NO. S-243258
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LAW SOCIETY OF BRITISH COLUMBIA

PLAINTIFF

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, ATTORNEY GENERAL 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

INTERVENORS

WRITTEN SUBMISSIONS OF THE PLAINTIFF

LAW SOCIETY OF BRITISH COLUMBIA

(Summary Trial pursuant to Rule 9-7 of the *Supreme Court Civil Rules*)

Law Society of British Columbia

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I. INTRODUCTION

A. Overview

1. An independent Bar is "one of the hallmarks of a free society"[1] and is an underlying principle of the Canadian Constitution. An independent Bar ensures the public's access to independent courts and is therefore fundamental to the legitimacy of Canada's constitutional democracy. The principle of independence of the Bar is part of the structure of our written Constitution, including s. 96 of the *Constitution Act, 1867*, and ss. 97 and 98, which recognize provincial Bars as constitutional institutions. Provincial legislatures are not free to use legislative authority under s. 92 of the *Constitution Act, 1867* to enact laws that undermine the independent Bar and the constitutional institutions it upholds.

2. The plaintiff Law Society of British Columbia (the **Law Society**) is an independent non-profit society continued by s. 2(1) of the *Legal Profession Act,* S.B.C. 1998, c. 9 (the ***LPA***) to govern the professional Bar for the purposes of upholding and protecting the public interest in the administration of justice.[2] The membership of the Law Society is composed of approximately 14,265 practicing lawyers, 1,567 non-practicing lawyers, and 1,086 retired lawyers.[3] The Law Society ensures independent, robust, visible and professional regulation of lawyers, in the public interest, under the *LPA*, the Law Society Rules (the **Rules**), and the *Code of Professional Conduct* (the ***Code***).[4]

3. The Law Society has independently regulated the Bar for 156 years.

4. The independence of lawyers and of their regulator is essential to the proper functioning of the administration of justice. It is the duty of the Law Society to prevent any erosion of the independence of lawyers or their regulator. That erosion occurs when the public's interest in having access to lawyers that are free from unnecessary government direction and intrusion, and who are governed by an independent regulator, is not protected by the province's enabling legislation.[5]

5. In 2024, the Legislature enacted the *Legal Professions Act*, S.B.C. 2024, c. 26 (**Bill 21**). Bill 21 contemplates that the Law Society will be amalgamated with the Society of Notaries Public of British Columbia (**SNPBC**) and continued into a new legal regulator created by Bill 21, Legal Professions British Columbia (**LPBC**).

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[1] *AG Can v. Law Society of B.C.*, [1982] 2 S.C.R. 307 [*AG Can*] at 335-336.
[2] Affidavit #1 of Brook Greenberg, K.C., made May 24, 2024 [Greenberg #1], para, 13.
[3] Greenberg #1, para. 14.
[4] Greenberg #1, para. 35.
[5] Greenberg #1, para. 16.

6. Under s. 230(1) of Bill 21, on the amalgamation date, all Benchers elected by lawyers to regulate the profession in the public interest will cease to hold office.[6] The mandate to protect the public interest given to the Benchers by lawyers in the province will have been terminated unilaterally by the government of British Columbia.

7. Bill 21 replaces a statutory structure carefully crafted by the independent Bar to preserve self-governance and self-regulation of lawyers in the public interest with government imposition of the government's own policy, informed by its own view of what independence and self-regulation require. In the Law Society's submission, Bill 21 is inconsistent with the written text of the Constitution (in particular ss. 96-101 of the *Constitution Act, 1867* and ss. 7, 10(b) and 11(d) of the *Charter*) because it undermines the essential conditions of the independent Bar.

8. These submissions detail the arguments set out in brief in the Notice of Application filed by the Law Society on April 4, 2025. While some of the submissions below anticipate certain of the arguments expected to be advanced by the Province and the Indigenous Bar Association (the **Indigenous BA**), the Law Society will file reply submissions by October 6, 2025 that fully reply to those parties' submissions.

B. Issues before the Court

9. This issues in this action are, broadly stated:

   (a) Is independence of the Bar an unwritten principle of the Constitution?

   (b) If so, what is the meaning and content of the principle of independence of the Bar?

   (c) Does the written text of the Constitution, interpreted in light of the principle of independence of the Bar, constrain the exercise of government power under ss. 92(13) and 92(14) of the *Constitution Act*, *1867*?

   (d) Is Bill 21 *ultra vires* the provincial Legislature's power under ss. 92(13) and 92(14) of the *Constitution Act, 1867*?

C. Orders sought

10. This is a summary trial application brought pursuant to Rule 9-7 of the *Supreme Court Civil Rules*.

[6] Legal Professions Act, S.B.C. 2024, c. 26 [Bill 21], s. 230(1).

11. The Law Society seeks declarations that Bill 21, save and except for certain sections,[7] is *ultra vires* provincial authority to legislate under s. 92(13) and (14) of the *Constitution Act, 1867*, and that those sections that are *ultra vires* the province's authority are of no force and effect.[8]

12. The Law Society also seeks its costs of this proceeding.

13. As a protective measure, the Law Society seeks interim injunctive relief enjoining the coming into force of the remainder of Bill 21, and in particular s. 5 of Bill 21, until 30 days after the determination of this summary trial application.

II. THE STATUTORY CONTEXT OF BILL 21

14. The first task in a challenge to the constitutionality of legislation is statutory interpretation of the provisions at issue.[9] Below, we summarize the evidence of the political theory underpinning Bill 21, the factual context of the enactment of Bill 21, and the provisions of Bill 21 that are at issue. We return to an analysis of why Bill 21 is inconsistent with the Constitution below.

A. The constitutional competence to enact Bill 21 is derived from ss. 92(13) and (14)

15. It is common ground among the parties that Bill 21 is enacted pursuant to the provincial Legislature's constitutional authority under both s. 92(13) of the *Constitution Act, 1867* (in relation to private law civil rights[10]) and s. 92(14).[11]

16. Section 92(14) of the *Constitution Act, 1867* gives the provinces exclusive jurisdiction over "[t]he Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts." Under the authority of this provision, provincial legislatures establish (and fund), among other things, both the superior and appellate courts of the provinces and other provincial courts.[12]

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[7] Sections 311-314 of Bill 21 came into force on Royal Assent. These provisions deal with existing Law Society programs and are not at issue in the litigation.
[8] Notice of Application of the Law Society of British Columbia, filed April 4, 2025, Part 1.
[9] *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2013 BCCA 147 [*FLSC* BCCA], para. 62.
[10] *Ontario (Attorney General) v OPSEU*, [1987] 2 SCR 2.
[11] *Law Society of British Columbia v. Mangat*, 2001 SCC 67 [*Mangat*], para. 46; *Krieger v. Law Society of Alberta*, 2002 SCC 65, paras. 4, 33.
[12] Affidavit #3 of Brook Greenberg, K.C., made April 3, 2025 [Greenberg #3], Ex. 63 (Judicial Independence: Defending an Honoured Principle in a New Age), pp. 1942-1943.

17. The courts established and administered under s. 92(14) are the public's point of access to the independent judiciary, which has core jurisdiction over courts pursuant to s. 96 of the *Constitution Act, 1867.*

B. The theory of Bill 21 is that independence of the Bar and self-regulation are policy decisions controlled by government

18. There is no dispute that the overarching purpose of Bill 21 is to regulate all lawyers, notaries, regulated paralegals, and other legal professions that may be created by government, through the creation of a new single legal regulator. The policy of a single legal regulator is not at issue in this action.

19. At issue in this action is the government's imposition on lawyers of a system of regulation that does not preserve self-governance of lawyers by elected lawyers, or enable self-regulation of lawyers in the public interest, and is therefore inconsistent with the text of the *Constitution Act, 1867* and the rights and freedoms guaranteed to all persons in Canada in the *Charter*.

The Government's Announcement

20. The government first announced it would impose a new regulatory model to govern lawyers, notaries and paralegals in British Columbia on March 1, 2022. Rather than seek a legislative proposal from the Law Society (as had been done at each substantive revision of the legislation since before modern times, in recognition of the independence of the Bar), then-Attorney General David Eby, K.C. stated in a letter to the respective then-Presidents of the Law Society and the SNPBC that "the ministry [of Attorney General] will be preparing a legislative proposal for government's consideration."[13]

21. The legislative proposal would, among other things "establish a mandate for the regulator that clarifies its duty to protect the public, including the public's interest in accessing legal services and advice" and "establish a modernized governance framework for the regulator that is consistent with best practices in professional regulatory governance."[14]

The Intentions Paper

22. On September 14, 2022, the Ministry of Attorney General released an Intentions Paper on Legal Professions Regulatory Modernization (the **Intentions Paper**).[15] The purpose of the Intentions Paper was to communicate to lawyers, notaries, paralegals and the public the

[13] Greenberg #1, Ex. 23 (Letter from D. Eby to Law Society and SNPBC), p. 662.
[14] Greenberg #1, Ex. 23 (Letter from D. Eby to Law Society and SNPBC), pp. 662-663.
[15] Greenberg #1, Ex. 24 (Intentions Paper), p. 672.

policy intention behind Bill 21, and to solicit commentary from those groups on the government's stated policy.[16]

23. The policy reflected in Bill 21 is based on a narrow concept of lawyer independence that does not recognize the principle as having a constitutional nature. The theory of lawyer independence underlying Bill 21 was explained in the Intentions Paper:[17]

> The importance of an independent bar to the functioning of a free and democratic society cannot be overstated. The Ministry is not proposing, and has no intention of implementing, changes that would interfere with the ability of a lawyer (or other legal service provider) to fearlessly advocate for their client and provide independent legal advice to their client, even, and especially, when their client is at odds with government.

24. In the Province's view, lawyer independence is a "policy choice,"[18] not a constitutional requirement. As a policy choice, the government determines the meaning of the principle and how it may be given effect, as the Legislature has done in Bill 21. The Province's narrow formulation of independence does not reflect the institutional dimension of independence of the Bar, which is derived from the duties that lawyers owe to clients, the courts, the public and the administration of justice, or the obligation of lawyers to ensure the independence of their regulator in the public interest.

25. Although the government recognized that self-regulation is connected to maintaining lawyer independence, the meaning of self-regulation Bill 21 intends to reflect does not protect the independence of the Bar. The Intentions Paper describes self-regulation in this way:

> The Ministry has no intention of implementing changes that would see a shift away from what is commonly referred to as "self-regulation". Self-regulation does not mean *no* oversight or involvement by government. It means that the Legislature has made a policy decision to assign a professional regulator the primary responsibility for the development of structures, processes, and policies for regulation (emphasis in original).[19]

26. The government did not have any particular understanding of the meaning of self-regulation of lawyers when it drafted Bill 21, other than it required that the regulator have sufficient subject matter expertise at the operational and governance levels to regulate effectively.[20] Like independence of the Bar generally, the concept of self-regulation is expressed as a policy choice in the Intentions Paper, such that the government can decide

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[16] Greenberg #1, Ex. 24 (Intentions Paper), p. 672.
[17] Greenberg #1, Ex. 24 (Intentions Paper), p. 672
[18] Written Submissions of the Province, June 17, 2024, para. 58, footnote 57.
[19] Greenberg #1, Ex. 24 (Intentions Paper), p. 672.
[20] Examination for discovery of Katharine Armitage by Craig Ferris, K.C., July 2, 2025, qq. 493-496.

as a matter of policy to assign tasks to a professional regulator. The Intentions Paper does not communicate any specific details of how this concept of self-regulation would be reflected in the legislation.

C. The theory underlying Bill 21 is not based in consensus among the Bar

27. The government did not publicly share a draft of Bill 21 before it was introduced in the Legislature in April 2024. While the government did share drafts of Bill 21 before its enactment with certain representatives of the Law Society and others, signing a confidentiality agreement was a condition precedent to receiving a copy of the draft Bill.[21]

28. As a consequence of the government's decision not to circulate a draft of Bill 21 before it was introduced in the Legislature, or permit the Law Society to circulate drafts to the members of the Bar, there was no meaningful engagement with the Bar or the public about the details of the new regulatory regime the government intended to impose on lawyers, and no consensus about how the legislation should preserve self-governance and self-regulation so as to protect the independence of the Bar.

29. This is important context to the enactment of Bill 21. As set out below, in every past iteration of the modern *Legal Profession Acts*, the governing body of the regulator has worked to develop consensus among the Benchers and among the Bar about the principles and provisions of the governing legislation, and the Legislature has encouraged (if not requested) the Benchers to do so. This history is evidence of the existence of the principle of independence of the Bar; it is also evidence of repeated acts of self-regulation carried out in the public interest. The government's refusal to share drafts of Bill 21 (or detail its consultation efforts with Indigenous groups and people) in order to build consensus with lawyers and the public aligns with the intention of Bill 21 to minimize actual self-regulation of lawyers in British Columbia.

30. The lack of consensus between government and lawyers on the meaning of the fundamental concepts of independence of the Bar and self-regulation, and the absence of details supporting them, was immediately clear to the Law Society. The Law Society issued a response to the Intentions Paper on November 16, 2022.[22] While the Law Society agreed with the Ministry's emphasis on access to justice and some of the steps as outlined in the Intentions Paper (such as licensing paralegals), the Law Society also expressed concerns that the Intentions Paper did not make clear how the government intended to preserve independence of the Bar. The Law Society asserted that an independent Bar requires self-governance by a regulatory board on which lawyers are in the majority; that a reduction in the size of the governing board would undermine diversity on the board; that defining the

[21] Examination for discovery of Katharine Armitage by Craig Ferris, K.C., March 14, 2025 [Armitage XFD], qq. 219-227.
[22] Greenberg #1, Ex. 25 (Law Society response to Intentions Paper).

regulated scope of practice for paralegals would create an unnecessary barrier to their entry into practice; and that the public interest is best served by legislation that enables, rather than constrains, an independent regulator.

31. The Canadian Bar Association, BC Branch (the **CBABC**) similarly emphasized the "paramount" importance of self-regulation. The CBABC wrote that the principle of self-regulation of lawyers must ensure that it is lawyers who make the governing decisions. The regulator (alongside associations and individuals) must retain the responsibility to protect the rule of law.[23] The CBABC highlighted the "difference in understanding of what independence and self-regulation mean with respect to the regulation of lawyers" between the government and lawyers,[24] and further submitted that "details and specifics matter" and asked that the CBABC be included in the continued development of the legislation, regulation and rules. It wrote "such engagement is essential to the self-regulation of lawyers."[25]

The "What We Heard" Report

32. In May 2023, the Ministry issued a "What We Heard" Report detailing some of the results of the Ministry's public engagement and public survey related to the proposed regulatory changes.[26] The Report indicates that over 130 individual lawyers provided submissions on the issues raised in the Intentions Paper, in addition to the submissions received from the Law Society, other law societies, professional bar associations and lawyer advocacy organizations.[27] The Report notes that protection of independence of the Bar through ensuring lawyer self-regulation arose as a "prominent theme" in the submissions the government received from lawyers.[28]

33. Although the Intentions Paper notes that the BC First Nations Justice Strategy requires that the government undertake a "distinct stream of consultation and co-operation" with Indigenous peoples, the results of that stream of consultation are not reported in the What We Heard Report, and have not been disclosed by the Province in this Action.

34. The fact that the specific details of the legislation to be imposed on a self-regulating and self-governing profession were not shared with members of the profession was a matter of significant concern among the Bar. In January 2024, the Federation of Law Societies of Canada (**FLSC**) wrote to the Attorney General to request the opportunity to review the government's proposed draft single regulator legislation, and provide commentary from

[23] Greenberg #1, Ex. 28 (CBABC response to Intentions Paper), p. 716.
[24] Greenberg #1, Ex. 28 (CBABC response to Intentions Paper), p. 718.
[25] Greenberg #1, Ex. 28 (CBABC response to Intentions Paper), p. 716.
[26] Greenberg #1, Ex. 31 (What We Heard Report).
[27] Greenberg #1, Ex. 31 (What We Heard Report), p. 769.
[28] Greenberg #1, Ex. 31 (What We Heard Report), p. 770.

the Federation, on behalf of law societies.[29] The government did not respond to the request.[30]

35. Also in January 2024, CBABC reiterated its request to the Attorney General that the proposed draft of the legislation be shared with the entire legal profession and the public, with sufficient time for meaningful and open consultation prior to its consideration by the Legislature. The letter urged that "members of the public need to be able to consult with lawyers to understand how the law applies to them in their individual situations" and further asserted that "lawyers need to be free from government control to challenge laws and government actions on behalf of their clients in courts that are independent from government."[31]

36. In addition, in March 2024, TLABC, the CBABC, the Federation of Asian-Canadian Lawyers (BC), the South-Asian Bar Association (BC), the Alberta Civil Trial Lawyers Association, the Saskatchewan Trial Lawyers Association, the Abbotsford & District Bar Association, the Cowichan Valley Bar Association, the Kamloops Bar Association, the South Cariboo Bar Association, the Surrey Bar Association and the Vancouver Bar Association signed an open letter urging the government to share a draft of the bill with the entire legal profession, emphasizing that an independent Bar is critical to the integrity of the legal system and a properly functioning democracy, and the importance of self-regulation and self-governance to an independent Bar.[32]

The March 2024 Public Update

37. One month before the introduction of Bill 21, the Ministry of Attorney General released a public update about the proposed single legal regulator legislation.[33] The public update does not communicate the government's intention to create a board of the new legal regulator that is not governed by a majority of elected lawyers; it does not communicate an intention to create a transitional Indigenous council that has the authority to approve the first rules of LPBC, and co-govern with the board of LPBC; or communicate any details of the other statutory provisions that the Law Society submits undermine self-governance and self-regulation in British Columbia.

38. The Law Society responded to the public update on March 18, 2024. In its response, the Law Society expressed the concern that there had not been sufficient recognition and protection of the necessary independence of a new legal regulator from government. The Law Society encouraged the government to address the Law Society's concerns about the

[29] Greenberg #1, Ex. 32 (Briefing by the Law Society's member of the Federation Council).
[30] Greenberg #1, para. 82.
[31] Greenberg #1, Ex. 43 (Letter by CBABC to Attorney General).
[32] Greenberg #1, Ex. 44 (Open Letter to Attorney General).
[33] Greenberg #1, Ex. 33 (Public Update).

degree of mandated direction and prescription the proposed legislation was expected to contain.[34]

Introduction of Bill 21 in the legislature

39. Bill 21 was introduced in the provincial Legislature on April 10, 2024.[35] A copy of Bill 21 was not publicly available before its introduction in the Legislature.

40. The Law Society issued a response to Bill 21 on April 10, 2024. Its statement noted that the public interest required the public's trust that the legal regulator is independent of government influence, citing Justice Estey's reasons in *AG Can. v. Law Society of British Columbia.*[36] Then-President of the Law Society, Jeevyn Dhaliwal, K.C., commented in the statement that the Law Society was steadfast in its commitment to protect the independence of the legal profession and the regulator, and that independence is essential to the proper functioning of the administration of justice. Its statement noted that should Bill 21 be passed and enacted, the Law Society had instructed counsel to initiate litigation to challenge its constitutionality.[37]

41. On April 12, 2024, CBABC hosted a conference on independence of the Bar and independence of the judiciary. Law Society President Dhaliwal spoke on a panel with the Attorney General and Scott Morishita, President of CBABC (as he then was), about Bill 21, which had only been made public two days previous. Ms. Dhaliwal urged the Attorney to pause the legislative debate on Bill 21 and engage in further consultation to build consensus with the legal community on protection of the independence of lawyers and of the regulator.[38]

42. On April 19, 2024, the CBABC again wrote to the Attorney General to request that the legislation not proceed until there was meaningful engagement on the actual draft Bill, and asked that the government resolve the concerns raised by all parties through a collaborative process.[39]

43. On April 26, 2024, the Benchers[40] of the Law Society wrote to the Attorney General to urge the government to reconsider proceeding with Bill 21 without significant amendment.[41]

44. On May 14, 2024, CBABC again wrote to say it did not support Bill 21, and emphasized that to be independent, lawyers must be self-regulated. This means that the board of the

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[34] Greenberg #1, Ex. 34 ("Proposed single legal regulator legislation raises concerns").
[35] Greenberg #1, Ex. 35 (Hansard – April 10, 2024).
[36] *AG Can* at 335.
[37] Greenberg #1, Ex. 37 ("Law Society of BC opposes Bill 21 – Legal Professions Act").
[38] Greenberg #1, para. 90.
[39] Greenberg #1, Ex. 45 (CBABC letter to Attorney General).
[40] Bencher Christina Cook KC recused herself from matters related to Bill 21 and did not sign the letter.
[41] Greenberg #1, Ex. 38 (Law Society letter to Attorney General).

regulator must comprise a substantive lawyer majority that is elected by lawyers through a process that reflects diverse voices, including Indigenous and racialized lawyers. The very definition of self-governance means that lawyers must be engaged on the legislation's final form.[42]

45. Notwithstanding the calls by the legal profession to address lawyers' concerns that the text of Bill 21 had not been appropriately considered by lawyers, and notwithstanding the clear importance of Bill 21 to the public interest in British Columbia, the government moved to close the debate in the Legislature on Bill 21 on May 15, 2024.

46. On the same day, counsel for the Law Society wrote to the Attorney General to provide formal notice of the Law Society's impending challenge to Bill 21.[43]

47. Bill 21 received third reading on May 15, 2024, and royal assent after 4:00 p.m. on May 16, 2024. The Law Society commenced this proceeding on May 17, 2024.

48. The government acknowledged and agreed that the Law Society, and lawyers generally, did not agree that Bill 21 sufficiently protected independence of the Bar by maintaining and promoting self-governance and self-regulation of the Bar by lawyers. On June 5, 2024, Deputy Attorney General Barbara Carmichael, K.C., wrote to the Law Society to acknowledge the contributions of the Law Society in enacting Bill 21. The letter acknowledges that "we may not all agree on every single aspect of the Act", and "our views may differ on certain aspects of the Act."[44]

D. The text of Bill 21 ends self-governance and self-regulation by lawyers in British Columbia

49. The specific provisions that collectively work to carry out the government's intention to end self-governance and self-regulation in British Columbia are the following:

(a) under s. 230(1) of Bill 21, on the amalgamation date, each Bencher of the Law Society, whether elected or appointed, ceases to hold office as a Bencher.[45] The mandate to protect the public interest given to the Benchers by lawyers in British Columbia will be terminated unilaterally by the government;

(b) Bill 21 no longer provides that the object and duty of the society is to uphold and protect the public interest in the administration of justice by, among other things,

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[42] Greenberg #1, Ex. 46 (CBABC letter to Attorney General).
[43] Greenberg #1, Ex. 40 (Lawson Lundell LLP letter to Attorney General).
[44] Affidavit #1 of Paul Craven, made June 7, 2024, Ex. B (Letter from Deputy Attorney General to Law Society and SNPBC).
[45] Bill 21, s. 230(1).

preserving and protecting the rights and freedoms of all persons. Section 6 of Bill 21 now provides the following:

> **Duties of regulator**
>
> **6** (1) The regulator has the following duties:
>
> (a) to regulate the practice of law in British Columbia;
>
> (b) to establish standards and programs for education, training, competence, practice and conduct of applicants, trainees, licensees and law firms;
>
> (c) to ensure the independence of licensees.
>
> (2) the regulator must exercise its powers and perform its duties under this Act in the public interest.

(c) s. 7 of Bill 21 imposes on the regulator "guiding principles" that the regulator must consider in exercising and performing duties under the Act, including:

> (b) supporting reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples [**UNDRIP**];

(d) s. 8 of Bill 21 prescribes a board of the legal regulator that is not controlled by elected lawyers, and which provides for a slim majority (9 of 17) of combined elected and appointed lawyers. Section 10 permits the board to establish an executive committee of no more than five members, of whom a maximum of two members will be elected lawyers;

(e) under ss. 3 and 4 of Bill 21, the government has the power to directly regulate a new class of "profession" that has the authority to practise law, and which may be exempted from licensing requirements under ss. 38 and 212 of Bill 21, and under s. 211 the government has been granted a "general regulation-making authority";

(f) s. 224 of Bill 21 establishes a transitional Indigenous council, composed of a majority of members (4 of 5 or 6) appointed by the BC First Nations Justice Council (the **BCFNJ**) and the Métis Nation British Columbia, which has the sole authority under s. 226(2)(b) of Bill 21 to approve, before the amalgamation date, the first rules of LPBC;

(g) s. 29 of Bill 21 creates an Indigenous council comprised of a majority of members appointed from among persons nominated by the BCFNJ and from among persons nominated by Métis peoples or entities representing Métis peoples. The role of the

> Indigenous council, set out in s. 30 of Bill 21, includes participation in the regulator's strategic planning processes, and the exercise of approval powers conferred on the Indigenous council by the Act (which extend to approval of the first rules of LPBC by the application of s. 224(4). These sections (together with s. 224) impose a system of co-governance and co-regulation on the legal regulator; and

(h) under Part 6 of Bill 21, the government prescribes matters that are fundamental to the regulation of lawyers in British Columbia, such as codified definitions of the terms "conduct unbecoming a professional", "incompetently", "professional misconduct". Under the *LPA*, the determination of these matters is left to the self-regulation and self-determination of the Benchers.

50. In accordance with the policy of the Bill, the collective weight of these provisions is intended to and does end self-governance and self-regulation of lawyers in British Columbia.

III. INDEPENDENCE OF THE BAR IS AN UNDERLYING PRINCIPLE OF THE CANADIAN CONSTITUTION

51. The Law Society submits that the independence of the Bar is one of the "vital unstated assumptions"[46] underlying our Constitutional structure. The principle of independence of the Bar animates the written text of the Constitution, and its continued observance ensures the public's access to legal rights and independent courts.

52. The government's enactment of Bill 21 now requires this Court, for the first time, to make express this implicit principle of our constitutional arrangements, so that the written text of the Constitution may be properly interpreted and applied.

53. Canada's constitutional history and the written text of the Constitution, together with 150 years of evidence of the principle of independence of the Bar in action in this province, require the express recognition of independence of the Bar as an underlying principle of the Constitution:

> [w]here, having regard to convention, written provisions and internationally affirmed values, it is clear that a nation and its people adhere to a particular fundamental principle or norm, then it is the court's duty to recognise it.

[46] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 [*Secession Reference*] at para. 49.

> This is not law-making in the legislative sense, but legitimate judicial work.[47]

A. Independence of the Bar is part of our constitutional structure

Overview

54. The independence of the Bar is an underlying unwritten constitutional principle essential to the structural coherence or integrity of the Constitution of Canada. When the written provisions of the Constitution are read in light of this principle, specific constitutional propositions of self-regulation and self-governance by a body with a strong majority elected by lawyers follow.

55. The general principle of the independence of the Bar, and the more specific propositions of self-governance and self-regulation that flow from independence of the Bar, are implicit within the following written provisions of the Constitution of Canada:

(a) the judicature provisions in the *Constitution Act, 1867*, namely, ss. 96, 97, 98, 99, and 100; and,

(b) the guarantees of fundamental rights and freedoms in the *Canadian Charter of Rights and Freedoms*: ss. 7, 10(b), and 11(d).

Canada's constitution includes unwritten underlying principles

56. Canada's constitution is partly written and partly unwritten.[48] The written Constitution includes the *Constitution Acts 1867-1982*, and the instruments listed in the Schedule to the *Constitution Act, 1982*.[49] The unwritten constitution, which includes underlying constitutional principles (such as federalism, democracy, the rule of law,[50] and judicial independence[51]), encompasses the norms necessary for Canada's system of governance to function.[52] The unwritten constitution predates Confederation, continues to operate after Confederation, and forms an essential part of our constitutional structure.[53]

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[47] Beverly McLachlin, "Unwritten Constitutional Principles: What is Going On?" (2006) 4:2: New Zealand J Public &Intl L 147 at 159, cited in Andre Matheusik, "Unfinished Business in Unwritten Justice: Unwritten Constitutional Principles after *Toronto (City) v. Ontario (Attorney General)*" (2023) 61:4: Alta L Rev at 959.
[48] The Hon. Justice Rowe and Manish Oza, "Structural Analysis and the Canadian Constitution" (2023) 101 Can Bar Rev. 205 [Rowe and Oza, "Structural Analysis"] at 206; *Secession Reference*, at para. 32.
[49] *The Constitution Acts, 1867-1982*.
[50] *Secession Reference*, at para. 32.
[51] *Ref re Remuneration of Judges of the Prov Court of PEI; Ref re Independence and Impartiality of Judges of the Prov Court of PEI*, [1997] 3 S.C.R. 3 [*Judges Reference*] at para. 105.
[52] Rowe and Oza, "Structural Analysis" at 207.
[53] Rowe and Oza, "Structural Analysis" at 211.

57. The underlying principles that form part of the unwritten constitution are the "'basic principles inherent in a given form of governance' from which concrete rules can be derived 'to make the system work in a coherent fashion.'"[54] They arise from Canada's constitutional history and the text of the Constitution. Underlying principles "inform and sustain the constitutional text: they are the vital unstated assumptions upon which the text is based."[55] By their nature, underlying principles are expressed at a "high level of generality", but more specific rules can be derived from them.[56]

58. Underlying principles have two closely related uses in constitutional analysis: 1) they may be used in the interpretation of constitutional provisions; and 2) they may be used to develop structural doctrines unstated in the written Constitution but that flow from the architecture of our Constitution.[57]

59. One example given of the interpretive use in *Toronto (City) v. Ontario (Attorney General)* is how "the unwritten constitutional principles of judicial independence and the rule of law have aided in the interpretation of ss. 96 to 100 of the *Constitution Act, 1867*."[58] The majority of the SCC cites in particular paragraphs 88 and 89 of the *Provincial Court Judges Reference* on this point. In those paragraphs, Lamer C.J.C. states that "the interpretation of ss. 96 and 100 has come a long way from what those provisions actually say" (he notes that s. 96 is, taken literally, only a "staffing provision"), and "[t]he only way to explain the interpretation of ss. 96 and 100, in fact, is by reference to a deeper set of unwritten understandings which are not found on the face of the document itself."[59]

60. When interpreted in light of unwritten principles, s. 96 of the *Constitution Act, 1867*, which by its text simply provides that superior court judges shall be appointed by the Governor General, gives constitutional protection to the following:

    (a) the judicial review of administrative decisions on jurisdictional grounds (*Crevier v. A.G. (Québec) et al.*);[60]

    (b) other core aspects of superior court inherent jurisdiction (*MacMillan Bloedel Ltd. v. Simpson*);[61]

    (c) public access to the superior courts (*TLABC*);[62] and,

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[54] Rowe and Oza, "Structural Analysis" at 213.
[55] *Secession Reference*, at para. 49.
[56] Rowe and Oza, "Structural Analysis", at 232.
[57] *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 [*Toronto (City)*] at paras. 54-56
[58] *Toronto (City)*, at para. 55.
[59] *Judges Reference*, paras. 88-89.
[60] *Crevier v. A.G. (Québec) et al.*, 1981 SCC 30, [1981] 2 SCR 220.
[61] *MacMillan Bloedel Ltd. v. Simpson*, 1995 SCC 57, [1995] 4 S.C.R. 725).
[62] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General),* 2014 SCC 59 [*TLABC*].

(d) together with ss. 97-100 and s. 11(d) of the *Charter*, to the independence of the judiciary, including individual or adjudicative independence, administrative independence, security of tenure, and financial security (*Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*).[63]

61. This jurisprudence, affirmed in *Toronto (City)*, demonstrates how core propositions of constitutional law not found on the "face" of a written provision, are, with the assistance of underlying or unwritten principles, derived by implication through "interpretation" which seeks to ensure the coherence or integrity of the structure or architecture of the Constitution of Canada.

