

COURT OF APPEAL FILE NO. CA51536
Law Society of British Columbia v. Attorney General of British Columbia
Appellant's Factum

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)

APPELLANT'S FACTUM
Law Society of British Columbia

Law Society of British Columbia

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CHRONOLOGY

Date	Event	Reference
March 1, 2022	The Attorney General of British Columbia announces that the government will impose a new regulatory model to govern lawyers, notaries and paralegals in British Columbia.	Affidavit #1 of Brook Greenberg, K.C., made May 24, 2024 [Greenberg #1], Ex. 23, (Joint Appeal Book (JAB) Tab ●, p. ●).
September 14, 2022	The Ministry of Attorney General (MAG) releases an Intentions Paper on Legal Professions Regulatory Modernization. Details of the proposed governance structure are not included in the Intentions Paper.	Greenberg #1, Ex. 24 (JAB Tab ●, p. ●).
May 2023	MAG issues a “What We Heard” report detailing some of the results of MAG’s public engagement and public survey related to the proposed regulatory changes.	Greenberg #1, Ex. 31 (JAB Tab ●, p. ●).
January – March 2024	The Federation of Law Societies of Canada, Canadian Bar Association (BC Branch), Trial Lawyers Association of British Columbia and 10 other professional lawyers’ associations issue letters asking the government to share draft legislation with lawyers.	Greenberg #1, Exs. 43-44 (JAB Tab ●, p. ●).
March 2024	MAG releases a public update about the proposed single legal regulator legislation. The public update contains limited information about the regulatory framework in the proposed legislation.	Greenberg #1, Ex. 33 (JAB Tab ●, p. ●).
April 10, 2024	Bill 21 – <i>Legal Professions Act</i> is introduced in the Legislature for first reading. This is the first time a draft of the proposed legislation is made available to the public.	Greenberg #1, Ex. 35 (JAB Tab ●, p. ●).
April 10, 2024	The Law Society of British Columbia (LSBC) issues a statement opposing Bill 21.	Greenberg #1, Ex. 37 (JAB Tab ●, p. ●).

April 19, 2024	The CBABC asks the AG not to proceed with Bill 21 without meaningful engagement to resolve concerns raised by lawyers through a collaborative process.	Greenberg #1, Ex. 45 (JAB Tab ●, p. ●).
April 26, 2024	The Benchers of the LSBC write to the Attorney General to urge the government to reconsider proceeding with Bill 21 without significant amendment.	Greenberg #1, Ex. 38 (JAB Tab ●, p. ●).
May 15, 2024	The government closes debate in the Legislature and enacts Bill 21 as the <i>Legal Professions Act</i> , S.B.C. 2024, c. 26 (Bill 21). Certain provisions of Bill 21 come into force on enactment.	
May 17, 2024	The LSBC files a Notice of Civil Claim in Supreme Court of British Columbia Action No. S-243258 alleging that Bill 21 is unconstitutional.	Notice of Civil Claim filed May 17, 2024 (Joint Appeal Record (JAR) Tab 1).
October 2025	LSBC's claim is heard by way of summary trial before the Hon. Chief Justice Skolrood.	
April 29, 2025	LSBC's claim is dismissed.	Order of the Honourable Chief Justice Skolrood (JAR Tab 19)

OPENING STATEMENT

An independent Bar stands between the government and the citizen to ensure the public's access to legal rights and independent courts. If independence of the Bar is compromised, then the foundations of our constitutional democracy are left vulnerable to the will of the government of the day.

The Chief Justice correctly found that independence of the Bar is an unwritten constitutional principle that is one of the basic tenets of our constitutional arrangements, and which is closely related to and maintains judicial independence and the rule of law in Canada. The Chief Justice also correctly defined the general principle of independence of the Bar and concluded that the principle is properly applied as an interpretive aid to the scope of the Legislature's authority under s. 92(13) and (14) of the *Constitution Act, 1867*. This Court should adopt and endorse the Chief Justice's findings in this regard.

But the Chief Justice applied the wrong test in his determination of whether Bill 21 was *ultra vires* ss. 92(13) and (14) of the *Constitution Act, 1867*. The correct test is whether a reasonable person, informed of the relevant statutory provisions in their historical and traditional context, viewing the matter realistically and practically, would conclude that Bill 21 maintains an independent Bar. The answer to this correct test is 'no'. Bill 21, viewed holistically and in its proper context, is objectively inconsistent with the maintenance of an independent Bar in British Columbia. It is therefore inconsistent with the Constitution and must be struck down.

PART 1 - STATEMENT OF FACTS

1. The facts set out below are not in dispute. The parties disagree as to their relevance to the constitutional question before this Court.

A. The Law Society of British Columbia

2. The appellant Law Society of British Columbia (the **Law Society**) is an independent, self-governing non-profit society continued by s. 2(1) of the *Legal Profession Act*, S.B.C. 1998, c. 9 (the **LPA**).¹ The Law Society ensures robust, visible and independent professional regulation of lawyers in the public interest² under the *LPA*, the Law Society Rules (the **Rules**), and the *Code of Professional Conduct* (the **Code**). Through the enabling provisions of the *LPA* (including ss. 3, 4 and 11), the public is assured of access to a trustworthy and competent Bar, whose admission, competence and discipline is regulated by lawyers who are accountable to the public interest, and not to government policy or outside influence.

3. The Law Society is governed by 32 Benchers, consisting of 25 lawyer Benchers elected by the lawyers of British Columbia from nine electoral districts across the province, six lay Benchers appointed by the Lieutenant Governor in Council (**LGIC**), and the Attorney General (an *ex officio* bencher, who does not vote at the Bencher table³).⁴ The *LPA* does not prescribe the number of Benchers, or the manner of their election.⁵ The Benchers have a duty to abide by the *LPA*, the Rules and the *Code*, and to uphold

¹ [Legal Profession Act, S.B.C. 1998, c. 9](#) [*LPA*], Book of Enactments (**BE**) Tab ●.

² [Law Society of British Columbia v British Columbia \(Attorney General\)](#), 2026 BCSC 779 at paras. 1, 9 [Reasons for Judgment] (JAR Tab 21, pp. 268, 270).

³ Examination for Discovery of Katharine Armitage by Craig Ferris, K.C., March 14, 2025 [**Armitage XFD**] (JAB Tab ●, p. ●, q. 124).

⁴ *LPA* at paras. 4, 7 (BE Tab ●, p. ●).

⁵ Affidavit #3 of Brook Greenberg, K.C., made April 3, 2025 [**Greenberg #3**], Ex. 42, Rules 1-19 to 1-44 (JAB Tab ●, p. ●).

the objects of the Law Society and ensure they are guided by the public interest in the performance of their duties.⁶

4. One of the core self-regulatory functions of the Benchers is rule-making.⁷ The Rules made by Benchers govern membership and admission into the Law Society; the authority to practice law; processes for protection of the public through the investigation of complaints, promotion of the mental and physical health of lawyers, maintenance of practice standards, and continuing education of lawyers; discipline of lawyers who are alleged to have breached the Rules; and all aspects of the day-to-day practice of law.⁸ The Rules, rather than the *LPA*, also provide for the manner of election of Benchers.⁹

5. The Benchers also maintain the *Code*.¹⁰ The *Code* is an expression of the Benchers' views on the special ethical responsibility of lawyers, and articulates lawyers' duties to the state, to courts, to clients, and to each other.¹¹ The maintenance of the *Code* forms an integral part of independent self-regulation of lawyers in the public interest. The *Code* is significantly related to the Federation of Law Societies' Model Code of Professional Conduct, which ensures pan-Canadian standards for the practice of law.¹²

6. The Rules and the *Code* are not subject to the influence of any body or group and do not require the approval of government.

⁶ Greenberg #3, Ex. 41 (JAB Tab ●, p. ●).

⁷ Greenberg #1, Ex. 6 (JAB Tab ●, p. ●); [Reasons for Judgment](#) at para. 8 (JAR Tab 21, p. 269). See for example: [LPA](#) ss. [6\(1\)](#), [7\(1\)](#), [8](#), [11-15](#), [36](#) (BE Tab ●).

⁸ Greenberg #1, para. 23 (JAB Tab ●, p. ●).

⁹ Greenberg #3, Ex. 42, Rules 1-19 to 1-44 (JAB Tab ●, pp. ●).

¹⁰ Greenberg #3, Ex. 44 (JAB Tab ●, p. ●).

