure in Bill 21 is constitutionally sound.

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[1] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2026 BCCA 383 at para. 76 (Joint Book of Authorities (**JBOA**) Tab ●, p. ●).

## PART 1 - STATEMENT OF FACTS

1. The Notaries Society is an independent society, incorporated by its members, being non-lawyer notaries public in the province of British Columbia, in 1926 under what is now the *Societies Act,* S.B.C. 2015, c. 18.[2] The Notaries Society's mandate is to regulate the notarial profession in the public interest. Much like the Law Society, the Notaries Society serves the public interest by regulating and establishing standards regarding the competence and integrity of notaries public in British Columbia.[3]

2. The Notaries Society is governed by a board of directors established pursuant to its constitution.[4] Currently, the board is made of twelve (12) total directors: nine (9) notaries, elected by the Society's membership, two (2) public appointees appointed by the Attorney General of British Columbia, and the past president of the Notaries Society who is a member *ex officio*.[5]

3. There are currently 430 practicing notaries in the province. All are members of the Notaries Society.[6]

4. The process to become a notary public is intensive and requires both legal-academic and vocational training, followed by examinations to measure competence and certain background checks to ensure good character.[7]

5. Admission to the roll of notaries is then granted by the courts.[8]

6. Upon admission to the rolls, notaries are then required to maintain standards of professional learning and professional development[9] and are subject to high standards of professional competence, conduct and behaviour, to the same or

[2] Affidavit #1 of Hassan El Masri made April 25, 2025 [**El Masri Affidavit**], para. 8 (Joint Appeal Book (**JAB**), Tab ●, p. ●).
[3] El Masri Affidavit, para. 16 (JAB Tab ●, p. ●).
[4] El Masri Affidavit, para. 9 (JAB Tab ●, p. ●).
[5] El Masri Affidavit, para. 9 (JAB Tab ●, p. ●).
[6] El Masri Affidavit, para. 5 (JAB Tab ●, p. ●).
[7] El Masri Affidavit, para. 6 (JAB Tab ●, p. ●).
[8] El Masri Affidavit, para. 6 (JAB Tab ●, p. ●).
[9] El Masri Affidavit, paras. 13-15 (JAB Tab ●, p. ●).

similar standards as lawyers.[10]

7. Notaries are plainly learned in their vocation and there was no evidence in the summary trial that notaries provide substandard legal services to clients, within the scope of their authorized practice.

8. The practice of a notary public in British Columbia involves significant legal work. Among other things, notaries act for and advise clients in real estate conveyances, hold funds in trust, and prepare wills, powers of attorney, representation agreements, and commercial contracts.[11] Notaries public are the first and only point of contact with the legal system for many British Columbians.

9. When providing legal services to clients, notaries' practices are functionally equivalent to those of solicitors in the same field. Notaries represent client interests diligently and provide informed legal advice.[12]

10. Notaries also are required, as a part of their practice, to provide clients with representation and advice in a large number of government interactions, where issues of law and statutory interpretation are required.[13] Clients do not always have interests which are aligned with government, and so notaries are frequently called on to give independent, objective legal advice in these situations.

11. The requirement to provide independent advice to clients, moreover, is expected of the members of the profession by the statutory regulatory body, the Notaries Society.[14]

12. During the course of providing legal service to clients, notaries are also often entrusted with confidential information, which must be kept secret. They are

[10] *Dorndorf v. Hoeter*, 1981 CanLII 756 (BC SC) at para. 36 (JBOA Tab ●, p. ●).
[11] El Masri Affidavit, paras. 23, 32-34 (JAB Tab ●, p. ●).
[12] El Masri Affidavit, para. 24 (JAB Tab ●, p. ●).
[13] El Masri Affidavit, para. 24 (JAB Tab ●, p. ●).
[14] El Masri Affidavit, para. 25 (JAB Tab ●, p. ●).

thus held to similar professional standards of confidentiality as lawyers are.[15]

13. While notaries cannot represent clients in disputes or in "contentious" matters, they do help clients resolve disputes. They help clients navigate taxation assessments and calculations and provide clients with analysis and legal advice about property to assist clients in *avoiding* potential legal disputes.[16]

## PART 2 - ISSUES ON APPEAL

14. The sole issue this intervention will address is whether the composition of the board of directors for the new regulator is constitutional.

## PART 3 - ARGUMENT

15. A central component of the appeals in this case is the governance structure of the board of directors for the new regulator established under Bill 21. The appellants both contend that the balanced board composition, which importantly is not made up of a majority of elected lawyers, represents an infringement of the independence of lawyers in the province.

16. The appellants reach this conclusion by asking the wrong question. The correct framework to apply in assessing the constitutional validity of the new governance structure is not whether the new governance structure infringes on the independence of *lawyers per se*, but rather whether it infringes on the independence of *legal professions*, viewed collectively. The focus of the constitutional protection for the rule of law is not on specific professions or specific roles, but rather the broader professional ecosystem of professions authorized to provide legal services in the Province. If legal professions must cooperate with one another, moreover, this has

[15] El Masri Affdiavit, para. 26 (JAB Tab ●, p. ●).
[16] El Masri Affdiavit, para. 29 (JAB Tab ●, p. ●).

the capacity to further, not hinder, their shared constitutional role: to safeguard and facilitate the rule of law.

