VANCOUVER
20-Oct-26
COURT OF APPEAL
REGISTRY

COURT OF APPEAL

ON APPEAL FROM the order of the Honourable Chief Justice Skolrood of the Supreme Court of British Columbia pronounced on April 29, 2026

BETWEEN:

Law Society of British Columbia

APPELLANT
(Plaintiff)

AND:

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

RESPONDENTS
(Defendants)

AND:

Law Foundation of British Columbia, Law Society of Manitoba, Lawyers' Rights Watch Canada, British Columbia Paralegal Association, Indigenous Bar Association in Canada, Federation of Law Societies of Canada, Canadian Bar Association, British Columbia Access to Justice Centre for Excellence, Criminal Defence Advocacy Society British Columbia, Advocates' Society, Workers for Ethical Substance Use Policy

INTERVENERS

BETWEEN:

Trial Lawyers Association of British Columbia and Kevin Westell

APPELLANT
(Plaintiff)

AND:

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

RESPONDENTS
(Defendants)

AND:

Law Foundation of British Columbia, Law Society of Manitoba, Lawyers' Rights Watch Canada, British Columbia Paralegal Association, Indigenous Bar Association in Canada, Federation of Law Societies of Canada, Canadian Bar Association, British Columbia Access to Justice Centre for Excellence, Criminal Defence Advocacy Society British Columbia, Advocates' Society, Workers for Ethical Substance Use Policy

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TABLE OF CONTENTS

CHRONOLOGY **7**

OPENING STATEMENT **8**

PART 1 – STATEMENT OF FACTS **9**

A. Regulatory models in Canada and other Westminster democracies 9

i. Canadian jurisdictions 9

ii. Other Westminster democracies 11

B. Key components of the *Act* 13

C. Transitional provisions of the Act 15

D. Reasons for judgment 16

PART 2 – ISSUES ON APPEAL **17**

PART 3 – ARGUMENT **17**

I. Preliminary Matters 17

A. Law Society's change in position 17

B. Standards of review 18

C. Proper doctrinal framework for these appeals 18

II. Independence of the Bar 19

A. Overview 19

B. Meaning of the constitutional principle of independence of the bar 20

i. Chief Justice correctly identified the critical question 20

ii. Critical question focuses on the role of lawyers 21

iii. Chief Justice's approach finds support in jurisprudence and literature 22

C. Essential conditions of independence of the bar 24

i. Unnecessary to define any conditions 24

ii. Alternatively, the Court could recognize two conditions 24

(1) Court should be restrained in defining conditions 24

(2) Conditions must be necessary rather than merely desirable 25

(3) Two conditions could be recognized 26

(4) First essential condition: public interest orientation 26

(5) Second essential condition: decisional independence 27

(6) Act meets these conditions 29

iii. Chief Justice was correct that self-governance and self-regulation are not essential conditions of independence 29

(1) Other regulatory models ensure independence 30

(2) Jurisprudence describes regulatory model as policy choice 31

(3) In any case, Act meets these conditions 32

D. Law Society misapplies reasonable perception 33
i. Constitutional standards do not vary between provinces 34
ii. Legislative policy choices do not harden into constitutional requirements 37
iii. Reasonable person not prevented from seeing anything outside BC 37
iv. Reasonable perception not a licence to consider non-justiciable issues 38
(1) Courts do not scrutinize the law-making process 39
(2) Courts do not scrutinize policy wisdom 42
E. Chief Justice was correct the Act does not infringe independence of the bar 43
i. Board composition (s 8) 43
ii. Guiding principles (s 7) 44
iii. Indigenous council and transitional Indigenous council (ss 26, 94(3), 131(6), 226(2)(a), 227(3)..... 46
iv. Provisions on conduct and discipline procedure (Part 6, ss 68-92)..... 48
v. Technical provision regarding cabinet regulations (s 211) 48
vi. Conclusion 50
III. Lawyers' Rights under the *Charter* 51
A. Part 6 of the Act does not infringe lawyers' rights under s 7 of the *Charter* .. 51
i. Overview 51
ii. Summary of relevant provisions 51
iii. Chief Justice correctly interpreted "incompetently" 52
iv. Chief Justice was correct that declining treatment is not an offence 54
v. Chief Justice was correct that lawyers' s 7 rights are not engaged 54
vi. Alternatively, if lawyers' rights are engaged, matter must be remitted ... 56
B. Sections 78 and 209 do not infringe lawyers' rights under s 8 of the *Charter* 57
PART 4 – NATURE OF ORDER SOUGHT 58
LIST OF AUTHORITIES 59
APPENDICES: ENACTMENTS 62

CHRONOLOGY

Date	Event
May 16, 2024	*Legal Professions Act,* SBC 2024, c 26 is enacted
May 17, 2024	Law Society commences action
May 21, 2024	Trial Lawyers Association of British Columbia and Kevin Westell commence similar action
July 17, 2024	Plaintiffs' application for an interlocutory stay and injunction pending the actions is dismissed: *Law Society of British Columbia v British Columbia*, 2024 BCSC 1292
October 2025	Summary trial before Chief Justice Skolrood
April 29, 2026	Actions are dismissed

OPENING STATEMENT

Independent lawyers play an essential role in the administration of justice, the rule of law, and our constitutional order. To ensure that lawyers can fulfil that important role, independence of the bar requires that lawyers be free, and reasonably perceived to be free, to discharge their duties to their clients and the administration of justice. The Chief Justice made no error in defining independence of the bar by reference to lawyers' essential role, or in upholding the constitutional validity of the new *Legal Professions Act.*

Self-governance and self-regulation are not the only way to ensure independence of the bar. The uncontradicted evidence at trial established that lawyers are independent in many jurisdictions with other regulatory models, including Quebec, Manitoba, Australia, and New Zealand. The changes to legal regulation under the *Act* are not as radical as those made by Quebec in the 1970s or the changes made in other liberal democracies. The new regulator's board maintains a majority of lawyers, many of whom are elected by their profession. The board can make and change rules and requires the approval of the Indigenous council only for two specific types of rules relating to regulatory processes rather than the practice of law. Unlike other provincial regimes, the board's rules do not require the approval of cabinet and cannot be annulled by cabinet or by the legislature. The regulator controls complaint handling, investigations, and prosecutorial decisions.

A reasonable person, properly apprised of the circumstances and having thought it through, would not conclude these regulatory changes will interfere with lawyers' ability to fulfil their duties to their clients and to the administration of justice. Lawyers regulated under the *Legal Professions Act* will be just as independent, individually and institutionally, as they are today. The public will have the same or better access to impartial legal advice and zealous, committed advocacy from lawyers, including in matters adverse to the state.

Nor does the *Act* violate lawyers' rights under sections 7 and 8 of the *Charter.* The Trial Lawyers misinterpret the *Act* and advance arguments that are inconsistent with settled authority.

These appeals should be dismissed.

PART 1 – STATEMENT OF FACTS

A. Regulatory models in Canada and other Westminster democracies

i. Canadian jurisdictions

1. In the court below, the Law Society admitted that independence of the bar "has existed, and still exists, in every province and territory in Canada", protected by the regulatory systems in place in each jurisdiction.[1]

2. Most provinces and territories have not given their law societies independent and exclusive power to make rules for the practice of law. In Ontario, the law society required cabinet approval for most types of rules from 1970 to 1998,[2] and still requires cabinet approval for some rules.[3] In Alberta, cabinet approval is required for certain types of law society rules.[4] In New Brunswick, cabinet approval for certain rules was required from 1996 to 2024.[5] In Northwest Territories, changes to law society rules are examined by the Registrar of Regulations, including for consistency with the United Nations Declaration on the Rights of Indigenous Peoples (the "**UN Declaration**").[6]

3. In Saskatchewan, the legislature has the power to annul any law society rule it finds to be "in any way prejudicial to the public interest".[7] In Yukon, cabinet could annul law society rules from 1984 (when a law society was first created) to 2017.[8] In Nova Scotia**,** cabinet has broad authority to make regulations about the practice of law, including

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[1] Law Society's BCSC submission at para 193 (Joint Appeal Book ("**AB**") vol 17, tab 40, p 8352).
[2] *Act to consolidate and revise The Law Society Act*, SO 1970, c 19, ss 54-55 (Respondents' Book of Enactments ("**RBOE**"), vol 2, tab 4, p 142-145).
[3] *Law Society Act*, RSO 1990, c L.8, s 63(1)(14) [***ON Act***] (RBOE, vol 2, tab 12, p 176).
[4] Reasons at para 52 (Appeal Record ("**AR**"), tab 21, p 283); *Legal Profession Act*, RSA 2000, c L-8, s 8(2)-(4) [***AB Act***] (RBOE, vol 2, tab 15, p 180).
[5] *An Act respecting the Law Society of New Brunswick*, SNB 1996, c 89, s 17(8) (RBOE, vol 2, tab 5, p 152).
[6] *Statutory Instruments Act*, RSNWT 1988, c S-13, s 2 (RBOE, vol 2, tab 22, p 197). The *Legal Profession Act*, SNWT 2023, c 28 (not yet in force) does not maintain this requirement.
[7] Reasons at para 52 (AR, tab 21, p 283); *Legal Profession Act*, SS 1990-91, c L-10.1, s 91(2) (RBOE, vol 2, tab 17, p 182).
[8] Reasons at para 53 (AR, tab 21, p 283); *Legal Profession Act*, SY 1984, c 17, s 8(3) (RBOE, vol 2, tab 18, p 183).

regulations respecting any matter cabinet "considers necessary or advisable to carry out effectively the intent and purpose" of the legislation.[9] In Alberta, cabinet can make rules about liability insurance for limited liability partnerships where the Minister believes the benchers' rules provide insufficient protection.[10]

4. In the 1970s, Quebec adopted a co-regulatory model for all regulated professions.[11] Co-regulation means that, rather than a profession being self-regulating, several different entities regulate aspects of the profession. The Barreau du Quebec is one of many professional "orders".[12] Elected lawyers form a majority on the Barreau's board,[13] but the Barreau is overseen by the Office des Professions (the "**Office**"). The Office is a seven-person body, appointed by cabinet, charged with ensuring that the Barreau and other professional orders are protecting the public.[14] The Barreau's directors are subject to an ethical code developed by the Office.[15] The Office may, if it considers it necessary for the protection of the public, require the Barreau "to take corrective and appropriate follow-up measures and to comply with any other measure determined by the Office".[16] The Office may report to cabinet if the Barreau "does not fulfil the duties imposed on it".[17]

5. The Barreau's rules must be approved by the Office and cabinet.[18] Quebec legislation requires the Barreau to develop a *Code of Professional Conduct* (subject to approval by the Office and cabinet) and prescribes some of the matters it must contain or

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[9] Reasons at para 52 (AR, tab 21, p 283); *Legal Profession Act*, SNS 2004, c 28, ss 16(4)(m), 71(1) [***NS Act***] (RBOE, vol 2, tab 16, p 181).
[10] *AB Act,* s 8(2)-(4) (RBOE, vol 2, tab 15, p 180).
[11] Expert report of Jakub Adamski dated May 13, 2025 ("**Adamski Report**") at p 3-5 (AB vol 16, tab 36, p 8104-8106).
[12] Adamski Report at p 8-9 (AB vol 16, tab 36, p 8109-8110).
[13] Adamski Report at p 9 (AB vol 16, tab 36, p 8110); *Act respecting the Barreau du Québec*, CQLR, c B-1, s 10 (RBOE, vol 2, tab 2, p 127). The composition of the board is subject to certain diversity requirements set out in the *Professional Code*, CQLR c C-26: see s 77-77.1 (RBOE, vol 2, tab 20, p 192).
[14] Adamski Report at pp 6-8 (AB vol 16, tab 36, p 8107-8109); *Professional Code*, ss 4, 12 (RBOE, vol 2, tab 20, p 189-190).
[15] *Professional Code*, ss 12.0.1, 79.1 (RBOE, vol 2, tab 20, pp 191-192).
[16] *Professional Code*, s 12 (RBOE, vol 2, tab 20, p 189-190).
[17] *Professional Code*, s 12(10) (RBOE, vol 2, tab 20, p 189-190).
[18] Reasons at para 55 (AR, tab 21, p 283); Adamski Report at pp 6-8 (AB vol 16, tab 36, p 8107-8109); *Professional Code*, ss 87, 95-95.2 (RBOE, vol 2, tab 20, 193-194).

address.[19] On the recommendation of the Office, cabinet can make or amend rules, including the *Code of Professional Conduct*, over the objection of the Barreau.[20]

6. Investigative and prosecutorial authority are vested in a "syndic" who is appointed by the Barreau but must act independently of the Barreau.[21] Discipline hearing panels consist of two persons appointed by the Barreau and a chair appointed by government.[22]

7. In Manitoba, the legislature changed the composition of the board of the law society in 2015 so that 12 of its 25 benchers are lawyers elected by lawyers.[23]

ii. Other Westminster democracies

8. Three experts gave evidence about lawyer regulation in Australia and New Zealand. The experts agreed that the co-regulatory systems in these jurisdictions do not undermine independence of the bar.[24] The expert retained by the Law Society put it this way:

> […] the Australian and New Zealand experience of the regulation of lawyer[s] show that these models of co-regulation can operate in ways that do not undermine lawyers' independence nor unduly limit the capacity of lawyers to properly discharge their public and private duties.[25]

9. In most Australian states, courts control admission.[26] Otherwise rule-making is assigned to professional bodies, but a standing committee of state attorneys general can veto proposed rules in certain circumstances.[27] Complaints and investigations are

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[19] *Professional Code*, s 87 (RBOE, vol 2, tab 20, p 192-193).
[20] Adamski Report at pp 6-8 (AB vol 16, tab 36, p 8107-8109); *Professional Code*, s 183 (RBOE, vol 2, tab 20, p 195).
[21] Adamski Report at pp 11-12 (AB vol 16, tab 36, p 8112-8113); *Professional Code*, s 121.1 (RBOE, vol 2, tab 20, p 194-195).
[22] *Professional Code*, ss 115.2, 117, 121-122 (RBOE, vol 2, tab 20, pp 194-195).
[23] *Legal Profession Act*, CCSM c L107, s 5 (RBOE, vol 2, tab 14, p 179).
[24] Expert report of Christine Parker dated December 2, 2024 ("**Parker Report**") at paras 207, 255 (AB vol 16, tab 34, p 7975, 7988); Expert report of Selene Mize dated December 3, 2024 ("**Mize Report**") at paras 1, 54 (AB vol 16, tab 35, p 8022, 8046); Expert report of Joe McIntyre dated July 7, 2025 ("**McIntyre Report**") at paras 21, 125, 126 (AB vol 16, tab 32, p 7801, 7829).
[25] McIntyre Report at para 21 (AB vol 16, tab 32, p 7801).
[26] Parker Report at para 44 (AB vol 16, tab 34, p 7916).
[27] Parker Report at table 8 (p 56), paras 108, 210 (AB vol 16, tab 34, p 7955, 7952, 7976).

