NO. S243258
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 the LIEUTENANT GOVERNOR IN COUNCIL OF BRITISH COLUMBIA

DEFENDANTS

AND:

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

INTERVENORS

WRITTEN SUBMISSIONS OF THE CANADIAN BAR ASSOCIATION

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Judge:	Chief Justice Skolrood
Time estimate:	14 days
Submissions by:	Canadian Bar Association ("**CBA**")

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PART 1 – OVERVIEW

1. The Constitution promises everyone in Canada access to independent courts, a fair trial and a right to counsel, and the rule of law. But these promises ring hollow without an independent bar. The independent bar gives substance to these constitutional promises by advising and advocating for their clients fairly, vigorously, and independently. But the *Legal Professions Act*, S.B.C. 2024, c. 26 ("**Bill 21**") erodes this necessary independence in a way that violates the Constitution. It should therefore be declared to be of no force or effect.

2. Every day, lawyers across the country advise their clients on their legal rights and duties and advocate for their clients in courts and tribunals of all kinds. They help their clients draft wills to provide for their loved ones, defend their clients against allegations of criminal misconduct, and advocate for their clients in immigration proceedings seeking their removal. In all these varied contexts, one thing remains constant: lawyers must advise and advocate for their clients *independently*.

3. This independence is essential given the basic duties that every lawyer in Canada must observe, respect, and uphold. For example, lawyers across Canada must show unwavering loyalty to their clients, provide fearless and resolute advocacy for their clients, and meet the strictest standards of confidentiality and privilege. These uncompromising duties protect and promote the integrity of the lawyer-client relationship, the foundation on which our justice system rests. The trust that underpins that relationship—and, by extension, our justice system as a whole—depends not only on the assurance, but also on the well-founded belief, that lawyers are, and will always remain, free from any control or influence by anyone else—including, and perhaps especially, the state itself.

4. This independence makes the rule of law—a well-recognized constitutional principle—possible. The rule of law would mean nothing without an independent bar charged with advising and advocating for their clients independently, free from any state control or influence. This independence allows lawyers to hold state

actors to account on behalf of their clients and ensure those clients fully enjoy their legal rights and fully comply with their legal duties. Only independent lawyers and independent judges drawn from that bar can safeguard the rule of law in Canada.

5. This independence must not only exist in fact, but also be manifest to the public. Much like the appearance of judicial independence, the appearance of lawyer independence, both at an individual level *and* at an institutional level, is vital to public confidence in the justice system. Even the perception of state control or influence over individual lawyers or the bar as a whole could deter people from seeking legal advice, chill vigorous advocacy, and impede access to justice—the very thing the province says it aims to promote. People must therefore *have* an independent bar, and also *perceive* that they have an independent bar.

6. Self-regulation—regulation of lawyers by lawyers—is a precondition to this independence. To be self-regulating, the board of the regulator must comprise a substantial majority of lawyers who are elected by lawyers. This self-regulation ensures that lawyers remain answerable to their peers and to the public, not to the state. It ensures that the bar is now, and will always remain, institutionally independent. It creates an essential structural guarantee of independence.

7. Bill 21 undermines these constitutional imperatives, with serious and lasting consequences. By eliminating self-regulation and giving the state new powers and control over the regulation of lawyers in the province, Bill 21 compromises both independence and the appearance of independence. This legislative overreach threatens the public's confidence in the administration of justice and fails to meet the constitutional standard required to protect the independence of the bar.

8. Claiming to protect independence of "the legal profession"—but not lawyers as a distinct profession—does not solve the problem. While notaries and paralegals play an important role in our justice system, neither group has the same constitutional imperative for institutional independence from the government as lawyers do. Neither is called upon to act as a resolute advocate for their clients in

adversarial matters against the government. And Bill 21 does not guarantee that notaries or paralegals will play the same role, or uphold the same duties of loyalty and commitment to a client's cause, as lawyers.

PART 2 – FACTS

A.) The CBA

9. The CBA is the voice of Canada's legal profession. The CBA was formed in 1896 and incorporated by an Act of Parliament in 1921. It represents more than 40,000 lawyers, jurists, Québec notaries, academics, and law students across Canada, with members and branches in every province and territory.

10. The CBA's mandate includes protecting lawyers' professional interests, ensuring high ethical standards for the practice of law, promoting access to justice in both official languages, and promoting public confidence in the administration of justice.

B.) Bill 21's history

11. As described below, Bill 21 was enacted without meaningful consultation with the very people it would directly regulate. After the government published a high-level discussion paper, it gave lawyers no opportunity to comment on the actual text of the proposed bill. Instead, the legislature passed the bill with little debate.

12. In March 2022, the province first announced its intention to change the *Legal Profession Act*, S.B.C. 1998, c. 9 (the "***LPA***").[1] Six months later, the province released an Intentions Paper with only a high-level discussion of the province's general policy objectives.[2]

[1] Affidavit #1 of Brook Greenberg, KC, made May 24, 2024 [**Greenberg Affidavit #1**] at para. 76, Exhibit 23.

[2] Greenberg Affidavit #1, at para. 77, Exhibit 24.

13. Over the following months, this paper garnered several responses from regulatory bodies and professional organizations, including the CBA's B.C. branch.[3] In a nutshell, the CBA's B.C. branch submitted that although the concept of a single regulator does not necessarily cause issues, its implementation must respect the independence of the bar, and the details of the bill matter, reinforcing the need for meaningful engagement with the bar.[4] These submissions reflected the input of a wide range of lawyers gathered through extensive consultations with members of the bar across the province.

14. The province did not heed that request for meaningful engagement. In May 2023, the province published a "What We Heard Report" summarizing at a high level some of the results of the province's public engagement and public survey related to the proposal.[5] In March 2024, the province released a public update on the proposal, again engaging in only a high-level policy discussion.[6] Despite public calls for drafts,[7] no draft legislation was provided until Bill 21 was introduced in the legislature on April 10, 2024.[8] Only 30 of Bill 21's 317 clauses were debated in the legislature. The bill passed with little debate or discussion, despite numerous objections to the draft form of the bill from all corners of the bar because of its serious and unprecedented impact on the independence of the bar.[9]

15. The lack of meaningful consultation with the bar before Bill 21's passage was itself inconsistent with the concept of self-governance, which requires that lawyers be meaningfully engaged and at minimum have a voice in their own regulation. Self-

[3] Greenberg Affidavit #1, at paras. 78-80, Exhibits 25-30.
[4] Greenberg Affidavit #1, Exhibit 28.
[5] Greenberg Affidavit #1, at para. 81, Exhibit 31.
[6] Greenberg Affidavit #1, at para. 83, Exhibit 33.
[7] Greenberg Affidavit #1, at paras. 82 and 84, Exhibits 32 and 34.
[8] Greenberg Affidavit #1, at para. 85.
[9] Greenberg Affidavit #1, at paras. 89-94, 96-99.

governance derives its very legitimacy from lawyers' active participation in shaping the regulatory frameworks and rules that govern them.

