No. S-243258
Vancouver Registry

In the Supreme Court of British Columbia

Between

Law Society of British Columbia

Plaintiff

and

Attorney General of British Columbia,
His Majesty the King in right of the Province of British Columbia,
and Lieutenant Governor in Council of British Columbia

Defendants

and

Canadian Bar Association, Indigenous Bar Association,
Society of Notaries Public of British Columbia,
Law Foundation of British Columbia, and Law Society of Manitoba

Interveners

APPLICATION RESPONSE

Application response of: Attorney General of British Columbia

THIS IS A RESPONSE TO the notice of application of the Law Society of British Columbia filed on April 4, 2025.

The Attorney General estimates that the applications will take 14 days.

PART 1: ORDERS CONSENTED TO

The Attorney General consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: **none**.

PART 2: ORDERS OPPOSED

The Attorney General opposes the granting of the orders set out in **all** of the paragraphs of Part 1 of the notice of application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Attorney General takes no position on the granting of the orders set out in **none** of the paragraphs of Part 1 of the notice of application.

PART 4: FACTUAL BASIS

A. Overview

1. There is no dispute in this case as to the fundamental importance of lawyers providing independent legal advice and zealous advocacy with loyalty to their client's cause. Independent lawyers play a crucial role in the administration of justice in our free and democratic society.[1] Members of the public need access to independent legal advice and zealous advocacy from lawyers, especially in matters adverse to the state.

2. Where the parties diverge is with respect to the meaning of lawyer independence[2] —the content and scope of lawyer independence, the institutional arrangements that are necessary to maintain lawyer independence, and how the Constitution protects lawyer independence.

3. Canadian history and jurisprudence, academic literature, and international sources support a functional approach to lawyer independence, traditionally understood as freedom from improper interference with a lawyer's advice or advocacy on behalf of their client.

4. No new law is required to protect lawyer independence, properly understood. It is already protected under the Constitution by specific principles of fundamental justice under s. 7 of the *Charter*. One is that the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes.[3] Another is that the state cannot require lawyers to divulge privileged information.[4] These and similar principles of fundamental justice are what give constitutional protection to lawyer independence.

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[1] *A.G. Can. v. Law Society of B.C.*, [1982] 2 SCR 307 at 335-336 [*Jabour*]; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 [*Trinity Western*].
[2] The Attorney General uses "lawyer independence" instead of "independence of the bar" because it is plainer language that is more accessible to the public.
[3] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 84 [*Federation 2015*].
[4] *R. v. McClure*, 2001 SCC 14 at para. 41 [*McLure*].

5. As examples from around the democratic world demonstrate, many different regulatory structures can protect lawyer independence. The current *Legal Profession Act*, S.B.C. 1998, c. 9 (the "***Current Act***") is one way, but not the only way. Québec, Australia and New Zealand, for example, have adopted different regulatory structures with no discernable impact on lawyer independence.

6. The new *Legal Professions Act*, S.B.C. 2024, c. 26 (the "***Act***") does not contravene or diminish lawyer independence. None of the impugned provisions of the *Act* interfere with lawyers' advice or advocacy on behalf of their clients.[5] The *Act* will not reduce the availability, to members of the public, of independent legal advice and zealous advocacy from lawyers, including in matters adverse to the state.

7. The Law Society conceives of lawyer independence more expansively than it has traditionally been understood. The Law Society does not give a clear, single definition of what it means by lawyer independence. However, the Law Society suggests it requires that lawyers be "free of influence by public authorities (or any other source)",[6] a broader definition than the one the Supreme Court of Canada rejected as too broad in *Federation 2015.*[7] The Law Society argues that lawyer self-governance and self-regulation are necessary components of, or preconditions to, lawyer independence.[8] Again, the Law Society does not clearly define these concepts, although it is apparent that by "self-governance" it means electoral or parliamentary self-governance.

8. The Law Society submits that its concept of absolute lawyer independence is an "underlying" or unwritten constitutional principle that limits the provinces' legislative competence under s. 92. This legal theory is inconsistent with settled constitutional

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[5] The Law Society challenges the regulator's mandate (s. 6), the non-exhaustive guiding principles (s. 7), the composition of the board (s. 8), the existence and role of the Indigenous council (ss. 29-34), the codification of certain regulatory procedure (ss. 68, 70-71 and 73-92), and cabinet's regulation-making authority (ss. 4 and 211-214).

[6] Law Society Notice of Application at paras. 21 and 43; Law Society Notice of Civil Claim at para. 84.

[7] *Federation 2015* at paras. 77-80. The Court of Appeal used the term "incursion" whereas the Law Society uses the broader term "influence".

[8] Law Society Notice of Application at paras. 21 and 55.

doctrine and has been rejected by the Supreme Court of Canada.[9] Unwritten principles cannot be used to invalidate legislation. This is a full answer to the main issue in these actions.

9. In any case, the Law Society's conception of absolute lawyer independence (self-governance, self-regulation, and freedom from any external influence) does not meet the test for an unwritten constitutional principle.

10. Finally, the Law Society argues that absolute lawyer independence "constrains" legislatures from legislating about the governance and regulatory structures for lawyers unless the legislation is "generated or consented to by the bar".[10] This constraint is said to arise from an alleged past practice, since Confederation, of legislatures across Canada not legislating about the governance and regulatory structures for lawyers without the consent of the bar. That factual allegation was not pleaded and is not properly before the Court.

11. Even if this allegation was properly raised, there is no support in Canada's constitutional framework for providing lawyers with an unreviewable and unaccountable veto over legislation affecting their governance and regulation. Courts assess the constitutionality of legislation based on its content, not the process through which it was enacted or the opinions that people hold about it.

12. Lawyers regulated by the new single regulator, Legal Professions BC, will be just as independent as they are now. Under the *Act,* members of the public will have the same or better access to independent legal advice and zealous and loyal advocacy from lawyers, including in matters adverse to the state.

13. These actions should be dismissed.

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[9] *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at paras. 5, 74-75, 80, 84 [*Toronto*].
[10] Law Society Notice of application at para. 17.

B. Legislative Facts: Context for the *Act*

14. The *Act* consolidates the regulatory framework for lawyers, notaries, and a new category of "regulated paralegals" in one statute and within the jurisdiction of a single regulator. (This overarching principle is not controversial: all parties agree, in concept, that the legal professions should be regulated by a single regulator.)

15. The purposes of the *Act* are to improve access to legal services, modernize the regulatory and governance frameworks for the legal professions, and advance reconciliation.

(i) Access to legal services in British Columbia

16. The market for legal services "fails to meet the legal needs of a vast majority of the population".[11] There are some legal services that lawyers are not best positioned to provide because lawyers are overqualified and unable to amortize the cost of their qualifications without charging fees that are too high.[12] The problem of access to legal services has many contributing causes, but the current regulatory model is one.[13] Licensing new types of legal services providers, and promoting competition between different types of legal services providers, will likely improve access.[14]

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[11] Report of Legal Services Regulatory Framework Task Force (2014) (Affidavit #1 of Brook Greenberg, KC made May 24, 2024 ("**Greenberg #1**"), Ex. 65 at pp. 1180-1182).
[12] Towards a New Regulatory Model (2008) (Greenberg #1, Ex. 63 at p. 1121).
[13] Hon. Cromwell and Anstis, "The Legal Services Gap: Access to Justice as a Regulatory Issue" (2016) 42:1 Queen's L.J. 1 at p. 12.
[14] Unified Regulatory Regime for Legal Services (2015) (Affidavit #3 of Brook Greenberg, KC made April 3, 2025 ("**Greenberg #3**"), Ex. 57 at p. 1728); Report of Legal Services Regulatory Framework Task Force (2014) (Greenberg #1, Ex. 65 at pp. 1184-1185); Final Report of Legal Service Providers Task Force (2013) (Greenberg #1, Ex. 64 at pp. 1132, 1150); Future of Legal Regulation in British Columbia (2011) (Affidavit #1 of Vanessa Lever made May 23, 2025 ("**Lever #1**"), Ex. C at p. 56); Towards a New Regulatory Model (2008) (Greenberg #1, Ex. 63 at pp. 1125-1127).

(ii) Electoral/parliamentary governance model

17. Under the *Current Act*, the Law Society's board is effectively a miniature parliament. The board is dissolved every two years and every elected bencher position (except the president and vice-presidents) is re-filled.

18. This model has benefits: elected benchers have credibility with the profession and are clearly independent from the government of the day. The current model also has disadvantages, however. Electing virtually the entire board "does not necessarily provide appropriate diversity of expertise, perspective, and lived experience" and "tends to result in a board that is older than the profession generally and less demographically diverse".[15] As the CBA Futures Initiative has observed, the electoral model also "lends some truth to the perception that self-regulation may tend to protect the interests of the profession".[16] To some members of the public, "the geographic election model suggests that Benchers represent the interests of a constituency, rather than the public interest".[17]

19. The CBA Futures Initiative and the Governance Review Task Force of the Law Society of Upper Canada have both recommended that fewer directors be elected

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[15] CBA Futures Initiative (2014) (Lever #1, Ex. A at p. 21); see also LSO Governance Review Task Force Report (2024) (Greenberg #3, Ex. 73 at p. 2079).

[16] CBA Futures Initiative (2014) (Lever #1, Ex. A at p. 21); see also Report of Independence and Self-Governance Committee (2008) (Greenberg #1, Ex. 20 at p. 627; Final Report of Futures Task Force (2020) (Greenberg #1, Ex. 66 at p. 1234); Cayton Report at para. 5.7 (Greenberg #1, Ex. 8 at p. 490).

