

# What We Heard Report

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**LEGAL PROFESSIONS REGULATORY MODERNIZATION**

*Ministry of Attorney General*

*May 2023*



**BRITISH  
COLUMBIA**

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## 1 PROJECT OVERVIEW

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In March 2022, the Ministry of Attorney General (the Ministry) [announced](#) a project proposing to modernize the regulatory framework for legal professionals in British Columbia, including lawyers, notaries and licensed paralegals, as part of the Ministry's strategy to improve access to legal services in BC.

Access to legal services is in part a regulatory issue because rules around who is allowed to provide what services have an impact on the availability (and cost) of those services to the public. Access to legal services is also in part a governance issue because it requires a governance framework that prioritizes the public interest over the interests of the professionals it regulates.

Specifically, the Ministry announced it would develop a legislative proposal that involves:

- regulating all regulated legal professions under a single statute and by a single regulator
- establishing a mandate for the regulator that clarifies its duty to protect the public, including the public's interest in accessing legal services and advice
- establishing a modernized regulatory framework that is consistent with best practices in professional regulatory governance
- establishing clearly defined scopes of practice for each regulated profession with procedures to allow for expanded scopes as needed

## 2 PUBLIC ENGAGEMENT SUMMARY

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In September 2022, the Ministry released an [Intentions Paper](#) outlining proposed reforms for the purpose of seeking feedback from stakeholders and the public. In setting out proposals for the establishment of a new legal regulator, the Intentions Paper highlighted the importance of:

- maintaining independence of the legal professions
- developing reforms to legal regulation, in co-operation with Indigenous Peoples, that support the objectives of reconciliation

The Intentions Paper addressed six areas for potential reform:

- single statute, single regulator
- clear mandate
- modernized governance framework
- flexible licensing framework
- efficient discipline framework
- enhanced focus on public interest

Public engagement took place from September 14 to November 18, 2022. During the engagement period the Intentions Paper and a public survey were posted on the govTogetherBC website. Legal professionals and the general public were invited to provide feedback by completing the survey or by sending a written submission by email to the Ministry.

The survey consisted of 16 questions. All substantive questions except one were directed exclusively at members of the public (“public respondents”). All survey respondents could respond to an open-ended question inviting comments on the Intentions Paper. Demographic information was also collected. A copy of the survey instrument is included at Appendix A.

We are grateful to everyone who participated in the engagement process. The feedback received has helped expand our understanding of the issues and will contribute to the development of new policy and legislative proposals.

### 3 PUBLIC ENGAGEMENT RESPONSES

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The Ministry received 776 completed surveys through the govTogetherBC website and 96 written submissions by email.

The 776 completed surveys included 539 surveys submitted by legal professionals and 211 by public respondents. Table 1.1 illustrates the number of survey respondents by respondent type.

**Table 1.1** Number of Survey Completions by Respondent Type

Stakeholder Group	Number of Respondents
Lawyers	222
Paralegals	218
Notaries	71
General public	211
Legal academic, instructor, researcher	10
Other	44
Total	776

Source: *Legal Professions Modernization Public Engagement (2022)*

Data collected exclusively from public respondents included demographic information as well as responses regarding experiences and access issues with the legal system and legal service providers.

Included in the survey was a question that requested open-ended comments from all survey respondents (Question 9). Comments varied in length from a few words to multiple paragraphs. Table 1.2 illustrates the number of comments provided by respondent type.

**Table 1.2** Survey Question 9, Number of Comments by Respondent Type

Stakeholder Group	Number of Respondents
Lawyers	116
Paralegals	77
Notaries	30
General public	114
Legal academic, instructor or researcher	7
Other	18
Total	362

Source: *Legal Professions Modernization Public Engagement* (2022)

In addition to the open-ended survey comments, the Ministry received 96 written submissions by email. Written submissions varied in length from a few sentences to over 10 pages. Submissions were provided by individual legal professionals and public respondents as well as organizations such as legal regulators, professional associations, advocacy groups, non-profit legal service providers, legal scholars, and academic institutions. Table 1.3 illustrates the number and type of written submissions received.

**Table 1.3** Number and Type of Written Submissions sent by Email by Respondent Type

Respondent Characteristics	Written Submissions
Current regulators and legal professional associations	7
Lawyers	28
Notaries	22
Paralegals	10
Clients of notaries	12
Non-profit legal service providers	5
Academic institutions and legal scholars	4
Other stakeholder organization	5
Other individual	3
Total	96

Source: *Legal Professions Modernization Public Engagement* (2022)

## 4 GENERAL PUBLIC SURVEY RESPONSES

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### 4.1 Demographics

In comparison to statistics for the general population of BC<sup>1</sup>, public respondents' demographic data indicates:

- lower household incomes
- higher education

<sup>1</sup> Statistics for Canada were used in place of BC statistics where BC statistics are unavailable.

- higher percentage of women and gender diverse respondents
- lower percentage of persons with disabilities and persons of colour respondents
- higher percentage of Indigenous and LGBTQ2S+ respondents

For further details on the demographics of the public respondents’ survey sample, please see Appendix B.

#### 4.2 Public Respondents’ Experiences with the Legal System and Legal Service Providers

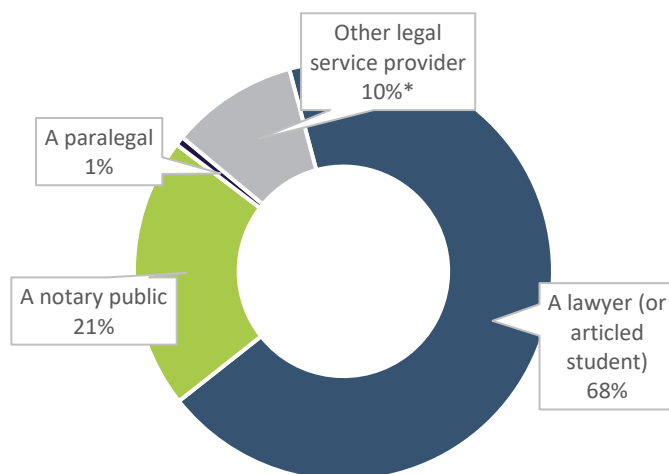
The survey asked public respondents multiple choice questions regarding their legal experiences, including:

- whether they had experienced a legal matter in the past five years
- if so, whether they got help from a legal service provider and from what type
- if they did not get help from a legal services provider, why they did not

The results show that 81% of public respondents reported having experienced a legal matter within the last five years, and 86% of those public respondents utilized legal service providers to handle their legal matters, whereas 14% handled their legal matter themselves.

Figure 1.1 illustrates the use of legal service providers by type.