C.) Bill 21

16. Bill 21 introduces sweeping and unprecedented changes to the regulation of lawyers in the province. These changes must be examined both individually and collectively to understand and assess their impact on the independence of the bar.

17. Bill 21 creates a single regulator with broad authority over all lawyers, notaries, paralegals, and other designated legal professionals in the province. It transforms the regulatory framework from one of self-regulation to one of co-governance, where elected lawyers no longer have a majority on the regulator's board.

18. Under the *LPA*, lawyers may elect benchers to the Law Society of British Columbia under rules determined by the Law Society—and thus lawyers—themselves.[10] Even the number of elected benchers is left to lawyers to decide. The Law Society's rules provide for 25 elected benchers.[11] The province appoints just 6 benchers—less than 20%—under s. 5 of the *LPA*.[12] So elected lawyers comprise a substantial majority of the Law Society's membership, ensuring self-regulation.

19. By contrast, Bill 21 prescribes that the new legal regulator under Bill 21 (the "**Regulator**") must have a board of 17 members, only 5 of whom are elected lawyers.[13] The remaining 4 lawyers on the Regulator's board are appointed by the balance of board members.[14] This means that elected lawyers at best make up only 5 of 12 board members (less than 42%) appointing the remaining lawyer board members. When only 1 lawyer appointee is being replaced, elected lawyers

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[10] *Legal Profession Act*, S.B.C. 1998, c. 9 [***LPA***], ss. 4, 7.
[11] Rules of the Law Society of British Columbia, Rule 1-21.
[12] *LPA*, s. 5.
[13] *Legal Professions Act*, S.B.C. 2024, c. 26 [**Bill 21**], s. 8(1)(a).
[14] Bill 21, s. 8(1)(e).

make up only 5 of 16 board members (less than 32%) appointing the replacement lawyer board member. In other words, Bill 21 makes elected lawyers a minority.

20. Bill 21 also eliminates lawyers' ability to introduce and vote on referendum questions that bind the Law Society.[15] That referendum mechanism ensured that lawyers ultimately exercise control and influence over their own regulator—a form of democratic accountability to the independent bar.

21. Beyond weakening the democratic accountability of the Regulator compared to the Law Society, Bill 21 also gives the province direct control over lawyers and the practice of law in the province, including by allowing the province to:

a. direct the Regulator as to how it must interpret its own duties, including the duty to ensure the independence of the bar;[16]

b. legislate standards of professional conduct and competence for the practice of law,[17] formerly entirely within Law Society control;[18]

c. create new legal professions by regulation and define the scope of their licenses based on the province's *own* assessment of, among other things, whether doing so would unduly impair licensee independence;[19] and

d. enact regulations that override the rules established by the Regulator.[20]

22. To be sure, Bill 21 contains a number of provisions that seek to promote important objectives, including advancing reconciliation with and amplifying the voices of Indigenous peoples. Moreover, the CBA does not argue that a single legal

[15] *LPA*, ss. 12(3), 13.
[16] Bill 21, s. 7.
[17] Bill 21, ss. 68, 71.
[18] *LPA*, s. 11.
[19] Bill 21, ss. 3(d), 4, 211-214.
[20] Bill 21, ss. 211, 214.

regulator is necessarily problematic. Rather, the CBA argues that the regulator—single or not—must be independent, and the underlying legislation as a whole must respect the independence of the bar. But Bill 21 does not. The CBA's submissions focus exclusively on Bill 21's impact on independence of the bar.

The plaintiffs' constitutional challenges

23. The Law Society and the Trial Lawyers Association of British Columbia ("**TLABC**") both challenge Bill 21. They argue that Bill 21 is unconstitutional because it impermissibly erodes the independence of the bar. The CBA agrees.

PART 3 – ISSUE

24. The issue is whether Bill 21 unconstitutionally impairs the independence of the bar.

25. It does.

PART 4 – ARGUMENT

A.) Lawyers play an indispensable role in the administration of justice

26. Resolving the issue in dispute begins with a proper understanding of the role that lawyers play in our justice system. In brief, lawyers play an indispensable role in our justice system by advising and advocating for their clients fairly, vigorously, and independently, free of any control or influence by the state.

27. Lawyers play an indispensable role in the administration of justice. The importance of their role "cannot be overemphasized": They provide resolute advocacy for their clients, bound by the strictest duties of confidence, honesty, and integrity.[21] They help their clients navigate complex immigration rules to a new life in Canada. They ensure their clients receive the basic social benefits to which they are entitled. And

[21] *Fortin v. Chrétien*, [2001] 2 S.C.R. 500, 2001 SCC 45, at para. 49.

they defend their clients against serious allegations of professional misconduct. Simply put, they play an indispensable role in every corner of our justice system.

28. The Supreme Court of Canada has repeatedly recognized and affirmed this indispensable role. For example:

a. In *British Columbia (Attorney General) v. Christie*, a unanimous Court stated that "[l]awyers are a vital conduit through which citizens access the courts, and the law. They help maintain the rule of law by working to ensure that unlawful private and unlawful state action in particular do not go unaddressed. The role that lawyers play in this regard is so important that the right to counsel in some situations has been given constitutional status".[22]

b. Similarly, in *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, LeBel J. stated that "[t]he role that lawyers play in society is so important that it has found its way into the Constitution of our country… Lawyers are viewed as playing a critical function in the administration of justice".[23]

c. And in *Pearlman v. Manitoba Law Society Judicial Committee*, a unanimous Court acknowledged "the particular importance of an autonomous legal profession to a free and democratic society", stressing the view that "the self-governing status of the professions, and of the legal profession in particular, was created in the public interest".[24]

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[22] *British Columbia (Attorney General) v. Christie*, 2007 SCC 21, at para. 22. See also *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 187; *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235, at p. 1265; *Fortin v. Chrétien*, 2001 SCC 45, at para. 49; *Law Society of British Columbia v. Mangat*, 2001 SCC 67, at para. 43.

[23] *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61, at para. 65 (dissenting in part, but not on this point).

[24] *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869, at 887-88.

29. Lawyers play this indispensable role both at an individual level and at an institutional level. At an individual level, they give clients meaningful access to a justice system that is otherwise "hostile and hideously complicated".[25] At an institutional level, they promote public confidence that our adversarial system can deliver just results, because lawyers help ensure that the rights and interests of each party have been fully and fairly advanced.[26] At both an individual level and an institutional level, therefore, lawyers promote the administration of justice.

30. Central to this indispensable role is every lawyer's fiduciary duty of loyalty. This duty underpins trust in the justice system as a whole: "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 … is a reliable and trustworthy means of resolving their disputes and controversies".[27] This duty encompasses three salient dimensions: (1) a duty to avoid conflicting interests; (2) a duty of commitment to the client's cause; and (3) a duty of candour.[28] Here, the first two duties are most pertinent.[29]

31. With respect to the duty to avoid conflicting interests, lawyers must never find themselves in situations that jeopardize their ability to effectively represent their clients.[30] Effective representation may be compromised by any "substantial risk" that lawyers will prefer other interests over those of their client: the lawyer's own interests, other clients' interests, or a third person's interests.[31] Outside "bright line" situations where lawyers act concurrently for adversely interested clients, the law

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[25] *R. v. Neil*, 2002 SCC 70 at para. 12.