[17] Final Report of Governance Review Task Force (2012) (Greenberg #1, Ex. 7 at p. 455); see also, LSO Governance Review Task Force Report (2024) (Greenberg #3, Ex. 73 at pp. 2082-2083); Rhode & Woolley, "Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada" (2012) 80:6 Fordham L. Rev. 2761 p. 2762, 2776; Wooley, "Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation" (2012) 45:1 UBC L. Rev. 145 at pp. 189-190; Mercer, "Independence and Self-Regulation: I'm OK but I'm Not So Sure About You!" (2014) Slaw, online: <www.slaw.ca/2014/09/17/independence-and-self-regulation-im-ok-but-im-not-so-sure-about-you>. This confusion is also evident in some of the campaign statements that benchers often make to their electors: see e.g. the bencher election statements from 2023 and 2019 in Ontario (Lever #1, Ex. H and I). Public discourse also reflects this skepticism: see e.g. Macleans, "Law societies under fire" Lever #1, Ex. J); CBC, "Lawyers' self-policing often 'lax or inadequate', critic says" (Lever #1, Ex. K); Halifax Examiner, "Should Nova Scotia lawyers really be allowed to regulate themselves?" (Lever #1, Ex. L); Tyee, "Alberta's Lawyers Police Their Own. The Process is Brutal and Broken" (Lever #1, Ex. M).

by the profession. The CBA Futures Initiative favours "a significant number of appointed lawyers and non-lawyers [...] selected by an independent appointment process designed to fill gaps in experience, skills and diversity".[18]

20. The current model also does not align with best practices for contemporary board governance:

    a. Simultaneous turnover of the entire board (as when the current board, like a miniature parliament, is dissolved every two years and entirely new benchers may be elected) can create substantial organizational disruption and undermine institutional stability.[19]

    b. Having a large board increases decision-making complexity and can reduce the effectiveness of the board.[20]

    c. There should be a clear delineation between the governance functions of the board and the operational functions of staff.[21]

(iii) Reconciliation

21. The Attorney General acknowledges British Columbia and Canada's history of colonization and related policies and practices. Through the enactment of the *Declaration Act* in 2019,[22] the legislature established the United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**")[23] as the Province's framework for reconciliation, consistent with the Truth and Reconciliation Commission's Calls to Action. The *Act* establishes a framework that ensures that Indigenous people and perspectives will have meaningful involvement in the new regulator's processes.

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[18] CBA Futures Initiative (2014) (Lever #1, Ex. A at p. 22).
[19] Expert report of Shona McGlashan dated May 14, 2025 ("**McGlashan Report**") at para. 35.
[20] McGlashan Report at paras. 12 and 29-30; see also Final Report of Governance Review Task Force (2012) (Greenberg #1, Ex. 7 at p. 468).
[21] McGlashan Report at paras. 21-24.
[22] *Declaration on the Rights of Indigenous Peoples Act,* S.B.C. 2019, c. 44.
[23] UNDRIP.

C. Key features of the *Act*

(i) The regulator

22. The *Act* creates a new regulator, Legal Professions British Columbia, by merging the Law Society of British Columbia and Society of Notaries Public.[24]

23. The regulator will regulate all designated legal professions.[25]

(ii) The mandate

24. The regulator's mandate is to regulate the practice of law in BC, including by: (1) establishing standards and programs for the education, training, competence, and conduct of licensees; and (2) by ensuring the independence of licensees.[26]

25. The regulator must carry out this mandate in the public interest.[27]

(iii) Guiding principles

26. The *Act* sets out four non-exhaustive guiding principles for the regulator: (1) facilitate access to legal services; (2) support reconciliation with Indigenous peoples and implement UNDRIP; (3) identify and remove barriers that disproportionately impact Indigenous persons and underrepresented groups; and (4) regulate in a manner that is transparent, timely, and proportionate.[28]

(iv) Governance structure

27. The regulator is governed by a board of 17 directors. 14 of the directors must be practising legal professionals, including nine lawyers. The remaining three directors do not need to have any particular professional status or background.[29]

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[24] *Act*, s. 5.
[25] It will regulate lawyers, notaries public, a new category of legal professional called "regulated paralegals", limited practice licensees, and any additional categories of legal professional that may be designated by cabinet regulation in the future: *Act*, ss. 3, 53.
[26] *Act*, s. 6.
[27] *Act*, s. 6.
[28] *Act*, s. 7.
[29] *Act*, s. 8.

28. Some of the directors who are legal professionals are elected by the members of their profession (five lawyers, two notaries, and two regulated paralegals). Other directors are appointed by the board on merit. Three directors are appointed by cabinet on merit, after consultation with the board.[30]

29. All directors have the same duties and responsibilities.[31]

(v) Function of the board

30. The board is a governance board. Its function is to govern the regulator, principally by making rules and overseeing the CEO.[32]

31. Directors do not have operational functions: directors cannot sit on the licensing committee or discipline committee and cannot be appointed as tribunal members.[33]

(vi) Indigenous council

32. The *Act* creates an Indigenous council.[34] The Indigenous council's functions are mostly consultative: the Indigenous council advises the regulator and tribunal on UNDRIP and matters relating to Indigenous legal traditions; provides input when consulted by the board, including in respect of proposed rules; participates in the regulator's strategic planning processes; and advises on the appointment of Indigenous persons to the licensing committee, discipline committee, and tribunal.[35]

33. However, there are two types of rules that cannot be made without the Indigenous council's approval: (1) rules that reflect or are influenced by Indigenous practices in relation to dispute resolution; and (2) tribunal rules that are designed to meet the

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[30] *Act*, s. 8.
[31] *Act*, s. 8.
[32] *Act*, s. 9.
[33] *Act*, ss. 51(3), 89(3), 98(4).
[34] The members of the Indigenous council are appointed by the board on merit and must, to the extent possible, collectively reflect the diversity of Indigenous peoples in British Columbia. Some of the members are appointed by the board from lists of candidates provided by the BC First Nations Justice Council and entities representing Métis peoples.
[35] *Act*, s. 30.

specific needs of Indigenous persons who are parties or witnesses in proceedings before the tribunal.[36]

(vii) LGIC regulations

34. The Lieutenant Governor in Council ("**LGIC**") may make regulations: (1) designating a profession as a legal profession (which profession would then be regulated by the regulator under the *Act*);[37] (2) creating exceptions from prohibition against unauthorized practice;[38] and (3) augmenting the scopes of practice of notaries and paralegals.[39] The LGIC must consult with the board before making regulations.[40]

(viii) Role of the regulator in conduct, competence and discipline

35. The regulator must investigate complaints and may initiate investigations on its own initiative.[41] The process is depicted in Schedule A.

36. The regulator may enter into a consent agreement with a licensee at any time during an investigation and may resolve complaints through alternative resolution processes in accordance with any rules made by the board.[42]

37. If an investigation is not diverted with a consent agreement or alternative resolution process, the regulator has various investigatory powers and the ability to apply to the court for a search warrant.[43] There are protections for clients' privileged information as there are in the *Current Act*.[44]

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[36] *Act*, ss. 94(3), 131(6).
[37] *Act*, s. 4.
[38] *Act*, ss. 38(1)(i), 212.
[39] *Act*, s. 213.
[40] *Act*, ss. 4, 212-213.
[41] *Act*, s. 77.
[42] *Act*, ss. 91-92.
[43] *Act*, ss. 78-81.
[44] *Act*, ss. 209-210.

38. At the conclusion of an investigation, the regulator may dismiss the complaint, make a competence order,[45] make a professional conduct order,[46] or submit a citation to the discipline committee.[47] Most competence and professional conduct orders are appealable to the tribunal.[48]

(ix) Role of the tribunal

39. The tribunal is independent of the regulator in the exercise of its adjudicative functions.[49] Tribunal members are appointed on merit by the board; the tribunal chair appoints members to panels.[50]

40. For discipline hearings, the hearing panel must consist of at least three tribunal members, of whom no more than two may be licensed to practise the same legal profession as the respondent. If the respondent or complainant is an Indigenous person, at least one tribunal member must be Indigenous.[51]

41. A final decision of the tribunal is appealable to the Court of Appeal.[52]

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[45] The regulator may make a competence order where it determines that a licensee has practised law incompetently. A competence order may require the licensee to submit to a practice review, complete a remedial program, or receive counselling or medical treatment; impose limits or conditions on the licensee's license; or suspend the licensee's license for a specified period or until the licensee meets a requirement.
[46] The regulator may make a professional conduct order where it determines that a licensee has contravened the *Act*, rules, or code of professional conduct in a manner that does not constitute professional misconduct or conduct unbecoming. A professional conduct order may require the licensee to submit to a practice review; complete a remedial program or receive counselling or medical treatment; impose limits or conditions on the licensee's license; or fine the licensee.
[47] *Act*, s. 86.
[48] *Act*, ss. 87(6), 88(6).
[49] *Act*, ss. 21(1)(c), 96(3)(b).
[50] There is no fixed number of tribunal members, but there must be at least two members of the public, two Indigenous persons, two lawyers, two notaries, and two regulated paralegals among the members of the tribunal. As noted, directors cannot be appointed as tribunal members.
[51] *Act*, s. 123.
[52] *Act*, s. 129.

D. History of lawyer regulation in Canada

(i) From confederation until the 1920s

42. The original provinces had different models of lawyer regulation at Confederation:

a. In **Québec**, lawyers were largely self-regulating and self-governing. However, the criteria for admittance were prescribed in detail by legislation.[53]

b. In **Ontario**, lawyers were partially self-regulating at Confederation but not self-governing in an electoral sense. Instead, benchers held office indefinitely and periodically selected new benchers to join them, consistent with the practice of the English Inns of Court.[54] It was not until 1871 that any benchers of the Law Society of Upper Canada were elected by lawyers.[55] While the Law Society of Upper Canada largely controlled admission at Confederation, it needed court approval to make rules on certain topics including admission of solicitors, and all formal disciplinary authority remained with the courts.[56] The Law Society had no statutory authority over discipline until 1875, and even then, it was shared with the courts.[57]

c. In **New Brunswick**, lawyers were regulated by the courts at Confederation, although the Barristers' Society of New Brunswick de facto controlled admission through rules that had been approved by the court.[58] The Barristers' Society had no authority over discipline until 1903.[59]

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[53] Expert report of Dr. Phillip Girard dated November 11, 2024 ("**Girard Report #1**") at para. 17; *Act respecting the Bar of Lower Canada*, C.S.L.C. 1861, c. 71, ss. 18, 26-28; *Act respecting the legal Profession in this Province*, R.S.L.C. 1867, c. 28, ss. 1-2.
[54] McDougal, "The Inns of Court" (1937) 9:15 Can. Bar. Rev. 675 at p. 681.
[55] *Act to make the Members of the law Society of Ontario elective by the Bar thereof*, S.O. 1870-1871, c. 15.
[56] Girard Report #1 at paras. 24, 26-27; see e.g. *Act respecting Attorneys at Law*, C.S.U.C. 1859, c. 35, s. 8. The Law Society of Upper Canada did exert some informal disciplinary authority before 1876: Girard Report #1 at p. 26.
[57] *Act to amend the Laws respecting the Law Society*, S.O. 1875-76, c. 31.
[58] Girard Report #1 at para. 4.
[59] *Act respecting the Barristers' Society, and Barristers, Attorneys and Students-at-Law*, C.S.N.B. 1903, c. 68, s. 13(3), 16-19.

d. In **Nova Scotia,** lawyers were largely regulated by the courts at Confederation. Legislation prescribed admission criteria, and courts made rules for clerkship applications, but applications for admittance (by persons who had clerked in Nova Scotia) were decided by a committee of a judge and two barristers.[60] The Nova Scotia Barristers' Society did not control admission until 1899,[61] and had no meaningful disciplinary authority until 1941.[62]

