

Legal Professions Act Q&A

1. What is the new *Legal Professions Act* (Bill 21), and why does it matter?

The *Legal Professions Act* (previously called Bill 21, also referred to as the LPA), brings all legal professions in British Columbia (lawyers, notaries public and paralegals) under a single regulatory body and establishes a new regulatory framework for legal professions.

The LPA does important things:

- It focuses on making it easier for people to get help with legal problems or issues by creating more choices among legal service providers.
- It includes numerous components to ensure and protect the independence of lawyers, and of all regulated legal service providers.
- It empowers the regulator to permit lawyers and other regulated professionals to practise through alternate business structures, enabling more innovative models in the way that legal services are delivered.
- It requires the new regulator to regulate proportionately to risk, which may reduce the regulatory burden for some practitioners.
- It creates a new category of legal professional called a “regulated paralegal” who will be able to provide legal services directly to the public.
- It expands the scope of practice of notaries public, to allow them to provide additional services to the public in addition to the ones they are currently able to provide.
- It creates a limited licence model that will allow limited licence holders to provide specific legal services directly to the public.
- It creates a new single regulator called Legal Professions British Columbia, which will be responsible for regulating the legal professions in British Columbia in the public interest, ensuring and enhancing the public’s confidence in the regulator and in legal professionals.
- It includes numerous components to make the regulatory framework work better for Indigenous people as legal professionals and clients of legal professionals.
- It clarifies that the provision of legal information does not constitute the practice of law.

2. How did we get here and why was the new *Legal Professions Act* introduced?

Discussions about a single legal regulator for notaries, lawyers, and other legal service providers have occurred since at least 2012 and the current regulators (the Law Society and Society of Notaries Public) agree in principle with this concept.

For many years notaries have requested changes to the *Notaries Act* to expand the scope of legal services they can provide.

Neither the *Notaries Act* nor the *Legal Profession Act* have been significantly updated for decades. It has long been known that hiring a lawyer is unaffordable. A study commissioned by the Law Society in 2020 indicated that 60% of people who had legal problems sought no professional help. The Law Society has taken steps to explore new ways of providing legal services. However, the Law Society's members (lawyers) voted in 2018 to express opposition to legislative amendments to allow the Law Society to regulate a new category of legal service providers, called "licensed paralegals". In 2021, the Law Society commissioned an expert in professional regulation, Harry Cayton, to conduct a regulatory review of the Law Society.

As a result, Mr. Cayton made several recommendations, which the *Legal Professions Act* responds to, including:

- "1.3 The review finds that the legal framework within which the Law Society operates is not fit for a modern regulatory body and that it hampers the Law Society's Benchers in fulfilling their responsibilities. In particular, the power of the members to elect the Benchers and to overrule them and to stop changes to the Society's rules means that the Society acts more like a professional association than a professional regulator", and
- "1.6 The review finds that there is a lack of engagement with regulatory matters and that the Society is too involved in responding to the interests of the legal profession."

In March 2022, the Ministry of Attorney General announced its intention to proceed with a single regulator through new legislation.

Since March 2022, the Ministry of Attorney General has worked with the Law Society, the Society of Notaries Public and the BC Paralegal Association to create a new framework that will provide for regulation of legal professionals that is more responsive to the public interest.

In addition, the Ministry has conducted extensive engagement with legal professionals and the public, and consulted with the Canadian Bar Association, Indigenous partners and many other organizations interested in legal regulation.

The [What We Heard Report](#) summarizes some of that extensive engagement. This work resulted in the newly enacted *Legal Professions Act*.

3. What does this legislation do for the public?

The LPA will improve access to legal services by allowing additional professionals to provide services that traditionally only lawyers have been able to provide.

The LPA also streamlines and modernizes the regulatory framework, which will make it easier for the public to understand their options in choosing a provider, and when necessary, raising a concern about a legal professional.

4. What does this mean for a lawyer in their day to day practice?

The Act does not change the scope of practice for lawyers.

The Act maintains many aspects of the current regulatory scheme, in that lawyers will continue to be regulated by an independent regulator responsible for setting entrance requirements, establishing practice standards, and investigating concerns about conduct or competence.

The Act establishes an independent tribunal and a more flexible discipline process. This will improve the regulator's ability to appropriately address minor misconduct, competence and health issues in an expedited manner, while also maintaining clear avenues for licensees to appeal to the tribunal.

The Act also contains mechanisms to encourage innovation and flexibility in service delivery. Currently lawyers may only provide services through a limited number of delivery models (e.g. sole proprietorship, partnership, etc.). Under the LPA, the regulator has the power to authorize licensees to provide services through alternative business structures, including structures that include individuals who are not licensees.