[26] *R. v. Neil*, 2002 SCC 70 at para. 12. See also *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 97.

[27] *R. v. Neil*, 2002 SCC 70 at para. 12.

[28] *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 19.

[29] The duty of candour requires a lawyer to disclose any factors relevant to their ability to provide effective representation (*Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 45).

[30] *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 23.

[31] *R. v. Neil*, 2002 SCC 70 at para. 31, cited by *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 26.

of conflicts requires a contextual analysis of whether the situation is "liable to create conflicting pressures on judgment" as a result of "the presence of factors which may reasonably be perceived as affecting judgment".[32]

32. With respect to the duty of commitment to the client's cause, lawyers must be vigorous and committed advocates.[33] This duty prevents lawyers from doing anything that might undermine the lawyer-client relationship.[34] In conjunction with the duty to avoid conflicting interests, this duty of commitment prevents lawyers from "soft-peddling" their representation of one client out of competing concerns.[35] This duty is a principle of fundamental justice under s. 7 of the *Charter*: the state cannot impose duties on lawyers that undermine their duty of commitment to their client's cause.[36] For instance, imposing an extensive recording keeping, reporting, and search regime to combat money laundering without adequate protections for solicitor-client privilege is unconstitutional because it impermissibly interferes with lawyers' ability to comply with their duty of commitment to the client's cause.[37]

33. The law impresses these duties upon lawyers not to make their jobs harder, but to maintain their role as trusted advisors. These duties foster a lawyer-client relationship that promotes the client's "unrestricted and unbounded confidence in the professional agent, facilitating full and frank disclosure of the client's confidences to the lawyer.[38] Without this full and frank disclosure, lawyers cannot effectively advise and represent their clients.[39] Therefore, to protect the lawyer-client relationship, members of the public must have utmost confidence that their

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[32] *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 38.
[33] *R. v. Neil*, 2002 SCC 70 at para. 13
[34] *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 44.
[35] *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 43.
[36] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 84.
[37] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 108.
[38] *Smith v. Jones*, 1999 CanLII 674 (SCC) at para. 45, citing with approval *Anderson v. Bank of British Columbia* (1876), 2 Ch. D. 644 (C.A.), at 649.
[39] *Smith v. Jones*, 1999 CanLII 674 (SCC) at para. 46.

relationship with their lawyer cannot be interfered with by government—either now or in the future. This is a fundamental tenet of a free and democratic society.

34. But the benefits of lawyers' uncompromising loyalty to their clients extend far beyond the individual lawyer-client relationship. This loyalty "promotes effective representation, on which the problem-solving capability of an adversarial system rests".[40] Trust in the justice system as a mechanism for resolving legal disputes is founded on the public's faith that their legitimate interests will be properly advanced when they access that system. Without lawyers—and without a relationship of utmost trust in them—the "whole legal system would be in a parlous state".[41]

B.) Independence of the bar and self-regulation are essential to protect this role

35. Independence of the bar is essential to protect lawyers' indispensable role in the administration of justice. Simply put, independence is what enables lawyers to do their jobs. This independence must prevail at both an individual level and at an institutional level to permit lawyers to be able—and to be *seen* to be able—to be resolutely loyal to their client and to serve their client properly.

36. As described above, the lawyer-client relationship is built on trust: there must be "no room for doubt" about the lawyer's loyalty or commitment to their client's cause.[42] The lawyer must be able—and be *seen* to be able—to exercise their professional judgment and advance their client's cause without fear of influence, pressure, or retaliation by anyone[43]—including, and perhaps especially, from the state, which is far and away the country's most frequent and powerful litigant.

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[40] *R. v. Neil*, 2002 SCC 70 at para. 13.

[41] *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143, at pp. 187-88.

[42] *R. v. Neil*, 2002 SCC 70 at para. 12, citing *R. v. McCallen*, 1999 CanLII 3685, 43 O.R. (3d) 56 (C.A.) at 67. See also *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at 1243 and 1265.

[43] *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at paras. 23, 38-40.

37. Public confidence "depends not only on fact but also on reasonable perception".[44] Thus, to maintain public confidence in the administration of justice, lawyers must *in fact* be able to discharge their duties to their clients free from state interference, and a reasonable and informed person must also *perceive* that to be true.[45]

38. Independence of the bar creates the conditions to allow lawyers to fulfil and be seen to fulfill these duties. One of the "hallmarks of a free society" is lawyers' ability to fulfill their role independently, free from any influence or interference "from the state in all its pervasive manifestations".[46] And an independent bar is an imperative of the rule of law and the associated legality principle, which requires that there be "practical and effective ways to challenge the legality of state action".[47]

39. This independence must operate at both individual and institutional levels:

    a. At the individual relationship level, clients must know that their lawyer is now, and will always remain, independent from government. This is especially true in criminal or public law matters, where clients could reasonably be expected to withhold information if they fear their lawyer might now or later experience government interference. If individual clients lack assurance that their lawyers are and will remain independent from government, it undermines the trust and confidence on which the lawyer-

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[44] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 97.

[45] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 97; *R. v. Neil*, 2002 SCC 70 at para. 12.

[46] *Attorney General (Canada) v. Law Society of British Columbia*, 1982 CanLII 29 (SCC) at 335. See also *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at paras. 97-100.

[47] *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 at para. 33.

client relationship—and the lawyer's effective representation of the client—depends.[48]

b. At the institutional level, both the bar and the public they serve must have assurance that the government cannot influence or pressure the bar, whether for clients or causes that they have represented in the past, are representing now, or might represent in the future.[49] Distrust in the independence of the bar undermines public confidence that the justice system "is a reliable and trustworthy means of resolving … disputes and controversies".[50]

40. Both levels of independence are important and interconnected. For our justice system to deliver just results and fulfil its truth-seeking function, lawyers must be free to accept retainers without fear that they may face retribution or punishment—in one form or another—for resolutely advocating a position on behalf of their client, no matter how politically unpopular the client or their cause. Moreover, the public must have utmost confidence that lawyers as a profession have protections in place at an institutional level to act in their client's best interests and provide fair, frank, and fearless advice, even if the client's adversary is the government. Thus, individual independence and institutional independence have a close connection and are equally foundational to our justice system.

41. The two layers of independence that lawyers need to do their jobs are analogous to the two layers of independence that judges need to do their jobs. Judges must have both individual independence (*e.g.*, security of tenure) and institutional independence (*e.g.*, institutional relationships separate from the executive and

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[48] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 96.

[49] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at paras. 97-103.

[50] *R. v. Neil*, 2002 SCC 70 at para. 12.

legislative branches) to function properly.[51] Institutional independence of the bar and independence of the judiciary also serve the same end: to protect the rights of members of the public.[52] Just as no one would tolerate laws that tell judges how to do their jobs, no one should tolerate laws that tell lawyers how to do their jobs.