43. The Provinces that joined after 1867 also had varied regulatory models:

a. **Manitoba** joined Canada on July 15, 1870. The Law Society of Manitoba was given some authority over admission in 1871, but the Law Society's proposed rules for admission required cabinet approval, and cabinet could admit lawyers in special circumstances.[63] The Law Society of Manitoba was not given disciplinary authority until 1915.[64]

b. **Northwest Territories** joined Canada on July 15, 1870. Lawyers were not given any self-regulatory authority until almost 30 years later, in 1898,[65] and it lasted only seven years, as the Law Society of the Northwest Territories disbanded in 1905. Between 1938 and 1976, lawyers were regulated by the executive and the courts.[66]

c. **British Columbia** joined Canada on July 20, 1871. An association called the Law Society of British Columbia existed at that time, but had no regulatory

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[60] *Of Barristers and Attornies*, R.S.N.S. 1864, c. 130, ss. 2-10.
[61] *Act to amend and consolidate the Acts relating to Barristers and Solicitors*, S.N.S. 1899, c. 27.
[62] *Act to Amend Chapter 9 of the Acts of 1939, "The Barristers' and Solicitors' Act"*, S.N.S. 1941, c. 52, s. 2.
[63] Girard Report #1 at paras. 13, 16; *Act to regulate the admission to the Study and Practice of Law in the Province of Manitoba*, S.M. 1871, c. 10, ss. 4-5.
[64] *Law Society Act*, S.M. 1915, c. 37, s. 85. Previously, the Law Society of Manitoba could merely bring applications to the court and invite the court to exercise its disciplinary authority: Girard Report #1 at para. 27.
[65] *Ordinance respecting the Legal Profession and to Incorporate the Law Society of the Territories* (1898).
[66] *Ordinance respecting the Legal Profession* (1938), s. 2; Northwest Territories *Legal Profession Ordinance*, R.N.O.W.T., 1976, c. 4.

authority.[67] In 1874, an Incorporated Law Society of British Columbia was created by statute and given statutory authority over admission (for practice in this court) and discipline of its members. Lawyers did not need to be members of the Law Society to practise in inferior courts.[68]

d. **Prince Edward Island** joined Canada on July 1, 1873. The Law Society of PEI was granted authority over admission in 1876, but needed the approval of at least two judges to make rules.[69] Almost half a century later, in 1930, the Law Society of PEI was granted the authority to disbar for misconduct and make rules without needing judicial approval.[70]

e. **Yukon** joined Canada on June 13, 1898. Yukon lawyers were not given self-regulatory authority until 1984.[71]

f. **Alberta** and **Saskatchewan** joined Canada on September 1, 1905. The Law Society of Alberta and Law Society of Saskatchewan were given authority over admission in 1907,[72] but were not given full disciplinary authority until 1922 and 1923 respectively.[73]

(ii) The 1920s to present

44. Although lawyer self-governance and self-regulation became widespread (though not ubiquitous) by the early 1920s, several legislatures subsequently changed aspects of their regulatory models.

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[67] See Watts, "History of the Law Society, Discipline Part 1" (1970) 28:6 Advocate 305 at p. 306.
[68] Many lawyers took advantage of this exception to practise law in British Columbia without having to pay fees to, or be subject to the oversight of, the Law Society: Girard Report #1 at paras. 8, 10, 15, 25; *Act respecting the Legal Professions*, S.B.C. 1874, c. 18, s. 7(d), 10.
[69] *Act to further amend "An Act to Incorporate a Law Society"*, S.P.E.I. 1876, c. 10, ss. 5, 16.
[70] *Legal Profession Act, 1930,* S.P.E.I. 1930, c. 14, ss. 48-55.
[71] *Legal Profession Act*, S.Y.T. 1984, c. 17.
[72] *Act respecting the Legal Profession and the Law Society of Saskatchewan*, S.S. 1907, c. 19, s. 35(2); *Legal Profession Act*, S.A. 1907, c. 20, ss. 34-35
[73] *Act to amend the Legal Profession Act*, S.S. 1923, c. 49, s. 49; *Legal Profession Act*, R.S.A. 1922, c. 206, s. 32.

45. The clearest example is Québec, which significantly changed the self-regulation model more than 50 years ago. In Québec, lawyers are regulated by the Office des professions du Québec, the Interprofessional Council, and the Barreau du Québec,[74] with the cabinet of Québec also playing important roles. The Office des professions has seven members, all appointed by cabinet.[75] The Office can require the Barreau to draft appropriate rules and regulations and can intervene if the Barreau fails to do so.[76] Rules or regulations proposed by the Barreau must be sent to the Office for examination, and submitted, with the Office's recommendation, to cabinet for approval or amendment.[77]

46. The Barreau is required to nominate a "syndic", who investigates and brings complaints of misconduct against lawyers independently of the Barreau.[78]

47. Other legislatures have also made changes to the self-governance and self-regulation of lawyers, though in less significant ways than Québec:

    a. In **Ontario**, proposed law society rules have required cabinet approval for significant periods and still do within certain categories.[79]

    b. In **Saskatchewan**, the Law Society must table all its bylaws, rules, and regulations in the Legislative Assembly, and the Legislative Assembly may nullify any that it considers to be "in any way prejudicial to the public interest".[80]

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[74] Expert report of Jakub Adamski dated May 13, 2025 ("**Adamski Report**") at p. 5.
[75] *Professional Code,* C.Q.L.R. c. C-26, s. 4.
[76] *Professional Code,* s. 12.
[77] *Professional Code,* s. 95 ; see also Houle and Rizko, "De quelques spécificités du Code des professions du Québec et de la discipline des professionnels membres des orders" (2024) 102:1 Can. Bar. Rev. 38.
[78] *Professional Code,* ss. 121-122; Adamski Report p. 12.
[79] *Statute Revision Amendment Act, 1927*, S.O. 1927, c. 28, ss. 12-13; *Statute Law Amendment Act, 1934*, S.O. 1934, c. 54, ss. 3, 14, 19. *Act to consolidate and revise The Law Society Act*, S.O. 1970, c. 19, ss. 54-55; *Act to amend the Law Society Act*, S.O. 1998, c. 21, ss. 28-29. *Law Society Act*, R.S.O. 1990, c. L.8, s. 63(1)(13)-(14).
[80] *The Legal Profession Act*, 1990, S.S. 1990-91, c. L-10.1, s. 91.

c. In **Yukon**, from 1984 to 2017 Cabinet had the power to annul rules if they were contrary to the public interest.[81] Since 2017, Cabinet has had the power to create new legal professions by regulation.[82]

48. On a related note, a few months after the *Act* was enacted, the Governance Review Task Force of the Law Society of Ontario proposed to change the board composition to something very similar to the board envisaged by the *Act*.[83] Notably, elected lawyers do not constitute a majority of the board in the proposal.

E. The regulation of lawyers in other Commonwealth jurisdictions

(i) Australia

49. In the 1980s and 1990s, most Australian states changed their models of lawyer regulation.[84] Lawyer regulation varies by jurisdiction, but typically it is shared among courts, professional associations, and statutory bodies as follows:

a. Courts control admission,[85] hear appeals of disciplinary matters,[86] and retain inherent jurisdiction to hear conduct cases.[87]

b. Professional associations control conduct rules, continuing professional development rules, and largely manage practicing certificates.[88]

c. Legal services commissioners or boards appointed predominantly by the Governors handle complaints and investigations, and institute disciplinary proceedings.[89]

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[81] *Legal Profession Act,* S.Y.T. 1984, c. 17, s. 8(3).
[82] *Legal Profession Act,* S.Y. 2017, c. 12, s. 19.
[83] LSO Governance Review Task Force Report (2024) (Greenberg #3, Ex. 73 at p. 2075). The proposal is for a board of 30, comprised of 14 elected lawyers, two elected paralegals, 10 directors appointed by the board, and four directors appointed by the government.
[84] Expert report of Dr. Christine Parker dated December 2, 2024 ("**Parker Report**") at para. 41.
[85] Parker Report at para. 44. The courts work with admission boards.
[86] Parker Report at para. 45
[87] Parker Report at paras. 48-51
[88] Parker Report at para. 44
[89] Parker Report at para. 44; Table 4 at pp. 35-36 and Table 5 at pp, 38-39.

d. Statutory disciplinary tribunals appointed predominantly by the relevant Governors or Governors in Council or Ministers hear conduct matters against lawyers.[90]

50. Australia's regulatory model does not undermine lawyers' independence from the state.[91] Although lawyers expressed concern about the proposed changes before they happened, once the changes occurred, lawyers generally accepted them.[92]

(ii) New Zealand

51. New Zealand regulates lawyers through a co-regulatory model.[93]

52. The New Zealand Law Society (governed by a majority of elected lawyers) exercises dual functions: regulating and representing lawyers.[94] The Law Society makes the Rules of Conduct and Client Care, but the Minister of Justice must approve and can amend the Rules.[95]

53. Co-regulation is most prevalent in disciplinary matters. Legislation defines grounds for discipline.[96] Two of the three primary disciplinary bodies are led by former lawyers or laypersons appointed by the Governor General or the Minister of Justice.[97] Lawyers can appeal disciplinary and admission decisions to the courts.[98]

54. New Zealand's co-regulatory model, which has been in place for nearly 20 years, does not undermine lawyers' independence from the state.[99]

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[90] Parker Report at para. 44; Table 1 at pp. 21- 24. In Tasmania the tribunal members are appointed by judges of the Supreme Court. In Australian Capital Territory disciplinary matters are heard by the Civil and Administrative Tribunal. The requirements for the composition of the tribunal vary from state to state.
[91] Parker Report at para. 255.
[92] Parker Report at para. 258.
[93] Expert report of Dr. Selene Mize dated December 3, 2024 at para. 5 ("**Mize Report**").
[94] Mize Report at paras. 11-13.
[95] Mize Report at paras. 36.
[96] Mize Report at paras. 39-41.
[97] Mize Report at paras. 14-17.
[98] Mize Report at paras. 20, 28.
[99] Mize Report at paras. 3, 54-57.

PART 5: LEGAL BASIS

A. Suitability for summary trial

55. The Attorney General agrees this matter is suitable for summary trial.

B. Evidentiary issues

56. The Attorney General submits that most of the evidence tendered by the Law Society is inadmissible, principally on the grounds that it is hearsay or argument/opinion. There are also relevance issues (given that the alleged facts underlying the Legislative Veto[100] argument were not pleaded) and issues arising from how many of the documents attached to the Law Society's affidavits were not listed. These evidentiary objections are made towards the end of this application response. At this stage, the Attorney General assumes for the sake of argument that all of the Law Society's evidence is admissible and submits that, even on that assumption, the actions should be dismissed.

