NO. S-243258
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LAW SOCIETY OF BRITISH COLUMBIA

PLAINTIFF

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and the ATTORNEY GENERAL OF BRITISH COLUMBIA

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and

(b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

(c) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-noted registry of this court within the time for Response to Civil Claim described below, and

(d) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff,

(a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or

(d) if the time for Response to Civil Claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

Overview

1. On May 16, 2024, the British Columbia legislature enacted the *Legal Professions Act*, S.B.C. 2024, c. 26 (for ease of reference, **Bill 21**). Bill 21 creates a new single regulator of legal professions in British Columbia – Legal Professions British Columbia – to regulate lawyers, notaries public, and certain paralegals practicing in the province, as well as new classes of government-created legal professionals that may be created and governed by Cabinet regulation.

2. Bill 21 erodes institutions that are fundamental to Canadian democracy: the independent bar and the independent judiciary. Bill 21 fails to protect the public's interest in having access to independent legal professions, governed by an independent regulator, that are not constrained by unnecessary government direction and intrusion.

3. An independent bar is fundamental to the legitimacy of Canada's constitutional democracy and the maintenance of the proper constitutional relationship between the executive, the bar, and the judiciary:

> 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 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 state, particularly in the 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.[1]

4. The practice of law is, and must continue to be, an independent and self-regulating profession. In Canada, self-regulated societies govern the professional bar for the purposes of upholding and protecting the public interest in the proper administration of justice. The Law Society of British Columbia (the **Law Society**) fulfills its obligation to regulate lawyers practicing in British Columbia in the public interest by, among other things, preserving and protecting the rights and freedoms of all persons, and ensuring the independence, integrity, honour and competence of lawyers.

5. The fundamental obligation on the professional bar to self-regulate lawyers in the public interest is reflected in, but not created by, s. 3 of the *Legal Profession Act*, S.B.C. 1998, c. 9 (the ***LPA***).

6. Under Bill 21, the government:

   (a) Purports to limit the scope of the regulator's duty to regulate the legal professions in the public interest;

   (b) Imposes a co-governance model of regulation of legal professions, in which lawyers do not have the functional majority to regulate the practice of law independent of government or any other body;

   (c) Empowers the government to create new legal professions, on the Attorney General's own assessment of, among other things, whether doing so impairs the independence of "licensees", and designates those professions as "officers of the court";

   (d) Exercises control over the practice of law in the province, including with respect to competence and discipline; and

   (e) Compromises the independence of the judiciary, whose members must be selected from an independent and impartial bar.

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[1] *AG Can v Law Society of BC*, [1982] 2 SCR 307 at 335-336.

7. Bill 21 is *ultra vires* the authority of the provincial Legislature to enact legislation under ss. 92(13) and (14) of the *Constitution Act, 1867*. It is not consistent with the judicature provisions in ss. 96-101 of the *Constitution Act, 1867*, or the individual rights guaranteed by the Charter.

8. The Law Society seeks a declaration under s. 52(1) of the *Constitution Act, 1982* that Bill 21 is inconsistent with the Constitution of Canada, and is, to the extent of the inconsistency, of no force or effect.

B. The Law Society of British Columbia

i. The object and duty of the Law Society

9. The object and duty of the Law Society is to uphold and protect the public interest in the administration of justice by:

(a) Preserving and protecting the rights and freedoms of all persons;

(b) Ensuring the independence, integrity, honour and competence of lawyers;

(c) Establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission;

(d) Regulating the practice of law; and

(e) Supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practice law in British Columbia in fulfilling their duties in the practice of law.

10. The membership of the Law Society is comprised of approximately 14,000 practicing lawyers, 1550 non-practicing lawyers, and 1070 retired lawyers.