handled by independent statutory entities, which also decide when a lawyer will be cited for misconduct.[28] Disciplinary authority rests with tribunals appointed by government.[29] Courts have coordinate jurisdiction to strike lawyers off the roll for misconduct.[30]

10. New Zealand also employs a co-regulatory model.[31] Rule-making is largely assigned to the law society, but proposed rules must be approved by the Minister of Justice; the Minister can also amend the rules.[32] Complaints are investigated by standards committees, which consist largely of lawyers who are appointed by the law society but must act independently of the law society.[33] These committees' determinations are reviewable by review officers who are appointed by the Minister and cannot be practising lawyers.[34] Disciplinary authority rests with a tribunal, which consists of an equal number of lawyers appointed by the law society and members of the public appointed by government; the tribunal chair and deputy chair are selected by government.[35] As in Australia, courts have coordinate jurisdiction to strike lawyers off the roll for misconduct.[36]

11. England and Wales also merit mention. Each of the nine regulated legal professions is regulated by a frontline regulator under the oversight of the Legal Services Board. Legislation prescribes regulatory objectives for the frontline regulators and Legal Services Board.[37] The directors of the Legal Services Board are appointed by government; the chair and a majority must be lay persons.[38] The Legal Services Board requires that the chair and a majority of the board of each frontline regulator be lay persons.[39]

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[28] Parker Report at para 44 (AB vol 16, tab 34, p 7916).
[29] Parker Report at para 56, table 1 at p 21-24 (AB vol 16, tab 34, p 7918, 7920-7923).
[30] Parker Report at para 45 (AB vol 16, tab 34, p 7916).
[31] Mize Report at para 5 (AB vol 16, tab 35, p 8024).
[32] Mize Report at paras 33-36 (AB vol 16, tab 35, p 8036-8038)
[33] Mize Report at paras 14-15, 45 (AB vol 16, tab 35, p 8028).
[34] Mize Report at paras 16, 46 (AB vol 16, tab 35 p 8029, 8042).
[35] Mize Report at paras 17, 47 (AB vol 16, tab 35, p 8029, 8043).
[36] Mize Report at paras 50-52 (AB vol 16, tab 35, p 8044-8046).
[37] *Legal Services Act 2007*, UK 2007, c 29, ss 1-3, 27, 28, 49(3) [***UK Act***] (RBOE, vol 2, tab 19, p 184-187).
[38] *UK Act*, Schedule 1, ss 1-2 (RBOE, vol 2, tab 19, p 184-185).
[39] *UK Act*, s 30 (RBOE, vol 2, tab 19, p 186); G.K. Hadfield & D.L. Rhode, "How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering" (2016) 67:1191 *Hastings Law Journal* at p 1207 (RBOE, vol 2, tab 218, p 12633).

B. Key components of the *Act*

12. The *Legal Professions Act* (the "**Act**")[40] was enacted on May 16, 2024. The overarching purposes of the Act are to establish a single regulator for all legal professionals and to increase access to legal services in BC.[41]

13. Sections 215 and 223-229 of the Act came into force on royal assent and provide for a transitional process. Sections 311-314 also came into force on royal assent but are not at issue in these appeals. The balance of the Act comes into force by regulation.[42]

14. When the rest of the Act is brought into force, the Law Society and Society of Notaries Public will merge into a "single regulator" called Legal Professions British Columbia.[43] The regulator will regulate lawyers, notaries, regulated paralegals, limited practice licensees, and any additional categories of legal professional that may be designated by regulation in the future.[44] The Law Society supports the creation of a single regulator and has previously proposed to merge with the Society of Notaries Public.[45]

15. The regulator's mandate is set out in s 6 and is essentially to regulate the practice of law in the public interest. Section 6(1)(c) of the Act expressly requires the regulator to ensure the independence of legal professionals.

16. Section 7 sets out non-exhaustive guiding principles for the regulator: (1) facilitating access to legal services; (2) supporting reconciliation and the implementation of the UN

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[40] SBC 2024, c 26 (RBOE vol 1, tab 1).
[41] British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 42nd Parl, 5th Sess, No 411 (10 April 2024) at p 14740 (BOA vol 3, tab 213, p 12465).
[42] Act, s 317 (RBOE vol 1, tab 1, p 126).
[43] Act, s 5 (RBOE vol 1, tab 1, p 15).
[44] Act, ss 3, 4, 53 (RBOE vol 1, tab 1, pp 14 & 32).
[45] See e.g. Affidavit #1 of Brook Greenberg, KC made May 24, 2024 ("**Greenberg #1**") at para 74 (stating that the Law Society "supports licensing paralegals" and "supports regulatory modernization, and the 'single regulator' model of regulation of legal professionals in British Columbia") (AB vol 1, tab 1, p 17); LSBC, Final Report of Legal Service Providers Task Force (2013) (Greenberg #1, Ex 64 at pp 1132) (AB vol 1, tab 1, p 423); Greenberg XFD, response to request 5 (Affidavit #1 of Vanessa Lever made May 23, 2025, Ex O at p 377) (AB vol 8, tab 25, p 5577).

Declaration; (3) removing barriers to the practice of law by members of underrepresented groups; and (4) regulating in a manner that is transparent, timely, and proportionate.

17. The board composition is set out in s 8. There are 17 directors. Nine directors must be lawyers (five elected, four appointed by the board on merit). Five directors must be other legal professionals (four elected, one appointed by the board on merit). The remaining three directors are appointed by cabinet in the tradition of lay benchers.

18. The Act creates an Indigenous council. Its roles are to provide input when consulted, including about proposed rules; participate in the regulator's strategic planning processes; and advise on the appointment of Indigenous persons to committees and the tribunal.[46] Two types of rules require the approval of the Indigenous council: (1) rules for alternative resolution processes, in discipline and competence matters, that reflect or are influenced by Indigenous practices (if the board chooses to make such rules); and (2) tribunal rules designed to meet the needs of Indigenous persons involved in tribunal proceedings.[47]

19. Part 6 of the Act addresses conduct, competence, and discipline. Part 6 does not materially change the status quo, although some concepts are expressed in different language. The regulator may initiate investigations and must investigate complaints.[48] At the end of an investigation, the regulator may dismiss the complaint, enter into a consent agreement, resolve the complaint through an alternative resolution process, make a professional conduct order, make a competence order, or submit a citation to the discipline committee.[49] The regulator may continue the Law Society's Alternative Discipline Process and develop additional similar programs.[50]

20. Most professional conduct and competence orders are appealable to the tribunal.[51] Similarly, if the discipline committee approves a citation, the tribunal must hold a discipline

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[46] Act, s 30 (RBOE vol 1, tab 1, p 23-24).
[47] Act, ss 94(3), 131(6) (RBOE vol 1, tab 1, pp 52 & 63).
[48] Act, s 77 (RBOE vol 1, tab 1, p 42).
[49] Act, ss 86-89, 91, 92 (RBOE vol 1, tab 1, p 48, 50, 51).
[50] Act, ss 91, 92 (RBOE vol 1, tab 1, p 51).
[51] Act, s 87(6), 88(6) (RBOE vol 1, tab 1, pp 48-50). Orders reprimanding a licensee, requiring a licensee to submit to a practice review, or requiring a licensee to complete a remedial program are not appealable.

hearing.[52] The tribunal is independent from the regulator in the exercise of its adjudicative functions.[53] Tribunal members are appointed on merit by the board. The board also appoints the tribunal chair, who is responsible for the governance and management of the tribunal and appoints tribunal members to hearing panels.[54] Tribunal decisions are appealable to this Court.[55]

21. Cabinet may make regulations designating a profession as a legal profession for the purposes of the Act, creating exceptions from prohibition on unlicensed practice, adding to notaries' scope of practice, and defining regulated paralegals' scope of practice.[56] The board can add to the scopes of practice of notaries and paralegals.[57]

C. Transitional provisions of the Act

22. The Act creates a transitional board and transitional Indigenous council. The transitional board consists of seven persons; four appointed by the Law Society and one appointed by each of the Notaries Society, BC Paralegal Association, and cabinet.[58] The transitional Indigenous council consists of three persons appointed by the BC First Nations Justice Council, one person appointed by Métis Nation British Columbia, and one or two members of the transitional board chosen by the transitional board.[59]

23. Given that the *Law Society Rules* were developed for lawyers but the regulator will regulate all legal professionals, the Act provides for "first rules". The first rules must be agreed upon by the transitional board and transitional Indigenous council.[60] If the

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[52] Act, s 90 (RBOE vol 1, tab 1, p 50).
[53] Act, ss 21(1)(c), 96(3)(b) (RBOE vol 1, tab 1, pp 19, 53).
[54] Act, ss 96, 98, 131 (RBOE vol 1, tab 1, p 53, 54, 63).
[55] Act, s 129 (RBOE vol 1, tab 1, p 63).
[56] Act, ss 3(d), 4, 38(1)(i), 46(1)(e), 47(1)(a), 212, 213 (RBOE vol 1, tab 1, p 14, 27, 30, 98).
[57] Act, ss 46(1)(f), 47(1)(b), 48(1)(a), 48(1)(b) (RBOE vol 1, tab 1, p 30).
[58] Act, s 223 (RBOE vol 1, tab 1, p 101).
[59] Act, s 224 (RBOE vol 1, tab 1, p 101).
[60] Act, s 226 (RBOE vol 1, tab 1, p 102).

transitional board and transitional Indigenous council cannot reach agreement on the first rules, the Act cannot be brought into force in its present form.[61]

D. Reasons for judgment

24. The Chief Justice held that independence of the bar is an unwritten constitutional principle.[62]

25. The Chief Justice identified the critical question before him as whether the Act violates independence of the bar "by interfering with or unduly influencing the duties owed by lawyers, both to their clients and to the administration of justice more broadly".[63]

26. Applying this test, the Chief Justice held that the Act does not infringe independence of the bar in its individual dimensions (i.e., "its direct application to lawyers and their clients") or institutional dimensions (i.e. "by way of the regulatory structure it creates").[64]

27. The Chief Justice specifically concluded that self-governance and self-regulation are not constitutionally required.[65] In making that finding, the Chief Justice was using these terms in the electoral sense the Law Society did in the court below. Below, the Law Society defined self-governance as "regulation by an independent legal regulator that is governed by a board composed of a *strong majority of lawyers elected by lawyers*".[66] Similarly, the Law Society defined self-regulation as "regulation guided by the board's determination of what is in the public interest" (note this board is, by definition, composed of a strong majority of lawyers elected by lawyers).[67] The Chief Justice found that electoral self-governance and self-regulation are not necessary to maintain individual or institutional independence of the bar.[68]

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[61] Act, s 226(2) (RBOE vol 1, tab 1, p 102).
[62] Reasons at para 88 (AR, tab 21, p 292).
[63] Reasons at para 110 (AR, tab 21, p 296).
[64] Reasons at paras 147-205 (AR, tab 21, pp 305- 319).
[65] Reasons at para 147 (AR, tab 21, p 305).
[66] Law Society's BCSC submission at para 93 (emphasis added) (AB vol 17, tab 40, p 8322).
[67] Law Society's BCSC submission at para 93 (AB vol 17, tab 40, p 8322).
[68] Reasons at para 158 (AR, tab 21, p 309).

28. The Chief Justice gave brief reasons dismissing each of the *Charter* arguments advanced by the Trial Lawyers Association of British Columbia and Kevin Westell (collectively, the "**Trial Lawyers**").[69]

PART 2 – ISSUES ON APPEAL

29. These appeals raise two main issues on which the Attorney General takes the following positions:

a) the Chief Justice was correct in how he defined independence of the bar; and

b) the Chief Justice was correct that the Act does not infringe independence of the bar in its individual or institutional dimensions.

30. The Trial Lawyers' appeal raises two additional issues on which the Attorney General takes the following positions:

a) the Chief Justice was correct that Part 6 of the Act does not engage lawyers' rights under s 7 of the *Charter*; and

b) the Chief Justice was correct that ss 78 and 209 of the Act do not infringe lawyers' rights under s 8 of the *Charter*.

PART 3 – ARGUMENT

I. Preliminary Matters

A. Law Society's change in position

31. The Law Society has changed its position and its definitions of "self-governance" and "self-regulation". In the court below, the Law Society's position was that independence of the bar entails "specific constitutional propositions of self-regulation and self-governance by a body with a strong majority elected by lawyers".[70] The Law Society

[69] Reasons at paras 206-233 (AR, tab 21, pp 319-325).
[70] Law Society's BCSC submission at para 54 (AB vol 17, tab 40, p 8312).

similarly defined self-governance and self-regulation as requiring "a board composed of a strong majority of lawyers elected by lawyers".[71]

32. The Law Society has abandoned its previous position. It now concedes that electoral self-governance and self-regulation are *not* constitutionally required across Canada.[72] It now defines self-governance as "a collective governance structure through which lawyers maintain and advance the rules and programs necessary to uphold the public's access to trustworthy and competent lawyers". It now defines self-regulation as "the Bar's ability to set and enforce standards […] that apply to the admission, practice of law, competence and discipline of lawyers".[73] These definitions no longer have an electoral component.

33. The Attorney General does not object to the Law Society's change in position: there is no prejudice. However, it must be understood that the Chief Justice was addressing a different position. Where he refers to self-governance and self-regulation, he is using these terms in the electoral sense the Law Society did in the court below.

B. Standards of review

34. The Attorney General agrees that most of the issues raised by these appeals are legal issues that attract the correctness standard of review. However, as developed below, aspects of the appellants' arguments are foreclosed by evidentiary findings they have not challenged.

C. Proper doctrinal framework for these appeals

35. It is common ground between the parties that the provinces have legislative authority to regulate the practice of law in the province under ss 92(13) and 92(14).[74] The Law Society frames its case as a challenge to the *vires* of the Act under s 92 of the *Constitution*

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[71] Law Society's BCSC submission at para 93 (AB vol 17, tab 40, p 8322).
[72] Law Society's factum at para 56. The Law Society says that electoral self-governance and self-regulation are constitutionally required *in BC*. This aspect of the Law Society's position is addressed in detail in Section II. Subsection D. "Law Society misapplies reasonable perception", below.
[73] Law Society's factum at para 54.
[74] *Law Society of British Columbia v Mangat,* 2001 SCC 67 at paras 38 and 42; *Pearlman v Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 at 886-888.

