



SE 243325

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA and KEVIN WESTELL

PLAINTIFFS

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 PLAINTIFFS 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

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 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 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.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

A. Overview

1. On May 16, 2024, the Legislative Assembly of British Columbia enacted the *Legal Professions Act*, S.B.C. 2024, c. 26 (“**Bill 21**”).
2. Bill 21 is unconstitutional. It is beyond the legislative competence of the Legislative Assembly of British Columbia because it eliminates an independent and independently regulated profession of lawyers in the Province.
3. The independence of the bar as a constitutional principle has two dimensions: the individual independence of lawyers and the institutional independence of lawyers maintained by a regulatory body free from government control and influence.
4. An independent bar, free from direct government regulation, is protected under Canada’s Constitution because it is a necessary element of the independence of the judiciary, protected under ss. 96-101 of the *Constitution Act, 1867*.
5. Without an independent bar there cannot be independent judges.
6. An independent bar is also expressly recognized through a person’s right to legal representation under the *Charter of Rights and Freedoms*.
7. Independence of the bar is also a necessary component of the rule of law, which is written in the preamble to the *Constitution Act, 1982*, and is also an established unwritten principle of Canada’s constitution.
8. There is no rule of law in Canada without an independent bar.
9. Bill 21 is inconsistent with a constitutionally entrenched independent bar. It is inconsistent with ss. 96-101 of the *Constitution Act, 1867*.
10. As a result of the elimination, or in the alternative the substantial impairment, of the independence of the bar by Bill 21, Bill 21 necessarily impairs and infringes upon Mr. Westell’s and other individuals’ rights under ss. 2(d), 7, 10(b) and 11(d) of the *Charter*, including to have the assistance or representation of independent counsel.

11. Provisions of Bill 21 also violate Mr. Westell's and other individuals' rights to be free from unreasonable search and seizure under s. 8 of the *Charter* and his right to life, liberty, and security of the person.
12. None of these contraventions of the *Charter* is justified as a reasonable limit in a free and democratic society.
13. The Plaintiffs seek 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 Parties

The Trial Lawyers Association of British Columbia

14. The plaintiff, The Trial Lawyers Association of British Columbia ("TLABC"), is a non-profit society with a membership of approximately 1500 legal professionals and a mission to support and promote the rights of individuals in British Columbia. TLABC is a registered society under the *Societies Act*, S.B.C. 2015, c. 18, with a registered and records office located at 380-2608 Granville St., Vancouver, BC, V6H 3V3.
15. TLABC's members include, but are not limited to, lawyers in a wide variety of practice areas, retired and non-practicing lawyers, articled students, law students, paralegals and legal assistants, and non-lawyers who support TLABC's goals.
16. TLABC represents the interests of individuals, rather than corporations or governments, united with the goals of promoting the rights of individuals, preserving the jury system, improving the professionalism and standards of lawyers, enhancing access to justice, protecting the innocent, and promoting judicial integrity and independence.
17. TLABC has a long history of raising its voice on matters impacting the individual rights of British Columbians. TLABC and its members have worked to protect the rights of individuals and enhance the practice of law in British Columbia, in part through active pursuit of positive changes in legislation and the rules of court proceedings.

Kevin Westell

18. The plaintiff, Kevin Westell, is a barrister and solicitor resident in British Columbia, with a business address located at 1175-510 Burrard St., Vancouver, British Columbia, V6C 3A8. Mr. Westell also frequently works at, and retains solicitor client privileged information at, his residence. Mr. Westell is a criminal defence lawyer practicing in Vancouver.
19. Mr. Westell is a member of the Law Society of British Columbia.
20. Mr. Westell currently serves as an elected Bencher for the Law Society of British Columbia.

The Attorney General for British Columbia

21. The defendant, the Attorney General of British Columbia, is his Majesty's Attorney General for British Columbia, and has the management and direction of the Ministry of the Attorney General, pursuant to the *Attorney General Act*, R.S.B.C. 1996, c. 22. The Attorney General has superintendence of all matters connected with the administration of justice in British Columbia that are not within the jurisdiction of the government of Canada, and the regulation and conduct of all litigation for or against the government or a ministry in respect of any subjects within the authority or jurisdiction of the legislature.
22. The Attorney General is also an elected politician, answerable to the Cabinet, and subject to directives and influence from the Premier of British Columbia, who is also an elected official and is *primus inter pares*.

The Law Society

23. The Law Society of British Columbia (the "**Law Society**") is a self-regulating society that governs the professional bar of lawyers in British Columbia. The Law Society's obligation to self-regulate lawyers in the public interest is reflected in but not created by the now former *Legal Profession Act*, S.B.C. 1998, c. 9 ("*LPA*").
24. An independent and self-regulating profession predates any legislative instrument creating and empowering the Law Society in British Columbia.
25. In England, the legal profession has been autonomous since the thirteenth century, a century which saw the Plantagenet kings sign *Magna Carta*. The Royal Courts of England were centralized around this time, and a proto-legal profession of "advocates" and "pleaders" also began to appear before these courts. In time, it became an accepted principle that the King's judges of the courts should be appointed from within the legal profession, rather than from the civil service, as a way of ensuring the independence of the judiciary from the monarch. Further, it became recognized that an independent bar is required to provide citizens and others with access to justice and an advocate for their cause.
26. The coordinate principles of an independent bar and an independent judiciary were imported to Canada and eventually to what would become the Province of British Columbia by British colonists in the 1850s and 1860s.
27. The legal profession in the colonies of Vancouver Island and British Columbia were recognized in Imperial orders in council or by orders of the newly created Supreme Court of British Columbia. Colonial laws provided that disciplinary matters for lawyers would be overseen by the judiciary, which itself would be independent of government.
28. In 1869, after the union of the colonies, the limited numbers of lawyers in the colony formed their own association of lawyers called the "Law Society of British Columbia". The Law Society had as its objects the following:
 - (a) The formation of a law library;