**Figure 1.1** Legal Service Provider used by Public Respondents in Past Five Years

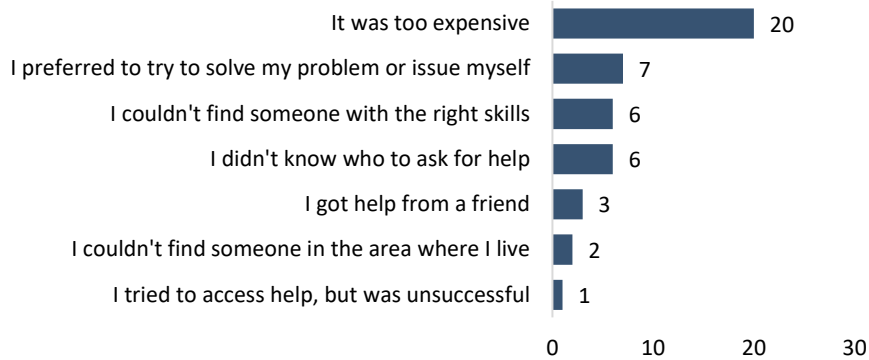


\* Nearly all respondents who selected “other legal service provider” specified Amici Curiae Friendship Society as the legal service provider.

Source: *Legal Professions Modernization Public Engagement* (2022)

The 23 respondents who did not utilize a legal service provider were asked to select from a list of reasons why they did not do so.<sup>2</sup> Figure 1.2 illustrates respondents' reasons for not seeking assistance from a legal service provider.

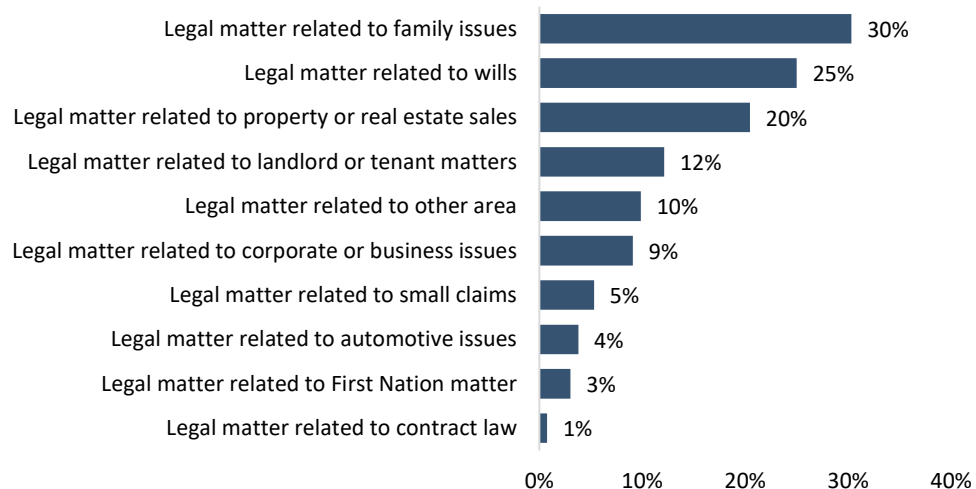
**Figure 1.2** Reasons for Not Accessing Legal Services



There are more than 23 responses due to the ability of respondents to select multiple reasons.  
 Source: *Legal Professions Modernization Engagement* (2022)

Public respondents who had a legal matter in the past five years were asked to describe their legal matter and overall experience trying to solve it, with or without a legal service provider. The Ministry received and analyzed 132 written comments. Figure 1.3 below illustrates the types of legal matters public respondents faced and their frequency.

**Figure 1.3** Types of Legal Matters Experienced by General Public Respondents



Valid n=132. Percentages may add to more than 100% due to multiple responses.  
 Source: *Legal Professions Modernization Engagement* (2022)

<sup>2</sup> Due to the small sample size of 23, the responses should not be assumed to be representative of all British Columbians who do not seek assistance with legal matters.

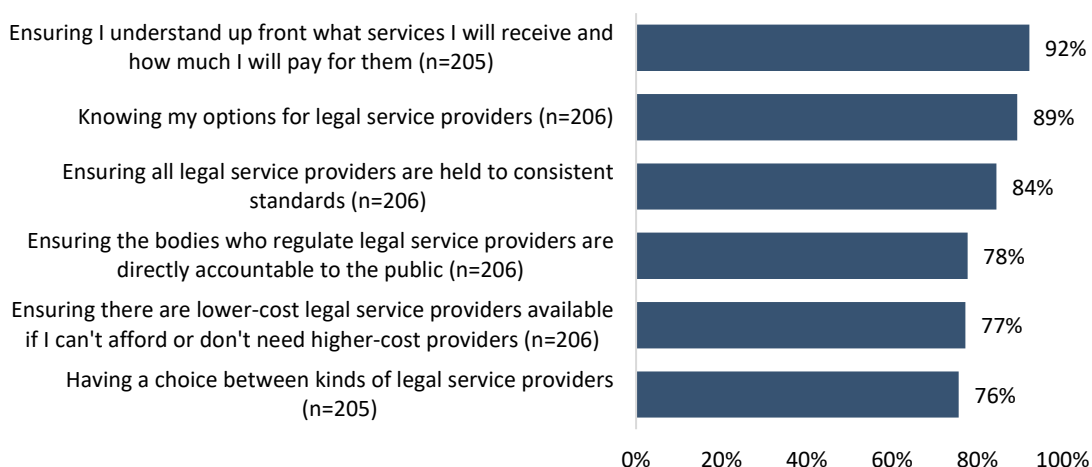
Out of the 132 responses, 35 described access to legal services issues. Of these, 71% commented that legal services are inaccessible for financial reasons, and 43% commented that legal services are inaccessible due to other barriers.<sup>3</sup> Examples offered of other barriers include: lack of communication from service providers; deadlines for filing and other time-related issues; and legal aid and pro bono lawyers not dedicating sufficient time to their case.

In addition, 30 of the 132 responses commented on their satisfaction with the legal services. Of these, 63% reported being satisfied with the legal services they received, while 53% reported being unsatisfied with services they received.<sup>4</sup>

### 4.3 Public Respondents’ Perspectives on Legal Services Regulatory Reforms

Public respondents were asked which attributes or issues are important to them in relation to accessing legal service providers. Overall, a large majority of respondents rated *all* attributes as “important” or “very important.” Figure 1.4 illustrates these responses.

**Figure 1.4** Importance of Legal Service Attributes or Issues



Respondents were asked to select all that apply.  
Source: *Legal Professions Modernization Engagement* (2022).

As noted in Table 1.2 above, 114 public respondents provided comments on the Intentions Paper in response to Question 9 of the survey. To provide a general overview of public comments, substantive comments that address an issue raised in the Intentions Paper were coded and analyzed to identify common themes.<sup>5</sup> Figure 1.5 illustrates themes that arose in 5% or more of substantive responses to the Intentions Paper.

