

COURT OF APPEAL FILE NO. CA51535

Trial Lawyer's Association of British Columbia v Attorney General of British Columbia
Intervener's Factum**COURT OF APPEAL**On Appeal from the Supreme Court of British Columbia, before the Honourable Chief
Justice Skolrood dated 29 April 2026

BETWEEN:

Trial Lawyers Association of British Columbia and Kevin WestellAPPELLANTS
(Plaintiffs)

AND:

Attorney General of British Columbia and Lieutenant Governor in CouncilRESPONDENTS
(Defendants)

AND:

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

INTERVENERS

- and -

COURT OF APPEAL FILE NO. CA51536

Law Society of British Columbia v Attorney General of British Columbia

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Justice Skolrood dated 29 April 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:

**Lawyers' Rights Watch Canada, Law Foundation of British Columbia, Law Society
of Manitoba, Society of Notaries Public of British Columbia, British Columbia
Paralegal Association, Indigenous Bar Association in Canada, Canadian Bar
Association, Criminal Defence Advocacy Society, Federation of Law Societies of
Canada, British Columbia Access to Justice Centre for Excellence, and
Advocates' Society**

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INTERVENER'S FACTUM

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OPENING STATEMENT

The question at the heart of this appeal is whether the *Legal Professions Act*, SBC 2024, c 26 (“**Bill 21**”) is *intra* or *ultra vires* the provincial legislature. Bill 21 provides for the amalgamation of the Law Society of British Columbia (the “**LSBC**”) with the Society of Notaries Public of British Columbia (the “**SNPBC**”) to create a new regulator with regulatory jurisdiction over lawyers.

The Law Foundation of British Columbia (the “**Law Foundation**”) is an interested party. Bill 21, if fully proclaimed into force, would materially alter its governance structure and source of funding. The Law Foundation, however, does not take a position on the constitutionality of Bill 21. It intervenes to assist the Court in its consideration of remedy.

The Law Foundation’s pursuit of its mandate requires a strong regulator. The Law Foundation is fundamentally indifferent as to whether that regulator remains “as is”, or changes in the manner Bill 21 contemplates. What concerns the Law Foundation is a result from this proceeding that leaves questions about the Law Foundation’s governance framework. The Law Foundation identifies certain portions of the LSBC’s argument that give rise to such concerns.

PART 1 - STATEMENT OF FACTS

1. The Law Foundation takes no position on the facts advanced by the appellants. In the paragraphs that follow, the Law Foundation provides background specific to its mandate, and how Bill 21 would affect the same.
- A. Statutory Context and Purpose of the Law Foundation**
2. Established in 1969, the Law Foundation is an independent, non-profit organization that funds access to justice projects across British Columbia.¹
3. The Law Foundation is a creature of statute and is continued and governed by Part 7 of the *Legal Profession Act*, SBC 1998, c 9 (the “**Current Act**”). Section 58 of the Current Act describes the Law Foundation as a corporation with the power to acquire, dispose of, and otherwise deal with its property.
4. The Law Foundation’s primary source of income is the interest accrued on lawyers’ trust accounts.² Section 62 of the Current Act requires lawyers and law firms, by default, to deposit money received or held in trust in a pooled interest-bearing account, at a designated savings institution. The interest accumulated on these funds is held in trust for the Law Foundation and must be remitted to the Law Foundation, which then uses these funds to finance its programs and projects.³ Naturally, the Law Foundation’s income is affected by the amount of money held in the pooled trust accounts of regulated lawyers in British Columbia and by the applicable interest rate.⁴
5. The Law Foundation has a legislative mandate to spend its funds in the public interest.⁵ It uses moneys it acquires for the funding of programs and projects in all regions of British Columbia, to benefit the public in five legislated mandate areas:

¹ Affidavit #1 of Marcus Miharija, affirmed 14 August 2026 (“Miharija #1”) at Exhibit A; Affidavit #1 of Josh Paterson affirmed 11 June 2024 at para 2 (“Paterson #1”).

