NO. S243325
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, ATTORNEY GENERAL OF BRITISH COLUMBIA, and THE LIEUTENANT GOVERNOR IN COUNCIL

DEFENDANTS

# APPLICATION RESPONSE

**Application response of**: **the intervenor the Canadian Bar Association (the "CBA")**

THIS IS A RESPONSE TO the notice of application of the plaintiffs, Trial Lawyers Association of British Columbia and Kevin Westell, filed April 7, 2025.

Pursuant to Chief Justice Skolrood's judicial case management order made November 27, 2024 under Supreme Court of British Columbia Action No. S243258, this application will be heard for 14 days beginning October 14, 2025.

## PART 1: ORDERS CONSENTED TO

The CBA consents to ALL of the orders set out in the notice of application.

## PART 2: ORDERS OPPOSED

The CBA opposes NONE of the orders set out in the notice of application.

## PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The CBA takes no position on NONE of the orders set out the notice of application.

## PART 4: FACTUAL BASIS

### Overview

1. Lawyers play a vital role in our justice system—a role that our Constitution protects. To fulfill this role, lawyers require independence. The *Legal Professions Act,* S.B.C. 2024, c. 26 ("**Bill 21**") erodes that required independence in a way that violates the Constitution.

2. The lawyer-client relationship is built on trust: to ensure effective legal advice and representation, clients must candidly disclose sensitive and confidential information to lawyers, and lawyers must abide by an uncompromising duty of loyalty and commitment to their client's cause. At all times, clients must have complete confidence that the lawyer-client relationship will maintain its integrity—even, and perhaps especially, in the face of opposition, criticism, or pressure from government.

3. For this constitutionally protected relationship to work, lawyers must remain independent from government and thus free to advocate for their clients without fear of government influence, interference, or retaliation. But actual independence is not enough: for the lawyer-client relationship to work, lawyers must also be *seen*—by their clients and by the public—to be independent of government. Perceived and actual independence of the bar are both essential to maintaining trust in the justice system.

4. Self-regulation, in turn, is a necessary precondition to the independence of the bar. Self-regulation ensures that the bar is now, and will always remain, institutionally independent. It creates an enduring structural protection for independence of the bar.

5. By replacing self-regulation with a co-governance regime where the government can directly regulate lawyers and prescribe conditions for the practice of law, Bill 21 erodes both the actual and perceived institutional independence of the bar. As a result, it threatens the very foundation of the lawyer-client relationship and undermines public confidence in the justice system in a way that violates our Constitution.

### Bill 21

6. Bill 21 was enacted in May 2024. Today, only part of it has taken effect.

7. 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 functional majority on the regulator's board of directors.[1]

8. Bill 21 also gives the government direct control over lawyers and the practice of law in the province, including by giving the government:

   (a) the power to legislate standards of professional conduct and competence for the practice of law;[2]

   (b) the power to create new legal professions by regulation and define the scope of their licenses based on the government's *own* assessment of, among other things, whether doing so would unduly impair licensee independence;[3]

   (c) the power to make direct appointments to the new regulator's board;[4] and

   (d) the power to enact regulations that override the rules established by the new regulator.[5]

9. To be sure, Bill 21 contains a number of provisions that seek to promote important objectives such as advancing reconciliation with Indigenous peoples. Moreover, the concept of a single regulator is not itself problematic, provided its implementation respects the constitutionally protected independence of the bar. But Bill 21 does not. Our submissions focus exclusively on Bill 21's impact on independence of the bar.

**The Plaintiffs' Constitutional Challenges**

10. The Law Society of British Columbia ("**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.

11. The CBA agrees. To avoid duplication, the CBA adopts the statements of facts provided by the Law Society and the TLABC in their respective notices of application.

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[1] *Legal Professions Act*, S.B.C. 2024, c. 26 [***Bill 21***], s. 8(1).
[2] Bill 21, ss. 68, 71.
[3] Bill 21, ss. 3(d), 4, 211-214.
[4] Bill 21, s. 8(1)(d).
[5] Bill 21, ss. 211, 214.

