



COURT OF APPEAL FILE NO. CA51535

Trial Lawyers Association of British Columbia and Kevin Westell v. Attorney General of
British Columbia
Intervener'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:

Trial Lawyers Association of British Columbia and Kevin Westell
APPELLANTS (Plaintiffs)

AND:

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

RESPONDENTS (Defendants)

AND:

The British Columbia Access to Justice Centre for Excellence
INTERVENER

COURT OF APPEAL FILE NO. CA51536

Law Society of British Columbia v. Attorney General of British Columbia
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BETWEEN:

Law Society of British Columbia
APPELLANT (Plaintiff)

AND:

**Attorney General of British Columbia and the Lieutenant Governor in Council of
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RESPONDENTS (Defendants)

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INTERVENER'S FACTUM

The British Columbia Access to Justice Centre for Excellence

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TABLE OF CONTENTS

OPENING STATEMENT	iv
PART 1 - STATEMENT OF FACTS	1
PART 2 - ISSUES ON APPEAL	1
PART 3 – ARGUMENT	1
A. Access to justice is central to these appeals	2
B. Access to justice should be recognized as an unwritten constitutional principle ..	3
I. The nature of unwritten constitutional principles	3
II. Access to justice is a “vital unstated assumption” of the constitutional text.....	3
III. Access to justice has a symbiotic relationship with lawyer independence	6
C. A people-centred conception of access to justice clarifies the meaning of the public interest.....	8
PART 4 - NATURE OF ORDER SOUGHT	10
APPENDIX 1: LIST OF AUTHORITIES.....	11
APPENDIX 2: ENACTMENTS	13

OPENING STATEMENT

The British Columbia Access to Justice Centre for Excellence (“**ACE**”) intervenes to advocate for a robust and contemporary understanding of access to justice as a guiding principle in these appeals.

ACE’s submissions address two issues: 1) The role of access to justice in the architecture of the constitutional principles of lawyer independence and the rule of law; and 2) How access to justice should inform the conception of public interest in the context of the regulation of legal professionals.

The finding that the independence of lawyers is an unwritten constitutional principle requires addressing the access to justice implications of that finding. The *Legal Professions Act*, which is the focus of this case, was introduced explicitly to help address access to justice problems.

Access to justice is a vital unstated assumption of the Constitution. This Court should recognize it as an unwritten constitutional principle. It interacts with the other unwritten principles, including that of lawyer independence, to demonstrate that the core value of these principles lies not only in how they support the infrastructure of the justice system, but also in how they permit people to engage with the justice system in ways that promote equitable access to justice throughout society.

Access to justice is also important in understanding the concept of the public interest in these appeals. A people-centred conception of access to justice starts with people and their legal needs, not with institutions. It clarifies the meaning of regulating in the public interest. Understanding the broad nature of assistance that lawyers provide, and how that assistance can help people with legal needs, has important implications, including that if other legal professionals take on roles previously filled by lawyers, those professions must have the same protections that are inherent in the principle of lawyer independence.

Access to justice demands no less.

PART 1 - STATEMENT OF FACTS

1. The British Columbia Access to Justice Centre for Excellence (“**ACE**”) is a provincial research centre hosted at the University of Victoria Faculty of Law. Its mission is to support, promote, and facilitate scholarly research and education on access to justice, with a focus on applied research that seeks practical solutions.¹

2. ACE was granted leave to intervene in these appeals by the order of Justice Horsman dated September 18, 2026.² ACE does not seek to extend or to dispute the factual record in these appeals.

PART 2 - ISSUES ON APPEAL

3. ACE intervenes to address two issues:

- (i) The role of access to justice in the architecture of the constitutional principles of lawyer independence and the rule of law; and,
- (ii) How access to justice should inform the conception of public interest in the context of the regulation of legal professionals.³

4. ACE takes no position on the outcome of the appeals.

PART 3 – ARGUMENT

5. ACE’s argument proceeds in three parts: 1) access to justice is central to these appeals; 2) access to justice should be recognized as an unwritten constitutional principle; and 3) a people-centred conception of access to justice clarifies the meaning of the public interest.

