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:

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

RESPONDENTS
(DEFENDANTS)

APPELLANTS' FACTUM

Trial Lawyers Association of British Columbia and Kevin Westell

---

Trial Lawyers Association of British Columbia and Kevin Westell

Gavin Cameron
Tom Posyniak
Laura Abrioux
Will Andrews

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
2900 – 550 Burrard Street
Vancouver, BC V6C 0A3

Phone: 604-631-3131
Email: gcameron@fasken.com
tposyniak@fasken.com
labrioux@fasken.com
wandrews@fasken.com

Counsel for the Appellants

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

Emily Lapper, K.C.
Trevor Bant
Karin Kotliarsky
Sergio Ortega

Ministry of Attorney General
Legal Services Branch
1301 – 865 Hornby Street
Vancouver BC V6Z 2G3

Phone: 604-660-6795
Email: Emily.Lapper@gov.bc.ca
Trevor.Bant@gov.bc.ca
Karin.Kotliarsky@gov.bc.ca
Sergio.Ortega@gov.bc.ca

Counsel for the Respondents

TABLE OF CONTENTS

CHRONOLOGY

Date	Event	Reference
March 1, 2022	The Attorney General announces the Province's intention to combine the regulation of lawyers, notaries public, and licensed paralegals under a single regulator.	Joint Appeal Book, p. [●] ("**JAB**"), Affidavit #1 of Brook Greenberg, K.C., made May 24, 2024 (LSBC Action), at paras. 33, 76 ("**Greenberg #1**"), Ex. 23.
September 14, 2022	The Attorney General releases an "Intentions Paper on Legal Professions Regulatory Modernization", in which it outlines its plans to "modernize the regulatory framework for legal service providers in British Columbia to help make it easier for the public to access legal services and advice".	JAB, p. [●], Greenberg #1 at para. 77, Ex. 24.
November 2022	The Law Society of British Columbia ("**LSBC**") issues a response to the announcement of Bill 21, the *Legal Professions Act*, S.B.C. 2024, c. 26 ("**Bill 21**") and the Intentions Paper, expressing concern that the proposed model did not directly disclose an intention to protect the institutional dimension of the independence of the Bar.	JAB, p. [●], Greenberg #1 at para. 78, Ex. 25.
January 2024	The Federation of Law Societies of Canada writes to the Attorney General seeking an opportunity to review and comment on the draft legislation that would become Bill 21. The Attorney General ignores the request.	JAB, p. [●], Greenberg #1 at para. 82, Ex. 32.
March 2024	The Attorney General releases an update on the proposed legislation. The LSBC responds again, encouraging the	JAB, p. [●], Greenberg #1 at

Date	Event	Reference
	government to recognize and address its concerns that the legislation did not adequately protect the independence of the Bar. The Trial Lawyers Association of British Columbia ("**TLABC**") and other bar associations throughout the province similarly call on the Attorney General to consult with lawyers and the public. The government refuses.	paras. 83–84, Exs. 33–34.
April 10, 2024	Bill 21 is introduced in the Legislature, marking the first time the text of Bill 21 was made publicly available.	JAB, p. [●], Greenberg #1 at para. 85.
April 10, 2024	TLABC issues a statement stating that Bill 21 constitutes an assault on the principle of lawyer independence and an enormous departure from the norms governing legal regulation in liberal, democratic societies.	JAB, p. [●], Affidavit #1 of Kevin Gourlay, made May 27, 2024 (TLABC Action), at para. 27 ("**Gourlay #1**"), Ex. B.
May 15, 2024	The Province moves to close the debate on Bill 21, and Bill 21 receives third reading.	JAB, p. [●], Greenberg #1 at paras. 93–94.
May 16, 2024	Bill 21 receives Royal Assent.	JAB, p. [●], Greenberg #1 at para. 94.
May 17, 2024	LSBC files a constitutional challenge to Bill 21.	Joint Appeal Record, p. 1 ("**JAR**"), Notice of Civil Claim (LSBC Action), dated May 17, 2024.
May 21, 2024	TLABC files a constitutional challenge to Bill 21.	JAR, p. 32, Second Amended Notice of Civil Claim (TLABC Action), dated

Date	Event	Reference
		December 19, 2024.
June 17–19, 2024	Hearing of TLABC and LSBC's applications for injunctive relief before the Honourable Justice Gropper.	JAB, p. [●], *Law Society of British Columbia v. British Columbia*, 2024 BCSC 1292 ("**Injunction Reasons**").
July 17, 2024	Justice Gropper dismisses LSBC and TLABC's applications for injunctive relief.	JAB, p. [●], Injunction Reasons at para. 6.
October 14–17, 20–24, 27–28, 2025	Hearing of the summary trial of TLABC and LSBC's constitutional challenge to Bill 21 before the Honourable Chief Justice Skolrood.	JAR, p. 265, Reasons of Chief Justice Skolrood ("**Reasons**").
April 29, 2026	Chief Justice Skolrood dismisses TLABC and LSBC's actions in reasons indexed as 2026 BCSC 779.	JAR, p. 326, Reasons, at para. 234.
May 5, 2026	TLABC and LSBC file notices of appeal.	JAR, p. 327, Notice of Appeal (CA51535) (TLABC), dated May 5, 2026; JAR, p. 333, Notice of Appeal (CA51536) (LSBC), dated May 5, 2026.

OPENING STATEMENT

The appellants are a lawyer and an organization which consists, in the main, of lawyers. This litigation concerns them, but also concerns every person in this Province, whether they know it or not—their rights are at stake. The legislation in question is of paramount importance to every citizen, but is likely not on their radar, when things like rent and dinner are the daily questions. So, we must take on the challenge presented by this legislation, to ensure that our fellow citizens are protected from legislation which will remove the bulwarks they have against government excess—an independent Bar, and an independent judiciary. One cannot exist without the other.

The Legislature cannot provide a rationale for what it is doing. As the Chief Justice noted, "[t]hroughout their submissions, both written and oral, the defendants offered no clear rationale for the significant changes brought about to the regulation of lawyers under Bill 21 or to the jettisoning of the long-established practice of consultation and collaboration with the legal profession about changes to their governing legislation."

The "why" cannot be answered. The "what" is a root and branch attack not only on lawyers and their clients, but this Court as an institution. If there is no why, and the what is the destruction of fundamental rights and freedoms, how can we say yes?

The sole question to be decided on this appeal is whether our courts, upon which every member of the public relies no matter how ignorant of their rights they might be, will take up the invitation these appellants make to preserve their clients' rights and to ensure this Court has an independent Bar who will represent those clients before it.

This is not a case about lawyers trying to preserve some special privilege. It is about those whom they represent, and those who they have the privilege of appearing before. Will lawyers continue to be able to perform those functions without fetters imposed by the Legislature, which the executive of our government has not deigned to even explain? Or will they be subject to governance by those whom their clients have grievances with, setting the playing field ever so slightly, or perhaps substantially, in their favour?

PART 1 - STATEMENT OF FACTS

1. This case is about the regulation and independence of lawyers in British Columbia. The appellants in this appeal, TLABC and Kevin Westell (collectively, the "**appellants**"), and the companion appeal (CA51536), the LSBC, challenge the constitutionality of Bill 21 on the basis that it undermines the independence of the Bar and violates lawyers' and the public's constitutional rights. The Chief Justice found that Bill 21 does not improperly undermine the independence of the Bar or violate the *Charter*.

2. Both the appellants and LSBC appeal those conclusions. The appellants adopt and rely upon LSBC's factum and arguments regarding the independence of the Bar. There is no challenge to the Chief Justice's findings of fact. Accordingly, the following summary is taken largely from his reasons.

A. Background

3. For over 150 years, since its creation in 1874, the LSBC has been an independent, self-governing society charged with regulating lawyers in the public interest.[1]

4. In 2024, the Legislature of British Columbia enacted Bill 21, which provides for the amalgamation of the LSBC with the Society of Notaries Public of British Columbia in order to create a new regulator (the "**new regulator**") with regulatory jurisdiction over lawyers, notaries public, and paralegals as well as, potentially, new legal professions. A central element of Bill 21 is the elimination of self-governance and self-regulation of lawyers by a board comprised of a majority of elected lawyers.[2]

(a) The current regulatory model: Legal Profession Act

5. At present, the LSBC is continued pursuant to the *Legal Profession Act*, S.B.C. 1998, c. 9, as amended (the "***LPA***"), which creates the self-governing and self-regulating model governing the legal profession in British Columbia.[3]

---

[1] JAR, p. 268, Reasons, at para. 1.
[2] JAR, p. 268, Reasons, at para. 2.
[3] JAR, p. 271, Reasons, at para. 9.

6. Importantly, s. 11 empowers the LSBC to make rules for the governing of the society, lawyers, law firms, articled students, and applicants and for carrying out the *LPA*. The rules do not require government approval, although certain rules must be approved by a vote of members at a general meeting. As part of its rule-making function under s. 11, the LSBC has established a *Code of Professional Conduct*, which is based in large part on the Federation of Law Societies' Model Code of Professional Conduct.[4]

(b) **The new regulatory model: Bill 21**

7. In March 2022, the government announced its intention to combine the regulation of lawyers, notaries public, and licensed paralegals under a single regulator.[5] The Attorney General did not open meaningful consultation on Bill 21 to lawyers or the public subsequent to the announcement and prior to the tabling of Bill 21.[6]

8. Bill 21 was not made publicly available until it was introduced to the Legislature on April 10, 2024.[7] The Government closed debate on Bill 21 on May 15, 2024.[8] Bill 21 received third reading that day, and Royal Assent on May 16, 2024.

