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 IN CANADA, SOCIETY OF NOTARIES PUBLIC OF BRITISH COLUMBIA, LAW FOUNDATION OF BRITISH COLUMBIA, and LAW SOCIETY OF MANITOBA

INTERVENORS

No. S-243325
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA and KEVIN WESTELL

PLAINTIFFS

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, the ATTORNEY GENERAL OF BRITISH COLUMBIA, and the LIEUTENANT GOVERNOR IN COUNCIL

DEFENDANTS

AND:

CANADIAN BAR ASSOCIATION, INDIGENOUS BAR ASSOCIATION IN CANADA, SOCIETY OF NOTARIES PUBLIC OF BRITISH COLUMBIA, LAW FOUNDATION OF BRITISH COLUMBIA, and LAW SOCIETY OF MANITOBA

INTERVENORS

WRITTEN SUBMISSIONS OF THE INDIGENOUS BAR ASSOCIATION IN CANADA
(Summary Trial Applications pursuant to Rule 9-7 of the Supreme Court Civil Rules)

TABLE OF CONTENTS

WRITTEN SUBMISSIONS OF THE INDIGENOUS BAR ASSOCIATION

PART I. Overview

1. These are the written submissions of the intervenor, the Indigenous Bar Association in Canada (the "**IBA**") in response to the summary trial applications filed by the Law Society of British Columbia (the "**Law Society**") in BCSC action no S-243258, Vancouver Registry (the "**Law Society Action**"), and by the Trial Lawyers Association of British Columbia (the "**TLABC**") in BCSC action no S-243325, Vancouver Registry (the "**TLABC Action**").

2. The IBA intervenes in these actions to make four main submissions, as outlined in its application response filed April 25, 2025 in the Law Society Action.

a. First, a general notion of the independence of the bar is not a constitutional principle that is capable of being enforced in the abstract or used to invalidate legislation. The principle of the independence of the bar manifests in discrete ways, such as in the principles of fundamental justice analysis. These established principles relate to a lawyers' vital role in the administration of justice, such as solicitor-client privilege, or the duty of loyalty.

b. Second, even if the independence of the bar can be used to invalidate legislation, Bill 21 does not, through its 'guiding principles' or the creation of the Indigenous council, undermine the principle when properly understood and construed. The principle of independence of the bar is distinct from the tradition of self-regulation of the legal profession. Self-regulation in the sense asserted by the Law Society – which is to say self-governance free from any non-lawyer influence – is overly broad, and not necessary for the independence of the bar. Bill 21's guiding principles and the Indigenous council do not intrude on the ability of lawyers to discharge their fundamental fiduciary and ethical obligations, through which the independence of the bar finds expression.

c. Third, to the extent that the principle of the independence of the bar is used as a tool to interpret the parameters of s. 92 of the *Constitution Act, 1987*, there are other important principles that must also be considered. These include the principles of reconciliation,

the Honour of the Crown, and the UN Declaration on the Rights of Indigenous People ("**UNDRIP**").

d. Fourth, even if there was a risk that the Indigenous council could – through its participatory and consulting role – undermine the independence of the bar, that would be solely due to the improper exercise of the statutory powers created by Bill 21. There are other appropriate mechanisms to ensure this does not occur, for example judicial review, and the mere existence of the statutory power does not in and of itself invalidate the legislation.

3. The IBA adopts and relies on its application response materials filed in the Law Society Action. These written submissions are focused on addressing in greater detail two arguments made in the plaintiffs' written submissions, relating to the Indigenous council and the guiding principles found in section 7(b) of Bill 21.