C. Functional approach to lawyer independence

57. Canadian jurisprudence, academic literature, and international sources support a functional approach to lawyer independence, traditionally defined as freedom from improper interference with a lawyer's advice or advocacy on behalf of their client.

58. Under a functional approach, self-governance and self-regulation are not components of, or preconditions to, lawyer independence. Rather, institutional arrangements are assessed functionally with reference to whether they will interfere with lawyers' function of providing independent legal advice and zealous advocacy on behalf of clients.

59. In *Federation 2015*, the Supreme Court of Canada endorsed a "narrower understanding" of lawyer independence "which relates it to the lawyer's duty of commitment to the client's cause".[101] The Court of Appeal had recognized as a

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[100] As defined in para. 121.
[101] *Federation 2015* at para. 80.

principle of fundamental justice that lawyers must be "free from incursions from any source, including from public authorities", which is similar to the Law Society's conception of absolute independence. The Supreme Court of Canada found there was "considerable merit" to the submission that the Court of Appeal had defined independence too broadly.[102]

60. In *Jabour*, the Supreme Court of Canada stated that lawyer regulation should ensure that lawyers will be "free from state interference, in the political sense, with the delivery of services to the individual citizens". This is the traditional definition of lawyer independence, the one the Attorney General submits is correct.

61. Importantly, *Jabour* does not suggest that any particular regulatory model is required to ensure lawyer independence. To the contrary, *Jabour* states that the provinces have "select[ed] self-administration as the mode for administrative control", that this model carries disadvantages ("the problem of conflict of interest, an orientation favourable to the regulated, and the closed shop atmosphere"), that this model properly includes "important protective restraints" from sources external to the profession, and that it is "for the Legislature to weigh and determine all these matters". The "important protective restraints" referred to in *Jabour* include the requirement that then existed in Ontario and Québec (it still exists in Québec) for most of the law society's proposed rules to be approved by cabinet.[103]

62. Although courts have endorsed the status quo regulatory model in anglophone Canada, they have done so in the course of describing it as a legislative policy choice that carries certain disadvantages and is open to legislatures to revise. Self-regulation is a privilege, not a right.[104]

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[102] *Federation 2015* at para. 80. Notably, the Law Society's conception is even broader: the Law Society had substituted "influence" for the Court of Appeal's "incursion".
[103] *Jabour* at pp. 334-336.
[104] See e.g. *Trinity Western* at para. 32 ("The legal profession in British Columbia, as in other Canadian jurisdictions, has been granted the privilege of self-regulation"); *Green v. Law Society of Manitoba*, 2017 SCC 20 at para. 37; *Law Society of Ontario v. Diamond*, 2021 ONCA 255 at para. 57; *Zielke v. Law Society of Saskatchewan*, 2021 SKCA 156 at para. 30; *Mor-Town Developments Ltd. v. MacDonald*, 2012 NSCA 35 at para. 41.

63. Lawyer independence may be analogized to judicial independence, although the analogy should not be stretched too far. Judicial independence has not been defined as requiring that judges be absolutely free from any kind of external influence from any source. Rather, courts have defined judicial independence in functional terms, by considering what arrangements are necessary for judges to fulfil their function of judging impartially.[105] Judicial independence does not mean that the legislature and government can have no influence whatsoever on court administration. It means the legislature and government cannot interfere with administrative decisions that bear "directly and immediately on the exercise of the judicial function", such as the assignment of judges, sittings of the court, courts lists, and the allocation of courtrooms.[106] Lawyer independence should be understood and defined in functional terms, as judicial independence has been.

64. The academic literature also supports the traditional definition of lawyer independence. In a paper commissioned by the Law Society of Upper Canada, Prof. Monahan (then Dean of Osgoode Hall Law School, now a justice of the Court of Appeal for Ontario) concludes that lawyer independence requires an independent regulator but not necessarily electoral self-governance:

> the term 'independence' in an institutional sense requires that the legal profession be independent of government, but not necessary 'self-governing.' The critical requirement is that lawyers retain the ability to act independently of government and are thus in a position to advocate fearlessly on behalf of their clients and act in accordance with their ethical obligations of loyalty and confidentiality.[107]

65. Prof. Wooley (then of the University of Calgary, now a justice of the Court of Appeal of Alberta) advocates for the same approach. She defines lawyer independence as

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[105] See e.g. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.),* [1997] 3 S.C.R. 3 [*Remuneration Reference*]; see also *Ell v. Alberta*, 2003 SCC 35 at para. 29.
[106] *Remuneration Reference* at para. 117.
[107] Monahan, "The Independence of the Bar as a Constitutional Principle in Canada" in *The Report and Research Papers of the Law Society of Upper Canada's Task Force on the Rule of Law and the Independence of the Bar* (Toronto: Irwin Law, 2007) at p. 148.

meaning that lawyers are "free from external pressures that might distort their fulfillment of their legal and ethical obligations".[108] Independence does not mean that lawyers are free from all external influence; it means they are free from influence that might distort their ability to fulfill their function of providing independent legal advice and zealous advocacy on behalf of clients.

66. Lastly, international sources support the traditional definition of lawyer independence.

67. The United Nations Basic Principles on the Role of Lawyers suggest that lawyers should be free from improper interference with their advice or advocacy on behalf of clients, but acknowledge that this objective does not require lawyers to be regulated solely by bodies controlled by the profession. The UN Principles contemplate codes of professional conduct being developed "by the legal profession through its appropriate organs, or by legislation", and disciplinary matters being adjudicated "before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court".[109]

68. Similarly, although the International Bar Association expresses a preference for self-regulation, it acknowledges that self-regulation is not the only way to secure lawyer independence. It too favours a functional understanding of lawyer independence.[110]

69. Properly understood, no new law is required to protect functional lawyer independence. It is already protected under the Constitution by specific principles of fundamental justice under s. 7 of the *Charter*. One is that the state cannot impose duties on lawyers that undermine their duty of commitment to their clients'

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[108] *Wooley* at p. 162.
[109] United Nations Basic Principles on the Role of Lawyers, ss. 26, 28 (Affidavit #1 of Patti Lewis made May 24, 2024, Ex. O at pp. 405-406).
[110] International Bar Association, "Stakeholder Submission to the Special Rapporteur on the Independence of Judges and Lawyers" (2018) (Lever #1, Ex. B at p. 30).

causes.[111] Another is that the state cannot require lawyers to divulge privileged information.[112] These and similar specific principles of fundamental justice are what give constitutional protection to lawyer independence in our constitutional framework.

D. The *Act* preserves functional lawyer independence

70. The *Act* preserves lawyer independence as it is traditionally understood: freedom from improper interference with their advice or advocacy on behalf of clients.

(i) Relevant principles of constitutional interpretation

71. Courts must approach constitutional challenges on the presumption that the impugned statute was validly enacted. The Law Society has the burden of displacing this presumption. Similarly, courts should prefer constitutionally conforming interpretations.[113]

72. Courts assess legislation on the presumption that any discretion created by the statute will be exercised constitutionally. Statutes are not assessed on speculative worst-case scenarios: there is "no proposition of law that legislation, to pass constitutional muster, must exclude all possibility of unconstitutional exercises of discretion".[114] If there are defects in administration, those defects are remediable on judicial review on a case-by-case basis.[115]

73. These principles are a full answer to most of the Law Society's arguments on substantive provisions of the *Act*.

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[111] *Federation 2015* at para. 84.
[112] *McClure* at para. 41.
[113] *Reference re Impact Assessment Act*, 2023 SCC 23 at paras. 69-73.
[114] *Brown v. Canada (Citizenship and Immigration)*, 2020 FCA 130 at paras. 61-88; see also *Slaight Communications Inc v. Davidson*, [1989] 1 S.C.R. 1038; *R. v. Conway,* 2010 SCC 22 at paras. 41-48.
[115] *Brown* at paras. 65-77, 80; see also *Reference re Impact Assessment Act* at para. 74; *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69 at para. 71.

(ii) There is nothing objectionable about the statutory mandate

74. The Law Society challenges the regulator's mandate in s. 6 of the *Act,* arguing that the mandate in the *Current Act* is constitutionally required and that the Law Society had a "broad access to justice mandate" for 156 years.[116]

75. This argument is not grounded in the facts. In BC, it was not until 1987 that the Law Society had any sort of public interest mandate in the legislation. Even then, it was a dual mandate: protect the public interest, as well as members' interests.[117] That dual mandate was removed in 2012, when the Law Society was directed to consider only the public interest.[118]

76. No other law society in Canada has a mandate akin to "preserving and protecting the rights and freedoms of all persons", and only one other has language about the administration of justice.[119] The regulator's mandate in s. 6 of the *Act* is similar to the statutory mandates of four other law societies.[120]

77. It is hard to see how a statutory mandate that exists only in BC and dates only to 1987 (or in its current form, to 2012) could be constitutionally required, or how a statutory mandate that is similar to longstanding mandates in four other provinces could be constitutionally prohibited.

78. Nothing about the mandate in s. 6 of the *Act* compromises lawyer independence.

(iii) The guiding principles do not undermine lawyer independence

79. Section 7 of the *Act* sets out four non-exhaustive guiding principles for the regulator: (1) facilitating access to legal services; (2) supporting reconciliation with Indigenous peoples and implementing UNDRIP; (3) identifying and removing barriers that

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[116] Law Society Notice of Application at para. 20.
[117] *Legal Profession Act,* S.B.C. 1987, c. 25, s. 3.
[118] *Legal Profession Amendment Act, 2012,* S.B.C. 2012, c. 16, s. 3.
[119] *Legal Profession Act*, S.N.S. 2004, c. 28, s. 4(d) ("seek to improve the administration of justice in the Province").
[120] *The Legal Profession Act*, 1990, S.S. 1990-91, c. L-10.1, ss. 3.1-3.2; *Legal Profession Act*, C.C.S.M. c. L107, s. 3(1); Law Society Act, R.S.O. 1990, c. L.8, ss. 4.1-4.2; *Legal Profession Act*, S.N.S. 2004, c. 28, s. 4.

disproportionately impact Indigenous persons and underrepresented groups; and (4) regulating in a manner that is transparent, timely, and proportionate.[121]

80. The Law Society does not object to the content of these principles, but says they are nonetheless unconstitutional because they originate from the public's elected representatives in the legislature, rather than from the profession itself.[122]

81. These guiding principles do not diminish lawyers' independence: they do not inhibit lawyers from fulfilling their function of providing independent legal advice and zealous advocacy on behalf of clients. Indeed, the Law Society says it is "deeply committed" to one of them (reconciliation) and that another (access to legal services) is "at the forefront of the Law Society's work".[123] Their content is not objectionable.