The new regulator is also required to regulate proportionately to risk, which may reduce the regulatory burden for some practitioners.

5. Does the legislation take away the independence of lawyers?

No, it does not.

Although independence is important for all legal professionals, it is vitally important that lawyers, in particular, continue to be able to provide legal advice and representation to their clients without fear of interference from government that could undermine their commitment to their clients' causes.

In no way does the *Legal Professions Act* impede the independence of lawyers in their ability to fearlessly represent their clients.

It is part of the regulator's core mandate to ensure the independence of the legal professionals it regulates.

The LPA also continues a model of self-regulation for legal professionals, which some view as an important layer of protection in maintaining independence of the bar.

6. What is self-regulation, and will it still exist?

Self-regulation is a model in which the government delegates to a profession the privilege to regulate itself on the basis that it must do so in the public interest.

The LPA continues self-regulation for the regulated legal professions (lawyers, notaries, and regulated paralegals).

Consistent with self-regulation, the regulator will be governed by a board composed of a majority of lawyers, and a super-majority of regulated professionals.

The regulator will have the authority to set eligibility standards for all categories of licensees, decide who meets those standards and investigate licensees when concerns arise about discipline or competence issues.

7. How are the legal professions regulated now?

Lawyers are regulated by the Law Society of British Columbia under the *Legal Profession* [singular] Act.

Notaries are regulated by a separate statute (the *Notaries Act*) and by a separate regulator (the Society of Notaries Public of British Columbia).

Paralegals are not directly regulated in British Columbia.

8. How will the new regulator's board be structured?

The regulator will be governed by a board of directors composed of 17 individuals. At least 2 directors must be Indigenous, with one specifically being from a First Nation in British Columbia.

A majority of directors (9/17) must be lawyers and a super-majority of directors (14/17) must be licensees (e.g. a lawyer, notary or regulated paralegal).

In addition, a majority of the directors (9/17) must be elected by other licensees.

The government will appoint only 3 out of 17 directors.

Unlike the model in place right now at the Law Society, the Attorney General will not be a member of the board.

Five of the 17 directors will be appointed by the other directors on the board.

9. Why does the board structure include appointed directors?

Appointments enable a board to be intentional about ensuring the board as a whole has the right mix of skills, experience and diversity to govern as effectively as possible.

As noted by the Canadian Bar Association in a report¹ published 10 years ago:

Electing 80% of law society directors is problematic because it does not necessarily provide appropriate diversity of expertise, perspective, and lived experience; it can cause over-representation of some parts of the profession, and under-representation of others. Election of law society directors tends to result in a board that is older than the profession generally and less demographically diverse. **Bringing different perspectives to governance serves the public interest because it grows capacity from under-represented groups within the leadership of law societies.** It is also crucial to strengthening diversity and inclusivity in the profession, since the increased presence of diverse groups in the profession cannot alone affect the governing norms, privileges, and access to opportunities within the profession. Similarly, the election of 80% of law society directors lends some truth to the perception that self-regulation may tend to protect the interests of the profession [emphasis added].

10. How does the *Legal Professions Act* advance reconciliation?

The LPA includes numerous components designed to move reconciliation forward in a meaningful way. This includes ensuring that Indigenous people are involved in the regulation of legal services, and that more Indigenous people become legal service providers themselves.

One component is the creation of an Indigenous Council, composed of Indigenous individuals appointed by the board, to collaborate with the regulator's board and staff on matters relating to the implementation of the UN Declaration on the Rights of Indigenous Peoples in the context of the regulation of the practice of law.

The LPA also specifically empowers the regulator to make rules for alternative resolution processes that reflect or are influenced by Indigenous practices, and requires rules be made that are designed to meet the specific needs of Indigenous people who are participants in a tribunal proceeding as a party or a witness.

¹ https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf.

11. Is it true that the *Legal Professions Act* gives the government control over the legal professions?

No. This is not true. Legal professions are regulated by the regulator, not the government. The regulator will have the authority to make rules under the Act, and those rules do not need to be approved by, or filed with, government.

The LPA does include some government regulation-making powers. However, they are limited and require consultation with the regulator. These limited regulation powers address:

- Adding new legal professions to enable a quick response to changes in the marketplace impacted by, among other things, artificial intelligence; if a new legal profession is established, the regulator would be responsible for regulating that new profession, such as admission requirements
- Establishing or expanding the scope of practice for the new designation of regulated paralegals, as well as expanding scope of practice for notaries
- Specify new exceptions to the unauthorized practice of law

The government appoints 3 of the board's 17 directors. The directors appointed by the government will not be government employees and will not represent the government. Their role will be to help ensure the regulator acts in the public interest.

12. What will a notary public be able to do or not do?

Under the LPA, notaries will be able to provide the same services they provide now, such as preparing certain wills, assisting with real estate transfers, business purchase and sales and affidavits and notarizations.

