



May 14, 2024

Attorney General Niki Sharma, KC
Ministry of Attorney General

Sent via email

Re: Progress of the *Legal Professions Act*

Dear Attorney General,

I write to update you on CBABC's position on Bill 21, *Legal Professions Act*. Since my April 19 letter to you, CBABC has engaged in 13 consultation sessions regarding the Bill with lawyers and articling students (among our 8,000 members) – including consultation with members of our Aboriginal Lawyers Forum, Truth & Reconciliation Committee and Provincial Council. This enabled us to gather the views of lawyers across the province on the matter.

While we support some components of the legislation, we maintain the view that there are fundamental flaws that must be addressed before the Bill is passed. This sentiment was clearly echoed in the results of our consultation, which highlighted just how crucial it is that the B.C. government allow more time for review by all impacted parties.

CBABC supports creating an Indigenous Council to play a meaningful and substantive role in the work of the legal regulator, including developing its rules and processes and furthering its ongoing commitment to reconciliation. Our view is that such a council must be independent from government and include Indigenous lawyers. CBABC also supports designating positions on the Board for Indigenous people and measures to ensure that people with identities who are historically underrepresented in the profession are included and empowered within the legal regulator. No changes to the way legal professions are regulated should be made without these, or similar, provisions. We applaud your work and that of Indigenous lawyers in bringing these changes to the foreground.

Unfortunately, the legislation is far broader than the Indigenous Council. As we have continuously emphasized, we support a single regulator model if – and only if – lawyer independence is maintained. Participants in our consultations were clear that, as drafted, Bill 21 does not provide sufficient protection for lawyer independence. To ensure public confidence in the justice system, members of the public need to know that their relationship with their lawyer cannot be interfered with by government. This is a fundamental tenet of a free and democratic society.

To be independent, lawyers must be self-regulated. This means that the board of the regulator must comprise a substantial lawyer majority that is elected by lawyers and through a process that reflects diverse voices, including Indigenous and racialized lawyers. The current slim majority of one elected



lawyer does not meet this requirement. Appointed board members are not sufficiently autonomous from other board members, government and political influence to be classed as independent.

We are also in support of a role for properly qualified and regulated paralegals, provided that any scope of practice for paralegals is determined by an independent regulator, not by government. Nevertheless, we stand by our view that modernizing the regulation of lawyers, notaries and paralegals as proposed will not meaningfully improve access to justice or legal services. Other services – such as funding family law legal aid representation, providing access to technology, or further funding modernized court services – would have much greater impact.

Despite the positive elements of this legislation, we do not support the passing of Bill 21 in its current form, given our concern that the independence of the Bar is not sufficiently maintained. Legislation that impacts the rights and freedoms of British Columbians requires transparent and meaningful consultation.

The very definition of self-governance means that lawyers must be engaged and have a say in the legislation's final form.

We need more time for discussions within the legal profession as well as with our regulator, the government, notaries, paralegals and Indigenous associations. We repeatedly called for the B.C. government to make the details of the proposals public, which was not done. The restrictions on those who saw drafts of the legislation in advance prevented dialogue to achieve a mutual understanding. If we cannot reach consensus on the changes required, we expect to intervene in any court action.

We hope to work with you to shape this legislation in a manner that reflects our shared goals of protecting the rule of law, respecting the continued independence of lawyers, enhancing the public's ability to access legal services throughout British Columbia, and empowering Indigenous people within the justice system.

Sincerely,

Scott Morishita
2023-2024 President

cc. BC United Party, Attention: Michael Lee
BC Green Party, Attention: Adam Olsen
BC Conservative Party, Attention: John Rustad