Act, 1867. However, unwritten constitutional principles cannot be used to narrow provincial authority and create gaps in the division of powers by reading down s 92.[75]

36. The proper doctrinal framework for these appeals is under ss 7, 10(b) and 11(d) of the *Charter*. If any provisions of the Act infringe independence of the bar, those provisions are contrary to s 10(b) (or other provisions) of the *Charter*. The unwritten constitutional principle of independence of the bar can be used to help interpret the *Charter*. That said, it is unnecessary to resort to the principle. On a conventional purposive interpretation, s 10(b) requires an independent bar capable of fulfilling the purposes of s 10(b).

37. All that said, most of the following submissions apply equally to a *vires* framework. The Chief Justice was correct that the Act is consistent with independence of the bar. Accordingly, there is no legal theory grounded in independence of the bar that could lead to the conclusion that the Act is unconstitutional.

II. Independence of the Bar

A. Overview

38. The Attorney General agrees that independence of the bar, properly understood, is an unwritten constitutional principle. Independence of the bar means that lawyers are free, and are reasonably perceived to be free, from interference with their ability to discharge their duties to their clients and the administration of justice.

39. This factum addresses independence of the bar in four parts.

40. First, the Chief Justice correctly identified the meaning of independence of the bar. To determine whether legislation compromises independence of the bar, the critical question is whether the legislation interferes, or is reasonably perceived to interfere, with lawyers' ability to fulfil their essential duties to their clients and the administration of justice.

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[75] *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 at paras 5, 48, 66 (BOA vol 2, tab 161, p 10596, 10614, 10623); *Mercer v Yukon (Government of)*, 2025 YKCA 5 at para 48 (BOA vol 1, tab 80, p 4363); *Quebec (Attorney General) v Canada (Attorney General)*, 2015 SCC 14 at para 44 (BOA vol 2, tab 96, p 5411); *Reference re Same-Sex Marriage*, 2004 SCC 79 at para 34 (BOA vol 2, tab 134, p 8484).

41. Second, it is unnecessary to identify “essential conditions” of independence of the bar. Approaching the issues as the Chief Justice did, by testing the Act against the critical question set out above, provides robust and sufficient protection to independence of the bar. Alternatively, the Attorney General sets out two conditions that could be recognized in these appeals. The Chief Justice was correct that self-governance and self-regulation are not essential conditions of independence of the bar. In any case, the Act meets the Law Society’s new definitions of self-governance and self-regulation.

42. Third, the Law Society’s approach to reasonable perception should not be adopted. The Attorney General agrees that reasonable perception plays a role in the analysis: it is part of the critical question set out above. However, reasonable perception cannot be used, as the Law Society contends, to create constitutional requirements that vary between provinces. The constitution either requires electoral self-governance or it does not.

43. Finally, the Chief Justice was correct that none of the impugned provisions of the Act interfere with independence of the bar in its individual or institutional dimensions. The Act does not interfere, or give rise to a reasonable perception of interfering, with lawyers’ ability to fulfil their essential duties to their clients and the administration of justice. Lawyers regulated under the Act will be just as independent, individually and institutionally, as they are today.

B. Meaning of the constitutional principle of independence of the bar

i. Chief Justice correctly identified the critical question

44. To determine whether legislation compromises the independence of the bar, the overarching, critical question is whether the Act interferes, or is reasonably perceived to interfere, with lawyers’ ability to fulfil their essential duties to their clients and to the administration of justice.

45. This critical question focuses on the role or functions of lawyers because, ultimately, *that* is what independence of the bar is meant to protect. Independence of the bar is a means of ensuring lawyers can fulfill their essential role in our constitutional order.[76]

46. The Chief Justice correctly identified the critical question before him as whether the Act violates independence of the bar "by interfering with or unduly influencing the duties owed by lawyers, both to their clients and to the administration of justice more broadly".[77] He found that such interference could occur either through the Act's direct application to lawyers and their clients or by way of the regulatory structure it creates.[78]

47. As the Chief Justice recognized, answering this critical question requires considering reasonable perception. He described it as "axiomatic" that "lawyers must be, *and be seen to be*, independent".[79]

ii. Critical question focuses on the role of lawyers

48. Articulating the overarching, critical question for independence of the bar with reference to the role of lawyers is consistent with how the Supreme Court of Canada has articulated the critical question for judicial independence. The overarching or "critical question" for testing interference with judicial independence is whether the impugned legislation interferes, or is reasonably seen to interfere, with the courts' adjudicative role.[80] The critical question for judicial independence recognizes that the constitution does not protect judicial independence for its own sake. As the Supreme Court has held, judicial independence is a means of ensuring that courts can perform their adjudicative role by rendering decisions based solely on the requirements of law and justice.[81]

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[76] See analogously e.g. *Ell v Alberta*, 2003 SCC 35 at para 29 ("Judicial independence serves not as an end in itself, but as a means to safeguard our constitutional order and to maintain public confidence in the administration of justice") (BOA vol 1, tab 44, p 2631).
[77] Reasons at para 110 (AR, tab 21, p 296).
[78] Reasons at para 110 (AR, tab 21, p 296).
[79] Reasons at para 106 (emphasis added); see also paras 109-110 (AR, tab 21, p 295-296).
[80] *British Columbia v Imperial Tobacco Canada Ltd.*, 2005 SCC 49 [***Imperial Tobacco***] at paras 47, 49, 54 (BOA vol 1, tab 19, p 904, 906).
[81] *Imperial Tobacco* at paras 45-52 (BOA vol 1, tab 19, p 903-905).

49. In articulating the critical question, the Chief Justice correctly recognized that the role of lawyers includes two functions. Lawyers have duties to their clients which require them to provide impartial legal advice and zealous, committed advocacy.[82] Lawyers also have duties to the courts and administration of justice.[83]

50. These two functions have long defined the role of lawyers in Canada. The Supreme Court has recognized a lawyer's duty of commitment to their client's cause as a principle of fundamental justice.[84] The Court has also recognized the essential role of lawyers in the administration of justice.[85] These two functions are interrelated: the administration of justice depends on individuals having access to impartial legal advice and zealous, committed advocacy from lawyers.

iii. Chief Justice's approach finds support in jurisprudence and literature

51. The Chief Justice's approach is consistent with jurisprudence on independence of the bar and influential scholarship by Professors Woolley and Monahan.[86]

52. Canadian jurisprudence on the independence of the bar has focused on lawyers' ability to fulfil their duties. *Jabour* defines independence of the bar as freedom from "state interference, in the political sense, with the delivery of [legal] services".[87] *Wilder* held that securities commissions' disciplinary jurisdiction over lawyers does not undermine independence of the bar because it does not "interfere with the ability of lawyers who practise securities law to continue to provide excellent and vigorous representation to their

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[82] Reasons at paras 101-108 (AR, tab 21, pp 294-296).
[83] Reasons at paras 109-110 (AR, tab 21, p 296).
[84] *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 [***Federation***] at para 8 (BOA vol 1, tab 22, p 1051).
[85] *Federation* at para 96 (BOA vol 1, tab 22, p 1080).
[86] A. Woolley, "Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation" (2012) 45:1 *UBC Law Review* 145 (BOA vol 3, tab 206, p 12322); P.J. Monahan, "The Independence of the Bar as a Constitutional Principle in Canada" in *The Report and Research Papers of the Law Society of Upper Canada's Task Force on the Rule of Law and the Independence of the Bar* (Toronto: Irwin Law, 2007) (BOA vol 3, tab 230, p 12944).
[87] *A.G. Can. v Law Society of B.C.*, 1982 CanLII 29 (SCC), [1982] 2 SCR 307 [***Jabour***] at pp 335-336 (BOA vol 1, tab 23, p 1141-1142).

clients".[88] *Federation*, when considering federal legislation that imposed reporting requirements on lawyers, focused on whether the legislation interfered with lawyers' duty of commitment to the client's cause.[89] Underlying these authorities is a conception of independence of the bar tied to lawyers' ability to fulfil their role or duties.

53. For Professor Woolley, independence of the bar is a means of ensuring that lawyers are "free from external pressures that might distort their fulfillment of their legal and ethical obligations".[90] Professor Woolley writes that independence of the bar is a "mechanism for achieving the normative principles that constitute and underlie lawyers' legal and ethical obligations". The focus is on whether lawyers can fulfil their obligations to clients and to the administration of justice.[91]

54. Professor Monahan also conceptualizes independence of the bar as a means of ensuring lawyers can fulfill their duties. Professor Monahan defines independence as "the lawyer's ability to provide effective representation of clients in litigious as well as non-litigious matters without improper external pressure". He rejects the notion that independence requires self-governance and self-regulation.[92] Instead, he concludes that the "critical requirement is that lawyers retain the ability to act independently of government and are thus in a position to advocate fearlessly on behalf of their clients and act in accordance with their ethical obligations of loyalty and confidentiality".[93]

55. The Chief Justice was therefore correct in how he framed the issue before him. The critical question in these appeals is *whether the Act interferes, or gives rise to a reasonable perception of interfering, with lawyers' ability to fulfil their essential duties to*

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[88] *Wilder v Ontario Securities Commission*, 2000 CanLII 29062 (ON SCDC) at para 24 (BOA vol 2, tab 176, p 11500), aff'd 2001 CanLII 24072 (ON CA) at para 29 (BOA vol 2, tab 177, p 11522).
[89] *Federation* at paras 81-84, 104-111 (BOA vol 1, tab 22, p 1075-1077, 1083-1086). The Court also said there was "considerable merit" to the submission that the Court of Appeal's definition of independence of the bar (lawyers are "free from incursions from any source") essentially places lawyers above the law: see paras 78, 80 (BOA vol 1, tab 22, p 1074-1075).
[90] Woolley at p 162 (BOA vol 3, tab 206, p 12340).
[91] Woolley at p 149 (BOA vol 3, tab 206, p 12327).
[92] Monahan at p 118-120 (BOA vol 3, tab 230, p 12945-12947).
[93] Monahan at p 148 (BOA vol 3, tab 230, p 12975).

clients and the administration of justice. For lawyers' duties to clients, the question is whether the Act interferes, or gives rise to a reasonable perception of interfering, with lawyers' ability to provide impartial legal advice and zealous, committed advocacy.

C. Essential conditions of independence of the bar

i. Unnecessary to define any conditions

56. It is unnecessary to define any essential conditions of the independence of the bar. Approaching the issues as the Chief Justice did, by testing the Act against the critical question set out above, provides robust and sufficient protection to independence of the bar. There is no form of interference with independence of the bar that would not be captured by asking directly whether the impugned legislation or measure interferes, or is reasonably perceived to interfere, with lawyers' ability to fulfil their essential duties to their clients and the administration of justice. Defining essential conditions, then testing the Act against those conditions, does not offer any additional protection.

ii. Alternatively, the Court could recognize two conditions

57. Alternatively, if this Court decides it is appropriate to define essential conditions of independence of the bar, there are two conditions that could appropriately be recognized in these appeals. Below, the Attorney General sets out certain principles that should guide the Court, explains the two conditions she proposes, and submits the Law Society's proposed conditions should be rejected.

(1) Court should be restrained in defining conditions

58. Should this Court decide to define essential conditions, the Court should approach that exercise with restraint. Courts generally should not decide issues of law, especially constitutional issues, that will not affect the disposition of a proceeding.[94] These appeals do not require this Court to exhaustively catalogue every condition of independence of the bar. These appeals are about the regulatory system created by the Act. If the Court chooses to identify essential conditions at all, the only conditions that should be identified are those relating to regulatory systems for lawyers. Such conditions are properly

[94] See e.g. *R v McGregor*, 2023 SCC 4 at para 24 (BOA vol 2, tab 114, p 6627).

characterized as “institutional” conditions, because what is being tested is a regulatory system that applies to every lawyer in BC. There are many other aspects of independence of the bar that are already protected by law and do not require consideration in these appeals.[95]

59. A second reason for restraint in defining essential conditions for independence of the bar is that independence of the bar is inherently different from judicial independence. For judicial independence, the essential conditions relate to the separation of powers between the branches of the state. Each condition corresponds to an institutional touchpoint between the judiciary and the other branches that could be misused as a lever of improper influence. Judges must have security of tenure because judges are appointed by the government. Judges must have financial security because judges are paid by the government. Judges must control judicial administration because court administration is controlled by the government.

60. For lawyers, the institutional touchpoint with government is predominantly the regulatory system. By answering the critical question outlined above, the Court can determine whether the regulatory system is constitutional without needing to refer to any conditions. Relatedly, the essential conditions for judicial independence have a strong textual basis in the constitution. Security of tenure and financial security are guaranteed (for superior court judges) by ss 99 and 100 of the *Constitution Act, 1867*. There is nothing similar for lawyers.

(2) Conditions must be necessary rather than merely desirable

61. Essential conditions are conditions that are *necessary* for lawyers to be able, and reasonably be perceived as able, to fulfil their duties. Essential conditions do not constitutionalize what may be thought to be desirable or ideal.[96] Judicial independence

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[95] For example, solicitor-client privilege is a principle of fundamental justice under s 7 of the *Charter* and statements by lawyers on behalf of clients have long enjoyed absolute privilege within the law of defamation. These aspects of independence are important, but are not at issue in these appeals.

[96] *R v Lippé*, 1990 CanLII 18 (SCC), [1991] 2 SCR 114 [***Lippé***] at pp 142-143 (BOA vol 2, tab 110, p 6527-6528).

does not protect anything beyond the essential role of the courts, because doing so would stray from judicial independence into judicial governance.[97] The essential conditions of judicial independence are the conditions that are necessary for courts to be able, and reasonably be perceived as able, to fulfil their adjudicative function.[98] They are the constitutional minimums, or floors, without which the reasonable person would not perceive that the judiciary is free to perform its adjudicative role.

(3) Two conditions could be recognized

62. If the Court chooses to identify essential conditions, two could be identified:

a) public interest orientation: all persons and entities regulating aspects of the practice of law must act in the public interest; and,

b) decisional independence: case-specific regulatory decisions must be made (i) by persons and entities that are independent from the executive branch of government, and (ii) in a manner that is free from external control or direction.