42. To maintain the independence of the bar at both an individual level and an institutional level, self-regulation is essential. Self-regulation means regulation of lawyers by lawyers. To be self-regulating, the board of the regulator must comprise a substantial majority of lawyers who are elected by lawyers. This self-regulation protects against state control or influence over lawyers. By creating a regulatory system in which neither lawyers nor their regulator must answer to the government, self-regulation ensures that lawyers can oppose governments without fear of actual or perceived retaliation, censure, or regulatory consequences.

43. Self-regulation ensures that lawyers and their regulator are answerable to *the profession itself*, not to *the government*, thus protecting the client's interest in an independent representative and advocate before the courts. Law societies discharge their statutory duties to regulate in the public interest with a background of institutional "expertise and sensitivity to the conditions of practice".[53] Moreover, as they are directly answerable to lawyers, law societies are empowered to oppose regulatory changes that they believe could compromise lawyers' ability to fulfil the stringent duties they owe to their clients. Self-regulation is premised on the notion that those who have a first-hand understanding of the ethical and functional demands of the profession—lawyers themselves—should control its governance.

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[51] *Valente v. The Queen*, 1985 CanLII 25 (SCC), [1985] 2 SCR 673 at para. 20.

[52] *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, 2002 SCC 13 at para. 122.

[53] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 at para. 37.

44. To be sure, independence of the bar and self-regulation are not for the benefit of lawyers. Rather, they are for the benefit of the public they serve. The Supreme Court of Canada's jurisprudence consistently reaffirms this point. For example:

a. In *Canada v. Law Society of British Columbia*, the Court observed that "[t]he independence of the Bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. ... The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally".[54]

b. Similarly, in *Pearlman v. Law Society of Manitoba*, the Court stated that "[s]tress was rightly laid on the high value that free societies have placed historically on ... an independent bar, free to represent citizens without fear or favour in the protection of individual rights and civil liberties against incursions from any source, including the state".[55]

c. In *Finney v. Barreau du Québec*, the Court stated that "[a]n independent bar composed of lawyers who are free of influence by public authorities is an important component of the fundamental legal framework of Canadian society".[56]

d. And most recently in Law *Society of British Columbia v. Trinity Western University*, the Court stated that "law societies self-regulate in the public interest … [self-regulation is] directed toward the protection of vulnerable interests — those of clients and third parties. … This delegation also

[54] *Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307, at 335-36.
[55] *Pearlman v. Law Society of Manitoba*, [1991] 2 S.C.R. 869, at 887.
[56] *Finney v. Barreau du Québec*, 2004 SCC 36, at para. 1.

maintains the independence of the bar; a hallmark of a free and democratic society".[57]

45. So independence of the bar and self-regulation by lawyers are aimed at protecting not lawyers' *self*-interest, but the *public* interest. Granted, self-regulation is not perfect—no model of professional regulation is. But self-regulation, unlike co-governance, ensures that lawyers are answerable to *the profession itself*, not to *the government*, which is necessary to maintain their independence and enable them to do their jobs in accordance with their professional responsibilities.

46. Independence of the bar is essential to effective advice and advocacy not just in theory, but in actual practice. Lawyers cannot do their jobs effectively under the thumb of government: they must be—and be *perceived* to be—free to advance unpopular causes and take difficult positions without fear of influence, pressure, or retaliation by anyone.[58] This freedom is foundational to the truth-seeking function of our adversarial court system and the constitutionally protected right to a fair trial.

47. Make no mistake: independence of the bar is no less important in the solicitor's context. Every day, solicitors across the country help their clients navigate byzantine regulations governing their entitlement to social benefits, make sense of seemingly inscrutable tax rules, register their trademarks and patents to protect their valuable intellectual property, and much more. Whether or not these matter turn contentious, clients need assurance that their lawyers act free from any control or influence by the state apparatus they must confront and navigate successfully. Otherwise, they may decide to take legal matters into their own hands—to their own detriment. They may lose their social benefits, fall afoul of their tax obligations, miss out on their intellectual property, or otherwise suffer serious consequences.[59]

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[57] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, at paras. 36-37.

[58] *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at paras. 23, 38-40.

[59] See Leonard T. Doust, Q.C., *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia* (March 2011) at 22.

C.) The Constitution protects the role and independence of lawyers

48. The Constitution protects the role and independence of lawyers. Although the Constitution does not expressly guarantee self-regulation or an independent bar, a number of constitutional protections—including s. 96 of the *Constitution Act, 1867*; ss. 7, 10(b), and 11(d) of the *Charter*; and the rule of law itself—have no meaning without a self-regulating and independent bar.

49. Given the indispensable role of lawyers as described above, the Supreme Court of Canada has already recognized that the Constitution protects aspects of this role and the lawyer-client relationship. For example, the Court has recognized that the principles of fundamental justice under s. 7 of the *Charter* prevent the state from imposing regulatory duties that interfere with lawyers' duty of commitment to their clients' cause[60] or require them to divulge privileged information.[61]

50. But this case raises squarely for the first time the question of whether the Constitution protects self-regulation and an independent bar—a question that the Supreme Court of Canada expressly declined to settle in *Canada (Attorney General) v. Federation of Law Societies of Canada*.[62] As developed below, however, the Constitution does afford these protections: the Constitution's written guarantees have no meaning without a self-regulating and independent bar.

51. To begin, the judicature provisions of the *Constitution Act, 1867*, including in particular s. 96, guarantee access to independent courts with jurisdiction to resolve public and private law disputes.[63] This s. 96 guarantee limits the powers of the federal and provincial governments: neither can enact laws that abolish or remove

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[60] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 84.
[61] *R. v. McClure*, 2001 SCC 14 at para. 41.
[62] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 86.
[63] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at paras. 29, 32.

part of the core or inherent jurisdiction of superior courts, such as by inhibiting access to these courts.[64]

52. *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)* demonstrates that s. 96 can be used to invalidate provincial legislation. In that case, the province had imposed fees on court hearings, including trials.[65] The trial judge found these fees were cost-prohibitive for some litigants, including those who did not engage the fee exception for "impoverished" persons.[66] Accordingly, the hearing fee scheme was declared unconstitutional for impermissibly denying the access to superior courts guaranteed by s. 96.[67]

53. Here, the same principles apply. Section 96 limits the jurisdiction of the province to enact legislation such as Bill 21 that interferes with the ability of lawyers to discharge their indispensable role within the justice system independently and thereby facilitate their clients' meaningful access to s. 96 courts. Access to independent legal counsel is often a necessary gateway to accessing these courts. Permitting the state to create a regulatory system that diminishes the ability of lawyers to act fearlessly against government actors would undermine access to s. 96 courts. In these ways, s. 96 limits the province's power to regulate lawyers without protecting self-regulation and the independence of the bar.