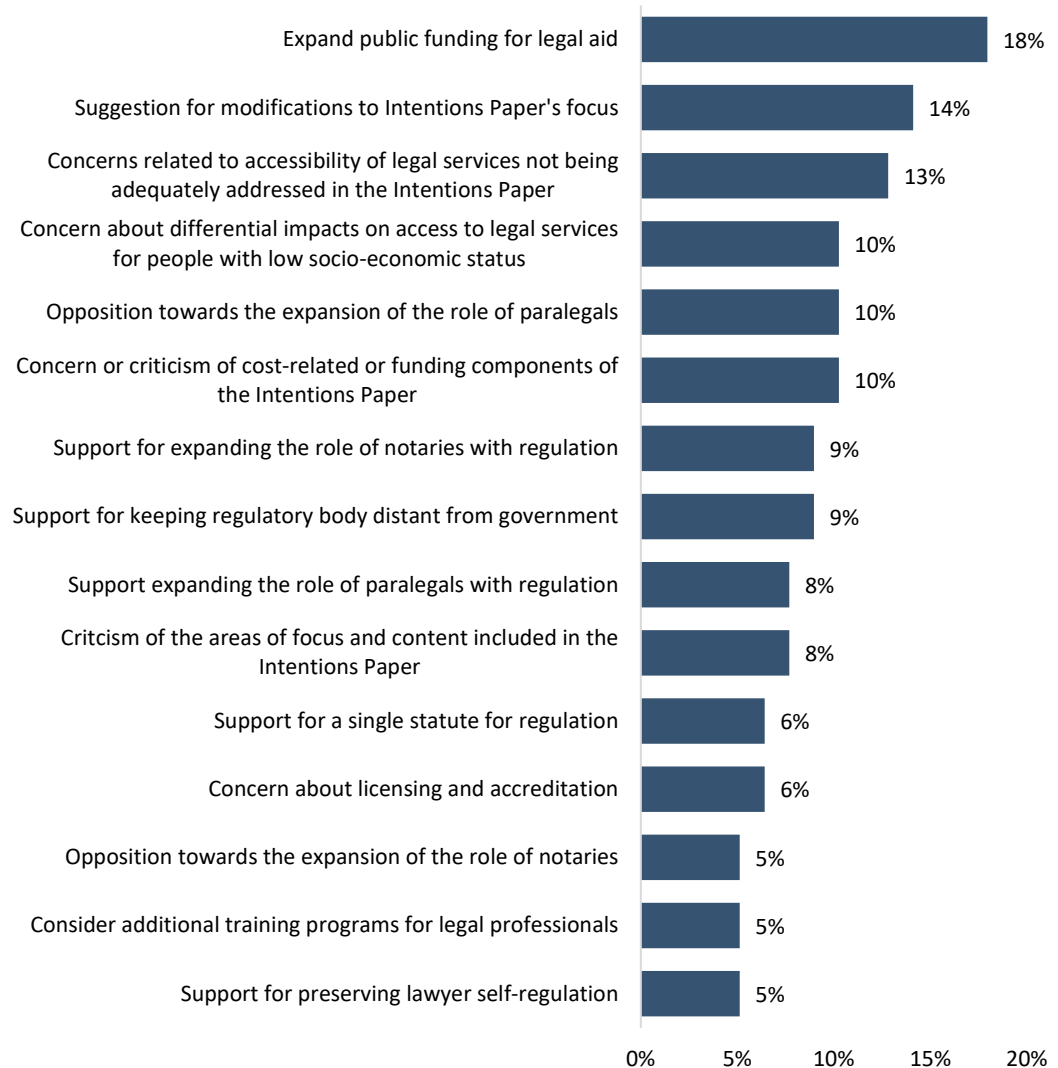
<sup>3</sup> Percentages add to more than 100% due to multiple responses.

<sup>4</sup> The overlap in responses is due to some respondents indicating that they were satisfied with one legal service but not another (e.g., unsatisfied with a lawyer’s services, but satisfied with a notary’s services).

<sup>5</sup> General comments that do not respond to the substance of the Intentions Paper are not included.



**Figure 1.5:** Categories of Substantive Responses to Intentions Paper among Public Respondents



N=78. Percentages may not add to 100% due to not all responses being included in this chart, and the opportunity for multiple codes to be applied to a single answer.  
 Source: *Legal Professions Modernization Engagement* (2022)

## 5 LEGAL PROFESSIONALS' SURVEY COMMENTS AND WRITTEN SUBMISSIONS TO THE MINISTRY

This section provides a summary of substantive comments of legal professionals provided on the Intentions Paper through open-ended comments in response to the survey as well as written submissions sent to the Ministry by email.

In response to Question 9 of the survey, 244 legal professionals provided open-ended comments on the Intentions Paper. A total of 96 written submissions were provided to the Ministry by email. For further detailed information, see Tables 1.2 and Table 1.3, above.

The survey comments and the written submissions (hereinafter collectively referred to as “submissions”) have been analyzed in accordance with the following respondent categories:

**Lawyers:** lawyers, the Law Society of BC, out-of-province law societies, the Canadian Bar Association and other organizations that advocate on behalf of lawyers

**Notaries:** notaries, the Society of Notaries Public of BC, the BC Notaries Association and clients of notaries

**Paralegals:** paralegals and the BC Paralegal Association

**Non-profit respondents:** non-profit organizations that provide low- or no-cost legal services, and other non-profit organizations, universities or legal scholars who engage in public interest research, analysis or advocacy relating to access to justice

The submissions address a large number of topics and issues. Some submissions focus on issues or topics that are not directly raised in the Intentions Paper, while others specifically address one or more topic headings used in the Intentions Paper. A comprehensive review of the submissions has identified four common topic areas:

- I. Single Regulator, Self-Regulation and Independence of the Bar
- II. Board Size, Diversity and the Role of Directors
- III. Competency, Scope of Practice and Affordability of Legal Services
- IV. Access to Justice and Accountability

The submissions of lawyers, notaries, paralegals and non-profit respondents on these topic areas are summarized below.

### **5.1 How have lawyers reacted to the Intentions Paper?**

Over 130 individual lawyers provided submissions on the issues raised in the Intentions Paper. Comments varied from strong opinions for or against certain positions to sharing insights from particular practice experiences. The Ministry also received submissions from lawyer organizations, including the Law Society of BC and other law societies, as well as professional bar associations and lawyer advocacy organizations.

## I. Single Regulator, Self-Regulation and Independence of the Bar

Many individual lawyers shared strong opinions against the creation of a single regulator due to what they view as potential negative implications for the independence of the bar.<sup>6</sup> Requiring “lawyer control” of the board of directors to ensure lawyer self-regulation, which is viewed as necessary to maintaining independence of the bar, arose as a prominent theme. Some respondents expressed concern about the possibility of board control through a majority of government-appointed directors and elected directors from non-lawyer legal professions.