## PART 5: LEGAL BASIS

### Lawyers' constitutionally protected role requires independence from government

12. Lawyers play a vital role in our society and in the administration of justice in Canada. The significance of this role "cannot be overemphasized".[6]

13. Every day, lawyers are called upon to act as trusted advisors and professional agents, facilitating their clients' access to a justice system that would, without them, be "hostile and hideously complicated".[7] Within this relationship, clients must be able to place "unrestricted and unbounded confidence in the professional agent" to facilitate full and frank disclosure of the client's confidences to the lawyer.[8] Without this full and frank disclosure, lawyers cannot effectively advise and represent their clients.[9]

14. For this lawyer-client relationship to work, there must be "no room for doubt" about the lawyer's loyalty or commitment to their client's cause.[10] 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[11]—including, and perhaps especially, from government, which may be directly adverse to the client. The lawyer's duty of commitment to their client's cause—a component of the broader duty of loyalty that lawyers owe their clients—is a principle of fundamental justice under our Constitution, recognized as "essential to the integrity of the administration of justice".[12] Without a litigant's confidence in their lawyer's undivided loyalty, "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".[13]

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[6] *Fortin v. Chrétien*, 2001 SCC 45 at para. 49.

[7] *R. v. Neil*, 2002 SCC 70 at para. 12. See also *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC).

[8] *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.

[9] *Smith v. Jones*, 1999 CanLII 674 (SCC) at para. 46.

[10] *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.

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

[12] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 8.

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

15. Independence of the bar is a structural precondition to lawyers' ability to fulfil these constitutionally recognized 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".[14] 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".[15]

16. To illustrate, the rule of law demands that members of the public be free to retain a lawyer of their choice without fear that the lawyer will face retribution for resolutely advocating a position contrary to the agenda of the government of the day. For our legal system to deliver justice and fulfil its truth-seeking function, lawyers must be free to accept a retainer—and to effectively and resolutely advance their client's case—no matter how politically unpopular the client or their cause. Moreover, the public must have utmost confidence that lawyers will act in their client's best interests and provide fair, frank, and fearless advice, even if the client's adversary is the government.

17. Independence of the bar operates at both an individual level and an institutional level:

    (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-client relationship—and the lawyer's effective representation of the client—depends.[16]

    (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 cause that they have represented in the past, are representing now, or might represent in the future.[17] Distrust in the independence of the bar

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[14] *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.
[15] *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 at para. 33.
[16] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 96.
[17] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at paras. 97-103.

undermines public confidence that the justice system "is a reliable and trustworthy means of resolving … disputes and controversies".[18]

18. Public confidence "depends not only on fact but also on reasonable perception".[19] 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 government interference, and a reasonable and informed person must also *perceive* lawyers to be able to do so.[20]

**Constitutional protection of independence of the bar is as close to absolute as possible**

19. 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 relationship and the justice system as a whole,[21] it receives protection that is both "permanent"[22] and "as close to absolute as possible".[23] Nothing less would suffice under our Constitution.

20. Like solicitor-client privilege, independence of the bar is essential to the proper functioning of both the lawyer-client relationship and the broader legal system. It is a necessary precondition to the lawyer's ability to discharge their duties to their client, including their duty 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".[24]

21. Independence of the bar is fundamental to effective advocacy before the courts—and public confidence in the rule of law through such adjudication—because it underpins and safeguards the lawyer's duty of loyalty to their clients. It is foundational to the truth-seeking function of our adversarial court system and the constitutionally protected right

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

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

[20] *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.

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

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

[23] *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.

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

to receive a fair trial. It is no less important in the solicitor's context, as many solicitors regularly advise their clients on contentious matters where government is involved.

22. Independence of the bar thus warrants the strongest possible constitutional protection as an unwritten constitutional principle, a principle of fundamental justice under s. 7 of the *Charter*, a safeguard for fair trial rights under *Charter* ss. 10(b) and 11(d), and part of the s. 96 protection for the rule of law through effective access to superior courts.[25]

**Self-regulation is an essential condition for independence of the bar**

23. To fulfill their unique duties of loyalty and commitment to their clients' cause, lawyers must be both individually and institutionally independent of the state. Self-regulation free from government influence is essential to fulfil both conditions.

24. No one doubts that regulation of lawyers is necessary to protect clients and the public, and that lawyers are not "above the law".[26] But the regulation of lawyers must not interfere with lawyers' fundamental role in the administration of justice. [27] As Estey J. stated for a unanimous court in *Attorney General (Canada) v. Law Society of British Columbia*, regulation of lawyers "must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense".[28]

25. In *Valente v. The Queen*, the Supreme Court of Canada recognized structural preconditions to judicial independence—namely, security of tenure, financial security, and administrative independence. The court observed that judicial independence has both individual and institutional dimensions: both individual judges and the court as an institution must be independent from government. [29] The independence of individual judges from any other entities is essential "for a given dispute to be decided in a manner that is just and equitable",[30] the independence of the judiciary is essential to ensure that the court can perform its constitutional function free from actual or apparent government

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

[26] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 111; *Attorney General (Canada) v. Law Society of British Columbia*, 1982 CanLII 29 (SCC) at 335-336.