The principles inherent in the Westminster system of government were assumed and continued by Canada's constitution

62. The vital assumptions underlying the Canadian constitution are unstated in the written Constitution because Canada's constitution carries forward the principles of the Westminster system of government inherited from the United Kingdom.[64] Canada did not have a "founding constitutional moment when the slate was wiped clean and entirely new constitutional arrangements were adopted;"[65] rather the *Constitution Act, 1867* confirmed the existing Westminster principles that emerged from the *Act of Settlement, 1701*,[66] including the twin principles of judicial independence and independence of the Bar,[67] and adapted them to Canada's federation.[68] The courts of the United Kingdom recognize the "principle of the independence of advocates" as a "long-established common law principle and one of the cornerstones of a fair and effective system of justice and the rule of law."[69]

63. As stated in the preamble to the *Constitution Act, 1867* and in the resolutions of the 1864 Conference leading to the *Constitution Act, 1867*, the key objective of confederation was to give effect to the Westminster system in Canada.[70] The legal and institutional structure of constitutional democracy in Canada should be similar to the legal and institutional structure of the regime out of which the Canadian Constitution emerged.[71] As stated by the Supreme Court of Canada (**SCC**) in *Ref re Remuneration of Judges of the Prov. Court*

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[63] *Judges Reference*.
[64] Rowe and Oza, "Structural Analysis" at 209.
[65] Rowe and Oza, "Structural Analysis" at 209.
[66] Greenberg #3, Ex. 66 (*Act of Settlement*, 1700.
[67] The Right Hon. Beverley McLachlin, P.C., Chief Justice of Canada, "Professional Independence and the Rule of Law" (2007) 23 W.R.L.S.I. 3 [McLachlin, "Professional Independence"] at 3.
[68] Greenberg #3, Ex. 70 ("Judicial Independence and Accountability in Canada"), pp. 2041-2042; See also Richard Peck, K.C., "The Independence of the Bar", in Jack Giles, ed, *The Splendour of the Law*, (Toronto: Dundurn Group, 2001) at 51.
[69] Lumsdon & Ors v General Council of the Bar & Ors, [2014] EWCA Civ 1276 at para 14.
[70] Rowe and Oza, "Structural Analysis" at 210.
[71] *Judges Reference*, at para. 96.

of P.E.I. the preamble to the *Constitution Act, 1867* recognizes and affirms the basic principles which are the very source of the substantive provisions of the *Constitution Act, 1867*, and invites the use of organizing principles (such as the independence of the Bar) to fill gaps in the express terms of the constitutional scheme,[72] or interpret the written text of the Constitution.[73]

64. The *Constitution Act, 1982* similarly carried forward and did not disturb the unwritten principles of the constitution that are assumed by the *Constitution Act, 1867*, though the "complexion" of those arrangements changed with new express limits on parliamentary sovereignty[74] and "the concomitant expansion of the courts' role as the 'guardian of the constitution.'[75]

Independence of the Bar is a fundamental component of Canada's free society

65. The underlying principle of independence of the Bar forms part of the very basic tenets of our constitutional arrangements. Canada is a "free and democratic society." The purpose for which the *Charter* and the rights and freedoms it guarantees are entrenched as a part of the written Constitution of Canada is to ensure that Canadian society remains "free and democratic."[76]

66. The values and principles of a free and democratic society are both the genesis of the fundamental rights and freedoms guaranteed by the *Charter*, and the standard against which a limit on a right or freedom must be justified, in s. 1 of the *Charter*.[77] These values include respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.[78]

67. An independent Bar composed of lawyers who are free of influence by public authorities (or any other source) is a fundamental component of our free society.[79] Independence of the Bar is the fundamental public right that lawyers may provide legal assistance for or on behalf of a client without fear of interference or sanction by the government, subject only

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[72] *Judges Reference*, para. 96
[73] *Toronto (City)* at para. 55.
[74] See, for example, s. 52(1) of the *Constitution Act*, *1982*.
[75] Rowe and Oza, "Structural Analysis" at 212.
[76] *R. v. Oakes*, [1986] 1 S.C.R. 103 [*Oakes*] at para. 64.
[77] *R v Oakes*, [1986] 1 SCR 103 at para 64.
[78] *R v Oakes* at para 64.
[79] *Finney v Barreau du Québec*, 2004 SCC 36, [2004] 2 SCR 17 at para 1. See also *AG Can* at 336; *Law Society of New Brunswick v Ryan*, 2003 SCC 20, [2003] 1 SCR 247 at para 36; *Law Society of British Columbia v. Trinity Western University,* 2018 SCC 32, [2018] 2 SCR 293 [*TWU*] at para. 32.

to the lawyer's professional responsibilities as prescribed by the Law Society, and the lawyer's general duty as a citizen to obey the law.[80]

68. This principle of independence of the Bar has a "fundamentally constitutional character"[81] because it is a condition precedent to access to the rights and freedoms that are guaranteed in a "free and democratic society". As Jack Giles, Q.C., wrote in his article "Independence of the Bar", delivered to the 1701 Conference held in Vancouver in 2001 in recognition of the 300th anniversary of the *Act of Settlement*:

> It is simply inconceivable that a constitution which guarantees fundamental human rights and freedoms should not first protect that which makes it possible to benefit from such guarantees, namely every citizen's constitutional right to effective, meaningful and unimpeded access to a court of law through the aegis of an independent bar.[82]

B. Independence of the Bar is necessarily implied in the written constitution

69. The principle of independence of the Bar is necessarily implied in the written text of the Constitution,[83] both in the judicature provisions that protect the public's access to independent courts, and in the individual rights and freedoms guaranteed by the *Charter*.

Independence of the Bar is necessarily implied by ss. 96-101 of the Constitution Act, 1867

70. The principle of independence of the Bar is necessarily implied by ss. 96-101 of the *Constitution Act, 1867*.[84] The judicature provisions (ss. 96-101) of the *Constitution Act, 1867* protect the core jurisdiction of provincial superior courts and give courts a "special and inalienable status".[85] The SCC wrote in *Trial Lawyers' Association of British Columbia v. British Columbia (Attorney General)* that the "historic task of the superior courts is to resolve disputes between individuals and decide questions of private and public law," and that the resolution of disputes is "central to what superior courts do."[86]

71. Independence of the Bar is intertwined with the public's access to independent courts in two ways: 1) the public and the judiciary rely on lawyers to present facts and argue the law

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[80] Greenberg #3, Ex. 56 ("Independence and Self-Governance of the Legal Profession"), p. 1716. See also *FLSC* BCCA, paras. 105-114.
[81] Greenberg #3, Ex. 69 ("The Independence of the Bar"), p. 2034.
[82] Greenberg #3, Ex. 69 ("The Independence of the Bar"), p. 2034.
[83] Roy Millen, "The Independence of the Bar: An Unwritten Constitutional Principle" (2005) 84:1 Can Bar Rev [Millen, "Independence of the Bar"] at 121.
[84] *LaBelle v Law Society of Upper Canada* (2001), 52 OR (3d) 398 (Sup Ct J), para. 38; *Fortin v Chretien*, 2001 SCC 45, para. 49.
[85] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General),* 2014 SCC 59 at para 29 [*TLABC*].
[86] *TLABC* at para. 32.

in accordance with their duties to clients and the administration of justice so that judges may exercise their jurisdiction to independently resolve disputes; and 2) the judiciary is chosen from among the independent Bar. Sections 96-101 reflect these two points: the judicature provisions of the *Constitution Act, 1867* establish a network of textual provisions that contemplate an independent and impartial court system that includes both independent and impartial judges, and an independent and impartial Bar.

72. The written text of the Constitution expressly recognizes provincial Bars as constitutional institutions. Sections 97 and 98 of the *Constitution Act, 1867* provide for the selection of judges from among the Bars of the provinces. These sections read as follows:

> **Selection of Judges in Ontario, etc.**
>
> 97 Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.
>
> **Selection of Judges in Quebec**
>
> 98 The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

73. Provincial Bars are therefore constitutional structures mandated by ss. 97 and 98. It is impossible to conceive that a provincial legislature could simply abolish the Bar – such an exercise of legislative power would surely be unconstitutional, and therefore void.

74. Similarly, the requirement that six justices of the SCC be selected from the Bars of the common law provinces, and three from the Quebec Bar, found in ss. 5 and 6 of the *Supreme Court Act*[87] are constitutional rules that cannot be changed without constitutional amendment.[88]

75. Thus the provincial Bar is a constitutionally-protected institution in relation to s. 96 courts and the SCC. The provincial Bars are institutions that are integral to the structure or architecture of the Constitution of Canada, in part because the existence of independent provincial Bars is essential for the conditions necessary for independent judges.

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[87] R.S.C. 1985, c. s-26.
[88] *Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21, [2014] 1 SCR 433.

76. The principle of independence of the Bar is also deeply connected to the other principles that inform ss. 96-100 of the *Constitution Act, 1867*: judicial independence,[89] the rule of law, and access to justice.[90]

77. The rule of law expresses society's collective agreement that all persons are bound by and subject to the law. The principle ensures the law will be applied "fairly and evenly to all persons, taking no account of hierarchies, privilege, power or wealth."[91] The rule of law is the tool by which an independent judiciary carries out its work, and is the fundamental idea that each judge and lawyer in Canada has sworn an oath to uphold.[92]

78. Judicial independence is the shield that secures and protects the public's constitutionally enshrined rights and values.[93] It is a fundamental principle of Canadian constitutional law that applies to all judges, not only to superior court judges under s. 99 of the *Constitution Act, 1867*.[94] The principle of judicial independence is the freedom of judges to hear and decide cases without external influence or interference, whatever the source.[95] The "source of our commitment" to the principle of judicial independence is found in the preamble to and in ss. 96-100 of the *Constitution Act, 1867,* and paragraph 11(d) of the *Charter*.[96]

79. The principle of judicial independence has two main dimensions: adjudicative independence of individual judges, and institutional independence through the administration of justice that is separate from the executive and legislative branches.[97] Each dimension is a necessary element that exists to uphold the overall objective of judicial independence.[98] The Canadian Judicial Council writes that unilateral reforms to the judicial system attempted by governments directly interferes with the principle of institutional independence: "[t]he necessary improvements to the administration of justice must be initiated, planned, determined and implemented in close collaboration with the chief justices, who are responsible for the administration of Canadian courts."[99]

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[89] See, for example, *Judges Reference* at paras. 83-84.
[90] *TLABC*.
[91] Greenberg #3, Ex. 59 (Canadian Judicial Council, "Why is Judicial Independence Important to You?"), p. 1762.
[92] Greenberg #3, Ex. 59 (Canadian Judicial Council, "Why is Judicial Independence Important to You?"), p. 1762.
[93] Greenberg #3, Ex. 59 (Canadian Judicial Council, "Why is Judicial Independence Important to You?"), p. 1756.
[94] Greenberg #3, Ex. 60 (Review of the Judicial Conduct Process of the Canadian Judicial Council – Background Paper), p. 1810.
[95] Greenberg #3, Ex. 60 (Review of the Judicial Conduct Process of the Canadian Judicial Council – Background Paper), p. 1810.
[96] Greenberg #3, Ex. 60 (Review of the Judicial Conduct Process of the Canadian Judicial Council – Background Paper), p. 1810; *Judges Reference*, paras. 106-109.
[97] Greenberg #3, Ex. 59 (Canadian Judicial Council, "Why is Judicial Independence Important to You?"), p. 1764, Ex. 60 (Review of the Judicial Conduct Process of the Canadian Judicial Council – Background Paper), p. 1811.
[98] Greenberg #3, Ex. 59 (Canadian Judicial Council, "Why is Judicial Independence Important to You?"), p. 1764.
[99] Greenberg #3, Ex. 59 (Canadian Judicial Council, "Why is Judicial Independence Important to You?"), p. 1764.

80. Because s. 96 is animated by the rule of law and judicial independence (and, the Law Society submits, independence of the Bar), s. 96 of the *Constitution Act, 1867* provides protection for access to justice:

> The very rationale for [s. 96] is said to be 'the maintenance of the rule of law through the protection of the judicial role'... As access to justice is fundamental to the rule of law, and the rule of law is fostered by the continued existence of the s. 96 courts, it is only natural that s. 96 provide some degree of constitutional protection for access to justice.[100]

81. There can be no dispute by any party to this action that independent lawyers play a fundamental role in maintaining access to justice – this is one of the fundamental justifications the Province offers for the imposition of Bill 21 on lawyers.[101]

82. An independent Bar is essential to maintaining the rule of law and judicial independence: "[w]ithout the dignity, independence and integrity of the Bar, impartial justice and the maintenance of the rule of law are impossible."[102] Together with the rule of law and judicial independence, an independent Bar gives meaning to the rights and freedoms the Constitution protects, and to the values and principles from which the rights and freedoms entrenched in the *Charter* arise.[103] The connection between judicial independence and independence of the Bar was described as follows by the Court in *LaBelle v. Law Society of Upper Canada et al*: [104]

> [38] An independent bar is essential to the maintenance of an independent judiciary. Just as the independence of the courts is beyond question [citation omitted] so the independence of the Bar must be beyond question. The lawyers of the independent bar have been the constant source of the judges who comprise the independent judiciary in English common law history. The "habit" of independence is nurtured by the bar. An independent judiciary without an independent bar would be akin to having a frame without a picture.

83. If the written Constitution of Canada is to retain its structural or architectural integrity, then the inferences drawn in relation to s. 96 (the core jurisdiction of the superior courts and judicial independence) must be accompanied by a parallel set of inferences drawn from ss. 97 and 98. These inferences are required by a purposive reading of constitutional text: the principles of the rule of law and independence of the judiciary secured by s. 96 are

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[100] *TLABC* at para 39.
[101] Greenberg #1, Ex. 24 (Intentions Paper), p. 672.
[102] Millen, "Independence of the Bar" at 113.
[103] Roy Millen, The Independence of the Bar: An Unwritten Constitutional Principle, (2005) 84 Can. Bar Rev. 107, "Independence of the Bar" at 107; see also Greenberg #3, Ex. 56 (Law Society letter to IBA), p. 1718.
[104] *Labelle v Law Society of Upper Canada* (2001), 56 OR (3d) 413 [*Labelle*] (aff'd 2001 CanLII 5226 (ONCA), at para 38; leave to appeal dismissed (Iacobucci, Binnie and LeBel JJ), S.C.C. File No. 29120, S.C.C. Bulletin, 2002, p. 1754.)

contingent upon analogous conclusions about the independence of the Bar secured by ss. 97 and 98. Section 96 secures the independence of the judiciary and ss. 97 and 98 secure the independence of the Bar, and both reinforce the rule of law, a result that flows from the inseparable connection between the two sets of textual provisions and the unifying constitutional principles that give them their full meaning.

The principle of independence of the Bar is necessarily implied by Charter *rights*

84. The rights and freedoms from state action guaranteed in the *Charter* are based on the "vital unstated assumption" of an independent Bar. These include:

(a) s. 7, which guarantees the right not to be denied life, liberty or security of the person except in accordance with the principles of fundamental justice.[105] The SCC has recognized that s. 7 gives rise to a right to state-funded counsel in certain circumstances,[106] and that the lawyer's duty of commitment to the client's cause is a principle of fundamental justice.[107] The right of effective assistance of counsel is also a principle of fundamental justice.[108]

(b) s. 10(b), which guarantees a detainee the right to an opportunity to obtain legal advice (and the right to be advised of that right), including in support of the right under s. 7 to remain silent in the face of interrogation, or to choose whether to cooperate with a police investigation.[109] That legal advice must be provided by independent lawyers who are free from government influence.

(c) s. 11(d), which guarantees the right to a fair and public hearing by an independent and impartial tribunal when charged with an offence.[110] Both aspects of the s. 11(d) right, (1) a fair and public hearing; and (2) an independent and impartial tribunal, assume an independent judiciary and an independent Bar.

85. In their Application Response, the Province argues that "no new law is required to protect lawyer independence, properly understood"[111] because it is already protected under the Constitution by specific principles of fundamental justice under s. 7 of the *Charter*. The Province therefore acknowledges that the principle of independence of the Bar is connected to the written text of the Constitution, at least in s. 7. However, the SCC in *FLSC* specifically left open the very question that is before the Court in this action: whether the

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[105] Peter W. Hogg & Wade K. Wright, Constitutional Law of Canada, Vol. 2 (Toronto, Thomson Reuters Canada Limited, 2023) (looseleaf rev. Rel 1, 7/2023), § 47:2.
[106] *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 SCR 46.
[107] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 [*FLSC* SCC].
[108] Millen, "Independence of the Bar" at 115.
[109] *R v Sinclair*, 2010 SCC 35, [2010] 2 SCR 310 at paras 24, 32; *R v Manninen*, [1987] 1 SCR 1233 at para 23.
[110] *Valente v The Queen*, [1985] 2 SCR 673.
[111] Application Response of the Defendants, para. 4.

legislative "choice" to protect independence of the Bar through self-regulation is constitutionally required.[112]

86. In any event, the unwritten principles of the Constitution (such as independence of the Bar) are high-level principles that give rise to certain rules that, in the context of s. 7 of the *Charter*, yield a manageable standard against which deprivations of life, liberty or security of the person can be measured (i.e. principles of fundamental justice), such as the duty of commitment to a client's cause, or solicitor-client privilege.[113] The existing s. 7 jurisprudence simply supports the Law Society's argument that the underlying principle of the independence of the Bar gives rise, in particular circumstances, to constitutionally-protected rules that are designed to uphold and maintain the rights protected by the written provisions of the Constitution.

Independence of the Bar is an internationally-recognized norm

87. The international community has broadly affirmed the fundamental importance of independence of the Bar.[114]

88. The UN Human Rights Commission's declaration on the Basic Principles on the Role of Lawyers says the following:

> 24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.[115]

89. The record before this Court is replete with statements issued by bar associations (both regulators and advocacy associations) that assert the fundamental importance of independence of the Bar to the rule of law and judicial independence.[116] The United Nations' *Basic Principles on the Role of Lawyers* states that effective access to legal services provided by an independent legal profession is essential for adequate protection of human rights and fundamental freedoms.[117] The United Nations has created an entire office dedicated to monitoring and recording attacks on the independence of judges and lawyers, identifying ways to improve the independence of the judiciary and the legal

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[112] *FLSC* SCC para. 86.
[113] *FLSC* SCC para. 87.
[114] *FLSC* SCC para. 101.
[115] Affidavit #1 of Patti Lewis made May 24, 2024, [Lewis #1]Ex. O.
[116] Greenberg #3, Ex. 63 (Advocates Society (2020) Judicial Independence), p. 1937, Ex. 90 (ABA Statement on Rule of Law), Ex. 91 (ABA Statement on Efforts to Undermine), Ex. 92 (CBA Statement on Threats), Ex. 93 (FLSC Statement on Threats), Ex. 95 (IBA Statement in Support of US), Ex. 96 (ABA Statement on Bar Organizations); Affidavit #4 of Patti Lewis made April 4, 2025, Ex. B.
[117] Lewis #1, Ex. O (UN Basic Principles on the Role of Lawyers).

profession, and making concrete recommendations to states on how to better protect the independence of judges and lawyers.[118]

90. While independence of the Bar is clearly recognized as an international norm and a shared value among democratic states, the legal status of the principle of independence of the Bar and the rules required to protect the principle is a matter of the societal values, the system of laws, and the dual legal culture of each jurisdiction.

C. Self-governance and self-regulation are essential conditions of independence of the Bar

91. As is the case with the essential features of superior courts, certain essential substantive features of the provincial Bar must therefore also be constitutionally protected by ss. 97 and 98. Courts have held that the s. 96 power of the Governor General to appoint superior court judges cannot be drained away by depleting the superior courts of their essential features. It is also true that the constitutionally mandated institution of the provincial Bar cannot be emptied by provincial legislation that drains the concept of the "Bar" of its essential features.

92. The fundamental public right to an independent Bar can only be preserved by systems and structures that distance government, in all its pervasive manifestations, from lawyers. The systems and structures that best ensure this distance, "thereby assuring the public of lawyers' independence and freedom from conflicts with the state" [119] are self-governance and self-regulation.

93. Self-governance means legal regulation by an independent legal regulator that is governed by a board composed of a strong majority of lawyers elected by lawyers; and self-regulation means independent regulation guided by the board's determination of what is in the public interest in the administration of justice.

94. Self-governance and self-regulation maintain independence of the Bar.[120] Without self-governance and self-regulation, it is open to the government to dictate the individuals or groups that may regulate lawyers (or the government may regulate them directly), the manner in which lawyers are regulated, and ultimately the manner in which lawyers carry out their duties to clients, courts and the administration of justice. When that occurs, the public is not assured of access to independent courts facilitated by an independent Bar.

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[118] Greenberg #3, Ex. 64 (UN Special Rapporteur 2024), p. 1957; Ex. 65 (UN Special Rapporteur 2018), p. 1978.
[119] Greenberg #1, para. 69, Ex. 20 (2008 Independence and Self Governance Committee Report), p. 618; see also Greenberg #3, Ex. 56 ("Independence and Self-Governance of the Legal Profession"), p. 1720.
[120] *TWU* at para. 37.

Self-governance and self-regulation reflect the institutional and individual nature of lawyers' duties

95. The principle of the independence of the Bar as stated by the Law Society (*i.e.* the fundamental public right that lawyers may provide legal assistance for or on behalf of a client without fear of interference or sanction by the government, subject only to the lawyer's professional responsibilities as prescribed by the Law Society, and the lawyer's general duty as a citizen to obey the law) has both institutional and individual dimensions, derived from the dual private and public nature of lawyers' duties.

96. Lawyers and judges are the "guardians of our legal system and the rule of law."[121] A lawyer is a "minister of justice, an officer of the courts, a client's advocate and a member of an ancient, honourable and learned profession."[122] These sometime competing duties have both a private or individual quality in the provision of legal advice and services within a particular client mandate, and a public or institutional quality in support of public confidence in the administration of justice:

(a) A lawyer owes a fiduciary duty to a client, from which springs the duty of loyalty and its sub-duties of commitment to the client's cause (which includes the duty of resolute advocacy[123]) and the duty to avoid conflicting interests.[124] That fiduciary relationship that grounds all of these specific duties serves the private purpose of ensuring a lawyer acts only in the best interests of their client; it serves the public purpose of ensuring public confidence (both in fact and in perception[125]) in the administration of justice through a body of professionals who are bound to act in only their interests.[126]

(b) Lawyers also owe duties of candour, fairness, integrity, and respect to the court, as officers of the court and ministers of justice.[127] The lawyer's duty to the court is "time-tested and vital to the legal profession's role in the administration of

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[121] McLachlin, "Professional Independence" at p. 5.
[122] Greenberg #3, Ex. 44 (*Code of Professional Conduct*), c. 2.1.
[123] *Groia v Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 SCR 772, para. 72. See also Greenberg #3, Ex. 44 (*Code of Professional Conduct*) at c. 5.1.
[124] See, for example, *R v Neil*, 2002 SCC 70, [2002] 3 SCR 631, para. 19; *Canadian National Railway Co v McKercher LLP*, 2013 SCC 39, [2013] 2 SCR 649, paras. 19-47; *FLSC* SCC at para. 99.
[125] *FLSC* SCC at para. 97.
[126] Alice Woolley, Richard Devlin, Brent Cotter, & John M. Law, Lawyers' Ethics and Professional Regulation, 4th ed. (Markham: LexisNexis Canada Inc., 2021), at p. 303, citing Federation of Law Societies of Canada, Standing Committee on the Model Code of Professional Conduct, *Report on Conflicts of Interest* (November 21, 2011), online: http://www.flsc.ca/_documents/Conflicts-of-Interest-Report-Nov_2011.pdf.
[127] Greenberg #3, Ex. 44 (*Code of Professional Conduct*).

justice."[128] To comply with this duty, lawyers must not mislead the court, and cannot permit a client to present evidence that the lawyer knows to be false.[129]

(c) Lawyers have a duty to encourage public respect for and try to improve the administration of justice.[130] This obligation is "not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community."[131] By training, opportunity, and experience, lawyers are in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities, and must act accordingly.[132]

97. In addition to the duties of lawyers as expressed in the *Code*, lawyers in British Columbia take an oath that they will, among other things, uphold the rule of law and the rights and freedoms of all persons according to the laws of Canada, and of the Province of British Columbia, including the Constitution, which recognizes and affirms the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples.[133]

98. The SCC discussed lawyers' multi-faceted role in *Fortin v Chretien*, in the course of explaining why "the essential role that the advocate is called upon to play in our society cannot be overemphasized."[134] The Court noted the primacy of lawyers' adversarial role in the collective imagination but emphasized that advocates are officers of the court and must "perform their professional obligations with integrity and preserve the impartiality and independence of the court".[135] The Court then endorsed the view that "apart from the adversarial role that may have been assigned to the advocate, he is a person who performs various counselling functions in the best interests of his client, his profession and the administration of justice in general".[136]

99. The Court in *Fortin v Chretien* also endorsed the following passage from the reasons of McIntyre J in *Andrews v. Law Society of British Columbia*, which recognizes the institutional nature of lawyers' role in the administration of justice:

> It is incontestable that the legal profession plays a very significant – in fact, a fundamentally important – role in the administration of justice, both in the

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[128] *May v Law Society of British Columbia*, 2023 BCCA 218, paras. 4-10.
[129] *May v Law Society of British Columbia*, paras. 5-7. See also Greenberg #3, Ex. 44 (*Code of Professional Conduct*), c. 5.1-1.
[130] See Greenberg #3, Ex. 44 (*Code of Professional Conduct*), c. 5.6; Andrew Flavelle Martin, "The Lawyer's Professional Duty to Encourage Respect for - and to Improve - the Administration of Justice: Lessons from Failures by Attorneys General" (2023) 54:2 Ottawa Law Review.
[131] Greenberg #3, Ex. 44 (*Code of Professional Conduct*), c. 5.6-1, p. 1408.
[132] Greenberg #3, Ex. 44 (*Code of Professional Conduct*), c. 5.6-1.
[133] Greenberg #1, Ex. 17 (Oath), p. 600.
[134] *Fortin v Chretien*, 2001 SCC 45, para. 49.
[135] *Fortin v Chretien*, 2001 SCC 45, paras. 49-51.
[136] *Fortin v Chretien*, 2001 SCC 45, paras. 52-53.

> criminal and civil law… I would observe that in the absence of an independent legal profession, skilled and qualified to play its part in the administration of justice and the judicial process, the whole legal system would be in a parlous state [emphasis added]… These powers and duties are vital to the maintenance of order in our society and the due administration of the law in the interest of the whole community.[137]

100. McIntyre J.'s comments emphasize the importance of the collectivity of lawyers to the functioning of the administration of justice.

101. Similarly, the SCC in *Law Society of British Columbia v. Mangat*[138] referred to lawyers' "obligation of upholding the various attributes of the administration of justice such as judicial impartiality and independence, as well as professional honesty and loyalty."[139]

102. Individual lawyers cannot properly perform the duties described above if their regulator is not independent and impartial, as Canadian courts have interpreted those concepts. Not only would such an arrangement create the continuous risk of the regulator imposing rules that interfere, as a matter of fact, with lawyers' performance of their duties, but it would also create the reasonable perception that lawyers as a collective are not independent and impartial. This perception is poisonous to the trust and confidence required for lawyers to perform their role.

103. Because of the dual dimensions of independence of the Bar (individual and institutional), maintenance of independence as defined in Canadian jurisprudence requires two things: first, cultivation by lawyers of the personal attributes of professional honesty, integrity and loyalty; and second institutional safeguards that protect the institutional nature of independence. Institutional safeguards include independent governance.[140]

104. Independence requires that lawyers be governed by a body that is, and is perceived by the public to be:

(a) Independent, in the sense that it has immediate and functional control over the administrative decisions that bear directly on the exercise of the lawyer's role (such as the Rules and *Code*), and is capable of taking any action it considers necessary to ensure public access to a body of trustworthy and competent lawyers; and

(b) Impartial, in the sense that when making decisions about the regulation of the profession, the governing body must have regard only to its obligation to act in the

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[137] *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143 at 187.
[138] *Mangat*.
[139] *Mangat*, at para. 45.
[140] McLachlin, "Professional Independence" at 7.

public interest in the administration of justice, free from government influence and control.

105. Bill 21 is based on a definition of lawyer independence that does not recognize any public or institutional nature of lawyers' duties. Further, Bill 21 does not recognize that lawyer independence requires any special protection as compared to other legal professions (such as notaries public and paralegals). Bill 21 fails to recognize at all the special nature of lawyers' duties to clients, which are constitutionally protected.

106. Lawyers are unique among other legal services providers, from a constitutional perspective, because aspects of lawyers' fiduciary and ethical duties have a "constitutional dimension."[141] The "centrality" to the administration of justice of preventing misuse of confidential information in the lawyer-client relationship is reflected in solicitor-client privilege, which attracts constitutional protection and "must remain as close to absolute as possible if it is to retain relevance."[142] The SCC further recognized the principle that the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' cause as a principle of fundamental justice.[143] No other legal profession yet in existence attracts these constitutionally-protected duties.

Self-governance and self-regulation serve the public interest

107. Self-governance and self-regulation serve the public interest. In *Pearlman v. Manitoba Law Society Judicial Committee*, the SCC noted the "considerable judicial support" for this proposition and explained that the public interest in an independent Bar is a primary rationale for self-governance.[144] In *Law Society of British Columbia v. Trinity Western University* the Court affirmed this connection between self-regulation and the public interest.[145]

108. The Law Society has recognized that in order to maintain self-governance and self regulation in the public interest, the public and government must perceive that self-governance and self-regulation to be effective in its protection of the public interest.[146] If the public does not have confidence in the regulation of lawyers, lawyer regulation is vulnerable to government interference and loss of independence.[147]

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[141] *FLSC* SCC para. 82.
[142] *FLSC* SCC para. 44, citing *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61, para. 36.
[143] *FLSC* SCC para. 84.
[144] *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 at 887-888.
[145] *TWU,* paras. 36-37.
[146] See, for example, Greenberg # 3, ex. 48 (An Examination of Issues in Connection with the Dual Prosecutorial an Adjudicative Functions of the Benchers), p. 1509.
[147] Greenberg #3, Ex. 48 (An Examination of Issues in Connection with the Dual Prosecutorial an Adjudicative Functions of the Benchers), pp. 1510, 1517; Ex. 49 (Report from the Independence and Self-Governance Committee on the Investigative and Adjudicative Functions of the Benchers), pp. 1535-1536.

109. As part of its public interest mandate, the Law Society communicates to the public, both within British Columbia and outside of British Columbia, that self-governance and self-regulation are necessary to preserve independence, and ultimately to properly serve clients' interests in accordance with the duties of undivided loyalty and solicitor-client privilege. Protection of the independence of lawyers and their regulator from undue government interference is identified as a regulatory priority of the Law Society in its public communications, including on its website and publications.[148]

Self-governance and self-regulation require majority governance by elected lawyers

110. The mandate set by the SCC for legal regulation in Canada is that "so far as by human ingenuity it can be so designed", legal regulation must be "free from state interference, in the political sense."[149] The call from the SCC does not admit of any compromise in the protection of independence of the Bar. The conditions that protect independence of the Bar best – the most ingenious design – are self-governance and self-regulation in the public interest. There is no other design that better protects the rule of law, democracy, and the independence of the Bar from attacks on those principles.

111. Just as judges must be governed by judges, lawyers must be governed by lawyers. Lawyers are bound by shared values and obligations. This is not merely a matter of technical expertise but also a matter of professional ethos, which includes the "habit" of independence.

112. Further, lawyers must be governed by lawyers elected by lawyers. First, lawyers' governing body must be directly representative of and accountable to the Bar. Second, there is simply no other means of ensuring that directors of a governing body are not influenced by outside parties. While the process of appointing directors that are not directly employed by government may satisfy some conception of independence in the administrative law sense, the practical reality is that appointed directors will always be subject to the influence of those who appointed them. Lawyer directors must make decisions without fear or favour of those who may appoint them.

113. The Court in *Labelle* recognized this imperative:

> [36] As important as it is to maintain the independent bar, both as a constitutional convention and a continuing vital need for an ordered society, no one would argue that independence should exist in a vacuum.

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[148] Greenberg #1 at para. 71, Ex. 21 (Lawyer Independence and Self Regulation).

[149] *Attorney General of Canada v. Law Society of British Columbia,* 1982 CanLII 29 (SCC), [1982] 2 SCR 307 at 336. The SCC then went on to state that the selection of "self-administration as the mode for administrative control over the supply of legal services throughout the community" was a decision "for the province to make", referring to the relationship between the province and the federal government, not the relationship between the province and the Bar.

> Historically, it never has, nor should it. Thus, through the involvement of the Attorney General as a bencher and through the involvement of eight lay benchers appointed by the Government of Ontario, the voice of the public can be heard in the deliberations of Convocation, in the decision made in the disciplinary process, and in all the other manifestations incidental to self-government…
>
> [37] It is important to note, however, that while those voices are appropriately heard (and in Ontario, by statute, numerous voices are heard), those voices should not be capable at any time to control the proceedings of Convocation, by outvoting those benchers who are elected by the members of the bar. Otherwise, the constitutional imperative of an independent bar would be rendered meaningless.[150]

114. Self-regulation is a privilege and a duty; it is not an indulgence to be dispensed by the state. The principle of independence of the Bar is meaningless if a provincial legislature has the power to unilaterally impose regulatory frameworks on lawyers based on the government's policy. As stated by Gordon Turriff, Q.C., in his speech at the Conference of Regulatory Officers in Perth, Australia on September 17, 2009:

> The staunchest independence champions maintain that the statute does not *give* lawyers independence and does not extend them the *privilege* of self-governance. Rather, we say that the statute was enacted to aid us in acting independently and as a recognition of self-governance as a necessary condition of independence. If independence were the gift of the legislature, not a constitutional imperative, it would be a gift that could be taken back by legislators who were unhappy with challenges lawyers made to state action, and if self-governance were a privilege, it would be a privilege that could be revoked if the self-governors offended the state.[151]

D. The Legislature does not have the authority to legislate under s. 92(13) or 92(14) of the *Constitution Act, 1867* in a manner that is inconsistent with the independence of the Bar

115. A province's power to legislate under s. 92(13) or 92(14) is not unlimited. The exercise of that power must be consistent with the other provisions of the Constitution, interpreted purposively and as a coherent whole,[152] by reference to the written text, informed by unwritten principles.[153]

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[150] *Labelle* at paras 36-37.
[151] Greenberg 1, Ex. 22 (Self-Governance as a necessary condition of constitutionally mandated lawyer independence in Canada), p. 645.
[152] Rowe and Oza, "Structural Analysis" at 218.
[153] *Toronto (City)* at para. 55.