Individual lawyer comments that reflected prominent themes on the issue of the independence of the bar and lawyer self regulation / majority of the board include:<sup>7</sup>

“These proposals are a severe encroachment on the independence of lawyers and thereby, an encroachment of the division between the executive and judicial branches of government. [...] The independence of the bar is such an important part of the constitution that the government cannot properly exist without it.”

“An independent bar is an essential guarantee of judicial independence. For judges to be independent, the bar from which they are appointed must also be independent.”

“Lawyers should be governed/regulated by lawyers [...] Having non-lawyers regulate lawyer functions uniquely carried out by lawyers undermines the independence of the bar.”

“The more government-appointed members, and the greater their influence, the greater the concern for the independence of the bar. To the extent there are appointed members, the appointment process itself should be structured to avoid political interference, and the criteria for appointment should be transparent and specific. Appointees must have no role in advocating for government priorities.”

While nearly all lawyer organizations support a single regulator for the legal professions, most lawyer organizations expressed similar views about the importance of lawyer self-regulation—most importantly through lawyer control of the board—to maintaining independence of the bar. Three lawyer organizations submit that international and constitutional law require lawyer self-regulation as fundamental to maintaining independence of the bar, which in turn is critical to upholding the rule of law. The following comments encapsulate these views:

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<sup>6</sup> The Supreme Court of Canada discusses the concept of “independence of the bar” in *Canada (Attorney General) v. Federation of Law Societies in Canada*, [2015] 1 S.C.R. 401. The Court refers to the “central importance to the legal system of lawyers being free from government interference in discharging their duties to their clients”. The Court cites with approval a passage from an earlier decision of the Court on the importance of the independence of the bar in *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C. R. 307: “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.” [Emphasis added by the Court]

<sup>7</sup> Comments have been edited for succinctness.

“An independent bar is crucial because it allows lawyers to contribute to law reform, ensure a functional justice system, and allows the judiciary to maintain their independence; all of these roles are critical for a free and democratic society governed by the rule of law. The principle of self-regulation of lawyers must ensure that it is lawyers who make all governing decisions.”

“[T]he importance of an independent bar to the functioning of a free and democratic society cannot be overstated. [...] We are confident that self-regulation of the legal profession would be held to be a principle of fundamental justice and that a majority of lawyers on the board is essential to self-regulation.”

However, while the majority of individual lawyers and lawyer organizations view lawyer control of the board as imperative, other individual lawyers raise concerns that lawyer self-regulation results in lawyers regulating to protect lawyers’ interests rather than the public interest, in particular the lawyer near-monopoly on providing legal services, and thus undermining access to justice reforms. Some respondents comment that access to justice is also fundamental to upholding the rule of law in a free and democratic society.

Some individual lawyers and lawyer organizations also object to the removal of lawyer members/licensees’ ability to vote in referenda or pass resolutions at Annual General Meetings to guide the board, viewing this power as an important aspect of self-regulation that contributes to protecting independence of the bar. A proposed alternative is to develop a vetting process to ensure member resolutions fall within the proper purview of the regulator.

Two lawyer organizations raise lawyer control over discipline of lawyers, including lawyers evaluating the conduct of lawyers and lawyers sitting as adjudicators (or majority of adjudicators) in lawyer discipline hearings, as another important aspect of lawyer self-regulation that should be maintained to ensure independence of the bar.

The democratic principle of proportional representation was also raised as a justification for lawyer majority control of the board, as there are many more lawyers (approximately 14,000) than notaries (approximately 400) and licensed paralegals (currently 0, future number unknown).

## II. Board Size, Diversity and the Role of Directors

Some individual lawyers and lawyer organizations criticize the Intentions Paper’s proposed reduction of board size (as compared to the current number of Law Society benchers) due to their view that a larger board is needed to ensure appropriate representation of:

- different types and areas of legal practice (e.g., barrister, solicitors, practice areas), including regional differences in practice
- the diversity of the population (e.g., gender, ethnic background, LGBTQ2S+)
- diverse perspectives of Indigenous Peoples

Other lawyers and lawyer organizations support the proposal of a smaller board, with some board members appointed based on needed skills, in accordance with modern regulatory practices. Proponents argue that a smaller board will facilitate meaningful discussion and debate, while noting that the board should still be large enough to ensure appropriate representation of Indigenous perspectives, different practice areas and regions, and diversity of the population.

There was broad support for the Intentions Paper’s proposals regarding maintaining strong Indigenous participation on the board. Some difference of opinion was expressed as to how best to achieve that goal, with some concern raised that a legislative minimum number of Indigenous directors would result in ineffective symbolic participation (“tokenism”), while others supported a legislative minimum of at least one appointed Indigenous director.

Several individual lawyers criticized both a reduction in board size and the narrowing in scope of director duties due to their view of the value that Benchers provide as volunteers and as mentors to the profession. This includes, for example, serving on the board, committees and as discipline tribunal adjudicators, and acting as practice and ethical advisors to the profession, all without pay.

### III. Competency, Scope of Practice and Affordability of Legal Services

#### a. Quality of Service Submissions

Many lawyers and lawyer organizations expressed service quality concerns about expanding the scope of legal services that licensed paralegals and notaries can provide to the public. They submit that allowing new scopes of practice for notaries and licensed paralegals will put the public at risk due to the differences in education and training received as compared to lawyers. Many lawyers submitted that the types of legal services being contemplated as appropriate for paralegals and notaries may raise complex issues that require a lawyer’s broad understanding of the law to be competently addressed.

Some lawyers who express limited support for expanding scopes of practice for notaries and licensed paralegals submit that consultation with practitioners would help to identify what services are suitable for non-lawyer licensees and what services should only be handled by lawyers.

Lawyers in support of expanded scopes of practice for paralegals and notaries submit that quality concerns can be addressed by the regulator by carefully defining what types of services are appropriate to be handled by someone without the full legal training of a lawyer and establishing a licensing process that includes education and training requirements appropriate to the contemplated services. In addition, adapting the regulatory disciplinary system to establish standards of service and handle complaints against licensed paralegals and notaries will help to ensure quality standards are similar to those of lawyers within whatever expanded scopes of services they are licensed to provide.

## b. Cost of Service Submissions

Another critique of expanding scopes of practice for notaries and licensed paralegals raised by individual lawyers and lawyer organizations cites economic reasons rather than, or in addition to, service quality concerns. They submit that expanding the scope of legal services that notaries and paralegals can provide will not result in more affordable services for the public, due to the reality of service costs that exist regardless of the type of legal service provider (e.g., overhead, insurance) and they cite the leveling effect of market forces on the price of services regardless of provider type. They also point to entrenched institutional justice system costs as another main factor in driving up costs of legal services, such as over complex litigation procedures. In short, they submit that because of these embedded costs, legal services will cost the same regardless of who provides them.