82. Lawyer independence is not for the benefit of lawyers, but for the benefit of the public. The Legislative Assembly is "elected by the people to protect the public interest";[124] its members are "reflective of and responsive to public concerns".[125] There should be nothing controversial in concept about general guiding principles to the regulator from the public's elected representatives in the Legislative Assembly. Affirming the constitutionality of the four principles in s. 7 of the *Act* would not licence the legislature to enact other principles with objectionable content.

(iv) The board composition does not undermine lawyer independence

83. The balance of the Law Society's challenges do not relate to the *Act* itself, but to issues the Law Society argues may arise in the administration of the *Act*.[126]

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[121] *Act*, s. 7.
[122] Law Society Notice of Application at para. 20.
[123] Greenberg #1 at paras. 146, 151.
[124] *Waugh v. Pedneault*, 1948 CanLII 474 (B.C.C.A.) at p. 15.
[125] Rt. Hon. McLachlin, "The Supreme Court and the Public Interest" (2001) 64:2 Sask. L. Rev. 309 at p. 316.
[126] Many of the CBA's concerns take this form as well. See, for example, CBA Application Response at para. 43.

84. The Law Society objects to the composition of the board set out in s. 8 of the *Act*, chiefly the fact that lawyers elected by lawyers are not a majority of the board.[127] For the Law Society this is a change in position. In its response to the Ministry of Attorney General's Intentions Paper preceding the *Act*, the Law Society said "self-regulation of the legal profession requires that a majority of the board that governs lawyers are themselves lawyers and a majority of the lawyer directors are elected".[128] The *Act* meets both criteria: a majority of the board are lawyers, and a majority of the lawyer directors are elected by lawyers.

85. The Law Society now argues that a majority of the board must be elected lawyers. Notably, the Law Society of Manitoba does not meet that test: only 12 of its 25 benchers are elected by lawyers.[129]

86. No particular board composition is required to ensure lawyer independence. A variety of regulatory models can secure lawyers' independence. Electoral self-governance is one way, but not the only way—and the legislature may choose what it regards as the best way in all the circumstances.

87. The *Act* retains a significant role for elections, in deference to tradition and in recognition of their benefits (independence from government, credibility with licensees). However, in recognition of their disadvantages (regulatory capture, potential lack of needed skills, reasonable public skepticism), the *Act* moves away from a purely electoral model. The result is a board that is just as independent, but more effective in regulating in the public interest and more credible with the public.

88. There is no evidence that directors who are not elected lawyers will be any less committed to lawyer independence than the elected lawyers, let alone to assume

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[127] The Society of Notaries Public makes a similar argument, submitting that the board composition safeguards independence because elected legal professionals are a majority. The underlying theory is the same: only electoral self-governance, whether by lawyers or a broader category of legal professionals, is consistent with independence.

[128] LSBC Response to the Ministry of Attorney General's Intentions Paper (Greenberg #1, Ex. 25 at p. 690).

[129] *Legal Profession Act,* C.C.S.M. c. L107, s. 5.

they will be vehicles for government interference.[130] Every director owes the same fiduciary duty to the regulator and statutory duty to act in the public interest.[131]

89. If the board ever did something that undermined lawyers' independence, it would be *ultra vires* the *Act*, which requires the regulator "to ensure the independence of licensees".[132] Speculation that the board might act *ultra vires* the *Act* cannot impugn the *Act* itself.

90. Finally, the Law Society misunderstands the operation of the *Act.* The Law Society's concern that elected lawyers are 'only' five of the "first 12 directors" who choose another five to appoint[133] assumes that the board will operate in the same way as the *Current Act,* as a miniature parliament that will periodically dissolve and be reconstituted. Best practices for modern board governance is to have staggered terms.[134] In any event, there is no evidence that, unless lawyers are a majority on the board, the board will choose the 'wrong' lawyers to appoint—nor is there evidence that there is such a thing as the 'wrong' lawyers. Any lawyer will understand the importance of lawyer independence, will owe a fiduciary duty to the regulator, and will have a statutory duty to act in the public interest.

(v) The Indigenous council does not undermine lawyer independence

91. The Law Society objects to the existence and role of the Indigenous council (s. 30 of the *Act*) on two grounds.

a. The *Act* does not require the members of the Indigenous council to be lawyers.

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[130] The CBA also takes this position. See CBA Application Response at paras. 32-36.
[131] See, generally, *Wooley* at p. 190.
[132] *Act*, s. 6(1)(c).
[133] Law Society Notice of Application at para. 24.
[134] McGlashan Report at pp. 4-5.

b. The existence of the Indigenous council "furthers a partnership between the provincial government and the BC First Nations Justice Council set out in the BC First Nations Justice Strategy".[135]

92. There is no evidence that members of the Indigenous council (including any non-lawyers) will lack independence or become vehicles for improper interference with the regulation of the practice of law.

93. Further, there is nothing objectionable about the BC First Nations Justice Strategy. The foundational objective of the BC First Nations Justice Strategy is to reverse the current reality of Indigenous persons being overrepresented in the criminal justice system and underrepresented as actors with roles and responsibilities within the system (e.g. as counsel and judges).[136] There is no basis to find that this objective interferes with individuals' ability to obtain independent legal advice and zealous advocacy from lawyers.[137]

94. In any case, the role of the Indigenous council is not to implement the BC First Nations Justice Strategy. The role of the Indigenous council is to act in the public interest.

(vi) Cabinet's regulation-making powers are narrow and the challenge to these provisions is premature

95. The Law Society's challenge to cabinet's regulation-making authority is based on a misinterpretation of the *Act*. Cabinet's regulation-making authority is more limited than the Law Society contends.

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[135] Law Society Notice of Application at para. 27.
[136] BC First Nations Justice Strategy (Affidavit #1 of Thomas Spraggs made April 3, 2025, Ex. F at p. 18 ("**Spraggs #1**")).
[137] Indeed, one of the objectives of the Law Society's Truth and Reconciliation Advisory Committee is to make recommendations "on how the Law Society can support the advancement of the principles set out in the *Declaration on the Rights of Indigenous Peoples Act (DRIPA)*, the First Nations Justice Strategy, and the Truth and Reconciliation Commission's Calls to Action": Indigenous Framework Report (2022) (Greenberg #1, Ex. 61 at p. 1070).

96. Cabinet can make regulations designating additional legal professions for the purposes of the *Act* and defining their scopes of practice and reserved title(s),[138] augmenting the scopes of practice of notaries and regulated paralegals,[139] and exempting classes of persons from the prohibition on licensed practice.[140]

97. Contrary to the Law Society's interpretation,[141] if cabinet designates an additional legal profession, that profession will not be regulated by the executive; it will be regulated by the regulator. The designation by cabinet triggers the regulator's jurisdiction; that is the purpose of the designation.

98. The ability of the executive to designate new professions is not unique to British Columbia. The governments of Québec and Yukon have equivalent powers.[142]

99. Should cabinet exercise its powers under ss. 3 and 4 of the *Act* in a manner that interferes with lawyer independence, the regulation would be subject to judicial review on administrative (i.e. reasonableness) and constitutional grounds.

100. The Law Society further submits that the *Act* empowers cabinet to make regulations wherever the board can make rules. It does not.

101. The Law Society's argument is based on s. 211(1) of the *Act* and the definition of "regulation" in the *Interpretation Act.* Subsection 211(1) provides that cabinet "may make regulations respecting any matter for which regulations are contemplated by this Act". The *Interpretation Act* provides that, in an enactment, unless a contrary intention appears, "regulation" includes "a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant, bylaw or other

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[138] *Act*, ss. 3(d), 4(3).
[139] *Act*, ss. 46(1)(e), 47(1)(a), 213(1). Lawyers' scope of practice cannot be augmented because it already encompasses all activities that constitute the practice of law: s. 45.
[140] *Act*, ss. 38(1)(i), 212(1). For something similar, see e.g. *Workers' Compensation Act*, R.S.B.C. 2019, c. 1, ss. 350-354 (exempting workers' advisers, employers' advisers, and lay advocates on Workers' Compensation Board matters from the prohibition on unlicensed practice in the *Current Act*).
[141] Law Society Notice of Application at para. 33. The Notaries also take issue with s. 4 of the *Act*. Notaries Application Response at paras. 33-34.
[142] *Professional Code,* s. 27. *Legal Profession Act,* S.Y. 2017, c. 12, s. 19.

instrument" enacted "in execution of a power conferred under an Act".[143] On this definition, rules made by the board are "regulations". Thus, the Law Society says, s. 211(1) of the *Act* means that cabinet may make regulations "respecting any matter for which" board rules are contemplated by the *Act*.

102. This interpretation is creative but incorrect. The *Act* is careful to use "regulation", "rule", and "tribunal rule" to denote different things: regulations are made by cabinet; rules are made by the board; and tribunal rules are made by the tribunal chair. This careful usage evidences a "contrary intention" within the meaning of the *Interpretation Act*—that is, an intention for the *Interpretation Act* definition of "regulation" not to apply to s. 211 and undermine all the careful distinctions throughout the *Act*.

103. The Law Society's interpretation is contrary to two important presumptions of statutory interpretation.

    a. The presumption of consistent expression is that words have a consistent meaning throughout an enactment.[144] The Law Society's interpretation of s. 211(1) requires the word "regulation" to have two different meanings in the same sentence: cabinet "may make regulations [i.e., cabinet regulations] respecting any matter for which regulations [i.e., board rules] are contemplated by this Act".

    b. The presumption against tautology is that legislatures avoid superfluous words and do not repeat themselves or speak in vain.[145] The Law Society's interpretation of s. 211(1) renders s. 213(1) superfluous. Subsection 213(1) empowers cabinet to make regulations augmenting the scopes of practice of notaries and regulated paralegals. Section 48 empowers the board to make rules augmenting the scopes of practice of notaries and regulated paralegals. If the legislature intended s. 211(1) to empower cabinet to make regulations

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[143] *Interpretation Act*, ss. 1 *sv* "regulation", 2(1).
[144] Sullivan, *The Construction of Statutes* (7th ed.) at § 8.04.
[145] Sullivan, § 8.03.

wherever the board can make rules, then s. 213(1) would be superfluous because the combination of ss. 48 and 211(1) would already empower cabinet to make regulations augmenting scopes of practice.

104. Subsection 211(1) is a technical provision that is routinely included in BC enactments to enable a certain style of legislative drafting. By including such a provision, other provisions can refer simply to "prescribed" things without specifically empowering cabinet to make regulations about those things. Those references to "prescribed" things means regulations are contemplated for those things, such that s. 211(1) empowers cabinet to make regulations about them.[146] This style of legislative drafting is not currently used in the *Act*, but s. 211(1) makes it possible to use this style in future amendments.

