IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Law Society of British Columbia v. British Columbia (Attorney General),* 2026 BCSC 779

Date: 20260429
Docket: S243258
Registry: Vancouver

2026 BCSC 779 (CanLII)

Between:

Law Society of British Columbia

Plaintiff

And

The Attorney General of British Columbia, and the Lieutenant Governor in Council

Defendants

And

Canadian Bar Association, Indigenous Bar Association, Society of Notaries Public of British Columbia, Law Foundation of British Columbia, and Law Society of Manitoba

Intervenors

-and-

Docket: S243325
Registry: Vancouver

Between:

Trial Lawyers Association of British Columbia and Kevin Westell

Plaintiffs

And

The Attorney General of British Columbia, and the Lieutenant Governor in Council

Defendants

And

Canadian Bar Association, Indigenous Bar Association, Society of Notaries Public of British Columbia, Law Foundation of British Columbia, and Law Society of Manitoba

Intervenors

Before: The Honourable Chief Justice Skolrood

Reasons for Judgment

In Chambers

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Place and Date of Trial:	Vancouver, B.C. October 14-17, 20-24, 27-28, 2025
Place and Date of Judgment:	Vancouver, B.C. April 29, 2026

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Overview

[1] For over 150 years, since its creation in 1874, the Law Society of British Columbia [LSBC] has been an independent, self-governing society charged with regulating lawyers in the public interest.

[2] In 2024, the Legislature of British Columbia enacted Bill 21, *Legal Professions Act*, 5th Sess, 42nd Leg, British Columbia, 2024 (transition provisions assented to 16 May 2024) S.B.C. 2024, c. 26 [Bill 21] which provides for the amalgamation of the LSBC with the Society of Notaries Public of British Columbia [SNPBC] in order to create a new regulator (the "new regulator") with regulatory jurisdiction over lawyers, notaries public and paralegals as well as, potentially, new legal professions. A central element of Bill 21 is the elimination of self-governance and self-regulation of lawyers by a board comprised of a majority of elected lawyers.

[3] The plaintiffs in these two actions, the LSBC (Action No. S243258) and Trial Lawyers of British Columbia and Kevin Westall [together, TLABC] (Action No. S243325) challenge Bill 21 on the basis that it undermines the independence of the Bar, which is a foundational, underlying principle of the Canadian Constitution, and is therefore *ultra vires* the provincial legislature.

[4] The TLABC also alleges that aspects of Bill 21 violate the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, specifically ss. 2(d), 7, 8, 10(b) and 11(d).

Preliminary Issues

Proper Defendants

[5] The defendants seek an order removing His Majesty the King in Right of the Province of British Columbia as a defendant on the basis that the proper defendant in a constitutional challenge is the Attorney General: *Allen v. British Columbia (Superintendent of Motor Vehicles)*, 2 B.C.L.R. (2d) 255 at 260–61, 1986 CanLII 1044 (S.C.). The plaintiffs do not take issue with this position, thus the relief sought by the defendants will be granted and the style of cause amended accordingly. The

Lieutenant Governor in Council [LGinC] remains a proper party given the plaintiffs' request for injunctive relief.

Evidentiary Issues

[6] Various evidentiary issues were raised. For example, the LSBC challenged the admissibility of certain affidavit evidence filed by the SNPBC describing the historical relationship between notaries and lawyers. The defendants also challenged portions of the evidence filed by the LSBC on the basis that it is hearsay, opinion, or both. The portions challenged as hearsay evidence include descriptions of the different law societies' involvement in developing legal professions legislation and historical facts drawn from academic and other literature. The evidence challenged as opinion includes, for example, legal opinion on the meaning and effect of the legislation.

[7] It is not necessary for me to rule on these objections. While I agree that aspects of the impugned evidence are problematic, for example various statements in the affidavit evidence filed by the LSBC effectively opining on the perceived impact of Bill 21 on the independence of the Bar, none of that evidence factors into my analysis in any meaningful way. Rather, the analysis turns on facts and evidence that are largely uncontradicted.

Current Regulatory Model: *Legal Profession Act*, S.B.C. 1998, c. 9

[8] At present, the LSBC is continued pursuant to the *Legal Profession Act*, S.B.C. 1998, c. 9, as amended [*LPA*]. Key elements of the current regulatory model, for the purposes of this case, include:

a) **Section 3** confirms that it is the object and duty of the LSBC to "uphold and protect the public interest". Section 3 then sets out a number of functions of the LSBC which are intended to achieve that object.

b) **Section 4** sets out the composition of the LSBC governing board. The directors, known as "benchers", are comprised of the Attorney General, up to six persons appointed by the Attorney General (pursuant to s. 5), and

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elected lawyers (pursuant to s. 7). Under s. 7, the benchers may establish rules governing elections, which rules currently provide for the election of 25 benchers distributed across nine geographic regions in the province.

c) **Section 11** empowers the LSBC to make rules for the governing of the society, lawyers, law firms, articled students and applicants and for carrying out the *LPA*. The rules do not require government approval, although certain rules must be approved by a vote of members at a general meeting.

d) As part of its rule-making function under s. 11, the LSBC has established a Code of Professional Conduct, which is based in large part on the Federation of Law Societies' Model Code of Professional Conduct.

[9] Together, these provisions, as well as other aspects of the *LPA*, create the current self-governing and self-regulating model for the regulation of the legal profession in British Columbia.

New Regulatory Model: Bill 21

[10] As noted above, if brought into force, Bill 21 will significantly alter the regulation of lawyers in British Columbia. The key changes highlighted by the plaintiffs, which they say eliminate self-governance and self-regulation and undermine the independence of the Bar, include:

a) **Section 3** designates the legal professions subject to regulation under Bill 21, including lawyers, notaries public, regulated paralegals and "a profession designated by regulation" (s. 3(d)). **Section 4** then authorizes the LGinC, on the recommendation of the Attorney General, to make regulations designating a profession as a legal profession. Section 4(2) identifies a number of factors that the Attorney General must consider before making a recommendation, including in s. 4(2)(v) "whether the designation would have an undue impact on the independence of licensees under this Act".

b) **Section 5** provides for the amalgamation of the LSBC and the SNPBC, with the newly formed regulator to be known as "Legal Professions British Columbia".

c) **Section 6** sets out the duties of the new regulator, which include: (i) regulating the practice of law in BC; (ii) establishing standards and programs for the education, training, competence, practice and conduct of applicants, trainees, licensees and law firms; and (iii) ensuring the independence of licensees. Section 6(2) further directs that the regulator "must exercise its powers and perform its duties under this Act in the public interest".

d) **Section 7** sets out a number of guiding principles that the regulator "must" have regard to in carrying out its functions, including in s. 7(b) "supporting reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples" [UNDRIP] and in s. 7(c) "identifying, removing or preventing barriers to the practice of law in British Columbia that have a disproportionate impact on Indigenous persons and other persons belonging to groups that are under-represented in the practice of law".

e) **Section 8** provides for a board of directors for the new regulator comprised of 17 directors as follows:

(i) 5 directors elected by and from among lawyers;

(ii) 2 directors elected by and from among notaries public who are not also lawyers;

(iii) 2 directors who are regulated paralegals;

(iv) 3 directors appointed by the LGinC, of whom at least one must be an individual of a First Nation;

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(v) 5 directors appointed by a majority of the other directors holding office, after a merit-based process, of whom 4 must be lawyers, one must be a notary public who is not a lawyer, and at least one must be an Indigenous person.

Pursuant to this section, the board of the new regulator is no longer controlled by a majority of elected lawyers. Prior to the creation of the new board, a transitional board will be put in place pursuant to s. 230.

f) Under **section 10**, the board of the new regulator may establish an executive committee of no more than five people, a maximum of two of whom can be elected lawyer directors.

g) **Section 27** empowers the board to make any rules it considers necessary or advisable for the performance of the regulator's duties and provides that the board may make different rules for different legal professions. **Section 26** provides that before making a rule, the board must consult the Indigenous Council (see below) respecting the extent to which the rule accords with the principles set out in ss. 7(b) and (c) [dealing with reconciliation and the removal of barriers].

h) **Section 29** establishes the Indigenous Council and sets out the composition of the council. **Section 30** sets out the role of the Indigenous Council, which includes:

(i) Advising and working in collaboration with the regulator on any matter relating to the implementation of UNDRIP in the context of the regulation of the practice of law in BC, including in respect of the incorporation of Indigenous legal traditions and Indigenous practices and the systemic challenges faced by Indigenous persons that require investigation and action by the regulator;

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(ii) Advising on matters that under the Act require consultation with the Indigenous Council;

(iii) Participating in the regulator's strategic planning processes; and

(iv) Exercising certain approval powers as conferred by the Act.

i) **Section 224** establishes a Transitional Indigenous Council which, pursuant to **section 226**, is required to collaborate with the transitional board of the new regulator to develop the first rules of the new regulator. Under s. 226(2)(b), any such new rules may not be made unless first approved by the Transitional Indigenous Council.

j) **Section 37** provides that a person must not practice law in BC unless licenced under the Act. **Section 38** sets out a number of exceptions to the s. 37 prohibition, including, in s. 38(1)(i), "a person in a class of persons prescribed under section 212" [which authorizes the LGinC to pass regulations prescribing classes of persons so exempted].

k) **Section 211** confers a general regulation-making authority on the LGinC to make "regulations respecting any matter for which regulations are contemplated" by Bill 21. Pursuant to **section 214**, in the event of an inconsistency between a regulation made by the LGinC and a rule made under Bill 21, the regulation prevails.

[11] In addition to these provisions, the TLABC points to a number of additional sections of Bill 21 that it submits breach various *Charter* rights, including:

a) **Section 78** authorizes the chief executive officer of the new regulator to enter the office of a lawyer or law firm and examine records relating to the practice of law and further, for the purposes of an investigation, to order a licensee or law firm to produce records and attend for an examination under oath.

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b) **Section 68,** which sets out a number of definitions relating to professional conduct and competence, includes reference to a "health condition" preventing a licensee from practising law with reasonable skill and competence. In other words, according to the TLABC, Bill 21 equates a health condition, including a mental health condition, with incompetence.

c) **Section 88** empowers the chief executive officer of the new regulator, upon determining that someone has practised law incompetently, to require a licensee or trainee to receive counselling or medical treatment, including treatment for a substance use disorder.

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LSBC's and TLABC's Challenges to Bill 21

[12] I will address the specific arguments advanced by the LSBC and the TLABC under the various issues set out below, but it is useful to provide a general overview of their respective positions.

[13] The LSBC submits that an independent Bar is a fundamental, underlying principle of the Canadian Constitution and is vital to maintaining the legitimacy of Canada's constitutional democracy. They argue that the principle of an independent Bar is reflected in the written constitution, specifically the judicature provisions of the *Constitution Act, 1867* (ss. 96–101), and in ss. 7, 10 and 11(d) of the *Canadian Charter of Rights and Freedoms*. They submit that provincial legislatures cannot use the legislative authority granted under s. 92 of the *Constitution Act, 1867* to enact legislation undermining an independent Bar.

[14] The LSBC submits that Bill 21 does exactly that. It overturns over 150 years of self-governance and self-regulation and, in doing so, erodes the essential conditions of an independent Bar. As such, the LSBC contends that Bill 21 is *ultra vires* the provincial legislature and its powers under ss. 92(13) and 92(14) of the *Constitution Act, 1867*.

[15] While the principal focus of the LSBC's challenge is the composition of the governing board of the new regulator, the LSBC submits that it is the "waterfall

effect" of numerous measures contained in Bill 21 that, taken together, significantly erode the independence of the Bar.

[16] The TLABC supports the position of the LSBC on its *vires* arguments. Additionally, the TLABC submits that Bill 21 violates individuals' rights under ss. 7, 10(b) and 11(d) of the *Charter* by undermining the independence of the Bar and thereby impeding access to effective assistance by independent counsel and to a fair hearing before an independent judge. The TLABC further submits that Bill 21 violates lawyers' s. 2(d) right to free association, s. 8 right to be free from unreasonable search and seizure, and s. 7 right to life, liberty and security of the person. The s. 7 argument focusses on what the TLABC submits are provisions of Bill 21 that permit the chief executive officer of the new regulator to compel lawyers to undergo treatment for mental health conditions.