¹ *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2026 BCCA 383 (in Chambers) [Leave to Intervene Reasons], at paras 34, 37 and 39.

² Leave to Intervene Reasons at paras 39, 118(b).

³ Leave to Intervene Reasons at paras 35, 40, 118(d)(i).

A. Access to justice is central to these appeals

6. One of the government's stated goals in enacting the *Legal Professions Act*⁴ is to increase the availability of legal services for people in B.C. by "offer[ing] more choices (and more affordable choices) of legal service providers for the public".⁵

7. While access to legal services is only one aspect of access to justice, it is of pivotal importance. In introducing the Act in the Legislative Assembly, the Attorney General identified access to justice more broadly as a key motivator for the legislation.⁶

8. Access to justice includes being able to understand that a problem is legal in nature, to seek out appropriate advice to resolve it, to pursue a resolution, to obtain a resolution that conforms with legal requirements, and to have the benefit of that resolution. Most Canadians with legal problems will resolve those problems – or fail to resolve them – without ever engaging with any formal dispute resolution forum.⁷ Access to the courts is only one piece of the access to justice puzzle.

9. The government recognized the importance of access to legal services in relation to access to justice by designating access to legal services as one of the four principles guiding the new regulator,⁸ and by mandating within the Act a report on "the extent to which this Act, the regulations, and the rules facilitate access to legal services in British Columbia."⁹

10. Chief Justice Skolrood recognized an unwritten constitutional principle of lawyer independence.¹⁰ He did not address how that principle relates to access to justice. ACE asks this Court to examine that relationship.

⁴ *Legal Professions Act*, SBC 2024, c 26 [Act].

⁵ *Law Society of British Columbia v British Columbia (Attorney General)*, 2026 BCSC 779 [Chambers Decision], at para 77.

⁶ British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 42nd Parl, 5th Sess, No 425 (1 May 2024) (N. Sharma) at 4:35 p.m.

⁷ See *Hryniak v Mauldin*, 2014 SCC 7 [*Hryniak*] at paras 24-25.

⁸ The Act at s. 7.

⁹ The Act at s. 24(1)(a).

¹⁰ Chambers Decision at para 95.

11. ACE submits that the unwritten constitutional principle of lawyer independence must exist in relationship to other unwritten constitutional principles, including the rule of law, judicial independence, and access to justice.

B. Access to justice should be recognized as an unwritten constitutional principle

I. The nature of unwritten constitutional principles

12. The Supreme Court of Canada (“SCC”) has stated that the unwritten constitutional principles are a vital part of the Constitution’s “internal architecture”.¹¹

13. The relationship between unwritten principles and the constitutional text has two characteristics: first, the text must always prevail if there is a potential conflict with an unwritten principle; and second, the unwritten principles must be anchored in the constitutional text, such that they can be understood as being “vital unstated assumptions upon which the text is based.”¹²

14. The unwritten principles “function in symbiosis” such that “[n]o single principle can be defined in isolation from the others, nor does any one principle trump or exclude the operation of any other.”¹³

15. It is uncontroversial that unwritten principles can be used in interpreting constitutional provisions and in filling gaps when the Constitution is silent on important matters that are necessary for the coherence of its architecture.¹⁴

II. Access to justice is a “vital unstated assumption” of the constitutional text

16. The SCC has explained how the unwritten principles are required by the text of the Constitution: while federalism is not named in the Constitution, a federal system is

¹¹ *Reference re Secession of Quebec*, 1998 CanLII 793, [1998] 2 S.C.R. 217 [Secession Reference] at paras 50-51.

¹² *Secession Reference* at para 49. See *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 [Toronto (City)] at paras 53-59.

¹³ *Secession Reference* at para 49.