The LPA will expand the work notaries can do in the areas of wills and probate.

When preparing a will, many parents don't want their children to get access to assets until they are old enough to make responsible financial decisions. The changes allow notaries to prepare wills that keep assets in trust until a beneficiary is 25, instead of 19.

The changes will also allow notaries who complete additional training to prepare wills that include a life estate component, which is an important consideration for those with blended families.

The changes will also allow notaries who complete additional training to help clients with the probate process.

13. What will a regulated paralegal be able to do or not do?

Currently, a paralegal can provide some legal services, but they must work under the supervision of a lawyer who is responsible for their conduct.

The proposed category for regulated paralegals would allow paralegals with this license to provide services directly to the public, including, for example, potentially providing some services in family law or corporate law, as well as certain litigation matters.

Determining the scope of services that a regulated paralegal will be able to provide requires more time and additional engagement. A working group has been established to continue this more detailed work. The group is being chaired by Lisa Trabucco, a Professor and Assistant Dean at the University of Windsor, whose research interests include the legal professions, professional regulation of paralegals and access to justice.

This working group has been tasked with making recommendations to the Attorney General. It will also be responsible to establish a process for public input on draft recommendations before they are finalized.

14. What will a lawyer be able to do or not do?

No changes have been made to the scope of practice for lawyers.

Under the LPA, the board has the ability to establish restricted areas of practice; this authority also exists under the current legislation.

15. What kind of consultation did the government do for the *Legal Professions Act*?

Over the course of more than two years, a tremendous amount of input was sought, collected and incorporated into the LPA.

The Ministry engaged in thorough and extensive engagement with a significant number of partners and stakeholders including the public, paralegals, notaries, lawyers, non-profits, regulators, associations, academics and Indigenous groups.

Initial in-person meetings in spring and summer 2022 with senior staff of the Law Society, Notaries Society and representatives of the BC Paralegal Association were integral to the Ministry's formulation of core policy issues. The results of this consultation were outlined in an Intentions Paper which was publicly released for comment in September 2022, alongside a public survey.

- 222 lawyers, 218 paralegals, 71 notaries and 211 members of the public completed the survey, including open ended feedback.
- In addition, 96 individuals and organizations provided written submissions by email including the current regulators, professional associations, non-profit legal service

providers, legal scholars, as well as numerous individual lawyers, notaries and paralegals.

In May 2023 the Ministry released a What We Heard Report summarizing the feedback from the Intentions Paper.

The Ministry commenced drafting the legislation in Spring of 2023.

Drafts of proposed legislation are not normally shared with the broader public before they are introduced in the Legislature. However, commencing in Summer 2023, consultation drafts were shared with numerous individuals under confidentiality agreements, and the feedback provided through that process assisted the Ministry in refining the legislation before introduction in April 2024.

16. Is it true that the *Legal Professions Act* can force lawyers to get medical treatment?

No. This is **not** true.

Regulators are given the authority to investigate concerns about a licensee's health where a health condition may impact their ability to provide competent services to the public. This authority exists in the current *Legal Profession Act* and is being carried over to the new *Legal Professions Act*.

Under both the former Act and the new Act, the regulator has the power to require a licensee, who wishes to continue to practise law, to undertake a medical examination to assess their capacity to practise law competently.

Also, under both the former Act and the new Act, the regulator has the authority to require a licensee, who wants to continue to practise law, to receive counseling or medical treatment, including treatment for a substance use issue. This can include, for example, anger management counseling, stress management counseling or medical monitoring for substance use. How the regulator may choose to use these tools (or not) going forward will be up to the regulator to determine, consistent with self-regulation.

The LPA also enables a licensee who objects to these actions to seek a review by the independent tribunal.

17. When will the *Legal Professions Act* come into force?

The LPA received Royal Assent on May 16, 2024.

Only a small number of the LPA's provisions came into force upon Royal Assent. They include minor amendments to the Notaries Act and Legal Profession Act, to make a small expansion to notaries' scope of practice and to codify and strengthen the Law Society's innovation sandbox initiative, which permits non-lawyers to provide specific legal services directly to the public.

The only other provisions that came into force upon Royal Assent are those that establish certain transitional bodies, for the purposes of overseeing and participating in the preparations for the transition to an operational, unified regulator.

The remainder of the LPA will come into force by regulation. That will not happen until the transitional bodies have had the opportunity to address all necessary considerations, such as the establishment of the first rules, policies, IT structure and other essential matters to establish a new amalgamated regulator. We anticipate that this will take a period of approximately 18-24 months.

Until that time, the Law Society will continue to regulate lawyers, and the Notaries Society will continue to regulate notaries.