In support of these submissions, individual lawyers comment that solicitors and notaries currently charge similar fees for similar services in some B.C. markets. Others point to licensed paralegals in Ontario, stating that they charge similar fees as lawyers for similar litigation services. In addition, it is submitted that there is no shortage of new lawyers, thus costs associated with practice are the cause of high service prices, not the lack of supply of lawyers.

A cost sub-issue raised by individual lawyers and lawyer organizations is the possibility of increased insurance rates for lawyers—and therefore higher fees for clients—due to the higher likelihood of professional liability claims against licensed paralegals and notaries potentially arising as a result of their lower education and training requirements. Accordingly, it is argued that expanding scopes of services will increase overall costs for clients of lawyer and potentially for clients of all legal service providers.

Opponents of expanded scope of practice for notaries and licensed paralegals argue that efforts to improve affordability of services—and therefore improve access to justice—should focus on reducing the embedded overhead costs of legal services as well as the inherent costs arising from complexity of the legal system.

Lawyers who support increased scope of practice for licensed paralegals and notaries submit that cost advantages for clients could arise for simple services, including in multi-service firms that utilize the proposed three types of service providers in combination. Allowing expanded scopes of practice and multi-provider law firms would advantage clients, as law firms could hire and utilize notaries and licensed paralegals to provide lower-complexity services that are not economical for lawyers to provide, with higher-complexity tasks provided by lawyers, reducing costs overall.

## IV. Access to Justice and Accountability

As discussed above, many individual lawyers and lawyer organizations question whether regulatory changes will result in legal services becoming more affordable, a key metric in assessing whether members of the public with lower incomes can achieve access to justice through the regulated legal services market. Some noted that a significant portion of the

population cannot afford legal services at any price—thus they are of the view that regulation of service providers is not the answer to the problem. Many of the comments state that improving access to justice requires a multi-faceted approach by multiple stakeholders and government, citing the need for modernization and reform of the courts, tribunals and other core legal system infrastructure, as well as for increased government funding of legal aid and other publicly funded legal services.

Some lawyer respondents also raise the concern that licensing paralegals will create a two-tiered justice system: higher income people and corporations will hire lawyers, and lower income people will hire the less expensive licensed paralegals and notaries. It is argued that the difference in service quality between lawyers and paralegals and notaries will create a legal system characterized by systemic bias in favour of the wealthy, thus undermining access to justice for everyone else. Respondents with this view strongly support increased government funding for legal aid or other publicly funded legal services as the best or only way to achieve real improvement in access to justice for low- and middle-income people.

Several individual lawyers and lawyer organizations raise the need for data collection and for developing a metric to measure access to legal services. Doing so would improve the regulator’s ability to effectively govern by supporting evidence-based decision-making as well as provide a means to hold the regulator accountable to the public. This would include setting performance targets and timelines, with periodic reviews to determine whether progress toward improved access to justice is actually being achieved and where future efforts should be targeted.

## **5.2 How have notaries reacted to the Intentions Paper?**

Thirty notaries provided survey comments and 22 notaries provided written submissions on the Intentions Paper. In addition, 12 clients of notaries provided written submissions. The Society of Notaries Public of BC (“Notaries Society”) and the BC Notaries Association (“BCNA”) also provided written submissions.

Many of the survey comments and nearly all of the written submissions provided by notaries, and the clients of notaries, contained very similar content to the submissions from the BCNA. Accordingly, reference to the BCNA includes reference to the submissions of individual notaries and clients of notaries, unless otherwise noted.

The Notaries Society and the BCNA expressed general support for the Intentions Paper proposals. Their comments focused on particular issues they strongly support or additional items not raised in the Intentions Paper.

## I. Single Regulator, Self-Regulation and Independence of the Bar

Notaries support extending the concept of the independence of the bar to all regulated legal professions.

Notaries oppose any single profession having a majority of directors on the board, as this could allow that profession to limit the ability of other professions to provide legal services, which would be inconsistent with the public interest. Notaries submit that the board should have a balanced composition of directors from the different professions, not proportionate to a profession's size.

The BCNA submits that it is of paramount importance to notaries that the legislation makes a sufficient distinction between lawyers, paralegals and notaries to ensure that the unique identity of B.C. notaries be maintained. The BCNA comments that notaries often practice in small remote communities where there are no lawyers and offer non-contentious time-sensitive legal services, such as verification services, that other legal professionals often do not provide.

The BCNA also submits that the Notary Foundation of British Columbia should be continued due to its support of access to justice initiatives and educational opportunities unique to the scope of services notaries provide.

## II. Board Size, Diversity and the Role of Directors

The Notaries Society supports a board composed of up to 19 directors, with a statutory requirement for Indigenous representation.

## III. Competency, Scope of Practice and Affordability of Legal Services

The BCNA submits that expanding the scope of practice for notaries in the new legislation would provide British Columbians increased choice when it comes to the provision of non-contentious legal services, increasing access to legal services immediately. In particular, notaries' scope of practice should be expanded to include preparing testamentary trusts and life estates, and filing probate documents. Consequential practical training requirements can be updated to include enhanced education in these areas.

The Notaries Society submits that grounding the provision of legal services in competence to practice will achieve protection of the public. The BCNA submits that consistent standards should be implemented across all regulated legal professions.

## IV. Access to Justice and Accountability

Notaries view a modernized scope of practice for notaries and other non-lawyer legal professionals as effective practical steps toward increasing access to justice.



### **5.3 How have paralegals reacted to the Intentions Paper?**

Individual paralegals provided responses to the Intentions Paper’s proposals through 77 survey comments and 10 written submissions. The BC Paralegal Association (“BCPA”) also provided a written submission.

Paralegal submissions strongly support the Intentions Paper’s proposals. Submissions from paralegals largely focused on licensing, competency and scope of practice.

#### **I. Single Regulator, Self-Regulation and Independence of the Bar**

The BCPA submits that no single profession should be allowed to have a majority of directors on the board as this would allow the majority profession to limit the services other legal professionals provide. Rather, the professions should have equal representation on the board.

Several paralegals comment on the importance of the independence of the bar and that the principle should apply to all regulated legal professions. Furthermore, the duties and privileges (e.g., solicitor-client) that apply to lawyer-client relationships should extend to paralegal-client relationships.

The BCPA supports the Intentions Paper’s proposal to remove the ability of licensees to direct the actions of the board.

#### **II. Board Size, Diversity and the Role of Directors**

The BCPA submits that the board should reflect the diversity of the communities they serve. Improving diversity will assist the regulator and the legal professions in addressing cultural access to justice barriers.

#### **III. Competency, Scope of Practice and Affordability of Legal Services**

The BCPA submits the new legislation should include a minimum scope of practice (which can be expanded by the regulator) and minimum standard or competency for licensed paralegals that includes a combination of education, experience and character. This would serve to protect the public interest, improve access to justice, as well as instill public confidence by providing transparency to the licensing process. The BCPA also supports a separate case-by-case approach in addition to the standard licence to allow for greater flexibility to license paralegals with exceptional qualifications or experience to provide a broader scope of services.