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Position of the Attorney General of British Columbia

[17] The defendants acknowledge that independent lawyers play a crucial role in the administration of justice. However, the defendants argue that lawyers are not constitutionally guaranteed the right to be free from any and all forms of democratic regulation. They submit that the regulatory powers of lawyers' governing bodies are delegated to them by provincial legislatures and that the regulatory model chosen is a matter of legislative policy.

[18] The defendants also acknowledge that the regulatory powers of provincial legislatures are not unconstrained. For example, the legislature cannot enact legislation creating rules or imposing requirements on lawyers that undermine their fundamental duty to provide clients with independent advice and advocacy. Such a duty, they acknowledge, is a principle of fundamental justice protected under s. 7 of the *Charter*. The defendants submit that Bill 21 preserves the independence of lawyers when independence is understood in this sense.

[19] However, according to the defendants, the plaintiffs' claims go well beyond the protection of this duty by asserting that a model of self-governance, by which lawyers are governed by an independent regulator with a board comprised of a

majority of elected lawyers, is constitutionally mandated. The defendants submit that there is no authority in Canada, or elsewhere in the democratic world, supporting this expansive definition of independence.

[20] With respect to the TLABC's *Charter* arguments, the defendants submit that these arguments are premised in large measure on a misreading of Bill 21 and a misapplication of the various *Charter* provisions and, accordingly, the *Charter* grounds are devoid of merit.

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<u>The Intervenors</u>

[21] A number of parties were granted leave to intervene in the two proceedings. The positions advanced by the intervenors are summarized below.

Canadian Bar Association

[22] The Canadian Bar Association [CBA] submits that Bill 21 unconstitutionally impairs the independence of the Bar, both in fact and appearance, by eliminating self-regulation and giving the state control over the regulation of lawyers. They contend that lawyers play an indispensable role in the administration of justice through their independent advice and advocacy and that independence of the Bar and self-regulation are essential to protecting lawyer's crucial role in the administration of justice.

[23] They submit that to ensure public confidence in the justice system, the public must have the utmost confidence that the profession has institutional protections in place to ensure independence. They submit that self-regulation, defined as the governing board having a substantial majority of elected lawyers, is essential to maintaining both individual and institutional independence, as it ensures the regulator is answerable to the profession, not government, enabling lawyers to safeguard the independence of the Bar.

[24] Further, the CBA submits that while the Constitution does not expressly guarantee self-regulation or an independent Bar, a number of constitutional protections have no meaning without a self-regulating and independent Bar. They

argue that these concepts are protected as unwritten constitutional principles that safeguard the rule of law and as necessary corollaries to the written guarantees in the judicature provisions and fair trial rights under the *Charter*.

[25] In the CBA's submission, Bill 21 eliminates self-regulation by replacing the strong majority of elected lawyers with a co-governance regime where government controls and participates directly in the regulation of lawyers. In their view, the new board being functionally controlled by non-lawyers and accountable to non-lawyers removes a structural protection to independence.

[26] Further, the CBA submits that Bill 21 puts lawyer regulation squarely in the hands of the state through: (a) rule-making power being held by a board not answerable or functionally controlled by lawyers; (b) Cabinet's authority to pass regulations to create new legal professions and define their scope of practice; (c) the legislature's role in defining professional conduct standards and competence requirements; (d) the removal of tools for democratic participation by lawyers in their governance; and (e) the changes to the regulator's mandate and the imposition of a government-defined guiding principle of independence. They submit that taken together these changes eliminate structural protections for institutional independence and grant unnecessarily broad powers to government to directly regulate the practice of law.

Law Society of Manitoba

[27] The Law Society of Manitoba [LSM] submits that an independent regulator is necessary to ensuring an independent Bar and that Bill 21 establishes a regulator that is not, or will not be seen to be, independent of government. While the LSM admits that there is no single way to ensure an independent Bar, it submits that self-regulation and self-governance are hallmarks of an independent Bar.

[28] The LSM focuses on the consequences of the proposed board structure and the ability of government to enact regulations that would override the regulator's decisions. The LSM submits that these two components of Bill 21 remove self-regulation and permit government control of the regulator.

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[29] The LSM contends that the board is not self-regulating and thus not independent because: (1) lawyers do not form the majority of those appointing the board-appointed directors; (2) when the board is fully populated, lawyers have a majority by only one, such that attendance will dictate whether the regulator is self-governing; and (3) lawyers will not be a majority of the executive committee, if established. The LSM distinguishes its own board structure on the basis that none of its appointed benchers are appointed by government and appointed lawyers are appointed by a group of which the majority are duly elected lawyers.

[30] The LSM further submits that the government's power to make regulations which would prevail against any rule made by the regulator would mean that government could always override the decisions of the regulator and effectively eliminate the independence of the Bar. This ability, it contends, operates as a "trump" card allowing the government to usurp the regulator's decisions without limit, making the entire scheme subject to the whim of the government of the day.

Society of Notaries Public of British Columbia

[31] The intervenor the SNPBC submits that the proper constitutional framework to address this case is that the Constitution guarantees the independence of legal professions, not just lawyers. As such, the SNPBC submits that co-regulation and co-governance is constitutionally sound.

[32] The SNPBC submits that the rule of law, an essential component of the Constitution's architecture, is supported by the role of independent legal professionals beyond just advocacy and representation. It notes that notaries public play an important role in educating and guiding society to facilitate voluntary compliance with the law and that such compliance is an essential precondition to the rule of law. Thus, it submits that the Constitution's protection of independent legal professionals should focus on function rather than title.

[33] Under this framing, the SNPBC argues that the board composition constitutes appropriate government regulation which does not infringe independence of the legal professions. The SNPBC stresses that legal professions are not guaranteed

independence from each other, just government or third parties, and cooperation between professions has the potential to further their shared constitutional role. As such, the SNPBC submits that Bill 21 simply creates a new framework for the self-governance of independent legal professionals.

[34] In response to the TLABC's s. 2(d) *Charter* arguments, the SNPBC submits that to the extent the TLABC suggests that a single regulator infringes lawyers' rights by compelling association with non-lawyers, this argument must be rejected. The SNPBC submits that such compelled association through collective regulation is appropriate in the circumstances and presents no danger to lawyers' liberty interests.

Indigenous Bar Association

[35] The intervenor the Indigenous Bar Association [IBA] submits that neither the Indigenous Council nor the s. 7(b) guiding principles undermine the independence of the Bar as properly understood and construed.

[36] The IBA contends that the Indigenous Council's role is carefully prescribed, is limited in scope, and does not create a model of co-governance. It cautions that a broad notion of independence cannot be enforced in the abstract; not all constraints on the governance and regulation of lawyers constitute an intrusion on independence. While the IBA questions the LSBC's articulation of independence as an unwritten constitutional principle, it submits that even under this articulation the Indigenous Council does not infringe the independence of the Bar. The IBA notes that the Indigenous Council's approval powers post-transition are limited in a way that does not undermine self-regulation. Further, it submits that the Transitional Indigenous Council does not undermine independence as it simply ensures an Indigenous voice in the creation of the first set of rules, and the first board, once constituted, may make any rules it considers necessary or advisable.

[37] Further, the IBA submits that any risk suggested by the plaintiffs that the Indigenous Council may be involved in the creation of rules that erode the independence of the Bar is not an inherent or structural risk and could be properly

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addressed through judicial review. It also asserts that having members of First Nations on the Indigenous Council does not create any inherent potential for bias or conflict of interest nor otherwise impair their ability to properly fulfill the mandate of the Indigenous Council. Such involvement has no proper analogy to threats to independence from direct state regulation.

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[38] Regarding the guiding principles in s. 7(b), the IBA submits that these principles are not an imposition of government policy: they do not prescribe how the regulator must have regard to these principles and do nothing more than require the regulator to consider things it has already adopted. The IBA notes that the LSBC has itself taken steps to implement UNDRIP and further reconciliation. Further, they assert that neither UNDRIP nor reconciliation are “government policy”: reconciliation is the grand purpose of s. 35 of the *Constitution Act, 1982* and through the *Declaration of the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44 [*DRIPA*] the province has affirmed the application of UNDRIP to the laws of BC.

[39] Finally, the IBA submits that the principles of independence of the Bar and reconciliation should be considered together when interpreting the Constitution. The IBA notes that traditionally the concept of independence has been formulated without consideration of Indigenous perspectives, but that moving forward any conceptualization must account for an Indigenous perspective and be expressed in a way that furthers reconciliation.

Law Foundation of British Columbia

[40] The Law Foundation of British Columbia (the “Foundation”) intervened for the limited purpose of opposing the plaintiffs’ proposed alternative remedy that only some parts of Bill 21 be declared *ultra vires*. While the Foundation took no position on the outcome of the application generally, it submits that the alternative remedies could destabilize the Foundation’s ability to carry out its mandate.

[41] Bill 21 proposes several changes to the Foundation’s structure, including absorbing the Notary Foundation and making corresponding changes to its board. The Foundation submits that if Part 18, which revises the makeup of the Foundation,

is declared *ultra vires* but Part 11, which sets out the role of the Foundation following the creation of the new regulator, remains, the Foundation would face procedural hurdles to their operations and a confusing and piecemeal governance structure.

[42] It submits that this would place the Foundation into a post-amalgamation state without the necessary transitional provisions to effect this change and make sense of the provisions that remain. The Foundation cautions that this resulting state of limbo would hinder their ability to fund vital legal services in BC.

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Background/Context

[43] Considerable evidence was led by both the LSBC and the defendants about the history of legal regulation in BC and throughout Canada, regulatory structures in other countries and the process leading to the enactment of Bill 21.

[44] While this evidence provides some useful context, it has minimal bearing on the issues the Court needs to decide. I will therefore not review the evidence in detail but will highlight some of the key points that emerge.

History of the Regulation of Legal Professions in British Columbia and Elsewhere in Canada

British Columbia

[45] Since the LSBC was incorporated as the regulator of the legal profession in 1874, it has been largely self-regulating and self-governing. It has been led by benchers, a majority of whom have been elected lawyers, and since 1884 it has held the exclusive right to make rules and regulations in respect of the discipline of lawyers and admission to the bar with no requirement for consultation with, or approval by, any government or other external body.

[46] Throughout its existence, the LSBC has taken the lead on changes to its governing legislation, including by proposing and drafting amendments, often after consultation with the profession. Where the legislature has revised these proposals, the LSBC has historically maintained a collaborative role through this process.

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[47] For example, when the *LPA* was revised and modernized in 1987, resulting in the *Legal Profession Act*, S.B.C. 1987, c. 25, the process was initiated and largely driven by the LSBC. It involved extensive consultation with the Bar and consensus-building, something noted by the government when the new legislation was introduced in the Legislature. Numerous subsequent amendments were made to the *LPA* leading to its current form, all of which involved extensive participation by and input from the LSBC. The LSBC submits that this history reflects an acknowledgement of its essential role in maintaining an independent Bar.

Other Canadian Jurisdictions

[48] At the time of Confederation, self-governance and self-regulation were not consistent features of lawyer regulation in the original provinces, and indeed each of the provinces had a different model of lawyer regulation. The provinces and territories that subsequently joined Canada also had varied regulatory models and none, at the time they joined, satisfied the conditions for both self-governance and self-regulation.

[49] Nonetheless, subject to certain exceptions described below, there are now several common features of lawyer regulation across Canadian jurisdictions, including: (1) the legal regulator is self-governing, governed by a majority of lawyers elected by lawyers, who are empowered to make rules for the governance of the society and the legal profession; (2) the legal regulator controls admission and discipline of lawyers; (3) the legal regulator is not required to consult with or get approval from any government or other entity in making rules and such entities are not allowed to make rules or regulations; and (4) the legal regulator plays a substantive role in developing and amending its governing legislation, including by making proposals for amendments.

[50] While these features can be described as general trends, they are not airtight rules.

[51] When these features came into being varies by jurisdiction. For example, while power over admission was often delegated fairly quickly following the creation

of a legal regulator, when jurisdictions delegated disciplinary powers varies quite widely, with some legal regulators not gaining such powers until the 1920s or 30s. In the Yukon, lawyer discipline was regulated by the courts until 1984.