² Paterson #1 at para 10.

³ Paterson #1 at para 5.

⁴ Paterson #1 at para 11.

⁵ *Kett v Kobe Steel, Ltd.*, 2020 BCSC 1977 at para 41.

(i) legal education; (ii) legal research; (iii) legal aid; (iv) law reform; and (v) law libraries.⁶

6. The Current Act provides guidelines for the Law Foundation's routine and long-term operations. Section 59(1) outlines the composition of the Board of Governors (the "**Board**"), which consists of 18 volunteer members, divided as follows:
 - a. 12 members of the LSBC, or the judiciary, appointed by the Benchers of the LSBC to represent all geographical areas of the province;
 - b. three persons, not lawyers, appointed by the Attorney General;
 - c. two members of the LSBC, appointed by the BC Branch of the Canadian Bar Association; and
 - d. the Attorney General or her appointee.⁷
7. The Board is responsible for governing the Law Foundation and determining and directing grant funding.⁸

B. Changes Proposed by Bill 21

8. Sections 152-65 and 242-50 of Bill 21 propose changes to the Law Foundation's structure, primarily through the dissolution of the Notary Foundation of British Columbia (the "**Notary Foundation**") and its subsequent absorption by the Law Foundation. This leads to notable changes to the Board.
9. Section 243 provides:

Transition - dissolution of Notary Foundation

243.(1) The Notary Foundation is dissolved.

(2) The assets of the Notary Foundation immediately before the transfer date are transferred to and vested in the Law Foundation.

(3) The liabilities of the Notary Foundation immediately before the transfer date are transferred to and assumed by the Law Foundation.

⁶ Miharija #1 at Exhibit A; Patterson #1 at para 4.

⁷ Paterson #1 at para 7.

⁸ Paterson #1 at para 7.

(4) On the transfer date, a reference to the Notary Foundation in any record that creates, evidences or otherwise relates to anything transferred or assigned under subsection (2) or (3) is deemed to be a reference to the Law Foundation.

10. Bill 21 restyles the Board as the board of trustees (the “**Board of Trustees**”). The initial Board of Trustees, by s 249, would consist of all persons then currently serving as governors of the Law Foundation and two additional persons, appointed by the Notary Foundation. The Notary Foundation’s appointees are required to have been members of that body’s Board immediately before the transfer date.
11. Following completion of the initial trustees’ terms, the Board of Trustees would be composed of a maximum of 18 trustees, as follows:
 - a. no more than 12 trustees appointed by the new regulator, of whom
 - i. at least two must be lawyers;
 - ii. at least two must be notaries public;
 - iii. (if the total number of regulated paralegals in British Columbia is 50 or more), at least two must be regulated paralegals; and
 - iv. at least one must be an Indigenous person;
 - b. no more than two additional trustees, appointed by the regulator appointees;
 - c. the Attorney General of British Columbia or her designate (as a non-voting trustee); and
 - d. no more than three trustees appointed by the Attorney General (of whom at least one must be an individual of a First Nation).⁹

PART 2 - ISSUES ON APPEAL

12. The Law Foundation takes no position on the constitutionality of Bill 21. The issue it raises on appeal relates to the appropriate remedy, should this Court find that some or all of Bill 21 is *ultra vires*.

⁹ Presumably, this means an individual who is a member or citizen of a First Nation.