9. As the Chief Justice found, if brought into force, Bill 21 will significantly alter the regulation of lawyers in British Columbia, including by eliminating self-governance and self-regulation of lawyers by a board comprised of a majority of elected lawyers.[9] The changes relevant to the issues on this appeal are set out below.

(i) The Indigenous Council and Transitional Indigenous Council

10. Section 29 establishes an Indigenous Council comprised of a majority of members appointed from persons nominated by the BC First Nations Justice Council ("**BCFNJC**") and persons nominated by Métis peoples or entities representing Métis peoples. Section 30 sets out the role of the Indigenous Council, which includes: (a) advising and working in collaboration with the regulator on any matter relating to the implementation of UNDRIP in the context of the regulation of the practice of law in British Columbia, including in

[4] JAR, pp. 270–271, Reasons, at para. 8.
[5] JAB, p. [●], Injunction Reasons at para. 19.
[6] JAB, p. [●], Gourlay #1 at para. 26.
[7] JAB, p. [●], Injunction Reasons at para. 24; JAB, p. [●], Greenberg #1 at para. 85.
[8] JAB, p. [●], Injunction Reasons at para. 27.
[9] JAR, pp. 268, 270, Reasons, at paras. 2, 10.

respect of the incorporation of Indigenous legal traditions and Indigenous practices and the systemic challenges faced by Indigenous persons that require investigation and action by the regulator; (b) advising on matters that under the Act require consultation with the Indigenous Council; (c) participating in the regulator's strategic planning processes; and (d) exercising certain approval powers as conferred by the Act.[10]

11. Section 224 establishes a Transitional Indigenous Council comprised of a majority of members appointed by the BCFNJC and the Métis Nation British Columbia. Section 226 provides that the Transitional Indigenous Council is required to collaborate with the transitional board of the new regulator to develop the first rules of the new regulator. Under s. 226(2)(b), any such new rules may not be made unless first approved by the Transitional Indigenous Council.[11] This is a veto power.

(ii) Professional conduct and competence

12. Section 68 sets out a number of definitions relating to professional conduct and competence. It defines "incompetently", in relation to the practice of law, as meaning in a manner that demonstrates either: (a) certain specified deficiencies that give rise to a reasonable apprehension that the quality of service to clients of a licensee or law firm may be significant adversely affected; or (b) a "health condition" preventing a licensee from practising law with reasonable skill and competence.[12]

13. Section 88 empowers the chief executive officer, upon determining that someone has practised law incompetently, to require a licensee or trainee to receive counselling or medical treatment, including treatment for a substance use disorder.[13]

14. Section 122 permits the Legal Professions Tribunal, upon determining in a discipline hearing that a licensee has practiced law incompetently,[14] to require a licensee

[10] JAR, pp. 272–273, Reasons, at para. 10(h).
[11] JAR, p. 273, Reasons, at para. 10(i).
[12] Book of Enactments, p. [●] ("**BE**"), Bill 21, s. 68; JAR, p. 274, Reasons, at para. 11(b).
[13] JAR, p. 274, Reasons, at para. 11(c).
[14] BE, p. [●], Bill 21, s. 122(2)(b)(ii). The chief executive officer submits citations to the discipline committee, which determines if the citation should be approved and a discipline hearing before the Legal Professions Tribunal be set: BE, p. [●], Bill 21, s. 90.

to receive counselling or medical treatment, including treatment for a substance use problem or disorder.[15]

15. Section 198 provides that a person commits an offence if the person wilfully interferes with or obstructs another person in the exercise of a power or performance of a duty under Bill 21, or in carrying out an order under Bill 21.

16. Section 202 provides that an individual who commits an offence under Bill 21 is liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding two years, or to both.[16]

(iii) <u>Search and seizure</u>

17. Section 78 authorizes the chief executive officer of the new regulator to enter the office of a lawyer or law firm and examine records relating to the practice of law and further, for the purposes of an investigation, to order a licensee or law firm to produce records and attend for an examination under oath.[17]

B. <u>Reasons of the Chief Justice</u>

18. The Chief Justice dismissed the appellants' and LSBC's actions. In doing so he addressed six issues: (a) Is the independence of the Bar an unwritten constitutional principle? (b) If so, what is the content of or meaning to be given to that principle? (c) Does Bill 21, in whole or in part, infringe the principle of an independent Bar? (d) Does Bill 21 infringe the *Charter*? (e) If so, can the infringement(s) be justified in a free and democratic society pursuant to s. 1? (f) If some or all of Bill 21 is found to be unconstitutional, what is the appropriate remedy?[18]

(a) The Chief Justice found that the independence of the Bar is a constraint on Legislative action

19. The Chief Justice found that the independence of the Bar is an unwritten constitutional principle. He found that it is an essential underpinning of Canada's constitutional order and necessary for maintaining an independent judiciary and the

---

[15] BE, p. [●], Bill 21, s. 122(3)(c)(ii).
[16] BE, p. [●], Bill 21, ss. 198, 202.
[17] JAR, p. 273, Reasons, at para. 11(a).
[18] JAR, pp. 286–287, Reasons, at para. 67.

proper administration of justice. He concluded that, while unwritten, the independence of the Bar is a principle that is implicit in the written constitutional text, specifically 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.*[19]

20. The Chief Justice concluded that the importance and fundamental constitutional character of independence of the Bar stems from the fact that, where it is interfered with, all other constitutional rights, including the rule of law, are placed in jeopardy. In his view, as expressed by Jack Giles K.C., it is "simply inconceivable that a constitution which guarantees fundamental human rights and freedoms should not first protect that which makes it possible to benefit from such guarantees, namely every citizen's constitutional right to effective, meaningful, unimpeded access to a court of law through the aegis of an independent bar".[20]

21. The Chief Justice correctly found that the Legislature cannot use its plenary authority under ss. 92(13) and (14) to regulate lawyers in such a manner as to eviscerate an independent Bar.[21]

(b) **The Chief Justice found independence of the Bar prohibits legal regulation by a body which is controlled or unduly influenced by outside forces**

22. The Chief Justice found the principle of the independence of the Bar prohibits legal regulation by a body which is "controlled, or unduly influenced, by outside forces".[22] He found that the independence of the Bar must be examined through the lens of lawyers' duties to their clients, the courts, and the administration of justice.[23]

23. The Chief Justice found that it was "axiomatic" that in carrying out their advisory and advocacy roles, lawyers must be—and seen to be—independent from outside influences, including, in particular, the influence of the state. This, he concluded, reflects the fact that the right to impartial advice free from undue outside influence is a right that

---

[19] JAR, pp. 290–293, Reasons, at paras. 80–94.
[20] JAR, pp. 293–294, Reasons, at para. 95.
[21] JAR, pp. 302–303, Reasons, at paras. 136–137.
[22] JAR, p. 296, Reasons, at para. 108.
[23] JAR, pp. 295–296, Reasons, at paras. 106–110.

belongs to clients.[24] The Chief Justice found that the need for institutional independence also acknowledges the fact that in addition to the duties owed to clients, lawyers owe broader duties to the courts and to the administration of justice generally. He concluded the powers and duties exercised by lawyers are vital to the maintenance of order in our society and the due administration of the law in the interest of the whole community.[25]

24. Legislation is *ultra vires* where it interferes with or unduly influences the duties owed by lawyers to their clients and the administration of justice, either through its direct application to lawyers and their clients or by way of the regulatory structure it creates.[26]

25. The appellants accept this statement of the law, but do not accept that it was applied to the facts of this case and the language of Bill 21 as it has been drafted.

(c) The Chief Justice found that Bill 21 does not infringe the principle of an independent Bar

26. The Chief Justice found that Bill 21 does not infringe the principle of an independent Bar. The appellants appeal this determination and, to avoid duplication, adopt and rely upon LSBC's factum and arguments on why the Chief Justice erred in that principal conclusion. The appellants' argument here focuses specifically on why the Chief Justice erred in law in finding that the independence of the Bar was not undermined by the role of the Indigenous Council and Transitional Indigenous Council in relation to the rules governing lawyers.