11. The Law Society is governed by a board, the members of which are known as Benchers.

ii. The core self-regulatory functions of the Benchers

12. One of the core self-regulatory functions of the Benchers is rule-making. The Benchers are empowered to, and do, make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of the duties and powers under the *LPA*. The *Law Society Rules* (the **Rules**) – currently the *Law Society Rules 2015* – govern

all aspects of the day-to-day practice of law, and are binding on the society, lawyers, law firms, the benchers, articled students, applicants, and others authorized to practice law in British Columbia.

13. The *Rules* specifically address membership and admission into the Law Society and the authority to practice law; processes for protection of the public through the investigation of complaints, promoting the mental and physical health of members, maintaining practice standards in the public interest, and continuing education of members; and discipline of lawyers who are alleged to have breached the *Rules*.

14. The Benchers also maintain the *Code of Professional Conduct for British Columbia* (the **Code**). The Code is an expression of the Benchers' views on the special ethical responsibility that comes with the lawyer's role, and forms an integral part of independent self-regulation of lawyers in the public interest. The Code is significantly related to the Federation of Law Societies' *Model Code of Professional Conduct*, which ensures pan-Canadian standards for the practice of law.

iii. Self-governance of the Law Society

15. The *LPA* does not prescribe the number of benchers, nor the manner of their election. The *LPA* prescribes only that the benchers are the Attorney General (though in practice the Deputy Attorney General attends meetings on the Attorney General's behalf), up to six persons appointed by the Lieutenant Governor in Council (**LGIC**), and the lawyers elected under s. 7 of the *LPA*.

16. Pursuant to the *Rules*, the Benchers include 25 lawyers elected by other lawyers in nine regions across British Columbia, ensuring appropriate geographic representation of lawyers practicing in the province, in addition to the six non-lawyers appointed by the LGIC.

17. The Rules applicable to governance matters of the Law Society, such as the term of office of Benchers, the electoral districts from which lawyers are elected, and the eligibility to be elected as a Bencher, are subject to approval of the membership of the Law Society: s. 12, LPA.

18. The Law Society receives no government funding. Its funds are derived from annual and other fees levied on its membership. The Benchers set the fees, and any special assessments, including but not limited to a fee for the Lawyers' Indemnity Fund, that must be paid by each member for the benefit of the Society.

C. Strategic objectives of the Law Society

19. In addition to its core regulatory functions, the Law Society maintains the following strategic objectives as part of its obligation to self-regulate independently, without incursion from any source, to preserve and uphold the public interest in the administration of justice in the province:

(a) Lead as an innovative regulator of legal service providers, including by continuously adapting regulatory structures to address money laundering risks and to support and promote mental and physical health and wellbeing of legal services providers;

(b) Work towards reconciliation by implementing initiatives to take meaningful action toward reconciliation with Indigenous peoples in the justice system, such as by continued support for the advancement of the principles set out in the Declaration on the Rights of Indigenous Peoples Act and the implementation of the First Nations Justice Strategy;

(c) Take action to improve access to justice by increasing availability of affordable legal service and access to the courts, administrative tribunals and other dispute resolution providers and the Law Society's regulatory processes, including by developing and implementing an innovation sandbox for the provision of a wider range of legal service and providers;

(d) Promote greater diversity and inclusion in the legal profession, which reflects the diversity of the public it serves, and ensure the equitable treatment of every individual who interacts with the Law Society; and

(e) Increase confidence in the Law Society, the administration of justice and the rule of law by ensuring greater public awareness of the importance of the rule of law and lawyer independence.

20. The Law Society takes specific, transparent and accountable action to support these strategic objectives.

i. Advancing the public interest by responding to the Truth and Reconciliation Commission calls to action

21. On October 30, 2015, nearly 10 years ago, the Benchers unanimously acknowledged the findings of the Truth and Reconciliation Commission (the **TRC**) and committed to addressing all of the TRC calls to action that fall within the Law Society's mandate. Since that time, the Law Society has continued to work on developing a full and impactful response to the TRC calls to action.

22. In 2016, the Benchers unanimously endorsed the creation of a permanent Truth and Reconciliation Advisory Committee to provide guidance and advice to the Law Society on legal issues affected Indigenous people in the province.

