



Court of Appeal File Nos: **CA51535; CA51536**

Vancouver Registry

COURT OF APPEAL

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA, BEFORE THE
HONOURABLE CHIEF JUSTICE SKOLROOD FROM A DECISION DATED APRIL 29,
2026

B E T W E E N:

**TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA and THE LAW SOCIETY
OF BRITISH COLUMBIA**

APPELLANTS

AND:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

AND:

**LAWYERS' RIGHTS WATCH CANADA, LAW FOUNDATION OF BRITISH
COLUMBIA, LAW SOCIETY OF MANITOBA, SOCIETY OF NOTARIES PUBLIC OF
BRITISH COLUMBIA, BRITISH COLUMBIA PARALEGAL ASSOCIATION,
INDIGENOUS BAR ASSOCIATION IN CANADA, CANADIAN BAR ASSOCIATION,
CRIMINAL DEFENCE ADVOCACY SOCIETY, FEDERATION OF LAW SOCIETIES
OF CANADA, BRITISH COLUMBIA ACCESS TO JUSTICE CENTRE FOR
EXCELLENCE, ADVOCATES' SOCIETY, and WORKERS FOR ETHICAL
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OPENING STATEMENT

The independence of the legal profession is a principle of fundamental justice that safeguards the rule of law, secures meaningful access to justice, and is inextricably bound to the independence of the judiciary. The forms of governance that protect the independence of the Bar are not a matter of institutional convenience or legislative grace. A judiciary can be no more independent than the Bar from which it is drawn and by which litigants are represented before it. Where the state controls the structure, governance, or discipline of the legal profession, it acquires the capacity — whether or not that capacity is exercised — to shape the advocacy on which impartial adjudication depends.

Canada's international legal obligations, including the *International Covenant on Civil and Political Rights* (“ICCPR”) and the United Nations *Basic Principles on the Role of Lawyers* (“UN Basic Principles”), elaborate this principle and must inform this Court's interpretation of the unwritten constitutional principle of independence of the Bar and of ss. 7, 10(b) and 11(d) of the Canadian Charter of Rights and Freedoms (“*Charter*”). The constitutionality of the Legal Professions Act, SBC 2024, c 26 (“LPA”), must be assessed against that international backdrop.

Lawyers' Rights Watch Canada (“LRWC”) intervenes to assist this Court in situating the constitutionality of the LPA within that broader framework, and to draw the Court's attention to why the independence of the legal profession cannot be severed, conceptually or constitutionally, from the independence of the judiciary itself.

PART 1: STATEMENT OF FACTS

1. The *Legal Professions Act*, SBC 2024, c 26 (“LPA”), enacted by the British Columbia government and receiving royal assent on May 16, 2024, eliminated the Law Society of British Columbia and established in its place a single regulator having jurisdiction over lawyers, notaries public, and paralegals.
2. The Law Society of British Columbia (“LSBC”) and the Trial Lawyers Association of British Columbia (“TLABC”) commenced separate actions challenging the constitutionality of the LPA.
3. Chief Justice Skolrood dismissed the plaintiffs’ constitutional claims and both the LSBC and the TLABC commenced this appeal.¹
4. LRWC takes no position on the facts at issue in this appeal.

PART 2: ISSUE ON APPEAL

5. The sole issue under appeal is the constitutionality of the LPA.

PART 3: ARGUMENT

A. International Law Must Inform Constitutional Analysis of the *Legal Professions Act*

6. International law, including customary and treaty law must inform the content of constitutional guarantees already recognized in Canadian jurisprudence. International law, principles, and standards are necessary interpretive aids regarding ss. 7, 10(b) and 11(d) of the *Canadian Charter of Rights and Freedoms* (Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 1) (“*Charter*”) and the unwritten constitutional principle of independence of the Bar.
7. The Supreme Court of Canada has held that the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions of

¹ *Law Society of British Columbia v British Columbia (Attorney General)*, 2026 BCSC 779.

the international human rights instruments Canada has ratified,² including the *International Covenant on Civil and Political Rights* (“ICCPR”).³ In *Baker v Canada*, the Court affirmed that international human rights law is “a critical influence on the interpretation of the scope of the rights included in the *Charter*,”⁴ and that the values reflected in international human rights law “may help inform the contextual approach to statutory interpretation and judicial review.”⁵ The SCC has endorsed the established interpretive presumption that the legislature is presumed to respect the values and principles of international law, both customary and conventional, which form the legal context in which legislation is enacted and construed, and interpretation consistent with those values and principles is to be preferred.⁶ This presumption of conformity applies to administrative decision-makers and tribunals, and is not confined to courts.⁷

8. This interpretive obligation applies with particular force to the *Charter* itself. In *R v Hape*, the Court held that “in interpreting the scope of application of the *Charter*, the courts should seek to ensure compliance with Canada’s binding obligations under international law where the express words are capable of supporting such a conclusion.”⁸

9. In *Canada (Human Rights Commission) v Canada (Attorney General)*, the Federal Court held that “where there is more than one possible interpretation of a provision in domestic legislation, tribunals and courts will seek to avoid an interpretation that would put Canada in breach of its international obligations,”⁹ the legislature being presumed to

² *Slaight Communications Inc v Davidson*, [1989] 1 SCR 1038 at 1056–7; *Taylor v. Newfoundland and Labrador*, 2026 SCC 5.