¹⁴ *Toronto (City)* at paras 55-56.

established by the text;¹⁵ while democracy is not named in the constitutional text, elected legislatures are established in the text;¹⁶ while judicial independence is not part of the constitutional text, the text establishes courts and gives those courts some specific characteristics.¹⁷

17. In the same way, several textual aspects of the Constitution require access to justice as a necessary implication of the text. The most important of these is the *Charter of Rights and Freedoms* itself.¹⁸ Rights with no means of vindicating them are legally meaningless. The ability to vindicate one's rights includes having knowledge of their existence, having the capacity to understand and interpret the rights, knowing what procedures are required to make a legal claim, being able to substantively and practically pursue that claim, and being able to reap the benefits of a ruling in one's favour. All of these factors are aspects of access to justice.

18. The constitutional text also requires access to justice as an unstated assumption in the establishment of courts in s. 96. The SCC has commented that "ss. 92(14) and 96 work together to advance access to justice by allowing the superior courts to coexist with tribunals and courts with provincially appointed members".¹⁹

19. Courts have recognized the unstated and constitutional character of access to justice: "[a]s the guardians of the rule of law, courts must be open and accessible to everyone all the time. This is a constitutional imperative, although seldom spelled out in the constitutions of liberal democratic states."²⁰

¹⁵ *Secession Reference* at paras 55-57.

¹⁶ *Secession Reference* at para 62.

¹⁷ *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, 1997 CanLII 317, [1997] 3 SCR 3 (SCC) [*Provincial Judges Reference*] at paras 83, 88-89, 105-109.

¹⁸ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹⁹ *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27 [*Civil Procedure Reference*] at para 40.

²⁰ *Trisura Guarantee Insurance v Duchnij, et al*, 2021 ABCA 78 (in Chambers) at para 50.

20. The SCC has also recognized that access to justice, though unstated in constitutional text, plays a vital role in constitutional analysis:

- a. In *B.C.G.E.U. v British Columbia (Attorney General)*, considering the concept of “access to justice” explicitly for the first time, the SCC stated that “[t]here cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice.”²¹ This framing understands access as a buttress to the rule of law.
- b. The majority in *Trial Lawyers Association of British Columbia v BC(AG)* stated that “...access to justice is fundamental to the rule of law...it is only natural that s. 96 provide some degree of constitutional protection for access to justice.”²²
- c. In concurrence in *Trial Lawyers 2014*, Justice Cromwell endorsed *Polewsky v Home Hardware Stores Ltd.*, in which the Ontario Divisional Court found that the rule of law “combined with what we find to be the common law constitutional right of access to justice” required some form of *in forma pauperis* provision for Ontario Small Claims Courts.²³

21. In addition, the SCC has recognized access to justice as a crucial standalone principle even beyond the constitutional context. In *Hryniak*, the Court rejected a challenge to revised summary judgment rules, recognizing that “...ensuring access to justice is the greatest challenge to the rule of law in Canada today.”²⁴ In *Uber Technologies v Heller* Justice Brown, concurring, stated that “...unless everyone has reasonable access to the law and its processes where necessary to vindicate legal rights,

²¹ *B.C.G.E.U. v British Columbia (Attorney General)*, 1988 CanLII 3, [1988] 2 SCR 214 (SCC) [BCGEU] at para 25.

²² *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59 [Trial Lawyers 2014] at para 39.

²³ *Trial Lawyers 2014* at para 71, citing *Polewsky v Home Hardware Stores Ltd.*, 2003 CanLII 48473, 66 OR (3d) 600 (ONSCDC) at para 60.

²⁴ *Hryniak* at para 1.

we will live in a society where the strong and well-resourced will always prevail over the weak.”²⁵

22. In the Chambers Decision, the Chief Justice adopted the proposition that a constitution which guarantees fundamental rights must “first protect that which makes it possible to benefit from such guarantees, namely every citizen’s constitutional right to effective, meaningful and unimpeded access to a court of law through the aegis of an independent bar”.²⁶ He concluded that it is “inconceivable that a constitution that protects fundamental rights would not also protect access to independent courts by way of an independent Bar”.²⁷ Accordingly, the independence of the Bar is not an end in itself. It is a means by which the Constitution secures access.