23. In 2018, the Truth and Reconciliation Advisory Committee published a Truth and Reconciliation Action Plan enumerating nine specific commitments to advance the calls to action in the Truth and Reconciliation Commission report. One of the many actions taken by the Law Society in support of these commitments was to request that the government of British Columbia appoint an Indigenous bencher.

24. On May 4, 2018, Claire Marshall became the province's first appointed Indigenous Bencher.

25. By 2021, five of 25 Benchers were Indigenous people.

26. On September 23, 2022, the Benchers approved an Indigenous Framework Report created by the Truth and Reconciliation Advisory Committee. The Indigenous Framework Report was prepared to help guide the Law Society in its application of the LPA, the Rules and the Code, as well as any future legislation regulating the legal profession in a manner that will advance the principles of reconciliation with Indigenous Peoples. The Framework sets out six principles that underlie the Law Society's existing statutory and regulatory commitments, and provides commentary to assist in the specific application of the principles to the *LPA*, the *Rules* and the Code.

27. In 2023, the Benchers received and approved a Report of the Indigenous Engagement in Regulatory Matters Task Force for the purpose of assisting the Law Society reconcile its

processes with Indigenous legal principles. The objective of the Report is to identify systemic barriers experienced by Indigenous complainants and witnesses, and propose solutions to establish and maintain culturally safe and trauma- informed regulatory processes.

28. All practicing lawyers called to the bar in British Columbia were required to complete, by January 1, 2024, Indigenous cultural competency training. The course was designed to provide knowledge on the history of Indigenous-Crown relations, the history and legacy of residential schools in Canada, and how legislation regarding Indigenous Peoples created the issues that reconciliation seeks to address.

ii. Protecting the public interest by addressing health challenges that impact professional responsibilities

29. In 2018, the Law Society created the Mental Health Task Force to address topics related to improving the mental health of the legal profession for the benefit of legal professionals and in the public interest, in response to the demonstrated elevated risk and prevalence of serious mental health issues in the practice of law.

30. Between July 2018 and December 2023, the Mental Health Task Force issued 10 reports to the Benchers regarding approximately two dozen recommendations for implementation of measures to, among many other things, improve access to health supports for lawyers, revise the *Rules* and the Code to remove stigmatizing language around mental health in the practice of law, and create an alternative discipline process to address circumstances in which there is a connection between a health condition and a conduct issue that resulted in a complaint investigation.

iii. Protecting the public interest by combatting money laundering

31. For example, nearly 20 years ago, the Law Society became the first law society in Canada to adopt a rule that restricted a lawyer's ability to accept cash (a hallmark of money laundering), and added anti-money laundering education to the Professional Legal Training Course. The Law Society subsequently introduced client identification and verification rules that are mandatory for each lawyer practicing in British Columbia, and since 2008

has routinely updated the Rules to reflect best practices, including as recently as March 2024.

32. In 2023, the independent Commission of Inquiry into Money Laundering in British Columbia (the **Cullen Commission**) concluded that the Law Society's Rules represent an "extensive" anti-money laundering regime that "has gone a long way to addressing many of the money laundering risks" in the legal sector.

33. The province has yet to implement any of the recommendations for government action in the Cullen Commission Final Report.

D. Background to Bill 21

34. In March 2022, the government announced its intention to combine regulation of lawyers, notaries public and licensed paralegals under a single regulator. The province did not, at any time prior to the tabling of Bill 21 for first reading on April 10, 2024, publicly disclose its intention to end self-regulation of lawyers in British Columbia and impose on lawyers a co-governance model of regulation.

35. The Ministry's position on independence and self-regulation was articulated in its Intentions Paper as follows:

> 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 services provider) to fearlessly advocate for their client and provided independent legal advice to their client, even, and especially, when their client is at odds with government.
>
> The Ministry has no intention of implementing changes that would see a shift away from what is commonly referred to as "self-regulation". Self-regulation does not mean no oversight or involvement by government. It means that the Legislature has made a policy decision to assign a professional regulator the primary responsibility for the development of structures, processes and policies for regulation.
>
> ...
>
> Many other common law jurisdictions have moved away from self regulation in favour of alternative regulatory models featuring enhanced

> government oversight (often referred to as "co-regulation")… However, the Ministry is not proposing this kind of change.