105. All that said, as noted above, legislation need not exclude all possibility of unconstitutional exercises of discretion. The hypothetical possibility that cabinet might enact a problematic regulation does not impugn the *Act*. If such a thing were to occur, it would be remediable on judicial review.

(vii) Codifiying conduct and discipline procedure does not undermine lawyer independence

106. Lastly, the Law Society objects to the codification of conduct and discipline procedure in ss. 68-92 of the *Act*. The Law Society does not claim there is anything problematic in the substance of what has been codified; its argument is that *any* legislative codification is an "attack" on "the theory and the practice of self-regulation and self-governance of lawyers".[147]

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[146] For an example, see the *Land Owner Transparency Act*, S.B.C. 2019, c. 23. The definition of "Indigenous nation" includes "a prescribed Indigenous person or entity". The legislation does not specifically empower cabinet to make regulations prescribing Indigenous persons and entities for the purpose of the definition, but s. 97(2)(a) empowers cabinet to make regulations "respecting any matter for which regulations are contemplated by this *Act*". Since regulations about Indigenous persons and entities are contemplated by definition of "Indigenous nation", the general language in s. 97(2)(a) empowers cabinet to make such regulations.

[147] Law Society Notice of Application at para. 35.

107. That argument should not be accepted. The Law Society does not (and cannot) claim that the codification of conduct and discipline procedure in the *Act* will adversely affect lawyers' advice or advocacy.

(viii) Conclusion

108. Under a functional approach, there is no need to consider whether lawyer independence is an unwritten constitutional principle, as nothing in the *Act* interferes with functional lawyer independence. These actions should be dismissed.

E. The power to regulate lawyers is in s. 92 of the *Constitution Act, 1867*

(i) The Law Society's legal theory is inconsistent with settled doctrine

109. The Law Society argues that the *Act* is beyond provincial legislative competence. The Law Society says that a broadly conceived unwritten constitutional principle of lawyer independence can be used to narrow the text of s. 92 of the *Constitution Act, 1867*, such that the *Act* falls within a gap between the division of powers.

110. There are at least three doctrinal problems with the Law Society's legal theory:

a. Parliamentary sovereignty means that legislative power is distributed exhaustively between the two orders of our federation; there are no gaps between ss. 91 and 92 into which some enactments fall.[148] If legislation is *ultra vires* provincial legislative competence under s. 92, it is, by definition, *intra vires* federal legislative competence under s. 91.[149]

b. The Supreme Court of Canada has recognized that provinces have legislative authority to regulate the practice of law in the province under ss. 92(13) and 92(14).[150]

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[148] *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 SCC 40 [*Mikisew Cree*] at para. 36.
[149] *Reference re Same-Sex Marriage*, 2004 SCC 79 at para. 34; see also *Québec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14 at para. 44 ("the *Constitution Act, 1867* provides for a complete division of powers between both orders of government").
[150] *Law Society of British Columbia v. Mangat,* 2001 SCC 67 at paras. 38 and 42 [*Mangat*].

c. There is binding precedent that unwritten constitutional principles cannot be used: (1) to invalidate legislation directly; nor (2) to read down s. 92 to invalidate legislation indirectly.[151]

111. The final point is a full answer to the main issue in these actions. It is unnecessary for the Court to decide whether lawyer independence is as absolute as the Law Society suggests because, on binding authority, no unwritten constitutional principle could be used to invalidate the *Act* in the way the Law Society submits. The Law Society's legal theory was rejected by the Supreme Court of Canada in *Toronto*, where the Court held that using an unwritten principle to invalidate legislation would undermine the institutional legitimacy of the courts and trench on the separation of powers.[152] Using an unwritten principle to read down s. 92 and invalidate legislation indirectly would be functionally the same as using the unwritten principle to invalidate the legislation directly.[153] It would raise the same concerns about the institutional legitimacy of the courts and separation of powers raised by the Supreme Court of Canada in *Toronto*.[154]

(ii) In any event, the Law Society's conception of absolute lawyer independence does not meet the test for an unwritten constitutional principle

112. In any event, the Law Society's conception of absolute lawyer independence (self-governance, self-regulation, and freedom from all external influence) does not meet the test for an unwritten constitutional principle.

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[151] *Toronto* at paras. 5, 74-75, 80, 84; see also *Mercer v. Yukon (Government of)*, 2025 YKCA 5 at para. 48 [*Mercer*].
[152] *Toronto* at paras. 5, 74-75, 80, 84.
[153] See *Mercer* at para. 48.
[154] *Toronto* at paras. 58-59. Notably, the same concerns do not arise for the existing body of law that already protects lawyer independence under s. 7 of the *Charter*. The democratically adopted text of s. 7 of the *Charter*, in using the open-ended language of "principles of fundamental justice", requires the courts to develop its meaning and scope over time in response to changing social views of what is fundamental. Judicial development of s. 7 avoids the concerns about institutional legitimacy and separation of powers that arise with respect to unwritten constitutional principles because the democratically agreed to constitutional text contemplates and requires the court to define what is fundamental.

113. Unwritten constitutional principles are the basic structural principles or "vital unstated assumptions" upon which the text of the constitution is based and without which "it would be impossible to conceive of our constitutional structure". They have a "historical lineage stretching back through the ages". Unwritten constitutional principles are the "baseline against which the framers of our Constitution, and subsequently, our elected representatives under it, have always operated". The reason that unwritten principles were not expressly codified in the *Constitution Act, 1867* is that doing so "might have appeared redundant, even silly, to the framers".[155]

114. The Law Society cannot establish an unwritten constitutional principle that lawyers be "free of influence by public authorities (or any other source)",[156] and that they be both self-governing and self-regulating[157] for four reasons.

115. First, as set out above, the jurisprudence, academic literature, and international sources support a functional approach to lawyer independence, defined as freedom from improper interference with advice or advocacy.[158] There is no meaningful support for the Law Society's conception of absolute independence (self-governance, self-regulation, and freedom from all external influence). The Supreme Court of Canada in *Federation 2015* rejected a less expansive theory of lawyer independence. Further, judicial independence, which is explicitly protected by the Constitution, is defined in functional terms; the Law Society claims more constitutional independence for lawyers than the courts have found to be required for judges.[159]

116. Second, lawyers have never been "free of influence by public authorities (or any other source)". Lawyers are, and always have been, subject to all sorts of external standards, including legislation that contains how lawyers may act on behalf of

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[155] *Reference re Secession of Québec,* [1998] 2 SCR 217 at paras. 49-51, 62.
[156] Law Society Notice of Application at paras. 21 and 43; Law Society Notice of Civil Claim at para. 84.
[157] Law Society Notice of Application at paras. 21 and 55.
[158] *Jabour* at pp. 334-336.
[159] See e.g. *Remuneration Reference*.

clients or regulates aspects of the solicitor-client relationship,[160] and external regulation by courts and certain administrative tribunals.[161] Law societies are also subject to external oversight, most obviously by the courts, but also by certain tribunals. The courts of Ontario have held that securities commissions' jurisdiction to discipline lawyers for misconduct "does not represent an encroachment on the independence of the bar" because it does not constitute improper interference with lawyers' advice or advocacy on behalf of clients.[162]

117. External influence is not problematic in concept, as the Law Society's theory suggests. Rather, external influence is only a problem when it constitutes improper interference with lawyers' advice or advocacy on behalf of clients. The purpose of lawyer independence is not to benefit lawyers, but to ensure that members of the public have access to independent legal advice and zealous advocacy from lawyers. The Law Society goes too far in arguing that any and all external influence undermines lawyer independence, irrespective of whether it has any adverse effect on client interests.

118. Third, lawyer self-governance and self-regulation do not have historical lineages stretching back to Confederation. Unlike every unwritten constitutional principle that has been recognized to date (e.g. democracy), lawyer self-governance and self-regulation are not part of the baseline against which the framers of the *Constitution Act, 1867* and our elected representatives have always operated. Lawyers in Québec were mostly self-governing and self-regulating at Confederation, it is true; but lawyers in Ontario were not self-governing and were only partially self-regulating; and lawyers in Nova Scotia and New Brunswick were neither self-governing nor self-regulating.

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[160] For example, the *Criminal Code* and human rights legislation regulate how lawyers may act on behalf of clients. Sections 69-74 of the *Current Act* regulates aspects of the contractual relationship between lawyers and clients.
[161] For example, human rights tribunals and securities commissions.
[162] *Wilder v. Ontario Securities Commission*, 2000 CanLII 29062 (O.N.S.C.D.C.) at para. 24, aff'd 2001 CanLII 24072 (O.N.C.A.) at para. 29.

119. The fact that British Columbia used a particular regulatory model for an extended period of time reflects public policy decisions made by successive legislatures, not a new unwritten constitutional principle.[163]

120. Finally, evidence from other jurisdictions, including Canadian jurisdictions, shows that lawyer independence is preserved under different regulatory models. The Law Society's position that self-governance and self-regulation are necessary components of lawyer independence is not borne out by the experience of Québec, Australia, and New Zealand, where lawyers remain independent under different regulatory models. It is difficult to conceive of how Canada's constitutional structure could require self-regulation and self-governance, or that lawyers be free from influence from any source, when Québec has regulated lawyers with a significant role for external and cabinet oversight for the last five decades.

F. Lawyers do not have a veto over the legislature

121. The Law Society asserts, for the first time in its notice of application, that governments have recognized and continue to recognize that legislatures are "constrained" from legislating about the "governance and regulatory structure for lawyers" unless amendments are "generated or consented to by the bar" (the "**Legislative Veto**"). This constraint is said to arise from an alleged past practice, since Confederation, of legislatures across Canada not legislating about the governance and regulatory structures for lawyers without the consent of the bar.[164]

122. As a preliminary matter, it would prejudice the Attorney General to allow the Law Society to raise this issue now. Neither the legal theory nor the underlying factual allegation (an alleged historical practice in every province over the past 150 years) were pleaded. Additionally, virtually none of the supporting documents that the Law Society is relying on were listed. The Attorney General has not had an adequate opportunity to respond.

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[163] *Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General)*, 2001 SCC 15.
[164] Law Society Notice of Application at paras. 17, 58.