[52] Further, there are a number of exceptions to the trend of legal regulators holding independent and exclusive power to make rules and regulations. In Saskatchewan, if the Legislative Assembly finds a rule or amendment to a rule to be prejudicial to the public interest, then the rule ceases to have effect and is deemed to have been revoked. In New Brunswick, rules about the taxation of lawyers' fees require Cabinet approval. In Nova Scotia, Cabinet has a broad regulation-making power in relation to lawyer regulation.

[53] The Yukon is also a notable exception. Lawyers in the Yukon only became self-regulating in 1984, when the Law Society of the Yukon came into existence. From 1984 to 2017, Yukon's Cabinet had the power to annul any rule of the legal regulator it considered contrary to the public interest. In 2017, Yukon's Cabinet was granted the authority to create new categories of legal professionals.

[54] Manitoba and Québec are also particular outliers. Manitoba does not meet the LSBC's definition of self-governance as only 12 of its 25 benchers are lawyers elected by lawyers. The other 13 benchers consist of four appointed lawyer benchers, six appointed lay benchers, one articled student elected by the articling class, the immediate past president of the Law Society of Manitoba, and the Dean of the Faculty of Law of the University of Manitoba. Appointed benchers are selected through a committee process established by the Law Society of Manitoba.

[55] In Québec, the regulation of professional corporations was standardized by the *Professional Code*, S.Q. 1973, c. 43 (now in amended form, C.Q.L.R., c. C-26), leading to significant government oversight through a co-regulatory model. This legislation established the Offices des professions du Québec (the "Office"), whose members are appointed by Cabinet. Any proposed rule or regulation must be approved by both the Office and Cabinet. The Barreau must first send the rule or regulation to the Office for review for compliance with the *Professional Code*. After

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this review, the Office makes its recommendation to Cabinet, who may approve the rule or regulation, with or without modification, or withhold its approval. In exceptional circumstances, should the Barreau fail to draft rules or regulations required by the *Professional Code* or the Office, Cabinet can unilaterally impose those rules or regulations and determine their content. This oversight extends to the Barreau's Code of Professional Conduct.

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The International Context

[56] The LSBC underscores the importance of maintaining a strong, independent Bar by reference to events in the United States where the current federal administration has engaged in what the LSBC describes as an "unprecedented assault on lawyers and the rule of law". The LSBC highlights these events not to suggest that Bill 21 is the equivalent to the actions taken in the United States, but rather to make the point that the elimination of self-governance and self-regulation undermines the independence of the Bar and thereby weakens an essential safeguard for ensuring that the rule of law and our essential democratic structures remain intact. For their part, the defendants point to the regulatory models adopted in Australia and New Zealand which involve systems of co-regulation in which the courts, government, professional associations and statutory boards all have defined roles. For example, in certain Australian states and in New Zealand, aspects of lawyer discipline are handled by statutory commissioners or boards. The defendants submit that these different models function well in serving the public interest and do not threaten lawyer independence.

[57] The evidence of the regulatory models in Australia and New Zealand illustrates that there are different approaches to the regulation of lawyers in other jurisdictions. However, given the very different constitutional frameworks existing in those countries, these examples have minimal relevance to the issues that arise in this case.

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Process Leading to the Enactment of Bill 21

[58] In the same way that the substance of Bill 21 represents a significant departure from the long-established approach to the regulation of lawyers in BC, so too did the process leading to its enactment.

[59] As discussed above, while the LSBC has always been established and governed pursuant to statute, it has also always been consulted, and indeed has generally taken the lead, on developing legislative amendments impacting the regulation of lawyers.

[60] That was not the case in respect of the development of Bill 21.

[61] The government first announced in March 2022 that it intended to create a new regulatory model to govern lawyers, notaries and paralegals. That announcement was followed in September 2022 with the publication of an Intentions Paper on the Legal Professions Regulatory Modernization (the "Intentions Paper") which outlined the policy objectives of the proposed new model. The Intentions Paper expressly addressed the independence of the Bar. It stated:

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

[62] The Intentions Paper invited submissions from the Bar and the public on those policy objectives and in May 2023, the Ministry published a "What We Heard" report summarizing the submissions received. Those submissions included responses from the CBA and other legal organizations, as well as individual lawyers and members of the public.

[63] Thereafter, and indeed throughout the 2022–2024 period, there were numerous meetings between government representatives and the various legal organizations at which the policy underpinnings of the proposed new regulatory

model were discussed. Benchers of the LSBC were provided with copies of the draft legislation during these meetings, although they were required to keep the drafts confidential.

[64] While the LSBC acknowledges that the government consulted in a general way about the proposed changes to the regulation of the various legal professions, its central complaint is that government did not share publicly a draft of Bill 21 before it was first tabled in the legislature and, as such, the government made no effort to build consensus with the Bar and the public.

[65] The point made by the LSBC and TLABC is that the long and established history of the Bar, through the LSBC, being consulted and directly involved in developing its own governing legislation reflects an acknowledgment of the self-governing status of the profession as an integral aspect of an independent Bar. The failure to follow a similar process in respect of Bill 21, in the LSBC's submission, demonstrates a disregard for the LSBC's role and for the importance of an independent Bar.

[66] However, as I noted at the outset, the evidence about the process leading to the enactment of Bill 21 has minimal bearing on the issues before the Court in this litigation. While that process did indeed depart from past practice, I agree with the defendants that this is a political issue rather than a legal or constitutional one.

Issues

[67] The following issues arise:

a) Is the independence of the Bar an unwritten constitutional principle?

b) If so, what is the content of or meaning to be given to that principle?

c) Does Bill 21, in whole or in part, infringe the principle of an independent Bar?

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d) Does Bill 21 infringe the *Charter of Rights and Freedoms*, specifically ss. 2(d), 7, 8, 10(b) and/or 11(d)?

e) If so, can the infringement(s) by justified in a free and democratic society pursuant to s. 1?

f) If some or all of Bill 21 is found to be unconstitutional, what is the appropriate remedy?

Analysis

Overview

[68] It is common ground that the provinces have legislative authority to regulate the practice of law in the province pursuant to ss. 92(13) and 92(14) of the *Constitution Act, 1867*: *Law Society of British Columbia v. Mangat,* 2001 SCC 67 at paras. 38, 42 [*Mangat*]. Indeed, it has long been recognized that the authority of governing bodies like the LSBC is delegated to those bodies by the provincial legislatures: *Finney v. Barreau du Québec*, 2004 SCC 36 at paras. 1, 14, 22.

[69] The central question in this case is whether the legislature, in enacting Bill 21, acted outside of that authority by creating a regulatory structure that improperly undermines the independence of the Bar.

[70] As a preliminary point, it is useful to note that the parties differ on the proper analytical framework. The LSBC submits that the first part of the analysis should be broken down into two issues: (i) is the independence of the Bar an unwritten constitutional principle? and (ii) if so, what is the meaning and content of the principle of the independence of the Bar?

[71] The defendants argue that these two issues are better analyzed through the lens of a single question: does the Constitution protect absolute lawyer independence as claimed by the plaintiffs? As part of this approach, the defendants say that the LSBC defines independence in the broadest possible way. They go so far as to suggest that the LSBC's formulation of lawyer independence would mean

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that law societies, and individual lawyers, could not be subject to the provisions of the *Criminal Code* and human rights legislation or to oversight by the courts.

[72] The difficulty with the defendants' formulation is that it mischaracterizes the LSBC's position and purports to address an argument not advanced by the LSBC. Specifically, the LSBC does not argue that an independent Bar requires lawyers to have "absolute" independence in the sense of being free from "any and all forms of democratic regulation", and, as such, the defendants' proposed single question approach does not align with the case as advanced by the plaintiffs.

[73] Further, I agree with the LSBC that the analysis of the constitutional status of an independent Bar involves two distinct concepts or questions: (i) is the independence of the Bar a foundational constitutional principle? and (ii) if so, what is the meaning or content of that principle and what legal rules flow therefrom?

[74] Another central theme of the defendants' position is that the harms alleged by the plaintiffs, and by the CBA, in terms of the impact of Bill 21 on an independent Bar are largely speculative in that they assume hypothetical worst-case scenarios. The defendants submit that that is an improper basis for assessing the constitutionality of legislation. They cite *Brown v. Canada (Citizenship and Immigration)*, 2020 FCA 130 at paras. 61–88, where the court observed at para. 79 that there "is no proposition of law that legislation, to pass constitutional muster, must exclude all possibility of unconstitutional exercises of discretion." The defendants argue that in the event the new regulator makes a decision, or takes an action, that undermines the principle of independence, that decision or action can be challenged by way of judicial review. The IBA makes a similar argument.

[75] That is true; however, that does not obviate the need to examine Bill 21 to determine whether it creates a regulatory structure that improperly undermines the independence of the Bar. Put another way, the LSBC's challenge is directed at the regulatory model created by Bill 21, not the possible future decisions of the new regulator. As the Supreme Court of Canada held in *Reference re Impact Assessment Act*, 2023 SCC 23:

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> [74] … a court cannot circumvent its duty to meaningfully review the constitutionality of legislation by suggesting that, insofar as an administrative decision maker applies a law unconstitutionally, the application of that law may be judicially reviewed. The constitutional validity of a law and its administrative application are distinct concepts. Where a constitutionally valid law grants a decision maker broad and imprecise discretion, that discretion must be exercised reasonably and in accordance with the purpose for which it was given … But where a law is ultra vires and therefore unconstitutional, it cannot be saved by the prospect of administrative judicial review.

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[76] One other preliminary point is worth highlighting. Throughout their submissions, both written and oral, the defendants offered no clear rationale for the significant changes brought about to the regulation of lawyers under Bill 21 or to the jettisoning of the long-established practice of consultation and collaboration with the legal profession about changes to their governing legislation.

[77] The defendants describe the purpose of Bill 21 in these terms (written submission at para. 115):

> … the purpose of the *Act* is to provide for simpler, streamlined regulation of all legal professionals in the province through a single regulator, to offer more choices (and more affordable choices) of legal service providers for the public, to modernize the governance and electoral structure of the regulator, to preserve the independence of licensees, and to advance reconciliation within the legal professions. The purpose of the Act is not to end or diminish lawyer independence. (Nor does the *Act* have that effect …).

[78] While the plaintiffs take issue with this last statement, they support generally the objects of Bill 21 as stated by the defendants. However, as they note, those objects do not explain or support the fundamental governance changes brought about by Bill 21.

[79] The defendants rightly submit that absence of a clear justification for the legislation, as well as the failure to obtain consensus with lawyers and the public, are irrelevant to the constitutionality of the legislation ultimately enacted by the legislature. That is true. However, the inability, or failure, to justify overturning 150 years of self-regulation, in the face of widespread opposition from the Bar, is notable.

Is the Independence of the Bar an Unwritten Constitutional Principle?

[80] It has long been established that Canada's Constitution has both written and unwritten terms. The written constitution includes the *Constitution Act, 1867*, *Constitution Act, 1982* as well as the *Canadian Charter of Rights and Freedoms*. The unwritten constitution includes principles central to Canada's system of democratic governance, including federalism, democracy, constitutionalism and the rule of law, and respect for minorities: *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217 at para. 32, 1998 CanLII 793 [*Secession Reference*]. In identifying these "fundamental and organizing principles", the Supreme Court made it clear that this list is not exhaustive.

[81] The unwritten constitutional principles "inform and sustain the constitutional text: they are the vital unstated assumptions upon which the text is based": *Secession Reference* at para. 49.

[82] In *Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3, 1997 CanLII 317, Chief Justice Lamer held that judicial independence is also an unwritten constitutional principle:

> [83] … Notwithstanding the presence of s. 11(d) of the *Charter*, and ss. 96-100 of the *Constitution Act, 1867*, I am of the view that judicial independence is at root an <u>unwritten</u> constitutional principle, in the sense that it is exterior to the particular sections of the *Constitution Acts*. The existence of that principle, whose origins can be traced to the *Act of Settlement* of 1701, is recognized and affirmed by the preamble to the *Constitution Act, 1867*. The specific provisions of the *Constitution Acts, 1867 to 1982*, merely "elaborate that principle in the institutional apparatus which they create or contemplate" …
>
> [Emphasis in original.]

[83] An independent Bar has similarly been described by Canadian courts at all levels as an essential underpinning of Canada's constitutional order and as necessary for maintaining an independent judiciary and the proper administration of justice.

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[84] One of the most oft-cited articulations of this concept is found in *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at 335–36, 1982 CanLII 29 [*Jabour*], where Justice Estey, speaking for the Court said:

> 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. 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.