27. The Chief Justice found that the role of the Indigenous Council and Transitional Indigenous Council do not undermine the independence of the Bar because they do not have "independent rule making authority" or a power to "unilaterally impose rules".[27]

28. The Chief Justice found the Indigenous Council has an important but carefully circumscribed role in the new regulator. He found this role is purely advisory with the exception of approval powers in respect of two sets of rules: (a) rules respecting the use of alternative resolution processes in discipline and competence matters that reflect or

---

[24] JAR, p. 295, Reasons, at paras. 106–107.
[25] JAR, p. 296, Reasons, at para. 109.
[26] JAR, p. 296, Reasons, at para. 110.
[27] JAR, pp. 313–316, Reasons, at paras. 181–193.

are influenced by Indigenous practices (s. 94(3)); and (b) rules that are designed to meet the specific needs of Indigenous persons who are parties to, or witnesses in, a proceeding before the tribunal (s. 131(6)). He concluded that this role does not undermine the independence of the bar because, even where the Indigenous Council has approval powers, such powers do not enable the "unilateral imposition of rules".[28] Given this conclusion, he also found that the fact that the members of the Transitional Indigenous Council and Indigenous Council need not be lawyers in no way threatens independence.[29]

29. The Chief Justice reached the same conclusion with respect to the Transitional Indigenous Council. He found that, as set out in s. 226 of Bill 21, the Transitional Indigenous Council must: (a) collaborate with the transitional board to develop the board's first set of rules; and (b) approve these rules. He found that this does not undermine independence because it does not equate to rule-making authority. He further noted that the transitional board has the duty to ensure the independence of licensees such that any rules that the Indigenous Council might consider for approval "should not pose any threat to independence in the first place".[30]

(d) **The Chief Justice found that Bill 21 does not violate the public's rights under ss. 7, 10(b), and 11(d) of the Charter**

30. The Chief Justice found that Bill 21 does not violate the public's rights under ss. 7, 10(b), and 11(d) of the *Charter* because it does not deprive the public of independent lawyers or infringe the independence of the Bar.[31]

(e) **The Chief Justice found that Bill 21 does not infringe lawyers' s. 7 rights to life, liberty, and security of the person**

31. The Chief Justice found that Bill 21 does not infringe lawyers' s. 7 rights because:

A. the definition of "incompetently" in s. 68 focuses on conduct, that is, whether a health condition is affecting a licensee's ability to practice with reasonable skill and competence.[32] The Chief Justice accepted the

---

[28] JAR, pp. 313–314, Reasons at paras. 182–184.
[29] JAR, pp. 314–315, Reasons at para. 186.
[30] JAR, pp. 315–316, Reasons at paras. 187–190.
[31] JAR, p. 325, Reasons, at para. 233.
[32] JAR, p. 321, Reasons, at para. 216.

government's proposition that the regime is based on "compassion, not stigmatization";[33]

B. the new regulator cannot compel lawyers to receive treatment they do not want. Analogizing to COVID-19 vaccine requirements for health care workers, the Chief Justice affirmed that s. 7 does not protect the right to work in a profession, particularly when the job loss arises from non-compliance with its governing rules and regulations;[34] and

C. declining to comply with an order for medical treatment under s. 198 would not constitute an offence under Bill 21.[35]

32. On this basis, the Chief Justice concluded Bill 21 does not engage lawyers' s. 7 rights and declined to address the balance of the analysis under s. 7.[36] As a result, the Chief Justice did not acknowledge—much less contend with—the evidence on mental health in the legal profession or the expert opinion on the stigmatizing impact of Bill 21. The Chief Justice did not acknowledge the mental health crisis in the legal profession, where women, professionals living with a disability, and professionals identifying as LGBTQ2S+ experience particularly high rates of mental health issues.[37]

33. Absent from his reasons was reference to the fact that lawyers delay seeking help for mental health and substance use, including for fear of regulatory repercussions.[38] The Chief Justice did not acknowledge the parties' experts agreed compelled treatment is

---

[33] JAR, p. 321, Reasons, at paras. 217–218.
[34] JAR, p. 322, Reasons, at para. 220.
[35] JAR, p. 322, Reasons, at para. 221.
[36] JAR, p. 322, Reasons, at para. 222.
[37] JAB, p. [●], Affidavit #3 of Brook Greenberg, K.C., made April 3, 2025 (LSBC Action), at paras. 92–94, 168–171, 211 ("**Greenberg #3**"), Ex. 105, at pp. 27, 34, 35, 40, 47, 53, 83, 185–188, 219–221, 233–234, 246–253, 258–262 ("**National Study, Phase 1 Report**"); Expert Report of Dr. Michael Colleton, dated June 27, 2025, at paras. 14–16 ("**Colleton Report**").
[38] JAB, p. [●], National Study, Phase 1 Report, at pp. 54–60, 283–285, 337; JAB, p. [●], Greenberg #3, Ex. 106, at pp. 7, 10, 17 ("**National Study, Executive Summary**"); JAB, [●], p. [●], Greenberg #3, Ex. 107, at pp. 2756, 2779 ("**National Study, Targeted Recommendations**"); JAB, p. [●], Affidavit #1 of Doron J. Gold, made March 3, 2025 (TLABC Action), Ex. A, at pp. 5, 7–9, 11 ("**Gold Report**"); JAB, p. [●], Cross-Examination of Dr. Michael Colleton, dated October 7, 2025, at Q237–241 ("**Colleton Cross-Examination**"); JAB, p. [●], Greenberg #3 at paras. 93, 107, 119–126, 250, 170–172.

generally less effective than voluntary treatment,[39] nor the appellants' evidence that compelled treatment heightens stigma and discourages self-help.[40] There is no consideration in the Chief Justice's reasons of the consequences of delayed help or stigma, including greater risk of suicide, self-harm, or deterioration of other conditions.[41]

(f) The Chief Justice found that Bill 21 does not infringe the s. 8 right to be secure against unreasonable search or seizure

34. The Chief Justice found that, because s. 78 of Bill 21 authorizes a warrantless search which is presumptively unreasonable, and because there is no specific search or seizure in issue, whether or not Bill 21 infringes lawyers' rights under s. 8 turns on the reasonableness of s. 78. The Chief Justice relied on previous decisions in which courts "upheld similar search provisions in the current *LPA*" and found that the protections for solicitor-client privilege in s. 209 of Bill 21, which largely replicate the protections in the *LPA*, "are clear and unambiguous in their protection of privilege". He concluded those protections are not undermined by the fact that the new regulator is not a body controlled by lawyers because, in his view, the new regulatory model does not undermine the independence of the regulator.[42]

---

[39] JAB, p. [●], Gold Report at pp. 12–14; JAB, p. [●], Gold Cross-Examination at Q113; JAB, p. [●], Affidavit #1 of Dr. Soma Ganesan, made March 29, 2025, Ex. A, at pp. 4–8 ("**Ganesan Report**"); JAB, p. [●], Colleton Cross-Examination at Q203–205.
[40] JAB, p. [●], Ganesan Report at p. 5; JAB, p. [●], Cross-Examination of Dr. Soma Ganesan, dated September 17, 2025, at Q147 ("**Ganesan Cross-Examination**"); JAB, p. [●], Gold Report at pp. 12–13; JAB, p. [●], Cross-Examination of Doron Gold, dated September 16, 2025, at Q38, 69–109 ("**Gold Cross-Examination**"); JAB, p. [●], Greenberg #1 at paras. 117–118, 120; JAB, p. [●], Greenberg #3 at para. 204.
[41] JAB, p. [●], National Study, Phase 1 Report, at pp. 283–284; JAB, p. [●], Greenberg #3 at para. 209; JAB, p. [●], Gold Report at pp. 6, 8–9; JAB, p. [●], Ganesan Report at p. 8.
[42] JAR, pp. 324–325, Reasons, at paras. 227–232.

PART 2 - ISSUES ON APPEAL

35. The Chief Justice erred in law by concluding Bill 21:

A. does not undermine independence of the Bar, despite the Transitional Indigenous Council and Indigenous Council's effective veto over rules governing the conduct and duties of lawyers;

B. does not violate the public's fair trial rights under ss. 7, 10(b), and 11(d) of the *Charter*, which cannot stand if Bill 21 is found to undermine the independence of the Bar;

C. does not engage lawyers' rights under s. 7 of the *Charter*, despite the text, legislative evolution, and context supporting the conclusion that Bill 21 associates competence and health conditions to the detriment of lawyers' s. 7 rights; and

D. does not violate s. 8 of the *Charter*, which cannot stand if Bill 21 is found to undermine the independence of the Bar.

PART 3 - ARGUMENT

A. Standard of Review

36. The issues raised on this appeal concern statutory interpretation and determinations of constitutional validity, both of which are questions of law reviewable on the correctness standard.[43]

B. The Chief Justice erred in law in concluding that the Transitional Indigenous Council and Indigenous Council's veto over rules governing the conduct and duties of lawyers does not undermine the independence of the Bar

37. The Chief Justice erred in law in concluding that the Transitional Indigenous Council and Indigenous Council's veto over rules governing the conduct and duties of lawyers does not undermine the independence of the Bar.

---

[43] Joint Book of Authorities, p. [●] ("**JBOA**"), *Brar v. British Columbia*, 2024 BCCA 265 at para. 38.

38. The LSBC argues that the Chief Justice's test for independence is flawed because it does not properly take account of the institutional dimension of the principle of independence of the Bar and thereby fails to apply the correct structural limits to the scope of ss. 92(13) and (14) of the *Constitution Act, 1867*. As above, the appellants adopt and rely upon LSBC's factum and arguments in this respect. In the alternative, however, the appellants argue that even if the Chief Justice did not err in law by applying the incorrect test, he did so by concluding that Bill 21 does not undermine his own narrower conception of the constitutional requirements of independence.