123. In any case, the Legislative Veto argument should be dismissed.

124. As a matter of law, the Legislative Veto argument is asserting a novel constitutional convention. Conventions are the only mechanism in law through which an alleged practice, repeated over time, can become a rule (in certain circumstances).[165]

125. As a starting point, even if this court were to find that the Legislative Veto is a convention, the effect would be political. Conventions are political rules, not legal rules, and they are not enforced by courts.[166]

126. Most of the evidence the Law Society is relying on is inadmissible,[167] but even assuming for the sake of argument that it is all admissible, the Law Society still would not be able to establish the necessary elements for a convention. There is evidence that law societies have often been involved in the development of draft legislation. However, the evidence does not establish that relevant political actors have ever understood themselves to be prohibited from acting without the consent of the law society or lawyers more generally. To the contrary, there are examples of legislatures legislating over the objections of a law society.[168] There is also no principled reason for lawyers to have an unreviewable Legislative Veto, given that lawyers have the same right as anyone else to challenge the constitutionality of legislation through the courts.[169]

127. Alternatively, if the Legislative Veto is conceptualized as a novel judicially enforceable requirement flowing from an unwritten constitutional principle, the argument should not be accepted for several reasons:

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[165] See generally Peter W. Hogg, Constitutional Law of Canada , 5th ed. (Toronto: Thomson Canada Limited, 2024), § 1:12. *Re Resolution to Amend the Constitution,* [1981] 1 S.C.R. 753 at p. 888 [*Patriation Reference*].
[166] *Patriation Reference* at p. 774.
[167] See "Evidentiary Issues", below.
[168] Expert report of Dr. Phillip Girard dated May 16, 2025 ("**Girard Report #2**") at para. 9; Affidavit #2 of Leah Kosokowsky made March 31, 2025 ("**Kosokowsky #2**") at paras. 17, 20-25; Affidavit #1 of Dwight Gordon Newman, KC made April 3, 2025 ("**Newman #1**), Ex. S at p. 718; Affidavit #1 of Philip Aaron Bull made May 16, 2025, Ex. A at p. 5-6.
[169] *Mikisew* at para. 125, *per* Brown J., concurring.

a. The separation of powers requires that legislative activities "proceed unimpeded by any external body or institution, including the courts".[170] Courts "come into the picture when legislation is enacted and not before".[171]

b. Legislatures have no duty to consult in the legislative process.[172] Without a duty to consult, there cannot be a duty to seek consent from external groups.

c. Parliamentary privilege generally prevents the courts from enforcing procedural constraints on the legislative process.[173]

d. Imposing the Legislative Veto would abrogate solicitor client privilege by forcing governments to share privileged information and documents (such as draft bills) with external groups.[174]

e. Imposing the Legislative Veto could constrain legislatures from pursuing their mandates and therefore undermine their role as the voice of the electorate.[175]

G. Specific Response To Interveners

(i) Canadian Bar Association ("CBA")

128. The CBA's arguments with respect to lawyer independence largely duplicate those advanced by the Law Society. The Attorney General has addressed those arguments above.

129. The balance of the CBA's submissions focus on medical treatment and are addressed in the Attorney General's application response to the Trial Lawyers.

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[170] *Mikisew Cree* at para. 35, citing *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at para. 20.
[171] *Mikisew Cree* at para. 34, citing *Patriation Reference* at p. 785.
[172] *Mikisew Cree* at paras. 35-37, *per* Karakatsanis J. for the plurality, 115-126, *per* Brown J., concurring, 148, 153, 160-171, *per* Rowe J., concurring.
[173] *Mikisew Cree* at para. 37.
[174] *British Columbia Teachers' Federation v. British Columbia,* 2010 BCSC 961 at paras. 24, 42.
[175] *Mikisew Cree* at para. 36.

(ii) Indigenous Bar Association

130. The Attorney General supports the positions advanced by the Indigenous Bar Association about the creation and role of the Indigenous Council under the *Act*.

(iii) Law Foundation

131. All parties wish to ensure that, regardless of the outcome of these actions, the Law Foundation's operations are not interrupted. If the actions are dismissed, no issues arise for the Law Foundation. If the Court finds portions of the *Act* to be unconstitutional, the Court has remedial discretion to craft a remedy that is consistent with s. 52 of the *Constitution Act, 1982*, but ensures the Law Foundation's operations are not interrupted.

(iv) Law Society of Manitoba ("LSM")

132. The LSM argues that the Constitution requires that lawyers "control" the board of their regulator.[176] The LSM does not define what it means by "control", but it is presumably using the term differently than the Law Society and CBA. The Law Society and CBA suggest that lawyers must "control" the board of their regulator in an electoral sense. That cannot be what the LSM means because elected lawyers are not a majority of its own board.[177]

133. In any case, as developed above, no particular board composition is required to ensure lawyer independence.

134. The LSM's comments about positions it might consider taking within the context of the National Mobility Agreement are irrelevant to the constitutionality of the *Act*.[178] At most, the LSM's contemplated actions engage the economic interests of lawyers who are licensed in BC but wish to practise temporarily in Manitoba without needing any kind of permit from the LSM.

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[176] LSM Application Response at paras. 22-23.
[177] As noted above, the board of the Law Society of Manitoba has 25 voting members, only 12 of whom are elected by lawyers.
[178] LSM Application Response at paras. 8-9.

(v) Society of Notaries Public of British Columbia ("Notaries")

135. The Notaries' arguments with respect to the board are similar to the arguments of the Law Society and CBA. The Law Society and CBA submit that a substantial majority of the board must be elected lawyers; the Notaries submit that a substantial majority must be elected legal professionals. As set out above, the Attorney General's position is that neither a majority of elected lawyers, nor elected legal professionals, are required to ensure lawyer independence (or the independence of legal professionals more broadly).

136. The Notaries' additional arguments with respect to ss. 4, 7, 68, and Part 17 of the *Act* largely overlap with submissions made by the Law Society and are addressed above. Although the Notaries also impugn s. 22 of the *Act* (which requires the CEO to appoint a person to lead reconciliation initiatives),[179] they provide no factual or legal basis for challenging this provision.

H. The remedy can be no broader than the extent of the inconsistency

137. Despite impugning only certain provisions of the *Act*, the Law Society invites this Court to declare the whole *Act* unconstitutional (except for three sections amending other statutes).[180] There is no legal basis to do so.

138. If this Court decides that a provision of the *Act* violates the Constitution, then the appropriate remedy is to declare that provision unconstitutional only to the extent of the inconsistency.[181]

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[179] Notaries' Application Response to the Law Society at para. 7.
[180] Law Society Notice of Application, Part 1.
[181] *Ontario (Attorney General) v. G*, 2020 SCC 38 at paras. 97, 108-109; *R. v. Moriarity*, 2015 SCC 55 at para. 58, citing *Schachter v. Canada*, [1992] 2 S.C.R. 679 at p. 702.

I. Evidentiary Issues

(i) Most of the Law Society's evidence is inadmissible

139. A summary trial, though conducted on affidavit evidence, is still a trial. An affiant may only state what they would be permitted to state from the witness stand in a conventional trial.[182]

140. Affidavits should be confined to relevant facts within the personal knowledge of the affiant, and should not include inadmissible hearsay, opinions, argument, or legal conclusions.[183]

141. Attaching documents to an affidavit does not make them admissible evidence.[184]

142. The Law Society has filed affidavits from lawyers in each province and territory. These affidavits consist predominantly of: (1) inadmissible hearsay (including double and triple hearsay), much of which is not properly attributed;[185] and (2) argument/opinion (including legal opinion) from persons who are not proffered as independent expert witnesses.[186]

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[182] Rules 10-4(12) and (13); *Larkin v. MacInnes,* 2023 BCSC 174.
[183] *British Columbia Investment Management Corporation v. Canada (Attorney General),* 2016 BCSC 2554 at para. 7.
[184] *Main Acquisitions Consultants Inc. v. Yuen*, 2022 BCCA 249 paras. 94-97.
[185] See e.g. Affidavit #1 of Jessica Copple made March 24, 2025 at paras. 11-51 ("**Copple #1**); Greenberg #3 at paras. 7, 19-44, 74-76, 92; Affidavit #1 of Cheryl Hodder, KC, made March 25, 2025 at paras. 12-59 ("**Hodder #1**"); Affidavit #1 of Michel Jolin, AD. E, made April 4, 2025 at paras. 21-62 ("**Jolin #1**"); Kosokowsky #2 at paras. 15-16, 42; Affidavit #1 of Peter Kryworuk made April 2, 2025 at paras. 10-33 ("**Kryworuk #1**"); Affidavit #1 of Grant McDonald made April 2, 2025 at paras. 12-19, 22-29 ("**Macdonald #1**"); Newman #1 at paras. 16-53; Affidavit #1 of Marc L. Richard, KC, made March 27, 2025 at paras. 10-32, 37 ("**Richard #1**"); Affidavit #1 of Joe Thorne made April 4, 2025 at paras. 8-36 ("**Thorne #1**"); Affidavit #1 of James Travers, KC made April 3, 2025 at paras. 9-49 ("**Travers #1**"); Affidavit #1 of Nalini Vaddapalli made March 31, 2025 at paras. 10-22 ("**Vaddapalli #1**").
[186] See e.g. Copple #1 at paras. 4, 11-51, 53-58; Greenberg #1 at paras. 12, 13, 15, 16, 18-24, 35, 37-44, 46, 48, 52-54, 69, 75, 100-145; Greenberg #3 at paras. 10-19, 45-49, 84, 121-123, 141, 190-194, 201-214; Hodder #1 at paras. 5, 12-59; Jolin #1 at paras. 9-62; Affidavit #1 of Leah Kosokowsky made November 22, 2024 at paras. 9-13, 17-26, 29-40; Kosokowsky #2 at paras. 15, 16, 18, 27, 28, 32, 33, 36-40, 43; Kryworuk #1 at paras. 4-34; Macdonald #1 at paras. 5-29; Newman #1 at paras. 4-55; Richard #1 at paras. 4-37; Thorne #1 at paras. 4-36; Travers #1 at paras. 4-49; Vaddapalli #1 at paras. 4-22.

143. The exhibits to these affidavits are not admissible for the truth of their contents except where the Law Society can establish a hearsay exception. Hansard is a business record of proceedings in the legislature, but factual statements by legislators recorded in Hansard, being relied upon for the truth of their contents, are hearsay like any other unsworn out-of-court statements.[187] For events within living memory, the necessity criterion for the principled exception to hearsay is not met.

144. All of the evidence about the alleged involvement of law societies in past legislative amendments is also irrelevant and inadmissible for that reason. This evidence is tendered in support of the Law Society's Legislative Veto argument, which was not pleaded and is not properly before the Court.

(ii) Many of the Law Society's exhibits were not listed

145. Many of the documents exhibited to the affidavits filed by the Law Society were not listed.[188] The Law Society has not explained why it did not list these documents nor sought leave to rely on them under R. 7-1(21).

146. Some of the unlisted documents are unobjectionable. The Law Society's legislative history affidavits attach many historical enactments as exhibits. Enactments need not be listed (nor should enactments be attached to affidavits at all, given s. 24 of the *Evidence Act*).