Many individual paralegals provided comments regarding competency and licensing based on their personal experiences as paralegals and/or experienced legal assistants. With respect to education requirements, many paralegals submitted that the required diploma or degree must have a curriculum that meets the regulator’s standard for paralegal training. Other suggestions include a professional exam for paralegals, similar to the bar exam, and/or practicum experience under supervision of a licensed paralegal or lawyer.

Many paralegals expressed concerns that the scope of practice that is prescribed will be too limited, either in terms of the types of services that paralegals are allowed to provide or in terms of practice areas. They submit that while there are complex legal issues that require a lawyer's expertise, there are less complex tasks and types of legal advice that paralegals can provide in all areas of practice.

With respect to affordability, nearly all paralegals expressed the view that licensing of paralegals will lead to more affordable legal services being available to the public for many legal tasks.

#### IV. Access to Justice and Accountability

A common theme expressed by paralegals is the expectation that licensing paralegals would significantly increase public access to high-quality lower-cost legal services. Most concerns were directed at access to justice being limited by the legislation or by the regulatory body imposing overly prescriptive scopes of practice. People need access to justice in all areas.

The BCPA submits that licensing paralegals will assist in reducing, and even closing, the existing, largely economic, access to justice gap.

### 5.4 How have Non-profit Respondents reacted to the Intentions Paper?

Five non-profit legal service providers and four academic institutions or scholars provided written submissions. Non-profit respondents were generally supportive of the Intentions Paper proposals.

#### I. Single Regulator, Self-Regulation and Independence of the Bar

Non-profit respondents strongly support a single regulator for legal professions that regulates all legal service providers collectively, and whose mandate is the promotion and protection of the public interest, including improving access to justice.

All non-profit respondents agree that independence of the bar is of fundamental importance to the justice system and to society. Several non-profit respondents submit that independence of the bar is not unique to lawyers and should be extended to include notaries, paralegals, and future categories of legal professionals. The associated duties and privileges should also be extended, including solicitor-client privilege, the duty of loyalty and the duty to avoid conflicts of interest.

None of the non-profit respondents support a lawyer-controlled majority on the board. Control of the new regulator by lawyers is viewed as a perpetuation of the lawyer-centric status quo, which they view as unlikely to make changes necessary to materially improve affordability of legal services or access to justice more generally. Most non-profit respondents support self-regulation by legal professions collectively through a majority of legal professionals as directors on the board, but with no single legal profession having a majority.

## II. Board Size, Diversity and the Role of Directors

Non-profit respondents express general support for the Intentions Paper’s proposals regarding the size, diversity and Indigenous representation on the board. One respondent questions whether 15 board members is enough, while another suggests a requirement for an appointed director from the non-profit legal community.

The focus of submissions is on the need to ensure the board does not become captured by the narrow self-interest of its licensees and instead achieves its public interest mandate by significantly improving access to justice for the large portion of the population who are currently underserved or not served at all. The following comments<sup>8</sup> encapsulate some of these concerns:

“The new regulator must have an embedded understanding of how legal services are provided to low-income and vulnerable people who cannot afford legal services through the private market. [...] Comprehensive research and consultation should be conducted to understand the needs of the non-profit legal sector, and those of their clients, related to a single regulatory regime.”

“The breadth of the expansion of access to justice rests with the leadership of the legal professions and their single self-regulator. The statute can only entrench the guiding principles and set the table for the public interest to overcome narrow self-interest through the regulator’s governance model – how many governors, from what professions, and balanced by how many lay appointments. [...] The governance framework should promote collaboration between the various legal professionals being regulated and ensure that there is not an imbalance of power/decision-making between lawyers and other legal professionals. [...] [N]on-legal appointments play a crucial role in balancing out any professional self-interest.”

Some non-profit respondents submit that board, committee and tribunal members should be paid for their time, as the current volunteer model deters licensees who cannot afford to volunteer.

## III. Competency, Scope of Practice and Affordability of Legal Services

Non-profit respondents strongly support increasing the services that are available to the public through non-lawyer service providers.

Submissions focus on the current lawyer monopoly model as creating major barriers to affordable access to legal services, including that the monopoly on legal services disincentivizes lawyers from pursuing cost-reducing innovations and encourages status quo business models that keep costs high.

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<sup>8</sup> Edited for brevity.

All non-profit respondents agree that establishing a regulatory framework for non-lawyer professionals can help improve access to justice. One respondent submitted:

“Establishing a framework for non-lawyer professionals to provide competent, high quality, and more affordable legal services has the potential to help low- and middle-income people access the legal help they need and obtain better outcomes. Regulatory reform could result in a more diverse pool of legal professionals from which people can choose to assist them.”

Another submission stated that the needs of those requiring legal services should be the primary focus of regulatory reform, and that legal needs and associated services should be viewed as existing on a spectrum of complexity. The public interest is better served by a range of legal service providers supplying different services depending on the level of complexity of the legal service.

With respect to ensuring competency, none of the non-profit respondents raise quality of service concerns about licensing of paralegals or extending scopes of practice. Non-profit respondents are strongly of the view that a regulatory framework that includes appropriate safeguards and checks and balances tailored to the nature of the services provided, including appropriate training and education, will produce regulated paralegals and notaries who can provide competent legal services.

Some non-profit respondents expressed support for an improved disciplinary framework, with a more accessible complaint and discipline process and a truly independent disciplinary tribunal, as a means to strengthen public confidence in the regulator and all the legal professions it regulates.

One non-profit respondent submitted that empirical research on the regulation of paralegals in Ontario demonstrates that regulated licensed paralegals are capable representatives and at least as competent as lawyers at achieving positive outcomes for their clients within their scope of practice.

Another non-profit respondent notes that non-profit legal clinics and non-lawyer advocates provide and will continue to provide free services to many thousands of low-income British Columbians each year. They further submit that it is important that new regulations regarding scope of practice and licensing do not impede these services but rather ensure flexibility to address the unique challenges faced by non-profit legal service providers. The needs of the many British Columbians facing poverty who will never be able to afford legal services regardless of the cost also must be understood and addressed in any system of regulation.

#### IV. Access to Justice and Accountability

Non-profit respondents' discussion of access to justice focuses on barriers to access for those most in need, which includes financial barriers (affordability), but also other barriers such as language, culture, information barriers and institutional barriers arising from the complexities of the legal system.

As discussed above, non-profit respondents' submissions strongly support increased scope of services for notaries, licensed paralegals and future new legal service providers as an effective means to improve affordable access to legal services in British Columbia.

Non-profit respondents emphasize the importance of accountability measures to ensure the new regulator performs in accordance with its public interest mandate. Some examples of submissions include:

"The new regulator must be sensitive and proactive to the realities of public need. The key is to maintain an evidence-based approach. The new regulator should be mandated to collect, analyse and act on data."