54. Beyond s. 96, ss. 97 and 98 of the *Constitution Act, 1867* require that judges be selected from the bars of each province. This requirement supports the institutional dimension of the independence of the bar: the judicial independence guaranteed by these provisions cannot function without selection of judges from *independent*

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[64] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at paras. 30-31.

[65] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at paras. 9-13.

[66] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at para. 52.

[67] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at paras. 36, 39, 64.

provincial bars, as selection of judges from a bar that lacks independence would be tainted by a reasonable perception that the judges may lack independence.[68] Members of the public may reasonable come to perceive that the judiciary is just another arm of the state drawn from a legal profession controlled by the state.

55. Similarly, the constitution guarantees for fair trial rights under ss. 7, 10(b) and 11(d) of the *Charter* cannot be effective without the assurance that independent lawyers exist to protect and promote those fair trial rights. For example, no one has access to a fair criminal trial unless their rights are properly protected by a lawyer whose sole concern is to vigorously defend their client and advance their rights. Likewise, the right to counsel means nothing without an independent bar to draw upon.

56. *Canada (Attorney General) v. Federation of Law Societies of Canada* demonstrates how regulatory interventions that interfere with the lawyer-client relationship can violate these constitutional protections.[69] The Supreme Court of Canada invalidated federal anti-money laundering legislation that interfered with solicitor-client privilege and the lawyer's duty of commitment to the client's cause as a principle of fundamental justice under s. 7 of the *Charter*. Here, Bill 21 creates the same type of constitutional problem: it imposes a regulatory structure that interferes with lawyers' duties and professional independence necessary to protect the *Charter* rights of their clients. This interference is unconstitutional.

57. Further, the Supreme Court of Canada has held that unwritten constitutional principles—such as the rule of law, judicial independence, and democracy—inform and constrain legislative action. In *Reference re Secession of Quebec*, the leading case on the subject, the Court held that these principles are "part of the Constitution" and "binding upon both courts and government".[70] The rule of law is

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[68] *Valente v. The Queen*, 1985 CanLII 25 (SCC), [1985] 2 SCR 673; *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.*, 1997 CanLII 317 (SCC), [1997] 3 SCR 3.

[69] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7.

[70] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at paras. 51, 54.

one such binding constitutional principle.[71] But the rule of law is not a self-executing concept: without the participation of an independent bar charged with advancing the rights and interests of their clients, the rule of law would be a hollow promise, not a bedrock constitutional principle.[72]

58. Here, self-regulation and the independence of the bar are protected both as necessary corollaries of written guarantees (such as the constitutional provisions listed above) and as expressions of the unwritten constitutional principles that safeguard the rule of law underpinning the Constitution as a whole. Viewed through these two lenses, Bill 21's elimination of self-regulation and erosion of lawyer independence is not merely problematic—it is constitutionally impermissible.

59. The province mischaracterizes the plaintiffs' allegations as resting entirely on unwritten principles. All of the constitutional provisions described above—and more—are levied against Bill 21 between both notices of civil claim. Recognizing the independence of the bar as an *unwritten* principle ensures robust interpretation of the Constitution's *written* guarantees such as guarantees to independent courts and fair trials with a right to counsel, buttressed by overlapping unwritten principles.

D.) This constitutional protection must be as close to absolute as possible

60. Any aspects of our justice system that are fundamental to its functioning and to maintaining public confidence in this system must receive the strongest protection possible. Solicitor-client privilege is a prime example: given the fundamental importance of solicitor-client privilege to the proper functioning of the solicitor-client

[71] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 53.
[72] *Re Gauthier*, 2018 ABCA 14, at fn. 18.

relationship and the justice system as a whole,[73] it receives protection that is both "permanent"[74] and "as close to absolute as possible".[75] Nothing less would suffice.

61. Like solicitor-client privilege, self-regulation and the independence of the bar are essential to the proper functioning of both the lawyer-client relationship and the broader legal system. They are necessary preconditions to lawyers' ability to discharge their duties to their client, including their duties of loyalty and of commitment to their client's cause. Our legal system demands that clients be able to place "unrestricted and unbounded confidence" in their lawyers, and the law recognizes the trust and confidence that is "at the core of the solicitor-client relationship" as "a part of the legal system itself, not merely ancillary to it".[76]

62. Accordingly, independence of the bar warrants the strongest possible constitutional protection. As the Supreme Court of Canada stated in *A.G. Can. v. Law Society of B.C.*, "The independence of the Bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law."[77]

E.) Bill 21 eliminates self-regulation and interferes with independence of the bar

63. Bill 21 eliminates self-regulation and erodes the independence of the bar contrary to the Constitution. It implements sweeping and unprecedented changes that remove conditions of independence and put lawyer regulation squarely into the

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[73] *R. v. McClure*, 2001 SCC 14 at para 31.

[74] *Lizotte v. Aviva Insurance Company of Canada*, 2016 SCC 52 at para. 23.

[75] *Lizotte v. Aviva Insurance Company of Canada*, 2016 SCC 52 at para. 60. See also C*anada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44 at para. 9.

[76] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 83.

[77] *A.G. Can. v. Law Society of B.C.*, [1982] 2 SCR 307 at pp. 335-336.

hands of the state. These changes threaten public confidence in lawyers' ability to advise and advocate for their clients free of any state control or influence, and to hold their regulator accountable for actions that compromise those abilities. Further, these changes eliminate self-regulation as an essential means for protecting the independence of the bar, and thereby impair that independence.

i.) Bill 21 eliminates self-regulation

64. Bill 21 is unconstitutional because it does not make the Regulator answerable to lawyers. By removing functional control by elected lawyers, Bill 21 eliminates self-regulation, destroying an essential condition for the independence of the bar.

65. B.C. lawyers are currently regulated by Law Society benchers: 25 elected lawyers, one Attorney General, and six non-lawyer appointees.[78] The benchers are charged with governance and administration of the Law Society and guided by the Law Society's broad public interest mandate.[79] They have the power to make rules and set standards for the practice of law in British Columbia. A strong majority—nearly 80%—are elected lawyers directly accountable to the profession, including through democratic rules that provide lawyers with a right to vote on new practice rules proposed by the benchers, or to bind the benchers with a referendum.[80]

66. Bill 21 replaces this self-regulatory regime with a regime of co-governance where the government controls and participates directly in the regulation of lawyers. Bill 21 replaces the 32 benchers with a 17-director board comprising:

a. 5 elected lawyers;

b. 2 elected notaries (who are not also lawyers);

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[78] See *LPA*, at ss. 4-5.
[79] See *LPA*, ss. 3-4.
[80] *LPA*, ss. 11-13.

c. 2 elected or appointed paralegals;

d. 3 directors appointed by Cabinet; and

e. 5 directors (4 of whom must be lawyers) appointed by a majority of other directors.[81]

67. Bill 21 creates a board that is functionally controlled by non-lawyers. By placing the regulation of lawyers under the functional control of non-lawyers, including a high proportion of government-appointed directors, Bill 21 eliminates structural protections that exist to preserve self-regulation and the independence of the bar.