39. The Chief Justice found that the role of the Indigenous Council and Transitional Indigenous Council does not undermine the independence of the Bar because their approval powers do not equate to "independent rule making authority" or a power to "unilaterally impose rules".[44]

40. This is an error of law because it fails to apply the Chief Justice's own interpretation of the principle and standard of independence of the Bar. The Chief Justice found 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.[45] He concluded that legislation is *ultra vires* where it interferes with or unduly influences the duties owed by lawyers to their clients and to the administration of justice, either through its direct application to lawyers and their clients or by way of the regulatory structure it creates.[46]

41. Bill 21 violates this principle because the regulatory structure it creates subjects lawyers to regulation by a body that is controlled, or unduly influenced, by outside forces.

42. With respect to control or undue influence, Bill 21 provides the Transitional Indigenous Council and Indigenous Council with a statutory veto over rules governing the conduct and duties of lawyers to their clients and to the administration of justice. Under Bill 21, the Transitional Indigenous Council and Indigenous Council have a statutory right (and obligation) to consult on and approve rules governing the professional conduct of lawyers.[47] As the Chief Justice found, the first rules and certain rules thereafter cannot be

---

[44] JAR, pp. 313–316, Reasons, at paras. 181–193.
[45] JAR, p. 296, Reasons at para. 108.
[46] JAR, p. 296, Reasons, at para. 110.
[47] BE, p. [●], Bill 21, ss. 94(3), 131(6), 226.

enacted without their approval.[48] Further, while not specifically contemplated in Bill 21, the Transitional Indigenous Council will also approve the replacement code of conduct applicable to lawyers.[49]

43. The point is this: the veto deprives the regulator, *i.e.*, the transitional board and board, of "independent" or "unilateral" rule-making authority. This undermines independence in two critical ways.

44. First, the veto deprives the transitional board and board of the authority to independently or unilaterally enact rules including, for example, those which they consider necessary to promote or maintain the independence of licensees. It destroys lawyers' freedom to choose and adopt, as a profession, the rules that govern them. In finding that this does not undermine independence, the Chief Justice reasoned that: (a) "there is no basis for believing that the inclusion of another set of perspectives, through the vehicle of the Indigenous Council, will in any way threaten the independence of the Bar";[50] and (b) "the transitional board has the duty to ensure the independence of licensees such that any rules that the Indigenous Council might consider for approval should not pose any threat to independence in the first place".[51] Both conclusions are divorced from the text of Bill 21. In any event, neither address the fundamental constitutional issue.

45. For one thing, the regulatory structure of Bill 21 does not merely contemplate the "inclusion of another set of perspectives"; it privileges the bodies advancing those perspectives with a statutory power to block the regulatory body from making rules. Further, the Chief Justice's statement that the "transitional board has the duty to ensure the independence of licensees" is an error of law as it is at odds with the text of Bill 21.[52] Bill 21 does not impose on the transitional board or the Transitional Indigenous Council a duty to ensure the independence of licensees. This duty applies only to <u>the regulator</u>,[53] after the amalgamation date and thus after the first rules have been made and the

---

[48] JAR, pp. 272–273, 313–315, Reasons, at paras. 10(h), 10(i), 182, 187.
[49] JAB, p. [●], Affidavit #1 of Thomas L. Spraggs, K.C., made April 3, 2025 (LSBC Action) ("**Spraggs #1**"), Ex. U, at p. 446.
[50] JAR, p. 315, Reasons at para. 186.
[51] JAR, p. 315, Reasons, at para. 190.
[52] JBOA, p. [●], *Manns v. Vancouver Island Health Authority*, 2024 BCCA 110 at para. 15 ("***Manns***").
[53] BE, p. [●], Bill 21, s. 6(1)(c).

transitional board and Transitional Indigenous Council have been dissolved.[54] In any event, the concern is not that the Transitional Indigenous Council and Indigenous Council have the power to approve rules that threaten lawyer independence; it is that they have the power to veto rules that are necessary to protect it. By limiting his analysis to "the inclusion of perspectives" and approval of rules that pose "threats to independence", the Chief Justice failed to grapple with the true nature and consequence of the statutory veto.

46. Second, the veto provides the Transitional Indigenous Council and Indigenous Council with *de jure* and *de facto* control over aspects of the rule making <u>process</u> including, most importantly, the development of the first rules. A veto necessarily changes decision-making dynamics and process. It narrows the range of rules that will be approved and, as a result, drives the investigation, development, and assessment of rules toward those more likely to receive approval. In this sense, the veto not only impacts the outcome, but the rule-making process itself. It functionally amounts to regulatory power. Under Bill 21, this effect is not just a logical and practical consequence of the veto power, it is a statutory requirement. Section 226, for example, provides that the transitional board and Transitional Indigenous Council must "collaborate to develop the first rules of the board."[55] This is joint decision making by a joint board on the rules governing lawyers' conduct and duties to their clients and to the administration of justice. The statute can be interpreted no other way. The fact that this is precisely how the rule-making process has played out in practice only confirms this.[56]

47. This control and undue influence is clearly exerted by an "outside force". There is no statutory requirement that any member of the Transitional Indigenous Council or Indigenous Council be a lawyer. Bill 21 provides that they be comprised of Indigenous appointees of the BCFNJC, the Métis Nation British Columbia, and the transitional board or board.[57] The result is that a subset of the non-lawyer population have direct control over the rules governing the conduct of counsel charged with advocating for or against their interests. First Nations are regularly, and increasingly, involved as parties to litigation. Members of TLABC, and the legal profession generally, are regularly involved

---

[54] BE, p. [●], Bill 21, ss. 223(8), 224(5), 226(2)(b).
[55] BE, p. [●], Bill 21, s. 226.
[56] JAB, p. [●], Spraggs #1 at paras. 17–23, Exs. O–S.
[57] BE, p. [●], Bill 21, ss. 29, 224.

in advocating for or against First Nations.[58] Lawyers are also called upon to negotiate, conclude, and interpret agreements with governments and First Nations.[59] That the structural inclusion of Indigenous perspectives is a benefit, that the members of the Transitional Indigenous Council or Indigenous Council are not “representing” their nations, or that their involvement furthers reconciliation is beside the point. A statutory veto over rules governing the conduct and duties of lawyers violates the independence of the Bar regardless of which subset of the non-lawyer population holds it.

48. A veto is by nature preclusive of true and meaningful independence. It cannot be read into constitutional compliance.[60] A correct application of the Chief Justice’s own test demonstrates that Bill 21 is *ultra vires* as it creates a regulatory structure that interferes with and unduly influences the duties owed by lawyers to their clients and to the administration of justice, and thereby undermines the independence of the Bar.

C. The Chief Justice erred in finding that Bill 21 does not violate the public’s fair trial rights under ss. 7, 10(b), and 11(d) of the *Charter* on the basis that it does not infringe the independence of the Bar

49. The Chief Justice’s finding that Bill 21 does not violate the public’s fair trial rights under ss. 7, 10(b), and 11(d) of the *Charter* rests entirely on his erroneous conclusion that Bill 21 does not undermine the independence of the Bar.[61]

50. If Bill 21 undermines independence of the Bar, it necessarily infringes the public’s fair trial rights. The Chief Justice found “an independent Bar is necessary to ensure that the fundamental rights enshrined by ss. 7, 10(b) and 11(d) are properly acknowledged and protected”.[62] This is so because the absence of an independent lawyer:

A. prevents a fair trial absent abuse of process, guaranteed under s. 7, because a fair trial depends on the integrity of the administration of justice, which is guaranteed by an independent Bar and judiciary;[63]

---

[58] JAB, p. [●], Gourlay #1 at paras. 33–35.
[59] JAB, p. [●], Affidavit #1 of Rajiv Gandhi, made May 27, 2024 (TLABC Action), at para. 13.
[60] JBOA, p. [●], *Democracy Watch v. Canada (Attorney General)*, 2026 SCC 28 at para. 83.
[61] JAR, p. 325, Reasons, at para. 233.
[62] JAR, p. 293, Reasons, at para. 94.
[63] JBOA, p. [●], *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at paras. 20–22, 28, 32; JBOA, p. [●], *R. v. Rose*, [1998] 3 S.C.R. 262 at para. 96.

B. prevents individuals from instructing counsel effectively, guaranteed under s. 10(b), because an independent lawyer is required to effectively protect the rights of accused in the criminal justice system;[64] and

C. prevents a fair and public hearing before an independent judiciary, guaranteed by s. 11(d), because an independent judiciary can only be achieved by an independent Bar.[65]

51. The Chief Justice's interpretation of independence of the Bar confirms this. He found that: (a) lawyers owe broader duties to the administration of justice and exercise powers and duties which are vital to the maintenance of order in our society and the due administration of the law in the interest of the whole community;[66] (b) the essential role of lawyers is perhaps best reflected in the area of criminal law where lawyers act to protect the liberty of their clients in criminal prosecutions backed by the weight and resources of the state;[67] and (c) the independence of the courts is "inextricably tied" to the independence of the Bar, because judges are selected from the independent Bar and 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.[68]

52. If the Chief Justice erred in finding that Bill 21 does not undermine the independence of the Bar, he erred in finding that it does not infringe the public's fair trial rights under ss. 7, 10(b), and 11(d) of the *Charter*.