PART 3 – ARGUMENT

13. If the Court finds that Bill 21 does infringe the *Charter* or is *ultra vires* the provincial legislature, it must take care in crafting the appropriate remedy. From the Law Foundation's perspective, it has concerns about a partial remedy that might subject it to "patchwork" legislation, restricting its ability to fund legal programs and projects in BC. In the event that the Court finds that portions of the legislation are contrary to s 52 of the *Constitution Act, 1982*, the Court should employ all remedial options to ensure that, while addressing the constitutional violation, it simultaneously ensures that the public continues to receive benefits flowing from the Law Foundation's pursuit of its legislated mandate.
14. The Law Foundation takes no position on the primary or alternative reliefs sought by the appellant the Trial Lawyers Association of British Columbia and Kevin Westell (the "**TLABC**") and takes no position on the primary relief sought by the appellant the LSBC. That relief would, if fully granted, prevent the provisions of Bill 21 relating to the Law Foundation from coming into force. In effect, this would maintain the *status quo*. The Law Foundation has no complaints about the *status quo*, which affords the requisite measure of certainty.
15. However, the Law Foundation submits that if the Court were to grant the LSBC's alternative relief, this would give rise to complications with respect to the Law Foundation's ability to carry out its mandate.
16. For greater specificity, the LSBC's alternative relief proposes as follows:

[T]hat Parts 1-6, 15, 17 and 18 (excepting ss 311-314) of Bill 21 are *ultra vires* provincial authority to legislate under ss 92(13) and 92(14) of the *Constitution Act, 1867*, and are therefore of no force or effect.

(the "**Alternative Relief**")
17. The Law Foundation submits that, if granted, the Alternative Relief would have deleterious implications on its governance and operations. These stem from resulting inconsistencies in the statutory scheme.

18. For instance, the Alternative Relief would strike down Part 18 (Transitional Provisions, etc.) while allowing Part 11 (Law Foundation of British Columbia) to come into effect. But the Part 18 transitional provisions are a key element in transitioning to the post-Bill 21 Law Foundation. Without the benefit of that legislative guidance, the Law Foundation would find itself metaphorically at sea in the post-transitional world.
19. The Law Foundation would be governed by the Board of Trustees, including at least two notaries public (Part 11, s 155(1)(a)(ii)), but the provisions dissolving the Notary Foundation and transferring its assets to the Law Foundation (Part 18, s 243) would not be in effect. This would create a leadership vacuum; there would be no “grandfathering” provision for the Law Foundation’s current Board (Part 18, s 249).
20. The Law Foundation requires a consistent and certain governance structure for its proper functioning. An irregular Board composition will jeopardize long-term funding decisions and delay the time in which decisions pursuant to its legislative mandate are made.
21. Additionally, under the Alternative Relief, the two or more notarial appointees on the Board of Trustees would remain governed by the *Notaries Act*, RSBC 1996, c 334. The two (or more) appointees who are notaries public, however, would not be “licensees” under the new Act; accordingly, the provision governing the removal of a trustee (Part 11, s 157(1)(c)) would not, on its face, apply to the removal of the notary trustees. Compounding this, a declaration that Part 1 of Bill 21 is of no force of effect would result in the deletion of the definitions for “licensee” and “rules”. How, in that circumstance, would the Law Foundation’s Board of Trustees make sense of s 157(1)(c)(ii), which allows it to remove a trustee who “is a licensee” and who has “contravene[d] a provision of [Bill 21] or the rules”?¹⁰

¹⁰ Parenthetically, the Law Foundation adds that one can also expect that the absence of a definition for “licensee” will also lead to difficulties in applying provisions in Part 12 (Trust Accounts). There are several references to “licensees” throughout that Part.

22. Clarity and precision are essential components of a properly functioning statutory scheme. Ambiguity in language—or a lack of coherence owing to deleted provisions—may lead to inconsistent enforcement, confusion, and delays in decision-making. A clear statute enables courts, legal professionals, and the public to understand the legislative intent, ensuring that the law is applied fairly and predictably. Precision in statutory language minimizes the risk of misinterpretation, upholds the rule of law, and reinforces confidence in the legal system.
23. Bill 21 affects a great number of stakeholders directly. The Law Foundation is but one of these stakeholders. It comes forward on this appeal to highlight how the Alternative Relief, if granted, would subject it to a confusing and piecemeal governance structure, risking frustration of its powers and ability to effectively carry out its legislated purposes. The Law Foundation submits that the Court would benefit from lengthy reflection on the Alternative Relief, and on the wording of any order following a finding of partial unconstitutionality, so as to avoid any unintended consequences.