116. The Province says that the SCC's decision in *Toronto (City) v. Ontario (Attorney General)* (***Toronto (City)***) is a "full answer"[154] to the Law Society's claim in this action, because in that case, the SCC held that unwritten principles of the Constitution cannot be used to invalidate legislation.

117. This is not correct. *Toronto (City)* in fact supports the Law Society's approach to interpretation of the meaning and effect of independence of the Bar as an underlying principle of the Constitution. As set out above, the Law Society's position is that the principle of independence of the Bar is necessarily implied in the written text of the Constitution, including ss. 96, 97 and 98 of the *Constitution Act, 1867*, the rights and freedoms guaranteed in the *Charter*, in particular ss. 7, 10(b) and 11(d), and the very structure of the Constitution itself.

118. *Toronto (City)* did not change the law. That case confirmed that the underlying principles of the Constitution are essential to the interpretation of the Constitution, "without which 'it would be impossible to conceive of our constitutional structure.'"[155] The legal force of underlying principles "lies in their representation of general principles within which our constitutional order operates and, therefore, by which the Constitution's written terms – its *provisions* – are to be given effect."[156] Underlying principles are used as interpretive aids to "give meaning and effect" to constitutional text.[157]

119. As described by the SCC in *Reference re Secession of Quebec*[158] (the reasoning of which was affirmed by the Court in *Toronto (City)*), underlying principles assist in the "delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of our political institutions."[159] Underlying principles may give rise, when they are properly used to inform the text and structure of the constitution, to substantive limitations on government action, in the form of either "abstract and general obligations" or more specific and precise constraints.[160]

120. Courts cannot interpret the text of the Constitution <u>without</u> reference to underlying principles, which have a "powerful normative force" and are "binding upon both courts and governments."[161] Observance of the underlying principles of the constitution "is

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[154] Application Response of the Defendants, paras. 8, 111.
[155] *Toronto (City)* at para. 49, citing *Secession Reference* at para. 50.
[156] *Toronto (City)* at para. 54
[157] *Toronto (City)* at para. 65.
[158] *Secession Reference*.
[159] *Secession Reference* at para. 52.
[160] *Secession Reference* at para. 54.
[161] *Secession Reference* at para. 54.

essential to the ongoing process of constitutional development and evolution of our Constitution as a 'living tree'".[162]

121. The same approach to interpretation of the Constitution was applied by the SCC in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*.[163] In that case, the SCC held that hearing fees set out in the *Supreme Court Rules* were inconsistent with s. 96 of the *Constitution Act, 1867*, and therefore invalid. A majority of the Court held that although the province had the legislative competence to establish hearing fees under s. 92(14) of the *Constitution Act, 1867*, the exercise of that power must also comply with s. 96 and the requirements that flow by necessary implication from s. 96. The fees impermissibly infringed on that jurisdiction by denying some people access to the courts.[164]

122. The Court in *TLABC* identified "two related tenets of constitutional interpretation":

(a) constitutional grants of power must be read together with other grants of power so that the Constitution operates as a harmonious whole, and so the ambit of s. 92(14) must be determined not only by reference to the wording of that section, but also with respect to the other powers conferred by the Constitution;[165] and

(b) the interpretation of s. 92(14) must be consistent with the other requirements that flow by necessary implication from the express terms of the Constitution: "the Constitution must be interpreted with a view to discerning the structure of government that it seeks to implement. The assumptions that underlie the text and the manner in which the constitutional provisions are intended to interact with one another must inform our interpretation, understanding and application of the text" [emphasis in the original].[166]

123. The majority in *TLABC* explained that the question was not whether hearing fees abolished courts, but whether legislating hearing fees that prevent people from accessing courts infringed on the core jurisdiction of the superior courts. The court held as follows:

> [32] The historic task of the superior courts is to resolve disputes between individuals and decide questions of private and public law. Measures that prevent people from coming to courts to have those issues resolved are at odds with this basic judicial function… To prevent this business being done strikes at the core of the jurisdiction of the superior courts protected by s.

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[162] *Secession Reference* at para. 52.
[163] *TLABC*.
[164] *TLABC* at para 2.
[165] *TLABC* at para 25.
[166] *TLABC* at para 26, citing *Reference re Senate Reform*, 2014 SCC 32 at para. 26.

> 96 of the *Constitution Act, 1867*. As a result, hearing fees that deny people access to the courts infringe the core jurisdiction of the superior courts.[167]

124. The Court further connected access to the courts to the rule of law as one of the foundational pillars protecting the rights and freedoms of Canadian citizens. There cannot be rule of law without access to the courts, and any action that interferes with such access "will rally the court's powers to ensure the citizen of his or her day in court."[168]

125. The SCC affirmed the approach in *TLABC* as a correct example of how underlying principles inform the interpretation of exercise of legislative powers in *Toronto (City)*. The Court said in that case:

> [t]he rule of law was used in [*TLABC*] as an interpretive aid to s. 96, which in turn was used to narrow provincial legislative authority under s. 92(14). The rule of law was not being used as in independent basis for invalidating the impugned court fees. In this way, McLachlin C.J.'s reasoning simply reflects a purposive interpretation of s. 96 informed by unwritten constitutional principles.[169]

126. The Court in *Toronto (City)* also affirmed a similar use of underlying principles in the *Provincial Court Judges Reference*, where the Court found that the principle of judicial independence "emerged from the reading together of s. 11(d) of the *Charter*, and the preamble and ss. 96 to 100 of the *Constitution Act*, *1867*" and then used this principle "to guide [its] interpretation of the scope of provincial authority under s. 92(14) of the *Constitution Act, 1867*."[170]

127. The circumstances in *Toronto (City)* were vastly different than the circumstances in *TLABC*. The majority in *Toronto (City)* held that there was no textual basis in the Constitution for the extension of democratic rights to candidates or electors to municipal councils, which the underlying principle of democracy could inform.[171] In fact, the constitutional status of municipalities had been discussed and *not* constitutionalized in either the *Constitution Act, 1867*, or by reference to democratic rights enshrined in the *Charter*.[172] The Court held that "the text of our Constitution makes clear that municipal institutions lack constitutional status, leaving no open question of constitutional interpretation to be addressed, and accordingly no role to be played by the unwritten principles."[173]

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[167] *TLABC* at para 32.
[168] *TLABC* at para 38, citing *BCGEU v. British Columbia (Attorney General)*, 1985 CanLII 143 (BCCA).
[169] *Toronto (City)* at para. 75.
[170] *Toronto (City)* at paras. 64-66 (emphasis added).
[171] *Toronto (City)* at para. 82.
[172] *Toronto (City)* at para. 82.
[173] *Toronto (City)* at para. 84.

128. The Court in *Toronto (City)* considered whether the unwritten constitutional principle of democracy could be applied to "narrow provincial legislative authority over municipal institutions" but ultimately concluded that it could not, ruling: "[t]he structure of neither the *Constitution Act, 1867* nor the *Constitution Act, 1982* requires by necessary implication the circumscription of provincial lawmaking authority under s. 92(8) in the manner proposed."[174]

129. The same analytical approach applies to the case at bar, but with a different result. The province regulates the legal profession under ss. 92(13) and (14) of the *Constitution Act, 1867*,[175] but this authority must be exercised in manner that conforms with – and does not undermine – the other express terms of the constitution and the unwritten principles that flow by necessary implication from those terms. More specifically, provincial authority under ss. 92(13) and (14) must be interpreted in a manner consistent with ss. 96-101 of the *Constitution Act, 1867* (including ss. 97 and 98, which recognize the provincial Bars as constitutional institutions), and ss. 7, 10(b), and 11(d) of the *Charter*, and the independence of the bar. As a result, provincial legislation regulating the legal profession that is inconsistent with the independence of the bar is *ultra vires* provincial authority and must be struck down.

The province has no authority to enact legislation that is repugnant to our constitutional structure

130. The provincial legislature does not have the power to interfere, or be reasonably seen to interfere, with the essential conditions of independence of the Bar, which inform the rights and freedoms in the Constitutional text.[176] As the SCC wrote in *Toronto (City)*, it is inconceivable that legislation which is repugnant to our "basic constitutional structure" would not infringe the Constitution itself."[177]

131. Independence of the Bar is an underlying constitutional principle that upholds the rule of law, the independence of the judiciary, the functioning of Canadian courts, and the public's access to constitutionally guaranteed rights. Unilateral enactment of legislative changes that undermine the independent bar is inconsistent with the structure of the constitution, and, pursuant to s. 52 (1) of the *Constitution Act, 1982*, is of no force or effect.[178]

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[174] *Toronto (City)* at paras. 13 and 79 (emphasis added).
[175] See *Mangat* at para. 46; *Krieger* at para. 33.
[176] *Kitsilano Coalition for Children & Family Safety Society v British Columbia (Attorney General)*, 2024 BCCA 423 at para 62.
[177] *Toronto (City)* at para. 52.
[178] *Canada (Attorney General) v. Power*, 2024 SCC 26 at paras. 50-57.

The double threshold doctrine also applies to limit provincial power

132. Section 32 of the *Charter* applies to the provincial legislature and government in the exercise of law-making powers under s. 92 of the *Constitution Act, 1867*. Section 32(1) reads as follows:

> 32(1) This Charter applies:
>
> (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
>
> (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

133. Section 32 imposes an additional constraint on provincial law-making power to ensure that Parliament or a provincial legislature cannot enact laws that are inconsistent with the *Charter*, properly structurally interpreted.[179]

IV. THE THREAT TO INDEPENDENCE OF THE BAR IS REAL AND URGENT

134. The public needs robust systems designed to preserve the independence of the Bar, and the public's access to legal rights and the independence of the Bar, because real and urgent threats to independence exist everywhere. The principles of democracy, responsible government, judicial independence, the rule of law, and independence of the Bar are shared ideas that must be maintained by acts that support those principles: "[t]he principles of democracy and good governance can be shaken, and institutions, including independent courts, are fragile. Such institutions are maintained only by vigilance and continuous effort."[180]

135. A 2024 Report of the United Nations Special Rapporteur on the independence of judges and lawyers[181] warns against a "growing trend" of governments undermining democracy by attacking the rule of law and the independence of judicial systems. The Special Rapporteur recognizes that self-governing professional associations[182] function to ensure the independence and quality of lawyers, which enables lawyers to play their individual role in protecting their rights of their clients, without interference or intimidation.[183]

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[179] *R v Malmo-Levine; R v Caine*, 2003 SCC 74, [2003] 3 SCR 571 at para 111.
[180] McLachlin, "Professional Independence" at 5.
[181] Greenberg #3, Ex. 64 (Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy), p. 1957
[182] The word "associations" is used in the Report to refer to bodies that determine the admission and discipline of lawyers, not advocacy associations.
[183] Greenberg #3, Ex. 64 (Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy), p. 1965.

136. One technique used to undermine the independence of the Bar (and democracy itself) is described by the Special Rapporteur as "capturing or curbing bar associations."[184] The international examples of bar association capture given in the Report are more advanced than has occurred in Canada to date, but they all reflect an unmistakeable trend of unilateral action by government to affect the collective power of lawyers to self-govern and self-regulate the profession. The government's imposition of Bill 21 on lawyers similarly represents, in a less egregious but no less dangerous manner, one-sided action intended to eliminate self-governance and self-regulation of lawyers in British Columbia.

137. Direct attacks on lawyers and judges undermine the independence of lawyers and judges, and the rule of law. [185] Nowhere have those attacks been more alarming – or more effective – than the recent attacks on lawyers and the judiciary by the executive in the United States. These unprecedented attacks are designed to punish and silence those who access the legal system to challenge government action and exercise their legal rights, and particularly those groups who access *pro bono* legal services because they could not otherwise afford the magnitude of legal services that are required to take on government action. These attacks are designed to and do subvert the rule of law in the United States, and around the world. Such attacks stand as examples of the kinds of threats for which there must be sufficient guardrails for the independence of lawyers and judges.

138. The United States government's unprecedent assault on lawyers and the rule of law began on the first day of President Trump's second presidency, January 20, 2025, with Executive Order 14147, titled "Ending the Weaponization of the Federal Government" (the **Weaponization Order**). The Weaponization Order purports to authorize the U.S. Attorney General to "take appropriate action to review the activities of all departments and agencies exercising civil or criminal enforcement authority of the United States," including the Department of Justice, to identify instances of conduct "contrary to the purposes and policies of this order" and make recommendations for "appropriate remedial actions." Among many other perceived injustices the Executive Order is designed to target, the order identifies that the Department of Justice "ruthlessly prosecuted more than 1,500 individuals associated with January 6" (the violent incursion of the U.S. Capitol in January 2021), "and simultaneously dropped nearly all cases against BLM [Black Lives Matter] rioters".[186] In this way, the Weaponization Order is not only expressly directed at the conduct of lawyers employed by the Department of Justice, carrying out their own responsibilities under a different administration, but also implicitly targets the judicial system that independently oversees the criminal proceedings brought to enforce U.S. criminal law.

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[184] Greenberg #3, Ex. 64 (Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy), p. 1965.
[185] Greenberg #3, Ex. 64 (Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy), p. 1957.
[186] Greenberg #3, Ex. 81 (Executive Order 14147 – Ending the Weaponization of the Federal Government), p. 2161.

139. The Weaponization Order was swiftly used to threaten lawyers at the United States Attorney's office for the Southern District of New York. On February 12, 2025, U.S. Attorney Danielle Sassoon wrote to U.S. Attorney General Pam Bondi to detail a memorandum she received from then Acting Deputy Attorney General Emil Bove,[187] which directed Ms. Sassoon to dismiss an indictment against New York City Mayor Eric Adams. In her extraordinary letter, Ms. Sassoon details the reasons why the government did not have a valid legal basis to seek the dismissal of an indictment returned by a grand jury, and why she could not in good faith accept Mr. Bove's admonishment. She offered her resignation if the Attorney General was not prepared to meet or reconsider the directive.[188]

140. On the following day, Mr. Bove accepted Ms. Sassoon's resignation, based on her "choice to continue pursuing a politically motivated prosecution despite an express instruction to dismiss the case." Mr. Bove wrote "[y]ou lost sight of the oath that you took when you started at the Department of Justice by suggesting that you retain discretion to interpret the Constitution in a manner inconsistent with the policies of a democratically elected President and a Senate-confirmed Attorney General."[189] Mr. Bove placed the lawyers principally responsible for the case on off-duty administrative leave pending investigations by the Office of the Attorney General and the Office of Professional Responsibility, both of which were directed to investigate Ms. Sassoon's conduct.[190] Mr. Bove further cited the Weaponization Order, which authorizes the Attorney General to investigate conduct and "recommend remedial actions", and threatened its use against all of the lawyers in the US Attorney's office for the Southern District of New York.[191]

141. President Trump next turned his attention to law firms. He issued a series of Executive Orders between March 6 and March 25, 2025, targeting law firms and their clients, including the following:

The Perkins Coie LLP Executive Order

(a) On March 6, 2025, the President issued Executive Order 14230 against the law firm Perkins Coie LLP.[192] The preamble to the order says that the "dishonest and dangerous activity of the law firm… has affected this country for decades." The "dishonest and dangerous activity" to which the President refers includes its representation of clients Hilary Clinton and George Soros, who the President perceives are his political enemies. The order further alleges that the firm is

[187] In July 2025, Emil Bove was appointed and confirmed as a judge on the 3rd U.S. Circuit Court of Appeals.
[188] Greenberg #3, Ex. 88 (Letter from USA SDNY to Attorney General Pam Bondi).
[189] Greenberg #3, Ex. 89 (Letter to Danielle Sassoon from Acting Deputy Attorney General Emil Bove).
[190] Greenberg #3, Ex. 89 (Letter to Danielle Sassoon from Acting Deputy Attorney General Emil Bove), p. 2189.
[191] Greenberg #3, Ex. 89 (Letter to Danielle Sassoon from Acting Deputy Attorney General Emil Bove), p. 2190.
[192] Greenberg #3, Ex. 82 (Executive Order 14230 – Addressing Risks from Perkins Coie LLP), pp. 2163-5164.

"undermining democratic elections, the integrity of our courts, and honest law enforcement" and "racially discriminates against its own attorneys and staff" because of its diversity, equity and inclusion policies.

As a result of the allegations made by the President, the order directs the following retaliatory actions, among others:

(i) the Attorney General and the Director of National Intelligence are directed to immediately take steps to suspend active security clearances of lawyers at Perkins Coie LLP;

(ii) the federal government is directed not to continue to supply any "goods, property, material or services" to the firm;

(iii) government contracting agencies are required to disclose any business they do with the firm, and the heads of all agencies are directed to review all contracts with Perkins Coie LLP and, among other things, terminate the contracts;

(iv) the Chair of the Equal Employment Opportunity Commission shall investigate the practices of "representative large, influential or industry leading law firms" (not restricted to Perkins Coie LLP) for discriminatory conduct;

(v) the heads of all agencies shall provide guidance "limiting official access from Federal Government buildings to employees of Perkins Coie when such access would threaten national security of or otherwise be inconsistent with the interests of the United States" (which would include courthouses).

The Paul Weiss order

(a) On March 14, 2025, the President issued Executive Order 14237 against the law firm Paul Weiss.[193] The preamble to the order says that "global law firms have for years played an outsized role in undermining the judicial process and in the destruction of bedrock American principle" [emphasis added]. The order alleges that global law firms have engaged in activities that make communities less safe, increase burdens on local businesses, limit constitutional freedoms, and degrade the quality of American elections, and have "sometimes done so on behalf of clients, pro bono, or ostensibly for the 'public good'". The order refers to a Paul Weiss partner and former leading prosecutor in the Office of Special Counsel Robert Mueller (which had investigated President Trump's conduct during his first presidency), who brought a *pro bono* claim against individuals who were alleged to have participated in the violent incursion of the U.S. Capitol on January 6, 2021;

[193] Greenberg #3, Ex. 83 (Executive Order 14237 – Addressing Risks from Paul Weiss), p. 2166.

and further refers to Paul Weiss's hiring of an "unethical" attorney Mark Pomerantz, who "manufactured" a prosecution against President Trump. The order alleges that Paul Weiss discriminates against employees, and as a result of these perceived injustices, imposes the same types of directions on Paul Weiss as does the Perkins Coie LLP order.[194]

The Jenner & Block order

(a) On March 25, 2025, the President issued Executive Order 14246 against the law firm Jenner & Block. The order describes that the U.S. government is : "committed to addressing the significant risk associated with law firms, particularly so-called "Big Law" firms, that engage in conduct detrimental to critical American interests." The order says that law firms regularly conduct activity that is detrimental to American interests through their "powerful pro bono practices, earmarking hundreds of millions of their clients' dollars for destructive causes, that often directly or indirectly harm their own clients." The order asserts that Jenner & Block LLP is "yet another law firm that has abandoned the profession's highest ideals, condoned partisan "lawfare", and abused its pro bono practice", and gives examples of the types of engagements Jenner & Block has taken on on behalf of its clients, arguing that Jenner & Block, through its representation of *pro bono* clients, "engages in obvious partisan representations to achieve political ends, including by supporting attacks on women and children based on "refusal to accept the biological reality of sex." The order further refers to Jenner & Block's hiring of "unethical" lawyer Andrew Weissmann, who had worked as part of Robert Mueller's investigation. The order accuses Weissman of dishonesty and bribery. As a result of these perceived injustices, the order imposes the same types of directions on Jenner & Block as does the Perkins Coie LLP order and the Paul Weiss order.[195]

142. The Executive Orders, as they were designed to do, had immediate, actual, tangible chilling effects on the public's access to courts and rights in in the United States. The Washington Post reported that officials associated with the Biden administration struggled to find lawyers to take on matters, as did other clients seeking counsel to challenge decisions of the Administration.[196]

143. On March 21, 2025, the President issued a new Executive Order 14244, indicating that Paul Weiss had engaged in a "remarkable change of course" that included "policy changes", including a policy of political neutrality with respect to client "selection", and dedicating $40 million in *pro bono* legal services to support causes identified by President

[194] Greenberg #3, Ex. 83 (Executive Order 14237 – Addressing Risks from Paul Weiss), p. 2166.
[195] Greenberg #3, Ex. 86 (Executive Order 14246 – Addressing Risks from Jenner & Block), p. 2174.
[196] Greenberg #3, Ex. 97 ("Law firms refuse to represent Trump opponents in the wake of his attacks", *The Washington Post*), pp. 2216-2221.

Trump. The background to the Executive Order closes with the following warning to all lawyers that they should focus their efforts on performing work with which the US government agrees: "[i]f the legal profession dedicates a fraction of its energy to bringing justice to local communities, unleashing hard-working businesses, strengthening the American family, and unifying our Nation, all Americans will benefit."[197]

144. WilmerHale LLP, a law firm that was the target of a similar Executive Order 14250 issued on March 27, 2025, challenged the constitutionality of the order before the United States District Court for the District of Columbia.[198] The Court struck down the order, including on the basis that the Executive Order violates the separation of powers by attempting to usurp the judiciary's authority.[199] The Court wrote that this "attempted usurpation 'threatens severe impairment of the judicial function' by sift[ing] out certain challenges and cases." In concluding that the Executive Order violates the constitutional separation of powers between the executive and judiciary in the United States, the Court connects judicial independence with independence of the Bar, and says that "an informed, independent judiciary presumes an informed, independent bar"[200] [emphasis added].[201]

145. The executive branch of the U.S. government has extended its attacks on the rule of law and judicial institutions beyond the American borders. On June 6, 2025, the U.S. Department of State issued economic sanctions against four judges of the International Criminal Court as a result of the judges' rulings in that Court. Two of the judges "ruled to authorize the ICC's investigation against U.S. personnel in Afghanistan"; two of the judges "ruled to authorize the ICC's issuance of arrest warrants targeting Israeli Prime Minister Benjamin Netanyahu and former Minister of Defense Yoav Gallant."[202] As a result of the sanctions, all personal property and interests in personal property that are in the U.S., or in possession or control of US persons (i.e. banks) are "blocked" and must be reported to the Department of Treasury's Office of Foreign Assets Control, including assets held jointly with others.[203]

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[197] Greenberg #3, Ex. 84 (Executive Order 14244 – Addressing Remedial Action by Paul Weiss), p. 2169.
[198] Affidavit #4 of Brook Greenberg, K.C., made June 30, 2025 [Greenberg #4] Ex. 33 (*Wilmer Cutler Pickering Hale and Dorr LLP v. Executive Office of the President et al.*, United States District Court for the District of Columbia Civil Case No. 25-917, May 27, 2025 [*Wilmer* Opinion]).
[199] Greenberg #4, Ex. 33 (*Wilmer* Opinion), p. 2145.
[200] Greenberg #4, Ex. 33 (*Wilmer* Opinion), p. 2144.
[201] On June 16, 2025, the American Bar Association filed a Complaint in the United States District Court for the District of Columbia to challenge the constitutionality of the U.S. government's attacks on law firms. See Greenberg #4, Ex. 37 (American Bar Association Complaint), pp. 2176-2267. At the time of writing, the case has not been decided by the court.
[202] Greenberg #4, Ex. 34 ("Imposing Sanctions in Response to the ICC's Illegitimate Actions Targeting the United States and Israel").
[203] Greenberg #4, Ex. 34 ("Imposing Sanctions in Response to the ICC's Illegitimate Actions Targeting the United States and Israel").

146. The International Bar Association issued a statement condemning the imposition of sanctions against the judges as an attack against the global rule of law an the independence of judges.[204]

147. Canadian lawyers recognize that a threat to the rule of law, judicial independence, and the independence of the Bar anywhere in the world – especially threats so brazen as those advanced by the US government – also threatens the democratic principles that form the basis of the Canadian constitution.

148. The FLSC[205] and the Canadian Bar Association (**CBA**) each issued statements about the growing pressures on lawyers and courts in the United States, and highlighted that these threats risk eroding public confidence in the legal system. The CBA also highlighted that democratic norms affect global stability, and that Canada relies on the maintenance of strong legal frameworks in every democratic country.[206]

149. The International Bar Association (the **IBA**) issued its own statement highlighting the importance of an independent Bar and the commitment of the international community to basic principles on the role of lawyers in democratic legal systems.[207]

150. To be clear, by describing the real and urgent threats to the independence of lawyers and the judiciary in the United States, the Law Society does not argue that Bill 21 is equivalent to the shocking and destabilizing efforts to undermine the legal system in the United States. However, as set out below, Bill 21 is designed to and does eliminate self-governance and self-regulation of lawyers, which eliminates safeguards and undermines the independence of the Bar and the public's access to independent courts. Bill 21 permits the type of erosion of independence of the Bar that is insidious to the protection of freedom and democracy. It is the type of erosion that Jack Giles, Q.C. warned of when he wrote "by plausible promises and pretenses, questionable means are justified by tempting ends."[208] Weakening of our fundamental systems and ideals exposes the public to arbitrary and undemocratic power:

> [A]rbitrary power has seldom or never been introduced into any country at once. It must be introduced by slow degrees, and as it were step by step, lest the people should see its approach. The barriers and fences of the people's liberty must be plucked up one by one, and some plausible

[204] Greenberg #4, Ex. 35 ("The IBA condemns the imposition of additional US sanctions against the International Criminal Court").
[205] Greenberg #3, Ex. 93 (Statement from the FLSC on Threats to the Rule of Law, the Independence of the Bar and Judicial Independence in the United States), p. 2207.
[206] Greenberg #3, Ex. 92 (Statement from CBA President Lynn Vicars on threats to the rule of law, courts and the legal profession), p. 2205.
[207] Greenberg #3, Ex. 95 ("The IBA stands in support of the US legal profession").
[208] Jack Giles, Q.C., "The Supremacy of Law, the Charter and the Judge", in Jack Giles, ed, *The Splendour of the Law* (Toronto: Dundurn Group, 2001), 145.

> pretences must be found for removing or hoodwinking, one after another, those sentries who are posted by the constitution of a free country, for warning the people of their danger.[209]

V. SELF-GOVERNANCE AND SELF-REGULATION OF LAWYERS BY THE LAW SOCIETY IN BRITISH COLUMBIA

151. The history of legal regulation in British Columbia reveals the existence and importance of the principle of independence of the Bar in practice. In the Law Society's submission, the practice of legal regulation in the Province has been, and must continue to be, a practice of statecraft, an "institutional expression of constitutional ordering."[210] The legislative history in this Province (and across all of Canada, as described below) is evidence of the existence of the principle of independence of the Bar, and the development of that legislation is evidence of acts of self-regulation carried out by the elected Benchers that have held office since 1869.

The creation of the Supreme Court of British Columbia

152. The first provision for a court of record, and for the practice of law in the colonies that became British Columbia, was made by order-in-council proclaimed by Queen Victoria at the Court at Buckingham Palace on April 4, 1856.[211] This order represents the origin of the justice system in British Columbia, directly imports the principles of the Westminster system into British Columbia, and confirms the fundamental connection between lawyers and the courts within that system.

153. The order did the following:

(a) it created the Supreme Court of Civil Justice of Vancouver Island, one of two colonies in what is now British Columbia;

(b) it gave the Court the power to admit as barrister and solicitor, among other things, qualified barristers from England and solicitors of any of the courts of record of Westminster;[212]

(c) it conferred jurisdiction on the Court to hear and decide certain disputes and hear appeals;[213]

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[209] Jack Giles, Q.C., "The Supremacy of Law, the Charter and the Judge", in Jack Giles, ed, *The Splendour of the Law* (Toronto: Dundurn Group, 2001) at 145-146 citing Thomas Erskine.
[210] Richard Devlin & Sheila Wildeman, "Introduction: Disciplining Judges – Exercising Statecraft" in Richard Devlin & Sheila Wildeman, eds, Disciplining Judges: Contemporary Challenges and Controversies (Cheltenham: Edward Elgar, 2021) 1 at p. 22.
[211] Greenberg #3, Ex. 3 (Order of Queen Victoria, April 4, 1856).
[212] Greenberg #3, Ex. 3 (Order of Queen Victoria, April 4, 1856), p. 14-15.
[213] Greenberg #3, Ex. 3 (Order of Queen Victoria, April 4, 1856), pp. 16-18.

(d) it conferred on the Court the jurisdiction to make rules of Court,[214] set the first Rules of the Court, and provided that in all matters not specifically addressed in the Rules "the practice of Her Majesty's Superior Courts at Westminster shall be followed, so far as the same shall be applicable and consistent with the circumstances of the Colony;"[215] and

(e) determined the forms for use in practice at the Court, the first two of which are declarations for Barristers of the Superior Courts of England (Ireland or Scotland) and Attorneys at her Majesty's Court of Westminster.[216]

154. The first justice of the Colony of British Columbia was appointed on September 2, 1858. On December 24, 1858, the Court issued an order that, among other things:

(a) adopted the Rules and Orders of the Supreme Court of Civil Justice of Vancouver Island, as subsequently amended;

(b) established sessions of the Court for the trial of civil and criminal causes; and

(c) provided for the recognition of barristers and solicitors in the colonies of British Columbia and Vancouver Island.[217]

155. Except self-represented litigants (or certain male relatives of litigants) only the persons enrolled as Attorneys or Solicitors under the Order were entitled to appear or address the Court on behalf of a party to a legal proceeding.[218]

156. The first *Legal Professions Act* was enacted in the Colony of British Columbia (and extended to the Colony of Vancouver's Island) in 1863.[219] That Act provided for the admission of certain Barristers-At-Law, Attorneys or Solicitors to practice in the Superior Courts of Law of the Colonies, and conferred on the Court (not government) the supervisory jurisdiction over admission to the practice of law.[220] *An Act respecting Barristers and Attorneys at Law*, January 30, 1865, confirmed the authority of the Supreme Court to admit barristers or advocates, and to make rules in respect of the admission to act as barristers, advocates, attorneys and solicitors.[221]

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[214] Greenberg #3, Ex. 3 (Order of Queen Victoria, April 4, 1856), p. 17
[215] Rowe and Oza, "Structural Analysis"; Greenberg #3, Ex. 3 (Order of Queen Victoria, April 4, 1856) p. 42, Rule 144th.
[216] Greenberg #3, Ex. 3 (Order of Queen Victoria, April 4, 1856), p. 44-45.
[217] Greenberg #3, Ex. 4 (Order of Justice Begbie), paras. I, III, V.
[218] Greenberg #3, Ex. 4 (Order of Justice Begbie), para. IX.
[219] Greenberg #3, Ex. 5 (*Legal Professions Act, 1863*).
[220] Greenberg #3, Ex. 5 (*Legal Professions Act, 1863*) pp. 107-108, s. 6, 8.
[221] Greenberg #3, Ex. 6 (*An Act respecting Barristers and Attorneys at Law*).

157. The Colony of Vancouver Island and the Colony of British Columbia were unified by proclamation dated November 17, 1866.[222] Barristers, attorneys, notaries public and articled clerks entitled to practice in the former Colony of Vancouver Island were admitted to practice in the unified colony in the Courts of Justice of British Columbia by the *Legal Professions Ordinance, 1867*.[223]

158. Effective July 1, 1867, the *Legal Practitioners' Ordinance, 1867* repealed the *Legal Professions Act, 1865* of the Colony of Vancouver Island and extended the *Legal Professions Act, 1863* over the unified colony of British Columbia.[224]

The association that became the Law Society was formed in 1869

159. On July 12, 1869, the "Members of the Bar and the Attorneys of the Supreme Court" were invited to attend the offices of Messrs. Drake, Jackson and Aikman in Victoria, British Columbia, to "consider the expediency of establishing a Law Society."[225]

160. On July 15, 1869, thirteen Barristers and Attorneys gathered and constituted themselves as a society to be known as "The Law Society of British Columbia." The society had as its purposes:

(a) the formation of a law library;

(b) the publication of legal decisions;

(c) the "regulation of the call to the Bar and admission on the Rolls of attorneys of persons desirous of practising in the Supreme Courts of the Colony"; and

(d) the furtherance and protection of the interests of the legal profession.[226]

161. The society was self-governed from the start. Three of the society's members were appointed at the first meeting to "settle the Rules" of the society.[227] At the meeting held July 22, 1869, the society passed the following rules, among others:[228]

> 4. The affairs of the Society shall be managed by a Council consisting of seven members (exclusive of the Attorney General and Solicitor General) who shall from among themselves elect by Ballot a President Vice President

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[222] Greenberg #3, Ex. 2, (*An Act for the Union of the Colony of Vancouver Island with the Colony of British Columbia*) pp. 9-10.
[223] Greenberg #3, Ex. 7 (*An Ordinance making provision for Barristers-At-Law, Attorneys, Notaries Public, and Articled Clerks, of the late Colony of Vancouver Island*).
[224] Greenberg #3, Ex. 8 (*An Ordinance respecting the Legal Profession*).
[225] Greenberg #3, Ex. 1 ("History of the Legal Profession in British Columbia, 1869-1984"), p. 6.
[226] Greenberg #3, Ex. 9 (Meeting minutes), p. 120.
[227] Greenberg #3, Ex. 9 (Meeting minutes), p. 120.
[228] Greenberg #3, Ex. 9 (Meeting minutes), pp. 121-122; see also Greenberg #4, Ex. 1 (Meeting minutes), pp. 2-3.