¹¹ Greenberg #3, Ex. 44, C-2.1 (JAB Tab ●, p. ●).

¹² Greenberg #1, para. 25 (JAB Tab ●, p. ●); Greenberg #3, Ex. 44 (Tab ●, p. ●); [Reasons for Judgment](#) at para. 8 (JAR Tab 21, p. 269).

B. The Legislature unilaterally reforms legal regulation through Bill 21

7. On March 1, 2022, the government announced it would impose a new regulatory model to govern lawyers, notaries and paralegals in British Columbia.¹³

8. On September 14, 2022, the Ministry of Attorney General released an Intentions Paper on Legal Professions Regulatory Modernization (the **Intentions Paper**).¹⁴ The Intentions Paper was the first public communication of the government's policy intention behind Bill 21. It did not contain specific details of any proposed legislation.

9. The theory of lawyer independence underlying Bill 21 was explained in the Intentions Paper as "the ability of a lawyer (or other legal service provider) to fearlessly advocate for their client and provide independent legal advice to their client, even, and especially, when their client is at odds with the government."¹⁵ The Intentions Paper describes self-regulation as a "policy decision to assign a professional regulator the primary responsibility for the development of structures, processes and policies for regulation."¹⁶

10. The Law Society responded to the Intentions Paper on November 16, 2022.¹⁷ While the Law Society agreed with the Ministry's emphasis on access to justice and other issues (such as licensing paralegals), the Law Society was concerned that the Intentions Paper did not make clear how the government intended to preserve independence of the Bar within this new regulatory framework.

11. The fact that the specific details of the legislation to be imposed on a self-regulating and self-governing profession were not shared with members of the profession was a matter of significant concern among the Bar. Multiple professional associations wrote

¹³ Greenberg #1, Ex. 23 (JAB Tab ●, p. ●).

¹⁴ Greenberg #1, Ex. 24 JAB Tab ●, p. ●).

¹⁵ Greenberg #1, Ex. 24 (JAB Tab ●, p. ●).

¹⁶ Greenberg #1, Ex. 24 (JAB Tab ●, p. ●).

¹⁷ Greenberg #1, Ex. 25 (JAB Tab ●, p. ●).

private and public letters requesting further consultation with lawyers in order to ensure independence of the Bar was preserved in the proposed legislation.¹⁸

12. One month before the introduction of Bill 21 in the Legislature, the Ministry released a public update about the proposed single legal regulator legislation.¹⁹ The public update provided limited details about the regulatory model the government intended to impose.

13. The Law Society responded to the public update on March 18, 2024 expressing concern regarding the lack of recognition and protection of the necessary independence of a new legal regulator from government. The Law Society encouraged the government to address its concerns about the degree of mandated direction and prescription the proposed legislation was expected to contain.²⁰

i. *Bill 21 is enacted into law*

14. Bill 21 was introduced in the Legislature on April 10, 2024.²¹ The introduction of Bill 21 at first reading was the first public disclosure of the text of the proposed legislation, in “stark contrast” to the process for every past revision to legal regulation since 1955.²²

15. The Law Society issued a public response to Bill 21 on the same day. It asserted that the public interest required the public’s trust that the legal regulator is independent of government influence.²³ The Benchers of the Law Society also wrote to the Attorney General to urge the government to reconsider proceeding with Bill 21 absent significant

¹⁸ Greenberg #1, para. 82, Exs. 32, 43-44 (JAB Tab ●, pp. ●).

¹⁹ Greenberg #1, Ex. 33 (JAB Tab ●, p. ●).

²⁰ Greenberg #1, Ex. 34 (JAB Tab ●, p. ●).

²¹ Greenberg #1, Ex. 35 (JAB Tab ●, p. ●).

²² [Reasons for Judgment](#) at paras. [58-60](#) (JAR Tab 21, p. 285).

²³ Greenberg #1, Ex. 37 (JAB Tab ●. p. ●).

amendment.²⁴ Bar associations also requested that the enactment of the legislation be paused to permit meaningful engagement on the draft Bill.²⁵

16. Notwithstanding these concerns, the government invoked closure to end the debate in the House on Bill 21 on May 15, 2024. The Bill passed third reading that evening and received Royal Assent on May 16, 2024. Certain transitional provisions of Bill 21 came into force on Royal Assent, and the remainder will be brought into force by regulation of the LGIC.

17. The key provisions of Bill 21 include the following:

- a. Bill 21 eliminates the Law Society. On the amalgamation date, each Benchers of the Law Society, whether elected or appointed, ceases to hold office as a Benchers (s. 230(1)), and the assets of the Law Society will be combined with the Society of Notaries Public of British Columbia to become Legal Professions British Columbia (**LPBC**).
- b. The Rules are not continued. The board of LPBC may make rules that are binding on licensees.²⁶ The *Code* is also not continued. The board of LPBC must establish a new code of professional conduct “for licensees” that is binding on all licensees, and which must accommodate definitions for “conduct unbecoming a professional”, “incompetently”, “professional conduct violation” and “professional misconduct” prescribed by the legislature.²⁷
- c. Bill 21 establishes a transitional board and a transitional Indigenous council who must collaborate to develop the first rules of the board.²⁸ The first rules of

²⁴ Greenberg #1, Exs. 38 (JAB Tab ●, pp. ●).

²⁵ Greenberg #1, Exs. 45-47 (JAB Tab ●, p. ●).

²⁶ Bill 21, ss. 25-27 (BE Tab ●, p. ●).

²⁷ Bill 21, ss. 68, 70, 71 (BE Tab ●, p. ●).

²⁸ Bill 21, ss. 224, 225, 226 (BE Tab ●, p. ●).

- the board “may not be made unless they are first approved, before the amalgamation date, by the transitional Indigenous council.”²⁹
- d. The board of LPBC, once constituted in accordance with the process set out in ss. 230, reduces the role of elected lawyers in governance from a minimum of 78% majority to a 29% minority. Combined with appointments, lawyers must comprise 9 of 17 board members, where quorum of the board is 12.³⁰ Lawyers do not form the majority of the executive committee.³¹
 - e. Bill 21 creates an Indigenous council, which must work in collaboration with the board on certain matters, participate in the regulator’s strategic planning processes, advise the board on certain matters, and exercise approval powers conferred by the Act. There is no requirement that any of the 6-9 members of the Indigenous council be lawyers.³²
 - f. Bill 21 does not continue the object and duty of the Law Society. Instead it imposes duties of the regulator and “guiding principles” to which the regulator must have regard.³³
 - g. Under ss. 3, 4 and 211-214 of Bill 21, the LGIC has various regulation-making powers, including the power to create and regulate a new class of “profession” that has the authority to practise law, and which may be exempted from licensing requirements under ss. 38 and 212. The LGIC may designate a new legal profession based on, among other things, the Attorney General’s

²⁹ Bill 21, s. 226 (BE Tab ●, p. ●).

³⁰ Bill 21, ss. 8 and 17 (BE Tab ●, p. ●).

³¹ Bill 21, s. 10 (BE Tab ●, p. ●).

³² Bill 21, s. 29, 30 (BE Tab ●, p. ●).

³³ Bill 21, ss. 6, 7 (BE Tab ●, p. ●).

consideration of whether the designation “would have an undue impact on the independence of licensees under [the] Act.”³⁴

C. The Law Society’s constitutional challenge of Bill 21

18. Immediately following the enactment of Bill 21, on May 17, 2024, the Law Society filed a Notice of Civil Claim seeking declarations that Bill 21 is *ultra vires* the Legislature’s authority under ss. 92(13) and (14) of the *Constitution Act, 1867*, and therefore of no force or effect. The Law Society’s claims were heard by way of summary trial before Chief Justice Skolrood in October 2025.

i. *The Court held that Independence of the Bar is an unwritten constitutional principle*

19. The Chief Justice found that independence of the Bar is an unwritten constitutional principle that is implicit in the written constitutional text, including in the judicature provisions of the *Constitution Act, 1867* (ss. 96-101) and in the fundamental rights and freedoms guaranteed under ss. 7, 10(b) and 11(d) of the *Charter*.³⁵ Sections 97 and 98 of the *Constitution Act, 1867*, which provide for the appointment of judges from among the Bar, “specifically acknowledge the existence of the Bars” of the provinces, and in doing so “the Constitution implicitly contemplates the continuance of independent Bars.”³⁶

20. The Chief Justice concluded that the principle of independence of the Bar informs the scope of ss. 92(13) and (14) and functions to limit the Legislature’s authority under those sections: “the idea that the legislature could use its plenary authority under ss. 92(13) and (14) to regulate lawyers in such a manner as to eviscerate an independent Bar is simply unthinkable.”³⁷

³⁴ Bill 21, s. 4(2)(b)(v) (BE Tab ●, p. ●).