D. <u>The Chief Justice erred in concluding Bill 21 does not violate lawyers' s. 7 rights to life, liberty, and security of the person</u>

53. The Chief Justice erred in concluding Bill 21 does not engage lawyers' s. 7 rights because his interpretation was not anchored in the text and contradicts the legislative and factual context. The Chief Justice's conclusions cannot stand when the text of ss. 68, 88, 198, and 202 are properly interpreted in their immediate, legislative, and factual context.

---

[64] JBOA, p. [●], *R v. Sinclair*, 2010 SCC 35 at para. 26; JBOA, p. [●], *R v. Sanclemente*, 2021 ONCA 906 at para. 132.
[65] JBOA, p. [●], *Valente v. The Queen*, [1985] 2 S.C.R. 673 at paras. 22–25.
[66] JAR, p. 296, Reasons, at para. 109.
[67] JAR, p. 295, Reasons, at paras. 104–105.
[68] JAR, p. 293, Reasons, at para. 92.

54. The Chief Justice's reasons evince three legal errors:

A. He erred in concluding s. 68 focused on conduct, not health conditions, by ignoring the provision's text and context.

B. He erred in concluding s. 88(1)(c) did not permit the new regulator to compel treatment by incorrectly analogizing to the COVID-19 cases.

C. He erred in concluding non-compliance with a competence order would not result in prosecution and associated penalties, as contemplated in ss. 198 and 202.

55. These errors establish that, contrary to the Chief Justice's conclusion, Bill 21 cultivates a fear of help-seeking, heightened anxiety of potential investigation, and risk of exacerbating existing conditions. These consequences are sufficient to engage and infringe lawyers' s. 7 rights.

(a) The Chief Justice erred in interpreting s. 68 to focus on conduct, not health conditions

56. The Chief Justice erred in interpreting s. 68 by disregarding the text, legislative context, and factual context. His conclusion that s. 68 focuses on conduct, not condition,[69] is the product of an analysis contrary to the rules of statutory interpretation: that the legislative text must be interpreted harmoniously in light of the statutory context and legislative purpose.[70]

57. When interpreted with proper regard to the text and context, Bill 21 associates incompetence with health conditions in a manner that pushes lawyers farther from help, engaging their s. 7 interests. Contrary to the Chief Justice's conclusion, s. 68 does not focus on conduct. It targets health conditions. It signals to lawyers and the public that health conditions are a <u>legislatively recognized reason of</u> and for incompetence and presumed cause for regulatory intervention.

---

[69] JAR, p. 321, Reasons, at para. 216.

[70] JBOA, p. [●], *Chisholm v. Valemount Forest Products Ltd.*, 2025 BCCA 48 at para. 16 ("***Chisholm***"), citing JBOA, p. [●], *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101 at paras. 39–41.

(i) The Chief Justice erred by disregarding the text of s. 68 itself

58. The Chief Justice's interpretation fails to come to grips with s. 68's plain and obvious textual association between competence and health conditions. Contrary to the Chief Justice's assertion at paragraph 216 of his reasons, the text of s. 68 itself creates an apparent and unwarranted link between lawyers' conditions (their mental health or substance use) and their ability to practice law competently.

59. The Chief Justice's analysis accepts the government's interpretation that conduct is the exclusive focus under Bill 21. But there are three problems with this position.

60. First, the Chief Justice does not grapple with the fact that the legislation itself makes the normative association between health conditions, including mental health conditions, and competency. In other words, on its face, the legislation makes a judgment about the connections between competency and health.

61. Second, the Chief Justice fails to ask the obvious question raised by the text of s. 68: if the purpose of the provision is to target incompetent conduct and conduct alone,[71] as the government says, and the Chief Justice found, then what is the point of even mentioning a health condition in the same section and making the obvious association between the two? Why bother mentioning the "why" of a lawyer's incompetence at all? The Chief Justice and the government's "conduct only" interpretation does not provide an answer, and ignores that language, contrary to the basic principles of statutory interpretation that all the words of the legislation must be given effect.[72]

62. Third, the Chief Justice's finding that Bill 21 focuses on conduct not condition is contradicted by his finding that s. 68's aim is to allow the regulator to probe into the health-related causes of incompetence and "understand why issues are arising in a lawyer's practice, so that the appropriate steps can be taken to get them back on track."[73] On this view, s. 68 is not "focused" on conduct; it is focused on identifying and associating causes of incompetence, which legislatively include a person's mental health and substance use.

---

[71] JAR, p. 321, Reasons, at para. 216.
[72] JBOA, p. [●], *Manns* at para. 15; JBOA, p. [●], *Chisholm* at para. 19.
[73] JAR, p. 321, Reasons, at para. 217 [emphasis in original].

63. In any event of these errors of statutory interpretation, the Chief Justice also fell into error by failing to appreciate that the text of Bill 21 itself is an unmistakeable signal to each and every lawyer and applicant that the legislature and the new regulator presumptively associate competence with health conditions. This is the ordinary meaning that arises when the text is read in its immediate context.[74] Bill 21 makes this association rather than stating a content-neutral floor of competence.

64. The Chief Justice's interpretation of the text s. 68 masks its actual function. It is formal and textual cover for the new regulator to make unfounded assumptions and investigate conditions as a presumptive cause of a competency issue.

65. Put simply, s. 68, and Bill 21 more generally, tells its readers that health conditions, including one's mental health, are a valid reason to suspect and assume incompetence. The Chief Justice erred in ignoring s. 68's ordinary textual meaning in this regard.

(ii) <u>The Chief Justice erred in allowing the legislative purpose to overwhelm the text</u>

66. The Chief Justice erred by placing undue reliance on the government's purported legislative purpose when that purpose conflicts with the words of s. 68. In doing so, the Chief Justice committed a "purpose error" by allowing the legislation's alleged purpose to overwhelm the text.[75] While it is proper—and, here, necessary—to turn to context to interpret the legislation,[76] the court cannot adopt an interpretation that is contrary to the actual words used.[77]

67. The Chief Justice accepted the government's submission that competence provisions are "based on compassion, not stigmatization".[78] This is an error because there is no textual anchor supporting that conclusion. Nothing in the text of s. 68 "conveys" that "there is nothing fundamentally wrong" with a licensee when their ability to practice is impaired by a health condition.[79] Nothing in the text of s. 68 expresses "compassion, not

[74] JBOA, p. [●], R. Sullivan, *The Construction of Statutes* (Toronto: LexisNexis Canada Inc., 2022), ch. 3 at s. 3.02 ("**Sullivan**").
[75] JBOA, p. [●], *Manns* at paras. 32–35.
[76] JBOA, p. [●], *Chisholm* at paras. 19, 37.
[77] JBOA, p. [●], *Manns* at para. 15.
[78] JAR, p. 321, Reasons, at para. 218.
[79] JAR, p. 321, Reasons, at para. 218.

stigmatization”.[80] To the contrary, the only actual message in s. 68 is that lawyers with health conditions are presumptively suspect in their capacity.

68. The Chief Justice in effect assumed, without any textual support, that lawyers will read and interpret Bill 21 in a certain manner (*i.e.*, that the government and the new regulator is intervening out of compassion). However, in the absence of a textual anchor, it is equally plausible to interpret Bill 21 as the appellants do—that is, as creating an association between incompetence and health conditions in a way that heightens stigma and deters help-seeking behaviour. One person’s so-called “compassion” is another person’s regulatory nightmare.

69. Absent words to anchor the legislative purpose, the Chief Justice commits a purpose error: his conclusion assigns too much weight to an abstract purpose that has little, if any, representation in the text. The Chief Justice’s conclusion that s. 68 focuses on conduct, not condition, is unsupportable on the text.

(iii) <u>The Chief Justice erred in ignoring Bill 21’s legislative development</u>

70. The Chief Justice erred in the interpretation of s. 68 by ignoring the legislative evolution of lawyer competence provisions. The evolution and history of competence regulation is relevant context to the interpretation of Bill 21.[81] Legislative evolution is presumed to be purposeful.[82] Yet, the Chief Justice ignores this critical interpretative aid and therefore fails to appreciate the legislature’s intent in upending the history of competence regulation.

71. For many reasons, Bill 21 is a departure from historical models of legal regulation. Bill 21 introduces an association between competence and health conditions. In striking contrast, Rule 3.1-1 of the *Code of Professional Conduct* does <u>not</u> define competence with reference to any health conditions—or any <u>causes</u> of incompetence.[83]

---

[80] JAR, p. 321, Reasons, at para. 218.
[81] JBOA, p. [●], *Chisholm* at paras. 17, 27–31; JBOA, p. [●], *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para. 43 (“***Mowat***”).
[82] JBOA, p. [●], *Mowat* at paras. 43–52; JBOA, p. [●], Sullivan at s. 23.02[2].
[83] JAB, p. [●], British Columbia Code of Professional Conduct, s. 3.1-1.

72. In line with the actual focus on conduct, the pre-Bill 21 regulatory model employs suspensions, among other powers, to regulate competence. It is undisputed that suspensions are effective in protecting the public from incompetent practice.[84] In fact, suspensions are the only regulatory tool that immediately and fulsomely achieve this goal. A suspension responds to conduct and conduct only.