> and Treasurer and every person who may be elected to the Council shall thence forth be a Bencher of the Society.
>
> 5. The Attorney General and Solicitor General if any of the Colony of British Columbia shall ex officio be members of the Council.

162. On July 20, 1871, two years after the formation of the first Law Society of British Columbia, British Columbia joined confederation through the *Terms of Union, 1871*.[229]

163. The society considered that it had been formally recognized as the regulator of the legal profession by the provisions of the *Legal Profession Amendment Act, 1873* (the **1873 Act)**, though it was not incorporated by that Act, and continued as an association.[230] The 1873 Act established fees, vested the property in the books and library in Trustees appointed by the Chief Justice, and assigned regulation of the use and management of the books and library to three enrolled barristers chosen by a majority of enrolled members to be called "Benchers of the Barrister's Society of British Columbia", such rules having been first submitted to and approved of by the Judges of the Supreme Court.[231]

164. The Law Society of British Columbia was first formally incorporated by the *Legal Professions Act, 1874* (the **1874 Act**).[232] The 1874 Act recognized the Law Society as a self-governing body that elected five of its members to be Benchers of the society, and permitted members of the Society to make, alter, or rescind Rules or Regulations for the necessary government of and for conducting the business of the Society. The Benchers had exclusive right and privilege of making, altering or rescinding Rules or Regulations in respect of certain matters, including admission to the bar. The 1874 Act permitted Benchers to make rules "deemed requisite or expedient for the discipline and well being of the Society,"[233] and provided that and no lawyer could be disciplined "until the matter of complaint against him shall have first been submitted to the Benchers of the Society." The 1874 Act also transferred fees collected from the Registrar to the Treasurer of the Law Society, and vested the property in the books acquired by the Law Society to the Law Society.[234]

165. The 1874 Act was replaced by legislation enacted in 1877, 1878, and 1882.[235] None of these Acts disturbed the Law Society's authority over rule-making and the election of

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[229] Greenberg #3, Ex. 10 (*Terms of Union, 1871*), p. 263-264.
[230] Greenberg #3, Ex. 9 (Meeting minutes), p. 128; Greenberg #4, Ex. 2 (Meeting minutes), p. 66.
[231] Greenberg #3, Ex. 11 (*An Act to enable Attorneys of the Supreme Court of British Columbia to be called to the Bar of the said Court*), pp. 288-289.
[232] Greenberg #3, Ex. 12 (*An Act respecting the Legal Profession*), pp. 291-292.
[233] Greenberg #3, Ex. 12 (*An Act respecting the Legal Profession*), pp. 291-292.
[234] Greenberg #3, Ex. 12 (*An Act respecting the Legal Profession*), p. 293.
[235] Greenberg #3, Exs. 13 (*An Act to consolidate the Laws relating to the Legal Professions in this Province*), 14 (*An Act to amend the law relating to the Legal Professions*) and 15 (*An Act to amend the Law relating to the Legal Professions*) respectively.

Benchers from among the members of the Law Society. Moreover, the Benchers' minutes record that it was the Benchers that drew up legislation to be submitted at the next session of the legislature.[236]

166. On February 2, 1884, the government enacted the *Legal Professions Act* 1884, c. 18 (the **1884 Act**)[237] This statute repealed the earlier statutes and re-established the "Law Society of British Columbia" as a "body politic and corporate" consisting of the Benchers and their successors (s. 3). Because this Act re-establishes the Law Society as a legal entity, which entity has been continued by legislation since 1884, 1884 has sometimes been treated as the Law Society's commencement date, though the association has existed since 1869.

167. The 1884 Act provided:

(a) for the election of 7 Benchers to govern the Society, exclusive of ex-officio members (s. 4) (who were the Attorney General of Canada, the Attorney General of British Columbia, and any retired judge of the Supreme Court of British Columbia) (s. 24);

(b) for the appointment of a Secretary and Treasurer (which position later became the President of the Law Society);

(c) that each Barrister or Solicitor entitled to practice in the Supreme Court of British Columbia, and actually residing and practicing in British Columbia, may vote for the Benchers;

(d) that the Benchers have the power to make such regulations as they consider expedient, not contrary to the Act, for regulating the election procedure (s. 25);

(e) that the Benchers have the power to appoint officers and servants necessary for the management of the business of the Society and make various rules (32(1));

(f) that the Benchers have broad authority to admit Barristers and solicitors (ss. 33-34);

(g) that the Benchers have "full power" to disbar, disqualify, suspend from practice or strike off the rolls (s. 47);

168. The Act vests all fees, dues, and subscriptions, and all property in the books of the law library, and any moneys and property of the Law Society incorporated under the 1877 Act

[236] Greenberg #4, Ex. 1 (Meeting minutes) pp. 45, 46, 50, 54, 57.
[237] Greenberg #3, Ex. 16 (*Legal Professions Act, 1884*).

(which in turn, vested property of previous legal iterations of the Society under previous Acts) in the Law Society.

169. There were many rounds of repeal, re-enactment, amendment, and renaming of the legislation governing lawyers between 1884 and the first major substantive revision to the legislation in 1955. At all times, through every round of repeal, re-enactment and renaming, the self-governing structure established by the 1884 Act was continued. At all times since 1874, the legislation has provided that the Law Society would be governed by Benchers, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

170. Further, in the years since 1884, the legislation governing the regulation of lawyers has never provided that rules made by the Benchers would be subject to consultation with or approval by the provincial government, such as the Lieutenant Governor-in-Council (the **LGIC**), or any other organization or body (other than the members of the Law Society as a collective). Also, the legislation has never granted the provincial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

171. There are two notable changes in the *Legal Professions Acts* before 1955:

(a) The *Legal Professions Act*, *1895*, S.B.C. 1895, c. 29 expanded the scope of the membership of the Law Society to include all persons called to the Bar of British Columbia and all persons admitted as Solicitors (rather than just the Benchers as members of the society) (s. 2(a)).[238] The minutes of the Law Society from 1894 indicate that it was four Benchers who were appointed to redraft the *Legal Professions Act* in 1894, and to "confir generally with the attorney general as to such other legislation as they may think desirable in the interest of the public with respect to the profession."[239]

(b) Through two separate amendments, the number of Benchers was increased to 12, plus various ex-officio Benchers including retired justices.[240] The *Legal Professions Amendment Act,* 1920, c. 46 further created life Benchers as those barristers-at-law who have served as a Bencher for 20 years, whether consecutively or not (s. 2).

[238] Greenberg #3, Ex. 17 (*Legal Professions Act, 1895*), p. 333.
[239] Greenberg #4, Ex. 2 (Meeting minutes), p. 128.
[240] *Legal Professions Amendment Act*, S.B.C 1893, c. 25, s. 2; *Legal Professions Amendment Act,* S.B.C. 1919, c. 47, s. 4.

172. The Benchers routinely proposed and recommended amendments to the *Legal Professions Acts*, and consulted with the entirety of the profession in doing so.[241]

173. It is also clear from the minutes of the Benchers' meetings in the earlier days of the Society that the Benchers considered the scope of their object to include not only regulation of the legal profession in the public interest, but to include the protection of the public interest in the administration of justice generally. For example:

(a) in 1909, the Benchers urged the government to create an Official Guardian to represent and protect the interests of infants in British Columbia, based on the Ontario model in place at the time.[242]

(b) at the Benchers' meeting in 1920, the Benchers adopted a proposal to seek legislation or orders in council about the timing and manner of sittings of the Court of Appeal and the Supreme Court, and providing that "gentlemen who are not students-at-law or articled clerks and those who are not members of the Legal Profession be disparred from appearing before any judicial tribunal including magistrates and justices of the peace;"[243]

(c) in 1930, the Benchers sought an amendment to the Court of Appeal Act to provide for an uneven number of judges sitting in all appeals (on the original suggestion of the Vancouver Bar Association);[244]

(d) in 1925, the Benchers sought an amendment to the *Jury Act*;[245]

(e) and in 1897, advocated for the introduction of the Torrens system in British Columbia;[246]

174. By 1954, the Benchers were engaged in a project to rewrite the *Legal Professions Act,* last amended in 1948.[247] A revised act was passed in 1955.[248] The *Legal Professions Act*, *1955* increased the number of Benchers to 20 (from 12 in 1948).[249] It also introduced the concept of election of Benchers from (at that time) seven geographical districts, and conferred on the Benchers the discretion to determine the total number of Benchers, the number and

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[241] Greenberg #4, Ex. 8 (Meeting minutes), p. 783, 792-796; 801-802.
[242] Greenberg #4, Ex. 4 (Meeting minutes), p. 359.
[243] Greenberg #4, Ex. 6 (Meeting minutes), p. 560.
[244] Greenberg #4, Ex. 7 (Meeting minutes), p. 711.
[245] Greenberg #4, Ex. 6 (Meeting minutes), p. 649.
[246] Greenberg #3, Ex. 9 (Meeting minutes), pp. 213, 231.
[247] Greenberg #4, Ex. 8 (Meeting minutes), p. 856, Ex. 27, p. 1889.
[248] Greenberg #3, Ex. 17 (*Legal Professions Act, 1955*), pp. 497-524. This Act became the *Legal Professions Act*, R.S.B.C. 1960, c. 214. In 1979, the Act was renamed to the *Barristers and Solicitors Act*, which was repealed and replaced by the *Legal Profession Act*, S.B.C. 1987, c. 25.
[249] Greenberg #3, Ex. 17 (*Legal Professions Act*, R.S. 1936, c. 149), p. 462.

boundaries of the electoral districts, and the number of Benchers to be nominated and elected from each district by a rule passed by a 2/3 majority of the members present at an annual meeting.[250]

The Legal Professions Act is significantly revised and modernized in 1987

175. Although the Law Society has regulated in the public interest for nearly 150 years, the Law Society first determined to embed that mandate in its governing statute in the 1980s.

176. In 1982, the Law Society set out to modernize and update the legislation governing regulation of lawyers (as a result of revisions in the 1970s, then named the *Barristers and Solicitors Act*). In November 1982, the Benchers resolved to adopt four basic principles of the proposed legislation, the first of which was "the primacy of the public interest."[251]

177. What followed was a significant three-year process of consultation and consensus-building[252] within the legal profession on the principles and provisions of the proposed legislation.[253] The Law Society held a Special General Meeting on May 4, 1983 to discuss the underlying principles adopted by the Benchers.[254] Multiple drafts of the legislation were circulated to the full membership of the Law Society for comment.[255] The membership engaged in a discussion of the proposed legislation at the Annual General Meeting of the Law Society on June 18, 1983, and passed nine resolutions relating to the proposed new act.[256] The CBA struck a committee for the purpose of considering the proposed new act, and produced a report with 27 recommendations, 23 of which were adopted by the Benchers.[257]

178. At a second Special General Meeting convened on December 13, 1984 to consider further revisions to the proposed legislation, the Treasurer of the Law Society highlighted the relationship between self-governance and the public interest, and the connection to the Law Society's statutory mandate:

> We are a self-governing profession. I won't bore you with that history. But I do want to impress upon you that the independence of our profession is the most important asset we possess.
>
> …

[250] Greenberg #3, Ex. 17 (*Legal Professions Act, 1955*), p. 498.
[251] Greenberg #3, Ex. 19 (Letter from the Law Society to the Attorney General), p. 781.
[252] Greenberg #3, Ex. 24 (Benchers' Bulletin), p. 826 (January 1988)
[253] Greenberg #3, Ex. 19 (Letter from the Law Society to the Attorney General).
[254] Greenberg #3, Ex. 20 (Notice to Profession), p. 787.
[255] Greenberg #3, Ex. 21 (Memorandum to All Members re: Proposed New Legal Profession Act), p. 793.
[256] Greenberg #3, Ex. 21 (Memorandum to All Members re: Proposed New Legal Profession Act), p. 793; Ex. 24 (Benchers' Bulletin), pp. 814-816; 818-820.
[257] Greenberg #3, Ex. 22 (Opening Statement of BWF McLoughlin, Special General Meeting, December 13, 1984), p. 800.

> We preserve our self-government at a price, and that price is our commitment to protect the public interest. That commitment is expressly stated in section 3 of the draft Act.[258]

179. The 1987 Act[259] recognizes, for the first time in the statute, the paramountcy of the Benchers' duty to act in the public interest in the administration of justice in the regulation of the legal profession, and further its close connection to the independence of lawyers. As enacted in 1987, s. 3 read as follows:[260]

> **Public interest**
>
> 3. It is the object and duty of the society
>
> (a) to uphold and protect the public interest in the administration of justice by
>
> (i) preserving and protecting the rights and freedoms of all persons,
>
> (ii) ensuring the independence, integrity and honour of its members, and
>
> (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and
>
> (b) subject to paragraph (a)
>
> (i) to regulate the practice of law, and
>
> (ii) to uphold and protect the interests of its members.

180. Although the duty and object of the Law Society to protect the public interest in the administration of justice was first reflected (at the instance of the Benchers) in the 1987 Act, the primacy of the public interest in the Law Society's work was "not a new notion."[261] The Benchers considered the that the duty to act in the public interest in the administration of justice was "implicit" in existing legislation.[262] And the public interest in the administration of justice was a guide for the Benchers' actions since the Law Society's earliest days. For example, the Law Society's records reveal that the public interest permeated many aspects of the Benchers' work in the early days of the Law Society:

(a) the Benchers advocated for the "independent and impartial administration of justice"[263] as early as 1879;

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[258] Greenberg #3, Ex. 22 (Opening Statement of BWF McLoughlin, Special General Meeting, December 13, 1984), p. 801.
[259] Greenberg #3, Ex. 17 (*Legal Profession Act*, S.C. 1987, c. 25), pp. 590-633.
[260] Greenberg #3, Ex. 17 (*Legal Profession Act*, S.C. 1987, c. 25), p. 594.
[261] Greenberg #3, Ex. 20 (Notice to Profession), p. 787.
[262] Greenberg #3, Ex. 20 (Notice to Profession), p. 787.
[263] Greenberg #4, Ex. 1, (Meeting minutes), p. 34.

(b) unqualified practice, the policing of which consumed much of the Benchers' time in the earlier days of the Law Society, was "subversive of the priveleges [sic] and independence of the profession and adverse to the public interest;"[264] and

(c) the Benchers considered its object of developing a law library to be in furtherance of the public interest in the administration of justice.[265]

181. A second policy change introduced by the Benchers in the 1987 Act was the appointment of up to three lay benchers.[266] Lay Benchers were qualified to serve on all Law Society committees including the Discipline Committee, and could at that time sit on discipline Hearing Committee panels.[267] The addition of lay Benchers to the self-governing society ensured that the voice of the public could be heard at the Bencher table.

182. The government emphasized the high level of consensus within the legal profession that the 1987 Act represented when the bill was finally introduced and passed in the House in 1987.[268] The recognition of the high level of consensus within the legal profession by government is a recognition of the existence of the principle of independence of the Bar, and of the act of self-regulation that the Benchers must carry out in the public interest.

ii. ***The* Legal Profession Act *is again amended in 1998***

183. Although the broad principles confirmed in the 1987 Act ensured the legal regulator's continued focus on protecting the public interest through self-regulation and self-governance, the 1987 Act posed practical challenges. The Benchers requested that the Legislature clarify certain disciplinary provisions in 1988;[269] in 1991 a Court of Appeal decision in *Gardner v. Law Society of British Columbia*[270] questioned the authority in the 1987 Act to delegate matters to the Discipline Committee and the Standing Credentials Committee, and as a result the Law Society sought further legislative amendment to clarify the Benchers' authority under the *LPA* in accordance with its longstanding practices.[271] In or around 1993, the Deputy Attorney General asked the Law Society to redraft the *LPA* to confer more rule-making power on the Benchers, and reduce the need for the Benchers to seek annual housekeeping amendments of the *LPA*.[272]

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[264] Greenberg #4, Ex. 2 (Meeting minutes), p. 87.
[265] Greenberg #4, Ex. 2 (Meeting minutes), p. 117.
[266] Greenberg #3, Ex. 24 (Benchers' Bulletin), p. 816.
[267] Greenberg #3, Ex. 19 (Letter from the Law Society to the Attorney General), p. 782.
[268] Greenberg #3, Ex. 18 (Hansard – May 12, 1987); see also Affidavit #1 of Gregory Berry, made May 27, 2024, Ex. A (Hansard – May 12, 1987), p. 2; Ex. B (Hansard – May 19, 1987), pp. 5-8. The 1987 Act was ultimately enacted in June 1987.
[269] Greenberg #3, Ex. 33 (Benchers' Bulletin), p. 922.
[270] *Gardner v. Law Society of British Columbia*, 1991 CanLII 1157 (BCCA).
[271] Greenberg #3, Ex. 33 (Benchers' Bulletin), p. 922.
[272] Greenberg #3, Ex. 27 (Hansard – May 5, 1998), p. 849.

184. The Act and Rules Subcommittee of the Planning Committee at the Law Society redrafted the *LPA* to restructure and streamline the Benchers' self-regulatory authority, to clarify and maintain the Benchers' control over Rules and regulations governing lawyers in British Columbia.[273]

185. The Benchers acknowledged that in addition to solving the practical problem of having to seek serial legislative amendments that reflected the Benchers' self-regulatory policies and procedures (and wait for their enactment by the Legislature), the re-drafted *LPA* ensured that rule-making authority was kept within the legal profession, rather than diverting that authority to government.[274] The Benchers specifically considered and rejected the idea that changes to lawyer regulation could be achieved by Order-in-Council of the LGIC, as it would "permit Government to impose changes unilaterally, without notice and without public or parliamentary debate. There is also the possibility that the independence of the profession from Government could be diminished."[275] Preserving rule-making authority preserved the profession's independence.[276]

186. The Benchers referred the development of what would become the 1998 Act to all members of the Law Society for their comment, at the request of government.[277] A referendum of all members was held in November 1993 on the proposal for structural change. By an almost 2-1 margin, lawyers endorsed the Benchers' plan; a majority of lawyers voted for the proposal in each of the nine electoral districts.[278]

187. Once the policy of the bill was determined by the Benchers, and consensus reached among the profession, the bill was forwarded to legislative counsel in late 1994, with the Law Society's explanations of the proposed changes.[279] The government did not bring the proposed act forward until 1998, after 12 further drafts of the statute in collaboration with the Law Society. The *LPA 1998* was ultimately enacted on May 13, 1998, incorporating the "overwhelming majority"[280] of the Law Society's proposals, and then brought into force on December 31, 1998 – the date requested by the benchers – by Order in Council 1549/98.[281] The opposition critic noted that the Law Society had prepared the statute, and supported the bill.[282]

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[273] Greenberg #3, Ex. 28 (Memorandum to Benchers); Ex. 29 (Memorandum to Benchers), p. 872.
[274] Greenberg #3, Ex. 31 (Memorandum to Benchers) , p. 910.
[275] Greenberg #3, Ex. 29 (Memorandum to Benchers), p. 872.
[276] Greenberg #3, Ex. 31 (Memorandum to Benchers), p. 910.
[277] Greenberg #3, Ex. 29 (Memorandum to Benchers), pp. 871-877.
[278] Greenberg #3, Ex. 31 (Memorandum to Benchers), p. 910.
[279] Greenberg #3, Ex. 30 (Memorandum to Deputy Attorney General Brian Neal from Jeffrey Hoskins), p. 896-907.
[280] Greenberg #3, Ex. 18 (Hansard – May 12 1987), p. 765.
[281] Greenberg #3, Ex. 32 (Memorandum to Benchers).
[282] Greenberg #3, Ex. 27 (Hansard – May 5, 1998), p. 849.

188. While the *LPA 1998* changed many aspects of the legislation, its s. 3 was identical to section 3 of the 1987 Act, except that the section title was changed from "public interest" to "public interest paramount".

Legislative developments after 1998

189. The Law Society was again integrally involved in the numerous amendments to the *LPA 1998* introduced by way of the *Legal Profession* Amendment *Act, 2012*.[283]

190. These amendments included the first change to the content of s. 3 since its introduction to the legislation in the *LPA 1987*, revising the provision to its current form, as follows:

Before the *Legal Profession Amendment Act, 2012*	Since the *Legal Profession Amendment Act, 2012*
Public interest paramount **3** It is the object and duty of the society (a) to uphold and protect the public interest in the administration of justice by (i) preserving and protecting the rights and freedoms of all persons, (ii) ensuring the independence, integrity and honour of its members, and (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and (b) subject to paragraph (a), (i) to regulate the practice of law, and (ii) to uphold and protect the interests of its members.	**Object and duty of society** 3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by (a) preserving and protecting the rights and freedoms of all persons, (b) ensuring the independence, integrity, honour and competence of lawyers, (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission, (d) regulating the practice of law, and (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[283] Greenberg #3, Ex. 37 (*Legal Profession Amendment Act, 2012*).

191. The amendment to s. 3 in 2012 was requested by the Law Society, on the recommendation of the Independence and Self-Governance Advisory Committee, to resolve any perceived concern that the subordinate mandate to protect lawyers in s. 3(b)(ii) of s. 3 could conflict with the Benchers' obligation to act in the public interest.[284] The Benchers viewed the perception of a conflict, if not the existence of a real conflict, between the public interest and the interests of lawyers to pose a threat to the self-regulation of lawyers in British Columbia, and therefore a threat to the profession's independence.[285]

192. When the bill for the *Legal Profession Amendment Act, 2012* was introduced for second reading in the Legislative Assembly on May 3, 2012, the Attorney General noted that the bill was "respond[ing] directly to a request from the Law Society of British Columbia."[286] Opposition critic Leonard Krog stated that the bill "makes a number of changes, all positive, all done in a fairly lengthy consultation over a long period of time with the Law Society of British Columbia and with a fair bit of input."[287] MLA Krog emphasized, as did the Law Society, that the purpose of the change was to make "crystal-clear, to the public that there is not some conflicting duty" between the regulator's obligation to protect the public interest and the regulator's obligation to protect or advance the interests of lawyers.[288]

B. Independence of the bar exists in every province and territory in Canada

193. Independence of the Bar, protected by self-governance and self-regulation, has existed and still exists in every province and territory in Canada, though the expression of independence has evolved with the unique history of each province and territory. Below, the Law Society sets out in brief the history of the legislative development of each Canadian jurisdiction.[289]

ii. Alberta

The early Law Society of the North-West Territories

194. In 1870, significant portions of the land that is currently Alberta was admitted into Canadian confederation as part of what was then known as the North-West Territories, by way of the *Rupert's Land Act, 1868*.[290] In 1885, the Council of the North-West Territories passed *An Ordinance respecting the Legal Profession* which set out the minimum qualifications for certification as an "advocate in the North-West Territories." Certificates

[284] Greenberg #3, Ex. 34 (Benchers' Bulletin), pp. 959-960; Ex. 35 (Meeting Minutes), pp. 981-982.
[285] Greenberg #3, Ex. 36 (Memorandum to Benchers re: Legal Profession Act, s. 3), pp. 986-987.
[286] Greenberg #3, Ex. 38 (Hansard – May 3, 2012), p. 1015.
[287] Greenberg #3, Ex. 38 (Hansard – May 3, 2012), p. 1016.
[288] Greenberg #3, Ex. 38 (Hansard – May 3, 2012), p. 1016.
[289] See also Schedule "A" to the Notice of Application of the Law Society.
[290] Affidavit #1 of Alan D. Macleod, K.C., made April 1, 2025 [Macleod #1], para. 8, Ex. E (*Rupert's Land Act, 1868*).

were issued by the Lieutenant-Governor of the Territories based on the recommendation of Stipendary Magistrates.[291]

195. In 1898, the Legislative Assembly of the Territories enacted *The Legal Profession Ordinance, 1898* (the **1898 LPO**), to set guidelines for regulation of the legal profession in the territories in a manner that was based on, and consistent with, English and Ontario models of self-governance in place at the time.[292] The 1898 LPO incorporated the "Law Society of the North-West Territories" (the **Territorial Law Society**), which was self-governed through the elect of nine of its members as Benchers. The Benchers were empowered to make rules and by laws "[f]or the government of the said society and other purposes connected therewith".

The Law Society of Alberta

196. The province of Alberta was carved out of the territory of North-West Territories in 1905, by way of the *Alberta Act, 1905*.[293] The Territorial Law Society disbanded in favour of two separate societies in Alberta and the newly-created Saskatchewan.[294]

197. The Law Society of Alberta (the **LSA**) was formed in 1907. In that year, the government of the recently-formed province of Alberta enacted the *Legal Profession Act,* S.A. 1907, c. 20 (the **1907 Alberta LPA**), which mirrored the 1898 LPO and provided that all present and future Barristers and Solicitors shall constitute "a body corporate and politic under the name and style of 'The Law Society of Alberta'."[295]

198. From its inception, the LSA has been self-governed. The provided, among other things, that "[t]he society shall be governed by a body composed of members of the society to be designated benchers".[296] Its members would first elect nine of their number to be benchers, who were empowered to make various rules and regulations including "[f]or the power government of the said society and the purposes connected therewith".[297]

199. Initially, the courts held disciplinary powers over lawyers in Alberta. However, in 1922, the Alberta government, the senior judiciary, and the LSA collectively decided that it was best to let the profession discipline itself.[298] The government therefore enacted the *Legal Profession Act,* R.S.A. 1922, c. 206, through which it transferred to the Benchers the full

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[291] Macleod #1, para. 9, Ex. F (*An Ordinance Respecting the Legal Profession*).
[292] Macleod #1, para. 10.
[293] Macleod #1, paras. 14, Ex. I (*The Alberta Act, 1905*).
[294] Macleod #1, para. 15.
[295] Macleod #1, Ex. J (*Legal Profession Act*), p. 495.
[296] Macleod #1, Ex. J (*Legal Profession Act*), p. 496.
[297] Macleod #1, Ex. J (*Legal Profession Act*), p. 499.
[298] Macleod #1, Ex. H ("The Black Sheep": The Disciplining of Territorial and Alberta Lawyers, 1885-1928), p. 450.

authority to disbar, disqualify, suspend, or strike off the Rolls any member guilty of misconduct, subject only to an appeal to the court.[299]

200. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in Alberta between 1907 and the most recent major substantive revision to the legislation in 2000. At all times, through every round of repeal, re-enactment and renaming, the self-governing structure established by the 1907 Alberta LPA was continued. At all times since 1907, the legislation has provided that the LSA would be governed by Benchers, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

201. Further, for the most part, in the years since 1907, the legislation governing the regulation of lawyers has not required that rules made by the Benchers be subject to consultation with or approval by Alberta's provincial government, such as the LGIC, or any other organization or body (other than the members of the LSA, as a collective).

202. Two minor exceptions exist. At one time, the governing legislation did provide that certain by laws passed by the Benchers in relation to the LSA's funds required written assent from a majority of the judges of the province's Supreme Court.[300] This requirement was removed with the enactment of *The Legal Profession Act, 1966*.[301] Second, Alberta's current *Legal Professions Act* requires rules and regulations made by the Benchers respecting protection against professional liability for limited liability partnerships be approved by the LGIC.[302]

203. Moreover, the legislation has only granted the provincial government or any other body the power to make rules or regulations respecting protection against professional liability for limited liability partnerships where the Benchers fail to appropriately amend those rules or regulations that the LGIC deemed did not provide sufficient protection.[303]

204. Beyond these narrow circumstances, the legislation has never granted the provincial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

205. The LSA has been extensively involved in the development of its governing legislation since 1907, as demonstrated by Hansard.[304] Hansard also highlights consistent and

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[299] Macleod #1, Ex. K (*An Act respecting the Legal Profession in the Province of Alberta and to establish The Law Society of the Province of Alberta*), pp. 517-519.
[300] Macleod #1, Ex. J.
[301] S.A. 1966, c. 46.
[302] Macleod #1, Ex. B (*Legal Profession Act*), p. 29.
[303] Macleod #1, Ex. B (*Legal Profession Act),* p. 30.
[304] Macleod #1, Ex. O (Hansard – November 5, 1981), p. 84; Ex. Q (Hansard – August 20, 1996), p. 851; Ex. R (Hansard – May 25, 2000), p. 855.

longstanding recognition from within the provincial government that self-governance of lawyers is both vital and beneficial to Albertans.[305]

iii. Saskatchewan

206. Saskatchewan shares the history described above in paras. 191-192 with Alberta. Shortly after the province's formation in 1905, the government of Saskatchewan enacted the *Legal Profession Act,* R.S. 1907, c. 19 (the ***1907 Saskatchewan LPA***).[306] The legislation incorporated the Law Society of Saskatchewan (the **LSS**), to which all present and future Barristers and Solicitors would belong.

207. The LSS has been self-governing since its inception. Among other things, the *1907 Saskatchewan LPA* provided that the society was to be governed by nine Benchers elected by and from its members.[307] The legislation empowered the Benchers to make rules and bylaws, including "[f]or the government of the said society and other purposes connected therewith".[308]

208. The provincial government first delegated disciplinary powers pertaining to the conduct of lawyers to its Supreme Court under the *1907 Saskatchewan LPA*. However, after a series of amendments in the early 1920s, the exclusive right and privilege to disbar, disqualify, suspend, or strike off the Rolls any member guilty of misconduct, was transferred to the Benchers of the LSS, subject only to an appeal to the court.[309]

209. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in Saskatchewan between 1907 and the most recent major substantive revision to the legislation in 1990. At all times, through every round of repeal, re-enactment and renaming, the self-governing structure established by the *1907 Saskatchewan LPA* was continued. At all times since 1907, the legislation has provided that the LSS would be governed by Benchers, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

210. Further, in the years since 1907, the legislation governing the regulation of lawyers in Saskatchewan has never granted the provincial government or any other body the power to

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[305] Macleod #1, Ex. P (Hansard – June 8, 1990), p. 846.
[306] Affidavit #1 of Dwight Gordon Newman, K.C., made March 28, 2025 [Newman #1], Ex. M (*An Act respecting the Legal Profession and the Law Society of Saskatchewan*), p. 447.
[307] Newman #1, Ex. M (*An Act respecting the Legal Profession and the Law Society of Saskatchewan*), p. 450.
[308] Newman #1, Ex. M (*An Act respecting the Legal Profession and the Law Society of Saskatchewan*), p. 453.
[309] Newman #1, Ex. O (*An Act to amend The Legal Profession Act*), pp.692-693; Ex. P (*An Act to amend The Legal Profession Act*), p. 698-703.

make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

211. The governing legislation currently in force in Saskatchewan, *The Legal Profession Act,* 1990, does require the LSS to file a copy of all rules and amendments to those rules or bylaws made under the act to be put before the Legislative Assembly. There is no requirement for the Legislative Assembly to "approve" rules before they are enacted by the Benchers, but if any such rule or amendment is found by the Legislature to be "in any way prejudicial to the public interest", it "ceases to have effect and is deemed to have been revoked.[310]

212. Hansard shows that the LSS has been integral in requesting, developing and endorsing its own governing legislation.[311] The LSS has been described by government representatives as "a model for other self-regulatory bodies in the province" that is proactive in requesting legislative changes that benefit the public interest.[312] The government's practice has been explained as "allow[ing] the Law Society of Saskatchewan to set their own rules and regulations and policies with respect to [self-governance]".[313] Where the LSS has not requested a legislative change, government representatives have noted that those changes were first presented to and discussed with the society before enactment.[314]

iv. Manitoba

213. Lawyers in Manitoba are regulated by the Law Society of Manitoba (the **LSM**). Beginning in the 19th century, Barristers in Manitoba were governed by voluntary unincorporated societies called the "Inns of Court," which held the exclusive power to admit and discipline members, subject to an appeal to the court.[315] The discipline of solicitors was exercised by the court. In 1871, legislation was enacted that permitted members of the Manitoba Bar to meet and constitute a "Bar Society" that was empowered to make rules regulating admission to the study and practice of law, upon approval by the LGIC.[316]

214. The LSM was established on February 28, 1877 with the enactment of *The Law Society Act,* S.M. 1877, c. 94 (the ***1877 Manitoba LSA***). The LSM as been self-governed from the start.[317] The *1877 Manitoba LSA* stipulated that the LSM was to be governed by nine

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[310] *The Legal Profession Act*, 1990, S.S. 1990-91, c. L-10.1, s. 91.
[311] Newman #1, Ex. Q (Hansard – June 15, 1990), p. 706; Ex. S (Hansard – March 21, 1996), p. 717; Ex. U (Hansard - November 28, 2005), p. 735; Ex. V (Hansard - November 30, 2005), p. 737; Ex. X (Hansard - April 21, 2010), p. 771.
[312] Newman #1, Ex. U (Hansard - November 28, 2005), p. 735.
[313] Newman #1, Ex. Z (Hansard – March 17, 2014), p. 781.
[314] Newman #1, Ex. S (Hansard – March 21, 1996), p. 717; Ex. DD (Hansard – April 1, 2019), p. 954.
[315] Trevor D. Anderson, *The Law Society of Manitoba, 1877-1977,* (Winnipeg: Peguis Publishers, 1977) at p. 2.
[316] *The Barristers Act,* S.M. 1871 c. 10, s. 4.
[317] Affidavit #3 of Leah Kosokowsky, made April 2, 2025 [Kosokowsky #3], Ex. B (*An Act respecting the Study and Practice of Law*), p. 8.