³ *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, CanTS 1976 No. 47, 6 ILM 368 (entered into force 23 March 1976, accession by Canada 19 May 1976) [ICCPR].

⁴ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at para 70.

⁵ *Baker*, at para 70.

⁶ *Baker*, at para 70.

⁷ *R v Hape*, 2007 SCC 26, at para 53; Gib van Ert, “Canada” in David Sloss, ed, *The Role of Domestic Courts in Treaty Enforcement* (Cambridge: CUP, 2014) 166.

⁸ *R v Hape*, 2007 SCC 26 [*Hape*] at para 56.

⁹ *Canada (Human Rights Commission) v Canada (Attorney General)*, 2012 FC 445 [*Canada (Human Rights Commission)*] at paras 155, 351.

respect the values and principles enshrined in both customary and conventional international law.

10. *Hape* addresses, albeit in obiter, Canada's approach to customary international law: following the common law tradition, customary international law is incorporated into Canadian domestic law unless Parliament expressly legislates to the contrary. Absent such express derogation, courts should look to rules of customary international law to interpret Canadian law and to develop the common law.¹⁰

11. The interpretive presumption is not confined to instruments having binding treaty status and also extends to non-binding instruments: the Federal Court in Canada (Human Rights Commission) held that the *United Nations Declaration on the Rights of Indigenous Peoples*,¹¹ a non-binding international instrument, may inform the contextual approach to statutory interpretation.¹² In *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430, [now under appeal to the SCC] this Court held the UN *Declaration on the Rights of Indigenous Peoples* provides “the interpretive lens through which British Columbia laws must be viewed and the minimum standards against which they are to be measured,”¹³ and that “the court may need to assess the extent to which a relevant article expresses a binding international right, obligation or general principle, a minimum standard, or an aspiration.”¹⁴ *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32, held that while binding international instruments carry more weight in the Courts’ analysis than non-binding instruments, the latter “should be treated as relevant and persuasive but not determinative interpretive tools[...].”¹⁵

¹⁰ *Hape*, at para 39.

¹¹ *UN Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess (2007).

¹² *Canada (Human Rights Commission)* at para 353.

¹³ *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 [*Gitxaala*] at para 7.

¹⁴ *Gitxaala* at para 97.

¹⁵ *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32 at headnote; see also paras 35, 36, 38.

12. The United Nations *Basic Principles on the Role of Lawyers* (“UN Basic Principles”),¹⁶ a non-binding instrument, has been considered by Canadian courts. The Supreme Court of Canada has relied on the UN Basic Principles as reflecting an “overwhelming” and “widespread consensus” among democratic states on the fundamental importance of protecting the independence of legal representation from state interference.¹⁷ Accordingly, the UN Basic Principles are integral to informing the content of the constitutional guarantees already recognized in Canadian jurisprudence.

13. The ICCPR and the UN Basic Principles, as well as customary and other sources of international law, are proper interpretive aids to the scope of ss. 7, 10(b) and 11(d) of the *Charter* and to the unwritten constitutional principle of independence of the Bar, including the international principle of self-governance of the Bar, and the constitutional validity of the LPA cannot be fully assessed in isolation from Canada’s international obligations.

14. International law arises from several sources, including treaties; “customary international law derived from the practice of states;” “general principles of law recognized by civilized nations;” and “judicial decision and the writings of ‘the most highly qualified publicists.’”¹⁸ In addition, international law may be shaped by international bodies and mechanisms such as those of the United Nations (UN).

15. Under the *Vienna Convention on the Law of Treaties*,¹⁹ Article 26, States Parties are bound by their international treaty obligations, which must be performed in good faith. The Vienna Convention further provides in Article 27 that a state may not rely on provisions of its internal law to justify a failure to meet a treaty obligation. This means that

¹⁶ United Nations Specialised Conferences, *Basic Principles on the Role of Lawyers*, 7 September 1990, welcomed by the General Assembly of the United Nations, Resolution 45/166, 18 December 1990.