68. The 5 elected lawyers (only 29%) occupy a marginal position on the board, only slightly outnumbering the 3 direct government appointees (18%). Although the 9 elected and appointed lawyers together maintain a bare majority on the board (53%), 4 of them are appointed by, and in that sense accountable to, a majority of non-lawyers.[82]

69. Indeed, the balance of power created by Bill 21 favours non-lawyers, who represent up to 8 of 17 directors (47%) once the board is fully constituted, but who hold the balance of power (58% of the votes, compared to lawyers' 42%) when appointing the board's final 5 directors. In other words, up to 71% of directors on the board may be either (a) non lawyers or (b) appointed predominantly by, and thus directly accountable to, non-lawyers. The board is thus accountable to non-lawyers, rather than lawyers.

70. The significant proportion of appointed directors (up to 53%) on the board erodes its institutional independence and legitimacy. Appointments can reduce transparency and introduce risks of external influence, as appointed directors can

[81] Bill 21, s. 8.
[82] Bill 21, s. 8.

reasonably be perceived to be accountable to those who appointed them. Appointments can also create other risks, as elected directors may appoint like-minded individuals to secure majorities, entrench factions, or marginalize dissenting perspectives, leading to reduced transparency and an appearance of insider control of the board. Appointees are not sufficiently autonomous from other board members, government, and political influence to be classed as independent.

71. While only three board members are directly appointed by government,[83] and the majority of board members are lawyers,[84] that does not solve the problem. The board must be functionally controlled by elected lawyers and answerable to lawyers. This ensures the board may regulate the profession in a way that maintains independence and ensures lawyers fulfill their duties to their clients.

72. Similarly, it is irrelevant that 9 of the 17 board members may be elected legal professionals (*i.e.*, 5 elected lawyers, 2 elected notaries, and up to 2 elected paralegals).[85] Neither notaries nor paralegals have the same constitutional imperative for institutional independence from the government as lawyers do, as there is no evidence that either is called upon to act as a resolute advocate in adversarial matters against the government. And Bill 21 does not guarantee that paralegals will play the same role, and uphold the same duties of loyalty and commitment to a client's cause, as lawyers.[86]

73. By removing functional control by elected lawyers, Bill 21 removes self-regulation, eliminating an essential condition for the independence of the bar. It allows government appointees and non-lawyers together to exercise control over lawyers and the practice of law. Its facilitation of direct and indirect government control over

[83] Bill 21, s. 8(1)(d); Defendant's Response to Civil Claim at Paragraph 6 of Part 3.

[84] Bill 21, s. 8(1); Defendant's Response to Civil Claim at Paragraph 13 of Part 1.

[85] Bill 21, s. 8(1)(a) (b) and (c). The two regulated paralegal board members are elected if the total number of regulated paralegals in British Columbia is 50 or more.

[86] The scope of regulated paralegal practice is to be determined by regulation under Bill 21, s. 47.

the practice of law creates the potential for both actual and perceived government interference with lawyers' constitutionally protected independence.

74. Section 6 of Bill 21, which mandates the Regulator to "ensure the independence of licensees", is no answer to these concerns. Independence of the bar requires self-regulation and a substantial majority of elected lawyers, not a vague direction to "ensure the independence of licensees", which in any event does not equate to independence of *the bar*. This vague direction has no meaning in a regulatory regime that does not include concrete, meaningful protections of independence.

75. Ultimately, the Constitution demands that the regulator of lawyers in Canada be controlled by—and answerable to—lawyers. Without this accountability, clients and the public at large cannot be assured that lawyers act solely in their client's best interests. Doubt may arise because lawyers and the lawyer-client relationship are subject to scrutiny and control by a government body not controlled by lawyers.

76. Eliminating self-regulation and reducing elected lawyers' voice on the board is not just bad law; it is also bad policy. The people best positioned to understand their clients' legal needs and challenges, set appropriate standards for the practice of law, and develop effective solutions to problems that clients and lawyers as a whole may face are lawyers themselves.[87] Moreover, reducing the number of elected lawyers on the board risks reducing the diversity of lawyers who have a hand in guiding the regulation of the bar. The Law Society's current board is a testament to how self-regulation can foster diversity on the board.

77. Eliminating self-regulation and reducing elected lawyers' voice on the board is itself sufficient to demonstrate Bill 21's unconstitutionality. But Bill 21 goes even further. Taken individually and collectively, the additional intrusions on the independence of the bar described below make Bill 21 unconstitutional.

[87] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, at para. 37.

ii.) Bill 21 gives the government control of lawyers and the practice of law

78. Bill 21 gives the government broad and unprecedented powers to regulate the practice of law, including by directly overriding the views of lawyers and the board. It goes much further than necessary to achieve its stated goals, giving the government overbroad powers to regulate and control the practice of law. This legislative overreach can be seen in numerous aspects of Bill 21.

79. First, Bill 21 gives broad rule-making authority to a board that is neither answerable to, nor functionally controlled by, elected lawyers.[88] These rules may cover the broad range of rules that the Law Society currently has the power to make, from trust accounting rules, to ethical standards, and everything in between. Given the high proportion of non-lawyers, the board can hardly be considered to have expertise in or sensitivity to the conditions of lawyer practice. Yet it is charged with regulating virtually every aspect of lawyer practice.

80. Second, Bill 21 gives Cabinet broad authority to pass regulations to create new legal professions and define the scope of practice for them, and these regulations prevail over rules made by the Regulator.[89] The regulatory authority on the face of Bill 21 is broad, as it allows Cabinet to define who can practice law, to what extent, and under what conditions. Yet the safeguards around its exercise are very narrow: the only apparent safeguard for the independence of the bar is that the Attorney General must "consider" whether the designation of a new class of legal professional would have an "undue impact" on the independence of "licensees".[90]

81. This broad and largely unfettered regulation-making power appears ripe for misuse. For example, Cabinet could make regulations to create a new legal profession to override conflicting rules adopted by the board.[91] It could do so

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[88] Bill 21, ss. 27-28.
[89] Bill 21, ss. 3(d), 4, 212-214.
[90] Bill 21, s. 4(2)(d)(v).
[91] Bill 21, s. 214.

quickly, and without meaningfully engaging with any objections that may be raised by the board, as the obligation to consult with the board before passing regulations is minimal and affords no process.[92] There is no requirement for the board, the Attorney General, or anyone else to be satisfied that the proposed regulations would *not* compromise independence of the bar—only that any "*undue* impact" be "considered".

82. Indeed, Cabinet could create a regulation to designate a new legal profession on the recommendation of the Attorney General *even if* (a) the board and/or a majority of practicing lawyers believed the proposed regulation would seriously compromise independence of the bar; (b) the board strenuously objected when consulted; (c) the board passed rules expressly to prevent the new profession from being designated (as its rules would be overridden), *and* (d) the Attorney General agreed that the proposed regulation would compromise independence of the bar.[93] This is truly extraordinary.