63. These conditions are met by the regulatory systems in every province and territory, which the Law Society admits maintain the independence of the bar.[99] They are also met by the regulatory systems in Australia, New Zealand, and England and Wales. As developed below, this commonality matters. The Supreme Court has long considered cross-jurisdictional trends when determining what is necessary to maintain judicial independence.[100]

(4) First essential condition: public interest orientation

64. The first condition, public interest orientation, applies not only to the entity or entities charged with directly enforcing standards on admission, competence and discipline, but also to bodies like cabinet and the legislature, who play a role in setting those standards.

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[97] *Imperial Tobacco* at para 53 (BOA vol 1, tab 19, p 905).
[98] *Lippé* at pp 142-143 (BOA vol 2, tab 110, p 6527-6528).
[99] Law Society's BCSC submission at para 193 (AB vol 17, tab 40, p 8352).
[100] See for example: *Valente v The Queen,* 1985 CanLII 25 (SCC) [***Valente***] at paras 42-43, 53-54 (BOA vol 2, tab 168, p 11166-11167, 11173-11174).

65. The Supreme Court of Canada has recognized that when law societies are given the "privilege" of regulating lawyers, in exchange they "must exercise this privilege in the public interest".[101] This requirement to act in the public interest should logically extend to all entities involved in regulating lawyers.

66. A public interest orientation is necessary to ensure the regulatory system as a whole cannot be misused to further private interests or partisan political agendas. The public must be confident that lawyers are committed to serving their clients' legitimate interests free from obligations or pressures that might interfere with their ability to do so. Such confidence would not exist if the regulatory system could be distorted to advance private or political interests. This aligns with the Court in *Jabour* holding that lawyers must be free from "state interference, in the political sense, with the delivery of [legal] services".[102]

67. The first condition should not be understood as requiring a legislated public interest mandate (such as s 6 of the Act). As the Alberta Court of Kings Bench has held, a legal regulator must act in the public interest "regardless of whether there is an express public interest clause in the enabling act".[103] Similarly, the Chief Justice held that although BC's public interest mandate was only legislated in 1987, "[i]t cannot seriously be contended that the [Law Society] had no obligation prior to that date to act in the public interest".[104] In the absence of an express public interest mandate, the public interest condition may be ascertained by reference to the legislative scheme as a whole.

(5) Second essential condition: decisional independence

68. The second condition, decisional independence, is necessary to ensure that lawyers' advice and advocacy are not, in fact or reasonable perception, chilled by the risk of unwarranted regulatory scrutiny. For the public to be confident that lawyers are committed to serving their clients' legitimate interests, case-specific regulatory decisions cannot be

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[101] *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 [***Trinity Western***] at para 32 (BOA vol 1, tab 69, p 3845), citing *Law Society of New Brunswick v Ryan*, 2003 SCC 20 [***Ryan***] at para 36 (BOA vol 1, tab 70, p 3989).
[102] *Jabour* at pp 335-336 (BOA vol 1, tab 23, p 1141-1142).
[103] *Song v The Law Society of Alberta,* 2025 ABKB 525 at para 89 (BOA vol 2, tab 153, p 9976).
[104] Reasons at para 171.

made by the executive branch and must not be subject to control or direction from outside the regulatory bodies.

69. The second condition applies only to the entity or entities charged with directly enforcing standards on admission, competence and discipline. It does not apply to the bodies involved in setting those standards. Thus, while government cannot make case-specific regulatory decisions, government can play roles in setting standards and outlining guiding principles.[105] This is because setting general standards and guiding principles is fundamentally different from making case-specific regulatory decisions in the day-to-day business of regulating lawyers. For example, a reasonable person would be concerned about lawyers' independence if the executive branch decided which lawyers would be cited for alleged misconduct but would not be concerned if their regulator had a statutory duty to consider access to legal services. As Professor Monahan observes, while government can impose "external controls" on the regulatory system for lawyers, such as lay benchers or cabinet having the power to approve rules: "What is fundamental to our constitutional order is the preservation of the independence of lawyers from *direct* control by executive government".[106]

70. Decisional independence is what the Chief Justice meant when he stated that "lawyers cannot be said to be truly independent if they are subject to regulation by a body which is itself controlled, or unduly influenced, by outside forces".[107] The appellants seize on this statement but misinterpret it.[108] The Chief Justice did not mean that lawyers cannot be regulated by anyone other than lawyers. He repeatedly stated that self-governance and self-regulation are not required, and he found that lay benchers as well as notary and paralegal directors can maintain independence.[109] When the Chief Justice wrote that the

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[105] *Jabour* at p 335 (BOA vol 1, tab 23, p 1141); Monahan at p 141-144 (BOA vol 3, tab 230, p 12968-12971).
[106] Monahan at p 149 (emphasis added) (BOA vol 3, tab 230, p 12976).
[107] Reasons at para 108 (AR, tab 21, p 296).
[108] Law Society's factum at para 70(a) (describing the regulator's board as including "outside parties"); Trial Lawyers' factum at paras 41-42 (describing the Indigenous council and transitional Indigenous council as "outside forces").
[109] Reasons at paras 160-163 (AR, tab 21, pp 309-310).

regulator must not be "controlled, or unduly influenced, by outside forces", he meant that the *regulator* must itself be independent.

(6) Act meets these conditions

71. The Act satisfies the conditions of a public interest orientation and decisional independence. Section 6 of the Act requires the regulator to act in the public interest. This mandate extends to each of the bodies that form part of the regulator, including the board, Indigenous council, licensing committee, discipline committee, and tribunal. Cabinet must also act in the public interest when making regulations, given that regulations must be consistent with the purposes of their enabling statute. The Act also ensures decisional independence. Under the Act, case-specific regulatory decisions in the day-to-day business of regulating lawyers are outside the purview of the executive branch and are not subject to external control or direction.

72. Again, though, the Attorney General's primary position is that it is unnecessary to define essential conditions. Essential conditions identify particular ways in which legislation might interfere, or be perceived to interfere, with lawyers' ability to fulfil their duties. It is simpler and equally protective to just ask directly if the impugned legislation interferes, or is reasonably perceived to interfere, with lawyers' ability to fulfil their duties.

iii. Chief Justice was correct that self-governance and self-regulation are not essential conditions of independence

73. The Chief Justice was correct that self-governance and self-regulation are not essential conditions of independence.[110] As noted, it is difficult to transpose the Law Society's arguments onto the Chief Justice's reasons because the Law Society has changed its definitions of self-governance and self-regulation. However, on either definition, self-governance and self-regulation are not essential conditions. This is so for at least two reasons, developed in turn below.

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[110] Law Society's factum at paras 54-61.

(1) Other regulatory models ensure independence

74. The first reason the Chief Justice was correct that self-governance and self-regulation are not essential conditions of independence is that lawyers are independent in many jurisdictions that do not meet the Law Society's definitions of these terms.

75. The Law Society's position is internally inconsistent. On one hand, the Law Society says "self-governance and self-regulation are essential characteristics of independence of the Bar, without which it cannot exist".[111] On the other hand, the Law Society concedes that independence of the bar "has existed and still exists in every province and territory in Canada" protected by a variety of regulatory systems that do not meet these conditions.[112] As canvassed in Part 1, many provinces and territories do not meet, or for lengthy periods did not meet, the Law Society's definitions of self-governance and self-regulation: Manitoba maintains independence of the bar without electoral self-governance and most Canadian jurisdictions have not given lawyer majority bodies the exclusive power to make rules about lawyers' practice.[113]

76. Additionally, the experts who gave evidence on Australia and New Zealand were unanimous in opining that the co-regulatory systems in these jurisdictions do not undermine independence of the bar. While the constitutions of those jurisdictions are different from Canada's, there is value in considering undisputed evidence that—as a factual matter—lawyers can be independent while operating under regulatory systems that do not meet the Law Society's definitions of self-governance and self-regulation.[114]

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[111] Law Society's factum at para 55.
[112] Law Society's BCSC submission at para 193 (AB vol 17, tab 40, p 8352).
[113] See Part 1, "A. Regulatory models in Canada and other Westminster democracies" above.
[114] For examples of cases considering evidence from foreign jurisdictions (including Australia and New Zealand) to decide constitutional matters in Canada see: *R v Daviault*, 1994 CanLII 61 (SCC), [1994] 3 SCR 63 at p 98-99 (BOA vol 2, tab 104, p 6097-6098); *Carter v Canada (Attorney General)*, 2015 SCC 5 [***Carter***] at paras 8, 28, 47 (BOA vol 1, tab 32, p 1572, 1582, 1589); *R v Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 SCR 30 at p 58, 61, 117-118 (BOA vol 2, tab 116, p 6793, 6796, 6852-6853); *Chaoulli v Québec (Procureur général)*, 2005 SCC 35 at paras 61, 70-84 (BOA vol 1, tab 33, p 1663, 1666-1671).

(2) Jurisprudence describes regulatory model as policy choice

77. The second reason the Chief Justice was correct that self-governance and self-regulation are not essential conditions of independence is the jurisprudence describes the regulatory model for lawyers as a legislative policy choice that is open to legislatures to revise. There is no authority for the proposition that self-governance and self-regulation, however defined, are constitutionally required.[115]

78. The most important case is *Jabour*. The Court described self-regulation as carrying advantages, but also disadvantages: "the problem of conflict of interest, an orientation favourable to the regulated, and the closed shop atmosphere".[116] These disadvantages are mitigated, the Court said, by "important protective restraints" including the requirement that then existed in Ontario, and still exists in Quebec, for "the confirmation by the Provincial Executive, the Lieutenant Governor in Council, of all regulations adopted by the Society as a prerequisite to their validity". The Court described the pros and cons of self-regulation as being "for the Legislature to weigh and determine" and said the decision of how lawyers should be regulated "is for the province to make".[117]

79. To similar effect, the Supreme Court of Canada has described the self-regulatory model as a "privilege" that has been "granted" to lawyers.[118] A privilege, by definition, is something that can be revoked by the entity that granted it.

80. The Law Society argues that the Chief Justice erred in relying on these decisions.[119] If the Law Society's point is simply that no case has *conclusively decided* whether self-governance and self-regulation are constitutionally required, the Attorney General agrees. This jurisprudence is not dispositive. However, if the Law Society's argument is that the Chief Justice erred in ascribing any weight to the jurisprudence, the Attorney General disagrees. It is significant that the Supreme Court has never described self-regulation as

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[115] Reasons at paras 147-157 (AR, tab 21, pp 305-308).
[116] *Jabour* at p 335 (BOA vol 1, tab 23, p 1141).
[117] *Jabour* at p 334-336 (BOA vol 1, tab 23, p 1140-1142).
[118] Reasons at paras 154-155 (AR, tab 21, pp 307-308), citing *Ryan* at para 36 (BOA vol 1, tab 70, p 3989), *Trinity Western* at para 32 (BOA vol 1, tab 69, p 3845).
[119] Law Society's factum at paras 59-61, referring to Reasons at paras 147-157 (AR, tab 21, pp 305-308).

anything other than a legislative policy choice that properly includes protective restraints from outside the profession and is open for legislatures to revise.

(3) In any case, Act meets these conditions

81. In any event, even if the Law Society could show that self-governance and self-regulation are essential conditions of independence, the Act would still be constitutional: it meets the Law Society's new definitions of these terms.

82. Without acknowledging it has changed definitions, the Law Society relies on the Chief Justice's statement that s 8 of the Act, which sets out the board composition, does not maintain self-governance and self-regulation.[120] Again, the Chief Justice was using these terms in the electoral sense the Law Society did in the court below ("a board composed of a strong majority of lawyers elected by lawyers").[121] The Chief Justice stated that s 8 does not maintain self-governance and self-regulation because the board "is not comprised of a majority of elected lawyers".[122]

83. The Law Society's new definitions of self-governance and self-regulation do not have an electoral component.[123] The Act meets the Law Society's new definitions. The lawyer-majority board of the new regulator can maintain and advance the rules and programs necessary to uphold the public's access to trustworthy and competent lawyers (self-governance) and set the standards for admission, the practice of law, competence, and discipline (self-regulation).

84. Under the Act, the board is the only entity that can make rules about how lawyers practise law (unlike in Quebec, Nova Scotia, Australia, and New Zealand). The board's rules do not require the approval of cabinet (as the Barreau's have for 50 years and the Law Society of Ontario's did for 30 years), cannot be annulled by cabinet (as the Law Society of Yukon's could for 30 years), and cannot be annulled by the legislature (as the Law Society of Saskatchewan's can). The approval of the Indigenous council is required

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[120] Law Society's factum at para 23, citing Reasons at para 140 (AR, tab 21, p 303).
[121] Law Society's BCSC submission at para 93 (AB vol 17, tab 40, p 8322).
[122] Reasons at para 140 (AR, tab 21, p 303).
[123] Law Society's factum at para 54.

only for two specific types of rules relating to regulatory processes rather than the practice of law.

85. The first rules require the approval of the transitional Indigenous council, but that does not derogate from self-governance or self-regulation as the Law Society now defines those terms. Lawyers are a majority on the transitional board.[124] The first rules cannot be made without the agreement of the lawyer-majority transitional board. If the transitional board and transitional Indigenous council cannot reach agreement on the first rules, the Act cannot be brought into force at all (in its present form).[125]

86. The Act represents a different mode of self-governance and self-regulation than the status quo in BC, but it maintains self-governance and self-regulation as the Law Society now defines those terms.

D. Law Society misapplies reasonable perception

87. The Attorney General agrees that reasonable perception plays a role in the analysis, but reasonable perception cannot be used in the manner the Law Society contends.

88. As set out above, the Attorney General's position is that reasonable perception is part of the critical question before the Court, i.e., whether the Act interferes, or is reasonably perceived to interfere, with lawyers' ability to fulfill their duties to their clients and the administration of justice.

89. The Law Society tries to use reasonable perception to construct a world in which regulatory changes that do not actually threaten independence give rise to a reasonable perception that they do (in one province but not others). This is a new argument made for the first time on appeal. The Law Society says that, although electoral self-governance and self-regulation are not necessary *in fact* for independence,[126] a reasonable person would *perceive* that they are necessary for independence *in BC*. Specifically, the Law

[124] Act, s 223(1)(a) (RBOE vol 1, tab 1, p 101).
[125] Act, s 226(2) (RBOE vol 1, tab 1, p 102).
[126] Law Society's factum at para 56.