4. The first issue addressed in these written submissions is the argument made by both plaintiffs to the effect that the Indigenous council creates a model of co-governance and co-regulation, and represents government policy, such that it interferes with the regulation and governance of the legal profession, and therefore interferes with the independence of the bar.[1]

5. The second issue addressed in these written submissions is the argument made by the Law Society to the effect that the guiding principles found in section 7(b) of Bill 21 (that the regulator have regard to supporting reconciliation and implementing UNDRIP) represent the imposition of government policy, and constrain the new regulator such that they improperly interfere with the independence of the bar.[2]

6. At a high level, the IBA's position on these two issues may be summarized as follows.

7. With respect to the first issue, the Indigenous council does not create a model of co-governance or co-regulation that interferes with the independence of the bar. The powers and role of the Indigenous council are prescribed by Bill 21, and are limited in scope. A distinction can also be drawn between the participation of the Indigenous council in the regulation of the legal

[1] Law Society written submissions, paras. 396-404; TLABC written submissions, paras. 130-139
[2] Law Society written submissions, paras. 405-434

profession, and the form of external, governmental political or partisan interference that is capable of undermining the independence of the bar.

8. With respect to the second issue, the guiding principles found in section 7(b) of Bill 21 are laudable aims that further reconciliation, and do not require the regulator to take any specific actions or implement any specific measures to further these principles. The Law Society has itself already implemented measures in its governance of the profession that are aimed at furthering the guiding principles in section 7(b) of Bill 21, without concern that doing so could negatively impact the independence of the bar.

PART II. Response to the plaintiffs' arguments about the impact of the Indigenous Council on the independence of the bar

A. Summary of the plaintiffs' positions

9. Broadly speaking, both the Law Society and the TLABC object to the role of the Indigenous council in the regulation of lawyers on the basis that: a) the independence of the bar is an unwritten principle of the Constitution; b) self-governance and self-regulation are essential conditions of independence of the Bar; and c) the Indigenous council creates a model of 'co-regulation' and 'co-governance' that impermissibly intrudes on the ability of lawyers to self-govern and self-regulate, and therefore the independence of the bar.

10. The Law Society also takes the position that the creation of the Indigenous council represents the implementation of government policy[3], and is therefore improper.

11. The IBA's position is that there is no broad notion of independence of the bar capable of being enforced in the abstract. Not all constraints on the governance and regulation of lawyers constitutes an intrusion into the independence of the bar, and the role played by the Indigenous council – which is prescribed by Bill 21 – enhances, not diminishes, the independence of the bar.

[3] Law Society written submissions, paras. 402-404

B. It is questionable whether independence of the bar is an unwritten constitutional principle, at least in the manner articulated by the plaintiffs

12. An independent bar must be free from state influence that would prevent lawyers from serving their clients' legitimate interests free of other obligations that might interfere with that duty.

13. To be independent, lawyers and the legal profession need to be free, and seen to be free, from state interference, in the *political sense*, in the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law.[4]

14. However, the IBA does not agree with the plaintiffs' articulation of a broad notion of independence of the bar that exists as a free-standing, unwritten constitutional principle.

15. The case law contains many examples of passages espousing the importance of the independence of the bar as a general, overarching principle. However, as an enforceable principle, independence of the bar manifests in a number of concrete legal principles that are protected as fundamental to the proper administration of justice. These legal principles relate to the discharge of a lawyer's fiduciary and ethical obligations that have both a private and public dimension.

16. In *Canada (Attorney General) v. Federation of Law Societies of Canada*[5], the Court drew a distinction between the broad proposition that independence of the bar means that lawyers "are free from incursions from any source, including from public authorities", and the narrower proposition concerning state interference with the lawyer's commitment to the client's cause[6]. In *Federation of Law Societies of Canada*, the Court agreed that the legislative scheme at issue in that case unreasonably interfered with the narrow proposition – that is, a lawyer's duty of commitment to the client's cause, which the Court found was a principle of fundamental justice that deserved protection.[7] The Court did not accept the broad proposition in that case, and while it did definitely foreclose it as a principle of fundamental justice, it cast considerable skepticism as to whether it could be such a principle.[8] *Federation of Law Societies of Canada* was also a *Charter*