73. In this context, Bill 21's inclusion of ss. 68 and 88(1)(c) are notable and unexplained additions. The legislative evolution signals to lawyers and the public that the target of competence regulation has shifted. It signals that suspensions are no longer a complete answer to the problem, and that the legislation is targeting something broader: health conditions. This context is missing in the Chief Justice's analysis.

74. The Chief Justice failed to take this evolution into account in assessing what s. 68 actually is and does. The inference from the evolution in competence regulation is that health conditions <u>now</u> presumptively matter to competence. That is how the new regulator will operate, and that is how members of the legal profession, and those seeking to join it, can assume it operates.

(iv) <u>The Chief Justice erred in ignoring the context in which lawyers would interpret s. 68</u>

75. The Chief Justice accepted what the legislation "conveys" to the legal profession matters to the interpretative analysis.[85] The reality in which s. 68 operates and is received is relevant to the interpretative exercise as factual context.[86] The Chief Justice ignored the obvious reality that lawyers, who as a population are experiencing an ongoing mental health crisis, will read the text of s. 68 and make the natural association between competence and health.[87]

76. Indeed, before the Chief Justice, it was accepted by all parties that the legal profession is experiencing a mental health crisis, where lawyers experience health

---

[84] JAB, p. [●], Gold Cross-Examination at Q96; JAB, p. [●], Colleton Cross-Examination at Q224, see also generally Q209–223, 262–264; JAB, p. [●], Greenberg #1 at para. 117.
[85] JAR, p. 321, Reasons, at para. 218.
[86] JBOA, p. [●], *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 41; JBOA, p. [●], Sullivan at s. 22.01[2].
[87] JAB, p. [●], Gold Cross-Examination, at Q56–57.

conditions and substance use disorders beyond the general population.[88] There is also no dispute that lawyers as a population delay or avoid seeking help for mental health and substance use, out of fear of reputational and regulatory repercussions.[89]

77. In this context, s. 68's association between health condition and incompetent practice cannot be interpreted neutrally, as the Chief Justice found. Nor does it serve—as the Chief Justice appeared to conclude—the purpose of "compassion" by conveying that lawyers "are simply experiencing a health issue for which they need health care".[90] That conclusion fails to appreciate that lawyers see the association and assume their condition is in and of itself a cause for regulatory intervention.

78. The government's only evidence on this point was from the Attorney General's representative, who stated that the policy was to "ensure that a member of the public who may have a concern about a regulated individual has a clear understanding of the types of issues or concerns that the regulator has the power to investigate".[91] In other words, the legislature wished the public to know that lawyers might practice incompetently on account of a health condition and that the public could make complaints on that basis.

79. If the government's purpose was to advertise that the public could make complaints because of a link between competence and health conditions, it is not unreasonable for the appellants and lawyers generally to make that association as well.

---

[88] JAB, p. [●], Greenberg #3 at paras. 92–94, 168–171, 211; JAB, p. [●], National Study, Phase 1 Report, at pp. 27, 34, 35, 40, 47, 53, 83, 185–188, 219–221, 233–234, 246–253, 258–262; JAB, p. [●], National Study, Executive Summary, at pp. 3–6, 14–16; JAB, p. [●], Greenberg #3, Ex. 99; JAB, p. [●], Gold Report at pp. 5–9; JAB, p. [●], Colleton Report at paras. 14–16; JAB, p. [●], Colleton Cross-Examination at Q57–59, 251–257; JAB, p. [●], Colleton Report at paras. 14–16.

[89] JAB, p. [●], National Study, Phase 1 Report, at pp. 54–60, 283–285, 337; JAB, p. [●], National Study, Executive Summary, at pp. 7, 10, 17; JAB, p. [●], National Study, Targeted Recommendations, at pp. 2756, 2779; JAB, p. [●], Gold Report at pp. 5, 7–9, 11; JAB, p. [●], Colleton Cross-Examination at Q237–241; JAB, p. [●], Greenberg #3 at paras. 93, 107, 119–126, 140, 170–172.

[90] JAR, p. 321, Reasons, at para. 218.

[91] JAB, p. [●], Examination for Discovery of Katharine Armitage, dated March 17, 2025, at Q115. A member of the public may make a complaint to the chief executive officer if they believe a licensee may have practiced incompetently. Unless the complaint is dismissed, the chief executive officer must commence an investigation: BE, p. [●], Bill 21, ss. 76, 77. As part of an investigation, the chief executive officer may require a licensee to undergo examination by a medical practitioner: BE, p. [●], Bill 21, s. 85(1)(g).

80. Put simply, the Chief Justice failed to interpret s. 68 in light of the undisputed and practical reality in which it will be read by lawyers and the public. In the result, the Chief Justice's interpretation of s. 68 as only facially focusing on conduct not condition cannot be supported in context. Bill 21 and s. 68 do associate, in an unwarranted way, mental health and competence in a way that engages lawyers' s. 7 rights.

(b) The Chief Justice erred in interpreting ss. 88(1)(c) and 122(3)(c)(ii) by analogizing to the COVID-19 cases

81. The Chief Justice erred in concluding the new regulator could not compel counselling or medical treatment by improperly relying on the COVID-19 cases. His interpretation of ss. 88(1)(c) and 122(3)(c)(ii) oversimplifies the constitutional choice presented to lawyers.

82. The Chief Justice erred in analogizing to the COVID-19 cases because:

A. he ignored Bill 21's broader infringement of the interests of lawyers' not subject to regulatory intervention; and

B. he incorrectly equated the constitutional choices presented to lawyers and health professionals by competence orders and the COVID-19 vaccine, respectively.

83. In the result, the Chief Justice's analogy to the COVID-19 cases produced an incomplete and flawed assessment of Bill 21's infringement of s. 7 interests.

(i) <u>The Chief Justice erred in failing to appreciate Bill 21's unconstitutional effects on lawyers not subject to regulatory intervention</u>

84. The Chief Justice erred in analogizing to the COVID-19 cases because he failed to appreciate Bill 21's unconstitutional effects on lawyers not subject to regulatory intervention. The COVID-19 cases could only be relevant to the s. 7 interests of lawyers subject to regulatory intervention. The COVID-19 cases do not grapple with the broader infringement caused by Bill 21: the heightened fear and stigma—and attendant reluctance to seek help—among lawyers not subject to regulatory intervention or investigation.[92] By

[92] JAB, p. [●], National Study, Phase 1 Report, at p. 58; JAB, p. [●], Gold Report at pp. 4–9.

equating the appellants' challenge to the COVID-19 cases, the Chief Justice disregarded the broader infringement caused by Bill 21.

85. For lawyers not subject to regulatory intervention, they are not presented with any choice between: (a) accepting treatment; or (b) leaving the profession. Rather, their s. 7 interests are infringed by mere practice of their profession in the regulatory scheme created by Bill 21. If you are a lawyer, you are at risk of being forced (by someone with zero medical qualifications) to take the blue pill, or the red pill.

(ii) <u>The Chief Justice erred in equating COVID-19 vaccines with the interventions contemplated by Bill 21</u>

86. The Chief Justice also erred in analogizing to the COVID-19 cases in respect of lawyers who are subject to regulatory intervention. The choice presented to lawyers subject to Bill 21 and health professionals subject to a COVID-19 vaccine is materially different such that Bill 21 cannot pass constitutional muster.

87. What underlies the Chief Justice's analogy to the COVID-19 cases is the assumption that Bill 21 and public health orders present individuals with the same choice: (a) accept what is universally regarded as safe and effective medical treatment; or (b) leave the profession. Indeed, in *Hoogerbrug v. British Columbia*, Justice Coval concluded vaccines were an effective preventative measure against transmission.[93]

88. However, the medical interventions contemplated by Bill 21 cannot be equated to the COVID-19 vaccine. There is no basis to say that a COVID-19 vaccine is inherently harmful.[94] The same cannot be said for an imposed medical treatment aimed at a lawyer's mental health or substance use. The vagueness of ss. 88(1)(c) and 122(3)(c)(ii) permits the chief executive officer or hearing panel of the new regulator to impose wide range of interventions on lawyers, with a degree of uncertainty of whether they will resolve the competency issue at all or on what timeline.[95] It authorizes such orders for forced

---

[93] JBOA, p. [●], *Hoogerbrug v. British Columbia*, 2024 BCSC 794 at paras. 124, 145 ("***Hoogerbrug***"), appeal dismissed as moot, JBOA, p. [●], *Tatlock v. British Columbia (Attorney General)*, 2025 BCCA 181.

[94] JBOA, p. [●], *Hoogerbrug* at para. 124. Courts have taken judicial notice of the safety of vaccines, and the COVID-19 vaccine in particular: JBOA, p. [●], *Parmar v. Tribe Management Inc.*, 2022 BCSC 1675 at paras. 108–110, 153.