³⁵ [Reasons for Judgment](#) at para. 88 (JAR Tab 21, p. 292).

³⁶ [Reasons for Judgment](#) at para. 90 (JAR Tab 21, p. 292).

³⁷ [Reasons for Judgment](#) at para. 137 (JAR Tab 21, p. 302).

21. The Court concluded that in order to protect the public's access to legal advice that is free from undue outside influence,³⁸ lawyers must be, and must be seen to be, independent from outside influences, including in particular the influence of the state.³⁹ The principle of independence has both individual and institutional dimensions, which reflect lawyers duties not only to their clients, but to the administration of justice more generally.⁴⁰

ii. *The Court held that Bill 21 was not unconstitutional*

22. The Chief Justice concluded that both the substance of Bill 21 and the process leading to its enactment represent a “significant departure” from the long-established approach to the regulation of lawyers in British Columbia.⁴¹ He described the government's “inability, or failure, to justify overturning 150 years of self-regulation, in the face of widespread opposition from the Bar” as “notable”.⁴² But he concluded that the process leading to the enactment of Bill 21 was a “political, rather than a legal or constitutional” issue, and therefore did not consider any evidence of the history of legal regulation in British Columbia or Bill 21's enactment in his analysis.⁴³

23. The Court agreed that Bill 21 eliminates electoral self-governance and self-regulation of lawyers in British Columbia.⁴⁴ Based on his review of existing jurisprudence, the Court found that “[n]o authority has gone so far as to hold that the model of self-governance advanced by the LSBC is constitutionally guaranteed and that ss. 92(13) and (14) must be interpreted in a way that precludes a provincial legislature imposing a

³⁸ [Reasons for Judgment](#) at para. [107](#) (JAR Tab 21, p. 295).

³⁹ [Reasons for Judgment](#) at para. [106](#) (JAR Tab 21, p. 295).

⁴⁰ [Reasons for Judgment](#) at paras. [109-110](#) (JAR Tab 21, p. 296).

⁴¹ [Reasons for Judgment](#) at para. [58](#) (JAR Tab 21, p. 285).

⁴² [Reasons for Judgment](#) at para. [79](#) (JAR Tab 21, p. 289).

⁴³ [Reasons for Judgment](#) at para. [66](#) (JAR Tab 21, p. 286).

⁴⁴ [Reasons for Judgment](#) at para. [140](#) (JAR Tab 21, p. 303).

different model.”⁴⁵ He held that the legislature has the authority to determine how lawyers should be regulated and, while the legislature has historically chosen a self-governance model, that model is not constitutionally mandated as a requirement for maintaining an independent Bar.⁴⁶

24. The Chief Justice examined the provisions in Bill 21 and determined that none of them interfere with independence of the Bar.⁴⁷ Although he acknowledged that Bill 21 represented a “dramatic change” in lawyer regulation, the Chief Justice was not satisfied, based on the test he applied, that the new regulatory structure is unconstitutional.⁴⁸

PART 2 - ERRORS IN JUDGMENT

25. The Chief Justice erred by applying the wrong test to determine whether Bill 21 complies with the Constitution. This was an error of law.⁴⁹

26. As a result of this legal error, the Chief Justice incorrectly concluded that Bill 21 is not *ultra vires* the Legislature’s authority in ss. 92(13) and (14) of the *Constitution Act, 1867*.

PART 3 – ARGUMENT

A. An independent Bar is part of the structure of Canada’s Constitution

27. The Law Society submits that this Court should endorse the Chief Justice’s conclusion that the Canadian constitution requires an independent Bar, for the following reasons.

⁴⁵ [Reasons for Judgment](#) at para. [147](#) (JAR Tab 21, p. 305).

⁴⁶ [Reasons for Judgment](#) at para. [167](#) (JAR Tab 21, p. 310).

⁴⁷ [Reasons for Judgment](#) at para. [201](#) (JAR Tab 21, p. 318).

⁴⁸ [Reasons for Judgment](#) at para. [205](#) (JAR Tab 21, p. 319).

⁴⁹ [Kitsilano Coalition for Children & Family Safety Society v. British Columbia \(Attorney General\)](#), 2024 BCCA 423 at paras. [50-51](#)

28. The existence of an independent Bar is essential to the structural coherence and integrity of the constitution of Canada.

29. Canada's constitution is partly written and partly unwritten.⁵⁰ The written Constitution includes the *Constitution Acts 1867-1982*, and the instruments listed in the Schedule to the *Constitution Act, 1982*.⁵¹ The unwritten constitution includes underlying constitutional principles (such as federalism, democracy, the rule of law,⁵² and judicial independence⁵³) and encompasses the norms necessary for Canada's system of governance to function.⁵⁴ The unwritten constitution predates Confederation, continues to operate after Confederation, and forms an essential part of our constitutional structure.⁵⁵

30. The underlying principles that form part of the unwritten constitution are the “‘basic principles inherent in a given form of governance’ from which concrete rules can be derived ‘to make the system work in a coherent fashion.’”⁵⁶ They arise from Canada's constitutional history and the text of the Constitution. Underlying principles “inform and sustain the constitutional text: they are the vital unstated assumptions upon which the text

⁵⁰ The Hon. Justice Rowe and Manish Oza, “Structural Analysis and the Canadian Constitution” (2023) 101 Can Bar Rev. 205 [Rowe and Oza, “**Structural Analysis**”] at 206; [Reference re Secession of Quebec](#), [1998] 2 SCR 217 at para. 32 (SCC) [Secession Reference] (Joint Book of Authorities (JBOA) Tab ●, p. ●).

⁵¹ The Constitution Acts, 1867-1982 (BE Tab ●, p. ●).

⁵² [Secession Reference](#) at para. 32 (SCC) (JBOA Tab ●, p. ●).

⁵³ [Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.](#) (1997), [1997] 3 SCR 3 at para. 105 (Nfld & PEIR) [Judges Reference] (JBOA Tab ●, p. ●).

⁵⁴ Rowe and Oza, “Structural Analysis” at 207 (JBOA Tab ●, p. ●).

⁵⁵ Rowe and Oza, “Structural Analysis” at 211 (JBOA Tab ●, p. ●).

⁵⁶ Rowe and Oza, “Structural Analysis” at 231 (JBOA Tab ●, p. ●).

is based.”⁵⁷ By their nature, underlying principles are expressed at a “high level of generality”, but more specific rules can be derived from them.⁵⁸

31. Unwritten constitutional principles can “give rise to substantive legal obligations... which constitute substantive limitations upon government action.”⁵⁹ These legal obligations are identified and elaborated through an interpretive process that discerns (and protects) “the structure of government that [the Constitution] seeks to implement”.⁶⁰

32. An independent Bar composed of lawyers who are free of influence by public authorities (or any other source) is a fundamental component of our free society.⁶¹ The principle of independence of the Bar is a fundamental public right that lawyers may provide legal assistance for or on behalf of a client without fear of interference or sanction by the government, subject only to the lawyer’s professional responsibilities as prescribed by the Law Society, and the lawyer’s general duty as a citizen to obey the law.⁶² This principle has a “fundamentally constitutional character”⁶³ because it is a condition

⁵⁷ [Secession Reference](#) at para. 49 (SCC) (JBOA Tab ●, p. ●).

⁵⁸ Rowe and Oza, “Structural Analysis”, at 232 (JBOA Tab ●, p. ●); [Secession Reference](#) at para. 54 (SCC) (JBOA Tab ●, p. ●).

⁵⁹ [Secession Reference](#) at para. 54 (SCC) (JBOA Tab ●, p. ●).

⁶⁰ [Reference re Senate Reform](#), 2014 SCC 32 at para. 26 (JBOA Tab ●, p. ●). See also Rowe and Oza, “Structural Analysis” (JBOA Tab ●, p. ●); Kate Glover Berger, “The Structural and Administrative Demands of Unwritten Constitutional Principles” (2019) 65:2 McGill LJ 305 at paras. 311-312 [Glover Berger] (JBOA Tab ●, p. ●).