17. While all legal professions are guaranteed independence from third parties and government, they are not guaranteed independence *from each other*. Nothing in the Constitution mandates that *specific* legal professions be self-regulating unto themselves.

### *i. The Constitution must be interpreted within the context of a history where the practice of law has been undertaken by many professions*

*The Rule of Law Requires Independent Legal Professionals*

18. The principle that legal professions must be independent does not arise in the abstract. Rather, it arises from the essential architecture of our Constitution, which assumes the operation of the rule of law. It thus operates as an interpretative limit on the Province's legislative jurisdiction under Section 92 of the *Constitution Act (1867)*.

19. The rule of law is an "organizing principle" of the Constitution, and a "fundamental postulate" of our constitutional structure.[17] The Supreme Court of Canada views the rule of law as encompassing "at least" three principles:

    a. The law is supreme over officials of the government as well as private individuals, and thereby preclusive of arbitrary power,

    b. There is a creation and maintenance of actual order of positive laws which preserves and embodies the more general principle of normative order, and

    c. The relationship between the state and the individual should be regulated by law.[18]

[17] *Roncarelli v. Duplessis*, [1959] S.C.R. 121 at p. 142 (JBOA Tab ●, p. ●).
[18] See *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473 at para. 58 (JBOA Tab ●, p. ●).

20. Each of these principles can only be maintained if there is institutional machinery which ensures their continued operation.

21. Independent, learned professions are an essential "cog" in this institutional machinery. They are the conduits through which the legal order is transmitted into and through society, which can thereafter organize its legal affairs accordingly.

22. The work required of these professions goes beyond advocacy and representation in the courtroom. Legal professionals "grease the wheels" of our legal order, ensuring that citizens have an understanding of their legal rights and obligations[19] and are able to organize their affairs in all walks of life. [20] In doing so, they ensure the rule of law prevails and continues through voluntary compliance; an essential precondition to the maintenance of the rule of law.[21]

23. The independence of legal professions demanded by the Constitution is driven by purposive interpretation. It is the need to ensure the integrity of the rule of law from which the principle arises. There is no serious argument in this court that the work of legal professions, including lawyers, can only be properly undertaken where it is free from external influence and control. In this appeal, the Notaries Society accepts the appellants' submissions that independence contains both institutional and individual dimensions – regulation or oversight of legal professions, as well as the individual practices of professionals, must be separate from external control.

*Legal Professionals Encompass More than Barristers and Solicitors*

24. These key functions played by legal professionals, which are essential to the rule of law, have *never*, in our constitutional order, been limited to any particular profession

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[19] See e.g. *Fothergill v Monarch Airlines Ltd.*, [1981] A.C. 251, at p. 279 to 280 (H.L.) (JBOA Tab ●, p. ●).
[20] Pue, W., *Death Squads and "directions over lunch: Comparative Perspectives*, (August 28 2006) [unpublished], Allard Faculty Publications, at p. 13 (JBOA Tab ●, p. ●).
[21] See V. Carmichael & G. Webber, "The Rule of Law in a Pandemic," (2021), 46:2, Queen's L.J. 317 at 320 to 321 (JBOA Tab ●, p. ●).

or person in the historical context of our constitution. Rather, they can be, and historically *have been*, undertaken by professions beyond barristers and solicitors.

25. In ancient times, the practice of law was performed by lay people who developed practical expertise,[22] including pleaders,[23] the attorney,[24] and clerical lawyers.[25] Beginning in the 13th century, true professions began to emerge, first with the Serjeants,[26] followed by solicitors, proctors, and modern day barristers (not necessarily in that order).[27] The scope of each profession's practice evolved and refined over the course of many centuries.[28] Even today, in the UK, the term "lawyer" goes beyond the professions of barrister and solicitor.[29]

26. From early days when British Columbia was a colony, stretching to today, three learned professions have engaged in legal practice in the Province: barristers and solicitors practice law without restriction, and notaries public with limitations. Yet as has been made clear by our courts, the restriction in notarial practice is based on subject matter defined in Section 18 of the *Notaries Act*, not their function within those scopes of practice:

> Although not a lawyer, the defendant belongs to a calling which maintains similar professional standards and is governed by rules established under the authority of the Notaries Act, R.S.B.C. 1979, c. 299, by the Chief Justice of this court. It is a profession which has long enjoyed public confidence in this province in matters of real property conveyancing. I have no doubt that the plaintiffs would have been entitled, in the circumstances, to place the same confidence in the defendant's professional independence that they would had he been in fact a solicitor of this court.[30]