36. In November 2022, the Law Society issued a response to the Ministry's Intentions Paper. The Law Society expressed its concerns that, among other things, the Intentions Paper did not directly disclose an intention to protect the institutional dimension of the independence of the bar (i.e. the legal profession), including by ensuring that the majority of the board that governs lawyers are themselves lawyers who are elected by lawyers. Further, a substantial change in the size of the board would undermine diversity on the board, and therefore public confidence in the regulator. The Law Society argued that the Ministry must empower an independent regulator to make the changes necessary to promote and protect the public interest. The Law Society wrote:

> To truly grapple with the historical and ongoing harms that the legal system has caused to Indigenous Peoples, and to reform the Law Society's structures, processes and policies in ways that make space for Indigenous world views and laws, the regulator's authority to do so must be preserved…
>
> The Law Society looks forward to working with the Ministry to ensure that these goals are achieved within a framework that recognizes the importance of an independent bar, an independent profession and an independent regulator reflecting the diversity of the British Columbia public and ensuring a variety of legal services providers [are] meeting the legal needs of the citizens of British Columbia.

37. In March 2024, the Ministry of the Attorney General released a public update on the proposed legislation. The public update noted that the Ministry "has been careful to ensure the key elements of independence of the Bar and of all legal professionals are maintained and even strengthened." The Ministry's update does not specify what the Ministry considers are the key elements of the independence of the bar.

38. Before and after the public release of Bill 21, the Law Society, and multiple bar associations in the province, called on the Attorney General to open up consultation on Bill 21 to lawyers and to the public. The province refused.

E. Bill 21

39. Bill 21 received first reading in the Legislature on April 10, 2024, and was tabled for second reading on May 6, 2024. Debate on Bill 21 in the Committee of the Whole House was closed by government motion on May 15, 2024. Royal assent to Bill 21 was granted on May 16, 2024.

40. Bill 21 fundamentally undermines the independence of the bar in British Columbia.

i. Bill 21 circumscribes the regulator's duties

41. The duty to act in the public interest in the administration of justice by protecting and preserving the rights and freedoms of all persons is fundamental to the role of the individual lawyer, and the role of the independent regulator.

42. The government has purported, by simple legislative enactment, to eliminate that duty, and others, as the responsibility of an independent regulator.

43. Under Bill 21, the regulator has the following duties:

> **Duties of regulator**
>
> 6 (1) The regulator has the following duties:
>
> (a) to regulate the practice of law in British Columbia;
>
> (b) to establish standards and programs for the education, training, competence, practice and conduct of applicants, trainees, licensees and law firms;
>
> (c) to ensure the independence of licensees.
>
> (2) The regulator must exercise its powers and perform its duties under this Act in the public interest.

44. Further, Bill 21 requires the regulator to consider legislated "guiding principles" as follows:

> **Guiding principles**
>
> 7 In exercising powers and performing duties under this Act, the regulator must have regard to the following principles:
>
> (a) facilitating access to legal services;

> (b) supporting reconciliation with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples;
>
> (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 belong to groups that are under-represented in the practice of law;
>
> (d) regulating the practice of each legal profession in a manner that is:
>
> (i) transparent,
>
> (ii) timely
>
> (iii) proportionate to the risk of harm to the public posed by the practice.

45. In s. 7 of Bill 21, through the "guiding principles", the Legislature has imposed its own, narrow conception of how the regulator is to act in the public interest.

46. Sections 6 and 7 of Bill 21 compromise the independence of the bar in British Columbia.

ii. Bill 21 imposes a co-regulation regime on lawyers in British Columbia

47. Upon receiving royal assent, Bill 21 created a "transitional board" empowered to prepare for and facilitate the transition from the *LPA* to the regime under Bill 21: s. 223, Bill 21.