---

[4] *Canada (Attorney General) v. Law Society (British Columbia)*, 1982 CanLII 29 (SCC), [1982] 2 S.C.R. 307 at 335–336
[5] 2015 SCC 7 [*Federation of Law Societies*]
[6] *Federation of Law Societies of Canada*, para. 77
[7] *Federation of Law Societies of Canada,* para. 97
[8] *Federation of Law Societies of Canada,* para. 80

challenge and the narrow conception of the principle of the independence of the bar was used as a principle of fundamental justice in the context of a section 7 claim. In this case, the TLABC is not alleging that the Indigenous Council breaches s. 7 of the *Charter*. Indeed, both plaintiffs say the broad conception of the independence of the bar is an unwritten constitutional principle, and say the Indigenous council is contrary to such a principle. As the Law Society acknowledges, such principles are used as interpretive aids, and cannot invalidate legislation.[9]

17. No previous authority establishes that such an unwritten principle exists. Indeed, the Federal Court of Appeal declined to find such a principle existed when the Law Society of Upper Canada made similar submissions that the independence of the bar is an unwritten constitutional principle derived from the independence of the judiciary.[10]

C. The Indigenous council does not infringe the independence of the bar

18. Assuming for the sake of argument that independence of the bar is an unwritten principle of the Constitution, and assuming that the principle requires the 'self-regulation' and 'self-governance' of the legal profession, it does not follow that preserving that independence requires protection from *any* legislative constraint whatsoever on the regulatory and governance regime of the profession.

19. In the context of this case, direct government control over the regulation and governance of the legal profession could very well undermine the perceived and actual independence of the bar. For example, in a system of direct government control, political or partisan government influence or interference could manifest itself in the form of rules or the threat of discipline that could interfere with, or be seen to interfere with, a lawyer's ability to represent clients.

20. However, preserving independence of the bar does not go so far as requiring that lawyers be placed above the law, to self-govern and self-regulate free from *any* legislative constraints whatsoever.

---

[9] Law Society written submissions, paras. 58-60; *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 [*Toronto*], paras. 49-63

[10] *Law Society of Upper Canada v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 243 , para. 47

21. In this case, the plaintiffs allege that one source of intrusion into the independence of the bar arises from the role of the Indigenous council in the regulation of the legal profession. The role of the Indigenous council is prescribed by section 30 of Bill 21, as follows:

> "30. The role of the Indigenous council is to
>
> (a) advise, and work in collaboration with, the board, the chief executive officer, the person appointed under section 22 (1) [reconciliation initiatives] and the tribunal chair on any matter relating to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the regulation of the practice of law in British Columbia, including the following matters:
>
> (i) the incorporation of Indigenous legal traditions and Indigenous practices into the practices and procedures of the regulator and of the tribunal;
>
> (ii) the systemic challenges faced by Indigenous persons that require investigation and action by the regulator,
>
> (b) advise on the following matters:
>
> (i) a matter which, under this Act, requires consultation with the Indigenous council;
>
> (ii) a matter referred to the Indigenous council by the board or the chief executive officer,
>
> (c) participate in the regulator's strategic planning processes,
>
> (d) advise the board on the appointment of Indigenous members of the licensing committee, the discipline committee and the tribunal, and
>
> (e) exercise the approval powers conferred on the Indigenous council by this Act."

22. Under section 94 of Bill 21, the board may make rules for the use of alternative resolution processes in the resolution of discipline and competence matters. Those may include rules that reflect or are influenced by Indigenous practices in relation to dispute resolution, which rules must be developed in collaboration with and approved by the Indigenous council.[11]

23. There is nothing unconstitutional about the Indigenous council having the limited power to approve board rules that reflect or are influenced by Indigenous practices. Granting this power to the Indigenous council to include an Indigenous perspective in the creation of rules that reflect Indigenous practices does not undermine the independence of bar.