147. Otherwise, however, the Court should not allow the Law Society to rely on unlisted documents. The schedule agreed to in the Chief Justice's order made February 11, 2025 was premised on document production being substantially complete by the end of 2024.[189] Examinations for discovery occurred in March 2025. The Attorney

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[187] *Wal-Mart Canada Corp. v. Saskatchewan (Labour Relations Board)*, 2006 SKCA 142 at paras. 10-12; *R. v. Hair*, 2016 ONSC 900 at para. 20.

[188] Some were belatedly listed on May 2, 2025, but that formal exercise does not cure the timing-related prejudice.

[189] See e.g. the Law Society's judicial management brief dated November 20, 2024, stating that the Law Society "anticipates substantial completion of document disclosure by December 20, 2024" (Lever #1, Ex. P at p. 385). The judicial management order of February 11, 2025, does not include a deadline for document production because all parties had indicated their production was already complete.

General did not have the opportunity to ask discovery questions relating to or arising from the unlisted documents that were subsequently attached to the Law Society's affidavits. The Attorney General has not had an adequate opportunity to assemble evidence in response to the unlisted documents within the schedule that was premised on document production being complete months earlier than these documents were delivered.

148. This prejudice to the Attorney General inhibits the adversarial process on which the Court's truth-seeking function depends. Evidence that has not been fully tested is evidence that risks leading the court into factual error.

149. To be very clear, the Attorney General does not want an adjournment, which would itself be prejudicial. The Attorney General submits the Law Society should be held to its pleading and the documents it listed.

(iii) The read-ins from examination for discovery are inadmissible

150. Almost all the questions and answers the Law Society seeks to rely on from its examinations for discovery of the defendants' representative are irrelevant to any issue in these proceedings.[190]

151. Legislation is interpreted the same way in a constitutional case as in any other case. The process undertaken by government in preparing the bill that became the *Act*, the professional background and role of the civil servants who were involved, the steps taken by those civil servants, and the government's subjective interpretation of the *Act* have no bearing on the interpretation or constitutionality of the *Act*.[191]

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[190] Law Society XFD Q31-32, 34, 43-45, 49, 50, 52-54, 58-63, 66-69, 79-80, 83, 86-89, 91, 97-98, 101-106, 109-110, 116-118, 124-126, 130-139, 141-144, 146-154, 156-158, 161-164, 166-169, 171-173, 175-177, 179, 182-184, 189-202, 206, 208-209, 213-229, 232, 236, 241, 245-251, 256-265, 272-273, 275, 277-285, 287-288, 289, 290, 293-296, 299-302, 310, 312-324, 326-359, and 361-367; Trial Lawyers XFD Q6-9, 27-30, 43-60, 63-64, 89-94, 97-103, 115-116, 118-122, 147-149, 151-153, 208-209.

[191] *Delisle v. Canada (Deputy Attorney General)*, 1999 CanLII 649 (S.C.C.) at para. 20; *Imperial Tobacco Canada Ltd. c. Québec (Procureur général)*, 2012 QCCS 726 at para. 81, aff'd 2012 QCCA 2196; *British Columbia Teachers' Federation v. Attorney General of British Columbia*, 2008 BCSC 1699 at paras. 42-43, 65-69, 76-80.

152. The Law Society seeks to read in some questions that were objected to and not answered. Questions are not evidence.

(iv) Statements by the Law Society are admissible at the Attorney General's instance

153. Statements that have previously been made by or on behalf of the Law Society are admissible for the truth of their contents, at the instance of the Attorney General, under the party admission hearsay exception.[192]

(v) The expert evidence filed by the Attorney general is admissible

154. The Attorney General has served expert reports from:

a. Dr. Phillip Girard, a legal historian and Professor Emeritus at Osgoode Hall Law School, on the history of the legal professions in Canada and the Legislative Veto argument;

b. Dr. Christine Parker, a Professor of Law at Melbourne Law School, on the regulation of lawyers in Australia;

c. Dr. Selene Mize, an Associate Professor of Law at the University of Otago Faculty of Law, on the regulation of lawyers in New Zealand;

d. Jakub Adamski, an adjunct professor of Law at the McGill University Faculty of Law, on the regulation of lawyers in Québec; and,

e. Shona McGlashan, an experienced governance consultant, on best practices for board governance.

155. These reports meet the *Mohan* criteria to be admitted as expert evidence.

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[192] *MJL Enterprises Inc. v. SAL Marketing Inc.*, 2025 ONCA 120 at para. 17.

J. Other issues

(i) No material change in circumstances justifying another injunction application

156. The Law Society says it may seek an order enjoining the LGIC from bringing the balance of the *Act* into force until 30 days after the determination of this application.[193]

157. While the Law Society can renew its injunction application if there is a material change in circumstances, the primary reason for Justice Gropper's dismissal of the first injunction application remains unchanged. The transitional board's work plan contemplates completing the first rules between October and December 2026.[194] Cabinet cannot bring the rest of the *Act* into force until the first rules are made.[195]

158. If there is a material change in circumstances and the Law Society wishes to renew its application, it must deliver proper application materials.

(ii) HMTK should be removed as a party

159. His Majesty the King in right of the Province of British Columbia (i.e., the government[196]) should be removed as a party.[197] In a proceeding about the structural principles of the Constitution, the government should not be conflated with the legislature. The proper defendant is the Attorney General.[198]

PART 6: MATERIAL TO BE RELIED ON

160. Expert report of Dr. Phillip Girard dated November 11, 2024;

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[193] Law Society Notice of Application at para. 59.
[194] Spraggs #1, Ex. U at p. 449.
[195] *Act*, s. 226(2)(a).
[196] *Crown Proceeding Act,* R.S.B.C. 1996, c. 89, s. 7.
[197] See *B.C. Teachers' Fed. v. B.C.*, 1985 CanLII 304 (B.C.S.C.) at para. 16.
[198] *Allen v. British Columbia (Superintendent of Motor Vehicles)*, 1986 CanLII 1044 (B.C.S.C.), (1986) 2 B.C.L.R. (2d) 255 at paras. 14-16; *Weisenburger v. College of Naturopathic Physicians of British Columbia,* 2024 BCSC 1047 at para. 129.

161. Expert report of Dr. Christine Parker dated December 2, 2024;

162. Expert report of Dr. Selene Mize dated December 3, 2024;

163. Expert report of Jakub Adamski dated May 13, 2025;

164. Expert report of Shona McGlashan dated May 14, 2025;

165. Second expert report of Dr. Phillip Girard dated May 16, 2025;

166. Affidavit #1 of Vanessa Lever made May 23, 2025;

167. Affidavit #2 of Vanessa Lever made May 23, 2025;

168. Answers 5-15, 19, 20, 22, 28-31, 36, 42-43, 45, 70, 71, 91, 92, 94, 111-113, 121, 123, 145-148, 152, 155, 156, 169-171, 174-184, 191-195, 202, 204, 205, 209-217, and 222 from the examination for discovery of the Law Society's representative on March 13, 2025, and answers 5, 7, 8, 12-16, 19, and 20 from the Law Society's letter dated May 21, 2025, responding pursuant to R. 7-2(24) to the requests left on discovery;

169. The pleadings and other material filed herein;

170. Such further and other material as counsel may advise and this Honourable Court permit.

The Attorney General has filed in this proceeding a document that contains her address for service.

Dated: May 23, 2025

emily lapper

Emily Lapper, Trevor Bant,
Sergio Ortega, Karin Kotliarsky,
and Solomon Kay-Reid
Counsel for the Attorney General
of British Columbia

SCHEDULE 'A'

Legal Professions Act: Understanding the Discipline Process

Regulator

Concern Identified

Individual makes a complaint about a licensee (**section 76**) or regulator identifies a potential concern on its own initiative (**section 77**).

Preliminary Assessment

Regulator assesses complaint to determine whether it merits investigation.

Complaint Dismissed

Regulator may dismiss complaints without investigation if frivolous, outside regulator's jurisdiction, etc. (**section 77**).

Complaint Investigated

Regulator commences investigation, investigation powers are engaged under **section 78.**

Alternative Dispute Resolution and Consent Agreements

Consent agreements (**section 91**) and alternative resolution processes (**section 92**) are available at any time until a Tribunal hearing commences.

Interim Orders

The regulator may issue interim orders (including limits, conditions or suspension, maximum three months in duration) if considered necessary in the public interest (**section 85**).

The regulator may also require a licensee to undergo a medical examination, if considered necessary in the public interest (**section 85(1)(g)**).

A licensee can appeal an interim order to the Tribunal (**section 85(9)**). The regulator can apply to the Tribunal to extend an interim order (**section 85(5)**).

No Further Action

If investigation indicates no conduct or competence concern, the regulator dismisses the complaint and no further action is taken.

Resolution by Consent

As noted above, if investigation indicates conduct or competence concern, the regulator and licensee can resolve the matter consensually.

Conduct or Competence Order Issued

If investigation indicates **less serious** conduct or competence concern and matter cannot be resolved consensually, regulator can issue a competence order (**section 86(c)(i)**) or a professional conduct order (**section 86(a)**).

Competence Order Issued

Orders can include the following:
- practice review
- education/training
- counselling/medical treatment
- limits or conditions on licence
- license suspension

Some competence orders can be appealed to the Tribunal (**section 88(6)**).

Professional Conduct Order Issued

Orders can include the following:
- reprimand
- practice review
- education/ training
- limits or conditions on licence
- fine (max $10k 1st offence, $20k 2nd offence)

Some professional conduct orders can be reviewed by the Tribunal (**section 87(6)**).

Citation Submitted to Discipline Committee

If investigation indicates serious conduct or competence concern and matter cannot be resolved consensually, regulator can submit a citation to the discipline committee (**sections 86(b)** and **(c)(ii)**).

Discipline Committee Review

Discipline committee reviews proposed citations for cases of professional misconduct, conduct unbecoming, or incompetence.

The committee either approves the citation for a hearing or sends it back to the regulator, with or without reasons (**section 90**).

Independent Tribunal
(independent of regulator)

Tribunal Review of Regulator Action

Licensees may apply for a review of some professional conduct orders and competence orders.

Licensees may also apply for a review of a interim order issued by the regulator under **section 85**.

Tribunal Hearing

Citations approved by the discipline committee are heard by the Tribunal.

Tribunal can dismiss citations or make the following orders:
- dismissal
- reprimand
- practice review
- remedial program to satisfaction of board
- counselling / medical treatment
- limits or conditions on licence
- $250k fine for licensees; $5 million for law firms
- licence suspension
- licence cancellation
- any other order the tribunal considers necessary in the public interest, including restitution

British Columbia Court of Appeal

Court of Appeal Reviews Decision

The regulator and licensees may appeal final decisions of the Tribunal to the BCCA for all questions of fact and law.