83. The argument that the government would never do such a thing is no answer to these concerns. Judicious exercise of discretion cannot save an unconstitutional law,[94] and constitutional protections cannot depend on government's willingness to show restraint. Opening the door to an intrusion on the independence of the bar is itself an intrusion, even without the government committing a further intrusion. Moreover, no one can guarantee that a future government will be minded to exercise its powers in a way that protects the independence of the bar. The very reason why we have a constitution is to provide an enduring set of norms that bind governments past, present, and future.

84. Likewise, the argument that we can just wait until the government actually takes further steps to intrude on the independence of the bar and challenge those steps

[92] See, *e.g.*, Bill 21, s. 4(2)(a).
[93] See Bill 21, s. 4(2).
[94] See, by analogy, *R. v. Nur*, 2015 SCC 15.

as unconstitutional or unreasonable is no answer to these concerns. While further steps may reinforce or aggravate the intrusions on the independence of the bar, no further intrusions are needed to demonstrate the unconstitutionality of Bill 21.

85. Bill 21's provisions giving Cabinet broad authority to pass regulations to create new legal professions and define the scope of practice for them also raise policy concerns. For example, Cabinet may use these provisions to inappropriately expand the scope of who can represent clients on immigration matters, leading to issues of access to competent counsel, access to justice, and fairness for immigration clients. Cabinet may also use these provisions to create new legal professions that are not needed, or that create confusion about who has the regulatory authority to provide different kinds of legal services. Thus, giving Cabinet paramountcy in this way raises both legal and policy concerns.

86. Third, Bill 21 gives the legislature—rather than the benchers, or even the board—the power to define certain professional conduct standards and competence requirements for the practice of law.[95] Bill 21 introduces prescriptive legislated definitions of "conduct unbecoming", "incompeten[ce]", "professional conduct violation", and "professional misconduct"—terms that have historically been defined based on the judgment of the benchers (*i.e.*, a group composed overwhelmingly of elected lawyers).[96] It imposes harsh consequences for violations of these legislatively prescribed standards.[97] Although these provisions are complemented by the rules and code of conduct established by the board (which elected lawyers do not functionally control), a mere breach of Bill 21's provisions is a contravention that can result in severe punishment.[98]

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[95] Bill 21, ss. 68, 71.

[96] See *e.g.*, *LPA* at s. 1 and Law Society of British Columbia, *Code of Professional Conduct for British Columbia* (annotated) (updated November 2024) (online).

[97] See *e.g.*, Bill 21, ss. 87-88.

[98] Bill 21, ss. 68, 71, 87.

87. Indeed, Bill 21 allows the new regulator's chief executive officer or a hearing panel of the new regulatory tribunal to order mandatory "counselling or medical treatment, including treatment for a substance use problem or substance use disorder" on lawyers deemed incompetent.[99] No one denies the importance of supporting lawyers' mental health and wellness. But forcing lawyers to attend "counselling or medical treatment" in this way is problematic, for several reasons, all of which undermine the independence of the bar by removing lawyers' autonomy and interfering with their bodily integrity:

a. Neither the chief executive officer nor members of hearing panels must be trained medical professionals. And imposing treatment for substance use "problems" as well as "disorders" suggests a medical framework or diagnosis may not even be a prerequisite to such an order.

b. The terms "counselling or medical treatment", which are not defined, are extremely broad. They could include not only substance abuse counselling and anger management counselling, but also forced medication, electroconvulsive therapy, and other forms of "treatment". Moreover, there is no limit on the number, cost, or length of treatment.

c. Perhaps most importantly, there is no requirement for the lawyer's consent to treatment—even for those capable of giving or withholding consent—which denies their most basic health care decision-making rights. An ongoing constitutional challenge to British Columbia's involuntary treatment regime under the *Mental Health Act* raises very similar concerns.[100]

d. The mandatory treatment regime also creates potential conflicts where determinations about lawyers' fitness to practise law and treatment requirements could be influenced—or could reasonably be perceived to be

[99] Bill 21, ss. 88(1), 122(3)(c)(ii).

[100] *Council of Canadians with Disabilities v. Attorney General of British Columbia*, B.C.S.C. file no. S168364 (pending).

influenced—by their advocacy. No lawyer should fear that their ability to practise their profession and maintain their autonomy and bodily integrity may depend in part on whether their regulator agrees with their advocacy.

88. Fourth, Bill 21 eliminates tools for democratic participation by lawyers in their governance. For example, it eliminates lawyers' ability to initiate a binding referendum or vote on new rules of practice.[101] Under the *LPA*, lawyers can propose resolutions, and those resolutions bind the benchers if at least 1/3 of all members in good standing of the society vote in the referendum, and 2/3 of those voting vote in favour of the resolution.[102] This referendum mechanism gives lawyers an important means of democratic participation and promotes democratic accountability on all matters of lawyer regulation. Eliminating these tools of democratic participation and accountability only impedes lawyers' ability to exercise self-governance and increases government's power over them.

89. Fifth, Bill 21 removes the legal regulator's 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".[103] Instead, Bill 21 requires the new 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".[104] This last duty rings hollow given the problems outlined above, and also given that the new regulator is not free to interpret "independence" for itself: s. 7 of Bill 21 prescribes the guiding principles.[105] This is *government-defined* independence, not *true* independence.

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[101] See previously *LPA*, ss. 11-13.
[102] See previously *LPA*, s. 13.
[103] See previously *LPA*, s. 3.
[104] Bill 21, s. 6.
[105] Bill 21, s. 7.

90. Bill 21 purports to make these changes in the name of access to justice. To be sure, access to justice remains one of the most pressing issues facing everyday Canadians and is an important objective worth pursuing. And everyone—lawyers included—can do more to promote access to justice, which has been a persistent and worsening issue for decades. But without an independent bar, there can be no meaningful access to justice. Undue government interference in the regulation of the bar hampers lawyers' ability to serve their clients effectively, including by advocating for their rights and interests. By contrast, an independent bar allows lawyers to serve their clients effectively and contribute to law reform efforts to improve access to justice. Accordingly, independence of the bar and access to justice are mutually beneficial, not mutually exclusive.

91. Moreover, the record contains no compelling evidence—beyond mere speculation and raw hope—that Bill 21 will actually promote access to justice. Certainly there is no evidence that eliminating self-regulation by lawyers and dampening lawyers' voice on their own governing body will increase access to justice. To the contrary, one might reasonably expect that these measures will *decrease* access to justice, as lawyers themselves are best positioned to understand the challenges that their clients face in accessing justice and to develop potential solutions to those challenges in collaboration with government and members of the public at large. Moreover, one might reasonably expect that insurance costs will rise—thereby increasing the costs of providing legal services—due to the addition of new practitioners and the expansion of their scopes of practice. Lawyers may even find themselves subsidizing the insurance costs of other professionals. So Bill 21 may well be counter-productive.

92. Further, Bill 21 fails to address matters that *would* meaningfully improve access to justice. For example, Bill 21 makes no attempt to support legal aid services, which have been chronically underfunded for decades due to a lack of government support—even for the most basic and essential legal aid services. Nor does Bill 21 attempt to reduce or eliminate the diversion of legal services tax revenues away

from legal aid funding and towards general revenue. So there are real reasons to question whether Bill 21 will have any meaningful impact on access to justice.