---

[11] Section 94, Bill 21

24. Under section 131 of Bill 21, the tribunal must make rules that are designed to meet the specific needs of Indigenous persons who are parties to, or witnesses in, a proceeding before the tribunal, and those rules must be approved by the Indigenous council.[12] Again, the power to approve tribunal rules that are designed to meet the specific needs of Indigenous persons involved in tribunal proceedings is limited and does not undermine the self-regulation of the legal profession to an extent that would render it unconstitutional.

25. Finally, under section 226 of Bill 21, the transitional Indigenous council must approve the first rules of the board.[13] The fact that the transitional Indigenous council has the power to approve the first set of rules is of little moment. Under section 27 of Bill 21, the new board, once constituted, may make any rules it considers necessary or advisable for the performance of the duties of the regulator. There is nothing that undermines self-governance or self-regulation in ensuring an Indigenous voice in the creation of the first set of rules by the board.

26. Notably, the role of the transitional Indigenous council is also limited and prescribed by section 224(4) of Bill 21, as follows:

> "(4) The role of the transitional Indigenous council is the role described in section 30 [role of Indigenous council], as that role relates to the transition from the operation of the former Acts to the operation of this Act."

27. The provisions of Bill 21 set out above create a statutory framework that delineates and limits the role of the Indigenous council in the governance and regulation of lawyers. The mandate of the Indigenous council is to assist the regulator by providing advice, working in collaboration with the regulator, and exercising approval power over a very limited range of rules that fall within the clear purview of the Indigenous council.

---

[12] Section 131, Bill 21
[13] Section 226, Bill 21

D. The regulatory framework may create the potential for governmental intrusion into the independence of the bar, but that does not ground a constitutional challenge

28. Given the limited and carefully prescribed power of the Indigenous council to approve rules within the purview of its mandate, relating to rules that engage the specific interests of Indigenous lawyers, there is no inherent or structural risk that the Indigenous council will interfere with the independence of the bar.

29. At most, the plaintiffs raise the prospect of the risk that the Indigenous council be involved in the creation of rules that then result in an erosion of the independence of the bar. This possibility is difficult to envision, given the extremely narrow scope of approval power granted to the Indigenous council.

30. With respect, the fact that the structure of the regulatory framework itself creates a potential risk of action that could undermine the independence of the bar is distinct from that framework being utilized in a manner that actually undermines the independence of the bar. In other words, the potential for a problematic exercise of statutory power is distinct from an actual, purported, or proposed exercise of that power. Judicial review is the proper mechanism to ensure the appropriate use of statutory power[14].

E. Including members of First Nations on the Indigenous council does not create a model of co-governance by First Nations

31. While not a central part of the IBA's submission, it is necessary to briefly respond to the TLABC's argument that the transitional Indigenous council represents a form of direct 'self-governmental' co-governance of lawyers by First Nations. The TLABC argues, at para. 137 of its written submissions, that: "[r]egulation by a self-government is no less of a danger than regulation by a Crown government… Bill 21's transitional provisions give members of First Nations direct control over the rules governing the conduct of counsel charged with advocating for or against their interests. That those members are not "representing" their nations, or that their involvement furthers reconciliation, is beside the point. Their effective veto over the rules of professional conduct of lawyers is a plain violation of the independence of the bar". With respect, this submission is misguided and ought to be given no weight by the court.

---

[14] See e.g. *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, paras. 87-88

32. There is no proper analogy that can be drawn between the threat to the independence of the bar caused by the state directly regulating lawyers, and there is no merit to the suggestion that permitting members of First Nations to participate in the regulation of lawyers creates any threat to the independence of the bar merely because some of the members of the Indigenous council might be members of First Nations.