[27] *Attorney General (Canada) v. Law Society of British Columbia*, [1982] 2 SCR 307 at 335-336.

[28] *Attorney General (Canada) v. Law Society of British Columbia*, 1982 CanLII 29 (SCC) at 335-336.

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

[30] *Mackin v. New Brunswick (Minister of Finance)*, 2002 SCC 13 at para. 39.

interference.[31] Both actual and perceived judicial independence are essential "not only to the capacity to do justice in a particular case but also to individual and public confidence in the administration of justice".[32]

26. Like judicial independence, independence of the bar has both individual and institutional dimensions. Both must be sufficiently protected for lawyers to fulfill their role so our justice system can function properly and maintain the public's trust. Like judicial independence, both *actual* and *perceived* independence of the bar are essential to the maintenance of public confidence in the system. Additionally, both independence of the judiciary and independence of the bar require structural, systems-level protections. However, the particular protections each requires are different, because judicial independence protects a relationship of *impartiality* (*i.e.*, judges must act as neutral arbiters of disputes between litigants),[33] while independence of the bar protects a relationship of *partiality* (*i.e.*, lawyers must act in their clients' interests, within the bounds of law and professional ethics).

27. Self-regulation is an essential precondition to independence of the bar, protecting the lawyer's relationship of loyalty to their client. It guarantees that the government, which may be the client's direct or indirect adversary, cannot control or influence 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.

28. 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".[34] Moreover, as they are directly accountable 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 clients. Self-

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[31] *Valente v. The Queen*, 1985 CanLII 25 (SCC) at paras. 18, 20.

[32] *Valente v. The Queen*, 1985 CanLII 25 (SCC) at para. 22.

[33] *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 at paras. 111-112.

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

regulation is premised on the notion that those who understand the ethical and functional demands of the profession—lawyers themselves—should control its governance.

**Bill 21 erodes the independence of the bar**

29. B.C. lawyers are currently regulated by Law Society benchers: 25 elected lawyers, one Attorney General, and six non-lawyers appointed by the government.[35] The benchers are charged with governance and administration of the Law Society and guided by the Law Society's broad public interest mandate.[36] 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 who are 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.[37]

30. Bill 21 replaces the province's 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);

(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.[38]

31. Bill 21 erodes the independence of the bar in fundamental ways described below.

[35] See *Legal Profession Act*, S.B.C. 1998, c. 9 [***LPA***] at ss. 4-5.
[36] See *LPA*, ss. 3-4.
[37] *LPA*, ss. 11-13.
[38] Bill 21, s. 8.

*Bill 21 creates a regulator that lacks a functional majority of elected lawyers*

32. 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 the institutional independence of the bar.

33. Elected lawyers (only 29%) occupy a marginal position on the board, only slightly outnumbering direct government appointees (18%). Although the nine elected and appointed lawyers together maintain a bare majority on the board (53%), four of them are appointed by, and in that sense accountable to, a majority of non-lawyers.[39]

34. 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.

35. 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 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.

36. While only three board members are appointed by government,[40] and the majority of board members are lawyers,[41] that does not solve the problem. The board must be functionally controlled by elected lawyers and accountable to lawyers. This ensures the board may regulate the profession in a way that maintains independence and ensures

[39] Bill 21, s. 8.

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

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

lawyers fulfill their duties to their clients. The board is plainly accountable to *government*, not to *lawyers*, removing a critical structural protection for independence of the bar.

37. 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).[42] 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.[43]

38. By removing functional control by elected lawyers, Bill 21 removes self-regulation, eliminating an essential condition for the institutional 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 the practice of law creates the potential for both actual and perceived government interference with lawyers' constitutionally protected independence.

*Bill 21 facilitates direct and indirect government control of lawyers and the practice of law*

39. Bill 21 also 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 farther than necessary to achieve its stated goals, giving the government broad powers to regulate the practice of law when it is not necessary to do so.

40. First, Bill 21 gives broad rule-making authority to a board that is neither accountable to, nor functionally controlled by, lawyers.[44] Given the proportion of non-lawyers, the board can hardly be considered to have expertise in or sensitivity to the conditions of lawyer practice. It includes almost as many direct government appointments as it does elected lawyers. Yet it is charged with regulating virtually all aspects of lawyer practice.

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[42] 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.

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

[44] Bill 21, ss. 27-28.