¹⁷ *Canada (Attorney General) v. Federation of Law Societies of Canada*, [2015] 1 SCR 401 at para 102.

¹⁸ *Statute of the International Court of Justice*, XV UNCIO 355, Article 38.

¹⁹ *Vienna Convention on the Law of Treaties*, 23 May 1969, CanTS No. 37, ratified/acceded to by Canada 14 October 1970.

states at all levels and branches of government are required by international law to implement treaties in accordance with their respective spheres of responsibility.

16. Legal obligations are also found in principles of customary international law, which form part of the common law under the doctrine of adoption.²⁰ This includes many provisions of the *Universal Declaration of Human Rights* (“UDHR”), including rights to fair trials and an independent judiciary.²¹ The right to a fair trial has been affirmed as customary international law by international criminal courts.²²

17. As a member of the UN, Canada is bound by the Charter of the United Nations²³ and is expected to respect the norms articulated in Declarations, Principles, and Resolutions adopted by the UN General Assembly and the UN Human Rights Council. This includes the views and decisions of independent UN treaty bodies, Special Procedures of the UN Human Rights Council. The International Court of Justice “ascribe[s] great weight to the interpretation adopted” by these independent bodies,²⁴ and Canadian courts have relied on them in determining the content and scope of Canada’s international obligations.²⁵ The SCC has often cited reports and statements of UN Human Rights Council’s Special Procedures mandate holders.²⁶

²⁰ *Hape*, at para 36.

²¹ UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948, Articles 10, 11; Lawyers Committee for Human Rights, “What Is a Fair Trial? A Basic Guide to Legal Standards and Practice” (New York, NY: March 2000) at 7. See also *Beharry v Reno*, 183 F Supp 2d 584, 604 (EDNY 2002), noting that several international human rights agreements such as the UDHR have attained the status of customary international law because of their widespread acceptance.

²² See, eg, *Prosecutor v Zlatko Aleksovski (Appeal Judgement)*, IT-95-14/1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 24 March 2000.

²³ *Charter of the United Nations*, 26 June 1945, CanTS 1945 no 7, ratified/acceded to by Canada 9 November 1945.

²⁴ *Republic of Guinea v Democratic Republic of the Congo*, Judgment of 30 November 2010, ICJ Reports 2010 at paras. 66-68. See also International Law Association, Berlin Conference (2004), *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, at para 175.

²⁵ *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at para 27.

²⁶ See, eg, *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5; and, *United States v Burns*, 2001 SCC 7.

B. Independence of the Legal Profession Is a Principle of Fundamental Justice Safeguarding the Rule of Law and Inextricable from Judicial Independence

18. Under international law and standards, independence of the legal profession, including self-governance, is not merely an administrative arrangement, a matter of “legislative choice,” or a “privilege” conferred by the legislature; it is a principle of fundamental justice and a safeguard of the rule of law that is also inextricably bound to the independence of the judiciary. A legal profession whose advocacy is constrained by regulatory design or political pressure may produce judicial decisions that are not fully informed and lack impartiality.

19. Independence of the legal profession is fundamental to fair trial right conditions set out in the UDHR Article 10²⁷ and ICCPR Article 14.²⁸ The UN Special Rapporteur on the Independence of Judges and Lawyers affirmed in 2021, that “the independence of lawyers and the judiciary is a fundamental precondition for the right to a fair trial, as guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR).”²⁹

20. The UN Human Rights Committee, the group of independent experts responsible for monitoring and enforcing the ICCPR, has emphasized that the independence of a tribunal requires protection from state interference, stressing that lawyers appearing

²⁷ UDHR Article 10: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

²⁸ ICCPR, Article 14 states, *inter alia*, “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”

²⁹ UN Human Rights Council, Special Procedures, *Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, Communication, AL IRN 26/2021, 1 October 2021.

before it must be able to advise and represent clients without restriction, pressure, or undue state interference or influence.³⁰

21. The UN Basic Principles elaborate guarantees of fair trial rights, including judicial independence, and the right of access to independent counsel of choice set out in the UDHR Article 10 and the ICCPR Article 14. Fair trial rights cannot be guaranteed without ensuring an independent legal profession. The UN Basic Principles have been internationally recognized as authoritative, including through citation in numerous consensus resolutions of the UN Human Rights Council and UN General Assembly.³¹

22. Canadian courts have long recognized that the independence of the legal profession is “a hallmark of a free society.”³² In *Pearlman v Manitoba Law Society Judicial Committee*, Iacobucci J, writing for the unanimous court stated:

Stress was rightly laid on the high value that free societies have placed historically on ...an independent Bar, free to represent citizens without fear or favour in the protection of individual rights and civil liberties against incursion from any source, including the state.³³

23. A legal profession whose members are constrained, whether by the structure of the regulatory regime or by a broader climate of political pressure, cannot be relied upon to discharge the duty of resolute advocacy that underlies fair and impartial adjudication. Where lawyers are deterred — whether by fear of regulatory consequence, political disfavour, or professional insecurity — from advancing the full range of arguments available to a client, or from accepting politically unpopular retainers, the resulting body of judicial decisions becomes incomplete and will not reflect the full adversarial contests on which impartial adjudication depends.