33. The fact that a person is a member of a First Nation does not create any inherent potential for bias or conflict of interest, nor otherwise impair their ability to properly fulfill the mandate of the Indigenous council, particularly when one considers the role and mandate of the Indigenous Council. This is not a situation where a member of a First Nation would be involved directly in the discipline of a lawyer acting against that First Nation. The fallacy of the TLABC's reasoning is apparent when one considers the appointment of judges. There is obviously no doubt that lawyers of all different racial, cultural, and religious backgrounds may be appointed judges – including members of First Nations – without raising any fear that these aspects of a judge's identity will impede or erode the independence of the judiciary.

PART III. Response to the Law Society's arguments about the guiding principles contained in section 7(b) of Bill 21

A. Summary of the Law Society's position

34. The Law Society objects to the inclusion of the guiding principles in section 7(b) of Bill 21, on the basis that these principles reflect government policy objectives[15], and constrain the regulator's impartiality.[16]

35. The Law Society makes two broad submissions in support of its position. First, that that the requirement to have regard to implementing UNDRIP in s. 7(b) is not 'coextensive' with the "constitutional imperative" of reconciliation framed by the courts, but rather an expression of government policy about how reconciliation should be achieved, or of what the law ought to be.[17]

36. Second, that by requiring the regulator to have regard to supporting the implementation of UNDRIP constrains the independence of the regulator and forces the regulator to take an

[15] Law Society written submissions, para. 406
[16] Law Society written submissions, para. 409
[17] Law Society written submissions, para. 427

'institutional position' on this issue. The Law Society argues that this mandated position will necessarily conflict with the legitimate interests of some clients in matters where reconciliation is at issue.[18]

B. The inclusion of the guiding principles in section 7(b) of Bill 21 is not the imposition of government policy

37. Section 7(b) of Bill 21 reads as follows:

> In exercising powers and performing duties under this Act, the regulator must have regard to the following principles:
>
> […]
>
> (b) supporting reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples;

38. There is nothing in section 7, nor in the balance of Bill 21, that prescribes *how* the new regulator ought to interpret or give effect to section 7(b), nor how it ought to have regard to the principle of supporting reconciliation and implementing UNDRIP in the regulation and governance of lawyers.

39. In the context of Bill 21, the regulator is only concerned with having regard to these principles in the context of regulating and governing the legal profession, in collaboration with the Indigenous council.

40. The import of section 7(b) is that the regulator must simply have regard to this principle in the context of governance and regulation of lawyers, without prescribing how it must do so. The creation of the Indigenous council and its mandate under section 29 of Bill 21 means that how the regulator gives effect to the principle will be developed in collaboration and with the advice of the Indigenous council.

---

[18] Law Society written submissions, para. 431

41. Section 29 of Bill 21 provides that the Indigenous council will provide advice to the regulator on any matter relating to the implementation of UNDRIP in the context of the regulation of the practice of law in British Columbia, including i) the incorporation of Indigenous legal traditions and Indigenous practices into the practices and procedures of the regulator and of the tribunal; and ii) the systemic challenges faced by Indigenous persons that require investigation and action by the regulator.

42. The Truth and Reconciliation Committee's ("**TRC**") Call to Action #27 specifically calls upon the Federation of Law Societies to ensure that all lawyers in Canada receive cultural competency training, and skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism. This directly intersects with the regulation and governance of the legal profession by the new regulator.

43. Further, numerous Calls to Action relate to improving the administration of justice, by undertaking reforms to justice system (in particular the criminal justice system) designed to address the overrepresentation of Indigenous people in the system, improve sentencing outcomes for Indigenous offenders, provide support and access to justice for Indigenous litigants, and further the goal of reconciliation. Implementing these Calls to Action necessarily require the participation and involvement of lawyers and judges.

44. This fact has been recognized by the Law Society, who has publicly taken the position that implementing the TRC's Calls to Action, specifically #27 and #28, speak specifically to the legal profession, involve a number of broad legal issues impacting Indigenous people, and "[t]he implementation of recommendations related to these issues largely depends on the engagement of lawyers".[19]

45. Further, Call to Action #50 calls for the establishment of Indigenous law institutes "…for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada". The creation of such institutions is not possible without a legal profession comprising independent lawyers with the training, skills, and desire to further these objectives.