⁶¹ [Finney v. Barreau du Québec](#), 2004 SCC 36 [Finney] (JBOA Tab ●, p. ●). See also [A.G. Can. v. Law Society of B.C.](#), 1982 CanLII 29 (SCC) at 335-336 (JBOA Tab ●, p. ●); [Law Society of British Columbia v. Trinity Western University](#), 2018 SCC 32 at para. 37 [TWU] (JBOA Tab ●, p. ●).

⁶² Greenberg #3, Ex. 56 (JAB Tab ●, p. ●). See also [Federation of Law Societies of Canada v. Canada \(Attorney General\)](#), 2013 BCCA 147 at paras. 105-114 (JBOA Tab ●, p. ●); [Reasons for Judgment](#) at para. 96 (JAR Tab 21, p. 294).

⁶³ Greenberg #3, Ex. 69 (JAB Tab ●, p. ●).

precedent to access to the rights and freedoms that are guaranteed in a “free and democratic society”.⁶⁴

33. The principle of independence of the Bar is also deeply connected to other foundational unwritten principles: including judicial independence,⁶⁵ the rule of law, and access to justice.⁶⁶ An independent Bar is essential to maintaining the rule of law and judicial independence: “[w]ithout the dignity, independence and integrity of the Bar, impartial justice and the maintenance of the rule of law are impossible.”⁶⁷ Together with the rule of law and judicial independence, an independent Bar gives meaning to the rights and freedoms the Constitution protects, and to the values and principles from which the rights and freedoms entrenched in the *Charter* arise.⁶⁸

i. The written text of the Constitution implies the existence of an independent Bar

34. The judicature provisions (ss. 96-101) of the *Constitution Act, 1867*, and the remedial provisions of the *Constitution Act, 1982* (ss. 24 and 52) establish a network of textual provisions that contemplate an independent and impartial court system that has “special and inalienable status”,⁶⁹ and which includes both an independent judiciary and an independent Bar.

35. An independent Bar is essential to the public’s access to independent courts (protected by ss. 96-101 of the *Constitution Act, 1867*) in two ways. First, the public and the judiciary rely on lawyers to present facts and argue the law in accordance with their

⁶⁴ [R. v. Oakes](#), [1986] 1 SCR 103 at p. 136 (SCC) (JBOA Tab ●, p. ●).

⁶⁵ See, for example, [Judges Reference](#) (1997) at paras. [83-84](#) (Nfld & PEIR) (JBOA Tab ●, p. ●).

⁶⁶ [Trial Lawyers Association of British Columbia v. British Columbia \(Attorney General\)](#), [2014 SCC 59](#), 2014 SCC 59 [TLABC] (JBOA Tab ●, p. ●).

⁶⁷ Roy Millen, The Independence of the Bar: An Unwritten Constitutional Principle, (2005) 84 Can. Bar Rev. 107 at p. 113 [Millen] (JBOA Tab ●, p. ●).

⁶⁸ *Millen* (JBOA Tab ●, p. ●). See also Greenberg #3, Ex. 56 (JAB Tab ●, p. ●).

⁶⁹ [TLABC](#) at para. [29](#) (JBOA Tab ●, p. ●).

duties to clients and the administration of justice so that judges may exercise their jurisdiction to independently resolve disputes and the public may access their legal rights.⁷⁰

36. Second, the members of the judiciary are “selected from the respective Bars” of the provinces, under ss. 97 and 98 of the *Constitution Act, 1867*.⁷¹ These provisions recognize the Bars of each province and territory as basic institutions of our constitutional structure. The reason judges are selected from the Bars of the provinces and territories is that “the Bar” represents a collection of individuals who (in addition to being educated in the law) have a shared commitment to our constitutional democracy, as evidenced, for example, by solemn oaths to uphold the Constitution of Canada, the rule of law, and the administration of justice sworn as a condition of membership in the Bar.⁷²

37. Legal regulation legislation enacted by a province under s. 92(13) and (14) of the *Constitution Act, 1867* does not create the Bar; the Bar exists as an institution because the Constitution requires it to exist for our system of governance to function as designed. It is therefore impossible to conceive that a provincial legislature could by ordinary

⁷⁰ [Reasons for Judgment](#) at para. [92](#) (JAR Tab 21, p. 293).

⁷¹ [Supreme Court Act, RSC 1985](#), c S-26, ss. 5-6 (BE Tab ●); [Reference re Supreme Court Act, ss. 5 and 6](#), 2014 SCC 21 (JBOA Tab ●, p. ●).

⁷² Greenberg #1, Ex. 17 (JAB Tab ●, p. ●); Affidavit #1 of Alan D. Macleod, K.C., made April 1, 2025, Ex. T (JAB Tab ●, p. ●); Affidavit #3 of Leah Kosokowsky, made April 2, 2025, Ex. F (JAB Tab ●, p. ●); Affidavit #1 of Dwight Gordon Newman, K.C., made March 28, 2025, Ex. EE (JAB Tab ●, p. ●); Affidavit #1 of Peter Kryworuk, made April 2, 2025, Ex. C (JAB Tab ●, p. ●); Affidavit #1 of Michel Jolin, F.A.C.T.L. Ad.E., made April 4, 2025, Ex. I (JAB Tab ●, p. ●); Affidavit #1 of Philip Aaron Bull, made May 16, 2025, Ex. A (JAB Tab ●, p. ●); Affidavit #1 of Marc L. Richard, K.C., made March 27, 2025, Ex. E (JAB Tab ●, p. ●); Affidavit #1 of Joe Thorne, made April 3, 2025, Ex. B (JAB Tab ●, p. ●); Affidavit #1 of Cheryl Hodder, K.C., made March 25, 2025, Ex. E (JAB Tab ●, p. ●); Affidavit #1 of James Travers, K.C., made April 3, 2025, Ex. D (JAB Tab ●, p. ●); Affidavit #1 of Grant Macdonald, K.C., made April 2, 2025, Ex. D (JAB Tab ●, p. ●); Affidavit #1 of Jessica Copple, made March 24, 2025, Ex. A (JAB Tab ●, p. ●); Affidavit #1 of Nalini Vaddapalli, made March 31, 2025, Ex. B (JAB Tab ●, p. ●); [Wiring v Law Society of Alberta](#), [2023 ABKB 580](#) (JBOA Tab ●, p. ●).

legislation abolish the Bar.⁷³ While it is certainly appropriate for the Legislature to make laws in relation to the regulation of lawyers, it must do so in a manner that complies with the system of government contemplated by the Constitution.

38. The existence of an independent Bar is also assumed by the *Charter*, which gives rise to more specific rules arising from the freedoms and guarantees in that part of the Constitution, including under:

- a. s. 7, which gives rise to a right to state-funded counsel in certain circumstances.⁷⁴ The lawyer's duty of commitment to the client's cause⁷⁵ and the right of effective assistance of counsel⁷⁶ are principles of fundamental justice which can limit the exercise of state power;
- b. s. 10(b), which guarantees a detainee the right to an opportunity to obtain legal advice (and the right to be advised of that right), including in support of the right under s. 7 to remain silent in the face of interrogation;⁷⁷ and
- c. s. 11(d), which guarantees the right to a fair and public hearing by an independent and impartial tribunal when charged with an offence.⁷⁸

39. The judicature provisions and the *Charter* imply not just the existence of a Bar, but of an independent Bar. Public confidence in the administration of justice (e.g. in the effectiveness of the courts and the independence of the judiciary, and in the meaning of

⁷³ [Reasons for Judgment](#) at paras. 90, 137 (JAR Tab 21, pp. 292, 302).

⁷⁴ [New Brunswick \(Minister of Health and Community Services\) v. G. \(J.\)](#), 1999 CanLII 653 (SCC), [1999] 3 SCR 46 (JBOA Tab ●, p. ●).

⁷⁵ [Canada \(Attorney General\) v. Federation of Law Societies of Canada](#), 2015 SCC 7 [FLSC] (JBOA Tab ●, p. ●).

⁷⁶ *Millen* at 115 (JBOA Tab ●, p. ●).

⁷⁷ [R v Sinclair](#), 2010 SCC 35, [2010] 2 SCR 310 at paras 24, 32 (JBOA Tab ●, p. ●); [R. v. Manninen](#), [1987] 1 SCR 1233 at pp. 1242-1243 (JBOA Tab ●, p. ●).