PART 4 - NATURE OF ORDER SOUGHT

24. The Law Foundation takes no position on the specific outcome of this appeal, other than to caution that the Court take great care with crafting the resulting order.
25. The Law Foundation does not seek costs and asks that none be ordered against it.

All of which is respectfully submitted.

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



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**Counsel for the Intervener,
Law Foundation of BC**

APPENDICES: LIST OF AUTHORITIES

Authorities	Page # in factum	Para # in factum
<i>Kett v Kobe Steel, Ltd.</i> , 2020 BCSC 1977	8	5

APPENDICES: ENACTMENTS

Legal Profession Act

SBC 1998, CHAPTER 9

[...]

PART 7 – LAW FOUNDATION

[...]

Law Foundation of British Columbia

- 58** (1) The Law Foundation is continued as a corporation with the name “Law Foundation of British Columbia” consisting of the members of the boards appointed under section 59 (1).
- (2) The foundation may acquire, dispose of and otherwise deal with its property for the purposes of the foundation.

Board of governors

- 59** (1) The foundation is administered by a board of governors consisting of 18 governors as follows:
- (a) the Attorney General or the Attorney General’s appointee;
 - (b) 3 persons, not lawyers, appointed to the board by the Attorney General;
 - (c) 12 lawyers or judges appointed by the executive committee, of whom at least one must be from each county referred to in the *County Boundary Act*;
 - (d) 2 lawyers appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association.
- (2) Governors, other than the Attorney General, hold office for a term of 3 years or until their successors are appointed, and they may be re-appointed.
- (3) The Attorney General may revoke the appointment of a governor appointed by the Attorney General, during that governor’s term of office.
- (4) The benchers may revoke the appointment of a governor appointed by the executive committee, during that governor’s term of office.

(5) The Provincial Council of the British Columbia Branch of the Canadian Bar Association may revoke the appointment of a governor appointed by the executive committee of the branch, during that governor's term of office.

(6) The board must elect one governor to be chair of the board.

(7) If a vacancy occurs in the office of a governor, the person or body by whom the governor was appointed may appoint to the vacant office a person eligible to be appointed to that office by that person or body under subsection (1), and the person so appointed holds office for the balance of the term for which the governor was appointed, or until a successor is appointed.

(8) The continuing governors may act despite a vacancy in the board.

(9) An act of the board is not invalid because of a defect that is afterwards discovered in the appointment of one or more governors.

(10) An appointed governor may resign from office on giving one month's notice in writing to the board of an intention to do so, and the resignation takes effect on the expiration of the notice or on its earlier acceptance by the board.

(11) A governor ceases to hold office if the governor

- (a) ceases to hold the qualifications necessary for appointment,
- (b) becomes a mentally disordered person,
- (c) becomes bankrupt, or
- (d) contravenes a provision of this Act or the rules, and a majority of the other governors considers that the contravention is sufficiently serious to justify the governor's removal from the board.

(12) A quorum of the board is 8 governors.

[...]

Trust account — interest rate and related matters

62 (1) A lawyer or law firm must deposit money received or held in trust in an interest bearing trust account

- (a) at a savings institution designated under section 33 (3) (b), and
- (b) that is in compliance with subsection (1.1) of this section.

(1.1) A trust account referred to in subsection (1) must bear interest at a rate approved by the board and any charges or fees charged to the foundation in respect of the account must be charged at an amount approved by the board.

(2) Subject to subsection (5), a lawyer or law firm who is credited by a savings institution with interest on money received or held in trust,

- (a) holds the interest in trust for the foundation, and
- (b) must remit the interest to the foundation in accordance with the rules.

(3) The benchers may make rules

- (a) permitting a lawyer or law firm to hold money in trust for more than one beneficiary in the same trust account, and
- (b) respecting payment to the foundation of interest on trust accounts.