---

[19] https://www.lawsociety.bc.ca/about-us/priorities/truth-and-reconciliation/background-and-history/

46. The Law Society has itself taken steps to implement the TRC's Calls to Action, UNDRIP, and to further reconciliation. In 2022 the Law Society adopted a Framework Agreement, designed to "…[support] the advancement of the principles set out in the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), the First Nations Justice Strategy, and the Truth and Reconciliation Commission's Calls to Action".[20]

47. The Law Society's Framework Agreement states that it hopes the principles developed therein "…will influence the protection of Indigenous interests in the new legislation that is being developed by the Province".[21] The IBA submits that the Indigenous council, and the guiding principles in section 7(b) of Bill 21 are consistent with the Framework Agreement, and assist with protecting Indigenous interests and perspectives in Bill 21.

48. Indeed, the Law Society itself points to its own measures to say that it "clearly does not object to policies and laws that further reconciliation".[22] Yet at the same time it takes issue with the fact that the government has a "policy" and a "law" that guides the regulator to support reconciliation. The Law Society's argument essentially boils down to the fact that reconciliation may be implemented through policies and laws that applies to everyone else except lawyers – but for lawyers, reconciliation is voluntary.

49. In any event, section 7(b) of Bill 21 does nothing more than require the new regulator to consider the same considerations that have already been adopted by the Law Society, without prescribing how it must do so. The Law Society's submissions that section 7(b) prescribes a particular "concept" of reconciliation has no merit.[23]

---

[20] https://www.lawsociety.bc.ca/about-us/priorities/truth-and-reconciliation/indigenous-framework-and-principles/
[21] https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/IndigenousFramework.pdf, at page 3
[22] Law Society written submissions, para. 404
[23] Law Society written submissions, para. 413

50. The Law Society also says that the combination of how section 7(b) speaks both to reconciliation and the implementation of UNDRIP is "policy".[24]

51. Reconciliation is not a matter of government "policy" as asserted by the Law Society; it is the "grand" purpose of section 35 of the *Constitution Act, 1982*,[25] which lawyers in the Province have sworn to uphold upon being called to the bar. Relatedly, the Honour of the Crown is a *sui generis* unwritten constitutional principle.[26] These are well-established constitutional and legal principles.

52. Nor is the implementation of UNDRIP a matter of government "policy". The Province, through the *Declaration Act*, has affirmed the application of the UNDRIP to the laws of BC[27], which requires the government to take "all measures necessary" to ensure the laws of BC are consistent with UNDRIP[28]. It is difficult to see how the Law Society can seek to have the guiding principles declared unconstitutional without having the *Declaration Act*, which obliges the Province to take all measures necessary to ensure its laws are consistent with UNDRIP, also declared unconstitutional.

PART IV. In the context of s. 92 of the *Constitution Act, 1987*, furthering reconciliation must be considered together with the independence of the bar

53. The Law Society argues that measures that interfere with the independence of the bar cannot be justified as constitutional regardless of whether these measures support reconciliation. The Law Society submits that there can be no such conflict between the independence of the bar and reconciliation, for both legal and practical reasons. 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.

54. The argument made by the IBA is not that Indigenous rights and interests ought to take precedence over the independence of the bar. It is that the principle of the 'independence of the bar' ought to be construed in such a way that it accords with the goal of furthering reconcilation.

---

[24] Law Society written submissions, para. 413
[25] *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 S.C.R. 103, at para. 10
[26] *Toronto*, para. 62
[27] *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44 [*Declaration Act*], s. 2(a)
[28] *Declaration Act*, s. 3

It is a question of incorporating reconciliation into a modern expression of the independence of the bar.

55. Much has been written by the Law Society and the TLABC, and others, about the lengthy history in this country of an independent bar, and of the fundamentally important role that an independent bar plays in preserving public confidence in the administration of justice, and access to the courts.