Benchers elected by and from its members.[318] Those Benchers were empowered under the act to make rules and by-laws for, among other things, "the government of the said society, and other purposes connected therewith".[319]

215. Following a series of amendments in the early 1900s, as of 1926, the LSM held the exclusive right and privilege to disbar, disqualify, suspend, or strike off the rolls any member guilty of misconduct, subject only to an appeal to the court.[320]

216. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in Manitoba between 1877 and the most recent major substantive revision to the legislation in 2002. At all times, through every round of repeal, re-enactment and renaming, the self-governing structure established by the *1877 Manitoba LSA* was continued. At all times since 1877, the legislation has provided that the LSM would be governed by Benchers, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

217. The LSM is governed by a body of 25 benchers, populated by 12 elected lawyer benchers, four appointed lawyer benchers, six appointed non-lawyer (lay) benchers, one articled student elected by the current class of articled students, the immediate past president of the LSM, and the Dean of the Faculty of Law of the University of Manitoba.[321]

218. Appointed benchers (whether lawyers or non-lawyers) are selected through a committee process established by the LSM. Final approval of the appointed lawyer benchers is made by the benchers while final approval of the lay benchers lies with a committee chaired by the Chief Justice of Manitoba. None of the benchers are selected, appointed, or approved by the government of Manitoba.[322]

219. In the years since 1877, the legislation governing the regulation of lawyers has never provided that rules made by the LSM would be subject to consultation with or approval by Manitoba's provincial government, such as the LGIC, or any other organization or body (other than the members of the LSM, as a collective). Also, the legislation has never granted the provincial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

220. Throughout its history, the LSM has consistently played a substantive role in developing and amending its governing legislation. The creation of the *Legal Profession Act* in 2002

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[318] Kosokowsky #3, Ex. B (*An Act respecting the Study and Practice of Law*), p. 9.
[319] Kosokowsky #3, Ex. B (*An Act respecting the Study and Practice of Law*), p. 10.
[320] Kosokowsky #3, Ex. E (*An Act to amend "The Law Society Act"*), p. 26-27.
[321] Affidavit #1 of Leah Kosokowsky, made November 22, 2024 [Kosokowsky #1], para. 4.
[322] Kosokowsky #1, para. 5.

in Manitoba, and subsequent amendments to that legislation, have almost always been at the request of the LSM or in consultation with the LSM. There have been, on rare occasions, disagreement with government as to what might encroach on the LSM's purpose and duty, but not on the principle that the independence of the delivery of the regulated services requires an independent regulator.[323]

221. Hansard also demonstrates the LSM's substantive role in developing and amending its governing legislation.[324] As described by one government representative in the Legislative Assembly "[t]he tradition has been that the Law Society will consider its own act on a regular basis" and propose changes.[325] Often, this has been done through special committees appointed by the LSM for the sole purpose of assessing its organizational structures and practices in light of the public interest and preparing a report to the Benchers, who in turn make recommendations to the government.[326]

222. In 2021, the LSM requested an amendment to the *Legal Profession Act* to facilitate increased access to justice by authorizing the LSM to approve, certify and regulate limited practitioners (persons not otherwise authorized to practise law and not qualified to practise beyond a limited scope determined by the LSM). When the requested amendment was presented in the form of a bill, it included provision for the LGIC to make regulations affecting a wide range of activities of limited practitioners, taking precedence over the rules that LSM might make. The bill was ultimately enacted, but after discussion with the LSM, the provision that permits regulation by government has not been brought into force.[327]

v. Ontario

223. The Law Society of Ontario (the **LSO**, and formerly the Law Society of Upper Canada or the **LSUC**) was established in 1797 by way of *An Act for better regulating the Practice of Law* (the ***1797 Act***), and has been self-governing from its inception.[328] The *1797 Act* directed the LSUC to appoint "the six senior members, or more, of the present practitioners… as governors or benchers".[329] The *1797 Act* also provided for the first

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[323] Affidavit #2 of Leah Kosokowsky, made April 3, 2025 [Kosokowsky #2], para. 17.
[324] Kosokowsky #3, Ex. H (Hansard – February 28, 1974), p. 448; Ex. I (Hansard – March 8, 1974), p. 450; Ex. K (Hansard – April 15, 1980), p. 457; Ex. M (Hansard – July 9, 1991), p. 475; Ex. O (Hansard – June 4, 1996), p. 486; Ex. Q (Hansard – May 14, 2008), p. 494; Ex. S (October 28, 2015), p. 506-507; Ex. U (Hansard – March 9, 2021), p. 518-524.
[325] Kosokowsky #3, Ex. M (Hansard – July 9, 1991), p. 475.
[326] For example, *An act to amend "The Law Society Act",* S.M. 1974, c. 22 implemented the major recommendations identified in a January 1973 report of a "special constitution committee" formed by the LSM, as explained in the Hansard transcript dated February 28, 1974: Kosokowsky #3, Ex. H (Hansard – February 28, 1974), p. 448. See also: Kosokowsky #3, Ex. I (Hansard – March 8, 1974), p. 450, Ex. O (Hansard – June 4, 1996), p. 486.
[327] Kosokowsky #2, paras. 21-24.
[328] Affidavit #1 of Peter Kryworuk, made April 4, 2025 [Kryworuk #1], Ex. G (*An act for better regulating the practice of law*), p. 523.
[329] Kryworuk #1, Ex. G, (*An act for better regulating the practice of law*) p. 523.

meeting of the prospective members of the LSUC, on July 17, 1797, "for the purpose of framing and adopting such rules and regulations as may be necessary for the immediate establishment of said society and its future welfare".[330]

224. On February 15, 1871, the Legislative Assembly passed *An Act to make the Members of the Law Society of Ontario elective by the Bar thereof* (the ***1871 Act***).[331] The *1871 Act* provided that "the Benchers of the Law Society, exclusive of *ex-officio* members, shall be thirty in number" and would be elected by the members of the Bar.[332] From its beginning, the LSO claimed the power of discipline over barristers. Legislative amendments in 1875-76 and 1881 clarified the LSO's power of discipline over barristers and conferred power over solicitors.[333]

225. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in Ontario between 1797 and the most recent major substantive revision to the legislation in 1990. At all times, the self-governing structure of the LSO was continued. At all times since 1797, the legislation has provided that the LSO would be governed by Benchers, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules and regulations for the governance of the legal profession or professions.

226. As noted, since at least 1871, the LSO's governing legislation has granted benchers (or the LSO) the authority to make both rules and regulations in connection with its mandate. However, the scope of this authority (including the degree of oversight from government or judges) has varied over time. In 1970, the government enacted *An Act to consolidate and revise The Law Society Act,* S.O. 1970, c. 19, which provided that the benchers' power to make regulations was subject to the approval of the LGIC.[334] This has remained the case since then, although the scope of this power has varied.

227. Currently, s. 63 of the *Law Society Act*, R.S.O. 1990, c. L.8 (the ***Ontario LSA***) provides that Convocation (a regular or special meeting of the benchers), with the approval of the LGIC, may make regulations concerning certain enumerated matters (e.g. prescribing provisions of the *Not-for-Profit Corporations Act,* 2010 that *apply to the LSO*) and, more generally, respecting anything under the *Ontario LSA* that may or must be prescribed or done by the regulations.[335] Notably, by-laws and rules of conduct enacted by the LSO do not require approval of the LGIC. This is distinguishable from BC, in which neither the

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[330] Kryworuk #1, Ex. G (*An act for better regulating the practice of law*), p. 523.
[331] Kryworuk #1, Ex. J (*An Act to make the Members of the Law Society of Ontario elective by the Bar thereof)*, p. 533.
[332] Kryworuk #1, Ex. J (*An Act to make the Members of the Law Society of Ontario elective by the Bar thereof)*, p. 533.
[333] Kryworuk #1, Ex. K (The Self Regulation of the Legal Profession in Canada and in England and Wales), p. 544.
[334] Kryworuk #1, Ex. L (*An Act respecting the Law Society of Upper Canada*), pp. 685-686.
[335] Kryworuk #1, Ex. L (*An Act respecting the Law Society of Upper Canada*), p. 738.

LPA nor Bill 21 confer upon the Law Society a power to make regulations, but rather reserve that right in its entirety to the LGIC.

228. As set out in Hansard debates, the LSO has been closely involved in the development of its own governing legislation.[336] Hansard also demonstrates acknowledgement by government representatives that, by reason of the LSO's self-governing nature, the Attorney General cannot mandate it to do certain things which the LSO must retain control over.[337]

vi. Quebec

229. In 1849, the "Bar of Lower Canada", eventually renamed the Barreau du Québec (the **Barreau**), was founded under *An Act to incorporate the Bar of Lower Canada*, 1849, 12 Vict. C. 46 (the ***1849 Bar Act***).[338] The *1849 Bar Act* empowered the Barreau to "make all such By-laws, rules and orders, as it may deem necessary and proper for the interior discipline and honour of the members of the bar, to regulate the admission of candidates for the profession to the study or practice of the Law, for the management of its property, and generally all By-laws, rules and orders of general interest to the said Corporation and the members thereof".[339]

230. The Barreau was initially set up to consist of three independent geographical sections, each having its own governing "Council".[340] Each council was composed of a President, a Syndic, a Treasurer and a Secretary, and a specified number of other members stipulated by the act and specific to each section.

231. The powers conferred on the Barreau were to be exercised by a "General Council" composed of all the officers and members forming the Councils of each of the three sections. Each council was to nominate and appoint, from amongst themselves, a President, Secretary and Treasurer of the General Council.[341] Within their respective section, and independent of each other, each Council could make by-laws, rules and orders as deemed necessary and specific to itself. None of those regulations could be contrary to any of those passed by the General Council.[342]

232. In 1971, the Québec government expressed its intention to regulate the operation of professional corporations, whose structures it wished to standardize and ultimately enacted

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[336] Kryworuk #1, Ex. S (Hansard – October 7, 1998), p. 830; Ex. U (Hansard – October 27, 2005), p. 961; Ex. W (Hansard – October 1, 2013), pp. 1242, 1258-1259, 1270.
[337] Kryworuk #1, Ex. Q (November 18, 1991), p. 768-769.
[338] Affidavit #1 of Michel Jolin, F.A.C.T.L., Ad.E., made on April 4, 2025 [Jolin #1], Ex. K, (*An Act to incorporate the Bar of Lower Canada*) p. 346, Ex. M (*An Act to amend the Act respecting the Bar of Lower Canada*), p. 703.
[339] Jolin #1, Ex. K (*An Act to incorporate the Bar of Lower Canada*), p. 347.
[340] Jolin #1, Ex. K (*An Act to incorporate the Bar of Lower Canada*), p. 347.
[341] Jolin #1, Ex. K (*An Act to incorporate the Bar of Lower Canada*), p. 347.
[342] Jolin #1, Ex. K (*An Act to incorporate the Bar of Lower Canada*), p. 347.

the *Professional Code,* S.Q. 1973, c. 43 (the ***Professional Code***).[343] At the time, the Barreau expressed concern as to maintaining its self-governance but ultimately compromised with the government and adopted the *Professional Code.*[344] In the result, the Barreau modified its own governing legislation to achieve harmony with the *Professional Code.*[345]

233. Notably, the *Professional Code* establishes the "Office des professions du Quebec" (the **Office**), which holds the power to force the Barreau to draft certain rules and regulations, including codes of ethics.[346] It also requires that any rule or regulation proposed by the Barreau be sent to the Office for review for compliance with the *Professional Code,* after which the Office makes its recommendation to the government.[347] The government may withhold its approval or approve the rule or regulation with or without modification.[348]

234. Finally, in exceptional circumstances, should the Barreau fail to draft rules or regulations required by the *Professional Code* or the Office, the government can unilaterally impose those rules or regulations and determine their content.[349]

235. In this sense, the legal profession is subject to greater government oversight in Quebec than in other Canadian jurisdictions. But it is not merely the regulation of its legal profession that is unique to Quebec. The legal profession in Quebec is distinctive from every other jurisdiction in Canada in various manners that make it of minimal comparative value.

236. Most significantly, Quebec is the only province in Canada with a bijural legal system comprised of both common and civil law systems.[350] That is, the province's private law, including property and contract law, is governed by civil law, while public law matters, such as criminal law, follow the common law system. Quebec's Civil Code is rooted in French legal heritage with its courts having become civil when the clauses of the Treaty of Paris, signed in 1763, came into force in what was then a new colony.[351]

237. As such, while other provinces require completion of a Canadian common law degree to practice law, Québec require its lawyers to graduate from a civil law-specific program.[352] The educational requirements for prospective lawyers entering the profession through a civil law program are also different. Depending on the University, a civil law applicant may

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[343] Jolin #1*,* Ex. T (*Code des professions*), pp. 772-842.
[344] Jolin #1 at para. 49.
[345] Jolin #1*,* Ex. U (*Loi modifiant la Loi du Barreau*), pp. 845-876.
[346] Jolin #1*,* Ex. H (*Professional Code*), pp. 203, 205-208.
[347] Jolin #1*,* Ex. H (*Professional Code*), pp. 205-208.
[348] Jolin #1*,* Ex. H (*Professional Code*), p. 205, 263.
[349] Jolin #1*,* Ex. H (*Professional Code*), p. 205.
[350] Jolin #1 at paras. 9, 22.
[351] Jolin #1 at para. 22, Ex. J (L'histoire du Barreau en trois periodes), p. 326; Affidavit #1 of *Philip Aaron Bull,* made May 16, 2025 [Bull #1], Ex. A, p. 2.
[352] Jolin #1 at para. 9.

be required to hold: a high school diploma and one year of university study; a diplôme d'études collégiales (a post-secondary diploma for pre-university and technical studies); or a Bachelor's degree.[353]

238. A lawyer in Québec who holds only a civil law degree is only qualified to practice in Québec and requires further education to move their practice to a common law province. Likewise, common law graduates cannot practice law in Québec unless they have also studied civil law.[354] The Barreau may, however, issue Canadian lawyers from outside of Québec, upon application, certain temporary or restricted permits that allow for the practice of law within the province.[355]

239. Because of this, the Barreau is not a reciprocating jurisdiction under the National Mobility Agreement, such that additional administrative steps and approval are required for out-of-province lawyers to practice in Quebec, as compared to those of other signatories.[356] Rather, the province has put in place regulatory mechanisms that allow for out-of-province lawyers to become licensed in Quebec after completing certain administrative steps with the Barreau.[357]

240. Furthermore, the constitutionality of this unique system under which the legal profession is regulated in Quebec has not been challenged before the courts.

241. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in Quebec between 1849 and the most recent major substantive revisions to the legislation in 1990. At all times, through every round of repeal, re-enactment and renaming, the self-governing structure first established under the *1849 Bar Act* has continued. At all times since 1849, the legislation has provided that the Barreau would be governed by a board consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

242. Since as early as 1960, Quebec's Legislative Assembly has expressly acknowledged the Barreau's extensive role in developing and amending its own governing legislation in Hansard.[358] The Barreau has created committees for the purpose of reviewing and modernizing its structures. For example, in 1964 a "Committee for the Reform of the Laws

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[353] Jolin #1 at para. 13.
[354] Jolin #1 at para. 9.
[355] Jolin #1 at para. 10.
[356] Affidavit #2 of Michel Jolin, F.A.C.T.L., Ad.E, made May 16, 2025, at para. 3.
[357] Jolin #1 at para. 14, Ex. B (Règlement sur les autorisations légales d'exercer la profession d'avocat hors du Québec qui donnent ouverture au permis du Barreau du Québec), pp. 6-8; Affidavit #2 of Philip Aaron Bull, made June 23, 2025 [Bull #2], Ex. A, pp. 1-3.
[358] Jolin #1, Ex. R (Hansard – January 14, 1960), p. 764; Ex. W (Hansard – October 24, 1990), p. 901, Ex. Y (Hansard – December 5, 2007), p. 917; Bull #2, Ex. A, pp. 30, 34, 40

and Regulation of the Bar" created by the Barreau prepared a report that culminated in the Barreau adopting an overhaul project which it presented to the Legislature.[359] The Barreau's draft reform of its governing legislation was assented to on June 29, 1967.[360]

vii. Newfoundland and Labrador

243. What is now known as the Law Society of Newfoundland and Labrador (the **LSNL**) was first incorporated as the Law Society of Newfoundland on June 12, 1834 under *An Act to incorporate a Law Society of Newfoundland, and to regulate the admission of Barristers and Attornies to practise in the Law in the several Courts on this Island,* 4 William IV, c. 23 (the ***1834 LSA***).[361]

244. The society has been self-governed since its inception. The *1834 LSA* provided, among other things, that the society was to be governed by six or more benchers that it appointed from its members.[362] The benchers were empowered under the *1834 LSA* to "form a body of Rules and Regulations for its own Government", subject to approval by the judges of the Supreme Court of Newfoundland as "visitors of the Society".[363]

245. In 1889, the enactment of the *Law Society Act,* 1889, 62 Vict. c. 22 (the ***1889 LSA***) rid of the requirement that all rules formed by the benchers be subject to approval by the judiciary.[364] Only the benchers' power to make rules necessary for the examination and admission of persons applying to be Solicitors remained subject to approbation of Newfoundland's Supreme Court judges.[365] This provision was removed from the legislation with its re-enactment as *The Law Society Act,* 1977, S.N.L. 1977, c. 77.[366]

246. The *1889 LSA* also granted to the Benchers the sole authority to disbar or disqualify any Barrister, Solicitor or Student "found by the Benchers of the Law Society, after due enquiry by a committee of their number or otherwise, guilty of professional misconduct, or of conduct unbecoming", subject only to an appeal to the court.[367]

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[359] Jolin #1, Ex. J (L'histoire du Barreau en trois périodes), p. 328; Bull #1, Ex. A, p. 4.
[360] Jolin #1, Ex. J (L'histoire du Barreau en trois périodes), p. 328, Ex. L (Loi du Barreau), p. 609; Bull #1, Ex. A, p. 4.
[361] Affidavit #1 of Joe Thorne, made April 3, 2025 [Thorne #1], Ex. G (*An Act to incorporate a Law Society in Newfoundland, and to regulate the admission of Barristers and attornies to practise in the Law in the several Courts in this Island*), p. 414.
[362] Thorne #1, Ex. G *An Act to incorporate a Law Society in Newfoundland, and to regulate the admission of Barristers and attornies to practise in the Law in the several Courts in this Island*), p. 414.
[363] Thorne #1, Ex. G *An Act to incorporate a Law Society in Newfoundland, and to regulate the admission of Barristers and attornies to practise in the Law in the several Courts in this Island*), pp. 414-415.
[364] Thorne #1, Ex. I (*Of the Law Society, Barristers and Solicitors*), pp. 611-642.
[365] Thorne #1, Ex. I (*Of the Law Society, Barristers and Solicitors*), p. 621.
[366] Thorne #1, Ex. H (*An Act to restructure the Law Society of Newfoundland*), pp. 492-570.
[367] Thorne #1, Ex. I (*Of the Law Society, Barristers and Solicitors*), p. 620.

247. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in Newfoundland (and later Labrador) between 1834 and the most recent major substantive revision to the legislation in 1999. At all times, through every round of repeal, re-enactment and renaming, the self-governing structure established by the *1834 LSA* was continued. At all times since 1834, the legislation has provided that the LSNL would be governed by Benchers, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

248. Further, in the years since 1834, the legislation governing the regulation of lawyers has never provided that rules made by the Benchers would be subject to consultation with or approval by any organization or body besides the judiciary. The requirement for approval of certain rules by judges of the province's Supreme Court (deemed "visitors" of the LSNL by the legislation) was extremely narrow in scope and was removed entirely by 1977. The legislation has never granted the provincial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

249. Historically, the LSNL has played a significant role in requesting, developing and amending its own governing legislation, as recognized in Hansard transcripts available from as early as 1952.[368] Government representatives in the Legislative Assembly have also recognized how the LSNL is "in the best possible position to understand the changes that need to be made, the procedures that need to be put in place and the process that needs to be modified".[369]

viii. New Brunswick

250. The organization now known as the Law Society of New Brunswick (the **LSNB**) was formally created in the Law Library at Province Hall on June 12, 1846 by *An Act to incorporate Barristers' Society of New Brunswick,* 1846, 9 Vic. c. 48 (the ***1846 BSA***).[370]

251. From its inception, the LSNB was self-governed. The *1846 BSA* permitted the society, at a meeting of at least 13 of its members, to make bylaws and regulations pertaining to its own governance.[371] While the *1846 BSA* itself did not confer extensive powers, the LSNB used its authority to promulgate bylaws, which were then bolstered by judges making rules of

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[368] Thorne #1, Ex. L, p. 663 (Hansard - April 17, 1952); Ex. M (Hansard – June 1, 1971), p. 669; Ex. P (Hansard – April 18, 1986), pp, 678-679; Ex. Q (Hansard – December 13, 1999), p. 698; Ex. U (Hansard – November 15, 2021), pp. 752.
[369] Thorne #1, Ex. U (Hansard – November 15, 2021), pp. 753-754.
[370] Affidavit #1 of Marc Richard, K.C., made March 27, 2025 [Richard #1], Ex. G (*An Act to incorporate the Barristers' Society of New Brunswick*), p. 368.
[371] Richard #1, Ex. G (*An Act to incorporate the Barristers' Society of New Brunswick*), p. 368.

court.[372] Scholars have described this as a mechanism through which the Supreme Court "virtually handed the Society control" and made the LSNB, in practice, the "gate-keeper of the profession" in New Brunswick.[373]

252. A new act in 1903 brought a landmark revision to governance of the legal profession in the province by making membership to the LSNB mandatory for all Barristers and Attorneys entitled to practice law in the province (the ***1903 BSA***).[374] It also created a Council to govern the LSNB, to which at least seven persons would be elected by and from its members and expanded its authority to make rules, regulations and by-laws.[375]

253. The *1903 BSA* also set out, for the first time, the grounds and procedure for discipline, granting the LSNB the right and privilege to make rules, regulations or by-laws relating to conduct and discipline of lawyers and students-at-law.[376] The *1903 BSA* further granted to Council the power to investigate any complaint raised against a Barrister or Attorney for conduct that "would render such person liable to be struck off the roll or suspended", subject only to an appeal to the court.[377]

254. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in New Brunswick between 1846 and the most recent major substantive revision to the legislation in 1996. At all times, through every round of repeal, re-enactment and renaming, the self-governing structure established by the *1846 BSA* was continued. At all times since 1846, the legislation has provided that the LSNB would be governed by a Council, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

255. Further, in the years since 1846, the legislation governing the regulation of lawyers has never provided that rules made by the Council would be subject to consultation with or approval by New Brunswick's provincial government, such as the LGIC, or any other organization or body (other than the members of the LSNB as a collective). Also, the legislation has never granted the provincial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

256. The LSNB has been extensively involved in developing its own governing legislation, as demonstrated in the Hansard.[378] Most recently, the LSNB's Council reviewed various reports addressing possible amendments to its governing legislation, and on September 8,

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[372] Richard #1, Ex. F (The Law Society of New Brunswick – An Historical Sketch), p. 349.
[373] Richard #1, Ex. F (The Law Society of New Brunswick – An Historical Sketch), p. 349.
[374] Richard #1, Ex. H (*Respecting the Barristers' society, and Barristers, Attorneys and Students-At*-Law), p. 374.
[375] Richard #1, Ex. H (*Respecting the Barristers' society, and Barristers, Attorneys and Students-At*-Law), p. 374.
[376] Richard #1, Ex. H (*Respecting the Barristers' society, and Barristers, Attorneys and Students-At*-Law), p. 376.
[377] Richard #1, Ex. H (*Respecting the Barristers' society, and Barristers, Attorneys and Students-At*-Law), p. 378.
[378] Richard #1, Ex. N (Hansard – May 15, 2009), pp. 602; Ex. R (Hansard – May 31, 2024), pp. 821-822.

2023, published its report entitled the "*Law Society Act, 1996 Amendments (2023)*".[379] The LSNB updated members with respect to the proposed amendments in one of its newsletters and collected feedback that was summarized in a Memorandum to Council.[380] On November 24, 2023, Council approved the proposed amendments to the *LSA*, and later filed the proposed amending act with the Legislative Assembly, which eventually became the current *An Act to Amend an Act Respecting the Law Society of New Brunswick,* S.N.B. 2024, c. 12.[381]

ix. Nova Scotia

257. The Nova Scotia Barristers' Society (the **NSBS**) was founded as a private body to which all barristers were members in 1825, making it the second-oldest law society in common-law Canada.[382] Despite the opportunity first arising shortly after its inception, the NSBS did not establish self-regulation until 1872.[383] Rather, the profession's governing legislation continued to affirm its regulation by the judiciary.[384]

258. The NSBS was formally incorporated in 1858.[385] It has been self-governing since. In 1860, the NSBS initiated its own reorganization, under which it brought in an executive, known as "Council," elected by and from its members.[386] The NSBS' governing legislation was not amended to provide for its ability to develop rules; rather, the society adopted a constitution and bylaws approved by cabinet.[387]

259. As noted, the NSBS acquired its first regulatory powers over the profession in 1872. The provincial government initiated the full transfer of regulatory powers over the profession to the NSBS in 1885, with a special committee of the NSBS having drafted the amendments itself.[388] Specifically, the amendments gave Council the authority to "make rules and regulations for preserving and enforcing the honour and discipline of the bar".[389] Those

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[379] Richard #1, Ex. O (*Law Society Act, 1996* Amendments (2023)), pp. 603-736.
[380] Richard #1, Ex. P (Memorandum – *Law Society Act, 1996* – Amendments – Update), pp. 737-793.
[381] Richard #1, Ex. Q (*An Act to Amend an Act Respecting the Law Society of New Brunswick*), pp. 794-819.
[382] Affidavit #1 of Cheryl Hodder, K.C., made March 25, 2025 [Hodder #1] at para. 14.
[383] Hodder #1, at para. 16 referring to Ex. M (*An Act to amend Chapter 130 of the Revised Statutes "Of Barristers and Attorneys"*), pp. 575-576.
[384] Hodder #1, at para. 16 referring to Ex. H (*An Act for the better regulation of Barristers, Advocates, Attornies, Solicitors and Proctors, practicing in the Courts of this Province*), p. 308; Ex. I (*An Act to continue and amend the Act in relation to Barristers and Attornies*), p. 313; Ex. J (Chapter 132 - *Of Barristers and Attornies*), p. 315.
[385] Hodder #1, Ex. K (*An Act to Incorporate the Nova Scotia Barristers' Society*), p. 319.
[386] Hodder #1 at para. 21.
[387] Hodder #1 at para. 21.
[388] Hodder #1 at para. 23 referring to Ex. N (*An Act to amend Chapter 108, Revised Statutes, "Of Barristers and Attorneys"*), pp. 578-579.
[389] Hodder #1, Ex. N (*An Act to amend Chapter 108, Revised Statutes, "Of Barristers and Attorneys"*), p. 578.

rules, however, required approval of both the judges of the supreme court and the governor-in-council.[390]

260. The NSBS became the excusive regulator of the legal profession in 1899 with the enactment of an extensive public act under which the legislature withdrew entirely from regulation.[391] Specifically, Council was granted the exclusive right and privilege to make rules, regulations or by-laws, including for "all matters relating to the discipline and honor of the Bar, and the discipline and practice of barristers and solicitors and articled clerks".[392]

261. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in Nova Scotia between 1825 and the most recent major substantive revision to the legislation in 2004. At all times, through every round of repeal, re-enactment and renaming, the NSBS' self-governing structure continued. Since 1899, when that structure was first recorded in the profession's governing legislation, all subsequent acts have provided that the NSBS would be governed by Council members, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

262. Further, in the years since 1899, when the NSBS became the exclusive regulator of the province's legal profession, the governing legislation has never provided that rules made by the Benchers would be subject to consultation with or approval by Alberta's provincial government, such as the LGIC, or any other organization or body (other than the members of the NSBS, as a collective). Also, since 1899, the legislation has never granted the provincial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

263. Hansard spanning more than 100 years in the province indicates that the NSBS has been instrumental in developing, requesting, and amending its own governing legislation.[393] The NSBS has done so through appointment of special committees to identify and report on areas of the legislation requiring modernization, and has then worked in conjunction with the government to draft new acts or provisions.[394] Government representatives have

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[390] Hodder #1, Ex. N (*An Act to amend Chapter 108, Revised Statutes, "Of Barristers and Attorneys"*), p. 578, Ex. O (Hansard – March 25, 1885), p. 582.
[391] Hodder #1, Ex. L (*An Act to amend and consolidate the Acts relating to Barristers and Solicitors*), pp. 335-358.
[392] Hodder #1, Ex. L (*An Act to amend and consolidate the Acts relating to Barristers and Solicitors*), p. 349.
[393] Hodder #1, Ex. Q (Hansard – 1908), p. 588; Ex. V (Hansard – February 17, 1958), p. 604; Ex. AA (Hansard – May 16, 1990), p. 631; Ex. CC (Hansard – October 15, 2004), p. 735; Ex. DD (Hansard – October 18, 2004), pp. 760-761; Ex. FF (Hansard - May 10, 2010), p. 780.
[394] See for example: Hodder #1 at para. 23, referring to Ex. N (*An Act to amend Chapter 108, Revised Statutes, "Of Barristers and Attorneys"*), pp. 578-580.

expressed appreciation for the value of changes brought to the NSBS's governing legislation on its own initiative.[395]

x. Prince Edward Island

264. The Law Society of PEI (the **LSPEI**) was created in 1876 with the government's enactment of *An Act to Incorporate a Law Society,* S.P.E.I. 1876, c. 24 (the ***1876 LSA***).[396] The LSPEI has been self governed from its start. Under the *1876 LSA*, members of the LSPEI were permitted to determine the numbers and duties of its officers and to appoint said officers to manage the society's affairs.[397]

265. Among other things, the *1876 LSA* granted the LSPEI the authority to make "Bye-Laws as shall appear to them proper and needful touching the government and regulation of the said Society, and its officers and members…".[398] All bye-laws enacted were to be sanctioned in writing by judges of the Supreme Court.[399] In 1930, membership to the LSPEI became mandatory with the enactment of *The Legal Profession Act*, 1930, S.P.E.I., c. 14 (the ***1930 LPA***).[400] It was specified that a "Council", composed of the LSPEI's officers and four other members elected by and from its members, would constitute the society's governing body.[401]

266. Further, under the *1930 LPA,* the LSPEI was granted greater regulatory authority including the authorization to make rules, regulations and by-laws respecting numerous areas such as discipline, as well as under a broad residual clause that permitted the creation of rules, regulations and by-laws generally for "the management of the Society and its affairs and all purposes connected therewith".[402]

267. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in Prince Edward Island between 1876 and the most recent substantive revision to the legislation in 1992. At all times, through every round of repeal, re-enactment and renaming, the self-governing structure established by the *1930 LPA* was continued. At all times since 1876, the legislation has provided that the LSPEI would be governed by

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[395] Hodder #1*,* Ex. DD (Hansard – October 18, 2004), p. 760-761, Ex. FF (Hansard - May 10, 2010), p. 780.
[396] Affidavit #1 of James Travers, K.C., made April 3, 2025 [Travers #1], Ex. E (*An Act to incorporate a Law Society*), p. 252.
[397] Travers #1, Ex. E (*An Act to incorporate a Law Society*), p. 252.
[398] Travers #1, Ex. E (*An Act to incorporate a Law Society*), p. 253.
[399] Travers #1, Ex. E (*An Act to incorporate a Law Society*), p. 253.
[400] Travers #1, Ex. G (*An Act Respecting The Law Society of Prince Edward Island and the Legal Profession in the Said Province*), pp. 264-265.
[401] Travers #1, Ex. G (*An Act Respecting The Law Society of Prince Edward Island and the Legal Profession in the Said Province*), p. 265.
[402] Travers #1, Ex. G (*An Act Respecting The Law Society of Prince Edward Island and the Legal Profession in the Said Province*), p. 268.