[85] In a similar vein, in *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 at 187, 1989 CanLII 2, Justice McIntyre said:

> It is incontestable that the legal profession plays a very significant — in fact, a fundamentally important — role in the administration of justice, both in the criminal and the civil law. I would not attempt to answer the question arising from the judgments below as to whether the function of the profession may be termed judicial or *quasi*-judicial, but I would observe that in the absence of an independent legal profession, skilled and qualified to play its part in the administration of justice and the judicial process, the whole legal system would be in a parlous state.

[86] In *R. v. Neil*, 2002 SCC 70, the Supreme Court again emphasized the importance of an independent Bar, of which a lawyer's duty of undivided loyalty is a fundamental component, as essential to maintaining public confidence in the legal system:

> [12] … Unless a litigant is assured of the undivided loyalty of the lawyer, neither the public nor the litigant will have confidence that the legal system, which may appear to them to be a hostile and hideously complicated environment, is a reliable and trustworthy means of resolving their disputes and controversies …
>
> [13] The value of an independent bar is diminished unless the lawyer is free from conflicting interests.

[87] These are but three of an innumerable number of judicial statements acknowledging the importance of an independent Bar. In my view, these are not merely examples of judges spouting eloquent but meaningless platitudes. Rather,

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they reflect judicial acknowledgement that an independent Bar is a foundational constitutional principle.

[88] While the independence of the Bar is an unwritten constitutional principle, it is a principle that is implicit in certain parts of the written constitutional text, specifically in the judicature provisions of the *Constitution Act, 1867* (ss. 96–101) and in the fundamental rights and freedoms guaranteed under ss. 7, 10(b) and 11(d) of the *Charter.*

[89] The judicature provisions establish certain requirements for maintaining an independent superior judiciary. Those provisions protect the core jurisdiction of the superior courts, granting them a “special and inalienable status”: *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at para. 29 [*Trial Lawyers*].

[90] Sections 97 and 98 specifically acknowledge the existence of the Bars of Ontario, Nova Scotia, New Brunswick and Quebec and direct that judges appointed to the superior courts of those provinces must be selected from the Bars of the respective province. In doing so, the Constitution implicitly contemplates the continuance of independent Bars.

[91] Professor, now Justice, Patrick Monahan made this point in his article “The Independence of the Bar as a Constitutional Principle in Canada” in *In the Public Interest: The Report and Research Papers of the Law Society of Upper Canada’s Task Force on the Rule of Law and the Independence of the Bar* (Toronto: Irwin Law, 2007) at p. 131:

> The link between the independence of the judiciary and the independence of the Bar is also implicitly recognized by sections 97 and 98 of the *Constitution Act, 1867*, which require that judges of the Superior Courts in the provinces be chosen from the Bars of those provinces. Like the other guarantees in Part VII of the Act, this requirement is intended to protect the independence of the judiciary, given the independence of the Bars of the provinces as they existed in 1867. In this sense, the *Constitution Act, 1867* assumes the continued existence of independent bars in the provinces, as an essential element in the protection of the independence of the judiciary.

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See also: Roy Millen, “The Independence of the Bar: An Unwritten Constitutional Principle” (2005) 84:1 The Canadian Bar Review 107.

[92] The independence of the courts is, in turn, inextricably tied to the independence of the Bar, both by virtue of the fact that judges are selected from the independent Bars of each province and territory and, equally importantly, that the courts can only function by having lawyers present evidence and arguments in accordance with their duties owed to their clients and to the administration of justice more generally.

[93] The defendants submit that the judicature provisions do not support a finding that independence of the Bar is a constitutional principle because those provisions are structural in nature rather than rights-conferring: *British Columbia (Attorney General) v. Le*, 2023 BCCA 200 at paras. 191–195, citing *Poorkid Investments Inc. v. Ontario (Solicitor General)*, 2023 ONCA 172 at para. 31.

[94] However, the LSBC does not rely on the judicature provisions as conferring rights on individual lawyers. Rather, as Professor Monahan notes, those provisions protect the independence of the judiciary as a key structural component of the Canadian constitutional framework which assumes, and indeed is largely dependent upon, the existence of an independent Bar. Similarly, an independent Bar is necessary to ensure that the fundamental rights enshrined by ss. 7, 10(b) and 11(d) are properly acknowledged and protected.

[95] To conclude on this issue, I am satisfied that the independence of the Bar is an unwritten constitutional principle, the importance of which is well captured in the oft-cited statement of Jack Giles K.C. in his article “The Independence of the Bar” (2001) 59:4 The Advocate 549 at 549, where he said:

> The principle of an independent bar, like the principle of an independent judiciary, is an idea that has a fundamental constitutional character. This is so because where it is interfered with all other constitutional rights including the rule of law are placed in jeopardy.
>
> It is simply inconceivable that a constitution which guarantees fundamental human rights and freedoms should not first protect that which makes it possible to benefit from such guarantees, namely every citizen’s

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> constitutional right to effective, meaningful and unimpeded access to a court of law through the aegis of an independent bar.

What Is the Meaning of or Content to Be Given to the Principle of the Independence of the Bar?

[96] As noted above, the LSBC does not advance a conception of “absolute” lawyer independence as suggested by the defendants. Rather, the LSBC’s conception of independence is well stated in its written submission (at para. 67):

> An independent Bar composed of lawyers who are free of influence by public authorities (or any other source) is a fundamental component of our free society. Independence of the Bar is the fundamental public right that lawyers may provide legal assistance for or on behalf of a client without fear of interference or sanction by the government, subject only to the lawyer’s professional responsibilities as prescribed by the Law Society, and the lawyer’s general duty as a citizen to obey the law.

[97] This formulation aligns with Justice Estey’s description in *Jabour* (see para. 84 above) of an independent Bar being free from influence by “the state in all of its pervasive manifestations” to ensure that members of the public receive independent and impartial legal advice and services.

[98] Independence of the Bar is not an abstract concept but rather manifests itself in the work that lawyers do to advance and protect the interests of their clients.

[99] Throughout the history of Canada, and particularly since the enactment of the *Charter*, Canadian courts have been called upon to make decisions having direct and significant impacts on the social and economic fabric of the country.

[100] These cases only happened because of the diligent and courageous efforts of lawyers who advanced novel positions in the face of opposing interests, often represented by the state.

[101] Chief Justice McEachern (in dissent but not on this point) underscored this essential role of counsel in *Omineca Enterprises Ltd. v. British Columbia (Minister of Forests)*, 85 B.C.L.R. (2d) 85, 1993 CanLII 1366 (C.A.):

> [53] … One of the great and often unrecognized strengths of Canadian society is the existence of an independent bar. Because of that

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> independence, lawyers are available to represent popular and unpopular interests, and to stand fearlessly between the state and its citizens.

[102] The importance of an independent Bar is of course not limited to litigation matters. In the commercial world, lawyers are at the heart of the transactions that drive our economy. It is lawyers who negotiate, structure and paper the deals in our natural resource, real estate, technology and other sectors that impact so directly on the financial well-being of the citizens of our province and our country.

[103] Similarly, lawyers are intimately involved in advising governments at all levels on the constitutionality and general legality of public laws and initiatives.

[104] The essential role of lawyers is perhaps best reflected in the area of criminal law where, on a daily basis, lawyers act to protect the liberty of their clients in criminal prosecutions backed by the weight and resources of the state.

[105] In *Andrews* at 188, Justice McIntyre commented on the role of lawyers in the administration of justice, noting the particular burdens on lawyers in the criminal law:

> … While it may be arguable whether the lawyer exercises a judicial, *quasi*-judicial, or governmental role, it is clear that at his own discretion he can invoke the full force and authority of the State in procuring and enforcing judgments or other remedial measures which may be obtained. It is equally true that in defending an action he has the burden of protecting his client from the imposition of such state authority and power. By any standard, these powers and duties are vital to the maintenance of order in our society and the due administration of the law in the interest of the whole community.

[106] It is axiomatic that in carrying out their advisory and advocacy roles in each of these areas, lawyers must be, and must be seen to be, independent from outside influences, including, in particular, the influence of the state.

[107] This concept of lawyer independence is central to the concept of an independent Bar as formulated in the various decisions referred to above and reflects the fact that the right to impartial advice free from undue outside influence is a right that belongs to clients: *Jabour* at 335–36.

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[108] Thus, legislation or other measures said to undermine the independence of the Bar must be examined through the lens of the impact on lawyers' ability to provide such impartial advice and zealous advocacy. This includes measures directed at lawyers individually that might affect the lawyer-client relationship, but also legislation establishing the regulatory model and structures governing matters such as eligibility for licensure, competence, professional conduct and discipline. Simply put, lawyers cannot be said to be truly independent if they are subject to regulation by a body which is itself controlled, or unduly influenced, by outside forces, particularly those exerted by the state.

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[109] The need for institutional independence acknowledges the fact that in addition to the duties owed to clients, lawyers owe broader duties to the courts and to the administration of justice more generally. As Justice McIntyre said in *Andrews*, the powers and duties exercised by lawyers "are vital to the maintenance of order in our society and the due administration of the law in the interest of the whole community": at 188 (see para. 105 above). See also: *Fortin v. Chrétien*, 2001 SCC 45 at paras. 52–53; *Mangat* at para. 45.

[110] Accordingly, determination of the plaintiffs' *vires* arguments turns on whether Bill 21 violates this conception of an independent Bar, by interfering with or unduly influencing the duties owed by lawyers, both to their clients and to the administration of justice more broadly, either through its direct application to lawyers and their clients or by way of the regulatory structure it creates.

The Relationship of Unwritten Constitutional Principles to the Written Constitution

[111] Having found that the independence of the Bar is an unwritten constitutional principle, the next question is how that principle applies to the analysis of the constitutional validity of Bill 21.

[112] The role of unwritten constitutional principles in interpreting and applying the written text of the Constitution was considered by the Supreme Court of Canada in

Toronto (City) v. Ontario (Attorney General), 2021 SCC 34, a decision that both the LSBC and the defendants rely on in support of their respective positions.

[113] *Toronto (City)* was a constitutional challenge to legislation enacted by the Ontario legislature reducing the size of the Toronto city council. The legislation was passed during the course of an ongoing municipal election.

[114] The judge at first instance found that the legislation limited the municipal candidates' right to freedom of expression as guaranteed by s. 2(b) of the *Charter* and municipal voters' right to effective representation under s. 2(b) and that the legislation could not be saved under s. 1. The Court of Appeal allowed the appeal.

[115] A further appeal to the Supreme Court of Canada was dismissed on the basis of a slim 5-4 majority. For the purposes of the present case, of note is the Supreme Court's discussion of the unwritten constitutional principle of democracy and whether it could be used by a court to invalidate otherwise valid provincial legislation.

[116] The majority, relying on previous decisions of the Court (for example *Secession Reference*), confirmed that certain unwritten principles are foundational components of the Canadian Constitution that have "full legal force" and that "can guide and constrain the decision-making of the executive and legislative branches": at para. 49.

[117] According to the majority, unwritten principles are not "provisions" of the Constitution, rather they are general principles that serve to give effect to the written text: at para. 54. The unwritten principles do so in two ways:

a) They may be used in the interpretation of constitutional provisions, e.g., the unwritten principles of judicial independence and the rule of law have aided in the interpretation of ss. 96–100 of the *Constitution Act, 1867* which safeguard the core jurisdiction of superior court judges (at para. 55); and

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b) They can be used to develop structural doctrines unstated in the written Constitution (at para. 56).

[118] However, according to the majority:

> [57] Neither of these functions support the proposition advanced by the City that the force of unwritten principles extends to invalidating legislation. Indeed, the truth of the matter is to the contrary. Attempts to apply unwritten constitutional principles in such a manner as an independent basis to invalidate legislation, whether alone or in combination, suffer from a normative and a practical deficiency, each related to the other, and each fatal on its own.
>
> [58] First, such attempts trespass into legislative authority to amend the Constitution, thereby raising fundamental concerns about the legitimacy of judicial review and distorting the separation of powers …
>
> [59] Secondly, unwritten constitutional principles are “highly abstract” and “[u]nlike the rights enumerated in the *Charter* — rights whose textual formulations were debated, refined and ultimately resolved by the committees and legislative assemblies entrusted with constitution-making authority — the concept[t] of democracy . . . ha[s] no canonical formulation[n]” …

[119] The majority went on to make the point that unwritten principles, particularly the principle of democracy, weigh strongly in favour of upholding the validity of legislation that conforms to the written text of the Constitution and thus cannot be used to narrow the broad legislative competence afforded provincial legislatures under s. 92: at para. 80.