48. The Benchers must appoint four members to the seven-member transitional board within two months; otherwise, the Attorney General will appoint members to the transitional board after a "merit-based process": s. 223(1)(a), (2), Bill 21.

49. There is no requirement that any of the members of the transitional board be lawyers.

50. Section 223(7) of Bill 21 imposes on the Law Society a statutory duty to "cooperate" with the transitional board in the exercise of its duty to prepare for and facilitate the transition from the LPA to the regime under Bill 21.

51. Section 224 of Bill 21 establishes a "transitional Indigenous council", consisting of up to six Indigenous persons as follows:

> (a) 3 members appointed by the BC First Nations Justice Council;
> (b) 1 member appointed by the Métis Nation British Columbia;

(c) 1 or 2 members of the transitional board appointed by the transitional board.

52. The BC First Nations Justice Council is comprised of members appointed by self-governing First Nations in British Columbia. The BC First Nations Justice Council does not represent non-status Indigenous people, nor does it represent off-reserve Indigenous people.

53. The transitional board is required, in consultation with the transitional Indigenous council, to appoint a person responsible for managing the transition from the *LPA* to the regime under Bill 21. This person will then become the first chief executive officer of the new regulator. The duties of the transitional chief executive officer include the duty to "work in collaboration with the Indigenous council and the board".

54. The transitional board and the transitional Indigenous council are required by Bill 21 to "collaborate to develop the first rules of the board." In addition to the duty to "collaborate", the transitional Indigenous council must approve the first rules of the regulator before the first rules are made.

55. Bill 21 includes 23 provisions that grant the board (and by reference, the transitional board) the power to make rules. Many of these provisions also include non-exhaustive lists of rule types that can be made under the rule-making power. These rules govern all aspects of the practice of law in the province.

56. Bill 21 provides that at least seven of the combined 13 members of the transitional board and transitional Indigenous council must be Indigenous persons; there is no requirement that any of the combined 13 members of the transitional board and transitional Indigenous council be lawyers. As a result, Bill 21 provides that the first rules governing the practice of law and the conduct of lawyers in British Columbia post-transition to a new regulator or will be established by non-lawyers.

57. Bill 21 also provides that lawyers and notaries must pay for the transition from the *LPA* to the regime under Bill 21, including remuneration of members of the board and Indigenous council (the elected Benchers are not remunerated for their service): s. 228, Bill 21.

58. By the operation of s. 228 of Bill 21, and by the self-funding nature of legal regulation in Canada, Bill 21 creates a system of financial dependency between lawyers and the regulator that compromises the independence of the bar.

iii. Bill 21 imposes a co-governance regime on lawyers in British Columbia

59. Under Bill 21, lawyers no longer form the functional majority of the board of governors of the legal regulator in British Columbia.

60. Under the *LPA*, lawyers elect 25 Benchers from nine geographical regions in British Columbia. Under Bill 21, lawyers comprise five (5) of the first 12 members of the board, which also includes three directors appointed by the LGIC.

61. The second five members of the board, four of whom must be lawyers, are appointed by a "majority" of the first 12 members. Lawyers do not form a majority of the first 12 members. While the government has preserved a numerical majority of lawyers on the eventual board of the regulator (9 of 17 members), lawyers do not in fact have functional control of the composition of the board.

62. Under s. 17(3) of Bill 21, a quorum of the board is 12 directors. This is the same number of directors that are not elected by lawyers.

iv. Co-regulation in post-transition rule-making

63. In addition to the prescriptive composition of the board set out above, Bill 21 creates a permanent Indigenous council, consisting of individuals appointed by the board following merit-based process. Section 29 prescribes the composition of the Indigenous council as follows:

> **Indigenous Council**
>
> 29 (1) The Indigenous council is to consist of the following members appointed by the board following a merit-based process:
>
> (a) 2 members who are directors;
>
> (b) 1 member who is not a director;
>
> (c) 2 to 4 members appointed from among persons nominated by the BC First Nations Justice Council;

(d) 1 to 2 members appointed from among persons nominated by Métis peoples or entitles representing Métis peoples.