[95] JAB, p. [●], Colleton Cross-Examination at Q207–208, 212, 215–222.

treatment without requirement that the chief executive officer obtain medical advice before making such an order.[96] It authorizes such forced treatment without any guarantee of confidentiality for the lawyer.[97] The scheme also fails to grapple with the undisputed fact and truth that voluntary treatment is generally more effective than compelled interventions.[98] As a result, the choice that Bill 21 foists on lawyers subject to regulatory intervention is: (a) accept invasive interventions of uncertain effectiveness ordered by a non-health professional, without confidentiality; or (b) leave the profession.

89. Our constitution does not permit a government-dominated regulator (without any medical professionals providing input) to impose treatment on persons simply because the other option is to abandon professions, jobs, livelihoods, and one of the most important things about a person's identity. If the law accepts such an impossible choice, then it has failed indeed.

90. The Chief Justice's analogy to the COVID-19 cases does not account for these distinguishing characteristics. Put simply, the COVID-19 cases are not apposite, and the Chief Justice erred in relying on them.

(c) The Chief Justice erred in finding that the failure to comply with a competence order could not result in prosecution

91. The Chief Justice concluded that a failure to comply with a competence order would not amount to an offence under Bill 21.[99] The Chief Justice appeared to conclude that the government's interpretation was an unequivocal representation that the government would not prosecute for non-compliance with a competence order.[100]

---

[96] BE, p. [●], Bill 21, s. 88(1)(c). Before the chief executive officer makes an order under s. 88(1), they must give the licensee notice and a reasonable opportunity to make submissions: BE, p. [●], Bill 21, s. 88(3). There is no requirement to obtain a medical consultation or seek other expert opinion. This is contrary to the evidence that treatment for mental health and substance use should have a solid evidentiary foundation: JAB, p. [●], Colleton Cross-Examination at Q205; see also JBOA, p. [●], *Grewal (Re)*, 2022 LSBC 22 at paras. 93–94.

[97] JAB, p. [●], Gold Report at p. 12; JAB, p. [●], Colleton Report at para. 57; JAB, p. [●], Greenberg #1 at para. 117.

[98] JAB, p. [●], Gold Report at pp. 12–14; JAB, p. [●], Ganesan Report at pp. 6–8; JAB, p. [●], Colleton Cross-Examination at Q176.

[99] JAR, p. 321, Reasons, at para. 221.

[100] JAB, p. [●], Written Submissions of the Attorney General of British Columbia, dated September 15, 2025, at para. 670: "Declining to comply with a competence order is not an offence."

92. In the absence of a Legislative amendment confirming that the definition of an offence does not capture non-compliance with a competence order, the Chief Justice erred. His conclusion is contrary to the text of s. 198.

93. On the face of s. 198, a lawyer that fails to comply with a competence order "willfully interferes with or obstructs another person [the chief executive officer] in the exercise of a power [the power to impose competence orders under s. 88]". Per the text, that lawyer is committing an offence and is thus exposed to the penalties prescribed in s. 202: a fine of up to $200,000 or imprisonment up to two years.

94. Nothing in the text of Bill 21 clarifies that non-compliance with competence orders are exempt from ss. 198 and 202, or that the powers in s. 59 are the only possible consequences of failing to comply with a competence order.[101] The text says imprisonment or a fine is available. The Chief Justice erred in adopting an interpretation of s. 198 that is contrary to the words enacted.

(d) The Court can decide Bill 21's consistency with s. 7 on the available record

95. The evidentiary record is sufficient for this Court to decide Bill 21's consistency with s. 7 of the *Charter*. Remitting the action to the Supreme Court is unnecessary.

96. The Chief Justice's errors arise from a flawed interpretation of Bill 21. As a result, the Chief Justice did not grapple with the appellants' evidence on Bill 21's unconstitutional effects on lawyers' s. 7 rights. The appellants' evidence remains unchallenged or aligned with that of the government.

97. On this record, Bill 21 engages and infringes the life, liberty, and security interests of lawyers in a manner that is not in accordance with the principles of fundamental justice.

98. Bill 21 signals to the profession that mental health and substance use are proper targets of professional regulation and can be remedied with compelled treatment by the new regulator. This signal creates an atmosphere of anxiety and suspicion among

---

[101] BE, p. [●], Bill 21, s. 59 permits the chief executive officer to impose limits or conditions on a license.

lawyers that leads to delayed treatment and decreased trust in seeking help for mental health and substance use.

99. The record below supports the following findings.

(i) Bill 21 engages and infringes lawyers' s. 7 rights

100. Bill 21 infringes liberty interests because it constrains lawyers' agency to make fundamentally personal decisions: decisions about their mental health and the integrity of their bodies. The right to personal autonomy is "so entrenched in the traditions of our law as to be ranked as fundamental and deserving of the highest order of protection."[102] Sections 88(1)(c) and 122(3)(c)(ii) empower the chief executive officer and a hearing panel to interfere with lawyers' medical self-determination by imposing particular counselling or treatment, with the threat of imprisonment or substantial fine.[103] The effects of these powers are to heighten stigma, and to discourage lawyers from choosing whether to self-report and seek help.[104] Bill 21 narrows lawyers' choices to seek help, from whom to seek help, and how to treat their condition, thus engaging their liberty interest.[105] The evidence is aligned that the legal profession experiences mental health and substance use disorders beyond the general population[106] and lawyers are already discouraged from seeking help.[107] In context, Bill 21's effects engage and infringe lawyers' liberty interests.

101. Bill 21 infringes security of the person because it discourages help-seeking and delays treatment, which exacerbates existing health conditions or causes new psychological stress.[108] Bill 21 creates this harm by (a) associating mental health and substance use with incompetent practice; and (b) enforcing that unwarranted association

---

[102] JBOA, p. [●], *Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2026 BCSC 1416 at para. 739 ("***CCD***"), quoting JBOA, p. [●], *Fleming v. Reid*, [1991] O.J. No. 1083 at para. 39 (C.A.).

[103] BE, p. [●], Bill 21, ss. 88, 122(3)(c)(ii), 198, 202.

[104] JAB, p. [●], Greenberg #1 at paras. 117–118, 120; JAB, p. [●], Greenberg #3 at para. 204; JAB, p. [●], Gold Report at pp. 12–13; JAB, p. [●], Gold Cross-Examination at Q38, 69–109; JAB, p. [●], Ganesan Cross-Examination at Q147.

[105] JBOA, p. [●], *CCD* at paras. 778–782.

[106] See footnote 88.

[107] See footnote 89.

[108] JBOA, p. [●], *R v. Morgentaler*, [1988] 1 S.C.R. 30 at p. 59; JBOA, p. [●], *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35 at para. 119; JAB, p. [●], Ganesan Report at p. 8; JAB, p. [●], National Study, Phase 1 Report, at pp. 283–284; JAB, p. [●], Gold Report at pp. 6, 8–9.

with threat of treatment, which is imposed by a chief executive officer with no guaranteed medical expertise or assurance of confidentiality.[109] Where a regulatory system, like Bill 21, exacerbates an atmosphere of stigma, it leads to more avoidance of help-seeking behaviour, which only compounds lawyers' already heightened disinclination to self-report or seek treatment.[110] These lawyers are subject to state-induced psychological harm beyond ordinary stress and anxiety or deterioration of existing conditions.

102. Bill 21 infringes lawyers' life interests for the same reasons it engages lawyers' security of the person. Considering the legal profession experiences suicidal ideation beyond the general population, Bill 21 creates a real risk that lawyers may engage in self-harm or suicide.[111] That risk is sufficient to engage their life interests.[112]

(ii) Bill 21's infringement of lawyers' s. 7 interests is not in accordance with the principles of fundamental justice

103. Bill 21 is arbitrary because associating competence with health conditions has no connection with the government's alleged purpose of protecting the public from incompetent practice. Bill 21 is counterproductive because it risks worsening lawyers' conditions by delaying treatment and heightening stigma. Lawyers delaying treatment and avoiding help-seeking behaviours out of fear of the regulator harms the lawyer and the public.[113] Bill 21 harms lawyers (exacting an unconstitutional price) and does not serve its own theory of the public good. In so doing, it limits lawyers' rights arbitrarily.[114]

---

[109] JAB, p. [●], Gold Report at p. 12; JAB, p. [●], Greenberg #1 at para. 117. The government's expert, Dr. Colleton, agrees confidentiality is an important concern and that Bill 21 does not protect against the risk of exposing lawyers' intimate personal health information to the public: JAB, p. [●], Colleton Report at para. 57. While Dr. Colleton opines lawyers' confidentiality interests must be balanced against the public interest in confidence in the legal profession, that is no answer in the s. 7 analysis: JBOA, p. [●], *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 125; JBOA, p. [●], *R. v. Brown*, 2022 SCC 18 at paras. 71–72; JBOA, p. [●], *CCD* at para. 889.

[110] JAB, p. [●], National Study, Phase 1 Report, at pp. 56–58, 281, 283–284; JAB, p. [●], National Study, Executive Summary, at pp. 7, 10; JAB, p. [●], National Study, Targeted Recommendations, at pp. 2756, 2779–2781; JAB, p. [●], Greenberg #3, Ex. 108, at pp. 20–21; JAB, p. [●], Gold Report at pp. 5–9.

[111] JAB, p. [●], National Study, Phase 1 Report, at pp. 40–42, 53, 55; JAB, p. [●], Greenberg #3 at para. 209; JAB, p. [●], Gold Report at p. 6.