[120] The defendants submit that the majority decision in *Toronto (City)* is fatal to the position of the plaintiffs, who seek to invalidate Bill 21 by reason of the unwritten principle of the independence of the Bar.

[121] The LSBC disagrees. The LSBC submits that it is seeking to apply the unwritten constitutional principle of an independent Bar in the first way acknowledged by the Court in *Toronto (City)*—to interpret written aspects of the Constitution, specifically ss. 92(13) and (14). It says that, based on the principle of the independence of the Bar, those provisions of the Constitution must be interpreted narrowly so as not to undermine that independence.

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[122] The LSBC submits that this interpretation and application of *Toronto (City)* is consistent with other Supreme Court of Canada authorities. For example, the LSBC cites *Trial Lawyers* where the Court invalidated hearing fees established under the BC *Supreme Court Rules* as being inconsistent with s. 96 of the *Constitution Act, 1867*.

[123] Speaking for the majority in *Trial Lawyers*, Chief Justice McLachlin noted that while s. 92(14) confers broad authority on provincial legislatures in connection with the administration of justice, which include the power to levy hearing fees, that power is not unconstrained. Rather, the province's authority under s. 92(14) must be considered and interpreted in light of other provisions of the Constitution, specifically s. 96: at paras. 24–25.

[124] According to Chief Justice McLachlin, s. 96, while referring to the appointment of judges, protects the core jurisdiction of the superior courts, a central element of which is the resolution of disputes: at paras. 28–29, 32. Thus, hearing fees that impede people's ability to access the courts undermine that core function and are therefore inconsistent with s. 96: at para. 32.

[125] While this finding was sufficient to dispose of the issue before the Court, Chief Justice McLachlin also found support for her position in the unwritten constitutional principle of the rule of law, which is "inextricably intertwined" with the s. 96 function (at para. 39). The Chief Justice said:

> [40] In the context of legislation which effectively denies people the right to take their cases to court, concerns about the maintenance of the rule of law are not abstract or theoretical. If people cannot challenge government actions in court, individuals cannot hold the state to account — the government will be, or be seen to be, above the law. If people cannot bring legitimate issues to court, the creation and maintenance of positive laws will be hampered, as laws will not be given effect. And the balance between the state's power to make and enforce laws and the courts' responsibility to rule on citizen challenges to them may be skewed: *Christie v. British Columbia (Attorney General)*, 2005 BCCA 631, 262 D.L.R. (4th) 51, at paras. 68-69, *per* Newbury J.A.

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[126] Thus, the principle of the rule of law supported Chief Justice McLachlin's finding that "s. 92(14), read in the context of the Constitution as a whole, does not give the provinces the power to administer justice in a way that denies the right of Canadians to access courts of superior jurisdiction": at para. 43.

[127] In *Toronto (City)*, the majority referred to *Trial Lawyers* and described Chief Justice McLachlin's analysis in these terms:

> [75] … The rule of law was used in [*Trial Lawyers*] as an interpretive aid to s. 96, which in turn was used to narrow provincial legislative authority under s. 92(14). The rule of law was not being used as an independent basis for invalidating the impugned court fees. In this way, McLachlin C.J.'s reasoning simply reflects a purposive interpretation of s. 96 informed by unwritten constitutional principles.

[128] The LSBC submits that, similarly, in this case, the independence of the Bar is being used as an aid in interpreting the scope of provincial legislative authority under ss. 92(13) and (14).

[129] As noted above, the defendants submit that the majority finding in *Toronto (City)* is a complete answer to the LSBC's arguments. They further submit that if there is any uncertainty arising out of *Toronto (City)*, that uncertainty is put to rest by *Mercer v. Yukon (Government of)*, 2025 YKCA 5.

[130] There, the appellant brought a constitutional challenge to the Yukon *Civil Emergency Measures Act*, R.S.Y. 2002, c. 34 [*CEMA*] pursuant to which the territorial government declared a state of emergency during the COVID-19 pandemic. The appellant argued that *CEMA* improperly delegated various legislative functions to the executive branch of government and, as such, the Act violated the unwritten constitutional principles of democracy, rule of law, separation of powers, responsible government and parliamentary sovereignty.

[131] The Court of Appeal reproduced the trial judge's summary of the appellant's argument as an accurate distillation of the position advanced at trial and on appeal (at para. 12):

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> [56] The plaintiffs say that *CEMA* is inconsistent with the structure of the *Yukon Act* that provides for three branches of government—legislative, executive, and judicial—each operating within their own sphere of activity. This structure is informed not only by the text of the *Yukon Act* but also by unwritten constitutional principles, identified by the plaintiffs as democracy, rule of law, separation of powers, responsible government, and parliamentary sovereignty. These principles assist in interpreting the text of the *Yukon Act*, the delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of political institutions (*Reference Secession* at para. 52). The plaintiffs say a consideration of *CEMA* in the context of these principles and the text of the *Yukon Act*, reveals it as legislation that improperly interferes with the legislative and judicial realms, by giving powers or protections to the executive that intrude into those of the other two branches. The plaintiffs say there are limits on the delegation of powers by the Legislature, limits that come from the constitutional text (i.e. the *Yukon Act*) and unwritten constitutional principles. *CEMA* does not respect those limits and as such is unconstitutional. The plaintiffs refer to this as an improper delegation of the core competence of the Legislature.

[132] As is the case here, the parties in *Mercer* disagreed on the proper interpretation and application of *Toronto (City).* The Court of Appeal noted the permissible uses of unwritten constitutional principles as determined by the Supreme Court in *Toronto (City)* and observed that the appellant was not seeking to rely on either of those permissible uses:

> [45] Having rejected the dissent's approach to [unwritten constitutional principles], the Court in *City of Toronto* explained that [unwritten constitutional principles] "may assist courts in only two distinct but related ways": at para. 54, emphasis added. These two ways are: 1) to aid in the interpretation of constitutional provisions; and 2) to assist in developing unstated structural doctrines that can fill gaps regarding questions on which the text of the Constitution is silent.
>
> [46] I note that Mr. Mercer does not rely on either of these permissible uses here. He does not seek to interpret particular provisions of the *Yukon Act* or Constitution, nor does he rely on [unwritten constitutional principles] to fill gaps in the constitutional structure. Rather, he asks this Court to conclude that *CEMA* is invalid because it does not respect [unwritten constitutional principles]. This is directly contrary to the majority's holding in *City of Toronto* that "[a]ttempts to apply unwritten constitutional principles…as an independent basis to invalidate legislation" suffer from two "fatal" deficiencies: at para. 57. First, there is the possibility of an unwarranted intrusion by the court into the legislative authority to amend the Constitution. Second, the "highly abstract" nature of [unwritten constitutional principles], if used in this way, could serve to decrease legal certainty and predictability: at para. 59. As the Court noted, "protection from legislation that some might view as unjust or unfair properly lies not in the amorphous underlying principles of our Constitution, but in its text and the ballot box": *City of Toronto* at para. 59,

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> quoting *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para. 66.

[133] The Court of Appeal concluded:

> [49] In sum, Mr. Mercer's position is similar to that rejected by the majority in *City of Toronto*: he is inviting judicial invalidation of *CEMA* in a manner that is wholly untethered from basic constitutional structure. The structure of the Constitution is to be addressed via purposive textual interpretation: *City of Toronto* at para. 53. Here, Mr. Mercer argues *CEMA* interferes with ss. 10–16 of the *Yukon Act*, but offers no explanation as to how that occurs. With the exception of the reference to "responsible government" in the preamble of the *Yukon Act*, which I address in the next section, Mr. Mercer's arguments do not point to any text, with or without the support of [unwritten constitutional principles], to support his assertion of constitutional invalidity.

[134] The Court of Appeal went on to find that the appellant's reliance on the term "responsible government" was misplaced. Specifically, the Court held that the delegation of certain functions to the executive branch under *CEMA* was well within the legislature's authority: at paras. 60–61.

[135] The defendants here submit that the LSBC is advancing arguments similar to those rejected by the Court in *Mercer*. I disagree. In my view, there are two key differences in the LSBC's position. First, the LSBC does seek to rely on one of the permissible uses of unwritten principles identified by the Supreme Court in *Toronto (City)*, namely to aid in the interpretation of ss. 92(13) and (14). Second, the LSBC is not relying on arguments "wholly untethered from basic constitutional structure"; rather, its position is that the independence of the Bar is an essential structural element of the constitution.

[136] In my view, the unwritten constitutional principle of an independent Bar is properly being applied by the LSBC as an interpretive aid in determining the scope of ss. 92(13) and (14).

[137] Paraphrasing Jack Giles K.C. (see para. 95 above), it is inconceivable that a constitution that protects fundamental rights would not also protect access to independent courts by way of an independent Bar. Put another way, the idea that

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the legislature could use its plenary authority under ss. 92(13) and (14) to regulate lawyers in such a manner as to eviscerate an independent Bar is simply unthinkable.

Is Bill 21, in Whole or in Part, *Ultra Vires* the Provincial Legislature?

[138] This then leads me to the issue that lies at the heart of this case. What is the impact of Bill 21 on the independence of the Bar?

[139] As described above, the plaintiffs identify a number of provisions of Bill 21 that they say violate the principle of an independent Bar, both in terms of their specific impact as well as in their cumulative effect. I propose to consider the specific provisions challenged by the plaintiffs and will then examine, if necessary, the manner in which they cumulatively operate, i.e. the “waterfall effect” as labelled by the LSBC.

Composition of the New Board

[140] I turn first to the provisions of Bill 21 that eliminate self-governance and self-regulation, specifically s. 8, which establishes the new governing board that is not comprised of a majority of elected lawyers.

[141] At the outset, I note that both parties adduced evidence going to the question of whether governance of lawyers by lawyers constitutes “best practice.” For example, the LSBC relies on the expert report of Professor Poonam Puri of Osgoode Hall Law School, who was qualified as an expert in corporate governance.

[142] In her report, Professor Puri opines:

> … In the case of a regulator of lawyers, having a majority of elected lawyers is important for good governance. …
>
> …
>
> In the context of a regulator of lawyers, independence for directors means independence both from the entity and its management, but also from the government. Given the unique role of lawyers in upholding the rule of law, it is important for the board of a regulator of lawyers to have voices around the table that are willing to go against the interests of the government where necessary.

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> In my view, when considering governance at a regulator of lawyers, director independence is not maximized when: (i) the board is not a majority of elected lawyers; (ii) the executive committee does not need to be majority elected lawyers; and (iii) quorum for making decisions does not require a majority elected lawyers to be present.
>
> …
>
> … having a majority of elected lawyers promotes good self-regulation in the public interest.

[143] For their part, the defendants cite a number of academic and other sources that question whether self-governance of lawyers by lawyers is an appropriate or effective model given the inherent conflicts that may arise between the duties owed by directors to the public interest and the self-interest of those lawyers and their constituents: see e.g., Michael J. Trebilcock, "Regulating the Market for Legal Services" (2008) 45:5 Alta. L.R. 215 at 229–31; Anita Anand, "Governance Gone Wrong: Examining Self-Regulation of the Legal Profession" (2018) 21:2 Legal Ethics 99 at 104, 112–13.

[144] The defendants submit that a purely electoral model whereby the board is comprised of a majority of lawyers elected by lawyers creates an appearance, and sometimes the reality, of regulatory capture that undermines public confidence in the regulation of the practice of law.

[145] It is not necessary to resolve this conflict in order to determine the issues in this litigation. Specifically, the validity of Bill 21 does not turn on whether it establishes a "better" governance structure than the current *LPA*. Rather, the central question is whether Bill 21's governance model undermines the independence of the Bar in an unconstitutional manner. That said, it is worth noting that nothing in the evidence adduced in this litigation supports any suggestion that the LSBC in its current form has governed the legal profession in a manner contrary to the public interest.