(2) the members appointed under subsection (1) must

(a) be Indigenous persons, and

(b) to the extent possible, collectively reflect the diversity of the Indigenous population of British Columbia.

(3) In making an appointment under subsection (1)(b), (c) or (d), the board must consider the following:

(a) the person's experience with and knowledge and understanding of the impact of the justice system on Indigenous persons;

(b) the person's experience working with organizations that support Indigenous persons;

(c) the person's knowledge of the Indigenous legal traditions of one or more Indigenous communities;

(d) the person's ties with one or more Indigenous communities.

64. There is no requirement that any person on the Indigenous council be a lawyer.

65. Section 27 of Bill 21 empowers the board to make "any rules that it considers necessary and advisable for the performance of the duties under s. 6" of Bill 21 (which are now also circumscribed by the Legislature). In practice, the first rules of the board are already created under the transitional provisions, in "collaboration" with the transitional Indigenous board, and subject to the "approval" of the transitional Indigenous board.

66. Subsequent rule-making requires "consultation" between the Indigenous council and the board, before making a rule, respecting the extent to which the rule accords with *some* of the guiding principles in s. 7: s. 26, Bill 21.

v. Creation of new legal professions by government

67. Under the *Rules*, the Benchers determine the categories of members of the Law Society, and further determine whether a member is in good standing, by reference to the Law Society's discipline and fee rules.

68. Bill 21 permits the government to create and regulate its own class of legal professionals. The decision to do so is to be made on the Attorney General's own assessment of, among

other things, whether the designation would have an "undue impact" on the independence of licensees, including lawyers: ss. 3 and 4, Bill 21.

69. Further, the government can specify the activities that a member of a new government-created legal profession may undertake (s. 213, Bill 21), exempt the new government-created legal professions from the prohibition against unauthorized practice of law (s. 212, Bill 21), and subject the new legal profession to regulations that are inconsistent with the rules created by the regulator governing lawyers (s. 214, Bill 21).

70. Bill 21 specifies that government-created legal professionals are officers of the court (s. 39, Bill 21).

71. The *Provincial Courts Act*, as amended by Bill 21, permits the government to appoint provincial court judges from a class of government-created legal professionals (s. 298, Bill 21).

72. Bill 21 amended the composition of the judicial council under s. 21 of the *Provincial Courts Act*. Formerly, the president of the Law Society – a lawyer elected as a Bencher – held one of up to nine positions on the judicial council (up to four positions on the judicial council are appointed by the LGIC).

73. After the enactment of Bill 21, the position held by the president of the Law Society is replaced by the chair of the board of the new regulator, who may or may not be lawyer, let alone a lawyer elected by the membership of the bar.

vi. Provisions regulating the conduct, competence and discipline of legal professionals

74. Bill 21 purports to directly regulate the conduct, competence and discipline of lawyers, matters that are the subject of the *Rules* under the *LPA*. Currently, these subject matters are governed mainly by the Code and the *Rules*, both being standards established by the Law Society.

75. For example, under s. 71(2) of Bill 21, a licensee, law firm or trainee must not (a) engage in conduct that constitutes professional misconduct or conduct unbecoming a professional, or (b) practice law incompetently. "Incompetently" is defined in s. 68 of Bill 21 as follows:

> "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 practicing law with reasonable skill and competence.

76. Section 77(2)(b) of Bill 21 permits the chief executive officer, on their own motion, to conduct an investigation to determine whether a lawyer has, among other things, practiced law "incompetently".

77. Under Section 78(1), the chief executive officer may conduct a warrantless entry into a business premises, and inspect or examine the records of a licensee, trainee or law firm that "relate to the practice of law by the licensee, trainee or law firm", for the purposes of "investigating" whether the licensee has practiced law "incompetently".