"A future independent review is an important tool for maintaining accountability. The Ministry should establish a series of access to justice benchmarks to guide the expectations for the new regulator. The approach should be outcome-focussed that examines the availability of quality and affordable services provided by competent providers."

"It is far better to achieve the checks and balances in the statute itself, or to reserve regulatory powers to permit the public interest to prevail, than to include a statutory periodic independent review that may never happen."

## **6 NEXT STEPS**

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The Ministry is extremely grateful to all the individuals and organizations who took the time to fill out the public survey and provide written comments and feedback on the ideas set out in the Intentions Paper. All submissions are helping to inform the development of a legislative proposal for government's further consideration.

**Q1** I am responding to this survey as:

- a) A member of the public
- b) A lawyer (skip to Q9)
- c) A notary public (skip to Q9)
- d) A paralegal (skip to Q9)
- e) An academic professor, instructor or researcher (skip to Q9)
- f) Other (please specify) (skip to Q9)

**Q2** Have you experienced a legal matter such as a separation, landlord/tenant concerns, incorporation of a business, drafting of a will, purchase of real property, etc. in the last five years?

- a) Yes
- b) No
- c) Unsure

**Q3** When you were dealing with your legal matter, did you get help from a legal service provider (like a lawyer, notary public, paralegal or other person)?

- a) Yes
- b) No

**Q4** If yes, what kind of legal service provider helped you?

- a) a lawyer (or articulated student)
- b) a notary public
- c) I'm not sure
- d) Other (please specify)

**Q5** Why didn't you get help? [multiple choice]

- a) It was too expensive
- b) I didn't know who to ask for help
- c) I couldn't find someone in the area where I live
- d) I couldn't find someone with the right skills
- e) I preferred to try to solve my problem or issue myself
- f) I got help from a friend
- g) Other (please specify)

**Q6** Briefly describe your legal matter and your overall experience of trying to solve it (either by yourself or with professional help). Please do not include anything in your response that personally identifies yourself or others. (1600-character limit)

**Q7** The Ministry of Attorney General’s intentions paper (linked) exploring changes to the way legal service providers are regulated in B.C. includes a goal to improve access to legal services by creating more options for people when they are looking for help with a legal matter. How would you describe your level of support for this goal?

- a) Very Supportive
- b) Somewhat Supportive
- c) No Opinion
- d) Somewhat Opposed
- e) Very Opposed

**Q8** In terms of access to legal services in BC, how do you rate the following issues in terms of importance.

	Very Important	Somewhat Important	Neutral	Less Important	Not Important
Knowing my options for legal service providers					
Having a choice between kinds of legal service providers					
Ensuring there are lower-cost legal service providers available if I can't afford or don't need higher-cost providers					
Ensuring I understand up front what services I will receive and how much I will pay for them					
Ensuring legal service providers are properly qualified					
Ensuring all legal service providers are held to consistent standards					
Ensuring the bodies who regulate legal service providers are directly accountable to the public					

**Q9** (for all categories in Q1)

Do you have any feedback on the Intentions Paper? (1600 character limit)

If you wish to provide additional feedback, please email your comments or submission to [PLD@gov.bc.ca](mailto:PLD@gov.bc.ca).

**Demographics**

To get a better understanding about who is responding to this questionnaire, please provide a bit of detail about yourself. These questions, like the other questions in this questionnaire, are optional. Your responses are confidential. All responses will be compiled and analyzed as a group. Responses will not be identified by individual.

**Q10** [Public respondents only] What is your total annual household income before taxes?

- Less than \$24,999
- \$25,000 to \$49,999
- \$50,000 to \$74,999
- \$75,000 to \$99,999
- \$100,000 to \$124,999
- \$125,000 to \$149,999
- \$150,000 to \$174,999
- \$175,000 or more
- Prefer not to answer

**Q11** [Public respondents only] What is your highest level of education completed?

- Less than high school completion
- High school diploma or equivalent
- Some post-secondary training
- College or other non-university certificate or diploma
- Apprenticeship/Certificate of Qualification/Red Seal Trade
- University certificate or diploma
- University degree
- Prefer not to answer

**Q12** [Public respondents only] What gender do you currently identify with?

- Woman
- Man
- Gender diverse
- Prefer not to answer



**Q13** [Public respondents only] Do you identify as any of the following? Please choose all that apply:

- Indigenous (First Nations, Métis, Inuk/Inuit)
- Person of colour
- LGBTQ2S+
- Person with disabilities
- Prefer not to answer

**Q14** As an Indigenous person, do you identify as any of the following? Please choose all that apply:

- First Nations
- Métis
- Inuk/Inuit
- Other
- Prefer not to answer

**Q15** In what region do you live? [All respondents]

- Vancouver Island / Sunshine Coast
- Lower Mainland / Fraser Valley
- Thompson / Okanagan
- Kootenay
- Cariboo
- Northwest and North Coast
- Nechako
- Northeast
- Outside BC
- Prefer not to answer

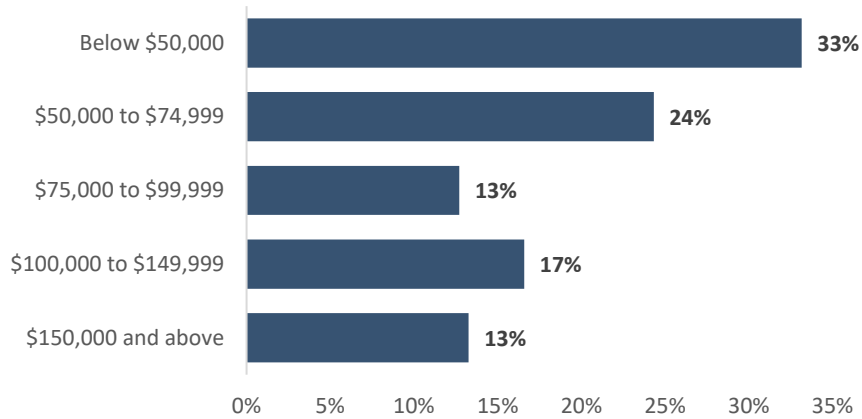
**Q16** [Public respondents only] What is your age?

- Under 25
- 25 to 44
- 45 to 54
- 55 and older
- Prefer not to answer

Thank you for taking the time to complete this survey. Your input will be used to inform the development of proposed changes to legislation that regulates legal service providers. A report summarizing the feedback we receive will be posted online following this public engagement.