Council members, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

268. In the years since 1876, the legislation governing the regulation of lawyers has never provided that rules made by Council would be subject to consultation with or approval by Alberta's provincial government, such as the LGIC, or any other organization or body (other than the members of the LSPEI as a collective). Also, the legislation has never granted the provincial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

269. The LSPEI has been integral in developing and requesting amendments to its own governing legislation, as demonstrated by Hansard.[403] Government representatives have described the typical process for amending the legislation governing the legal profession in the province as being for the LSPEI to do so itself.[404]

xi. Yukon

270. From its inception as a territory in 1898 until 1984, the legal profession in the Yukon was governed under the *Legal profession Ordinance,* pursuant to which its Supreme Courts held jurisdiction to regulate lawyers.[405] In 1984, the Law Society of the Yukon (the **LSY**) was established as a statutory corporation under the *Legal Profession Act,* S.Y.T. 1984, c. 17 (the ***1984 LPA***).[406]

271. The LSY has been self-governed from its inception. The *1984 LPA* provided that the LSY would be governed by an "Executive", composed of at least four elected lawyers and two non-lawyers appointed by the Commissioner in Executive Council (i.e. Cabinet).[407] This Executive had the power to manage and conduct the affairs of the LSY, and to make rules for the LSY's regulation.[408] However, the *1984 LPA* reserved to Cabinet the power to annul any rule considered "contrary to the public interest", which remained a feature of the LSY's governing legislation until 2017.[409]

272. The *1984 LPA* has been amended on several occasions between 1984 and the most recent major substantive revision to the legislation in 2017. At all times, the self-governing structure established by the *1984 LPA* has continued. At all times, the legislation has

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[403] Travers #1, Ex. O (Hansard – April 2 1996), p. 394; Ex. Q (Hansard – December 9, 2004), p. 399; Ex. R (Hansard – May 17, 2012), p. 407; Ex. U (Hansard – November 7, 2023), p. 417; Ex. V (Hansard – November 17, 2023), p. 420.
[404] Travers #1, Ex. O (Hansard – April 2 1996), p. 394.
[405] Affidavit #1 of Grant Macdonald, K.C., made April 2, 2025 [Macdonald #1], Ex. G (Ordinances respecting the legal profession), pp. 343-376.
[406] Macdonald #1, Ex. H (*Legal Profession Act*), p. 382.
[407] Macdonald #1, Ex. H (*Legal Profession Act*), p. 382.
[408] Macdonald #1, Ex. H (*Legal Profession Act*), p. 383.
[409] Macdonald #1, Ex. H (*Legal Profession Act*), p. 388.

provided that the LSY would be governed by an Executive, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

273. Additionally, the legislation has never granted the provincial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law. While the *1984 LPA* provided that rules made by the Executive were subject to an overriding power of Cabinet to annul any rule it deemed contrary to the public interest, that power was ultimately revoked in 2017 with the territorial government's enactment of the *Legal Profession Act,* S.Y. 2017, c. 12 (the ***2017 LPA***).[410] Cabinet was granted the authority to make regulations creating new non-lawyer members of the LSY who may provide particular legal services, but has not exercised this power to date.[411]

274. The LSY and its predecessor – the "Yukon Law Society" – have been instrumental in developing the legislation that governs the legal profession in the Yukon. It was in fact the Yukon Law Society that requested new governing legislation in 1984 that would establish the profession as a self-regulating body consistent with those in every other Canadian jurisdiction.[412] Similarly, reforms to the legislation in 2004 were requested by the LSY.[413]

275. Furthermore, the significant modernization of the legislation achieved through the *2017 LPA* is largely attributable to a Legislative Review Committee appointed by the LSY Executive, whose work culminated in a policy paper delivered to the territorial government that made recommendations as to the future of the legislation.[414] This included the removal of Cabinet's annulment power, which a government representative described as removing "the government's direct oversight of the law society" and "establishing a less prescriptive approach to professional regulation".[415]

xii. Northwest Territories

276. The first iteration of a law society in the Northwest Territories was incorporated in 1898. Through *The Legal Profession Ordinance*, *1898*, O.N.W.T, c. 51 the territorial legislature delegated the responsibility to govern the legal profession to this society, empowering nine Benchers, elected by and from the society's members, to make rules and by laws "for the government of the said society and other purposes connected therewith".[416]

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[410] Macdonald #1, Ex. O (*Legal Profession Act, 2017)*, pp. 731-842.
[411] Macdonald #1, Ex. O (*Legal Profession Act, 2017)*, pp. 753-754.
[412] Macdonald #1, Ex. I (Hansard – April 2, 1984), p. 453.
[413] Macdonald #1, Ex. M (Hansard – November 8, 2004), p. 619.
[414] Macdonald #1, Ex. N (Toward a new *Legal Profession Act* – Policy Paper), p. 626-729; Ex. P (Hansard – October 30, 2017), p. 845.
[415] Macdonald #1, Ex. P (Hansard – October 30, 2017), p. 846.
[416] Affidavit #1 of Jessica Copple, made March 24, 2025 [Copple #1], Ex. I, (*The Legal Profession Ordinance, 1983*) p. 373.

277. In 1905, a large part of the North-West Territories was lost to the creation of Alberta and Saskatchewan, and its law society disbanded in favour of separate societies for the two new provinces. No law society remained in place for the few lawyers remaining in the North-West Territories, and no new legislation governing the legal profession would be enacted for nearly 25 years.[417] It was not until 1976 that the Law Society of the Northwest Territories (the **LSNWT**), as its known today, was established as a new self-regulating body of the legal profession in the territory through the *Legal Profession Ordinance,* R.O.N.W.T. 1976, c. 4 (the ***1976 LPO***).[418]

278. Under the *1976 LPO,* the LSNWT was again self-governed by a body referred to as the "Executive", to which a majority of lawyers were elected by and from the society's members.[419] The Executive was granted broad enumerated powers under the *1976 LPO,* which included at its end an expansive residual clause.[420]

279. The society was given the exclusive jurisdiction to make rules "for the regulation of the [LSNWT], the management and conduct of its business affairs and for the exercise or carrying out of the duties and powers conferred or imposed on the [LSNWT] or the Executive" by its governing legislation.[421] It was also empowered with the exclusive jurisdiction to discipline any member found guilty of professional misconduct or conduct unbecoming a barrister and solicitor.[422]

280. In 2023, the territorial government passed Bill 82: *Legal Profession Act* (**Bill 82**), which substantially modernizes the legislation governing the legal profession in the Northwest Territories.[423] Bill 82 has not yet come into force and will not until the LSNWT finishes drafting a new corresponding version of the rules.[424]

281. There have been many rounds of repeal, re-enactment, and renaming of the legislation governing lawyers in the Northwest Territories between the inception of its first law society in 1898 and the most recent major substantive revision approved in 2023. At all times a law society has existed under this legislation, the self-governing structure first established in 1898 has continued. At all times, the legislation has provided that the LSNWT would be governed by an Executive, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or

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[417] Copple #1 at para. 17.
[418] Copple #1, Ex. M, (*Legal Profession Ordinance*, 1979) p. 405.
[419] Copple #1, Ex. M, (*Legal Profession Ordinance*, 1979) p. 405.
[420] Copple #1, Ex. M, (*Legal Profession Ordinance*, 1979) pp. 405-406.
[421] Copple #1, Ex. M, (*Legal Profession Ordinance*, 1979) p. 407.
[422] Copple #1, Ex. M, (*Legal Profession Ordinance*, 1979) pp. 413-417.
[423] Copple #1 at para. 52 referring to Ex. E, (Bill 82, *Legal Profession Act*) pp. 268-324.
[424] Copple #1 at para. 52.

professions. Bill 82 will not introduce any changes to this structure when it comes into force.

282. Further, in the years for which a law society has existed in the territory, its governing legislation has never provided that rules made by the Executive would be subject to consultation with or approval by the Northwest Territory's government, such as the LGIC, or any other organization or body (other than the members of the LSNWT, as a collective). Also, the legislation has never granted the territorial government or any other body the power to make rules or regulations of any kind while the LSNWT has been in existence, including for the governance of lawyers or the practice of law.

283. The LSNWT's initiation of changes to its own governing legislation and active participation in implementing those changes has been acknowledged in Hansard.[425] Moreover, the LSNWT recently established a "Revision Committee" that prepared a discussion paper for presentation to the territory's Department of Justice to modernize the legislation so that it better reflects contemporary developments in the self-regulation of the legal profession across Canada.[426] The LSNWT's recommendations resulted in the tabling of Bill 82.[427]

xiii. Nunavut

284. The Law Society of Nunavut (the **LSN**) was established in 1999 after Nunavut was created from portions of the Northwest Territories and most of its members were formerly members of the LSNWT.[428] To govern the new territory, consolidations of the statutes and regulations of the Northwest Territories, adopted or enacted for Nunavut.[429] In respect of the legal profession, the resulting legislation became known as the *Legal Profession Act,* R.S.N.W.T. (Nu) 1988, c. L-2 (the ***1988 LPA***).[430]

285. The *1988 LPA* established the LSN and provided that its affairs shall be managed and conducted by a governing body known as an "Executive", the majority of which would be composed of lawyers elected by and from its members.[431]

286. Under the *1988 LPA,* the LSN was granted the exclusive jurisdiction to make rules "for the regulation of the [LSN], the management and conduct of its business affairs and for the exercise of the powers conferred or the performance of the duties imposed on the [LSN] or

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[425] Copple #1, Ex. P, (Hansard – October 18, 2004) p. 812, Ex. R, p. 523.
[426] Copple #1, Ex. S, (Discussion Paper: A Review of the *Legal Profession Act* of the Northwest Territories) pp. 525-579; Ex. T, (Hansard – March 30, 2023) p. 581.
[427] Copple #1, Ex. T, (Hansard – March 30, 2023) p. 581; Ex. U, (Report on Bill 82: *Legal Profession Act*) p. 586.
[428] Affidavit #1 of Nalini Vaddapalli, made March 31, 2025 [Vadapalli #1] at para. 10.
[429] Vaddapalli #1 at para. 11.
[430] Vaddapalli #1, Ex. F, (Consolidation of *Legal Profession Act (Nunavut)*, R.S.N.W.T. 1988, c. L-2) pp. 285-332.
[431] Vaddapalli #1, Ex. F, (Consolidation of *Legal Profession Act (Nunavut)*, R.S.N.W.T. 1988, c. L-2) p. 289.

the Executive" by its governing legislation.[432] The LSN was given the sole authority to both determine the question of guilt of a member complained of, subject to an appeal before the Court of Appeal, and to discipline any member found guilty of professional misconduct or conduct unbecoming.[433]

287. The *1988 LPA* required the LSN to submit any proposed changes to the rules to the Government of Nunavut's Registrar of Regulations for review and registration as regulations under the act.[434] This technical requirement was removed from the legislation in 2017 on the basis that it "[was] unnecessary and inappropriate in that it takes away from the independence of the law society in governing the legal profession in Nunavut".[435] The government had not enforced the provision since the territory's founding in 1999.[436]

288. The legislation governing lawyers in Nunavut has undergone few substantive amendments since its inception 1999. However, at all times, the self-governing structure established by the *1988 LPA* has continued. At all times since 1999, the legislation governing the regulation of lawyers has provided that the LSN would be governed by an Executive, consisting largely of lawyers elected by lawyers (not counting *ex officio* members), who would make rules for the governance of the legal profession or professions.

289. In the years since 1999, despite the *1988 LPA* stipulating so, the LSN was not required to, in practice, submit its proposed rules to the territorial government for approval.[437] Further, the legislation has never granted the territorial government or any other body the power to make rules or regulations of any kind, including for the governance of lawyers or the practice of law.

C. The Law Society does not claim a "Legislative Veto"

290. The Province argues that the Law Society asserts, by its claim that governments across Canada have recognized the principle of independence in the enactment of legislation, is asserting a novel constitutional convention. The Law Society is not asserting a novel constitutional convention[438] (though constitutional conventions are also a type of unwritten principle of the Constitution).

291. This claim is about a constitutional constraint on the province's power to legislate under ss. 92(13) and (14). It is the Legislature's obligation to enact constitutionally compliant

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[432] Vaddapalli #1, Ex. F, (Consolidation of *Legal Profession Act (Nunavut)*, R.S.N.W.T. 1988, c. L-2) pp. 291-292.
[433] Vaddapalli #1, Ex. F, (Consolidation of *Legal Profession Act (Nunavut)*, R.S.N.W.T. 1988, c. L-2) pp. 300-309.
[434] Vaddapalli #1, Ex. I (Hansard – September 17, 2018), p. 350.
[435] Vaddapalli #1, Ex. H (*An Act to Amend the Legal Profession Act, 2017*), p. 339-342; Ex. I, (Hansard – September 17, 2018) p. 350.
[436] Vaddapalli #1, Ex. I, (Hansard – September 17, 2018) p. 350.
[437] Vaddapalli #1, Ex. I, (Hansard – September 17, 2018) p. 350.
[438] Lawson Lundell LLP Letter to AGBC dated April 30, 2025.

legislation; therefore, the Legislature is constrained from enacting legislation that compromises the essential characteristics of the independence of the Bar, which impairs the public's access to courts and rights as entrenched in the written text of the Constitution. Legislation that is impairs self-governance and self-regulation of lawyers is inconsistent with the Constitution, and is therefore invalid.

D. International regulatory schemes are irrelevant to the Canadian context

292. Over the course of many years, as the Law Society examined its own structures to determine whether or not they are best promoting the public interest, the Law Society has considered and rejected the implementation of regulatory models that were recently imposed in other common law jurisdictions, including in England and Wales, and Australia.[439] The Law Society has used these jurisdictions as examples of where perceived regulatory failures have invited government interference with self-governance and self-regulation.[440] The Law Society specifically designed its regulatory approach to ensure it did not invite the type of interference by government that occurred in other jurisdictions, which the Law Society viewed as diminishing independence of the Bar.[441]

293. The Law Society understands the Province to advance examples of lawyer regulation in other common law jurisdictions (the UK, Australia and New Zealand) - not because the model imposed in Bill 21 is similar – but because other governments have imposed different regulatory structures on lawyers in those jurisdictions with what the Province will assert is minimal impact on lawyer independence. The Law Society will address this point further in reply.

VI. SELF-REGULATION AND SELF-GOVERNANCE OF LAWYERS UNDER THE *LEGAL PROFESSION ACT*, S.B.C. 1998, C. 9

294. Through the enabling mechanisms of the *LPA*, the public is assured of access to a trustworthy and competent bar, whose admission, competence and discipline is regulated by lawyers who are accountable only to the public interest, and not to government policy or political influence.

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[439] Greenberg #3, Ex. 52 (Independent Oversight of the Law Society's Regulatory Functions); Ex. 56 (Letter from Law Society to International Bar Association), p. 1714.
[440] Greenberg #3, Ex. 36 (Memorandum to Benchers re: Legal Profession Act – section 3), pp. 986-987, Ex. 56, p. 1721 ("Independence and Self-Governance of the Legal Profession); Ex. 63 (Judicial Independence: Defending an Honoured Principle in a New Age), p. 1117.
[441] Greenberg #3, Ex. 51 (Report of the Independence and Self-Governance Advisory Committee Concerning Bencher Governance Policies – Policy H-5), pp. 1565, 1566, 1568-1569, 1575, 1584.

295. Independence of the Bar in British Columbia is maintained by the statutory protections in the *LPA*:

(a) s. 3 of the *LPA* confirms the object and duty of the regulator, as determined by the regulator itself.[442] The mandate chosen by lawyers for its regulator connects lawyers and the Law Society to their role as "guardians of our legal system and the rule of law."[443] Section 3 of the *LPA* implicitly recognizes the Law Society's (chosen) statutory mandate to support access to justice for all persons in British Columbia.[444]

(b) s. 4 of the *LPA* enables the Benchers to self-govern and self-regulate. Pursuant to the rules, lawyers themselves have determined that the Law Society should be governed by 25 Benchers who have been elected by lawyers, distributed across nine geographic regions across the province, together with 6 non-lawyer Benchers appointed by the LGIC.[445]

(c) s. 11 of the *LPA* enables the Benchers to make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of the *LPA*. In accordance with s. 11, one of the Benchers' core functions is to make the Rules that govern all aspects of the day-to-day practice of law.[446] The Benchers are not required to obtain approval of Rules from the government or any other body.[447]

(d) Pursuant to the authority in s. 11 of the *LPA* and the Rules, the Benchers also maintain the *Code*. The *Code* is an expression of the Benchers' views on the special ethical responsibility that comes with the lawyer's role, and forms an integral part of independent self-regulation of lawyers in the public interest. The *Code* is significantly related to the Federation of Law Societies' *Model Code of Professional Conduct*, which ensures pan-Canadian standards for the practice of law.[448]

(e) Pursuant to the authority in s. 11 of the *LPA* and the Rules, the Benchers also oversee the implementation and administration of the Law Society's many programs to promote and protect the public interest in the administration of justice.

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[442] Greenberg #3, paras. 31-36, Exs. 27-33.
[443] McLachlin, "Professional Independence" at 5.
[444] The Honourable Justice Thomas A. Cromwell & Siena Antsis, The Legal Services Gap: Access to Justice as a Regulatory Issue, (2016) 42:1 Queen's LJ 1 at 10.
[445] Greenberg #3, para. 45.
[446] Greenberg #1, para. 22.
[447] Greenberg #1, para. 24.
[448] Greenberg #1, para. 25; Greenberg #3, Ex. 44 (*Code of Professional Conduct*).

A. The Law Society is self-governed by a majority of elected Benchers

296. The Law Society is governed by 32 Benchers, consisting of 25 lawyer Benchers elected by the lawyers of British Columbia – including the president, vice-president, and second vice-president – from nine electoral districts spread across the Province,[449] six lay Benchers appointed by the Lieutenant Governor in Council, and the Attorney General (an *ex officio* bencher, who does not vote at the Bencher table[450]). The LPA does not prescribe the number of Benchers, or the manner of their election. Bencher elections are largely governed by Rules 1-20 to 1-40.

297. The term of office for elected Benchers is generally two years. Elections take place on November 15 of each odd-numbered year, and the term for those elected begins on January 1 of the following year.

298. One exception to the two-year term for elected Benchers is for the president, first vice-president and second vice-president. Rule 1-5 creates a "ladder" structure for these offices: at each annual general meeting the members elect one of the current elected Benchers as second vice-president elect, and this person then remains a Bencher and moves through the roles of second vice-president, first vice-president, and president over the following three years.[451]

299. In recent years, the general process and timelines for Bencher elections have been as follows:

(a) The Law Society circulates a notice and call for nominations approximately two months prior to the election;

(b) Candidates must submit their nominations at least one month before the election. Once nominations have closed, the Law Society posts the candidates' biographical summaries and election statements to its website;

(c) The Executive Director must circulate a ballot to each member entitled to vote at least two weeks before the election;

(d) The Executive Director is responsible for supervising vote counts and declaring the candidates elected. In recent years, the Law Society has used a third-party company

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[449] 13 Benchers from District No. 1, the County of Vancouver; two Benchers from District No. 2, the County of Victoria; one Bencher from District No. 3, the County of Nanaimo; three Benchers from District No. 4, the County of Westminster; one Bencher from District No. 5, the County of Kootenay; one Bencher from District No. 6, Okanagan; two Benchers from District No. 7, the County of Cariboo; one Bencher from District No. 8, the County of Prince Rupert; and one Bencher from District No. 9, Kamloops.
[450] Armitage XFD, q. 124.
[451] Greenberg #3, Ex. 42 (Law Society Rules), p. 1089, Rule 1-5.

to provide online voting capacity and has been able to declare election results shortly after voting closes.[452]

B. The Benchers make rules that govern lawyers, law firms, articled students, applicants and the Law Society

300. The Benchers are empowered by ss. 4(2)-4(4) of the *LPA* to govern and administer the affairs of the Law Society, and to take any action they consider necessary for the promotion, protection, interest or welfare of the Law Society.[453]

301. One of the core functions of the Benchers is rule-making.[454] The Benchers are empowered by the *LPA* to, and do, make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of the duties and powers under the *LPA*. The Rules govern all aspects of the day-to-day practice of law, and are binding on the Law Society, lawyers, law firms, the Benchers, articled students, applicants, and others authorized to practice law in British Columbia.[455]

302. Benchers must obtain approval for their rule-making only with respect to matters such as the offices of president, first vice-president, or second vice-president; the terms of office for Benchers; the electoral districts for the election of Benchers; and the general meetings of the Law Society (see s. 12 of the *LPA*). In these contexts, a 2/3 majority of lawyers must approve the applicable Rules.[456] The *LPA* includes a provision that requires member approval of certain Rules that relate to Bencher composition to guard against the appearance that the Benchers could act in their own self-interest on these fundamental self-governance questions.[457]

303. The Benchers also maintain the *Code*. As set out above, the *Code* is an expression of the Benchers' views on the special ethical responsibility that comes with the lawyer's role, and forms an integral part of independent self-regulation of lawyers in the public interest. The *Code* is significantly related to the Federation of Law Societies' *Model Code of Professional Conduct*, which ensures pan-Canadian standards for the practice of law.[458]

304. The Rules and the *Code* are not subject to the approval or influence of government or any other body.

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[452] Greenberg #3, para. 50.
[453] Greenberg #1, para. 20; *LPA*, ss. 4(2)-4(4).
[454] Greenberg #1, Ex. 6 (Bencher Position Description).
[455] Greenberg #1, para. 22.
[456] Greenberg #1, para. 24.
[457] Greenberg #3, Ex. 54 (Report of Bencher Election Working Group), p. 1630.
[458] Greenberg #1, para. 25; Greenberg #3, Ex. 44 (Code of Professional Conduct).

305. The Benchers also oversee the implementation and administration of the Law Society's many programs to promote and protect the public interest in the administration of justice.[459]

306. In carrying out these roles, it is the Benchers' duty to abide by the *LPA*, the Rules and the *Code*, and uphold the objects of the Law Society and ensure they are guided by the public interest in the performance of their duties.[460] As required by the Law Society Rules, all Benchers are required to take an oath of office by which each Bencher swears to uphold the objects of the Law Society and be guided by the public interest in the performance of their duties.[461] The Benchers are provided with access to training and resources to support them in their roles, and are required to act in accordance with the Bencher Code of Conduct.[462]

307. The Benchers typically meet 8 or 9 times each year. Their meetings are open to the public except where matters must be discussed *in camera*. At Bencher meetings, the Benchers discuss matters of policy; consider amendments to the Rules or the *Code*; receive presentations, reports, briefings, and recommendations on various aspects of the Law Society's operations; and conduct various other business.[463]

308. In addition to attending these regular meetings, Benchers also participate on committees, task forces and in regulatory proceedings when appointed to do so. The Law Society's committees, advisory committees, and task forces play an important role both in the present governance of the legal profession and in ensuring that this governance continues to evolve and progress as needed to best serve the public interest. The reports prepared by the Law Society's committees and task forces in recent years are publicly available on the Law Society's website.[464]

309. The elected Benchers are not paid, except for the president and vice-presidents, who receive some remuneration for their executive roles in the form of an honorarium, and the LGIC Benchers, who receive prescribed *per diem* payments.[465]

C. The Benchers are the "guardians of self-regulation"

310. The Law Society ensures robust, visible and professional regulation of lawyers, in the public interest under the *LPA*, the Rules, and the Code. Regulating lawyers and the practice

[459] Greenberg #1, paras. 26, 39-41, 44-45, 49-51, 69-70, 109-111, 124, 136-137; Exs. 16, 20, 49-52A, 55-57.
[460] Greenberg #3, Ex. 41 (Bencher Code of Conduct), p. 1061.
[461] Greenberg #1, para. 21; Ex 42 (Law Society Rules), p. 1088.
[462] Greenberg #3, para. 52, Ex. 41 (Bencher Code of Conduct).
[463] Greenberg #1, para. 27.
[464] Greenberg #1, para. 28.
[465] Greenberg #1, para. 29.

of law in British Columbia is a complex task. It has three core aspects: membership and authority to practice law, professional conduct, and complaints and discipline.[466]

311. The Rules specifically address membership and admission into the Law Society and the authority to practice law; processes for protection of the public through the investigation of complaints, promoting the mental and physical health of lawyers, maintaining practice standards, and continuing education of lawyers; and discipline of lawyers who are alleged to have breached the Rules.[467]

ii. Membership and authority to practice law

312. Under the *LPA* and the Rules, and with limited exceptions, only licensees of the Law Society are permitted to practice law in British Columbia. "Lawyer" is defined in the *LPA* as a member in good standing, who holds or is entitled to hold a practising certificate. The *LPA* also sets out a non-exhaustive definition of the term "practice of law". Subject to exceptions set out in the *LPA*, no person other than a practising lawyer is permitted to engage in the practice of law. It is an offence under s. 85 of the *LPA* to engage in the unauthorized practice of law.

313. The Benchers determine the rules for membership in the Law Society:

(a) ss. 19-21 of the *LPA* provide that for enrolment as an articled student, call and admission to the bar (as a lawyer and licensee)[468], and reinstatement as a licensee, the Benchers make the applicable rules, the Benchers determine the applications, and the Benchers must be satisfied that applicants are of good character and repute and fit to become lawyers. Section 14 also provides that the Benchers may make rules to establish categories of licensees and to determine the rights and privileges associated with these categories;

(b) s. 16 of the *LPA* provides that the Benchers may permit qualified lawyers of other Canadian jurisdictions to practise law in British Columbia, and may make rules in this regard. These rules are set out in Rules 2-15 to 2-27, which provide for inter-jurisdictional practice, including by "visiting lawyers" from other Canadian provinces. The Law Society is a signatory to the reciprocal National Mobility Agreement and the Territorial Mobility Agreement, which facilitate permanent and temporary inter-jurisdictional practice among Canada's provinces and territories.[469]

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[466] Greenberg #1, para. 35.
[467] Greenberg #1, para. 23.
[468] "Call and admission" refers to *call* to the Bar of British Columbia and *admission* as a solicitor of the Supreme Court. This if often shortened to simply "call and admission" or "call and admission to the Bar", and it signifies becoming a lawyer in British Columbia.
[469] Greenberg #1, Ex. 15 (National Mobility Agreement).

(c) s. 17 authorizes the Benchers to permit a person holding professional legal qualifications obtained in a country other than Canada to practise law in British Columbia, and may make rules in this regard. These rules are set out in Rules 2-28 to 2-34, which provide for practice by practitioners of foreign law.

314. The Law Society's admission program is governed by Rules 2-54 to 2-75. The Law Society's admission program requires the successful completion of nine months of articles, the 10-week full-time Professional Legal Training Course (**PLTC**) administered by the Law Society, and two qualification examinations based on the PLTC materials and course work. Roughly 600 applicants enrolled in PLTC each year between 2017 and 2022.[470]

315. Upon completing the admission program and any other applicable requirements (see Rule 2-76), applicants may apply for call and admission. Pursuant to Rule 2-84, applicants who meet all the requirements for call and admission may then take the barristers' and solicitors' oath at a call ceremony or before a judge or practising lawyer, before becoming eligible for practice. The Benchers are responsible for approving the form of the oath.

316. Lawyers practising in other Canadian jurisdictions may be eligible to transfer into membership with the Law Society without completing the admission program. Transfer is governed by Rules 2-79 to 2-82, and the applicable rules depend in part on whether the transfer is governed by the National Mobility Agreement or the Territorial Mobility Agreement. Although the National Mobility Agreement and the Territorial Mobility Agreement are recent developments, the principle of uniform practice to facilitate the movement of lawyers among common law provinces has been the subject of discussion and action among legal regulators for more than 70 years.[471]

317. Lawyers can terminate their membership by providing the Law Society with written notice of resignation, though restrictions apply in circumstances where the lawyer is the subject of disciplinary proceedings, an investigation, or a practice review.

iii. Professional conduct

318. The Benchers have discretion under the *LPA* to establish standards, requirements, programs, and rules related to professional conduct (which includes practice standards, practice management, and professional responsibility). Many of the applicable rules and requirements are set out in Rules 3-15 to 3-110, which deal with matters such as practice standards, education, compulsory indemnification, financial responsibility, and the management of trust accounts and client property.

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[470] Greenberg #1, para. 39.
[471] Greenberg #4, Ex. 4 (Meeting minutes), p. 311; Ex. 8 (Meeting minutes), p. 850.

319. The Practice Standards Committee, established under Rules 3-15 and 3-16, plays a key role in the Law Society's governance of professional conduct. The objectives of the Practice Standards committee are to:

(a) recommend standards of practice for lawyers,

(b) develop programs that will assist all lawyers to practise law competently, and

(c) identify lawyers who do not meet accepted standards in the practice of law, and recommend remedial measures to assist them to improve their legal practices.

320. The *LPA* proscribes incompetent practice, but does not define "incompetence" or "competence", leaving the definitions of these terms to the discretion of the Benchers.

321. In 2024, the Benchers approved a resolution to adopt the final draft of the Western Canada Competency Profile (the **WCCP**) as the competencies to be demonstrated at entry to legal practice in British Columbia. The WCCP was developed by expert consultants and a representative task force from the law societies of British Columbia, Alberta, Saskatchewan, and Manitoba, and was very recently adopted by the Law Society of Alberta.[472]

322. The Benchers also provide detailed guidance and instruction on professional conduct and competency by way of the Code, as discussed above.

323. In addition to establishing standards and rules for practice in the Rules and the Code, the Benchers have also established requirements for continuing legal development. Presently, all practising lawyers are required to complete 12 hours of Continuing Professional Development (**CPD**) in each calendar year. Two of these hours must pertain to professional responsibility, ethics, and/or practice management. Any lawyer who fails to complete the required CPD may be suspended from practice until the requirements are met.[473]

324. In 2021, in response to the Truth and Reconciliation Commission, the Law Society determined that lawyer competence requires Indigenous intercultural training. Each practising lawyer admitted to the British Columbia bar is required to complete the Law Society's Indigenous intercultural training course within a two year period.[474]

325. In addition to providing rules and guidance for professional conduct, the Law Society also provides lawyers with support and resources. These include, for example, the Practice Advice program, Practice Resources including practice checklists, access to the

[472] Greenberg #1, para. 47, Ex. 18 (draft WCCP Competency Profile).
[473] Greenberg #1, para. 49.
[474] Greenberg #1, para. 50; Truth and Reconciliation Commission: Calls to Action, 27.

independently-operated Lawyers Assistance Program, access to supports provided through LifeWorks and LifeSpeak, and the volume of written resources prepared and curated by the Law Society addressing the wide range of topics relevant to the practice of law in British Columbia, all accessible on the Law Society's website.[475]

iv. Complaints and discipline

326. The *LPA* (s. 26) provides that a person may make a complaint to the Law Society if they believe that a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming the profession or a breach of the *LPA* or the Rules (collectively defined in the Rules as a "**discipline violation**"); or if they believe that a law firm has been guilty of professional misconduct, conduct unbecoming the profession or a breach of the *LPA* or the Rules.[476]

327. The *LPA* does not define or particularize the terms "incompetently" or "professional misconduct". "Conduct unbecoming the profession" is defined only insofar as stating that it is a matter that the Benchers consider to be contrary to the best interest of the public or of the legal profession, or to harm the standing of the legal profession. As a result, the meaning of these terms is left to the discretion of the Benchers.[477]

328. Rules 3-1 to 3-9 govern the complaints process. The Executive Director is responsible for considering complaints, and much of the process has been delegated to the Law Society's Professional Conduct Department.[478]

329. Generally, the complaints process is confidential. However, in certain circumstances the Law Society has the discretion to disclose to the public information about the complaint, or the steps taken by the Law Society in response, while a complaint is ongoing, in order to protect the public interest.[479]

330. The Law Society encourages anyone with a concern about a lawyer's conduct to reach out to the Law Society. The Law Society receives complaints, or information that may be treated as a complaint, from a broad range of sources, including members of the public, other lawyers, self-reports, government agencies, law enforcement agencies, and the courts. The Law Society also initiates investigations based on information that comes to our attention directly, such as through trust audits, or indirectly, such as through media reports or court decisions.[480]

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[475] Greenberg #1, para. 51.
[476] Greenberg #1, para. 52.
[477] Greenberg #1, para. 53.
[478] Greenberg #1, para. 54.
[479] Greenberg #1, para. 55.
[480] Greenberg #1, para. 56.