41. Second, Bill 21 gives cabinet broad authority to pass regulations to create new legal professions and define the scope of practice for them.[45] 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".[46]

42. Bill 21's regulation-making powers appear ripe for misuse by any politically motivated government actors. For example, cabinet could make regulations to create a new legal profession to override conflicting rules adopted by the board.[47] It could do so 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.[48] 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". 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.[49] This is truly extraordinary.

43. Third, Bill 21 permits the legislature—rather than the benchers, or even the board—to define certain professional conduct standards and competence requirements for the practice of law.[50] 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

[45] Bill 21, ss. 3(d), 4, 212-214.
[46] Bill 21, s. 4(2)(d)(v).
[47] Bill 21, s. 214.
[48] See, *e.g.*, Bill 21, s. 4(2)(a).
[49] See Bill 21, s. 4(2).
[50] Bill 21, ss. 68, 71.

benchers (*i.e.*, a group composed overwhelmingly of elected lawyers).[51] It imposes harsh consequences for violations of these legislatively prescribed standards.[52] Although these provisions are complemented by the rules and code of conduct established by the board (which lawyers do not functionally control), a mere breach of Bill 21's provisions is a contravention that can result in severe punishment.[53]

44. Indeed, Bill 21 allows the new regulator's chief executive officer or a hearing panel of the new regulatory tribunal to impose required "counselling or medical treatment, including treatment for a substance use problem or substance use disorder" on lawyers deemed incompetent.[54] 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 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.

45. Fourth, Bill 21 eliminates tools for democratic participation by lawyers in their governance, such as the ability to initiate a binding referendum or vote on new rules of

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[51] 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).

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

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

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

practice.[55] Eliminating these tools of democratic participation only impedes lawyers' ability to exercise self-governance and increases government's power over them.

46. Fifth, Bill 21 effectively 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".[56] 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".[57] 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.[58] This is government-defined "independence".

47. Bill 21 purports to make these changes in the name of access to justice. To be sure, access to justice is an important principle worth pursuing. But without independence of the bar, there can be no 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. Simply put, there is no access to justice without an independent bar.

48. Bill 21's 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 a new legal profession in circumstances even if 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.

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[55] See previously *LPA*, ss. 11-13.
[56] See previously *LPA*, s. 3.
[57] Bill 21, s. 6.
[58] Bill 21, s. 7.

*Bill 21 goes further than any other professional regulatory regime in Canada*

49. Bill 21 is an outlier in Canada. No other professional regulatory regime interferes with the independence of the bar in the way Bill 21 does. No other province or territory does away with elected lawyers' functional control over the legal regulator—*i.e.*, self-regulation. No other province or territory gives itself the right to create new classes of legal professionals irrespective of their impact on independence of the bar. And no other province or territory forces lawyers to undergo medical treatment without consent. Bill 21's changes are both unprecedented and unnecessary.

**PART 6: MATERIALS TO BE RELIED ON**

1. Affidavit #1 of Simon Collins, made May 24, 2024;

2. Affidavit #1 of Kevin Gourlay, made May 27, 2024;

3. Affidavit #1 of Gregory Berry, made May 27, 2024;

4. Affidavit #1 of Rajiv Gandhi, made May 27, 2024;

5. Affidavit #1 of Brook Greenberg, K.C., made May 24, 2024 (Law Society Action);

6. Affidavit #1 of Patti Lewis, made May 24, 2024 (Law Society Action);

7. Affidavit #2 of Patti Lewis, made June 4, 2024 (Law Society Action);

8. Affidavit #2 of Brook Greenberg, K.C., made June 12, 2024 (Law Society Action);

9. Affidavit #1 of Winston Sayson, K.C., made March 28, 2025;

10. Affidavit #1 of Dr. Soma Ganesan, made March 29, 2025;

11. Affidavit #1 of Doron Gold, made March 31, 2025;

12. Affidavit #1 of Kevin Westell, made April 3, 2025;

13. Affidavit #2 of Gregory Berry, made April 3, 2025;

14. Affidavit #3 of Brook Greenberg, K.C., made April 3, 2025 (Law Society Action);

15. The Second Amended Notice of Civil Claim, filed December 19, 2024; and

16. Such further and other material as counsel shall advise and the court will permit, including the materials filed by the Law Society in support of their application, to be heard at the same time as this application.

☒ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

DATE: April 22, 2025

**MICHAEL A. FEDER, K.C.**
**CONNOR BILDFELL**
**LINDSAY FRAME**
**NICO RULLMANN**
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