[146] I have referred above to the numerous judicial statements describing an independent Bar as a bedrock principle of the Canadian Constitution and, indeed, I have found the independence of the Bar to be an unwritten constitutional principle. I

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have also found that unwritten principles can be used to interpret the written text of the Constitution, even in a manner that limits or narrows the scope of the written provisions. Again, this is how the unwritten principle of the rule of law was applied to s. 92(14) in *Trial Lawyers*.

[147] However, as the defendants submit, no authority has gone so far as to hold that the model of self-governance advanced by the LSBC is constitutionally guaranteed and that ss. 92(13) and (14) must be interpreted in a way that precludes a provincial legislature imposing a different model.

[148] In fact, the courts have described the choice of governance model as a matter of legislative choice and/or public policy.

[149] For example, in *Jabour*, where Justice Estey described an independent Bar as one of the hallmarks of a free society, he also noted that the regulation of legal professionals was implemented for the protection of the public. It is worth quoting Justice Estey at some length (at 334–36):

> … It is the establishment of this protection that is the primary purpose of the *Legal Professions Act.* Different views may be held as to the effectiveness of the mode selected by the Legislature, but none of the parties here challenged the right of the province to enact the legislation. It is up to the Legislature to determine the administrative technique to be employed in the execution of the policy of its statutes. I see nothing in law pathological about the selection by the provincial Legislature here of an administrative agency drawn from the sector of the community to be regulated. Such a system offers some immediate advantages such as familiarity of the regulator with the field, expertise in the subject of the services in question, low cost to the taxpayer as the administrative agency must, by the statute, recover its own expenses without access to the tax revenues of the Province. On the other hand, to set out something of the other side of the coin, there is the problem of conflict of interest, an orientation favourable to the regulated, and the closed shop atmosphere. In some provinces some lay Benchers are appointed by the provincial governments; in other provinces the Attorney General is seized with the duty as an *ex officio* Bencher of safe-guarding the public interest; a right of appeal from decision affecting members is given to the Court; and the confirmation by the Provincial Executive, the Lieutenant Governor in Council, of all regulations adopted by the Society as a prerequisite to their validity**. It is for the Legislature to weigh and determine all these matters and I see no constitutional consequences necessarily flowing from the regulatory mode adopted by the province in legislation validly enacted within its sovereign sphere as is the case here.**

> There are many reasons why a province might well turn its legislative action towards the regulation of members of the law profession. These members are officers of the provincially-organized courts; they are the object of public trust daily; the nature of the services they bring to the public makes the valuation of those services by the unskilled public difficult; the quality of service is the most sensitive area of service regulation and the quality of legal services is a matter difficult of judgment. 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. 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. The uniqueness of position of the barrister and solicitor in the community may well have led the province to select self-administration as the mode for administrative control over the supply of legal services throughout the community. Having said all that, it must be remembered that the assignment of administrative control to the field of self-administration by the profession is subject to such important protective restraints as the taxation officer, the appeal to the courts from action by the Benchers, the presence of the Attorney General as an *ex officio* member of the Benchers and the legislative need of some or all of the authority granted to the Law Society. **In any case this decision is for the province to make.**
>
> [Emphasis added.]

[150] In its written submissions, the LSBC argues that this reference to the regulatory model being a decision “for the province to make” is simply referring to the relationship between the provincial and federal levels of government. In oral submissions, in response to a question, counsel for the LSBC suggested that the choice for the province was about whether or not to legislate, not about the preferred regulatory model.

[151] Respectfully, Justice Estey’s decision in *Jabour* cannot be construed so narrowly. His statement about it being a decision for the province to make follows a passage in which he discusses the pros and cons of self-regulation and where he again observes that it “is for the Legislature to weigh and determine all these matters” (at 335). Justice Estey then goes on to state that he sees “no constitutional consequences necessarily flowing from the regulatory mode adopted by the province” (at 335).

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[152] Similarly, in *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869 at 888, 1991 CanLII 26, the Supreme Court of Canada, while acknowledging that self-government of the legal professions was created in the public interest, recognized it was nonetheless a matter of legislative choice:

> In the case at bar, the Manitoba Legislature has spoken, and spoken clearly. The *Law Society Act* manifestly intends to leave the governance of the legal profession to lawyers and, unless judicial intervention is clearly warranted, this expression of the legislative will ought to be respected.

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[153] Earlier in its reasons, at 886–87, the Court quoted a report entitled *The Report of the Professional Organizations Committee* (1980) produced by the Ontario Ministry of the Attorney General, for the legislative rationale for making the legal profession self-governing, which included the following statement, endorsed by the Court:

> In the government of the professions, both public and professional authorities have important roles to play. When the legislature decrees, by statute, that only licensed practitioners may carry on certain functions, it creates valuable rights. As the ultimate source of those rights, the legislature must remain ultimately responsible for the way in which they are conferred and exercised. Furthermore, the very decision to restrict the right to practise in a professional area implies that such a restriction is necessary to protect affected clients or third parties. The regulation of professional practice through the creation and the operation of a licensing system, then, is a matter of public policy: it emanates from the legislature; it involves the creation of valuable rights; and it is directed towards the protection of vulnerable interests.
>
> On the other hand, where the legislature sees fit to delegate some of its authority in these matters of public policy to professional bodies themselves, it must respect the self-governing status of those bodies. Government ought not to prescribe in detail the structures, processes, and policies of professional bodies. The initiative in such matters must rest with the professions themselves, recognizing their particular expertise and sensitivity to the conditions of practice. In brief, professional self-governing bodies must be ultimately accountable to the legislature; but they must have the authority to make, in the first place, the decisions for which they are to be accountable.
>
> [Emphasis added in SCC decision.]

[154] This is consistent with other statements made by the Supreme Court of Canada that have recognized the importance of self-regulation, but as a matter of privilege granted by the legislature rather than as a constitutional imperative. For example, in *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, the Court at

para. 36 cited David A.A. Stager & Harry W. Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990) at 31 where the authors stated:

> The privilege of self-government is granted to professional organizations only in exchange for, and to assist in, protecting the public interest with respect to the services concerned…
>
> [Emphasis added.]

[155] The same point was made in *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 [*Trinity Western*] where the Court said:

> [32] The legal profession in British Columbia, as in other Canadian jurisdictions, has been granted the privilege of self-regulation. In exchange, the profession must exercise this privilege in the public interest …
>
> [Emphasis added.]

[156] Elsewhere in *Trinity Western*, the Court expanded on the notion of the legislature delegating regulatory authority to self-governing bodies as a means of protecting the public interest and maintaining the independence of the Bar:

> [37] To that end, where a legislature has delegated aspects of professional regulation to the professional body itself, that body has primary responsibility for the development of structures, processes, and policies for regulation. This delegation recognizes the body's particular expertise and sensitivity to the conditions of practice. This delegation also maintains the independence of the bar; a hallmark of a free and democratic society (*Canada (A.G.)*, at pp. 335-36). Therefore, where a statute manifests a legislative intent to leave the governance of the legal profession to lawyers, "unless judicial intervention is clearly warranted, this expression of the legislative will ought to be respected" (*Pearlman*, at p. 888). As Iacobucci J. later explained in *Ryan*, we give deference to law society decisions to "giv[e] effect to the legislature's intention to protect the public interest by allowing the legal profession to be self-regulating" (para. 40).
>
> [38] In sum, where legislatures delegate regulation of the legal profession to a law society, the law society's interpretation of the public interest is owed deference. This deference properly reflects legislative intent, acknowledges the law society's institutional expertise, follows from the breadth of the "public interest", and promotes the independence of the bar.

[157] As is apparent from these various references, while the determination of the appropriate regulatory model for lawyers is a matter of legislative choice, legislatures in Canada, including in British Columbia, have largely exercised that choice in favour

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of self-government and self-regulation in recognition of lawyers' professional expertise and commitment to the public interest.

[158] That said, as the defendants submit, there is no authority for the proposition that a regulatory board comprised of a majority of elected lawyers is necessary for maintaining both individual lawyer and institutional independence.

[159] Nor does the evidence support such a proposition. Manitoba is, as noted, a jurisdiction in which the governing law society does not have a majority of elected lawyer directors and yet its ability to function independently is not challenged. The LSM CEO deposes:

> In my time as a senior executive, the LSM has acted independently of government consistent with its designation as the regulator of the practice of law for the purpose of upholding and protecting "the public interest in the delivery of legal services with competence, integrity and independence". In my experience, despite being a creature of statute the LSM has operated, and continues to operate, without direction or interference from the government of the day. That is to say, consistent with its statutory designation as the regulator of the practice of law in Manitoba the LSM acts independently.

[160] Further, the LSBC has long had a number of benchers appointed by the provincial government, including non-lawyer benchers. There is no evidence to suggest, nor does the LSBC allege, that those benchers have failed to act independently and in the public interest.

[161] Even if that was a concern, which it is not, pursuant to Bill 21, the LGinC appoints only three out of a total of 17 directors. Thus, its ability to control or unduly influence the new regulator through the exercise of its appointment power is limited.

[162] I note as well that five of the 17 directors are to be appointed by the majority of other directors holding office. Of these five, four must be lawyers (s. 8 (1)(e)). Thus, when fully constituted, the board of the new regulator will be comprised of an, albeit slim, majority of lawyers. There is no basis on which to suggest that the appointed lawyers will act any less independently, or be more vulnerable to government influence, than the elected lawyer directors.

[163] The same holds true for the other non-lawyer legal professionals on the board (ss. 8(1) (b) and (c)).

[164] The CBA and the defendants both make arguments about the representative nature of a governing board comprised of a majority of elected lawyers. For example, the CBA submits that the electoral model ensures that the elected benchers remain accountable to lawyers, rather than to non-lawyers or to the government. The CBA highlights the fact that Bill 21 eliminates the ability of member lawyers to direct the benchers by way of binding resolutions, thereby further diminishing benchers' accountability to the membership.

[165] The defendants essentially flip this argument on its head and submit that a governing board comprised of a majority of elected lawyers would be too accountable to the lawyer members who elect them and would give rise to at least the perception, if not the reality, of regulatory capture (see paras. 143–44 above).

[166] Neither argument is compelling. As I noted above (see para. 145), there is nothing in the record to suggest that the LSBC in its current form has failed to govern lawyers in the public interest. The CBA's argument also misses the mark given that the object and duty of the legal regulator is to act in the public interest and not to advance, or be accountable to, the interests of lawyers.

[167] In summary on this point, it is well established that the legislature has the authority to determine how lawyers should be regulated and, while the legislature has historically chosen a self-governance model, that model is not constitutionally mandated as a requirement for maintaining an independent Bar. As Professor Monahan notes in his article at 136 (see para. 91 above): "it is the *independence* of the profession that is constitutionally protected, but not necessarily its '*self governing status*'" [emphasis in original].

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Duties and Guiding Principles

[168] The LSBC puts considerable emphasis on the fact that under Bill 21, the new regulator no longer has as its core object the broad mandate to “uphold and protect the public interest”, which is currently set out in s. 3 of the *LPA*.

[169] Instead, s. 6 identifies the new regulator’s duties, which include regulating the practice of law in BC, establishing applicable standards for education, competence, conduct etc., and ensuring the independence of licensees. Section 6(2) further directs that the regulator “must exercise its powers and perform its duties under this Act in the public interest”. The LSBC describes the commitment to the public interest under s. 6 as “considerably denuded”.

[170] I do not accept that the new formulation under Bill 21 undermines or diminishes the obligation of the new regulator to act in the public interest. Specifically, there is, in my view, no meaningful difference between a provision stipulating that the object and duty of the regulator is to uphold and protect the public interest and one that mandates that the regulator exercise its duties in the public interest.

[171] It is important to note that the “public interest” mandate language found in s. 3 of the current *LPA* was only added to the statute in 1987. It cannot seriously be contended that the LSBC had no obligation prior to that date to act in the public interest.

[172] Further, language similar to s. 3 of the *LPA* exists in the governing statute of only one other provincial law society (New Brunswick). Legislation in other provinces (Saskatchewan, Ontario, Manitoba and Nova Scotia) largely mirrors the language used in Bill 21. The LSBC does not argue that those provincial law societies lack a public interest mandate.

[173] The LSBC also takes issue with the imposition of mandatory guiding principles under s. 7 of Bill 21, including under s. 7(b) the principle of “supporting

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reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples".