331. Complaints are typically referred to the Practice Standards Committee where consideration of the complaint has raised concerns about the lawyer's competency that do not require a disciplinary response. Consideration of complaints by the Practice Standards Committee is governed by Rules 3-17 to 3-25. The Committee can take various actions on a complaint, including, for example, initiating a practice review, imposing conditions and limitations on a lawyer's practice, and referring the complaint to the Discipline Committee.[481]

332. Complaints are typically referred to the Discipline Committee where consideration of the complaint has raised concerns that the lawyer has committed a discipline violation. The Committee's consideration of complaints is governed by Rules 4-3 to 4-8. After its consideration of a complaint, the Discipline Committee must choose amongst the following options:

(a) decide that no further action be taken on the complaint;

(b) send a conduct letter to the lawyer expressing the committee's concerns and reminding the lawyer of professional obligations;

(c) require the lawyer to attend a conduct meeting;

(d) require the lawyer to appear for a conduct review (which is governed by Rules 4-11 to 4-15); and/or

(e) direct that the Executive Director issue a citation to order a hearing into the conduct or competence of the lawyer. The citation sets out the allegations of misconduct against the lawyer, to be the subject of a public hearing before the Law Society Tribunal.[482]

333. Between 2020 and 2023, there were approximately 530 outstanding complaints at the start of each year, 820 new complaints each year, and approximately 860 complaints closed each year. Over the 2020-2022 period approximately 10-20% of the complaints closed in each year were referred to the Practice Standards Committee or the Discipline Committee for further consideration. Between 2020 and 2022, 26-33 complaints were referred to the Practice Standards Committee, 84-132 were referred to the Discipline Committee, and 16-35 citations were issued by the Discipline Committee.[483] In 2023, there were 421 outstanding complains at the start of the year, 1291 complaint files opened, and 1152 complaint files closed.[484]

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[481] Greenberg #1, para. 58.
[482] Greenberg #1, para. 59.
[483] Greenberg #1, para. 60.
[484] Greenberg #3, Ex. 46 (2023 Annual Report), p. 1481.

v. The Law Society Tribunal

334. When the Discipline Committee issues a citation, the matter then goes before a hearing panel of the Law Society Tribunal (the **Tribunal**), unless there is a consent agreement.[485] The Tribunal independently conducts hearings and renders impartial decisions, by way of Part 5 of the Rules. Under these Rules, the Tribunal is overseen by the Tribunal Chair, who is appointed by the Benchers. The Chair must be a practising lawyer and must not be a Bencher, nor a member of the Discipline, Credentials or Practice Standards Committee. Subject to the *LPA* and the Rules, the Tribunal determines the practice and procedure to be followed in its proceedings, and the Tribunal Chair issues practice directions in this regard.[486]

335. The Tribunal Chair is responsible for appointing members to hearing panels. Subject to limited exceptions, the panels must be chaired by the Tribunal Chair or by another lawyer, and must include at least one Bencher (or Life Bencher) who is a lawyer, and one person who is not a lawyer. The Tribunal maintains a roster of adjudicators for appointment to its hearing panels.[487]

336. The Law Society is a party in disciplinary hearings before the Tribunal, and bears the onus of proving the allegations set out in the citation. The Tribunal determines whether the allegations are proven and the appropriate disciplinary sanction, if any. The Tribunal's decisions are published on the Law Society's website and on the Canadian Legal Information Institute (**CanLII**) website.[488]

337. Where the Tribunal finds that the Law Society's allegations are proven, the Tribunal has the authority to, for example, fine, reprimand, suspend, or disbar a lawyer, or to impose conditions and limitations on the lawyer's practice.[489]

338. Approximately 25 disciplinary hearings were completed in each year from 2020 to 2022. In 2022, 24 hearings were completed, leading to 10 suspensions, 7 fines, and 4 disbarments. The statistics in the Tribunal reports do not account for disciplinary action taken as part of a consent agreement and interim suspensions. In 2022, there were an additional eight suspensions that resulted from consent agreements, and one undertaking not to practice for a period of at least 12 years.[490]

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[485] Greenberg #3, para. 63.
[486] Greenberg #1, para. 61.
[487] Greenberg #1, para. 62.
[488] Greenberg #1, para. 63.
[489] Greenberg #1, para. 64.
[490] Greenberg #1, para. 65.

339. When the Tribunal sanctions a lawyer, the Law Society posts information about the sanction on its website, subject to measures for preserving privilege and confidentiality in respect of complainants or other affected parties.[491]

340. The Law Society or the respondent lawyer may apply for a review of a hearing panel's decisions to a review board of five panel members, with some limitations. Review hearings are relatively rare, and only between one and four were completed in each year from 2020 to 2022. The Law Society and the respondent lawyer also both have a right to appeal the decisions of a hearing or review panel to the Court of Appeal, though the Law Society's right is limited to an appeal on a question of law (see s. 48 of the *LPA*).[492]

341. The Tribunal recently published a guide addressing Indigenous Engagement with the Law Society Tribunal, which sets out six principles that will guide the Tribunal in adapting its hearing processes to incorporate culturally-relevant and trauma-informed practices that will better support Indigenous hearing participants.[493]

D. The Law Society pursues reconciliation and promotes access to justice in the public interest

342. Bill 21 does not introduce the concepts of reconciliation and access to justice into legal regulation. The evidence before the Court is that reconciliation and access to justice are strategic priorities advanced by the Law Society as part of its commitment to regulate in the public interest for many years.

343. Self-regulation means that the government cannot impose a new legal regulator on lawyers because it would like strategic priorities to be addressed in a different way, or in accordance with its own political strategy. There is no question that the Law Society has pursued both reconciliation and access to legal services as part of its independent regulation of the legal profession, so there is no basis for the government to substitute its own regulatory framework to address these issues. It is not the case, and the Province has not suggested that it is the case, that the Law Society has failed to regulate in the public interest, particularly in the areas of reconciliation and access to justice.

ii. The Law Society pursues reconciliation

344. In July 2016, the Benchers unanimously approved the creation of the Truth and Reconciliation Advisory Committee. This committee (at least half of which must be

[491] Greenberg #1, para. 66.
[492] Greenberg #1, para. 67.
[493] Greenberg #1, para. 68, Ex. 19 (Indigenous Engagement with the LSBC Tribunal).

comprised of Indigenous individuals) provides ongoing guidance and advice to the Law Society on legal issues affecting Indigenous people in the province.[494]

345. In September 2022, the Benchers unanimously approved an Indigenous Framework, which is intended to guide the Law Society in regulating the legal profession in a manner that will advance the principles of truth and reconciliation set out by the Truth and Reconciliation Committee.[495] The Indigenous Framework sets out five principles that are intended to guide the Law Society's application of the *Legal Profession Act*, the Law Society Rules, the *Code,* and the policies, procedures and practices of the Law Society. The first principle of the Indigenous Framework recognizes that the paramountcy of the Law Society's independence includes engaging with Indigenous individuals:[496]

> Principle 1: The Law Society complies with the adage: "Nothing about us without us," and will ensure that Indigenous individuals are engaged in the development of policy proposals or decisions that may affect Indigenous interests.
>
> > Commentary 1: The Law Society has committed to increasing Indigenous representation at all levels, including in its governance, tribunals, committees, employment and membership;
> >
> > …
> >
> > Commentary 4: The Law Society has established a practice of including an Indigenous panelist in any regulatory matter that involves an Indigenous person as a complainant, witness or respondent, and Principle 1 supports and formalizes this practice…

346. Also, the Indigenous Engagement in Regulatory Matters (**IERM**) Task Force completed its work and final report in 2023.[497] This report, and each of its recommendations, were unanimously adopted by the Benchers at their meeting on September 22, 2023.

347. The Law Society has already taken steps to implement the recommendations in the Task Force's report. For example, the Law Society created the new position of Indigenous Navigator. The Indigenous Navigator works closely with the Law Society's complaints and regulatory departments to ensure that complaints, investigations, and hearing processes are culturally safe for Indigenous people.[498]

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[494] Greenberg #1, para. 147.
[495] Greenberg #1, Ex. 61 (Indigenous Framework Report).
[496] Greenberg #1, Ex. 61 (Indigenous Framework Report), pp. 1071-1072.
[497] Greenberg #1, Ex. 62 (Report of the Indigenous Engagement in Regulatory Matters Task Force).
[498] Greenberg #1, para. 150.

iii. Promoting access to legal services in British Columbia

348. Similarly, removing barriers to access to legal services has long been at the forefront of the Law Society's work, including through examination of the effects of the expansion of legal services on self-governance and the independence of lawyers.

349. Some of the Law Society's work on access to legal services is reflected in the following reports:

(a) Towards a New Regulatory Model – Report to the Benchers from the Futures Committee, dated January 30, 2008;[499]

(b) Final Report of the Legal Service Providers Task Force, dated December 6, 2013;[500]

(c) Report of the Legal Services Regulatory Framework Task Force, December 5, 2014;[501]

(d) Anticipating Changes in the Delivery of Legal Services and the Legal Profession, The Final Report of the Futures Task Force, September 10, 2020;[502] and

(e) An Access to Justice Vision for the Law Society of British Columbia, dated December 4, 2020.[503]

350. Individual lawyers are also deeply committed to advancing access to justice within their own spheres of influence. More than half of lawyers in British Columbia volunteer free legal services; 55.5% of all lawyers provide an average of 51 hours of volunteer legal services per year; the value to the economy is more than $87 million (which is likely severely underestimated at an average rate of $250). 40% of lawyers provide low cost legal services; nearly 5,000 lawyers provided an average of 94 hours of legal services at substantially reduced fees per year. In addition, lawyers engage in a variety of volunteer work, such as serving on the boards of public interest organizations providing public legal education, working on social justice and equality initiatives.[504]

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[499] Greenberg #1, Ex. 63 (Towards a New Regulatory Model – Report to the Benchers from the Futures Committee).
[500] Greenberg #1, Ex. 64 (Final Report of the Legal Service Providers Task Force).
[501] Greenberg #1, Ex. 65 (Report of the Legal Services Regulatory Framework Task Force).
[502] Greenberg #1, Ex. 66 (Anticipating Changes in the Delivery of Legal Services and the Legal Profession).
[503] Greenberg #1, Ex. 67 (An Access to Justice Vision for the Law Society of British Columbia).
[504] Affidavit #2 of Brook Greenberg, K.C, made June 12, 2024, Ex. B ("Lawyers giving back: volunteer legal services").

The Law Society supports a proposed single legal regulator model

351. The concept of a proposed single legal regulator – now embodied in Bill 21 – has been the subject of study and recommendation by the Law Society for more than 10 years. In July 2012, then-Minister of Justice Shirley Bond wrote to the Law Society and to the Society of Notaries Public of British Columbia (**SNPBC**) to request that the two organizations work together to develop a recommended legislative proposal for a single legal regulator of lawyers, notaries and paralegals.

352. In 2013, the Benchers unanimously approved recommendations from the Legal Services Provider Task Force. The first recommendation was that the Law Society seek to merge regulatory operations with the SNPBC with the result that the Law Society would regulate lawyers and notaries in British Columbia. SNPBC agreed that oversight of notaries could be subsumed within the operations of the Law Society.[505] The Law Society and SNPBC entered into a Memorandum of Understanding to develop a joint proposal for consideration by the Minister in 2015.[506]

353. The Report of the Legal Services Regulatory Framework Task Force recommended that the Law Society seek a legislative amendment to the *LPA* to authorize the Law Society to establish, regulate and create credentialing requirements for new categories of legal services providers to address areas of unmet and underserved legal need. Those amendments were enacted on November 17, 2018, through the *Attorney General Statutes Amendment Act, 2018*.[507]

354. The amendments have not been brought into force, despite the Law Society's request that the government do so.

355. At the Law Society's annual general meeting in December 2018, lawyers passed a resolution directing the Benchers to request that the provincial government not pass regulations to bring the licensed paralegal amendments into force until the Benchers completed consultations regarding licensed paralegals. The resolution passed with 861 votes in favour, 297 against, and 62 abstentions. The resolution was not binding on the Benchers, but informed the Benchers' consultation efforts on the licensing of paralegals.[508]

356. The Law Society created the Licensed Paralegal Task Force in March 2019. The Task Force issued its report on September 25, 2020, and recommended that the Law Society

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[505] Greenberg #3, Ex. 57 (Memo to Benchers – Unified Regulatory Regime for Legal Services in British Columbia), p. 1732.
[506] Greenberg #3, Ex. 57 (Memo to Benchers – Unified Regulatory Regime for Legal Services in British Columbia), pp. 1736-1739.
[507] S.B.C. 2018, c. 49.
[508] Greenberg #1, para. 153.

create a "grass roots" regulatory sandbox in which to expand regulated legal services (the **Innovation Sandbox**).[509]

357. The Law Society implemented the Innovation Sandbox to permit individuals and firms not authorized to provide legal services to test services in a regulated environment, through the issuance of "no action" letters. Since May 2021, the Law Society has issued more than 50 "no action" letters specifying the legal services that may be carried out by legal services providers who applied to deliver those services through the Innovation Sandbox.[510]

358. In March 2023, the Law Society requested that the government bring the 2018 amendments into force.[511] The provincial government rejected the Law Society's request. On May 25, 2023, the Attorney General of British Columbia wrote to the Law Society and explained that the government would not proclaim the 2018 amendments into force, in part because the new legislation under development would include the licensing of paralegals.[512]

E. The Law Society reviews its own governance to prevent real or perceived failures of self-regulation

359. As the elected governors of the Law Society, the Benchers are the guardians of self-regulation of the legal profession.[513] Self-regulation serves the public interest by ensuring the public's access to independent courts, and meaningful access to legal rights. But the Benchers have long recognized that the privilege of self-regulation was lost in other jurisdictions (including Australia, England and Wales) because of perceived failures of the legal regulators in those jurisdictions to ensure their governance framework recognizes the primacy of the public interest.[514]

360. The Benchers therefore have undertaken periodic reviews of their own governance to help them evaluate their relationship to the public interest, and avoid the risk that government assumes control of lawyer regulation because of real or perceived failures of self-regulation.[515]

361. The Benchers carried out three governance reviews between 1993 and 2012. In July 1993, the Benchers adopted and implemented a Carver policy board model that was directed at empowering boards of directors to fulfill their obligation of accountability for the organizations they govern. By 2007, this framework was no longer in use, and the Benchers restructured Bencher committees and task forces, and developed a more robust

[509] Greenberg #1, Ex. 68 (Licensed Paralegal Task Force Report).
[510] Greenberg #1, Ex. 69 (No Action Letters).
[511] Greenberg #1, para. 27, Ex. 70 (Memorandum), p. 1534.
[512] Greenberg #1, Ex. 71 (Letter from Attorney General to Law Society).
[513] Greenberg #1, Ex. 7 (Final Report of the Governance Review Task Force), pp. 447-448.
[514] Greenberg #1, Ex. 7 (Final Report of the Governance Review Task Force), pp. 447-448.
[515] Greenberg #1, para. 30.

annual planning cycle, including a strategic plan. In 2011, the Benchers included in the strategic plan the objective of identifying and developing processes to ensure continued good governance, and established the Governance Review Task Force.

362. The objective of the Governance Review Task Force was to assess the Law Society's current governance structure and practices against leading-edge governance practices for professional regulatory bodies, and identify areas where improvements could be made.[516] The Task Force engaged Watson Advisors Inc. to assist with a review and prepare an interim report. The work of the Task Force and the Watson report culminated in a Final Report of the Governance Review Task Force, dated November 28, 2012[517]

i. The Cayton Report

363. The Law Society commissioned a further review of its governance in 2021. This culminated in a report issued to the Benchers by Harry Cayton in November 2021.[518] This report was presented to the Benchers at their meeting on December 3, 2021.[519] The Benchers noted that while there was support expressed for some recommendations, there were also concerns about some of the recommendations, and the accuracy of some of its conclusions.[520]

364. The Benchers discussed Mr. Cayton's report and the potential implementation of certain of his recommendations at the Bencher's meeting on January 28, 2022, with the goal of making decisions in that respect by the Bencher's meeting in April 2022.[521]

365. Two days after the Benchers received the Cayton report, on December 21, 2021, and while it began its consideration of that report, the Attorney General wrote to the Law Society's incoming President for 2022, Lisa Hamilton, Q.C., to advise that he was considering whether provisions regarding licensed paralegals in Bill 57, *Attorney General Statutes Amendment Act, 2018*, which had been enacted but not yet brought into force, should be brought into force in 2022.[522]

366. The Benchers intended to resume their consideration of Mr. Cayton's report, and the Benchers' views on the recommendations in that report, at the next meeting on March 4, 2022. That discussion was pre-empted, however, by the Attorney General's announcement to the Law Society of the government's intention to change the regulatory model governing

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[516] Greenberg #1, Ex. 7 (Final Report of the Governance Review Task Force), p. 442.
[517] Greenberg #1, Ex. 7 (Final Report of the Governance Review Task Force).
[518] Greenberg #1, Ex. 8 (Report of a Governance Review of the Law Society of British Columbia).
[519] Greenberg #1, Ex. 9 (Meeting Minutes – December 2, 2021); Ex. 10 ("Law Society considers Cayton governance report").
[520] Greenberg #1, Ex. 9 (Meeting Minutes – December 2, 2021), p. 521; Greenberg #3, paras. 62-63.
[521] Greenberg #1, para. 31.
[522] Greenberg #1, para. 32, Ex. 11 (Letter from Attorney General to Law Society).

the legal professions in British Columbia.[523] In doing so, the government did what the Law Society was trying to avoid through the Cayton report and earlier governance reviews, seizing upon a perceived failure to protect the public interest as a pretext for taking control of legal regulation.

VII. BILL 21 ENDS SELF-GOVERNANCE AND SELF-REGULATION OF LAWYERS IN BRITISH COLUMBIA

A. Bill 21 unilaterally imposes concepts of independence and self-regulation

367. On the heels of the Cayton Report, before the Benchers of the Law Society could consider and accept or reject some of the most substantive recommendations of that report, including in relation to the size and composition of the Bencher table, the government announced that it would impose a new regulatory model to govern lawyers, notaries and paralegals in British Columbia. Rather than seeking a legislative proposal from the Law Society (as had been done at each substantive revision of the legislation since before modern times, in recognition of the independence of the Bar), then-Attorney General David Eby, K.C. announced that "the ministry [of Attorney General] will be preparing a legislative proposal for government's consideration."[524]

368. The legislative proposal would, among other things "establish a mandate for the regulator that clarifies its duty to protect the public, including the public's interest in accessing legal services and advice" and "establish a modernized governance framework for the regulator that is consistent with best practices in professional regulatory governance."[525]

369. Throughout the development of Bill 21, the Law Society affirmed and reaffirmed its commitment to work with government, in furtherance of the Law Society's public interest mandate, to support and implement a single legal regulator framework that upholds, rather than erodes, independence of lawyers and of a legal regulator. The Law Society has publicly and unequivocally stated that Bill 21 does not adequately protect the independence of legal professionals.[526]

370. The following sections set out the particular provisions of Bill 21 that work collectively to undermine self-governance and self-regulation of lawyers.

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[523] Greenberg #1, Ex. 23 (Letter from Attorney General to Law Society).
[524] Greenberg #1, Ex. 23 (Letter from Attorney General to Law Society), p. 662.
[525] Greenberg #1, Ex. 23 (Letter from Attorney General to Law Society), p. 662.
[526] Greenberg #1, para. 88.

B. Bill 21 removes lawyers' public interest mandate

371. Bill 21 strips the new regulator of the broad mandate to protect the public interest in the administration of justice that has been carefully developed and maintained by the independent Bar for 156 years.

372. Under Bill 21, the regulator no longer has as its object the broad mandate to "uphold and protect the public interest in the administration of justice" including by "preserving and protecting the rights and freedoms of all persons."[527] The considerably denuded s. 6 of Bill 21 requires the regulator to "regulate the practice of law in British Columbia"; establish standards and programs for the education, training, competence, practice and conduct of applicants, trainees, licensees, and law firms; and "ensure the independence of licensees."

373. The duty on a legal regulator to uphold and protect the public interest in the administration of justice is an obligation that arises because the public has a right to access courts and legal rights through an independent Bar. The duty on an independent legal regulator is not a policy option to be conferred, or not, by the provincial Legislature. The duty arises as a matter of substantive legal obligation that flows from the principle of the independence of the Bar.

374. The duty to "ensure the independence of licensees" in s. 6 of Bill 21 is of no comfort to the public. Lawyer independence is maintained by self-regulation and self-governance free from interference by any source; s. 6(c) of Bill 21 has no meaning in the context of a governance structure that does not also preserve self-governance and self-regulation of lawyers (as Bill 21 does not do).

C. Bill 21 eliminates self-governance by elected lawyers

375. Under Bill 21, on the amalgamation date imposed by the LGIC, all Benchers elected by lawyers to regulate the profession in the public interest will cease to hold office.[528] The Benchers' mandate to protect the public interest in the administration of justice will have been terminated unilaterally by the government of British Columbia.

376. Under Bill 21, lawyers called in British Columbia will no longer be majority governed by elected lawyers, notwithstanding that lawyers in British Columbia, the Law Society, courts in Canada, and the United Nations' Special Rapporteur for the independence of judges and lawyers[529] each recognize that election of the governing body of an independent regulator by lawyers is essential to protect the independence of the Bar.

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[527] *LPA*, s. 3.
[528] Bill 21, s. 230(1).
[529] Greenberg #3, Ex. 65 (Report of the Special Rapporteur on the independence of judges and lawyers), p. 1996.

377. The ability of shareholders or members of an organization to directly elect directors is a core element of governance that is a legitimate way to get competent, qualified directors to a boardroom decision-making table.[530] In the opinion of professional governance expert Dr. Poonam Puri, in the context of professional regulation of lawyers, board governance by a majority of elected lawyers is important for two reasons:

(a) Majority governance by elected lawyers maximizes director independence. In Dr. Puri's view, director independence is not maximized where: (i) the board is not a majority elected lawyers; (ii) the executive committee does not need to be majority of elected lawyers; and (iii) quorum for making decisions does not require a majority of elected lawyers to be present;[531] and

(b) Self-governance promotes good self-regulation in the public interest, given the technical knowledge and expertise required to govern lawyers in the public interest.[532]

378. Bill 21 does not preserve self-governance by a majority of elected lawyers. The first board of LPBC will be composed as follows:

(a) by s. 223(1), Bill 21 compelled the appointment of a transitional board of seven (7) members, four of whom were required to be appointed by the Benchers. The Benchers appointed four members to the transition board in July 2024; since that time three of the appointees were appointed to the Bench and have since been replaced.[533]

(b) by s. 223(8) and s. 230(2), on the amalgamation date, the transitional board is dissolved, and the first board of LPBC will consist of the seven members of the transitional board immediately before the amalgamation, and has the powers in s. 8 of Bill 21;

(c) under s. 230(6), no later than 6 months after the amalgamation date, the first board must (a) hold elections "for the purposes of s. 8(1)(a), (b), and if applicable, (c)(ii); and (b) the directors to be appointed under s. 8(c)(i), if applicable and s. 8(1)(d) must be appointed." This means that within 6 months of the amalgamation date:

- 5 lawyers are elected by and from among lawyers;

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[530] Expert report of Dr. Punam Puri, dated June 30, 2025 [Puri Report], para. 55.
[531] Puri Report, para. 60.
[532] Puri Report, para. 62, para. 36.
[533] Affidavit #1 of Thomas L. Spraggs, K.C., made April 3, 2025 [Spraggs #1], paras. 7-8; Affidavit #2 of Thomas L. Spraggs, K.C. made June 27, 2025, paras. 3.

- 2 notaries public are elected by and from notaries public who are not also lawyers;

- 2 directors are appointed by a majority of directors then holding office, or if there are 50 regulated paralegals within 6 months of the amalgamation date, 2 regulated paralegals elected by and from regulated paralegals;

- 3 directors appointed by the LGIC on the recommendation of the Attorney General.

(d) under s. 8(1)(e), 5 further directors will be appointed, after a merit-based process, by a majority of the other directors holding office, of whom four (4) must be lawyers.

379. Bill 21 is silent on the timing of the appointment of five directors under s. 8(1)(e); it may occur "by a majority of the other directors holding office." The composition of the group who appoints the directors under s. 8(1)(e) is therefore unclear, and it may occur before any directors, including lawyer directors, have been elected at all.

380. In any event, once the transition is complete,[534] only 5 of the directors of the new board of LPBC will be elected by lawyers – 29% of the board, compared with 80% under the existing Law Society Rules.[535] These 5 elected lawyers do not form a majority of the first 12 directors elected or appointed under s. 8(1)(a)-(d),[536] which group may select the remaining 5 directors under s. 8(1)(e) (only 4 of which must be lawyers) by majority vote. So while LPBC's board, once fully established, will include 9 out of 17 lawyers, a slim and tenuous majority, Bill 21 does not require that 4 of these 9 will be chosen by lawyers.

381. The clear intention of Bill 21 is to ensure elected lawyers do not control the composition of the board of LPBC, or compose the majority of the board.

382. Further, s. 28(2)(b) of Bill 21 empowers the board (which is not comprised of a majority of elected lawyers) – including the transitional board - to establish "a process for the screening of candidates in the election of directors." Given the government's interference with independent rule-making by the legal regulator, described below, this is further interference with self-governance by elected lawyers, whose candidacy is subject to a screening process determined by a non-independent board.

383. Under s. 10 of Bill 21, the board may establish an executive committee of no more than 5 people. No more than two of those board members appointed to the executive committee may be lawyers (one is the chair of the board, one is a lawyer, one is a notary public, one

[534] Bill 21, s. 230(4)-(6).
[535] Armitage XFD, q. 348.
[536] Section 8 of Bill 21 must be read together with s. 230 of Bill 21.

is a regulated paralegal or appointee under s. 8(1)(c), and one is appointed by the LGIC). A quorum of the executive committee is four, which ensures that lawyers do not control the executive committee.

The governance review at the Law Society of Ontario

384. As set out above, the LSO is governed by its Benchers. The number and types of the LSO's Benchers are determined by a combination of the *Law Society Act*, R.S.O. 1990, c. L.8, and the LSO's By-laws, which provide for a combination of elected, appointed, *ex officio*, and honorary emeritus Benchers. At present there are a total of 86 Benchers, though only a core group of 54 Benchers have the right to vote in Convocation (the meeting of the Benchers). These 54 Benchers consist of 40 elected lawyers, 5 elected paralegals, 8 lay Benchers appointed by the government, and the Attorney General for Ontario.[537]

385. The Province says that a few months after Bill 21 was enacted, the Governance Review Task Force of the LSO proposed to change the board composition of the LSO to "something very similar to the board envisaged by the *Act.*"[538] The Province notes that elected lawyers did not constitute a majority of the board composition set out in the proposal. Presumably, the Province refers to the LSO proposal for the proposition that lawyers in Ontario did not agree that an independent legal regulator must be governed by a majority of elected lawyers.

386. The most obvious difference between the review process engaged by the LSO and Bill 21 is that the Ontario government did not propose the governance changes. It also has not eliminated the LSO and enacted legislation that replaces it and imposes a new regulatory structure. This is an internal LSO governance review and it has been made subject to a robust consultation process with the Bar.

387. In any event, lawyers in Ontario have opposed the LSO's proposal, and as of the date of writing, it has not been adopted by Convocation.

388. The LSO's Governance Review Task Force has been considering reforms to the LSO's governance structure since at least October 2023. Following Convocation on October 31, 2024, the LSO issued a public request for comment on the governance changes recommended by the Task Force in a report titled "Towards More Effective Governance – Governance & Electoral Reforms at the Law Society of Ontario" (the **LSO Report**).[539]

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[537] Greenberg #3, para. 73.
[538] Application Response of the Defendants, para. 48.
[539] Greenberg #3, Exs. 72 (Call for Comment: Towards More Effective Governance – Governance & Electoral Reforms at the Law Society of Ontario), 73 (Report to Convocation).

389. The LSO Report recommended the following changes to the structure of the LSO's governing board (among others):[540]

(a) a reduction in the size of Convocation to approximately 30 members, consisting of 14 elected lawyers, 2 elected paralegals, 10 members appointed by the Law Society board (4 lawyers, one paralegal, and 5 non-licensees), and 4 non-licensee public members appointed by the government.

(b) the creation of a new category of Law Society-appointed board member.

(c) the creation of a new, independent, standing committee called the Governance & Nominating Committee, with a mandate to select and recommend board appointments to the board.

390. The LSO requested responses from the profession on the LSO Report, in order to determine whether to request Convocation's approval of the recommendations set out in the Report.

391. The electoral reforms proposed by the LSO have been rejected by Ontario lawyers. The Federation of Ontario Law Associations (**FOLA**), which represents Ontario's 46 county and district law associations, criticized the reforms set out in the report. FOLA rejected the proposal to reduce the number of elected benchers, concluding that 40 elected benchers is not disproportionate to the number of licensees in Ontario (approximately 59,000 lawyers and 11,000 paralegals[541]), and objected to changes to regional representation structure. FOLA further stated that "elected board members provide a strong defence against threats to self-regulation", and concluded it would be a "mistake to diminish the proportion of elected board members". FOLA writes:

> The principle of self-regulation is a cornerstone of the legal profession's independence. By introducing 10 LSO-appointed benchers, the proposed model shifts the balance of power away from elected representatives, diminishing the voice of licensees and eroding public confidence in the profession's autonomy. We are troubled that the proposal diminishes the importance of self-regulation in its design. There is little to no evidence that self-regulation in Ontario is unsuccessful, and on the other hand 225 years of evidence that self-regulation is and will continue to be successful.[542]

392. The Toronto Lawyers Association (the **TLA**) wrote that reducing the number of elected lawyer benchers to a minority of Convocation would:

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[540] Greenberg #3, para. 75.
[541] Kryworuk #1, para. 4.
[542] Greenberg #3, Ex. 76 (Letter from FOLA to Governance Review Task Force), p. 2132.

> profoundly impact our profession's longstanding history of self-regulation. Our members have described this aspect of the Task Force's proposed reforms as 'undemocratic', 'fundamentally wrong', 'extreme' and an erosion of independence and self-governance.[543]

393. In the TLA's view, a strong majority of Convocation should be comprised of at least 75% elected lawyer benchers.

394. The Ontario Bar Association (**OBA**) issued a 13-page report in response to the LSO Report. The OBA noted that it had heard concerns from lawyers across all regions of Ontario that the outcomes the Governance Task Force intended to achieve could be achieved without fundamentally affecting the self-regulation of the profession. A "principal concern" raised by Ontario lawyers was that lawyers would no longer elect a majority of Benchers under the proposal in the LSO Report. The OBA noted that "self-governance requires that the governed select their governors,"[544] and recommended that elected lawyers must remain a strong majority on convocation.

395. There simply is no support for the proposition that there is a consensus among lawyers in Canada that independence can be maintained in the absence of self-governance by a body of lawyers who have been, in the majority, elected by lawyers.

i. Co-governance and co-regulation by the transitional Indigenous Council and Indigenous Council

396. In addition to the elimination of self-governance by a majority of elected lawyers, Bill 21 introduces a model of co-governance with an additional body created by the Legislature. The board will co-govern with an Indigenous council.[545] The Indigenous council will include 4-7 members (in addition to two members who are unspecified directors) who are Indigenous persons, and who are intended to be appointed from among persons nominated by the BC First Nations Justice Council and Métis peoples or entities representing Métis peoples to collectively reflect the diversity of the Indigenous population of British Columbia.[546]

397. There is no statutory requirement in Bill 21 that any member of the Indigenous council be a lawyer, which creates the risk that the slim majority of lawyers prescribed by s. 8 of Bill 21 will completely disappear for any form of joint decision making.[547] In practice, the transitional board (comprising appointees of the Law Society, SNPBC, regulated

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[543] Greenberg #3, Ex. 78 (Letter from TLA to Governance Review Task Force), p. 2139.
[544] Greenberg #3, Ex. 80 (OBA Response to LSO Governance and Electoral Reforms Proposal), p. 2150.
[545] Bill 21, s. 29.
[546] Bill 21, s. 29(1), (2).
[547] Spraggs #1, paras. 17-23, Exs. O-S (Transition Agendas and Meeting Minutes).

paralegals, and the LGIC)[548] does not meet without the transitional Indigenous council.[549] Development of the policy underlying the first rules of LPBC is carried out through a "joint board" of the transitional board and the transitional Indigenous council. Only 4 of 11 members of the joint board are appointed by Benchers under the transition provisions.[550] Although it is not specifically contemplated in Bill 21, the transitional Indigenous council will also approve the replacement code of conduct that will be applicable to lawyers.[551]

398. The co-governance arrangement imposed by Bill 21 between the board of the regulator and the indigenous council is not limited to consultation and collaboration. The first rules of LPBC – all of the rules that apply to lawyers, law firms, articled students and applicants - require the approval of the transitional Indigenous Council,[552] 4 of the 6 or 7 members of which must be appointed by BCFNJ and Métis Nation British Columbia.[553]

399. The "first" rules are intended to be completed by amalgamation, and are intended to provide a complete, rather than provisional, code for the regulation of lawyers by LPBC.[554] In addition to the first rules, the transitional Indigenous council will also approve mandatory code of conduct governing lawyers.[555]

400. The LPBC workplan contemplates two phases of "approval" of the first rules and the *Code* by the transitional Indigenous council: the first phase of approval by April 2026, followed by engagement with stakeholders in June 2026, and final approval of the first rules and the *Code* by October-December 2026.[556] Engagement with stakeholders on the first rules of LPBC is not a condition precedent to the amalgamation; in the government's view, only approval of the first rules is a condition precedent to amalgamation.[557]

401. A statutory requirement for the approval of rules that govern lawyers by any body other than a majority-elected board impairs self-regulation, and the independence of the Bar.