⁷⁸ [Valente v. The Queen](#), [1985] 2 SCR 673 [*Valente*] (JBOA Tab ●, p. ●); [R. v. Kahsai](#), 2023 SCC 20 (JBOA Tab ●, p. ●).

the specific rights enshrined in the *Charter*) depends on both the perception and the reality that lawyers may provide legal assistance for or on behalf of a client without fear of interference or sanction by the government or other outside influence.

40. A province's power to legislate under ss. 92(13) or 92(14) is not unlimited: "[u]nder the rule of law, all public powers must be legal, and all legal powers have limits."⁷⁹ The exercise of that power is constrained by and must be consistent with the other provisions of the Constitution,⁸⁰ interpreted purposively and as a coherent whole,⁸¹ by reference to the written text, informed by unwritten principles.⁸²

ii. Independence of the Bar has both individual and institutional dimensions

41. The Chief Justice agreed that the principle of independence of the Bar has both individual and institutional dimensions. But, as further set out below, the test he applied to Bill 21 did not properly accommodate that institutional dimension. The basis for the appropriate articulation of institutional independence is set out below.

42. Individual independence refers to the performance of lawyers' duties in their individual client mandates. Institutional independence relates to the status of the Bar as an institution that maintains the conditions in which the public can access a trustworthy and competent lawyer.⁸³ These dual dimensions of independence of the Bar arise from the dual private and public nature of lawyers' duties. As the Chief Justice held, "[t]he need for institutional independence acknowledges the fact that in addition to the duties

⁷⁹ [*Democracy Watch v. Canada \(Attorney General\)*](#), 2026 SCC 28 at para. [1](#) [*Democracy Watch*], (JBOA Tab ●, p. ●).

⁸⁰ [*Conférence des juges de paix magistrats du Québec v. Québec \(Attorney General\)*](#), 2016 SCC 39 at para. [39](#) [*Conference des juges*] (JBOA Tab ●, p. ●).

⁸¹ Rowe and Oza, "Structural Analysis" at 218 (JBOA Tab ●, p. ●).

⁸² [*Toronto \(City\) v. Ontario \(Attorney General\)*](#), 2021 SCC 34 at para. [55](#) [*Toronto City*] (JBOA Tab ●, p. ●).

⁸³ [*Mackin v. New Brunswick \(Minister of Finance\); Rice v. New Brunswick*](#), 2002 SCC 13 at para. [39](#) [*Mackin*] (JBOA Tab ●, p. ●).

owed to clients, lawyers owe broader duties to the courts and to the administration of justice more generally.”⁸⁴

43. Lawyers are the “guardians of our legal system and the rule of law.”⁸⁵ A lawyer is a “minister of justice, an officer of the courts, a client’s advocate and a member of an ancient, honourable and learned profession.”⁸⁶ These sometime competing duties have both a private or individual quality in the provision of legal advice and services within a particular client mandate, and a public or institutional quality in support of public confidence in the administration of justice:

- a. A lawyer owes a fiduciary duty to a client, from which springs the duty of loyalty and its sub-duties of commitment to the client’s cause (which includes the duty of resolute advocacy⁸⁷) and the duty to avoid conflicting interests.⁸⁸ The fiduciary relationship that grounds all of these specific duties serves the private purpose of ensuring a lawyer acts in the best interests of their client, and it serves the public purpose of ensuring public confidence in the administration of justice.⁸⁹
- b. Lawyers also owe duties of candour, fairness, integrity, and respect to the court, as officers of the court and ministers of justice. A lawyers’ duty to the

⁸⁴ [Reasons for Judgment](#) at para. [109](#) (JAR Tab 21, p. 296).

⁸⁵ The Right Hon. Beverley McLachlin, P.C., Chief Justice of Canada, “Professional Independence and the Rule of Law” (2007) 23 W.R.L.S.I. 3, at p. 5 (JBOA Tab ●, p. ●).

⁸⁶ Greenberg #3, Ex. 44, c. 2.1 (JBOA Tab ●, p. ●). See also [Fortin v. Chrétien](#), 2001 SCC 45 at paras. [49-53](#) (JBOA Tab ●, p. ●).

⁸⁷ [Groia v. Law Society of Upper Canada](#), 2018 SCC 27 at para. [72](#) [Groia] (JBOA Tab ●, p. ●).

⁸⁸ See, for example, [R. v. Neil](#), 2002 SCC 70 at para. [19](#) [Neil] (JBOA Tab ●, p. ●); [Canadian National Railway Co v McKercher LLP](#), [2013 SCC 39](#), [2013] 2 SCR 649 at paras. 19-47 (JBOA Tab ●, p. ●); [FLSC](#) SCC at para. 99 (JBOA Tab ●, p. ●).

⁸⁹ See, for example, [Neil](#) at para. [24](#), citing D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters’ Law of Trusts in Canada* (4th ed. 2012), at p. 968 (JBOA Tab ●, p. ●); [FLSC](#) at para. [96](#) (JBOA Tab ●, p. ●); [Groia](#) at para. [73](#) (JBOA Tab ●, p. ●);

court is “time-tested and vital to the legal profession’s role in the administration of justice.”⁹⁰ As the Chief Justice put it, “the courts can only function by having lawyers present evidence and arguments in accordance with their duties owed to their clients and to the administration of justice more generally.”⁹¹

- c. Lawyers have a duty to encourage public respect for and try to improve the administration of justice.⁹² This obligation is “not restricted to the lawyer’s professional activities but is a general responsibility resulting from the lawyer’s position in the community.”⁹³ By training, opportunity, and experience, lawyers are in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities, and must act accordingly.

44. The institutional dimension of independence recognizes that the Bar “participates along with other institutions in shaping the life” of our shared community.⁹⁴ Lawyers are not only individual actors within our legal system, but also part of a functioning collective that is essential to the administration of justice.⁹⁵

45. Institutional independence requires the court to consider the relationship of the Bar to external actors, such as the executive and legislative branches of government. As the Chief Justice concluded, institutional independence means that “lawyers cannot be said

Alice Woolley, Richard Devlin, Brent Cotter, & John M. Law, *Lawyers’ Ethics and Professional Regulation*, 4th ed. (Markham: LexisNexis Canada Inc., 2021), c. 3.1 (JBOA Tab ●, p. ●).

⁹⁰ [May v. Law Society of British Columbia](#), 2023 BCCA 218 at paras. 4-10 (JBOA Tab ●, p. ●).

⁹¹ [Reasons for Judgment](#) at para. 92 (JAR Tab 21, p. 293).

⁹² Greenberg #3, Ex. 44, c. 5.6 (JAB Tab ●, p. ●).

⁹³ Greenberg #3, Ex. 44, c. 5.6-1 (JAB Tab ●, p. ●).

⁹⁴ [The Queen v. Beauregard](#), [1986] 2 SCR 56 at pp. 69-70 (DLR) [*Beauregard*] (JBOA Tab ●, p. ●).

⁹⁵ [Andrews v. Law Society of British Columbia](#), [1989] 1 SCR 143 at pp. 187-188 (JBOA Tab ●, p. ●); [Beauregard](#) at p. 24 (DLR) (JBOA Tab ●, p. ●).

to be truly independent if they are subject to regulation by a body which is itself controlled, or unduly influenced, by outside forces, particularly those exerted by the state”.⁹⁶

B. The Chief Justice applied the wrong test to assess Bill 21’s constitutionality

46. The test applied to the Law Society’s central *vires* argument is set out at paragraph 110 of the Reasons for Judgment:

[110] Accordingly, the determination of the plaintiffs’ *vires* arguments turns on whether Bill 21 violates this concept of an independent Bar, by interfering with or unduly influencing the duties owed by lawyers, both to their clients and to the administration of justice more broadly, either through its direct application to lawyers and their clients or by way of the regulatory structure it creates.

47. The central flaw in this test is that it does not properly take account of the institutional dimension of the principle of independence of the Bar. Instead, the Chief Justice asks whether the provisions of Bill 21 (read in the four corners of the statute, without reference to their history and context) interfere with the *individual* independence of lawyers (i.e. the lawyers’ duties and functions) directly or through the regulator.

48. Protection of the institutional dimension of independence of the Bar requires more than this functional analysis. Protection of the Bar as an institution also requires consideration of public perception of the independence of the Bar.⁹⁷

49. The correct test is whether a reasonable person informed of the relevant statutory provisions, their historical background and the traditions surrounding them, after viewing the matter realistically and practically would conclude that Bill 21 maintains an

⁹⁶ [Reasons for Judgment](#) at para. [108](#) (JAR Tab 21, p. 296).