[174] The LSBC submits that a legislated requirement to support reconciliation and the implementation of UNDRIP effectively makes the new regulator an instrument of government policy and is antithetical to the concept of an independent Bar. In particular, they contend that the provisions of Bill 21 require the new regulator to take an institutional position on reconciliation which may be inconsistent with the legitimate interests of lawyers' clients involved in matters in which reconciliation, or at least the nature and content of reconciliation activities, may be in issue. Further, the LSBC submits that the requirement to support the implementation of UNDRIP goes well beyond the scope of what courts have described as the constitutional imperative of reconciliation.

[175] I am unable to accede to the LSBC's arguments on this issue for a number of reasons. First, it is not clear how a legislated requirement of institutional support for reconciliation compromises the duties that lie at the heart of an independent Bar to provide independent and objective advice and advocacy to clients. The guiding principles provide a framework for the new regulator in carrying out its public interest mandate. The principles do not direct the manner in which individual lawyers must act in relation to their clients. Further, the guiding principles must be read alongside the regulator's express duty to ensure the independence of licensees (s. 6(1)(c)).

[176] Second, as discussed above, the LSBC's conception of independence is not absolute as suggested by the defendants but acknowledges that lawyers, and the LSBC itself, are subject to laws of general application. In this regard, the Court of Appeal has recognized that there is an obligation generally on all public institutions to pursue reconciliation: *Servatius v. Alberni School District No. 70*, 2022 BCCA 421 at paras. 105–107.

[177] With respect to UNDRIP, the provincial government has an obligation to ensure that the laws of the province are consistent with the UN Declaration: *DRIPA*. The Court of Appeal has held that the effect of *DRIPA* is to incorporate UNDRIP into

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the positive law of the province*: Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 at para. 143.

[178] Thus, as the defendants submit, s. 7(b) simply requires the new regulator to operate within the existing legal framework in British Columbia, in the same way that it must take account of *Charter* values and comply with legislation like the *Human Rights Code*, R.S.B.C. 1996, c. 210.

[179] Third, the LSBC has itself long been committed to reconciliation and has implemented a number of measures in pursuit of that goal. While the LSBC rightfully distinguishes between measures adopted voluntarily and those imposed by government, there is no meaningful difference in terms of the impact of such measures. For example, the LSBC's support of reconciliation has not impeded the ability of lawyers to act for clients in opposition to claims of Indigenous rights. There is no basis to suggest that the independence of those lawyers has been compromised or that they have been subject to sanction by the LSBC.

[180] In short, I am not satisfied that the legislative imposition of guiding principles on the new regulator improperly compromises the independence of the Bar.

Role of the Indigenous Council and Transitional Indigenous Council

[181] The LSBC frames the creation of the Indigenous Council and Transitional Indigenous Council as introducing a model of co-governance and unilaterally imposing government policy on the legal regulator. They take issue with both the composition of these bodies and their role in the new regulator.

[182] Turning first to the Indigenous Council, respectfully, the LSBC overstates the role of this body. While the Indigenous Council has an important role in the new regulator, it is a carefully circumscribed role. The Indigenous Council has approval power in respect of two sets of rules: (1) rules respecting the use of alternative resolution processes in discipline and competence matters that reflect or are influenced by Indigenous practices (at s. 94(3)); and (2) rules that are designed to

meet the specific needs of Indigenous persons who are parties to, or witnesses in, a proceeding before the tribunal (at s. 131(6)).

[183] The other aspects of the Indigenous Council's role, as laid out in s. 30 and referenced throughout Bill 21, are purely advisory. The Indigenous Council is to advise and work in collaboration with the board on a range of issues, many of which clearly benefit from the structural inclusion of Indigenous perspectives, including the systemic challenges faced by Indigenous persons that require investigation and action by the regulator, and the incorporation of Indigenous legal traditions and practices into the practices and procedures of the regulator.

[184] In my view, the role of the Indigenous Council does not undermine independence because the Council does not have independent rule-making authority. In many areas its role is advisory. As for the two areas for which it has approval powers, such approval powers cannot threaten independence because it does not enable the unilateral imposition of rules.

[185] The LSBC also argues that the composition of the Indigenous Council is a threat to independence, with a particular focus on the fact that its members do not have to be lawyers. Section 29 sets out the composition of the Indigenous Council. Its members are appointed by the board following a merit-based process. The Indigenous Council is to consist of: two members who are directors; one member who is not a director; two to four members appointed from among persons nominated by the BC First Nations Justice Council; and one to two members appointed from among persons nominated by Métis peoples or entities representing Métis peoples: at s. 29(1). The appointed members must be Indigenous persons (at s. 29(2)(a)) and are, to the extent possible, to collectively reflect the diversity of the Indigenous population of BC (at s. 29(2)(b)).

[186] The LSBC's argument in this regard assumes a false binary: if regulation is not by lawyers, it is regulation by government. The defendants' response is apt: "The members of the Indigenous council and transitional Indigenous council need not be lawyers, but that is not reason to dismiss their perspectives, let alone to fear that

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their perspectives will somehow be dangerous." There is no basis for believing that the inclusion of another set of perspectives, through the vehicle of the Indigenous Council, will in any way threaten the independence of the Bar. As already noted, they have no power to unilaterally impose rules: they have limited approval powers and a larger advisory role. As already noted, self-regulation and self-governance are not steadfast requirements for ensuring an independent Bar. I would add that, as noted above, the LSBC has long had the benefit of different perspectives in the form of lay benchers.

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[187] Turning next to the Transitional Indigenous Council, as set out in s. 226, the Transitional Indigenous Council and the transitional board must collaborate to develop the board's first set of rules, and the Transitional Indigenous Council must approve these rules.

[188] The defendants contend that this power does not undermine independence because it does not give the Transitional Indigenous Council unilateral rule-making authority and the board still has an ongoing duty, including in making the first rules, to ensure the independence of licensees.

[189] The defendants submit that the Transitional Indigenous Council's role in making the first rules is to ensure "that the lived experience of Indigenous persons is considered when creating the first rules" and is meant to help counteract their historic exclusion and ongoing underrepresentation in the profession.

[190] As with the Indigenous Council's approval powers, the Transitional Indigenous Council's approval powers over the first rules does not undermine independence. Approval power does not equate to rule-making authority. The transitional board has the duty to ensure the independence of licensees such that any rules that the Indigenous Council might consider for approval should not pose any threat to independence in the first place.

[191] The LSBC also objects to these new bodies on the basis that they constitute a unilateral imposition of government policy and direct government interference.

They reason that the creation of the Indigenous Council and Transitional Indigenous Council reflect the implementation of government policy, namely the BC First Nations Justice Strategy, furthering a partnership between the provincial government and the BC First Nations Justice Council.

[192] The defendants, for their part, submit that there is nothing objectionable about the content of the BC First Nations Justice Strategy, which has as its primary objective reversing the overrepresentation of Indigenous persons in the criminal justice system and underrepresentation as actors with roles and responsibilities within that system.

[193] As discussed above, the provincial legislature has latitude in deciding how to set up the legal regulator; the regulatory model is, within constitutional constraints, a policy choice. If the legislature wants to pursue a particular model in the hopes that it will, as suggested by the defendants, reduce barriers to Indigenous individuals becoming lawyers and judges, that is open to it so long as it does not undermine the independence of the Bar. Beyond characterizing this choice as a "government policy", the LSBC has not pointed to anything specific about the Indigenous Council's existence, as a policy choice, that threatens independence of the Bar. As such, creating these bodies falls squarely within the legislature's authority when determining an appropriate regulatory model for the legal profession.

Lieutenant Governor in Council's Regulation-Making Power

[194] The LSBC argues that the regulation-making powers given to the LGinC, i.e. Cabinet, allow the government to regulate the practice of law directly.

[195] The LSBC contends that s. 211(1) gives Cabinet a broad and vague power to make regulations that supersede the board's rules based on Cabinet's assessment of what is "necessary and advisable" for carrying out Bill 21 according to its intent. This interpretation is based on reading s. 211(1) of Bill 21 together with s. 41(1)(a) of the *Interpretation Act*, R.S.B.C. 1996, c. 238.

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[196] The defendants submit that the *Interpretation Act* does not grant Cabinet "new or broader" regulation-making authority; it merely affirms the common law doctrine of jurisdiction by necessary implication. The defendants submit that this provision cannot change the express limits on Cabinet's regulation-making powers as set out in Bill 21.

[197] Respectfully, the plaintiffs read this power too broadly. Section 211(1) states:

> **General regulation-making authority**
>
> 211(1) The Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act.

[198] The LSBC's interpretation of this provision gives no meaning to the phrase "respecting any matter for which regulations are contemplated by this Act." Regulations are only "contemplated" in a few specific matters under Bill 21: (a) designating a profession as a legal profession (s. 4); (b) prescribing classes of persons as exempt from the prohibition against unauthorized practice (s. 212); and (c) prescribing the scope of practice for notaries and regulated paralegals (s. 213). As such, s. 211(1) does not extend the scope of regulations that Cabinet can make but simply empowers Cabinet to make regulations where regulations are already contemplated.

[199] The LSBC also objects to those areas where Bill 21 specifically contemplates regulations. They submit that these powers should only be held by the legal regulator and that in giving them to Cabinet, the government is fragmenting the authority of the regulator, amounting to government capture of the regulator. They go so far as to claim that giving these powers to Cabinet is akin to a "sword of Damocles above the head of the legal regulator that clearly preserves to the executive unlimited power to directly regulate the practice of law in the province."

[200] The defendants contest the idea that these provisions amount to giving the executive the direct power to regulate the practice of law. They note, correctly, that if Cabinet designates an additional profession, that profession will be regulated by the regulator. If Cabinet exempts a class of persons from the prohibition on unlicensed

practice, those persons will be unregulated. The defendants also note that there is nothing novel about allowing certain non-lawyers to provide legal services within defined spheres, listing as examples, among others, notaries, Native court workers and family justice counsellors, all of which are currently outside the ambit of LSBC regulation.

[201] The powers given to Cabinet in Bill 21 are not at odds with the principle of independence of the Bar nor do they amount to direct government regulation. These powers amount to tools that could allow the government, if necessary, to address unmet areas of legal services by allowing non-lawyers to provide legal services within defined spheres. There is nothing inherent to the exercise of these powers that threatens the ability of lawyers to fulfill their duties as independent advocates, nor does it threaten the ability of the regulator to act independently in regulating lawyers. While, as is clear from the concerns of the LSBC, it is possible in an extreme scenario for such a power to be used in a way that threatens the independence of the Bar, the LSBC's arguments ignore the presumption that executive actors will exercise their delegated authority constitutionally: *Brown* at paras. 61–88.

[202] If these powers were somehow used in a way that threatens the independence of the Bar, that decision could be challenged on judicial review. Any regulation that threatens the independence of licensees, which the regulator has a duty to ensure under s. 6(1)(c), would be *ultra vires* the legislation as regulations "must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object": *Auer v. Auer*, 2024 SCC 36 at para. 33. It could also be challenged on the basis of the constitutional principle of independence of the Bar.

[203] In a related argument, the LSBC takes issue with the fact that Bill 21 codifies aspects of legal regulation, for example the definitions of "professional misconduct", "incompetence" and "conduct unbecoming" that under the *LPA* were left to the benchers to define. The LSBC submits that this attacks "both the theory and the practice of self-regulation and self-governance".

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[204] The LSBC did not develop this argument in any meaningful way. Further, the definitions in Bill 21 are general in nature and must be read in conjunction with s. 6(1) of Bill 21 which confers a duty on the new regulator to “regulate the practice of law in British Columbia” and to “establish standards and programs for the education, training, competence, practice and conduct of applicants, trainees, licensees and law firms”. The LSBC has not identified how the codified provisions impede the ability of the new regulator to act independently or how these provisions interfere with lawyers’ ability to provide independent advice and advocacy.

[205] In sum, none of the impugned provisions of Bill 21 interfere with the independence of the Bar. There is no doubt that the cumulative impact of the various provisions constitutes a dramatic change in the way in which lawyers will be regulated, but I am not satisfied that the new regulatory structure is unconstitutional.

Does Bill 21 Infringe the *Charter of Rights and Freedoms*?

[206] The TLABC raises a range of *Charter* concerns, which I will deal with in turn.

Section 2(d): Right to Associate

[207] The TLABC argues that by ending self-regulation, Bill 21 violates lawyers’ right to freedom of association under s. 2(d). They argue that the LSBC is the only institution that can effect lawyers’ associative rights because of its regulatory authority and the fact that it by definition represents all lawyers.