(4) A relationship between a lawyer or law firm and client or a trust relationship between a lawyer or law firm, as trustee, and the beneficiary of the trust does not make the lawyer or law firm liable to account to the client or beneficiary for interest received by the lawyer or law firm on money received or held in an account established under subsection (1).

(5) On instruction from a client, a lawyer or law firm may place money held on behalf of the client in a separate trust account, in which case

- (a) this section and the rules made under it do not apply, and
- (b) interest paid on money in the account is the property of the client.

Legal Professions Act

SBC 2024, c 26

[...]

PART 11 – LAW FOUNDATION OF BRITISH COLUMBIA

[...]

Board of trustees

- 155** (1) The board of trustees is to consist of no more than 18 trustees, as follows:

- (a) no more than 12 trustees appointed by the board of directors of the regulator, of whom
 - (i) at least 2 must be lawyers,
 - (ii) at least 2 must be notaries public,
 - (iii) if the total number of regulated paralegals in British Columbia is 50 or more, at least 2 must be regulated paralegals, and
 - (iv) at least one must be an Indigenous person;
- (b) no more than 2 trustees appointed by the trustees described in paragraph (a);
- (c) the Attorney General or a designate of the Attorney General, who is a non-voting trustee;
- (d) no more than 3 trustees, of whom at least one must be an individual of a First Nation, appointed by the Attorney General.

(2) The Attorney General must seek nominations by First Nations for the purpose of the appointment, under subsection (1) (d), of a trustee who is an individual of a First Nation.

(3) A director is not eligible to be appointed as a trustee under subsection (1).

(4) The board of trustees may establish committees to assist the board of trustees.

[...]

Removal of trustee

157 (1) The board of trustees may remove a trustee if any of the following apply to the trustee:

- (a) the trustee becomes bankrupt;
- (b) the trustee contravenes a term of the oath of office for trustees, or the code of conduct for trustees, if any, established by the board of trustees;
- (c) if the trustee is a licensee appointed under section 155 (1) (a), the trustee
 - (i) contravenes the code of professional conduct,

- (ii) contravenes a provision of this Act or the rules, or
- (iii) ceases to be a licensee.

(2) The board of trustees may remove a trustee to whom one or more of the circumstances described in subsection (1) apply if, after reasonable notice to the trustee, the board of trustees, by resolution passed by a vote of at least 2/3 of the other trustees holding office, considers the circumstances sufficiently serious to justify the trustee's removal.

[...]

PART 18 – TRANSITIONAL PROVISIONS, REPEALS, CONSEQUENTIAL AMENDMENTS, RELATED AMENDMENTS AND AMENDMENTS TO THIS ACT

[...]

Division 6 – Transitional Provisions Related to Law Foundation

[...]

Transition – dissolution of Notary Foundation

243 (1) The Notary Foundation is dissolved.

(2) The assets of the Notary Foundation immediately before the transfer date are transferred to and vested in the Law Foundation.

(3) The liabilities of the Notary Foundation immediately before the transfer date are transferred to and assumed by the Law Foundation.

(4) On the transfer date, a reference to the Notary Foundation in any record that creates, evidences or otherwise relates to anything transferred or assigned under subsection (2) or (3) is deemed to be a reference to the Law Foundation.

[...]

Transition – first board of trustees

249 (1) On the transfer date and despite section 155 [board of trustees], the board of trustees of the Law Foundation consists of the following trustees:

- (a) all persons who, immediately before the transfer date, were members of the board of governors of the Law Foundation;
- (b) two persons appointed by the Notary Foundation and who, immediately before the transfer date, were members of the board of governors of the Notary Foundation.

(2) Sections 155 (4) to 159 apply to the board of trustees established under subsection (1) as if the board of trustees were established under section 155 and, for the purposes of sections 156 [term limits for trustees] and 158 [vacancies], a trustee's term on the board of trustees is deemed to have begun at the same time the trustee's term on the applicable board of governors began.