78. Section 78(3) authorizes the chief executive officer to compel any person who may have information or records that are relevant to the investigation (including records relating to a health condition) to attend and give evidence, give written answers to questions, or produce records to the chief executive officer.

79. The chief executive officer may also compel a lawyer to receive medical treatment or counselling: s. 88(1), Bill 21.

80. Refusing to attend counselling or receive medical treatment, or other wilful interference with an order made by the chief executive officer, is an offence:

> 198 (2) A person commits an offence if the person:
>
> ...
>
> (d) wilfully interferes with or obstructs another person in the exercise of a power or performance of a duty under this Act or in carrying out an order under this Act.

81. An individual who commits an offence under Bill 21 is liable to imprisonment for a term not exceeding two years: s. 202, Bill 21.

82. An order made by the chief executive officer under s. 88(1) may form part of a licensee's or trainee's disciplinary record, which must include any remedial action taken in relation to a licensee or trainee: s. 1 of Bill 21.

Part 2: RELIEF SOUGHT

83. The Law Society seeks the following orders:

(a) declarations that Bill 21, or alternatively portions of Bill 21, are *ultra vires* provincial authority in ss. 92(13) and (14) of the *Constitution Act, 1867*;

(b) a declaration under s. 52 of the *Constitution Act, 1982* that Bill 21, or alternatively portions of Bill 21, are of no force and effect to the extent of any inconsistency with the Constitution of Canada;

(c) interlocutory and interim injunctive relief enjoining the operation of certain sections of Part 18 – Division 3 of Bill 21;

(d) further, or alternatively, interlocutory and interim injunctive relief enjoining the coming into force of Bill 21;

(e) costs of this proceeding; and

(f) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

A. Independence of the bar is a constitutional imperative

84. An independent bar, comprised of lawyers who are free from influence or incursion by any source, is a fundamental feature of a free and democratic society.

85. Independence of the bar is an unwritten constitutional principle that flows by necessary implication from the preamble to and ss. 96-101 of the *Constitution Act, 1867*. Independence of the bar is also a necessary component of the rule of law, and of the independence of the judiciary, each of which are also recognized as unwritten constitutional principles.

86. The principle of independence of the bar also finds substantive expression in the fundamental rights guaranteed by the *Charter of Rights and Freedoms*, including:

(a) s. 7, which guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;

(b) s. 10(b), which guarantees the right to retain and instruct counsel on arrest or detention;

(c) s. 11(d), which guarantees the right to a fair and public hearing by an independent and impartial tribunal when charged with an offence.

87. The scope of the Province's authority to legislate under ss. 92(13) and (14) of the Constitution *Act, 1867* must be interpreted in light of the entirety of the Constitution, including ss. 96-101 of the *Constitution Act, 1867* and the individual rights guaranteed in the *Charter*.

B. The key aspects of independence of the bar

88. There are two inextricably intertwined dimensions to independence of the bar:

(a) individual independence of lawyers, who play a fundamentally important role in the administration of justice and exercise powers and duties that are vital to the maintenance of order in our society, and the due administration of the law in the interest of the whole community; and

(b) institutional independence of lawyers, maintained by a professional body of lawyers that is dedicated to protecting the values of the profession and the public's confidence that lawyers' professional values will guide the lawyers who serve them, through self-government and self-regulation of lawyers.

89. Institutional independence requires that lawyers are governed by a body that is, and is perceived by the public to be:

(a) Independent, in the sense that it has immediate and functional control over the administrative decisions that bear directly on the exercise of the lawyer's role; and

(b) Impartial, in the sense that when making decisions about the regulation of the profession, the governing body must have regard only to its obligation to act in the public interest in the administration of justice.

90. Individual and institutional independence require that professional regulation of lawyers is free from incursion from <u>any</u> entity lawyers may be bound to challenge on behalf of clients to whom they owe a duty of undivided loyalty.