[208] Section 2(d) protects three classes of activities: (1) the right to join with others and form associations; (2) the right to join with others in the pursuit of other constitutional rights; and (3) the right to join with others to meet on more equal terms the power and strength of other groups or entities: *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para. 66.

[209] Courts follow a two-step framework to decide whether a complainant’s s. 2(d) rights have been infringed: (1) whether activities fall within the range of activities protected under the freedom of association guarantee; and (2) whether the legislation or government action, in purpose or effect, substantially interferes with

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those activities: *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, 2024 SCC 13 at paras. 5–7.

[210] The inherent flaw in the TLABC's reasoning is that the LSBC is not an association meant to represent lawyers; its purpose is to regulate lawyers in the public interest. As such, its activities do not fall within the range of activities protected under s. 2(d). Since Bill 21 was enacted for the purpose of regulating the profession, s. 2(d) has no application: *Murtaza v. Registrar of the Association of Professional Engineers of Ontario*, 2016 ONSC 1745 at para. 16. Regardless, Bill 21 does not limit lawyers' association rights because it neither precludes an activity because of its associational nature (*R. v. N.S.*, 2022 ONCA 160 at para. 169, citing *Harper v. Canada (Attorney General)*, 2004 SCC 33 at para. 125) nor prevents lawyers from associating in pursuit of shared objectives through lawyers' associations, as evidenced by the participation of both the TLABC and CBA in this litigation.

[211] As such, Bill 21 does not infringe lawyers' s. 2(d) rights.

Section 7: Right to Life, Liberty, and Security of the Person

[212] The TLABC argues that Bill 21 infringes lawyers' s. 7 rights to life, liberty, and security of the person because it allows the regulator to impose unilateral forced treatment and conflates mental health and substance abuse issues with competence, stigmatizing lawyers with mental health conditions and increasing the risk of harm to said lawyers.

[213] The TLABC rests its argument on the association it contends is created in s. 68 between mental health conditions and competence. It argues that this association makes a lawyer's health condition relevant to a range of regulatory interventions, most notably what they term "forced treatment".

[214] The TLABC argues that this "forced treatment" infringes lawyers' rights to liberty and security of the person, which protect an individual's autonomy and dignity, including the right of a person to make fundamental decisions about their life,

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including whether, and when, to receive medical interventions. The TLABC further contends that due to the operation of s. 198, which details offences under the legislation, and s. 202, which lays out penalties for committing said offences, a lawyer could be subject to a fine or imprisonment for refusing medical treatment prescribed by the new regulator.

[215] The key statutory provision is the definition of “incompetently” in s. 68, which reads in part:

> "incompetently", in relation to the practice of law, means in a manner that demonstrates either of the following:
>
> > …
> >
> > (b) a health condition that prevents a licensee from practising law with reasonable skill and competence;

[216] Contrary to the TLABC’s contentions, practicing incompetently under this definition does not turn on the existence of a health condition but on whether a health condition is affecting a licensee’s ability to practice with reasonable skill and competence. The focus remains conduct, not condition.

[217] The defendants submit that these provisions are aimed at helping both the public and lawyers experiencing health problems. They allow the regulator to understand *why* issues are arising in a lawyer’s practice, so that the appropriate steps can be taken to get them back on track. The acknowledgment that health conditions may influence a lawyer’s ability to practice law to an acceptable standard is not stigmatizing; it is a reality which a regulator has a duty to address.

[218] The defendants submit further that while the primary purpose of these provisions is to protect the public by ensuring that licensee are not impaired by health conditions from practicing law to an acceptable standard, their secondary purpose is to convey that, when a licensee’s ability to practice is impaired by a health condition, there is nothing fundamentally wrong with them, they are simply experiencing a health issue for which they need health care. This is based on compassion, not stigmatization.

[219] The TLABC also objects to the ability of the new regulator to require a licensee or trainee to receive counselling or medical treatment, including treatment for a substance use problem or substance use disorder: at ss. 88(1)(c), 122(3)(c)(ii). However, as noted by the defendants, the new regulator cannot compel lawyers to receive treatment they do not want. It is open to the lawyer to decline, though this may lead to consequences such as a suspension or cancellation of their license.

[220] It has already been determined that such consequences do not engage the complainant's s. 7 rights. In *Hoogerbrug v. British Columbia*, 2024 BCSC 794 (appeal dismissed as moot in *Tatlock v. British Columbia (Attorney General)*, 2025 BCCA 181), a case dealing with COVID-19 vaccination requirements for health care workers, Mr. Justice Coval stated:

> [276] On the evidence, the Orders compelled none of the Tatlock petitioners to accept unwanted medical treatment. Thus, unlike *Carter*, their s. 7 rights associated with bodily integrity and medical self-determination were not engaged.
>
> [277] Instead, they lost their jobs because they chose not to accept vaccination against a highly contagious virus which posed the risk of serious illness and death to vulnerable patients and other healthcare workers. In my view, this loss did not engage their s. 7 right to liberty because of the well-established principle that s. 7 does not protect the right to work in any specific employment or particular profession, particularly when the job-loss arises from non-compliance with its governing rules and regulations. This is not a constitutionally-protected fundamental life choice.

[221] Further, the TLABC's interpretation of s. 198 is inconsistent with the plain language meaning of that provision. Declining to comply with an order for medical treatment would not constitute an offence under this provision.

[222] The TLABC makes a range of other arguments about how lawyers' s. 7 rights are engaged by the provisions around health and treatment, but none are relevant in light of the above interpretation of these provisions.

Section 8: Unreasonable Search and Seizures

[223] The TLABC also argues that s. 78 authorizes unreasonable search and seizures contrary to s. 8 of the *Charter*.

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[224] Section 78(1) authorizes the following:

> (1) For the purpose of an investigation, the chief executive officer may, subject to any limit or condition established in the rules, do any of the following without a warrant:
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> > (a) during business hours, enter the business premises in which a licensee, trainee or law firm practises law;
> >
> > (b) inspect or examine the records, or any other thing, of a licensee, trainee or law firm that relate to the practice of law by the licensee, trainee or law firm;
> >
> > (c) observe the practice of law by the licensee, trainee or law firm or the licensee's supervision of the practice of law.

[225] A warrantless search is presumptively unreasonable, however that presumption may be rebutted where the search or seizure is: (i) authorized by law; (ii) the law is itself reasonable; and (iii) the manner in which the search is carried out is reasonable: *R. v. Collins*, [1987] 1 S.C.R. 265 at 278, 1987 CanLII 84.

[226] As there is no specific search or seizure in issue, the TLABC's challenge turns on the reasonableness of s. 78.

[227] As noted, the courts have upheld similar search provisions in the current *LPA*. In *A Lawyer v. The Law Society of British Columbia*, 2021 BCCA 437, the Court of Appeal found that s. 36 of the *LPA*, which authorizes the LSBC to make rules concerning investigations, and the specific rules enacted for that purpose, do not violate s. 8. The Court of Appeal endorsed the analysis of the chambers judge who came to the same conclusion:

> [35] Relying on *Branch*, *Mulgrew v. Law Society of British Columbia,* 2016 BCSC 1279 and *Goodwin v. British Columbia (Superintendent of Motor Vehicles),* 2015 SCC 46, the judge held that a flexible approach to reasonableness must be taken in this regulatory context. He applied the framework from *Goodwin* and concluded that the nature and purpose of the legislative scheme, the mechanism employed and the degree of intrusiveness, as well as the availability of judicial supervision, all weighed in favour of a finding that the authorizing law was reasonable:
>
> > [157] In my view, the exercise of the investigatory power under R. 4-55, while broad, is not arbitrary. Rather, it requires a reasonably held belief of misconduct and it is rationally connected to the Law Society's ability to fulfill its duty to the public. Given its duty to protect the public, it is not unreasonable that R. 4-55(6) authorized the R. 4-55 Order to

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> require the [appellant] to produce all documents and permit them to be copied. These powers and requirements are not unreasonable given the important duty the Law Society has in protecting the public.
>
> [158] Section 36 of the [*Legal Profession Act*] provides the Law Society with the authority to make rules to fulfill its mandate to protect the public. The Law Society made one such rule by establishing R. 4-55. In my view, considerable deference should be provided to the Law Society in making rules to fulfill its mandate by issuing an order under R. 4-55 … In my view, the mechanism employed (ie., the R. 4-55 Order) and its degree of intrusiveness is not unreasonable given the Law Society's duty to uphold the public interest by regulating the practice of law.
>
> [159] Furthermore, there are a number of safeguards, or checks, built into the R. 4-55 investigatory process that also support the reasonableness of the process and its degree of intrusiveness.
>
> …
>
> [164] … While the legislative scheme in question may not provide the [appellant] with immediate resort to judicial supervision in respect of the seizure of the Firm's records, it does provide for a review mechanism which is, in my view, appropriate in the context.
>
> …
>
> [166] The scope of a seizure made under R. 4-55 is admittedly broad. However, given the [appellant's] diminished expectation of privacy over the Firm's records, the seizure of those records pursuant to the R. 4-55 Order does not, in my view, amount to a major intrusion upon [the appellant's] privacy. Moreover, the seizure of records under R. 4-55 does not result in any immediate consequences for the [appellant]. It is only after (and if) a citation is issued that a tribunal or panel is established by ss. 38 and 41 of the [*Legal Profession Act*] for the purposes of holding a hearing which could result in sanctions. The Discipline Committee's decision is ultimately reviewable by the Court of Appeal. In the circumstances, the review mechanism provided for is reasonable and the availability of judicial supervision is adequate.

[228] The TLABC raises concerns about the impact of the search and seizure provision of Bill 21 on solicitor-client privilege. The defendants submit that these concerns are conclusively answered by the Court of Appeal decision in *Skogstad v. The Law Society of British Columbia*, 2007 BCCA 310, where the Court held that confidential and privileged information disclosed to the LSBC as part of an investigation remains protected pursuant to s. 88 of the *LPA*.

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[229] The protections in s. 88 of the *LPA* are largely replicated in s. 209 of Bill 21, including ss. 209(4) and (5) which state:

> (4) A licensee, trainee or law firm that, in accordance with this Act or the rules, provides the regulator with any information or records that are confidential or privileged is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the regulator or to the client of the licensee, trainee or law firm not to disclose the information or records.
>
> (5) For certainty, if a licensee, trainee or law firm discloses, in accordance with this Act or the rules, any privileged information or privileged records to the regulator, the privilege of the information or records is not affected by the disclosure.

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[230] The TLABC seeks to distinguish cases decided under the *LPA* based upon the altered structure and makeup of the new regulator. Specifically, the TLABC submits that the statutory protections are significantly undermined by the fact that the new regulator is not a body controlled by lawyers. This follows on the position advanced by both plaintiffs that under the structure created by Bill 21, the new regulator is no longer independent.

[231] However, I have found that the new regulatory model, in terms of the makeup of the board, does not undermine the independence of the regulator. Moreover, the provisions of s. 209 are clear and unambiguous in their protection of privilege.

[232] In the result, I am not satisfied that s. 78 is unreasonable and violates s. 8 of the *Charter*. This finding does not, of course, immunize the new regulator from *Charter* scrutiny in the event it conducts a specific search or seizure in a manner that violates an individual's s. 8 rights.

The Public's Rights Under ss. 7, 10(b), and 11(d)

[233] The TLABC contends that Bill 21 deprives the public of independent lawyers, thus infringing their fair trial rights under ss. 7, 10(b) and 11(d). As I have already concluded that Bill 21 does not infringe the independence of the Bar, these *Charter* arguments also fail.

Conclusion

[234] In summary, I find that Bill 21 does not improperly undermine the independence of the Bar and is not *ultra vires* the provincial legislature. Nor does it violate the *Charter*. The actions of both the LSBC and the TLABC are dismissed.

[235] If the parties are unable to agree on costs, they may make arrangements to speak to the issue. If the parties do wish to do so, they should contact Supreme Court Scheduling within 60 days to schedule a conference at which the process and timing for dealing with costs will be addressed.

[236] I am indebted to counsel for all of the parties and intervenors for their professionalism throughout this matter and for their helpful and thorough submissions.

"The Honourable Chief Justice Skolrood"

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