Society argues that a reasonable person, when evaluating whether the Act maintains independence of the bar, would consider three factors specific to BC:

a) BC has a tradition of electoral self-governance;[127]

b) the legislature enacted the Act over the opposition of the bar;[128] and,

c) the Law Society has not "governed lawyers in a manner that is contrary to the public interest", so there is no "justification" or "reason" for the Act.[129]

90. For at least four reasons, developed in detail below, this argument should not be accepted: (1) constitutional requirements do not vary between provinces; (2) legislative policy choices do not, when maintained over time, harden into constitutional requirements; (3) a reasonable person would know that other jurisdictions maintain independence of the bar without electoral self-governance and self-regulation; and (4) the reasonable person test does not permit judicial scrutiny of non-justiciable issues.

i. Constitutional standards do not vary between provinces

91. The first reason the Law Society's new reasonable perception argument should not be accepted is that constitutional standards do not vary between provinces.

92. The Law Society's use of the reasonable person test sets different constitutional requirements for BC than for other provinces. The variation in constitutional standards is clearest in the Law Society's argument about self-governance. The Law Society argues that self-governance is a necessary condition for the independence of the bar.[130] It then concedes that *electoral* self-governance is a "particular mode" of self-governance that is not constitutionally required in all circumstances.[131] This concession makes sense, given that Manitoba maintains an independent bar without electoral self-governance.[132] However, the Law Society then goes on to argue that, given certain factors specific to BC,

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[127] Law Society's factum at para 56.
[128] Law Society's factum at para 68.
[129] Law Society's factum at para 69.
[130] Law Society's factum at paras 54-55.
[131] Law Society's factum at para 56.
[132] Reasons at para 159 (AR, tab 21, p 309).

a reasonable person would conclude that electoral self-governance is required for independence of the bar in BC.[133]

93. With respect, this cannot be correct. The constitution either requires electoral self-governance or it does not. The requirements of the constitution do not vary by province.

94. The Law Society's argument is inconsistent with how reasonable perception operates in the jurisprudence on judicial independence. Courts use reasonable perception to determine whether a reasonable and informed person would perceive that a court or tribunal meets the essential conditions of judicial independence.[134] In other words, the function of the reasonable person test is not to *set* the essential conditions, but to *test* whether a particular tribunal or court is reasonably seen to maintain those conditions.

95. In the judicial independence cases, context is relevant to reasonable perception, but not in the way the Law Society asserts.[135] The relevant context is not local tradition or history, but the functions and powers of the impugned court or tribunal.[136] Courts take this context into account when deciding how rigorously to apply the essential conditions to a diverse array of courts and tribunals. For example, a higher level of independence is required for an immigration tribunal than for a tribunal adjudicating disputes about property taxes.[137] At least one court has rejected the argument that different standards should apply to equivalent courts in different provinces and territories, holding that the "constitutional principles of judicial independence […] apply equally throughout Canada".[138]

96. Unlike courts and tribunals, which differ in their functions and powers, all lawyers have essentially the same duties. The contextual analysis from the judicial independence

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[133] Law Society's factum at paras 56, 67-69.
[134] *Conférence des juges de paix magistrats du Québec v Quebec (Attorney General)*, 2016 SCC 39 at para 33 (BOA vol 1, tab 37, p 1919).
[135] See, for example, Law Society's factum at paras 56, 63, 67.
[136] *Canadian Pacific Ltd. v Matsqui Indian Band*, 1995 CanLII 145 (SCC) at para 83 (BOA vol 1, tab 31, p 1524).
[137] *Ibid* at para 84 (BOA vol 1, tab 31, p 1524).
[138] *Reference re Territorial Court Act (Northwest Territories)*, 1997 CanLII 4530 (NWT SC) at paras 3, 23-24 (BOA vol 2, tab 139, p 8773, 8778-8779).

case law, which accounts for the different functions and powers of courts and tribunals, simply does not apply to independence of the bar. Quebec, Manitoba, and other provinces require the same level of independence of the bar as BC because the duties of lawyers and the role of the regulator are essentially the same across all provinces.

97. The Law Society has framed its case as a challenge to the *vires* of the Act under s 92 of the *Constitution Act, 1867*. The meaning and scope of s 92 cannot vary from one province to another. In the words of the Supreme Court, the provinces have "identical exclusive jurisdiction over the subjects listed in section 92".[139]

98. There are a few constitutional provisions that vest different powers or obligations on some provinces.[140] However, the constitutional provisions in which the independence of the bar finds expression—the judicature provisions of the *Constitution Act, 1867* and ss 7, 10(b) and 11(d) of the *Charter*[141]—set national standards. Given the judicature provisions' objective of national unity, the Supreme Court of Canada has remarked that "the limits imposed by s. 96 must be consistent across the country".[142] Similarly, the *Charter* is "an instrument of nationality unity and identity" that protects "a common set of rights and freedoms for all Canadians".[143] As Prof. Hogg puts it, the *Charter* "supplies a set of uniform national standards for the protection of civil liberties".[144] A good example is

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[139] *1068754 Alberta Ltd. v Québec (Agence du revenu)*, 2019 SCC 37 at para 83 (BOA vol 1, tab 1, p 35). See also *Québec (Procureur général) v Canada (Procureur général)*, 1982 CanLII 3082 (QC CA) at para 28 (BOA vol 2, tab 99, p 5683), aff'd [1982] 2 SCR 793 (BOA vol 2, tab 128).

[140] For example, *Constitution Act*, *1867*, ss 93 (denominational schools), 94 (uniformity of laws), 133 (language) (RBOE vol 2, tab 7, p 154-155); *Constitution Act*, *1982*, ss 6(4) (affirmative action programs), 16(2), 17(2), 18(2), 19(2), 20(2), 59 (language) (RBOE vol 2, tab 8, p 156-158).

[141] Reasons at para 88 (AR, tab 21, p 292); Law Society's factum at paras 34, 38.

[142] *Reference re Code of Civil Procedure (Que.)*, *art. 35*, 2021 SCC 27 at para 45 (BOA vol 2, tab 131, p 8031), citing *Sobeys Stores Ltd. v Yeomans and Labour Standards Tribunal (N.S.)*, 1989 CanLII 116 (SCC) (BOA vol 2, tab 151).

[143] *Taylor v Newfoundland and Labrador*, 2026 SCC 5 at para 139 (BOA vol 2, tab 157, p 10185).

[144] P.W. Hogg & W. Wright, *Constitutional Law of Canada*, 5th ed (Thomson Reuters, 2026) at s 36:3 (BOA vol 3, tab 231, p 12989).

Judges' Reference where the s 11(d) requirement to have an entity akin to an independent judicial compensation commission was applied uniformly to every province.[145]

ii. Legislative policy choices do not harden into constitutional requirements

99. The second reason the Law Society's new reasonable perception argument should not be accepted is that it is inconsistent with "one of the most fundamental rules of our democratic constitutional order: legislatures cannot bind their successors".[146] In relying on the tradition of electoral self-governance in BC, the Law Society is effectively saying that legislative policy choices, when maintained for sufficient time, can harden into constitutional requirements. That proposition is inconsistent with parliamentary sovereignty. A legislature is "not bound by its past policy choices".[147] Prior legislation is not a "baseline" against which to assess the constitutionality of subsequent legislation.[148]

iii. Reasonable person not prevented from seeing anything outside BC

100. The third reason the Law Society's new reasonable perception argument should not be accepted is that a reasonable person would know, from other jurisdictions, that self-governance and self-regulation are not the only way to ensure independence. A reasonable person would not perceive something they know to be inaccurate.

101. The Law Society's reasonable person knows a lot about BC but nothing about the rest of Canada, much less the wider democratic world. The Law Society refers to "a reasonable person informed of the relevant statutory provisions, their historical background and the traditions surrounding them".[149] By "historical background" and "traditions", the Law Society means the legislative history and traditions of BC and BC

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[145] *Reference re Remuneration of Judges of the Prov Court (P.E.I.)*, 1997 CanLII 317 (SCC) at para 147 (BOA vol 2, tab 129, p 7768).
[146] *Cycle Toronto v Ontario (Attorney General)*, 2026 ONCA 582 [***Cycle Toronto***] at para 33 (BOA vol 1, tab 39, p 2356).
[147] *R v Sharma*, 2022 SCC 39 at para 61 (BOA vol 2, tab 123, p 7255); see also *Reference re Securities Act*, 2011 SCC 66 at para 119 (BOA vol 2, tab 136, p 8634).
[148] *Cycle Toronto* at paras 5, 39 (BOA vol 1, tab 39, p 2346, 2359). Compare Law Society's factum at para 67.
[149] Law Society's factum at para 49.

only.[150] The Law Society's focus on local history and tradition is derived from the Court of Appeal for Ontario's 1983 decision in *Valente*.[151] At the Supreme Court, however, the Court in *Valente* was not concerned with the history and traditions of a single province. Rather, the Court specifically considered how legislatures across the country maintained judicial independence and sought to create "a standard that reflects what is common to, or at the heart of, the various approaches to the essential conditions of judicial independence in Canada".[152]

102. More significantly, *Valente's* focus on "historical background and tradition" has been overtaken. Recent cases ascribe a broader base of knowledge to the reasonable person. In *Federation*, the Court considered "the perception of a reasonable person, fully apprised of the relevant circumstances and having thought the matter through".[153] In *Edwards*, the Court referred to "knowledge of all the relevant circumstances", specifying that reasonable persons "apply themselves to the question and obtain thereon the required information".[154]

103. A person who is fully apprised of the relevant circumstances, who applies themselves to the question and obtains the required information, would be aware from other Canadian jurisdictions and liberal democracies that electoral self-governance and self-regulation are not the only way to ensure independence.

iv. Reasonable perception not a licence to consider non-justiciable issues

104. The fourth reason the Law Society's new reasonable perception argument should not be accepted is that it invites the Court to consider non-justiciable issues relating to the law-making process or policy wisdom of the Act, as developed below.

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[150] See Law Society's factum at para 56.
[151] *Regina v Valente (No. 2)*, 1983 CanLII 1901 (ON CA) (BOA vol 2, tab 141).
[152] *Valente* at para 26 (BOA vol 2, tab 168, p 11154).
[153] *Federation* at para 97 (BOA vol 1, tab 22, p 1081).
[154] *R v Edwards*, 2024 SCC 15 at para 85 (internal punctuation omitted) (BOA vol 2, tab 106, p 6216).

(1) Courts do not scrutinize the law-making process

105. The Law Society argues that a reasonable person, when evaluating whether the Act maintains independence, would consider that the legislature enacted the Act "over the public opposition of the Bar".[155] This argument is the newest iteration of the appellants' repeated attempts to challenge (with no foundation in the pleadings) the legislative process leading to the Act. In the court below, the Law Society took the position that legislatures cannot legislate about lawyers unless the legislation is "generated or consented to by the bar".[156] It moderated that position in argument, saying instead that it is "important context" that the Act does not reflect "consensus between government and lawyers".[157] The Trial Lawyers, for their part, alleged a novel (and unpleaded) constitutional convention, one requiring government to obtain lawyers' consent before introducing bills affecting lawyers in the legislative assembly.[158]

106. This reframing of the argument does not cure the problems the Chief Justice identified. As the Chief Justice correctly held, the process leading to the enactment of the Act is a political issue, not a legal issue.[159]

107. Courts do not scrutinize the legislative process nor attempt to evaluate the extent to which legislation reflects public opinion or the public interest. As the Supreme Court has repeatedly emphasized, the separation of powers and parliamentary privilege require legislative activities to be "unimpeded by any external body or institution, including the courts".[160] In the words of the Court of Appeal for Ontario, "[c]ourts play no role in the policy development process, no role in the choices made by the government in proposing legislation, and no role in the legislature's decision to pass a law".[161]

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[155] Law Society's factum at para 68.
[156] Law Society's notice of application for summary trial at para 17 (AR, tab 5, p 66).
[157] Law Society's BCSC submission at paras 29-30 (AB vol 17, tab 40, p 8305).
[158] Trial Lawyers BCSC submission at para 99 (AB vol 17, tab 41, p 8448).
[159] Reasons at para 66 (AR, tab 21, p 286).
[160] *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40 [***Mikisew***] at para 35 (BOA vol 1, tab 82, p 4466), citing *Canada (House of Commons) v Vaid*, 2005 SCC 30 at para 20 (BOA vol 1, tab 25, p 1221).
[161] *Cycle Toronto* at para 21 (BOA vol 1, tab 39, p 2351).

108. In support of its argument that the Court can and should scrutinize the legislative process that led to the Act, the Law Society cites two authorities: *BCTF* and *Mikisew*.[162] Neither authority assists the Law Society.

109. *BCTF* held that pre-legislative consultations with affected workers can potentially satisfy the right to collective bargaining protected by s 2(d) of the *Charter*.[163] Section 2(d) creates a right to "a meaningful process" for workers "to make collective representations to the employer, and to have those representations considered in good faith".[164] The appellants do not suggest that independence of the bar creates a similar process right for lawyers. Indeed, it is common ground that independence of the bar does not belong to lawyers at all; it is a public right.[165]

110. *Mikisew* contradicts the Law Society's position. The Supreme Court held that no duty to consult under s 35 of the *Constitution Act, 1982* can arise in respect of the legislative process because that "would oblige the judiciary to step beyond the core of its institutional role".[166] Thus, "the law-making process—that is, the development, passage, and enactment of legislation—does not trigger the duty to consult".[167] Rather, the Court found that requiring the legislature to consult with external groups "may constrain it in pursuing its mandate and therefore undermine its ability to act as the voice of the electorate".[168]

111. This Court should refuse the appellants' invitation to transgress the separation of powers by wading into political issues.

112. In any case, even if reasonable perception could be used to scrutinize the legislative process, the Law Society has not proven that a reasonable person would believe there is

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[162] Law Society's factum at para 63, citing *British Columbia Teachers' Federation v British Columbia*, 2015 BCCA 184 [***BCTF***] at paras 283-303, *per* Donald JA, dissenting (BOA vol 1, tab 17, p 841-848), rev'd substantially for the reasons of Donald JA, 2016 SCC 49 (BOA vol 1, tab 18); *Mikisew* at para 48 (BOA vol 1, tab 82, p 4471).
[163] *BCTF* at para 299, *per* Donald JA, dissenting (BOA vol 1, tab 17, p 847).
[164] *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at para 29 (BOA vol 1, tab 17, p 769).
[165] Law Society's factum at para 32.
[166] *Mikisew* at para 2 (BOA vol 1, tab 82, p 4454).
[167] *Mikisew* at paras 32-33 (BOA vol 1, tab 82, p 4464).
[168] *Mikisew* at para 36 (BOA vol 1, tab 82, p 4466).

a tradition of legislatures seeking lawyers' consent. The Law Society says "at past major reiterations of the enabling legislation in 1987 and 1998, the Benchers worked to develop consensus among the Bar about the principles and provisions of the governing legislation, with the Legislature's encouragement and at its request".[169] Even accepting this statement at face value, two instances in 150 years does not constitute a tradition, particularly when set against numerous examples of legislatures legislating over lawyers' opposition.