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[22] Alexander R.S., "The History of the Law as an Independent Profession and the Present English System" (1983) 19:2 Forum 185 at p. 10 (JBOA Tab ●, p. ●).
[23] Robert C. Palmer, "The Origins of the Legal Profession in England" (1976) 11:1 Irish Jurist (NS) 126 at pp. 125 to 128 (JBOA Tab ●, p. ●).
[24] *Ibid* at pp. 135 to 136 (JBOA Tab ●, p. ●).
[25] Alexander R.S., *supra,* at p. 191 to 192 (JBOA Tab ●, p. ●).
[26] *Ibid* at p. 193 (JBOA Tab ●, p. ●).
[27] Roscoe Pound, "The Legal Profession in England from the End of the Middle Ages to the Nineteenth Century" (1944) 19 Notre Dame L. Rev. 315, pp. 2 to 3; and Barry Cahill, "The Origin and Evolution of the Attorney and Solicitor in the Legal Profession of Nova Scotia" (1991) 14:2 Dal LJ 277, pp. 10 to 20 (JBOA Tab ●, p. ●).
[28] Alexander R.S., *supra*, at pp. 194 to 196 (JBOA Tab ●, p. ●).
[29] See https://www.sra.org.uk/consumers/choosing/legal-jargon-explained/ (JBOA Tab ●, p. ●).
[30] *Dorndorf v. Hoeter*, (1981) 122 D.L.R. (3d) 758 (B.C.S.C.) (JBOA Tab ●, p. ●).

27. While modern notaries public in the Province do not practice in our courts or provide, directly, advice regarding disputes, they are still required to advise clients in a broad range of circumstances, sometimes involving difficult matters in complex transactions, sometimes involving the Crown. The independent legal advice and guidance provided by a notary public to the client is no less important to the proper functioning of our legal order than that of a solicitor similarly situated.

28. Each of these professions play a role in educating and guiding society to facilitate voluntary compliance with the rule of law, which in turn maintains the rule of law, an essential piece of our constitution's architecture.

### ii. *The balanced composition of the new board of directors does not erode the independence of legal professions in British Columbia*

29. The Notaries Society agrees with the appellants that legal professions must be independent from government and third-party influence. This means that external forces, most importantly government, cannot influence the work of those authorized to engage in legal practice in the province. If Bill 21 (including its governance structure) limited the independence of legal professions by subjecting them to third party or government control, the Notaries Society agrees that it would be *ultra vires* the Province.

30. Bill 21 does not, however, subject legal professions to external influences. Rather it assembles them into a new framework which requires cooperation in the regulation of *all* authorized legal professions. The board of this new regulator is still dominated by legal professionals, including seven (7) elected lawyers and notaries with two (2) more elected paralegals. Eventually the board will likely be composed of a majority of elected legal professionals. In so doing, the legislation has left the regulation of legal professionals outside the direct influence and control of government and third parties, and firmly in the hands of the people authorized to engage in legal work. This structure respects the constitutional principle at play.

31. Requiring lawyers to cooperate with other legal professions in the regulation of legal practice does no more to infringe on the independence of lawyers, or any other profession for that matter, than does requiring barristers and solicitors to cooperate in the regulation of all "lawyers".

32. What the new governance structure *does* do is *regulate* the framework within which independent legal professionals self-govern. Our law has always been that the mere regulation of any particular right does not amount to extinguishment.[31]

33. As with all proper regulatory decisions of government, this is the manifestation of a policy decision directed at the benefit of society. The full scope of the government's underlying policy objectives is for the Province to explain, but the *impact* of the regulatory regime on notaries, situated within the broader sphere of legal professions, is significant. The new governance structure creates a buffer against the ability for *individual* legal professions, motivated by self-interested protection of market share, to regulate in a manner that *limits* the scope of legal services offered by other legal professions (and, by extension, the overall availability of legal services to society). It achieves this by defining the presence of each legal profession and providing for appointed positions as a counter-majoritarian force against individual professions' self-interests.

34. Viewed cumulatively, in the proper context, it cannot be said that the governance structure of the new regulator, on its own, infringes the independence of legal professions in the province.

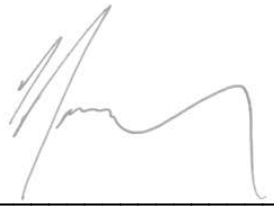
## PART 4 - NATURE OF ORDER SOUGHT

35. The intervener Notaries Society takes no position on the orders sought on appeal.

[31] *R v. Sparrow*, [1990] 1 SCR 1075 at para. 36 (JBOA Tab ●, p. ●).

All of which is respectfully submitted.

Dated at the City of Vancouver, Province of British Columbia, this 5th day of October 2026.



Ian M. Knapp, Brian Duong, Alanna Mackenzie
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## APPENDICES: LIST OF AUTHORITIES

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|---|---|---|
| **Cases** | | |
| *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473 | 10 | 19 |
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| V. Carmichael & G. Webber, “The Rule of Law in a Pandemic,” (2021), 46:2, Queen’s L.J. 317 | 11 | 22 |