⁹⁷ [FLSC](#) at para. [97](#) (JBOA Tab ●, p. ●); [Judges Reference](#) (1997) at para. [112](#) (Nfld & PEIR) (JBOA Tab ●, p. ●).

independent Bar.⁹⁸ The application of this test requires the Court to identify the legal guarantees that ensure a reasonable perception of independence.⁹⁹

i. *The characteristics of an independent Bar*

50. By implication, the Chief Justice accepted that certain characteristics define the relationship of an independent Bar to other entities: “[i]ndependence of the Bar is a fundamental public right that lawyers may provide legal assistance for or on behalf of a client without fear of interference or sanction by the government, subject only to the lawyer’s professional responsibilities as prescribed by the Law Society, and the lawyer’s general duty as a citizen to obey the law.”¹⁰⁰ But because he did not apply the correct test, the Chief Justice did not further articulate those characteristics, or how they maintain the reality and the perception of an independent Bar.

51. The SCC’s jurisprudence on the principle of judicial independence (which is inextricably tied to independence of the Bar¹⁰¹) illustrates the need to identify characteristics that create a relationship of independence. The SCC identified the unwritten constitutional principle of judicial independence through “the reading together of s. 11(d) of the *Charter*, and the preamble and ss. 96 to 100 of the *Constitution Act, 1867*.”¹⁰² And the Court held that this principle protects all courts, not just the

⁹⁸ [Judges Reference](#) (1997) at para. 113 (Nfld & PEIR) (JBOA Tab ●, p. ●). See also [Mackin](#) at para. 38 (JBOA Tab ●, p. ●); [Ell v. Alberta](#), 2003 SCC 35 at para. 32 [*Ell*] (JBOA Tab ●, p. ●); [Conference des juges](#) at para. 33 (JBOA Tab ●, p. ●); [R. v. Edwards](#), 2024 SCC 15 at paras. 84-85 [*Edwards*] (JBOA Tab ●, p. ●); *Glover Berger* at paras. 329-330 (JBOA Tab ●, p. ●).

⁹⁹ [Valente](#) at p. 685 (JBOA Tab ●, p. ●). See also [Beauregard](#) at p. 73 (DLR) (JBOA Tab ●, p. ●); [Judges Reference](#) (1997) at paras. 111-112, 123-130 (Nfld & PEIR) (JBOA Tab ●, p. ●); [Mackin](#) at paras. 37-40 (JBOA Tab ●, p. ●); [Ell](#) at para. 28 (JBOA Tab ●, p. ●); [Conference des juges](#) at para. 33 (JBOA Tab ●, p. ●); [Edwards](#) at paras. 84-85 (JBOA Tab ●, p. ●); [FLSC](#) at para. 97 (JBOA Tab ●, p. ●); *Glover Berger* at paras. 329-330 (JBOA Tab ●, p. ●).

¹⁰⁰ [Reasons for Judgment](#) at para. 96 (JAR Tab 21, p. 294).

¹⁰¹ [Reasons for Judgment](#) at para. 92 (JAR Tab 21, p. 293).

¹⁰² [Toronto City](#) at para. 64 (JBOA Tab ●, p. ●), citing [Judges Reference](#) (1997) at para. 124 (Nfld & PEIR) (JBOA Tab ●, p. ●). See also [Judges Reference](#) (1997) at paras.

superior courts identified in s. 96, in recognition of the “central place that courts hold within the Canadian system of government” and to give effect to the “constitutional imperative” of preserving the “basic structure of our Constitution.”¹⁰³ The result of the Court’s structural analysis is that “the jurisdiction of the provinces over ‘courts’, as that term is used in s. 92(14) of the *Constitution Act, 1867*, contains within it an implied limitation that the independence of those courts cannot be undermined.”¹⁰⁴

52. The SCC articulated three characteristics of judicial independence that are necessary to ensure the reasonable perception of independence as a matter of preserving and upholding the Constitution: security of tenure;¹⁰⁵ financial security (which mandates an independent, effective, and objective judicial remuneration process, depoliticizes salary negotiations, and requires that judicial salaries not fall below a minimum level necessary to protect the judiciary from economic manipulation);¹⁰⁶ and administrative independence, which requires judicial control over the administrative decisions that bear directly and immediately on the exercise of the judicial function.¹⁰⁷

53. These essential conditions are specific to the constitutional role of the judiciary and serve as constitutional guardrails (or minimum standards) for government action in respect of the judiciary. The SCC has held that each of these conditions must be “institutionalized through appropriate legal mechanisms”¹⁰⁸ though the exact details of the

[83](#), [108](#) (Nfld & PEIR) (JBOA Tab ●, p. ●); [Beauregard](#) at pp. 70-74 (DLR) (JBOA Tab ●, p. ●).

¹⁰³ [Judges Reference](#) (1997) at para. [108](#) (Nfld & PEIR) (JBOA Tab ●, p. ●).

¹⁰⁴ [Judges Reference](#) (1997) at para. [108](#) (Nfld & PEIR) (JBOA Tab ●, p. ●). See also Rowe and Oza, “Structural Analysis” at paras. 218-219 (JBOA Tab ●, p. ●).

¹⁰⁵ See [Valente](#) at p. 698 (JBOA Tab ●, p. ●). See also [Elli](#) at paras. [32-37](#) (JBOA Tab ●, p. ●).

¹⁰⁶ See [Judges Reference](#) (1997) at paras. [131-137](#) (Nfld & PEIR) (JBOA Tab ●, p. ●).

¹⁰⁷ See [Valente](#) at pp. 711-712 (JBOA Tab ●, p. ●); see also [Edwards](#) at paras. [116-117](#) (JBOA Tab ●, p. ●); Greenberg #3, Ex. 60 (JAB Tab ●, p. ●). See also Canadian Judicial Council, “[Why Judicial Independence Matters](#)” (2026) (JBOA Tab ●, p. ●).

¹⁰⁸ [Mackin](#) at para. [40](#) (JBOA Tab ●, p. ●).

institutional design need not be specified, leaving room for policy discretion within constitutional limits.¹⁰⁹ In this way, unwritten constitutional principles give rise to concrete legal rules that constrain government action in order to preserve our basic constitutional structure, while accommodating the variability and evolution that is central to the Canadian legal context.

ii. *Two essential characteristics of independence of the Bar are self-governance and self-regulation*

54. The systems and structures that best ensure the Bar's independent status, "thereby assuring the public of lawyers' independence and freedom from conflicts with the state"¹¹⁰ include (i) self-regulation and (ii) self-governance. Self-regulation as a characteristic of independence of the Bar refers to the Bar's ability to set and enforce standards (i.e. through the Rules or the Code) that apply to the admission, practice of law, competence and discipline of lawyers in the province. Self-governance as a characteristic of independence of the Bar refers to 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.

55. Without self-governance and self-regulation, it is open to the government or other interests to dictate the individuals or groups that may regulate lawyers (or the government or outside groups may regulate them directly), the manner in which lawyers are regulated, and ultimately the manner in which lawyers carry out their duties to clients, courts, and the administration of justice. When that occurs, the public is not assured of access to independent courts facilitated by an independent Bar. It follows then that self-governance

¹⁰⁹ See, for example, [Valente](#) at pp. 692-694 (JBOA Tab ●, p. ●); [R. v. Généreux](#), [1992] 1 SCR 259 at paras. 284-285 (JBOA Tab ●, p. ●); [Judges Reference](#) (1997) at paras. 167, 185 (Nfld & PEIR) (JBOA Tab ●, p. ●); [Therrien \(Re\), 2001 SCC 35 \(CanLII\)](#), 2001 SCC 35 at paras. 65-71 (JBOA Tab ●, p. ●); [Elli](#) at paras. 30-32 (JBOA Tab ●, p. ●); [Conférence des juges](#) at paras. 33, 39, 50, 55 (JBOA Tab ●, p. ●); [Glover Berger](#) at paras. 120, 130 (JBOA Tab ●, p. ●).

¹¹⁰ [Greenberg #1](#), para. 69, Ex. 20 (JAB Tab ●, pp. ●); [Greenberg #3](#), Ex. 56 (JAB Tab ●, p. ●).

and self-regulation are essential characteristics of independence of the Bar, without which it cannot exist.