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[548] Bill 21, s. 223.
[549] Spraggs #1, paras. 18, 23, Exs. P (Minutes of Meeting – October 21, 2024), R (Minutes of Meeting – January 15, 2025), T (Minutes of Meeting – February 19, 2025).
[550] Although Christina Cook KC, appointed to the transitional Indigenous council, is also presently a Law Society Bencher.
[551] Spraggs #1, Ex. U (Agenda – March 19, 2025), p. 446.
[552] Bill 21, s. 226.
[553] Spraggs #1, paras. 15.
[554] Spraggs #1, Ex. Q (Legal Professions BC Workplan), p. 180.
[555] Spraggs #1, Ex. Q (Legal Professions BC Workplan), p. 181.
[556] Spraggs #1, Ex. Q (Legal Professions BC Workplan), pp. 183-184.
[557] Craven #1, para. 21.

Co-governance and co-regulation of LPBC furthers government policy

402. Like the Indigenous council that will be appointed under s. 29, the creation of the transitional Indigenous council under s. 224 reflects the implementation of government policy set out in the Strategy.

403. The addition of the Indigenous council and the transitional Indigenous council (described below) as co-governors and co-regulators of LPBC furthers a partnership between the provincial government and the BCFNJ[558] set out in the BC First Nations Justice Strategy.[559] The Strategy documents a provincial government policy, the terms of which are agreed between the government and the BCFNJ,[560] which addresses all forms of interaction between First Nations and the justice system.[561] The Indigenous council has unprecedented statutory power to participate in the strategic planning process of the regulator and approve rules of the board, and to attend *in camera* meetings of the board (although the board members cannot attend *in camera* sessions of the council), among other things.[562]

404. The Law Society clearly does not object to policies and laws that further reconciliation – it has adopted and endorsed its own policies that are designed to advance reconciliation, including within the Law Society's own policies and procedures.[563] The Law Society objects to the unilateral imposition of government policy into the governance and regulatory structures of the legal regulator. Doing so is direct government interference that is inconsistent with maintaining independence of the Bar.

D. Bill 21 imposes guiding principles that constrain the regulator

405. In s. 7 of Bill 21, the government directs what principles the regulator must consider in exercising its powers and performing its duties under the act.[564] Section 7 reads:

> **Guiding Principles**
>
> **7** In exercising powers and performing duties under this Act, the regulator must have regard to the following principles:
>
> (a) facilitating access to legal services;

[558] Spraggs #1, para. 11, Ex. E (First Nations Justice Council – Who We Are).
[559] Spraggs #1, Exs. F, G.
[560] Outstanding requests for information from the examination for discovery of Katharine Armitage, dated April 1, 2025, #14.
[561] Spraggs #1, Ex. F; Armitage XFD, qq. 141-202.
[562] Bill 21, s. 30.
[563] Greenberg #1, paras. 50, 146-150, Exs. 61-62.
[564] Spraggs #1, para. 19.

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

406. There are two reasons the Law Society submits s. 7 is inconsistent with self-regulation and self-governance, and is therefore unconstitutional. First, it is antithetical to the concept of self-regulation for the government to impose on the regulator a legislative framework that permits the government to dictate mandatory principles that the board must consider in regulating lawyers. The principles reflect government policy and objectives,[565] not the independent regulator's own view of the public interest in the administration of justice.

407. In addition to being antithetical to the concept of self-regulation, imposing guiding principles on the legal regulator also constrains the act of self-regulation by the board. Mandatory guiding principles constrain the board from carrying out its own assessment of competing public interest objectives in the complex task of regulating lawyers and other legal professions.[566]

408. It is easy to see the risk to independence of the Bar arising from a legislative framework that permits the government to set the principles that guide the regulator when the US example is considered. As the Executive Orders issued by President Trump described above show, the current US government now considers private efforts to increase diversity among groups of lawyers at law firms in the US to be "racial discrimination." The government has attempted to impose its own view of matters of equality, diversity and discrimination on lawyers by Executive Order. Section 7 of Bill 21 is a vehicle through which the government may impose its own political views of the meaning of "principles" on the legal regulator.

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[565] Spraggs #1, Exs. F-G.
[566] Puri Report, paras. 63-65.

409. Secondly, as submitted below, the specific guiding principles imposed by Bill 21 compromise the regulator's impartiality.

Section 7(b) imports government policy into the legal framework of Bill 21

410. Section 7(b) provides that the board must, in exercising its powers and performing its duties, have regard to "supporting reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples."

411. This guiding principle is connected to several further provisions of Bill 21:

(a) s. 21(b) [duties of the CEO] requires the CEO to work in collaboration with the Indigenous council and the board to, among other things, support reconciliation with Indigenous peoples and the implementation of UNDRIP;

(b) s. 22 [reconciliation initiatives] requires the CEO to appoint an employee of the regulator as a person whose role is to lead reconciliation initiatives by the regulator, including initiatives related to reconciliation with Indigenous peoples and the implementation of UNDRIP;

(c) s. 23 [annual report of the regulator] requires the board of LPBC to prepare and publish a report respecting the activities of the regulator in the immediately preceding calendar year, which report must include a description of the consideration given by the regulator, in exercising powers and performing its duties, to the principles set out in s. 7.

(d) s. 26 [Rules – application] provides that "[b]efore making a rule, the board must consult the Indigenous council respecting the extent to which the rule accords with the principles set out in s. 7 (b) and (c)" (emphasis added).

(e) s. 34 [independent review] provides for a review of the extent to which the act, the regulations, and the rules accord with the principles set out in s. 7(b) and (c), culminating in a report that the Attorney General must table in the Legislative Assembly (or file with its clerk) and publish by posting it on a publicly available website.

412. Section 7(b) can be read conjunctively or disjunctively. The Province adopts a disjunctive interpretation of s. 7(b) in its Application Response (i.e. the regulator must have regard to (i) supporting reconciliation and (ii) the implementation of UNDRIP).[567] The Law Society submits that this interpretation is incorrect and the provision should be read conjunctively (i.e. the regulator must have regard to supporting (both) reconciliation and the

[567] See Application Response of the Defendants at paras. 26, 79.

implementation of UNDRIP). The conjunctive interpretation is most consistent with the language of s. 7 (where distinct principles are listed separately) and with similar provisions in other provincial statutes.[568] The Law Society's argument below proceeds on the assumption that 7(b) is interpreted conjunctively. However, this argument applies with equal or even greater force to the disjunctive interpretation.

413. As the Truth and Reconciliation Commission has explained, "the concept of reconciliation means different things to different people, communities, institutions, and organizations."[569] The Law Society does not suggest that reconciliation in a general sense, or in the constitutional sense discussed below, is merely government policy. The Law Society's argument here is that the concept of reconciliation embodied in s. 7(b), coupled with the requirement to support the implementation of UNDRIP, represents government policy, rather than enabling the legal regulator to further its own pursuit of reconciliation as a matter of self-regulation.

414. The guiding principle in s. 7(b) of Bill 21 (and its connection to the related provisions set out above) must be understood in the following context.

415. The SCC has articulated a conception of reconciliation in its constitutional jurisprudence related to s. 35 of the *Constitution Act*, *1982*. The Court has repeatedly explained that "Aboriginal rights are recognized and affirmed by s. 35(1) in order to reconcile the existence of distinctive aboriginal societies prior to the arrival of Europeans in North America with the assertion of Crown sovereignty over that territory."[570] More broadly, the Court has written that "[t]he fundamental objective of the modern law of aboriginal and treaty rights is the reconciliation of aboriginal peoples and non-aboriginal peoples and their respective claims, interests and ambitions." [571] This reconciliation, in a mutually respectful long-term relationship, is "the grand purpose of s. 35 of the *Constitution Act, 1982*".[572]

416. The same concept of reconciliation animates the honour of the Crown, an underlying constitutional principle which "arises from the Crown's assertion of sovereignty over an Aboriginal people and *de facto* control of land and resources that were formerly in the control of that people."[573] The ultimate purpose of the honour of the Crown is "the

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[568] See *Environmental Assessment Act*, SBC 2018, c 51, s. 2(2)(ii); *Professional Governance Act*, SBC 2018, c 47, s. 7(2)(b)(ii).
[569] Honouring the Truth, Reconciling the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada, p. 16.
[570] *R v Gladstone* (1996), 1996 CanLII 160 at para 73 (DLR) (emphasis added). See also *R v Van der Peet* (1996), 1996 CanLII 216 (SCC) at paras 30-43 (DLR); *Delgamuukw v British Columbia* (1997), 1997 CanLII 302 at para 186 (DLR); *R v Desautel*, 2021 SCC 17 at para 22 (SCC).
[571] *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 8 (emphasis added).
[572] *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 10.
[573] *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 66.

reconciliation of pre-existing Aboriginal societies with the assertion of Crown sovereignty."[574]

417. This conception of reconciliation has shaped the constraints imposed upon the government by s. 35 of the *Constitution Act, 1982* and the honour of the Crown, as determined by the SCC. The Court explained in *R. v. Gladstone* that "Aboriginal rights are a necessary part of the reconciliation of aboriginal societies with the broader political community of which they are part; limits placed on those rights are, where the objectives furthered by those limits are of sufficient importance to the broader community as a whole, equally a necessary part of that reconciliation."[575] In *Tsilhqot'in Nation v. British Columbia*, the Court set out a framework for justifying an infringement of Aboriginal rights "that permits a principled reconciliation of Aboriginal rights with the interests of all Canadians"; this framework mirrors the *Oakes* test for *Charter* rights in many respects.[576]

418. Similarly, with respect to the honour of the Crown, the Court in *Haida Nation v. British Columbia (Minister of Forests)* held that the duty to consult and accommodate requires the Crown to "balance Aboriginal concerns reasonably with the potential impact of the decision on the asserted right or title and with other societal interests."[577] In doing so, the Court explained that "[b]alance and compromise are inherent in the notion of reconciliation."[578]

419. This judicial conception of reconciliation continues to develop[579] in a process facilitated and enabled by the zealous arguments of counsel representing the wide range of parties involved in litigation of this nature.

420. The conception of reconciliation adopted by the Truth and Reconciliation Commission echoes in some ways the conception articulated by the courts.[580] The Commission defined reconciliation as "an ongoing process of establishing and maintaining respectful relationships."[581] However, there are also points of difference. For example, in one of its Calls to Action under the heading of "reconciliation", the Commission called upon Canadian governments to repudiate concepts used to justify the assertion of sovereignty over Indigenous peoples and lands,[582] including concepts that this Court quite recently

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[574] *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 (emphasis added).
[575] *R v Gladstone* (1996), 1996 CanLII 160 at para 73 (DLR) (emphasis in original).
[576] *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.
[577] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 50.
[578] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73.
[579] See, for example, *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para. 148.
[580] See, for example, Honouring the Truth, Reconciling the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada, pp. 16-21.
[581] Honouring the Truth, Reconciling the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada, p. 16.
[582] Call to Action 47.

described as "a fundamental part of the framework animating Aboriginal law jurisprudence following 1982".[583]

421. The Commission also called upon Canadian governments to "fully adopt and implement [UNDRIP] as the framework for reconciliation."[584] As the Province notes,[585] the provincial legislature did so by enacting the *Declaration on the Rights of Indigenous Peoples Act* (the ***Declaration Act***).[586] The legislature also amended the *Interpretation Act* to provide that "[e]very Act and regulation must be construed as being consistent with [UNDRIP]."[587]

422. UNDRIP is a non-binding international instrument that presents "a comprehensive delineation of the individual and collective rights of Indigenous peoples."[588] The *Declaration Act* did not implement UNDRIP in British Columbia, and the laws of British Columbia are not presently in alignment with the standards in UNDRIP. These points were argued by the Province and accepted by this Court in *Gitxaala v British Columbia (Chief Gold Commissioner)*.[589] Instead, the *Declaration Act* provides for measures to bring the laws of British Columbia into alignment with UNDRIP. In the words of this Court, the *Declaration Act* "contemplates and acknowledges that there is (current) misalignment between the laws of British Columbia and [UNDRIP]. It also puts steps in place to resolve those inconsistencies."[590]

423. Relatedly, commentators have argued that the standards set out in UNDRIP exceed, at least in some respects, the constitutional standards established by the SCC with respect to s. 35.[591] One prominent point of debate concerns the degree to which the requirement for "free, prior and informed consent" in several articles of UNDRIP exceeds the standards for accommodation and justification established by the Court. In a recent decision, the Federal Court concluded that "the UNDRIP concept of [free, prior and informed consent] requires an enhanced and more robust process" than the duty to consult and accommodate at common law.[592]

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[583] See *Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc*, 2022 BCSC 15 at paras 193-196.
[584] Call to Action 34.
[585] Application Response, para 21.
[586] S.B.C. 2019, c. 44.
[587] *Interpretation Act*, RSBC 1996, c 238.
[588] *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680 at paras 436-437. See also *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 para. 4.
[589] *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680 at paras 444-470. This decision is presently under appeal.
[590] *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680.
[591] See, for example, Nigel Bankes, Implementing UNDRIP: An Analysis of British Columbia's Declaration on the Rights of Indigenous Peoples Act, 2020 53-4 *UBC Law Review* 971, 2020 CanLIIDocs 4082 at 1007 to 1014.
[592] *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319 at para 133. 1. The Court had determined that UNDRIP applied as an "interpretive lens" to the federal Crown's duty to consult and accommodate, by operation of the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, a statute with substantial similarity to British Columbia's *Declaration Act*. In doing so, the Federal Court disagreed

424. Consistent with the *Declaration Act*, the provincial government has taken steps toward implementing UNDRIP. One such step is the BC First Nations Justice Strategy, which the government developed in partnership with the BCFNJ, the First Nations Leadership Council, and others.[593] This Strategy was "developed with meeting the standards of [UNDRIP] at its core, and designed so that its implementation can be co-ordinated with, and supportive of, the processes and efforts that are now being moved forward to implement [the *Declaration Act*], including the development of an action plan to meet the objectives of [UNDRIP] and the alignment of the laws of BC with the standards of [UNDRIP]."[594]

425. Another such step was the inclusion of UNDRIP in Bill 21. During the legislative debate for Bill 21, and speaking with respect to the reconciliation initiatives required under s. 22(a), the Attorney General explained that the government was fulfilling its obligation under the *Declaration Act* by "ensur[ing] that the new regulator "incorporates [UNDRIP] into their work".[595] The Attorney General also explained that the government had worked with BCFNJC to ensure alignment between Bill 21 and UNDRIP.[596]

426. The government's commitment to implementing the *Declaration Act* and UNDRIP is reflected in the Premier's recent mandate letters to provincial Ministers, dated January 16, 2025. Each mandate letter described implementing the *Declaration Act* as the "responsibility of every Minister."[597]

427. The foregoing context demonstrates that the requirement in s. 7(b) for the new regulator to have regard to supporting reconciliation and the implementation of UNDRIP is not co-extensive with the "constitutional imperative" of reconciliation framed by the courts. Instead, it is an expression of government policy about how reconciliation should be achieved. Moreover, to the extent that the requirements of UNDRIP exceed present legal standards, it is a governmental policy that is based on the government's view of what the law *should* be.

428. To be clear, the issue here is not the merits of or justification for the government's policy, but rather the propriety of the government embedding a policy of this kind in the legislation, and in every aspect of the regulator's operations. In essence, the government has made the regulator an instrument of government policy, and the Law Society submits that this is a significant incursion on self-governance and the independence of the Bar.

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with and distinguished this Court's decision in *Gitxaala v British Columbia (Chief Gold Commissioner)*: paragraphs 101-102. Both decisions are presently under appeal.

[593] Spraggs #1, Ex. "F".

[594] Spraggs #1, Ex. "F", p. 8.

[595] Lewis #1, Ex. "I", pp. 183-184 (Hansard of May 15, 2024).

[596] Lewis #1, Ex. 'I", p. 185 (Hansard of May 15, 2024).

[597] Greenberg #4, Ex. 32 (Ministerial mandate letters), pp. 1996-2094.

429. Finally, there is no inconsistency in the Law Society's objection to the guiding principle in s. 7(b) and the Law Society's own efforts and commitment to reconciliation.[598] The Province's suggestion that this contradiction exists[599] misunderstands the critical distinction between a reconciliation policy chosen and carried out by the self-governing legal regulator and one chosen by the government, entrenched in the statute, and carried out by LPBC.

The s. 7(b) guiding principle undermines the regulator's impartiality

430. The reconciliation of Indigenous rights and interests with the rights and interests of all Canadians is one of the defining legal issues of our time. It is also the subject of extensive litigation involving parties from every segment of society. By requiring the regulator to have regard to supporting the implementation of UNDRIP – which sets out standards that are inconsistent with the laws of this province and which arguably exceed constitutional requirements – Bill 21 has given the regulator an institutional position on this issue.

431. As the SCC has explained, "[c]lients — and the broader public — must justifiably feel confident that lawyers are committed to serving their clients' legitimate interests free of other obligations that might interfere with that duty."[600] Guiding principle 7(b) creates an institutional position in the regulator that will necessarily conflict with the legitimate interests of some clients in matters where reconciliation is at issue. Not only does this arrangement create a continuous risk of the regulator imposing rules or other measures that interfere, as a matter of fact, with lawyers' performance of their duties in these matters, but it also gives rise to a reasonable perception of conflict that will undermine the trust and confidence necessary for the solicitor-client relationship.[601] As Gordon Turriff, Q.C. wrote in 2009:

> … In Canada, we believe very strongly that we can't be partners in lawyer regulation with an entity we are bound to challenge on behalf of clients to whom we owe a duty of undivided loyalty. We are afraid that if we lost our independence, by losing self-governance, we could never get it back. We are not afraid for ourselves. We are afraid for those whose interests we could not serve.[602]

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[598] Greenberg #1, paras. 146-150.
[599] Application Response of the Defendants at paras. 81-82.
[600] *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 at para 96. See also *R v Neil*, 2002 SCC 70, para. 12 ("Unless a litigant is assured of the undivided loyalty of the lawyer, neither the public nor the litigant will have confidence that the legal system, which may appear to them to be a hostile and hideously complicated environment, is a reliable and trustworthy means of resolving their disputes and controversies").
[601] *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7.
[602] Greenberg #1, para. 72, Ex. 22.

Measures that undermine the independence of the Bar do not support reconciliation

432. The Indigenous BA suggests that the principles of the independence of the Bar and of reconciliation may operate against each other in the assessment of the scope of the provincial government's jurisdiction under ss. 92(13) and (14) of the *Constitution Act, 1867*.[603] More specifically, the Indigenous BA appears to suggest that measures that interfere with the independence of the Bar may nonetheless be constitutional if these measures support reconciliation. The Law Society respectfully submits that there can be no such conflict between the independence of the Bar and reconciliation, for both legal and practical reasons.

433. Independent lawyers representing courageous Indigenous clients have long played a critical role in advancing the cause of reconciliation. Indeed, the government has tried to interfere with this dynamic in the past. As the Indigenous BA notes: "One does not need to look far back into history to find examples of government intrusion into the independence of the Bar is it relates to the rights and interests of Indigenous people."[604] Independence of the Bar is integral to the administration of justice and any measure that undermines this principle cannot be said to advance a principled understanding of reconciliation. Put another way, measures that undermine the administration of justice do not support the reconciliation of Indigenous and non-Indigenous Canadians in "a mutually respectful long-term relationship."[605] No constitutional principle is subordinate to another; laws must give effect to both independence of the Bar and constitutional principles that support Indigenous rights and interests.

434. Further, this province's lawyers have demonstrated their commitment to advancing reconciliation and the Law Society is already making concerted efforts in this regard, including by answering the Truth and Reconciliation Commission's Call to Action 27 (concerning cultural competency training).[606] As the Attorney General herself acknowledged during the legislative debate for Bill 21, the Law Society has "really put reconciliation as a focus when it comes to making sure that Indigenous voices are heard and represented, even developing a course with respect to a requirement for every lawyer to take with respect to the history of Indigenous people in the province and law."[607] Regardless of the decision this Court reaches with respect to the constitutionality of Bill 21, the legal regulator will be advancing reconciliation.

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[603] Application Response of the Indigenous Bar Association, paras. 32-38.
[604] Application Response of the Indigenous Bar Association at para. 36, referring to the *Indian Act* prohibition on the hiring of legal counsel.
[605] See *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 10.
[606] See Greenberg #1, paras. 146-150.
[607] Lewis #1, Ex. I, p. 181 (Hansard of May 15, 2024).

E. Bill 21 permits the government to regulate the practice of law directly

435. Bill 21 gives Cabinet (through the LGIC) the explicit authority to make regulations designating new legal professions and their scope(s) of practice (ss. 3-4) and regulate exceptions from the prohibition against the unauthorized practice of law (s. 212).

436. Sections 3 and 4 of Bill 21 read as follows (emphasis added):

> **Legal professions**
>
> **3** The following professions are designated as legal professions for the purposes of this Act:
>
> (a) the profession of lawyer;
>
> (b) the profession of notary public;
>
> (c) the profession of regulated paralegal;
>
> (d) a profession designated by regulation.
>
> **Regulations designating legal professions**
>
> **4** (1) For the purposes of section 3 (d) [a profession designated by regulation], the Lieutenant Governor in Council may, on the recommendation of the Attorney General, make regulations designating a profession as a legal profession.
>
> (2) Before making a recommendation under subsection (1), the Attorney General must
>
> (a) consult the board, and
>
> (b) consider all of the following:
>
> (i) whether the designation is likely to facilitate access to legal services in British Columbia without posing a significant risk of harm to the public;
>
> (ii) whether the activities performed in the practice of the profession are similar to, or overlap with, those performed in the practice of law;
>
> (iii) whether failing to designate the profession would undermine the regulator's ability to regulate the practice of law in British Columbia;
>
> (iv) whether the practice of the profession is regulated in other jurisdictions;

(v) whether the designation would have an undue impact on the independence of licensees under this Act.

(3) A regulation made under this section

(a) must specify the activities that a licensee who practises the legal profession may perform in the course of practising law, and

(b) may reserve titles for the exclusive use of a licensee who practises the legal profession.

437. Section 4 must be read together with the following sections:

(a) s. 35, which defines the "practice of law" to include any activity that (a) involves the application of legal principles and legal judgment to the circumstances or objectives of the other person, and (b) requires the knowledge and skill of a person trained in the law, and specifically includes representing another person in court, or in any other proceeding in which legal pleadings are filed or a record is established as the basis for judicial review;

(b) s. 37, which subject to s. 38, prohibits a person from practicing law unless they are licensed by the regulator;

(c) s. 38(1)(i), which exempts a person in a class of persons prescribed under s. 212; and

(d) s. 212, which confers on the LGIC the power to, on the recommendation of the Attorney General, make regulations prescribing classes of persons who are exempt from the prohibition against the unauthorized practice of law.

438. This scheme is devastating to the independence of the Bar, and is therefore unconstitutional for the following reasons:

(a) Each of the "considerations" in s. 4(2)(b) are properly considerations of an independent legal regulator charged with ensuring the availability to the public of a competent and trustworthy Bar. The power to make those decisions in relation to a profession it may create is now conferred on the Attorney General, based on the Attorney General's own conclusions about the regulatory questions in s. 4(2)(b);

(b) In particular, the Attorney General is conferred with the power to decide (and then make a recommendation based on that decision) whether the creation of a new legal profession has an "undue impact" on the independence of licensees. There are two significant problems with this provision: 1) it is the independent regulator, not the Attorney General, that is charged with ensuring the independence of lawyers in the

public interest; and 2) it is clear that the Attorney General has a view of the meaning of "independence" that is not shared by lawyers and does not reflect the scope of lawyers' duties;

(c) Although the Province asserts that the independent regulator will regulate any new profession created under s. 4, that is not the case. Section 38 and s. 212 permit the Attorney General to exempt classes of persons, including classes of persons designated as a profession under s. 4, from the licensing requirement under s. 37, and therefore from the ambit of the legal regulator; and

439. The power vested in the Attorney General by s. 4 (and its related sections) in Bill 21 is unprecedented. This is similar to the type of fragmentation of power that is referred to by the Special Rapporteur in her 2024 Report as a threat to independence of the Bar. It is a type of capture of the independent regulator: it authorizes the government to fragment the authority of the independent regulator if, in its own assessment, it should do so.

440. The policy rationale for conferring on the LGIC the power to create new classes of legal professions by regulation is to "build in some flexibility in case changes in the legal marketplace required that."[608] The preservation of unspecified "flexibility" to create new legal professions and directly regulate them is a sword of Damocles above the head of the legal regulator that clearly preserves to the executive unlimited power to directly regulate the practice of law in the province.

441. In addition to the specific regulation-making powers described above, Bill 21 also gives Cabinet a "general regulation-making authority" to make regulations "respecting any matter for which regulations are contemplated" by the act (s. 211(1)). This general authority is expressly not limited by, and therefore must be additional to, the specific regulation-making authority set out in Bill 21.[609] Further, these Cabinet regulations prevail over rules made by the new governing body in all cases of conflict or inconsistency (s. 214), not just those cases that are explicitly contemplated by Bill 21's grant of overlapping regulation and rule-making power. This means that Bill 21 both contemplates other areas of conflict between Cabinet regulations and the rules, and gives Cabinet paramountcy.

442. Cabinet's general regulation-making power under s. 211(1) of Bill 21 must be examined in light of s. 41(a) of the *Interpretation Act*, which provides in part:

> 41 (1) If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as

[608] Examination for discovery of Katharine Armitage by Craig Ferris, K.C., March 14, 2025, qq. 364. See also qq. 362-367.
[609] Bill 21, ss. 4, 211, 212, 213.

empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to

(a) make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it,

443. Contrary to the Province's suggestion,[610] the Law Society does not argue that s. 211 gives Cabinet the power to make regulations wherever the board can make rules. The Law Society's argument is that s. 211 gives Cabinet a broad and vague power to make regulations that supersede the board's rules, based on Cabinet's assessment of what is "necessary and advisable" for carrying out Bill 21 according to its intent, which intent includes curtailing lawyer independence. There is nothing to stop Cabinet from using this power to regulate lawyers.

444. The Province is unable to posit any meaningful explanation for s. 211's inclusion in the statute.[611] Instead, the Province argues that the provision has no function in Bill 21 at present but rather was included in the statute in case "future amendments" add provisions granting Cabinet the power to regulate in respect of 'prescribed 'things'". The Province makes this argument immediately after pointing out that the legislature does not "speak in vain" and without offering any explanation as to why the legislature could not have added s. 211 in the course of the same "future amendments" that would render it functional. With respect, the Province's argument is a transparent attempt to avoid the issue and should not be given any weight.

ii. Bill 21 creates a prescriptive regime

445. Bill 21 further undermines self-governance and self-regulation by codifying key aspects of legal regulation, taking them out of the hands of the regulator. For example, Bill 21:

(a) Defines "professional misconduct" and "incompeten[ce]" where the *LPA* did not.[612] It also defines "conduct unbecoming" directly where under the *LPA* it was defined as being within the "judgment of the benchers".[613]

(b) Mandates that the new governing body establish a *binding* code of professional conduct (to be approved by the transitional Indigenous council),[614] whereas the present *Code* is an instructive guide for lawyers.

(c) Codifies many of the present rules concerning complaints and discipline (ss. 73-92).

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[610] Application Response of the Defendants, paras. 101-103.
[611] See Application Response of the Defendants, para. 104.
[612] Bill 21, s. 68.
[613] *Legal Profession Act,* S.B.C. 1998, c. 9, s. 1.
[614] Bill 21, s. 68, ss. 70-71.

446. These provisions of Bill 21 attack both the theory and the practice of self-regulation and self-governance of lawyers. These provisions (and the balance of Bill 21 that is based on these provisions) are unconstitutional because they are inconsistent with the public's access to the courts through an independent Bar.

VIII. REMEDY SOUGHT

A. Declaration of invalidity

447. Provincial Bars are constitutional institutions protected by ss. 97 and 98 of the *Constitution Act, 1867*. Those sections, together with ss. 96, 99, 100 of the *Constitution Act, 1867* and ss. 7, 10(b) and 11(d) of the *Charter* imply the independence of the Bar as an underlying constitutional principle. Self-governance by elected lawyers, and self-regulation guided by the board's determination of what is in the public interest in the administration of justice are the essential conditions that preserve and protect independence of the Bar, and the rights contained in the written text of the *Constitution*.

448. It is not open to the provincial Legislature to unilaterally enact legislative changes that impair the essential characteristics of self-governance and self-regulation.[615] Bill 21 does so by imposing on lawyers a governance structure that does not ensure lawyers are governed by elected lawyers; and by imposing a system of self-regulation that does not enable the board to determine what is in the public interest in the administration of justice, free from interference in the political sense.

449. As a result, the core sections of Bill 21 (e.g. ss. 3, 4, 5, 6, 7, 8, 10, 29, 30), and therefore the entirety of the act, are inconsistent with the Constitution, and under s. 52 are invalid to the extent of the inconsistency.

B. The Constitutional Defects in Bill 21 are not remediable by judicial review

450. The Province submits that the Court should presume any discretion under Bill 21 will be exercised constitutionally, and any unconstitutional exercise of discretion will be subject to judicial review,[616] so there is no basis for a declaration of invalidity of Bill 21. We reserve the right to reply more fully to this point in further submissions. However, as set out above, the Law Society's arguments concern the content of the statute itself, including the discretionary powers it bestows, not the exercise of discretion under the statute.

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[615] Rowe and Oza, "Structural Analysis", at 222.
[616] Application Response, para. 72.

451. In any event, there are at least three additional reasons why this submission should be rejected. First, the constitutionality of legislation is a justiciable question, and must be so:

> The question of constitutionality of legislation has in this country always been a justiciable question. Any attempt by Parliament or a Legislature to fix conditions precedent, as by way of requiring consent of some public officer or authority, to the determination of an issue of constitutionality of legislation cannot foreclosure the Courts merely because the conditions remain unsatisfied.[617]

452. Second, this Court should reject the proposition that the defence of the basic principles that guarantee the public's access to independent courts rests on the good faith exercise of discretion. Protection of our constitutional institutions and their underlying principles relies on a system of checks and balances, not on the good faith of those that govern our political institutions.[618]

453. Third, the public must have confidence that there are in fact systems and rules in place to uphold and protect rights. If the public loses that confidence, the legitimacy of the court's resolution of disputes is also undermined.

C. Interim injunction

454. The defendants have assured this Court that the LGIC will not bring the remainder of Bill 21 into force, and therefore trigger the formation of LPBC, until the transitional planning process is complete.[619] The workplan published by the transitional board and transitional Indigenous council contemplates that transitional planning will be complete by April 2026.[620] As a protective measure, and if necessary, the Law Society intends to seek an order at the hearing of this application that the LGIC is enjoined from bringing the balance of Bill 21 into force until 30 days after the determination of this application.

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[617] *AG Can* at 326.
[618] Greenberg #3, Ex. 55 (IBA Task Force Report), p. 1679.
[619] *Law Society of British Columbia v. British Columbia*, 2024 BCSC 1292 at para. 111.
[620] Spraggs #1, Ex. U (LPBC Transition Board and Transition Indigenous Council – Agenda, March 19, 2025), pp. 37-42.

All of which is respectfully submitted, July 31, 2025.

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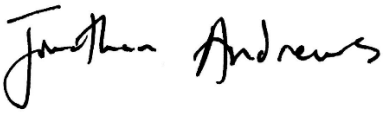

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