[112] JBOA, p. [●], *CCD* at paras. 735, 772, 776.

[113] JAB, p. [●], Greenberg #3 at paras. 141, 214; JAB, p. [●], Gold Report at pp. 8–12.

[114] JBOA, p. [●], *Carter v. Canada (Attorney General),* 2015 SCC 5 at para. 83; JBOA, p. [●], *CCD* at paras. 747, 811.

104. If Bill 21 has some connection with the government's purported purpose, it remains overbroad. The statutory association between competence and health, backed by the power to compel treatment, is unnecessary when (a) the evidence is aligned that suspensions are a complete answer to incompetent practice;[115] and (b) the LSBC's model illustrates competency can be assessed without reference to health conditions.[116]

105. If Bill 21 has some connection with the government's purported purpose, Bill 21 is nevertheless grossly disproportionate. For lawyers subject to regulatory intervention, they may be compelled to counselling or medical treatment contrary to their right to medical self-determination. Compelled treatment is generally much less effective and should be relied upon as a last resort.[117] Yet, Bill 21 provides no such safeguard. As a result, Bill 21 interferes with lawyers' fundamentally personal choices to impose treatment that is ineffective in achieving the government's purpose. For lawyers not subject to regulatory intervention, Bill 21 still has grossly disproportionate effects. The fear arising from the possibility of compelled treatment disincentivizes help-seeking and self-reporting. This fear arises despite the evidence that not all mental health and substance use disorders impair practice.[118] The harsh effect on lawyers' s. 7 interests is out of sync with Bill 21's purpose. It is unconstitutional to impose these harms on lawyers when suspensions are sufficient to achieve the goal of protecting the public from incompetent practice.

---

[115] JAB, p. [●], Gold Cross-Examination at Q96; JAB, p. [●], Colleton Cross-Examination at Q224, see generally Q209–223, 262–264; JAB, p. [●], Greenberg #1 at para. 117.

[116] The LSBC's Mental Health Task Force undertook substantial research on how to address mental health and substance use among lawyers without perpetuating stigma. This led to the removal of stigmatizing language from the *Code of Professional Conduct* and the alternative disciplinary process: JAB, p. [●], Greenberg #1 at paras. 110–123, Exs. 49–54; JAB, p. [●], Greenberg #3 at paras. 85–163, Exs. 98–110.

[117] The government's expert, Dr. Colleton, conceded on cross-examination that compelled treatment is not always effective, not least immediately effective, and should be used as a last resort: JAB, p. [●], Colleton Cross-Examination at Q207–208, 212, 215–222. See also JAB, p. [●], Colleton Cross-Examination at Q176; JAB, p. [●], Gold Report at pp. 12–14; JAB, p. [●], Gold Cross-Examination at Q113; JAB, p. [●], Greenberg #3 at paras. 136–140; JAB, p. [●], Ganesan Report at pp. 4–8.

[118] JAB, p. [●], Colleton Report at para. 21; JAB, p. [●], Gold Report at p. 10; JAB, p. [●], Greenberg #3 at paras. 99, 210; JAB, p. [●], National Study, Targeted Recommendations, at p. 2780; JAB, p. [●], Colleton Cross-Examination at Q228–231.

(iii) Bill 21's violation of s. 7 cannot be justified in a free and democratic society

106. In the court below, the government properly conceded that any violation of s. 7 could not be justified under s. 1.[119]

107. In the result, the evidentiary record is sufficient for this Court to assess whether Bill 21 violates lawyers' s. 7 rights. The appellants' evidence was largely unchallenged and effectively conceded by the Respondents' own expert. In substance, if this Court concludes the Chief Justice erred in the interpretation of Bill 21, the evidence supports a finding that Bill 21 violates s. 7 of the *Charter*.

(e) Alternatively, the Court should remit the s. 7 issue with directions on the correct interpretation and legal principles

108. If the Court finds the Chief Justice erred in the s. 7 analysis and concludes it cannot decide the issues, the appropriate remedy is to remit the s. 7 analysis with directions on the correct interpretation of Bill 21.

E. The Chief Justice erred in finding that Bill 21 does not violate the s. 8 right to be free from unreasonable search and seizure on the basis that it does not undermine the independence of the Bar

109. The Chief Justice's finding that Bill 21 does not violate s. 8 is bound up with his erroneous conclusion that Bill 21 does not undermine the independence of the Bar. In particular, the Chief Justice's (a) reliance on the s. 8 cases decided under the *LPA*; and (b) finding that the statutory protections for solicitor-client privilege in Bill 21, are not significantly undermined by the fact that the new regulator is not a body controlled by lawyers, are dependent on his conclusion that the new regulatory model does not undermine the independence of the new regulator.[120] As a result, if the appellants and LSBC are correct that Bill 21 undermines the independence of the Bar and, by extension, the new regulator, the Chief Justice's analysis cannot stand. Put simply, the search and seizure power in s. 78 is not reasonable, and the protections for solicitor-client privilege

---

[119] JAR, p. 246, Application Response of AGBC, filed May 23, 2025 (TLABC Action), at para. 42.
[120] JAR, p. 325, Reasons, at paras. 230–231.

in s. 209 are not sufficient, if the regulator exercising that power and receiving the privileged information is not independent.

PART 4 - NATURE OF ORDER SOUGHT

110. The appellants seek orders:

A. allowing the appeal;

B. setting aside the order made at paragraph 234 of the judgment dismissing the action of the appellants;

C. declaring that Bill 21: (a) is *ultra vires* the Legislative Assembly of British Columbia under ss. 92(13) and (14) of the *Constitution Act, 1867*; (b) violates ss. 7, 8, 10(b), and 11(d) of the *Charter* in a manner that cannot be justified in a free and democratic society under s. 1 of the *Charter*; and (c) is of no force or effect under s. 52 of the *Constitution Act, 1982*; in the alternative, declaring that ss. 68, 76–78, 85, 88, 122(3)(c)(ii), 198, 202, and 209 of Bill 21 violate ss. 7 and 8 of the *Charter* in a manner that cannot be justified in a free and democratic society under s. 1 of the *Charter*; (e) those portions of Bill 21 are of no force and effect to the extent of any inconsistency with the Constitution of Canada under s. 52 of the *Constitution Act, 1982*; in the further alternative, remitting the action to the Supreme Court of British Columbia for a new trial; and

D. awarding the appellants costs of the appeal and in the Supreme Court of British Columbia on a solicitor-and-own client indemnity basis.

All of which is respectfully submitted.

Dated at the City of Vancouver, Province of B.C., this 5th day of August, 2026.

Signed by:
Gavin Cameron
AC3B07833A6B4D9...

Gavin Cameron, Tom Posyniak, Laura Abrioux, and Will Andrews
Counsel for the Appellants, Trial Lawyers Association of British Columbia and Kevin Westell

APPENDICES: LIST OF AUTHORITIES

Authorities	**Page # in factum**	**Para # in factum**
Cases		
Brar v. British Columbia, 2024 BCCA 265	10	36
Canada (Attorney General) v. Bedford, 2013 SCC 72	27	101
Canada (Canadian Human Rights Commission) v. Canada (Attorney General), 2011 SCC 53	19	70
Carter v. Canada (Attorney General), 2015 SCC 5	27	103
Chaoulli v. Quebec (Attorney General), 2005 SCC 35	26	101
Charkaoui v. Canada (Citizenship and Immigration), 2007 SCC 9	14	50
Chisholm v. Valemount Forest Products Ltd., 2025 BCCA 48	16, 17, 18, 19	56, 61, 66, 70
Council of Canadians with Disabilities v. British Columbia (Attorney General), 2026 BCSC 1416	26, 27	100, 101 102, 103
Democracy Watch v. Canada (Attorney General), 2026 SCC 28	14	48
Fleming v. Reid, [1991] O.J. No. 1083 (C.A.)	26	100
Grewal (Re), 2022 LSBC 22	24	88
Hoogerbrug v. British Columbia, 2024 BCSC 794	23	87, 88
Manns v. Vancouver Island Health Authority, 2024 BCCA 110	12, 17, 18	45, 61, 66

Parmar v. Tribe Management Inc., 2022 BCSC 1675	23	88
R. v. Brown, 2022 SCC 18	27	101
R. v. Morgentaler, [1988] 1 S.C.R. 30	26	101
R. v. Rose, [1998] 3 S.C.R. 262	14	50
R. v. Sanclemente, 2021 ONCA 906	15	50
R. v. Sinclair, 2010 SCC 35	15	50
Tatlock v. British Columbia (Attorney General), 2025 BCCA 181	23	87
Valente v. The Queen, [1985] 2 S.C.R. 673	15	50
Wang v. British Columbia (Securities Commission), 2023 BCCA 101	16	56
West Fraser Mills Ltd. British Columbia (Workers' Compensation Appeal Tribunal), 2018 SCC 22	20	75
Secondary Authorities		
R. Sullivan, *The Construction of Statutes* (Toronto: LexisNexis Canada Inc., 2022)	18, 19, 20	63, 70, 75

APPENDICES: ENACTMENTS

[See Appellants' Book of Enactments.]