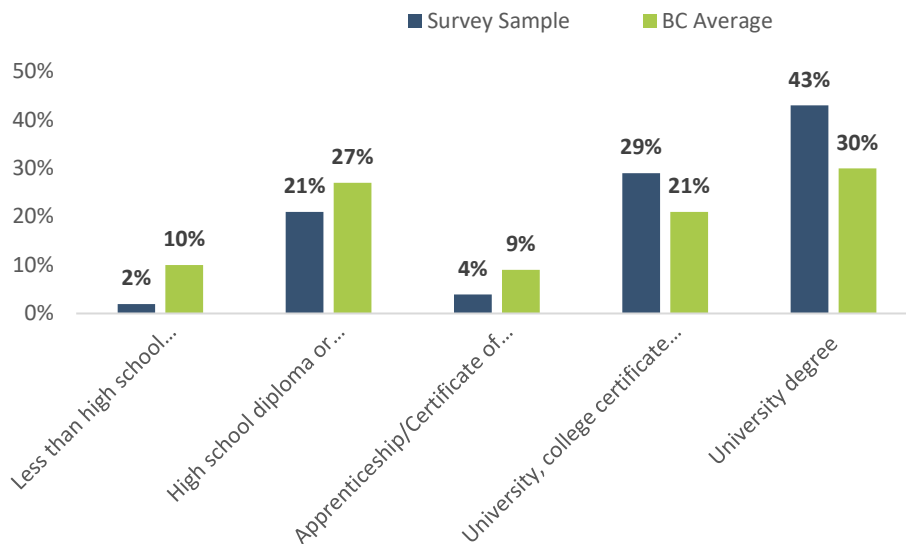
## APPENDIX B: PUBLIC RESPONDENTS DEMOGRAPHIC DATA

**Figure 2.1:** Breakdown of Respondents by Income Level, Members of the Public Only



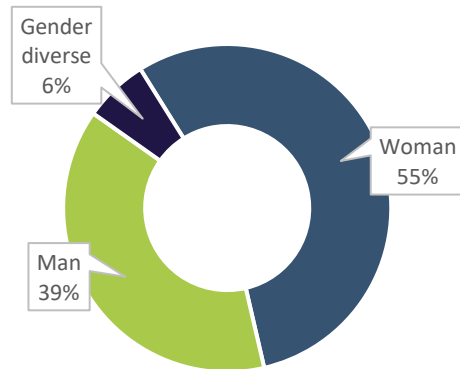
Modal income reported was “Below \$50,000”; median income reported was “\$50,000 to \$74,999”  
 Source: *Legal Professions Modernization Public Engagement (2022)*

**Figure 2.2** Highest Level of Education – Public Respondents Compared to B.C. Public



Source: *Legal Professions Modernization Public Engagement (2022)*

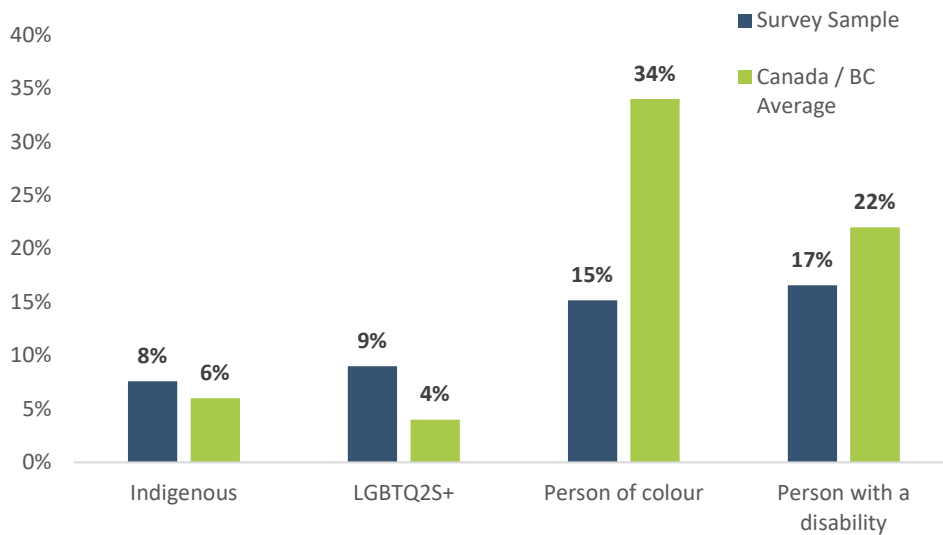
**Figure 2.3: Gender Representation among Public Respondents**



For the population of BC, 51% identify as women, 49% identify as men, and 0.44% identify as transgender or non-binary.<sup>9</sup>

Source: *Legal Professions Modernization Public Engagement* (2022)

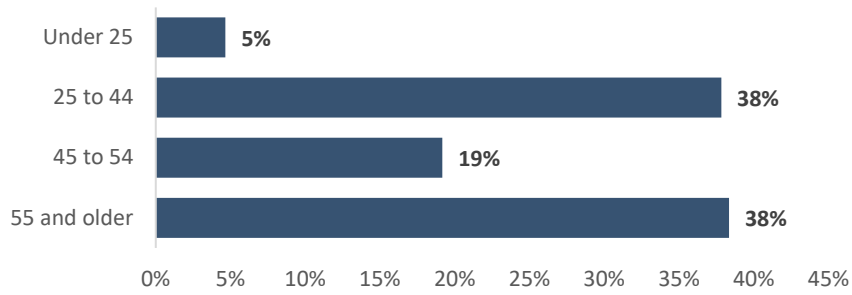
**Figure 2.4 Minority Identities – Public Respondents Compared to B.C. / Canadian Public**



Source: *Legal Professions Modernization Public Engagement* (2022)

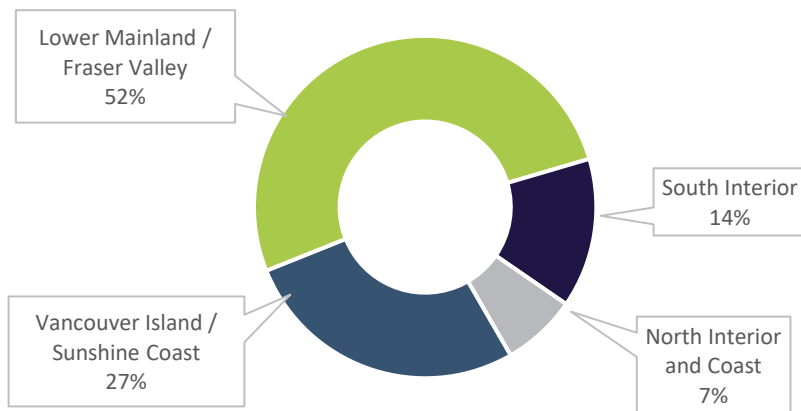
<sup>9</sup> Statistics Canada. Broad age groups and gender: Canada, provinces and territories. April 27, 2022. Retrieved from: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810003601&pickMembers%5B0%5D=1.11>

**Figure 2.5** Breakdown of Respondents by Age Categories, Members of the Public Only



Source: *Legal Professions Modernization Public Engagement (2022)*

**Figure 2.6** Respondents by Region, Members of the Public Only



Source: *Legal Professions Modernization Public Engagement (2022)*