24. Independence of the Bar necessarily entails self-governance by lawyers’ governing bodies. This principle has been established by the UN Basic Principles.

³⁰ Human Rights Committee, *General Comment No 32* (2007), at paras 19, 34, and 38.

³¹ UN General Assembly, *Resolution 45/166*, 18 December 1990; UN Commission on Human Rights, *Human rights in the administration of justice*, E/CN.4/RES/1991/34, 5 March 1991.

³² *Canada (Attorney General) v Law Society of BC*, [1982] 2 SCR 307, at 335.

³³ *Pearlman v Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 at p 887.

Principles 24 and 25, which apply to the regulatory framework of the legal profession, state:

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

25. Principle 24 stipulates that the entitlement of lawyers to form and join self-governing professional associations, the members of which elect their executive body, is for three interrelated purposes: representation of lawyers' interests, promotion of continuing education and training, and protection of professional integrity. The "interests" of lawyers mentioned in Principle 24 does not refer to the self-interests of individual lawyers, but the public interest, as set out in the preamble of the UN Basic Principles, which states:

... professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest...³⁴

26. The *Council of Europe Convention on the Protection of the Profession of Lawyer*,³⁵ based on the UN Basic Principles, also stipulates the requirement of self-governance of the Bar. As the first binding treaty on protection of the legal profession, it reflects the international norm of self-governance, stating in Article 5 that "[States] Parties shall refrain from adopting any measures or endorsing any practices that would undermine the

³⁴ *Basic Principles*, Principle 24.

³⁵ Council of Europe: Committee of Ministers, *Council of Europe Convention for the Protection of the Profession of Lawyer*, 12 March 2025; Council of Europe: Committee of Ministers, *Explanatory Report to the Council of Europe Convention for the Protection of the Profession of Lawyer*, CM(2024)191-add2final, 12 March 2025.

independence and self-governing nature of professional associations.”³⁶

27. In 2018, the UN Special Rapporteur on Independence of Judges and Lawyers (SRIJL) defined independence as follows:

A bar association is generally deemed to be independent when it is mostly free from external influence and can withstand pressure from external sources on matters such as the regulation of the profession, the development and implementation of codes of professional conduct, and the right of lawyers to join the association.³⁷

28. The SRIJL further stated that the minimum requirements that Bar associations should meet are “(a) independence; (b) a self-governing nature; (c) a general mandate to protect the independence of the legal profession and the interests of its members; and (d) recognition under law.”³⁸

29. The SRIJL affirmed, in para 89, that “[a]ll existing legal standards stress that bar associations should be self-governing. In practice, that means that the bar association should be able to set its own rules and regulations, make its own decisions free from external influence, represent its members’ interests and be able to sustain itself.”³⁹

30. The SRIJL further acknowledged, in para 104, that “involvement of State authorities in the regulation of the legal profession does not per se jeopardize the independence of the profession itself” as long as it is in accordance with international standards and the legal profession can participate in the legislative process.⁴⁰ He noted that some States have chosen self-regulation, “while others have a mixed model allowing for some State intervention. Not all forms of State intervention have, by themselves, an adverse impact on the ability of the legal profession to carry out their professional duties in accordance with the rule of law.” However, the Special Rapporteur has emphasised

³⁶ *Ibid*, Article 5.

³⁷ General Assembly, *Report of the Special Rapporteur on the independence of judges and lawyers*, A/73/365, at para 23.

³⁸ *Ibid*, at para 88

³⁹ *Ibid*, at para 104

⁴⁰ *Ibid*, at para 84.

that the test for independence of the Bar entails assessing whether the forms of State intervention, in actual practice, meet the minimum requirements as defined by the Special Rapporteur.

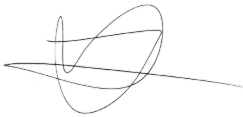
31. LRWC submits that the Court must assess whether the unilateral replacement of the Law Society of BC with a regulatory body of the government's own devising can be said to meet the requirements of independence, including self-governance, established by international law and standards.

PART 4: NATURE OF ORDER SOUGHT

32. LRWC seeks no relief for costs and asks that no relief be granted against them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Vancouver, British Columbia, this 5th day of October 2026



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