III. Access to justice has a symbiotic relationship with lawyer independence

23. The SCC has emphasized the relationships between different unwritten constitutional principles. For example, that Court has stated that “democracy in any real sense of the word cannot exist without the rule of law.”²⁸ Similarly, separation of powers and judicial independence function together,²⁹ and judicial independence has its own relationship with the rule of law.³⁰

24. Access to justice also has a symbiotic relationship with the principles of democracy, rule of law, constitutionalism, protection of minorities, and judicial independence. None of these principles is able to reach its constitutional potential if those governed by the Constitution do not have access to justice.

25. The principle of lawyer independence recognized in the Chambers Decision similarly fits into this constellation. Its essential constitutional value is not found in what it

²⁵ *Uber Technologies Inc. v Heller*, 2020 SCC 16 [*Uber*] at para 112.

²⁶ Chambers Decision at para 95, quoting J. Giles, “The Independence of the Bar” (2001) 59:4 *The Advocate* at p 549.

²⁷ Chambers Decision at para 137.

²⁸ *Secession Reference* at para 67.

²⁹ *Civil Procedure Reference* at paras 46-47.

³⁰ *Provincial Judges Reference* at para 10.

provides for lawyers individually or for the legal profession institutionally. Rather, lawyer independence matters because of what it provides to those served by lawyers. As the Chief Justice put it, “the right to impartial advice free from undue outside influence is a right that belongs to clients”.³¹ In this way, it is directly related to access to justice because only those with an understanding of their rights, and sufficient knowledge and resources to engage the justice system, are able to become the clients that the unwritten principle of lawyer independence envisions.

26. Courts have repeatedly noted the connection between lawyer independence and access to justice. In *B.C.(A.G.) v Christie*, the SCC emphasized “the important role that lawyers play in ensuring access to justice and upholding the rule of law”.³² If lawyer independence is to be recognized as an unwritten constitutional principle, its content should be explained in relation to other constitutional principles, such as access to justice, the rule of law, and judicial independence.

27. The principle of lawyer independence cannot be fully developed without articulating its relationship to access to justice. In the present appeals this means:

- a. If this Court upholds the unwritten principle of lawyer independence, it should also acknowledge the unwritten principle of access to justice and describe the close relationship between those two principles;
- b. The interaction of the unwritten principles of lawyer independence, access to justice, and also of the rule of law and judicial independence, suggests that the core value of these principles lies not only in how they support the infrastructure of the justice system, but also in how they permit people to engage with the justice system in ways that promote equitable access to justice throughout society.

³¹ Chambers Decision at para 107.

³² *British Columbia (Attorney General) v Christie*, 2007 SCC 21 [*Christie*] at para 22.

C. A people-centred conception of access to justice clarifies the meaning of the public interest

28. It is common ground among the parties that lawyer regulation must be in the public interest. In *Law Society of British Columbia v Trinity Western University*, the SCC noted that “[t]he public interest is a broad concept and what it requires will depend on the particular context.”³³ In the particular context of these appeals, the public interest implicates access to justice and this should be explicitly stated.

29. While it is unnecessary to exhaustively define access to justice, some description of its content is necessary to understand how it shapes the public interest.

30. In *AIC Limited v Fischer*, Justice Cromwell defined access to justice as follows:³⁴

It has two dimensions, which are interconnected. One focuses on process and is concerned with whether the claimants have access to a fair process to resolve their claims. The other focuses on substance — the results to be obtained — and is concerned with whether the claimants will receive a just and effective remedy for their claims if established. They are interconnected... As the Honourable Frank Iacobucci put it, “access to justice must contain both a procedural and a substantive component. I find it difficult to accept that providing injured parties with a process to pursue their claims can be divorced from ensuring that the ultimate remedy arising from the process provides substantive justice where warranted” [citation omitted]

31. His definition is consistent with the conceptualization of access to justice proposed by socio-legal scholar Rebecca Sandefur:

There is access when disputes and problems governed by... law... resolve with results that satisfy legal norms. These include substantive norms that govern the rights, duties, and responsibilities of the different parties to a transaction or relationship... When such problems are processed in some kind of dispute-resolving forum... these include procedural norms... When the relevant substantive and procedural norms govern resolution, that resolution is lawful and

³³ *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 34.