113. In BC, the legislature created a right of appeal from the Law Society's admissions decisions in 1949.[170] The right of appeal was retroactive by one year so it could be exercised by a graduate of UBC Law whom the benchers had refused to call and admit because of his political beliefs. The benchers lobbied against the creation of this right of appeal,[171] but the legislature enacted it over their opposition.

114. Because the reasonable person is not confined to considering only BC, the following additional examples further demonstrate that a reasonable person would not believe there is a tradition of legislatures seeking lawyers' consent before legislating.

115. The Law Society of Ontario did not use bencher elections for the first 74 years of its existence. When Ontario enacted legislation removing all the benchers from office and providing for elections,[172] the benchers reacted "as if to the end of the world".[173]

116. Quebec did not consult with the Barreau before enacting the system of co-regulation described above.[174] The Barreau has said it "had a difficult time accepting the introduction

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[169] Law Society's factum at para 66.
[170] *Act to amend the "Legal Professions Act"*, SBC 1949, c 35, s 2 (RBOE vol 2, tab 3, p 128).
[171] Minutes of the Annual Meeting of the Law Society (June 25, 1953) (Affidavit #4 of Brook Greenberg, KC made June 30, 2025, Ex 26 at p 1884-1885) (AB vol 15, tab 28, p 7563-7564). See *Martin v Law Society of British Columbia*, 1950 CanLII 242 (BC CA) (BOA vol 1, tab 77, p 4283).
[172] *Act to make the Members of the law Society of Ontario elective by the Bar thereof*, SO 1870-1871, c 15 (RBOE vol 2, tab 5).
[173] C. Moore, *Law Society of Upper Canada and Ontario's Lawyers, 1797-1997* (University of Toronto Press, 1997) at p 132 (BOA vol 3, tab 215, p 12606).
[174] Expert report of Dr. Philip Girard dated November 11, 2024 ("**Girard Report #2**") at para 9 (AB vol 16, tab 33, p 7861).

of this new professional system".[175] An article in the *Advocate* put it more colourfully, describing the "astonishment and confusion of a myopic Québec Bar which had not been consulted and appeared to be blissfully unaware of what was going on".[176]

117. Around the same time as the Quebec reforms, the Law Society of Ontario had prepared draft amendments and provided them to the Attorney General of Ontario; however, government shelved that draft and instead moved ahead with its own plans.[177] Ontario enacted legislation changing the size of the board, the length of benchers' terms, and the manner of elections; providing for lay benchers; and making most of the Law Society's rule-making subject to cabinet approval.[178]

118. As these examples demonstrate, there is no tradition of legislatures seeking lawyers' consent before legislating. Legislatures are answerable to the public, not to lawyers.

(2) Courts do not scrutinize policy wisdom

119. Finally, the Law Society argues that a reasonable person, when evaluating whether the Act maintains independence, would consider that there is "no evidence that the Law Society has governed lawyers in a manner that is contrary to the public interest" and therefore no "reason" or "justification" for the changes made by the Act.[179]

120. Reasonable perception does not permit judicial scrutiny of the policy wisdom of the Act. With respect, it is not for this Court to assess whether there is sufficient justification for the Act. The "wisdom and value of legislative decisions are subject only to review by the electorate".[180] It is not the courts' role to require the government or legislature "to prove

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[175] Affidavit #1 of Michel Jolin made May 1, 2025, Ex J at p 329 (in French) (AB vol 8, tab 22, p 4851), translated at Affidavit #1 of Philip Aaron Bull made May 16, 2025, Ex A at p 5 (AB vol 8, tab 23, p 5240).
[176] "Entre Nous" (1972) 30:3 *Advocate (Vancouver)* 134 at p 135 (BOA vol 3, tab 205, p 12317).
[177] Girard Report #2 at paras 6-7 (AB vol 16, tab 33, p 7858-7860).
[178] *Act to consolidate and revise The Law Society Act*, SO 1970, c 19 (RBOE vol 2, tab 4).
[179] Law Society's factum at para 69.
[180] *Wells v. Newfoundland*, 1999 CanLII 657 (SCC), [1999] 3 SCR 199 at para 59 (BOA vol 2, tab 174, p 11427).

the efficacy of the solutions the legislature is applying to the problems it has identified".[181] It is "illegitimate for courts to involve themselves in matters of legislative policy".[182]

E. Chief Justice was correct the Act does not infringe independence of the bar

121. The Chief Justice was correct that the Act maintains independence of the bar in its individual and institutional dimensions. Lawyers regulated under the Act will be just as independent, individually and institutionally, as they are today.

122. The following submissions are framed around the critical question identified by the Chief Justice, i.e., whether the Act interferes, or gives rise to a reasonable perception of interfering, with lawyers' ability to fulfil their essential duties to their clients and the administration of justice. However, as developed above, the Act also meets the essential conditions advanced by the Law Society (self-governance and self-regulation)[183] and the essential conditions posited by the Attorney General in the alternative (public interest orientation and decisional independence).[184]

i. Board composition (s 8)

123. The Law Society objects to s 8 of the Act, which sets out the composition of the board, because it "does not enable electoral self-governance".[185] This position is inconsistent with the Law Society's concession that no "particular mode of self-governance (such as electoral self-governance) is constitutionally required".[186]

124. The Chief Justice found that the evidence before him did not support the proposition that electoral self-governance is necessary for independence.[187] He considered evidence

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[181] *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2022 BCCA 163 at para 150 (BOA vol 2, tab 163, p 10770); see also *Vriend v Alberta*, 1998 CanLII 816 (SCC), [1998] 1 SCR 493 at para 136 (BOA vol 2, tab 169, p 11248).
[182] *Cycle Toronto* at para 22 (emphasis deleted) (BOA vol 1, tab 39, p 2352).
[183] See paras 81-86 above.
[184] See para 71 above.
[185] Law Society's factum at para 70(a) (emphasis deleted).
[186] Law Society's factum at para 56.
[187] Reasons at para 159 (AR, tab 21, p 309).

from the CEO of the Law Society of Manitoba, who was unequivocal that it is independent without electoral self-governance.[188] He also found there was no evidence to suggest that:

a) appointed lawyer directors will act any less independently, or be more vulnerable to government influence, than elected lawyer directors;

b) notary or paralegal directors will act any less independently, or be more vulnerable to government influence, than lawyer directors; and,

c) in the past, lay benchers appointed by cabinet have ever failed to act independently and in the public interest.[189]

125. The Law Society's argument is foreclosed by these unchallenged findings. Its position amounts to a bare assertion that, despite the evidence, a reasonable person would be suspicious of directors who are members of the public, notaries, paralegals, and even *lawyers* who are appointed on merit rather than being elected.

126. There is nothing to suggest that this board will fail to act independently. The board has a majority of lawyers and a supermajority of legal professionals. The remaining directors are members of the public in the tradition of lay benchers. The board composition does not, in fact or perception, interfere with lawyers' ability to fulfil their duties to their clients and to the administration of justice.

ii. Guiding principles (s 7)

127. The Law Society objects to s 7, which sets out guiding principles for the regulator, because they were "chosen by the government, rather than the Bar".[190] The Law Society further challenges the portion of s 7(b) that refers to supporting the implementation of the UN Declaration on the ground that the implementation of the UN Declaration "is the subject of extensive and divisive public debate".[191]

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[188] Reasons at para 159 (AR, tab 21, p 309).
[189] Reasons at paras 160-163 (AR, tab 21, pp 309-310).
[190] Law Society's factum at para 70(b).
[191] Law Society's factum at para 70(b).

128. The Law Society's first objection—that the guiding principles were chosen by the legislature rather than the bar—implies there can never be any democratic input into how lawyers are regulated. It is an artificial position in the sense that the Law Society objects to the author of the principles rather than their content or substance. The Law Society's position would mean it is unconstitutional for the public (through elected representatives) to inform the regulator that access to legal services should be a regulatory objective—even though the Law Society agrees it should be.[192] It is also at odds with the Law Society's admission that all Canadian jurisdictions maintain independence, given that the legislation in Ontario has guiding principles.[193]

129. To be clear, it is not the Attorney General's position that *any* guiding principles would be constitutional. There are limits. However, there is nothing objectionable about the principles in s 7, because nothing about these principles interferes with lawyers' ability to fulfill their duties to clients or the administration of justice. These high-level principles do not fetter the regulator in how it pursues its objectives, nor do they direct the manner in which lawyers must act.[194] Further, they must be read alongside the regulator's express duty to ensure the independence of legal professionals.[195]

130. The requirement for the regulator to contribute to reconciliation does not compromise the duties of an independent bar.[196] As the Chief Justice held, s 7(b) simply requires the regulator to operate within the existing legal framework in BC, which includes an obligation on all public institutions to pursue reconciliation.[197] The *Declaration Act* incorporates the UN Declaration into the positive law of BC.[198] In this sense, s 7(b) is similar to the Law

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[192] Law Society's factum at para 10.
[193] *ON Act*, s 4.2 (RBOE vol 2, tab 12, p 175).
[194] Reasons at para 175 (AR, tab 21, p 312).
[195] Reasons at para 175 (AR, tab 21, p 312).
[196] Reasons at para 175 (AR, tab 21, p 312).
[197] Reasons at para 176 (AR, tab 21, p 312), citing *Servatius v Alberni School District No. 70*, 2022 BCCA 421 at paras 105-107 (BOA vol 2, tab 148, p 9649-9650).
[198] *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44 (RBOE vol 2, tab 9).

Society's obligation to take account of *Charter* values and comply with legislation like the *Human Rights Code*.[199]

iii. Indigenous council and transitional Indigenous council (ss 26, 94(3), 131(6), 226(2)(a), 227(3)

131. The appellants take issue with the provisions of the Act relating to the Indigenous council and transitional Indigenous council. As noted, two types of rules require the approval of the Indigenous council: (1) rules for alternative resolution processes, in discipline and competence matters, that reflect or are influenced by Indigenous practices (if the board chooses to make such rules); and (2) tribunal rules designed to meet the needs of Indigenous persons involved in tribunal proceedings.[200] The first rules must be approved by the transitional Indigenous council.[201]

132. The appellants object to these approval powers on the ground that the Indigenous councils are "external to the Bar".[202] The premise of this argument is that it is unconstitutional for the rules that govern lawyers' professional conduct to require the approval of entities without a lawyer majority.[203] There is no basis for that proposition. As set out in Part 1 above, in most Canadian jurisdictions, many bodies (including the executive, legislatures, and appointed statutory bodies) either approve or can unilaterally impose rules that govern lawyer's professional conduct. Yet, the Law Society admits those regulatory systems maintain the independence of the bar.[204] Similarly, in *Jabour,* the Supreme Court said it was "for the Legislature to weigh and determine" whether cabinet should have approval powers over all rules made by a law society.[205]

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[199] Reasons at para 177 (AR, tab 21, p 312), citing *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para 143 (BOA vol 1, tab 30, p 3073). *Human Rights Code*, RSBC 1996, c 210.
[200] Act, ss 94(3), 131(6) (RBOE vol 1, tab 1, p 52, 63).
[201] Act, s 226 (RBOE vol 1, tab 1, p 102).
[202] Law Society's factum at para 70(c).
[203] Law Society's factum at para 70(c); Trial Lawyers' factum at paras 41, 47.
[204] Law Society's BCSC submission at para 193 (AB vol 17, tab 40, p 8352).
[205] *Jabour* at p 334-335 (BOA vol 1, tab 23, p 1140-1141).

133. In any case, the appellants overstate the powers of the Indigenous councils. As the Chief Justice noted, the Indigenous councils cannot unilaterally impose rules.[206] Bodies external to the bar have long been able to impose rules in systems that maintain independence, the most obvious example being Quebec, where the Office and cabinet can make rules about how lawyers practise law and change the *Code of Professional Conduct* over the objection of the Barreau. But the Act goes nowhere near as far.

134. The transitional Indigenous council has a one-time power to approve the first rules.[207] Once constituted, the regulator's board can unilaterally amend almost any rule, as the Indigenous council only has approval powers over two specific issues directly affecting Indigenous people. The upshot is that, if the transitional Indigenous council does not agree to the first rules, then the transitional bodies would be at an impasse and the Act cannot be brought into force at all (in its present form). Once balance of the Act is in force, if the Indigenous council does not approve a proposed rule that needs its approval, then that rule would not be made. This is nothing like the co-regulatory system that has prevailed in Quebec for the last half century.

135. The Trial Lawyers' factum goes further. The Trial Lawyers say that lawyers who act for clients adverse in interest to Indigenous nations will be "subject to governance by those whom their clients have grievances with, setting the playing field ever so slightly, or perhaps substantially, in their favour".[208] There is no basis for any concern that the Indigenous council or transitional Indigenous council will abuse their roles to tilt the regulatory system. As the Chief Justice held, the members of the Indigenous councils need not be lawyers, but that is not reason to dismiss their perspectives as useless, let alone to fear that they will be dangerous.[209] There is no reason to believe that including another set of perspectives will in any way threaten the independence of the bar.[210]

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[206] Reasons at para 184, 186 (AR, tab 21, p 314).
[207] Act, s 226 (RBOE vol 1, tab 1, p 102).
[208] Trial Lawyers' factum, opening statement and para 47.
[209] Reasons at para 186 (AR, tab 21, p 314).
[210] Reasons at para 186 (AR, tab 21, p 314).

136. Finally, both appellants take issue with the extent to which the transitional board has chosen to involve the transitional Indigenous council in its work.[211] This choice by an independent body is not required by the Act and does not properly form part of this constitutional challenge to the Act.

iv. Provisions on conduct and discipline procedure (Part 6, ss 68-92)

137. The Law Society objects to Part 6 (ss 68-92) of the Act, which sets definitions and procedure for discipline, saying this "has long been the subject of careful protection by the Benchers through the Rules and the *Code*".[212] The Law Society does not claim there is anything problematic about the content of Part 6. In that sense, this is again an artificial position devoid of substance. As the Law Society tacitly acknowledges, nothing in Part 6 interferes, in fact or perception, with lawyers' ability to fulfil their duties to their clients or the administration of justice

v. Technical provision regarding cabinet regulations (s 211)

138. The Law Society objects to s 211 of the Act, describing it as "a vague power that creates the potential, and the perception, of Cabinet regulation of lawyers".[213] Not so. Section 211 is a technical provision. It does not enable cabinet to regulate lawyers. The only types of regulations cabinet may make are regulations contemplated by the Act, specifically regulations designating a profession as a legal profession for the purposes of the Act creating exceptions from prohibition on unlicensed practice, adding to notaries' scope of practice, and defining regulated paralegals' scope of practice.[214] These types of regulations do not pertain to lawyers.