56. The IBA agrees with these sentiments, but notes that traditionally, the concept of the independence of the bar has been formaluted without consideration of an Indigenous perspective.

57. For many Indigenous people, the Canadian legal system has been used as a means to colonize Indigenous lands, peoples, and communities[29], as a tool of colonial policy against Indigenous people. As set out in the IBA' application materials, one does not need to look far back into history to find examples of government intrusion into the independence of the bar as it relates to the rights and interests of Indigenous people.[30] Well known examples include the ban on potlaches, and the prohibition on hiring legal counsel contained in section 141 of the *Indian Act*.

58. In its final report, the TRC found that: "[u]ntil recently, Canadian law was used by Canada to suppress truth and deter reconciliation. Parliament's creation of assimilative laws and regulations facilitated the oppression of Aboriginal cultures and enabled the residential school system… In addition, the right of Aboriginal communities and leaders to function in accordance with their own customs, traditions, laws, and cultures was taken away by law. Those who continued to act in accordance with those cultures could be, and were, prosecuted. Aboriginal people came to see law as a tool of government oppression".[31]

59. Indigenous people are porportionally underrepresented in the legal profession, and this underrpresentation has a broad impact, on *inter alia*, the development of Aboriginal law, and the ability of the courts to fuflill their obligation to take into account the Indigenous legal perspectives

---

[29] Guide for Working with Indigenous People, Law Society of Ontario, at page 42; https://lawsocietyontario-dwd0dscmayfwh7bj.a01.azurefd.net/media/lso/media/legacy/pdf/g/guide_for_lawyers_working_with_indigenous_peoples_may16.pdf

[30] For example, section 141 of the *Indian Act* that prohibited the hiring of legal counsel

[31] TRC Summary of the Final Report, page 202

and make space for Indigenous legal orders[32]. It also affects the confidence and trust in the legal system, especially by Indigenous persons.

60. A number of learned authors, including former Chief Justice Lance Finch, have written about the lack of Indigenous representation in the practice of law. In "The Duty to Learn", Chief Justice Finch makes the point that "…most legal practitioners are neither Aboriginal nor academically trained in the investigation of Aboriginal cultures— [which] has significant implications for the development of Aboriginal law, whether in terms of rights and title recognition, or with regard to the project of incorporating Indigenous legal principles into the common law".[33]

61. The Law Society has recognized that it is a colonial institution that relies on policies and processes that are often inconsistent with Indigenous legal principles regarding dispute resolution. The Law Society also acknowledges the oppressive role that the colonial legal system has played, and continues to play, in the lives of Indigenous people, and the role the Law Society plays within that legal system.[34]

62. Any conceptualization of the independence of the bar must account for an Indigenous perspective, and be expressed in such a way so as to further reconciliation. Accepting that it is unconstituitonal for the legal profession to be guided by a principle to "support reconciliation" continues the dishonourable history of the legal profession in ignoring Indigneous people and their perspectives.

[32] See for example *The Duty to Learn,* by The Honourable Chief Justice Lance S.G. Finch
[33] *The Duty to Learn,* p. 2.1.1
[34] https://www.lawsociety.bc.ca/about-us/priorities/truth-and-reconciliation/why-truth-and-reconciliation-matters/

63. The Indigenous council, and the guiding principles in section 7(b) of Bill 21 are consistent with UNDRIP, in particular Article 4[35]. In addition, they further the particpation and involvement of Indigenous people in the administration of justice, enhance access to justice, and increase confidence in the legal profession. These measures serve the public interest, further goal of reconciliation, and the implementation of UNDRIP[36] and the TRC's Calls to Action. As such, these measures are not only consistent with, but indeed strengthen, the independence of the bar.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: August 20, 2025

Signature of lawyers for the Indigenous Bar Association in Canada,
Declan C. Redman and David W. Wu

[35] Article 4: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

[36] In particular Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.