³⁴ *AIC Limited v Fischer*, 2013 SCC 69 at para 24. See also *Uber* at para 115: “[...] access to justice is not merely access to a resolution. After all, many resolutions are unjust. Where a party seeks a rights-based resolution to a dispute, such resolution is just only when it is determined according to law [...]”.

we have access to justice, whether or not lawyers are involved in the resolution and whether or not the problem comes into contact with any kind of dispute-resolving forum. Access to justice is a good in itself.³⁵

32. Both of these definitions reflect a “people-centred” concept of access to justice. People-centred justice places people and their everyday legal needs at the core of the analysis rather than focusing primarily on legal institutions. Canadian jurisprudence has recognized and endorsed this orientation, even if the “people-centred” label has not been used.³⁶

33. A people-centred understanding of access to justice helps to anchor the public interest in lawyer regulation to the actual needs of people seeking justice in British Columbia. In *British Columbia (Attorney General) v Council of Canadians with Disabilities*, the SCC explained that a core function of public interest standing is to provide access to the courts on behalf of people who cannot access the courts alone, and used access to justice as a key principle for interpreting public interest standing.³⁷

34. When we begin from the perspective of an individual with a legal problem, the role of lawyer independence has several facets. It helps ensure that people can seek confidential advice without any risk of jeopardy; that people can seek resolutions outside of formal processes in the knowledge that those resolutions conform with the law; and that those who engage in formal dispute resolution processes in an adversarial system are able to put their cases in the best possible light. In this context, the public interest shares its contours with the principle of access to justice.

35. Understanding all of these aspects of the relationship between the public interest and the principle of lawyer independence also leads to the necessary conclusion that if other legal professionals are to take on societal roles which have previously been filled

³⁵ Rebecca L Sandefur, “Access to What?” (2019) 148(1) *Daedalus* 49 at 50-51, emphasis added.

³⁶ *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27 [*Council of Canadians*] at para 35.

³⁷ *Council of Canadians* at paras. 37-40.

by lawyers, those professions must have the same protections that are inherent in the principle of lawyer independence. Access to justice demands no less.

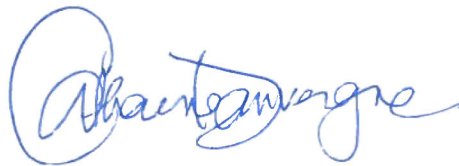
PART 4 - NATURE OF ORDER SOUGHT

36. ACE takes no position on the disposition of the appeals and seeks no order on the merits.

37. ACE seeks no costs and asks that none be awarded 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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APPENDIX 1: LIST OF AUTHORITIES