91. Independence of the bar is necessary to maintaining an independent and impartial judiciary, and the public perception of an independent and impartial judiciary.

92. Under s. 96 of the *Constitution Act, 1867*, the federal government appoints judges to superior courts of the province from the independent bar.

93. Under s. 6(2) of the *Provincial Courts Act*, R.S.B.C. 1996, c. 379 a person must not be appointed as a judge unless the person has been a member in good standing of the Law Society of British Columbia – now Legal Professions British Columbia - for at least 5 years, or has other legal or judicial experience satisfactory to the judicial council. The role of the judicial council is to improve the quality of judicial service, in part by considering nominations for the appointment of provincial court judges.

C. Bill 21 is *ultra vires* the Province

94. Bill 21 is designed to and does eliminate the independent bar in British Columbia. It does so by, among other things:

(a) Circumscribing the regulator's duties to act in the public interest in the administration of justice, including by protecting and preserving the rights of all persons in Canada, and imposing on a regulator "guiding principles" that do not include the regulator's own view of the public interest in the administration of justice (ss. 6-7, Bill 21);

(b) Imposing a co-governance model of regulation on lawyers, in which lawyers are no longer governed by elected lawyers, and in which lawyers do not maintain a functional majority of the board (Part 2, Division 2, Bill 21), thereby allowing the standards for the conduct of lawyers and the practice of law by lawyers to be established by non-lawyers;

(c) Imposing a co-regulation model of regulation on lawyers, in which the rules of the board – which govern every aspect of the day-to-day practice of law in British Columbia – are to be "approved" by representatives of self-governing nations who are not required to be lawyers (Part 18, Division 3, Bill 21);

(d) Permitting government to create its own class of legal professionals by regulation, to prescribe the activities that may be performed by government-created legal professionals and exempt government-created legal professionals from unauthorized practice of law, and permitting the government to directly regulate

government-created legal professionals in a manner that is inconsistent with the regulator's rules (ss. 3, 4, and Part 17, Bill 21);

(e) Creating a prescriptive governance regime, including by codifying matters of conduct, competence and discipline, removing the authority of the regulator to make fundamental decisions about the conduct of lawyers and the regulation of the practice of law (Parts 5 and 6, Bill 21);

(f) Directly compromising the independence of the judiciary, including by replacing the role of the independent, lawyer-elected president of the Law Society on the judicial council under the *Provincial Courts Act*, with the chair of a non-independent, partisan board of the new regulator.

95. The individual parts of Bill 21, or in the alternative Bill 21 in its collectivity, purports to legislate in respect of the administration of justice in the province in a manner that is inconsistent with the independence of the bar and the independence of the judiciary. It is therefore *ultra vires* the province.

96. Section 52(1) of the *Constitution Act, 1982* provides that any law that is inconsistent with the Constitution of Canada is of no force or effect, to the extent of the inconsistency.

Plaintiff's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Craig A.B. Ferris, K.C./Laura L. Bevan/Jonathan Andrews).

E-mail address for service is: cferris@lawsonlundell.com; cc: lbevan@lawsonlundell.com; jandrews@lawsonlundell.com.

Place of Trial: Vancouver, British Columbia

The address of the Registry is: 800 Smithe Street, Vancouver, British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, May 16, 2024.

Lawson Lundell LLP
Solicitors for the Plaintiff
The Law Society of British Columbia

This Notice of Civil Claim is filed by Craig A.B. Ferris, K.C., Laura L. Bevan, and Jonathan Andrews, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Law Society challenges the constitutionality of *Bill 21-2024 – Legal Professions Act.*

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☒ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

PART 4:

Legal Professions Act, S.B.C. 1998, c.9.

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LAW SOCIETY OF BRITISH COLUMBIA

PLAINTIFF

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and the ATTORNEY GENERAL OF BRITISH COLUMBIA

DEFENDANTS

NOTICE OF CIVIL CLAIM

LAWSON LUNDELL LLP

Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Craig A.B. Ferris, K.C.

LLB/JSA/slp

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