93. The province advocates for a "functional approach" to independence of the bar, meaning an approach whereby "institutional arrangements are assessed functionally with reference to whether they will interfere with lawyers' function of providing independent legal advice and zealous advocacy on behalf of clients".[106] But even on this "functional approach", Bill 21 does not pass constitutional muster. As demonstrated above, Bill 21 interferes with lawyers' functions by removing their mechanisms for democratic participation and accountability, giving the government new powers to tell them how to practice law, and creating other legal professions that may trench on the functions of lawyers and impair their independence. None of this is "functional" in any sense of the word.

94. Bill 21's unprecedented changes dangerously undermine the lawyer's role in the administration of justice, eliminating time-tested structural protections for the institutional independence of lawyers. Bill 21 grants unnecessarily broad powers to the government to regulate the practice of law, with no commensurate safeguards to prevent misuse, including by providing Cabinet with the ability to designate new legal professions even in circumstances where doing so is widely expected to compromise independence of the bar. It risks mischief by government actors by giving them broad powers to interfere with the practice of law for reasons of political expedience. None of this is constitutionally permissible.

iii.) Bill 21 goes further than any other regime regulating lawyers

95. Bill 21 is an outlier in Canada, and in the world. No other professional regulatory regime interferes with the independence of the bar in the way Bill 21 does.

[106] Province's Application Response to Law Society, at paras. 57-58.

96. In Canada, Bill 21 goes further than any other professional regulatory regime in minimizing elected lawyers' functional control over the regulator of lawyers, giving the government powers to control lawyers and the practice of law, and allowing for orders forcing lawyers to undergo medical treatment without consent.

97. The province argues that some regulatory regimes in other Canadian provinces and territories have aspects that share certain similarities with Bill 21: for example, Manitoba's regulatory regime does not comprise a majority of elected lawyers. But the Law Society of Manitoba's 25-member board includes no fewer than 12 elected lawyers, 6 public representatives appointed by a statutory committee, 4 appointed lawyers based on a skills matrix, 1 articling student (a soon-to-be lawyer) elected by fellow students, 1 immediate past president (not selected by government), and 1 law school dean (not selected by government)—leaving only a minority of members appointed by government. Moreover, the mere existence of supposed similarities in some other Canadian jurisdictions does not demonstrate their constitutionality.

98. However, careful analysis demonstrates that independence of the bar enjoys staunch protection under each legal regulatory regime in Canada, including in Manitoba. To avoid unnecessary duplication, the CBA adopts and relies on the written submissions of the Law Society on this point.[107]

99. In any event, Bill 21's impact on independence of the bar must be viewed both individually and collectively, not in isolation. That impact goes well beyond any impacts of comparable regulatory regimes in Canada.

100. Bill 21 also goes further than any other professional regulatory regime in the Commonwealth in interfering with the independence of the bar. Although the province points to some specific aspects of Commonwealth regulatory regimes that it claims share certain similarities with Bill 21, none of those regimes even

[107] Written Submissions, Law Society of British Columbia, at paras. 193-289.

come close to Bill 21's interference when viewed as a whole. Neither precedent jurisdiction cited by the province—Australia or New Zealand—is a suitable comparator when assessing Bill 21's impacts on the independence of the bar.

101. Under Australia's legal regulatory regime, courts control admission, hear appeals of disciplinary matters, and retain inherent jurisdiction to hear conduct cases,[108] while a mix of statutory bodies address complaints and disciplinary matters with regard to lawyer conduct.[109] Otherwise, professional associations in each state and territory—each with a governing body by majority made up of elected members—make the rules that govern lawyer conduct.[110] Statutory disciplinary bodies are not a feature of Bill 21, but Bill 21 does remove functional lawyer control over the board of the legal regulator and its rule-making powers, as described above.

102. Comparisons to the New Zealand regime are similarly unhelpful. The New Zealand Law Society regulates lawyers and makes the Rules of Conduct and Client Care—and is governed by a majority of elected lawyers.[111] The Rules must be approved by the Minister of Justice, who also has a power to amend the Rules on consultation with the Council of the New Zealand Law Society.[112] Complaints and disciplinary matters are handled by a mix of bodies, some appointed by the New Zealand Law Society and some by the Department of Justice.[113]

103. Neither Australia, nor New Zealand, nor any other Commonwealth professional regulatory regime relegates elected lawyers to less than one-third of board seats, strips lawyers of their most basic tools for democratic participation, prescribes the

[108] Expert Report of Dr. Christine Parker dated December 2, 2024 [**Parker Report**] at para. 59.
[109] Parker Report at paras. 56-58, 68-69, 75.
[110] Parker Report at paras. 80-81 and Table 6 at pp. 42-45.
[111] Expert Report of Dr. Selene Mize dated December 3, 2024 [**Mize Report**] at paras. 7-10, 33-34.
[112] Mize Report, at para. 36.
[113] Mize Report, at paras. 14-17.

professional standards that lawyers must meet, forces lawyers to undergo treatment without even considering their capacity to give or refuse treatment, and gives Cabinet the power to create new professions and define their scope—even if they impair the independence of the bar.

104. The importance of an independent bar is not unique to Canada. Rather, it is a core feature of democratic legal systems around the world. To illustrate, Principle 24 of the United Nations Basic Principles on the Role of Lawyers states that "[l]awyers 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."[114] These international standards recognize that self-governing professional associations—led by elected lawyers without external interference—is not a professional privilege, but a democratic necessity to ensure lawyers can carry out their protected role.

105. Bill 21 departs from these international standards. It does not provide for an executive body elected by its members and does not allow that executive body to exercise its functions without external interference. To the contrary, it minimizes the number of elected executive body members and allows for significant government interference with the exercise of the executive body's functions. Bill 21 is an outlier in its disregard for protecting the independence of the bar.

106. While there is some utility in analyzing how foreign professional regulatory regimes protect the independence of the bar, this analysis must not lose sight of the fact that Canada has its own unique constitution with both written and unwritten norms. Bill 21's constitutionality must be measures against those norms.

[114] United Nations Basic Principles on the Role of Lawyers (adopted 7 September 1990) [emphasis added].

iv.) Bill 21's impacts would not be felt evenly

107. Finally, the consequences of Bill 21's impact on the independence of the bar would not be felt evenly. The clients most likely to suffer from the perception—or the reality—that lawyers lack independence are those who are already most vulnerable, especially those who face persecution by the state and are most in need of independent counsel. These clients may reasonably question whether their lawyer can truly act against state authorities when that lawyer is regulated by a board that lacks basic structural guarantees of independence. This well-founded doubt risks undermining both individual access to justice and the systemic legitimacy of the justice system as a whole, with serious and lasting effects.

PART 5 – ORDERS SOUGHT

108. The CBA supports the relief sought by the plaintiffs. As an intervener, the CBA asks that no costs be awarded for or against it.

Date: August 18, 2025

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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