Authorities	Para # in factum
<i>AIC Limited v Fischer</i> , 2013 SCC 69	30
<i>B.C.G.E.U. v British Columbia (Attorney General)</i> , 1988 CanLII 3, [1988] 2 SCR 214 (SCC)	20
<i>British Columbia (Attorney General) v Christie</i> , 2007 SCC 21	26
<i>British Columbia (Attorney General) v Council of Canadians with Disabilities</i> , 2022 SCC 27	33
<i>Hryniak v Mauldin</i> , 2014 SCC 7	8, 21
<i>Law Society of British Columbia v British Columbia (Attorney General)</i> , 2026 BCSC 779	6, 10, 22, 25
<i>Law Society of British Columbia v Trinity Western University</i> , 2018 SCC 32	28
<i>Polewsky v Home Hardware Stores Ltd.</i> , 2003 CanLII 48473, 66 OR (3d) 600 (ONSCDC)	20
<i>Reference re Code of Civil Procedure (Que.)</i> , art. 35, 2021 SCC 27	18, 23
<i>Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island</i> , 1997 CanLII 317, [1997] 3 SCR 3 (SCC)	16
<i>Reference re Secession of Quebec</i> , 1998 CanLII 793, [1998] 2 SCR 217 (SCC)	12, 13, 14, 16, 23
<i>Toronto (City) v Ontario (Attorney General)</i> , 2021 SCC 34	13, 15
<i>Trial Lawyers Association of British Columbia v British Columbia (Attorney General)</i> , 2014 SCC 59	20
<i>Trial Lawyers Association of British Columbia v British Columbia (Attorney General)</i> , 2026 BCCA 383 (in Chambers)	1, 2
<i>Trisura Guarantee Insurance v Duchnij, et al</i> , 2021 ABCA 78 (in Chambers)	19
<i>Uber Technologies Inc. v Heller</i> , 2020 SCC 16	21, 34
Secondary Sources	Para # in factum
British Columbia, <i>Official Report of Debates of the Legislative Assembly (Hansard)</i> , 42nd Parl, 5th Sess, No 425 (1 May 2024) (N. Sharma) at 4:35 p.m.	7
J. Giles, “The Independence of the Bar” (2001) 59:4 <i>The Advocate</i> at p 549.	22

Sandefur, R.L., "Access to What?" (2019) 148:1 <i>Dædalus</i>	31
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APPENDIX 2: ENACTMENTS

CONSTITUTION ACT, 1867 30 & 31 Victoria, c. 3 (U.K.)

92

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, ...

(13) Property and Civil Rights in the Province.

(14) The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

96

The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

LEGAL PROFESSION ACT [S.B.C. 1998] CHAPTER 9

Object and duty of society

3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

LEGAL PROFESSIONS ACT [S.B.C. 2024] CHAPTER 26

Designation of legal professions

4 (2) Before making a recommendation under subsection (1), the Attorney General must

- (a) consult the board, and
- (b) consider all of the following:

- (i) whether the designation is likely to facilitate access to legal services in British Columbia without posing a significant risk of harm to the public;
- (ii) whether the activities performed in the practice of the profession are similar to, or overlap with, those performed in the practice of law;
- (iii) whether failing to designate the profession would undermine the regulator's ability to regulate the practice of law in British Columbia;
- (iv) whether the practice of the profession is regulated in other jurisdictions;
- (v) whether the designation would have an undue impact on the independence of licensees under this Act.

Duties of regulator

6 (1) The regulator has the following duties:

- (a) to regulate the practice of law in British Columbia;
 - (b) to establish standards and programs for education, training, competence, practice and conduct of applicants, trainees, licensees and law firms;
 - (c) to ensure the independence of licensees.
- (2) The regulator must exercise its powers and perform its duties under this Act in the public interest.

Guiding principles

7 In exercising powers and performing duties under this Act, the regulator must have regard to the following principles:

- (a) facilitating access to legal services;
- (b) supporting reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples;
- (c) identifying, removing or preventing barriers to the practice of law in British Columbia that have a disproportionate impact on Indigenous persons and other persons belonging to groups that are under-represented in the practice of law;
- (d) regulating the practice of each legal profession in a manner that is
 - (i) transparent,
 - (ii) timely, and
- (iii) proportionate to the risk of harm to the public posed by the practice.

Independent review

24 (1) The board must appoint a person it considers qualified to do the following at the expense of the regulator:

- (a) conduct a review of the extent to which this Act, the regulations and the rules facilitate access to legal services in British Columbia;

(b) at the conclusion of the review and no later than 5 years after the date this section comes into force, provide a report, with recommendations, to the board.

(2) After receiving a report under subsection (1) (b), the board

(a) may prepare a response to the report, and

(b) must provide the report, with the response prepared under paragraph (a), if any, to the Attorney General.

(3) After receiving a report under subsection (2) (b), the Attorney General must

(a) promptly table the report in the Legislative Assembly if it is then sitting, or if the Legislative Assembly is not sitting, file the report with the Clerk of the Legislative Assembly, and

(b) publish the report by posting it on a publicly available website