139. Section 211 enables a particular style of legislative drafting routinely used in BC statutes to enable regulation-making. For example, in the *Land Owner Transparency Act*, the definition of "Indigenous nation" includes "a prescribed Indigenous person or entity". The *Land Owner Transparency Act* does not specifically empower Cabinet to make

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[211] Law Society's factum at para 70(c); Trial Lawyers' factum at para 42.
[212] Law Society's factum at para 70(e).
[213] Law Society's factum at para 70(d).
[214] Act, ss 3(d), 4, 38(1)(i), 46(1)(e), 47(1)(a), 212, 213 (RBOE vol 1, tab 1, p 14, 27, 30, 57).

regulations prescribing Indigenous persons and entities for the purpose of the definition. However, there is a general provision like s 211 which empowers Cabinet to make regulations "respecting any matter for which regulations are contemplated". Since regulations about Indigenous persons and entities are contemplated by the definition of "Indigenous nation", the general provision empowers cabinet to make such regulations.[215]

140. Subsections 211(1) and (2) enable the same approach in the Act. Subsection (1) enables cabinet to make regulations in respect of matters "for which regulations are contemplated by this Act". Subsection (2) would apply if the Act were amended such that some regulations contemplated by the Act had corresponding enabling provisions, but others did not. In that scenario, subsection (2) would clarify that any contemplated regulations that lack a corresponding enabling provision are nonetheless covered by subsection (1). This is necessary because the presumption of implied exclusion might otherwise apply if some regulations contemplated by the Act had corresponding enabling provisions, but others did not.[216]

141. The Law Society argues that s 211(2) of the Act overrides the express limit in s 211(1). This interpretation overlooks that the two subsections refer to different types of provisions. Subsection 211(1) limits cabinet regulation-making powers by reference to provisions that contemplate regulations being made: ss 3(d), 38(1)(i), 46(1)(e), and 47(1). Subsection 211(2) ensures that 211(1) is not further limited by the other enabling provisions in the Act: ss 4, 212, and 213.

142. Properly interpreted, s 211 does not enable cabinet to make regulations about lawyers' conduct. But even if the Law Society's interpretation were correct, s 211 would be no different from provisions in Quebec and Nova Scotia that broadly enable cabinet to

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[215] *Land Owner Transparency Act*, SBC 2019, c 23, ss 1 *sv* "Indigenous nation", 97(2)(a) (RBOE vol 2, tab 10, p 173).

[216] R. Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022) at s 8.09[3] (BOA vol 3, tab 233, p 13047).

make regulations about the practice of law.[217] The Law Society admits these systems preserve independence of the bar.

143. Finally, if this Court concludes that the Law Society's interpretation is plausible and renders s 211 unconstitutional (both of which are denied), the presumption of constitutional compliance would support the Attorney General's interpretation.[218] The crux of the Law Society's argument is that s 211 is vague.[219] Accepting that proposition would not change the fact that the Attorney General's interpretation is plausible. When faced with two plausible characterizations of a law, the court should choose the one that supports the law's constitutional validity.[220]

vi. Conclusion

144. Despite the Law Society's claim that there "has not been a more stark interference with the governance of the Bar in the history of Canada",[221] the changes made by the Act are not radical. They are nothing like the changes Quebec made in the 1970s or the changes Australia, New Zealand, and England and Wales have made.

145. The regulator's board maintains a majority of lawyers (9 of 17) and a super-majority of legal professionals (14 of 17), many of whom are elected by their profession (9 of 17). The board has a free hand to make and change rules, needing the approval of the Indigenous council (itself an independent body) only for two specific types of rules relating to regulatory processes rather than the practice of law. The board's rules do not require the approval of cabinet (as the Barreau's have for 50 years and the Law Society of Ontario's did for 30 years), cannot be annulled by cabinet (as the Law Society of Yukon's could for 30 years) or by the legislature (as the Law Society of Saskatchewan's can). No other body can make rules (unlike in Quebec, Nova Scotia, Alberta, Australia, and New

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[217] *NS Act*, s 71(1)(k) (RBOE vol 2, tab 16, p 181). *Professional Code*, s 183 (RBOE vol 2, tab 20, p 195).
[218] *R v Sharpe*, 2001 SCC 2 (CanLII) at para 33 (BOA vol 2, tab 124, p 7357).
[219] Law Society's factum at para 70(d) (referring to s 211 as a "vague power").
[220] *Siemens v Manitoba (Attorney General)*, 2003 SCC 3 at para 33 (BOA vol 2, tab 149, p 9717).
[221] Law Society's factum at para 68.

Zealand). The regulator controls complaint handling, investigations, and prosecutorial decisions, unlike in Quebec, Australia, and New Zealand.

146. A reasonable person, properly apprised of the circumstances and having thought it through, would not think these regulatory changes will interfere with lawyers' ability to fulfil their duties to their clients and to the administration of justice. No reasonable person would perceive that these changes will interfere with lawyers' ability to provide impartial legal advice and zealous, committed advocacy, including in matters adverse to the state.

III. Lawyers' Rights under the *Charter*

A. Part 6 of the Act does not infringe lawyers' rights under s 7 of the *Charter*

i. Overview

147. The Chief Justice was correct that paragraph (b) of the definition of "incompetently" and sections 88(1)(c) and 122(3)(c)(ii) of the Act do not engage lawyers' rights under s 7 of the *Charter*. These provisions do not materially change the status quo under the *Law Society Rules* and are similar to provisions of legal professions legislation in Ontario, Newfoundland, Nova Scotia, and Yukon. They do not engage lawyers' medical autonomy under s 7. If a lawyer declines treatment that is required by an order, the only possible consequences are a suspension or cancellation of their license. It is settled law that such licensing consequences do not engage s 7.

ii. Summary of relevant provisions

148. A competence order may be made when a legal professional is found to have practised law "incompetently" as that term is defined in s 68. Paragraph (a) of the definition refers to conduct that reveals deficiencies in knowledge, attention, record-keeping, or other aspects of the practice of law. Paragraph (b) refers to conduct that reveals a health condition that is impairing a professional from practising law with reasonable skill and competence.[222]

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[222] Act, s 68 *sv* "incompetently" (RBOE vol 1, tab 1, p 39).

149. A competence order can, for example, require a legal professional to complete a practice review, complete a remedial program, or "receive counselling or medical treatment, including treatment for a substance use problem or substance use disorder".[223] If a legal professional declines treatment required by an order, the regulator may suspend their licence or apply to the tribunal to cancel their licence.[224]

150. Like all the powers in the Act (and all the Law Society's current powers), the power to require a lawyer to receive medical treatment must be exercised reasonably in an administrative law sense and in accordance with the *Charter* and *Human Rights Code*. If a legal professional's conduct is being impaired by a health or substance use issue that constitutes a disability, the regulator must accommodate that disability to the point of undue hardship to its public interest mandate.[225]

iii. Chief Justice correctly interpreted "incompetently"

151. The Trial Lawyers argue the Chief Justice erred in interpreting the definition of "incompetently".[226] They argue that it conflates health conditions with incompetence and conveys that "lawyers with health conditions are presumptively suspect".[227] It does not. As the Chief Justice correctly held, "practicing incompetently under this definition does not turn on the existence of a health condition but on whether a health condition is affecting a legal professional's ability to practice with reasonable skill and competence".[228]

152. Health conditions do not necessarily impair a legal professional's ability to practice law. Under the Act, a legal professional cannot be found to be incompetent for simply having a health condition. As the Chief Justice held, a legal professional can be found to have practised law incompetently only if their conduct demonstrates that a health condition is impairing them from practising law to an acceptable standard.

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[223] Act, ss 88(1), 122(3) (RBOE vol 1, tab 1, p 49, 60).
[224] Act, s 59(1)(g), (2) (RBOE vol 1, tab 1, p 35).
[225] See e.g. *Law Society of Ontario v Khan*, 2018 ONLSTH 131 at paras 51-66 (BOA vol 1, tab 71, p 4012-4014), aff'd 2020 ONLSTA 18 (BOA vol 1, tab 72).
[226] Trial Lawyers' factum at paras 56-80.
[227] Trial Lawyers' factum at para 67.
[228] Reasons at para 216 (AR, tab 21, p 321).

153. There is nothing harmful, stigmatizing, or novel about stating openly that health conditions have the potential to affect legal professionals' ability to practise law. This reality is already widely recognized in law society publications and legal professions legislation. For example, in BC, the Law Society's Mental Health Task Force has written that "[m]any legal regulators, including the Law Society of BC, have observed that mental health and substance use issues can be a contributing factor in some instances of lawyer misconduct".[229]

154. The power to order a lawyer to receive treatment, where a health issue is interfering with their ability to practice law to an adequate standard, already exists in BC and three other provinces.[230] In BC, the *Law Society Rules* empower the Practice Standards Committee (the body that deals with competence issues) to require a lawyer to "obtain a medical assessment or assistance, or both".[231] The Law Society Tribunal has, at the urging of the Law Society, interpreted the current BC legislation to empower the Tribunal to require a lawyer to receive medical treatment.[232] In Ontario, the legislation has long empowered the Law Society Tribunal of Ontario to order a licensee to obtain medical treatment where the licensee is found to be "incapacitated", defined as follows:

> A licensee is incapacitated for the purposes of this Act if, by reason of physical or mental illness, other infirmity or addiction to or excessive use of alcohol or drugs, he or she is incapable of meeting any of his or her obligations as a licensee.[233]

155. There are similar definitions in Newfoundland, Nova Scotia, and Yukon.[234]

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[229] LSBC Mental Health Task Force, "Recommendation on the Development of an Alternative Discipline Process" (September 24, 2021) (Greenberg #1, Ex 49 at p 866) (AB vol 1, tab 1, p 307).
[230] *ON Act*, s 40(1)(2) (RBOE vol 2, tab 12, p 175); *Law Society Act, 1999*, SNL 1999, c L-9.1, s 50(3)(n)(ii) to (iv) [***NL Act***] (RBOE vol 2, tab 11, p 174); Rules of the Law Society of Saskatchewan, s 1131(3)(a)(iii)(D) (Affidavit #1 of Dwight Gordon Newman, KC made March 28, 2025, Ex D at p 286-287) (AB vol 2, tab 9, p 800-801).
[231] Law Society Rules, s 3-20(e) (Greenberg #1, Ex 1 at p 129) (AB vol 1, tab 1, p 41).
[232] *Grewal (Re)*, 2022 LSBC 22 at paras 81, 93 (BOA vol 1, tab 56, p 3265, 3266).
[233] *ON Act*, s 37(1), 40(1)(2) (RBOE vol 2, tab 12, p 175).
[234] *NL Act*, s 41(a.1) (RBOE vol , tab 11, p 174); *NS Act*, s 2(ga) (RBOE vol 2, tab 16, p 181); *Legal Profession Act, 2017*, SY 2017, c 12, s 49(1) (RBOE vol 2, tab 13, p 177).

iv. Chief Justice was correct that declining treatment is not an offence

156. The Trial Lawyers argue the Chief Justice erred in holding that declining treatment is not an offence under the Act.[235] The Chief Justice was correct on this point. Declining treatment is not an offence. If a legal professional declines treatment required by an order, the only possible consequences are licensing consequences: the regulator may suspend their licence or apply to the tribunal for an order cancelling their licence.[236]

157. The Trial Lawyers cite s 198(2)(d), which provides that a person commits an offence if the person "wilfully interferes with or obstructs another person in the exercise of a power or performance of a duty under this Act or in carrying out an order under this Act".[237] As a matter of plain language, declining to comply with a competence order does not interfere with or obstruct anyone from doing anything. Moreover, the presumption of consistent expression militates against the Trial Lawyers' interpretation. When the legislature intends to make it an offence not to comply with an order made under an enactment, it says so.[238]

v. Chief Justice was correct that lawyers' s 7 rights are not engaged

158. The analytical framework for s 7 of the *Charter* has two steps. First, the claimant must show the impugned law engages their life, liberty, or security of the person. If the impugned law is shown to engage life, liberty, or security of the person, the question at the second step is whether it does so in a manner that is consistent with the relevant principles of fundamental justice.[239]

159. The Chief Justice held that Part 6 does not engage lawyers' rights under s 7 for two reasons. First, the definition of "incompetently" turns on whether a health condition is affecting a legal professional's ability to practice with reasonable skill and competence, not on whether they have a health condition.[240] Second, the regulator cannot compel

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[235] Trial Lawyers' factum at paras 91-94.
[236] Act, s 59(1)(g), (2) (RBOE vol 1, tab 1, p 35).
[237] Act, s 198(2)(d) (RBOE vol 1, tab 1, p 92).
[238] See e.g. *Public Health Act*, SBC 2008, c 28, s 99(1)(h), (1)(k), (4)(b) (RBOE vol 2, tab 21, p 196).
[239] *Carter* at para 55 (BOA vol 1, tab 32, p 1592).
[240] Reasons at para 216 (AR, tab 21, p 321).

lawyers to receive treatment. If a lawyer declines treatment that is required by an order, the only possible consequences are a suspension or cancellation of their license and such licensing consequences do not engage s 7.[241]

160. The Trial Lawyers say the Chief Justice erred in finding that lawyers' rights under s 7 are not engaged. The Trial Lawyers make two arguments.

161. First, the Trial Lawyers say paragraph (b) of the definition of "incompetently" will cause lawyers to experience fear, anxiety, and stigma.[242] This argument depends on the premise that the definition conflates health conditions with incompetence. As submitted above, that premise is incorrect.

162. Second, the Trial Lawyers say that *Hoogerbrug,* the COVID case cited by the Chief Justice,[243] is distinguishable because the COVID vaccine is effective, whereas there is "a degree of uncertainty" about whether treatment ordered by the regulator will be effective in every case.[244] This is not a principled basis to distinguish jurisprudence about the scope of s 7 of the *Charter*. It is settled law that s 7 is not engaged by economic consequences flowing from the exercise of medical autonomy. In other words, s 7 protects the right to choose whether to receive treatment but does not guarantee that refusing treatment will be free from economic consequences. The most directly analogous authority is *BCTF 2003*, in which this Court held that s 7 was not engaged when a teacher lost her job because she refused to undergo a psychiatric examination ordered by her regulator.[245] The Trial Lawyers have not asked this Court to consider overruling *BCTF 2003*, nor have they requested a five-justice division to permit the Court to do so.