56. Identifying the characteristics of independence of the Bar as self-governance and self-regulation does not imply that any particular *mode* of self-governance (such as electoral self-governance) is constitutionally required in all circumstances, just as identifying financial security as a characteristic of judicial independence does not set a constitutionally-required salary. These characteristics do not dictate a “particular legislative or constitutional formula”¹¹¹ or entrench a “particular institutional framework in constitutional stone,”¹¹² and there is “scope for local choice.”¹¹³ The provincial and territorial schemes for legal regulation may reflect the diversity in legal context across Canada. As set out below, the tradition of self-governance that has developed in British Columbia is governance by a strong majority of elected Benchers.¹¹⁴ Considering that tradition in the context of Bill 21’s elimination of electoral self-governance is central to a proper understanding of whether the independence of the Bar in British Columbia is compromised by Bill 21.

57. Identifying self-governance and self-regulation as characteristics of an independent Bar as also does not imply that lawyers are not subject to other means of regulation. Legislatures, the judiciary, and the public all play important roles in modern legal regulation.¹¹⁵ However, in order to main the status of the Bar as an independent institution, these other sources of regulation must be optimally balanced to enhance, rather than erode, the public’s access to independent legal advice, the public’s access to

¹¹¹ [Valente](#) at p. 675 (JBOA Tab ●, p. ●).

¹¹² [Judges Reference](#) (1997) at para. [185](#) (Nfld & PEIR)(JBOA Tab ●, p. ●).

¹¹³ [Judges Reference](#) (1997) at para. [167](#) (Nfld & PEIR) (JBOA Tab ●, p. ●).

¹¹⁴ Greenberg #3, Exs. 3, 9, 12-17, 37 (JAB Tab ●, pp. ●).

¹¹⁵ Amy Salzyn, "The Judicial Regulation of Lawyers in Canada" (2014) 37:2 Dal LJ 481 (JBOA Tab ●, p. ●).

independent courts, and the rule of law.¹¹⁶ Self-governance and self-regulation ensure this essential balance.

iii. ***Self-governance and self-regulation are not indulgences to be dispensed by the state***

58. Rather than considering the objective effect on an independent Bar if its essential characteristics of self-governance and self-regulation are revoked unilaterally by government, the Chief Justice considered whether there was authority for the proposition that *electoral* self-governance is a constitutional requirement.¹¹⁷ Relying on *Jabour*, he found that it was not.¹¹⁸

59. *Jabour* cannot stand for the proposition that the government may eliminate self-governance and self-regulation by ordinary legislation, which is subordinate to the supreme law of Canada in the Constitution. *Jabour* did not involve reform to governance structure of the legal profession, which requires a holistic assessment of the changes to the conditions that impact the constitutional principle (independence of the Bar).¹¹⁹ By the Chief Justice's own reasoning, the constitutional landscape should be understood differently than at the time of *Jabour*.¹²⁰ And in any event the specific question of institutional design in constitutional context was considered open by the SCC in *FLSC*,¹²¹ not determined by *Jabour*.

60. Similarly, *Pearlman* did not decide that self-governance is a policy choice that can be revoked by the Legislature at its will. *Pearlman* endorsed the "particular importance

¹¹⁶ Law Society of Upper Canada, "Protecting the Public through an Independent Bar: The Task Force Report", in *In the Public Interest: 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) at pp. 8-9 (JBOA Tab ●, p. ●).

¹¹⁷ [Reasons for Judgment](#) at para. [140](#) (JAR Tab 21, p. 303).

¹¹⁸ [Reasons for Judgment](#) at para. [158](#) (JAR Tab 21, p. 309).

¹¹⁹ [Conference des juges](#) at paras. [36](#), [70](#) (JBOA Tab ●, p. ●).

¹²⁰ [Reasons for Judgment](#) at para. [95](#) (JAR Tab 21, p. 293).

¹²¹ [FLSC](#) at para. [86](#) (emphasis added) (JBOA Tab ●, p. ●).

of an autonomous legal profession to a free and democratic society”,¹²² and connected the self-governing status of the profession to the public interest. The SCC recognized that the Manitoba Law Society *is* self-governing,¹²³ not that it is a valid exercise of the legislature’s authority to impose a new structure on a law society.

61. Self-regulation is a privilege and a duty; it is not an indulgence to be dispensed by the state. If the concepts of self-governance and self-regulation – not just their modes – are “policy choices”, as the Attorney General contends, then independence of the Bar and the rights it protects are meaningless.¹²⁴

C. Bill 21 does not maintain an independent Bar

62. The correct analysis is the examination of Bill 21 holistically, considering the independent Bar as part of our basic constitutional structure, and the context in which Bill 21 is enacted. The correct question is whether Bill 21, which eliminates the Law Society and removes the Benchers from office, and creates a new and different regulatory regime in which lawyers, including elected lawyers, have a more limited role in their governance, interferes with the essential characteristics of self-governance and self-regulation and thereby violates the principle of an independent Bar.

i. Evidence of the history and context of legal regulation and of Bill 21 is legally relevant to a constitutional analysis

63. The Court’s conclusion that the government’s “significant departure” from established practice in the enactment of Bill 21 was a “political issue”, not a legal issue, and that the history or context of legal regulation in British Columbia is irrelevant to the Court’s constitutional analysis, is an error of law. The history and context of the enactment of legislation is legally relevant in a constitutional analysis if it affects the

¹²² [Pearlman v. Manitoba Law Society Judicial Committee](#), [1991] 2 SCR 869 at p. 887 [Pearlman] (JBOA Tab ●, p. ●).

¹²³ [Pearlman](#) at p. 888 (JBOA Tab ●, p. ●).

¹²⁴ Greenberg #1, Ex. 22 (JAB Tab ●, p. ●).

government's compliance with the constitutional principle at issue,¹²⁵ and is essential to understanding the effect of legal reform.¹²⁶ An understanding of the historical background and traditions surrounding the impugned provisions is central to the objective test that must be applied to questions of interference with independence.¹²⁷

An abbreviated history of legal regulation in BC

64. The first provision for a court of record and for the practice of law in the colonies that became British Columbia was made by order-in-council proclaimed by Queen Victoria on April 4, 1856.¹²⁸ This order represents the origin of the justice system in British Columbia, directly imports the principles of the Westminster system into British Columbia, and confirms the fundamental connection between lawyers and the courts within that system.

65. The first *Legal Professions Act* was enacted in the Colony of British Columbia (and extended to the Colony of Vancouver's Island) in 1863.¹²⁹ In 1869, thirteen members of the Bar formed a self-governing association to be known as the Law Society of British Columbia. That Society was formally incorporated by the *Legal Professions Act, 1874*,¹³⁰ and re-established by the *Legal Professions Act 1884*.¹³¹ These Acts both provided for a self-governing structure composed of elected Benchers with the power to enact rules to govern the members of the Society. This basic structure of electoral self-governance and self-regulation was maintained in each iteration of the enabling legislation for 150 years

¹²⁵ [British Columbia Teachers' Federation v. British Columbia](#), 2015 BCCA 184 at paras. 283-303, Donald JA, (dissenting) (JBOA Tab ●, p. ●); appeal allowed, [British Columbia Teachers' Federation v. British Columbia](#), 2016 SCC 49 (JBOA Tab ●, p. ●); [Mikisew Cree First Nation v. Canada \(Governor General in Council\)](#), 2018 SCC 40 at para. 48 (JBOA Tab ●, p. ●).

¹²⁶ [Mackin](#) at paras. 65-67 (JBOA Tab ●, p. ●).

¹²⁷ [Judges Reference](#) (1997) at para. 113 (Nfld & PEIR) (JBOA Tab ●, p. ●).

¹²⁸ Greenberg #3, Ex. 3 (JAB Tab ●, p. ●).

¹²⁹ Greenberg #3, Ex. 5 (JAB Tab ●, p. ●).

¹³⁰ Greenberg #3, Ex. 12 (JAB Tab ●, p. ●).

¹³¹ Greenberg #3, Ex. 16 (JAB Tab ●, p. ●).

until the enactment of Bill 21 in 2024,¹³² and has evolved to mean the election of 25 Benchers from nine geographical regions, together with six appointed lay Benchers.

66. Further, 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.¹³³

67. The history and tradition of electoral self-governance and self-regulation of lawyers, founded on careful negotiation and collaboration between the Bar and the executive in British Columbia, is how the independent status of the Bar is maintained in British Columbia, and how that status is communicated to the public. This history and context provides the baseline against which the reforms the government seeks to introduce through Bill 21 must be considered. The Chief Justice ought to have considered the evidence of the unilateral enactment of Bill 21 in stark contrast to the history and tradition of legal regulation in the province as evidence that informs the objective inquiry of whether Bill 21 is *ultra vires* the Constitution.

ii. Bill 21 violates the independence of the Bar and is therefore ultra vires the Legislature

68. By ss. 5 and 230 of Bill 21, when brought into force, the Law Society is eliminated as the body through which the independent Bar governs itself. The Benchers – elected by lawyers to carry out the regulatory task in concert with lay Benchers – are dismissed from office.¹³⁴ The Rules and the *Code*, carefully crafted by the Bar over more than 150 years, and which guide and inform lawyers individually and collectively, are not continued. The legislation was drafted by the executive and enacted by the legislature over the public opposition of the Bar, including as expressed by the Benchers¹³⁵ and numerous

¹³² Greenberg #3, Exs. 3, 9, 12-17, 37 (JAB Tab ●, pp. ●).

¹³³ Greenberg #3, Exs. 19-22, 24, 27, 30-31, 34-35 (JAB Tab ●, pp. ●).

¹³⁴ Bill 21, s. 230(1) (BE Tab ●, p. ●).

¹³⁵ Greenberg #1, Ex. 38 (JAB Tab ●, p. ●).

significant lawyer associations.¹³⁶ There has not been a more stark interference with the governance of the Bar in the history of Canada. The enactment of Bill 21 in this context objectively interferes with the self-governance and self-regulation of lawyers, and so does not maintain the independent Bar.

69. There is no reason for the elimination of the Law Society or electoral self-governance of lawyers in British Columbia.¹³⁷ There is no evidence that the Law Society has governed lawyers in a manner that is contrary to the public interest.¹³⁸ In the debate over Bill 21, the Attorney General told the Legislative Assembly that “[t]here's no doubt that I have that the benches [*sic*] and the members of the Law Society act honourably, and they do their best to protect the public interest.”¹³⁹ The absence of any justification for the wholesale replacement of electoral self-governance of lawyers in British Columbia suggests the interference is arbitrary and not consistent with maintenance of independence of the Bar.

70. The regulatory structure created by Bill 21, in reality and in perception, vests control over the role and conduct of lawyers in outside parties:

- a. ss. 6 (Duties of Regulator) and 8 (Board of Directors): The members of the Bar will not have control over the body responsible for regulating the practice of law and establishing standards and programs for the education, training, competence, practice and conduct of lawyers and law firms (section 6(1)). Once the transition is complete,¹⁴⁰ the Bar will be governed by a board consisting of 17 directors, only five of whom will be elected by lawyers – 29% of the board, compared with 78% under the existing *LPA* and Rules.¹⁴¹ The five

¹³⁶ Greenberg #1, Ex. 44 (JAB Tab ●, p. ●).

¹³⁷ [Reasons for Judgment](#) at para. 79 (JAR Tab 21, p. 289).

¹³⁸ [Reasons for Judgment](#) at para. 145 (JAR Tab 21, p. 304).

¹³⁹ Affidavit #1 of Patti Lewis made May 24, 2024, Ex. G (JAB Tab ●, p. ●).

¹⁴⁰ Bill 21, s. 230(4)-(6) (BE Tab ●, p. ●).

¹⁴¹ Armitage XFD (JAB Tab ●, p. ●, q. 348).

elected lawyers do not determine the additional four lawyers who must be appointed as directors, with the result that Bill 21's provision for a board with a minimum of nine out of 17 lawyers does not enable electoral self-governance. Lawyers can never form a majority of the executive committee of the regulator, and the government's appointment to the Board is ensured a seat on the executive committee.¹⁴² As a result, Bill 21 does not include a key mechanism for ensuring institutional independence,¹⁴³ which is significant generally and as a departure from the history of legal regulation in this province.¹⁴⁴

- b. s. 7 (Guiding Principles): The Board must govern the Bar with regard to governing principles chosen by the government, rather than the Bar. These guiding principles include a direction to support "the implementation of the United Nations Declaration on the Rights of Indigenous Peoples", an international instrument that is currently only partially implemented in this province¹⁴⁵ and the implementation of which is the subject of extensive and divisive public debate. Governance of the Bar, and individual lawyers, has always been subject to the law; the introduction of "guiding principles" is intended to direct the Board in its consideration of the law, and therefore encroaches on self-regulation.
- c. ss. 26 (Rules – consultation) and 226 (Transition – first rules): The first rules of the new regulator, which govern admission, practice of law, competence and discipline "may not be made unless they are first approved...by the transitional Indigenous council" (s. 226), and the Indigenous council also holds more

¹⁴² Bill 21, s. 10 (BE Tab ●, p. ●).

¹⁴³ See, for example, [TWU](#) at paras. [37-38](#) (JBOA Tab ●, p. ●); [Finney](#) at para. [1](#) (JBOA Tab ●, p. ●).

¹⁴⁴ [Reasons for Judgment](#) at para. [140](#) (JAR Tab 21, p. 303).

¹⁴⁵ [Gitxaala v. British Columbia \(Chief Gold Commissioner\)](#), 2025 BCCA 430 at para. [145](#) (JBOA Tab ●, p. ●).

specific rule approval powers set out in s. 30.¹⁴⁶ The transitional bodies are also co-developing the professional code of conduct,¹⁴⁷ which is now made binding on lawyers by Bill 21. The Chief Justice concluded that rule-approval power does not undermine independence because it “does not equate to rule-making authority”.¹⁴⁸ However, there can be no dispute that s. 226 gives an entity external to the Bar significant influence over all rules governing lawyers, in process and substance, and as a matter of fact and perception. The Chief Justice’s conclusion fails to appreciate the impact of this external influence on institutional independence, and it is inconsistent with his acknowledgement 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.”¹⁴⁹

- d. Section 211 (General regulation-making authority): This provision gives Cabinet the power to “make regulations respecting any matter for which regulations are contemplated by this Act” (section 211(1)). The Chief Justice concluded that this power only applies where Bill 21 expressly provides for Cabinet regulations.¹⁵⁰ With respect, this interpretation disregards section 211(2), which states that “the authority to make regulations under another provision of this Act does not limit subsection (1)”. Thus, the authority granted by section 211(1) is distinct from and not limited by the express grants of authority elsewhere in the statute. It is a vague power that creates the potential, and the perception, of Cabinet regulation of lawyers.

¹⁴⁶ Bill 21, ss. 26 and 226 (BE Tab ●, p. ●).

¹⁴⁷ See, for example, Affidavit #1 of Lindy Grant filed September 24, 2025, Ex. A (JAB Tab ●, p. ●).

¹⁴⁸ [Reasons for Judgment](#) at para. [190](#) (JAR Tab 21, p. 315).

¹⁴⁹ [Reasons for Judgment](#) at para. [108](#) (JAR Tab 21, p. 296).

¹⁵⁰ [Reasons for Judgment](#) at para. [198](#) (JAR Tab 21, p. 317).

- e. Part 6: Bill 21 prescribes and proscribes certain conduct¹⁵¹ by lawyers that has long been the subject of careful protection by the Benchers through the Rules and the *Code*.

71. It is not possible to read constitutionally compliant meaning into these provisions. Bill 21 is based on a concept of “lawyer independence” that does not recognize the institutional dimension of independence of the Bar, and it is fundamentally incompatible with the Constitution.¹⁵²

72. The Law Society does not suggest that a legislature can never make changes to a legal regulation statute under s. 92(13) or (14) of the *Constitution Act, 1867*, or even introduce reforms. Modernization of legal regulation has been and will continue to be the subject of legislation. But those reforms will always be subject to constitutional guardrails required to maintain the independence of the Bar. Bill 21 fails that test.

PART 4 - NATURE OF ORDER SOUGHT

73. The appellant seeks an order that the appeal be allowed, and seeks the following declarations:

- a. Bill 21, save and except sections 311-314, or alternatively that 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.

74. The appellant seeks an order for costs of this proceeding in favour of the Law Society, or alternatively, if the appeal is not allowed, that the parties bear their own costs.

All of which is respectfully submitted.

¹⁵¹ Bill 21, Part 6 (BE Tab ●, p. ●).

¹⁵² [*Democracy Watch*](#) at para. [83](#) (JBOA Tab ●, p. ●).

Dated at the City of Vancouver, Province of British Columbia, August 5, 2026.



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