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[241] Reasons at paras 219-221 (AR, tab 21, p 322).
[242] Trial Lawyers' factum at paras 84-85.
[243] Reasons at para 220 (AR, tab 21, p 322), citing *Hoogerbrug v British Columbia*, 2024 BCSC 794 [***Hoogerbrug***] (BOA vol 1, tab 59), appeal quashed as moot 2025 BCCA 181 *sub nom. Tatlock v British Columbia* (BOA vol 2, tab 156).
[244] Trial Lawyers' factum at paras 86-90.
[245] *B.C. Teacher's Federation v School District No. 39 (Vancouver)*, 2003 BCCA 100 [***BCTF 2003***] at paras 203-210 (BOA vol 1, tab 7, p 383-390). A similar issue is raised in *Szezepaniak v Interior Health Authority*, CA50942 (appeal heard May 20-21, 2026).

163. *BCTF 2003* is consistent with a considerable body of jurisprudence. As the Court of Appeal for Ontario has indicated, there is "an unbroken line of authority from the Supreme Court of Canada confirming that s. 7 of the *Charter* does not protect the right to practice a profession or occupation".[246]

164. If the regulator or tribunal makes an order requiring a lawyer to receive treatment, it is open to the lawyer to decline. If the lawyer declines, their licence to practise law may be suspended or cancelled.[247] Ineligibility to continue practising law is an economic consequence similar to the job loss the teacher in *BCTF 2003* experienced when she refused to undergo a psychiatric examination ordered by her regulator. It is settled law that these kinds of economic consequences do not engage s 7.

vi. Alternatively, if lawyers' rights are engaged, matter must be remitted

165. Alternatively, if the Court concludes that lawyers' rights under s 7 are engaged, the matter must be remitted to the Chief Justice for him to make evidentiary rulings and findings of fact relevant to the principles of fundamental justice. The Trial Lawyers ask this Court to make its own findings of fact, claiming that their evidence "was largely unchallenged and effectively conceded by the [Attorney General]'s own expert".[248] The Attorney General disagrees.

166. The Attorney objected to the admissibility of most of the documentary and affidavit evidence cited in the Trial Lawyers' factum, which includes opinion evidence from a partner of the law firm representing the Trial Lawyers.

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[246] *Tanase v College of Dental Hygienists of Ontario*, 2021 ONCA 482 at para 40 (BOA vol 2, tab 155, p 10073); see also *Hoogerbrug* at paras 276-278 (BOA vol 1, tab 59, p 3481-3482); *Weisenburger v College of Naturopathic Physicians of British Columbia*, 2024 BCSC 1047 at para 89 (BOA vol 2, tab 172, p 11356), aff'd 2025 BCCA 460 (BOA vol 2, tab 173); *Mussani v College of Physicians and Surgeons of Ontario*, 2004 CanLII 48653 (ON CA) at para 41 (BOA vol 1, tab 83, p 4552); *Ouellette v Law Society of Alberta*, 2019 ABQB 492 at para 52 (BOA vol 1, tab 89, p 5074), application for leave to appeal dismissed 2021 ABCA 99 (BOA vol 1, tab 90).
[247] Act, ss 59(2), 122(3) (RBOE vol 1, tab 1, p 35, 60).
[248] Trial Lawyers' factum at para 107.

167. The evidence of the experts retained by the Trial Lawyers, Dr. Ganesan and Mr. Gold, was challenged in cross-examination. Dr. Ganesan's testimony was essentially the opposite of what is written in his report. For example, he agreed it is appropriate for the regulator of lawyers to have the power to require lawyers to receive treatment when their ability to practice is being impaired by a health condition.[249] Mr. Gold agreed it is not stigmatizing to suggest that health issues and substance use have the potential to cause deficiencies in practice, as long as there is no suggestion that health issues and substance use invariably cause deficiencies in practice.[250] Mr. Gold also agreed that compulsory treatment can be effective.[251]

168. The evidence of Dr. Ganesan and Mr. Gold was also challenged in a responding report by Dr. Colleton. The Trial Lawyers claim, with no citations, that Dr. Colleton "effectively conceded" their allegations.[252] He did not. The Trial Lawyers did not even cross-examine Dr. Colleton on his opinion that compulsory treatment can be effective, beyond asking him to agree with the trivial proposition that treatment takes time and is not effective instantaneously.[253]

B. Sections 78 and 209 do not infringe lawyers' rights under s 8 of the *Charter*

169. Section 78 empowers the regulator to obtain certain kinds of information from certain places for the purposes of an investigation, subject to protections in s 209 for privilege held by clients. These provisions do not differ materially from the status quo, which this Court has held to be compliant with s 8 of the *Charter*.[254]

170. The Trial Lawyers argue that ss 78 and 209 infringe lawyers' rights under s 8 of the *Charter* because the regulator is not independent.[255] As developed above, the Chief Justice was correct that the regulator is independent. In any case, s 8 cannot require that searches be conducted by an entity that is independent from government because the

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[249] Ganesan cross, Q 147-148, 170-183, 194-219 (AB vol 17, tab 52, p 9089-9096).
[250] See e.g. Gold cross, Q 41-52 (AB vol 17, tab 51, p 9061-9062).
[251] Gold cross, Q 113 (AB vol 17, tab 51, p 9070).
[252] Trial Lawyers' factum at para 107.
[253] Colleton cross, Q 207-222 (AB vol 17, tab 53, p 9119-9120).
[254] *A Lawyer v Law Society of British Columbia*, 2021 BCCA 437 (BOA vol 1, tab 2).
[255] Trial Lawyers' factum at para 109.

Charter applies only to government and legislatures.[256] The Law Society is considered to be government for the purposes of the *Charter*. When this Court held the status quo to be compliant with s 8, it did so on the basis that searches conducted by the Law Society are government searches: otherwise, s 8 would not apply.

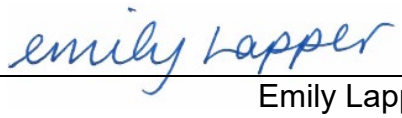
PART 4 – NATURE OF ORDER SOUGHT

171. The Attorney General seeks an order dismissing the appeals.

172. In the alternative, should this Court finds that any provisions of the Act are unconstitutional, the Court should declare those provisions unconstitutional to the extent of the inconsistency.[257] For example, if the Court were to conclude that the constitution requires a board composed of a strong majority of elected lawyers, only s 8 of the Act would be constitutionally infirm and only s 8 should be declared to be unconstitutional.

173. The Attorney General respectfully submits that costs should be addressed after judgment on the merits, if the parties cannot agree on costs.

All of which is respectfully submitted on this 5th day of October, 2026.



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[256] *Charter*, s 32 (RBOE vol 2, tab 8, p 158).
[257] *Ontario (Attorney General) v G*, 2020 SCC 38 at paras 97, 108-109 (BOA vol 1, tab 87, p 4778, 4781-4782); *R v Moriarity*, 2015 SCC 55 at para 58 (BOA vol 2, tab 118, p 7000).

LIST OF AUTHORITIES

Authorities	Page # in factum	Para # in factum
CASE LAW		
1068754 Alberta Ltd. v Québec (Agence du revenu), 2019 SCC 37	36	97
A Lawyer v Law Society of British Columbia, 2021 BCCA 437	57	169
A.G. Can. v Law Society of B.C., 1982 CanLII 29 (SCC), [1982] 2 SCR 307	22, 27, 28, 31, 46	52, 66, 69, 78, 132
B.C. Teacher's Federation v School District No. 39 (Vancouver), 2003 BCCA 100	55, 56	162, 163, 164
British Columbia Teachers' Federation v British Columbia, 2015 BCCA 184	40	108, 109
British Columbia Teachers' Federation v British Columbia, 2016 SCC 49	40	108
British Columbia v Imperial Tobacco Canada Ltd., 2005 SCC 49	21, 26	48, 61
Canada (Attorney General) v Federation of Law Societies of Canada, 2015 SCC 7	22, 23, 38	50, 52, 102
Canada (House of Commons) v Vaid, 2005 SCC 30	39	107
Canadian Pacific Ltd. v Matsqui Indian Band, 1995 CanLII 145 (SCC)	35	95
Carter v Canada (Attorney General), 2015 SCC 5	30, 54	76, 158
Chaoulli v Québec (Procureur général), 2005 SCC 35	30	76
Conférence des juges de paix magistrats du Québec v Quebec (Attorney General), 2016 SCC 39	35	94
Cycle Toronto v Ontario (Attorney General), 2026 ONCA 582	37, 39, 43	99, 107, 120
Ell v Alberta, 2003 SCC 35	21	45
Gitxaala v British Columbia (Chief Gold Commissioner), 2025 BCCA 430	46	130
Grewal (Re), 2022 LSBC 22	53	154
Hoogerbrug v British Columbia, 2024 BCSC 794	55, 56	162, 163

Authorities	**Page # in factum**	**Para # in factum**
Law Society of British Columbia v Mangat, 2001 SCC 67	18	35
Law Society of British Columbia v Trinity Western University, 2018 SCC 32	27, 31	65, 79
Law Society of New Brunswick v Ryan, 2003 SCC 20	27, 31	65, 79
Law Society of Ontario v Khan, 2018 ONLSTH 131	52	150
Law Society of Ontario v Khan, 2020 ONLSTA 18	52	150
Martin v Law Society of British Columbia, 1950 CanLII 242 (BC CA)	41	113
Mercer v Yukon (Government of), 2025 YKCA 5	19	35
Mikisew Cree First Nation v Canada (Governor General in Council), 2018 SCC 40	39, 40	107, 108, 110
Mussani v College of Physicians and Surgeons of Ontario, 2004 CanLII 48653 (ON CA)	56	163
Ontario (Attorney General) v G, 2020 SCC 38	58	172
Ouellette v Law Society of Alberta, 2019 ABQB 492	56	163
Ouellette v Law Society of Alberta, 2021 ABCA 99	56	163
Pearlman v Manitoba Law Society Judicial Committee, [1991] 2 SCR 869	18	35
Quebec (Attorney General) v Canada (Attorney General), 2015 SCC 14	19	35
Québec (Procureur général) v Canada (Procureur général), 1982 CanLII 3082 (QC CA)	36	97
Re: Objection by Quebec to a Resolution to amend the Constitution, 1982 CanLII 219 (SCC), [1982] 2 SCR 793	36	97
R v Daviault, 1994 CanLII 61 (SCC), [1994] 3 SCR 63	30	76
R v Edwards, 2024 SCC 15	38	102
R v Lippé, 1990 CanLII 18 (SCC), [1991] 2 SCR 114	25, 26	61
R v McGregor, 2023 SCC 4	24	58

Authorities	**Page # in factum**	**Para # in factum**
R v Morgentaler, 1988 CanLII 90 (SCC), [1988] 1 SCR 30	30	76
R v Moriarity, 2015 SCC 55	58	172
R v Sharma, 2022 SCC 39	37	99
R v Sharpe, 2001 SCC 2 (CanLII)	50	143
Reference re Code of Civil Procedure (Que.), art. 35, 2021 SCC 27	36	98
Reference re Remuneration of Judges of the Prov Court (P.E.I.), 1997 CanLII 317 (SCC)	37	98
Reference re Same-Sex Marriage, 2004 SCC 79	19	35
Reference re Securities Act, 2011 SCC 66	37	99
Reference re Territorial Court Act (Northwest Territories), 1997 CanLII 4530 (NWT SC)	35	95
Regina v Valente (No. 2), 1983 CanLII 1901 (ON CA)	38	101
Saskatchewan Federation of Labour v Saskatchewan, 2015 SCC 4	40	109
Servatius v Alberni School District No. 70, 2022 BCCA 421	45	130
Siemens v Manitoba (Attorney General), 2003 SCC 3	50	143
Sobeys Stores Ltd. v Yeomans and Labour Standards Tribunal (N.S.), 1989 CanLII 116 (SCC)	36	98
Song v The Law Society of Alberta, 2025 ABKB 525	27	67
Tanase v College of Dental Hygienists of Ontario, 2021 ONCA 482	56	163
Tatlock v British Columbia, 2025 BCCA 181	55	162
Taylor v Newfoundland and Labrador, 2026 SCC 5	36	98
Toronto (City) v Ontario (Attorney General), 2021 SCC 34	19	35
Trial Lawyers Association of British Columbia v British Columbia (Attorney General), 2022 BCCA 163	43	120

Authorities	**Page # in factum**	**Para # in factum**
Valente v The Queen, 1985 CanLII 25 (SCC)	26, 38	63, 101, 102
Vriend v Alberta, 1998 CanLII 816 (SCC), [1998] 1 SCR 493	43	120
Weisenburger v College of Naturopathic Physicians of British Columbia, 2024 BCSC 1047	56	163
Weisenburger v College of Naturopathic Physicians of British Columbia, 2025 BCCA 460	56	163
Wilder v Ontario Securities Commission, 2000 CanLII 29062 (ON SCDC)	23	52
Wilder v Ontario Securities Commission, 2001 CanLII 24072 (ON CA)	23	52
Wells v. Newfoundland, 1999 CanLII 657 (SCC), [1999] 3 SCR 199	42	120
SECONDARY SOURCES		
"Entre Nous" (1972) 30:3 *Advocate (Vancouver)*	42	116
A. Woolley, "Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation" (2012) 45:1 *UBC Law Review*	22, 23	51, 53
British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 42nd Parl, 5th Sess, No 411 (10 April 2024)	13	12
C. Moore, *Law Society of Upper Canada and Ontario's Lawyers, 1797-1997* (University of Toronto Press, 1997)	41	115
G.K. Hadfield & D.L. Rhode, "How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering" (2016) 67:1191 *Hastings Law Journal*	12	11
P.J. Monahan, "The Independence of the Bar as a Constitutional Principle in Canada" in *The Report and Research Papers of the Law Society of Upper Canada's Task Force on the Rule of Law and the Independence of the Bar* (Toronto: Irwin Law, 2007)	22, 23, 28	51, 54, 69
P.W. Hogg & W. Wright, *Constitutional Law of Canada*, 5th ed (Thomson Reuters, 2026)	36	98
R. Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022)	49	140

APPENDICES: ENACTMENTS

(See Book of Enactments, Vol. 1 and 2)