- (b) The publication of legal decisions;
 - (c) The regulation of the call to the Bar and admission on the Rolls of attorneys of persons desirous of practising in the Supreme Courts of the Colony; and
 - (d) The furtherance and protection of the interests of the legal professions.
29. The Law Society's leadership was elected from amongst its members. The Attorney General of British Columbia was a member *ex officio* of the council.
30. British Columbia became a Province of Canada in 1871.
31. The Law Society continued as an association until 1874. At that time, the Province of British Columbia enacted legislation creating the legal entity of the "Incorporated Law Society of British Columbia". The Law Society continued its democratic structure.
32. In 1895, all persons called to the bar became members of the Law Society, which was responsible for the regulation and advancement of the legal professional of all lawyers. This basic structure continued until this year.
33. Under the *LPA*, 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.
34. The membership of the Law Society is comprised of approximately 14,000 practicing lawyers, 1550 non-practicing lawyers, and 1070 retired lawyers.
35. The Law Society is governed by a board, the members of which are known as Benchers.
36. The Law Society, through its Benchers, has a number of core self-regulation functions, including making rules governing the society, lawyers, law firms, articled students, applicants, and for carrying out the duties and powers under the *LPA*. The Benchers maintain the Code of Professional Conduct for British Columbia, which 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.

37. The Law Society began as a self-governing entity and remained one. Other than the six persons appointed by the government, a supermajority of the Law Society's Benchers are elected by lawyers called in British Columbia, representing nine districts across the province. The rules governing their election and other governance matters are subject to the approval of members of the Law Society. The Law Society is also self-funded by lawyers' fees; it receives no government money.

C. Bill 21

38. In March 2022, the government announced its intention to combine regulation of lawyers, notaries public and licensed paralegals under a single regulator.
39. At no point between the government's announcement and the tabling of Bill 21 before the BC Legislature did the Attorney General open up meaningful consultation on Bill 21 to lawyers or the public.
40. 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.

Bill 21 eliminates independence of the bar in British Columbia

41. Bill 21 eliminates the independence of the bar in British Columbia by, amongst other things:
- (a) Effectively eliminating lawyer self-regulation of the legal profession in British Columbia by allowing for a functional majority of government appointed lawyers and non-lawyers to control the board of directors of Legal Professions British Columbia;
 - (b) Compromising a lawyer's duty to act for their client's cause, to provide zealous advocacy, and to uphold the rule of law through the elimination of lawyer self-regulation;
 - (c) 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);
 - (d) 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), thereby allowing the standards for the conduct of lawyers and the practice of law by lawyers to be established by non-lawyers;

- (e) 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);
- (f) 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, exempt government-created legal professionals from the unauthorized practice of law, and permit 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);
- (g) 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);
- (h) Granting the Lieutenant Governor in Council a power of uncertain scope to make regulations respecting any matter for which regulations are contemplated by Bill 21, subject to the Lieutenant Governor in Council’s interpretation of that power, and providing that, in the event of conflict or inconsistency, rules or regulations made by the Lieutenant Governor in Council will prevail over any regulations made by Legal Professions British Columbia (Part 17); and
- (i) 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.

Bill 21 directly regulates conduct, competence, and discipline of lawyers

42. Bill 21 authorizes Legal Professions British Columbia to directly regulate the conduct, competence, and discipline of lawyers, by, among other things:
- (a) prohibiting, by legislation, a licensee, law firm or trainee from engaging in conduct that constitutes professional misconduct or conduct unbecoming a professional, or practicing law incompetently. “Incompetently” is defined to include having “a health condition that prevents a licensee from practicing law with reasonable skill and competence” (ss. 68, 72(2)).
 - (b) authorizing the chief executive officer of Legal Professions British Columbia, on their own motion, to conduct an investigation to determine whether a lawyer has, among other things, practiced law “incompetently”, which again includes a lawyer’s mental health condition (s. 77(2)(b)).
 - (c) authorizing the chief executive officer of Legal Professions British Columbia to conduct a warrantless entry into 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” (s. 78).

- (d) authorizing 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 (s. 78(3)).
- (e) authorizing the chief executive officer to compel a lawyer to receive medical treatment or counselling, the refusal of which, or other wilful interference with an order made by the chief executive officer is an offence which may be punishable by up to 2 years in prison. Any orders made by the chief executive officer to compel a lawyer to receive medical treatment or counseling 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 (ss. 1, 88).

Part 2: RELIEF SOUGHT

1. The Plaintiffs seek 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) declarations that Bill 21, or alternatively certain provisions in Part 6 of Bill 21, violate ss. 2(d), 7, 8, 10(b), and 11(d) of the *Charter of Rights and Freedoms* in a manner that cannot be justified in a free and democratic society under s. 1 of the *Charter*;
- (c) 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;
- (d) interlocutory and interim injunctive relief enjoining operation of Part 18 – Division 3 of Bill 21;
- (e) further, or alternatively, interlocutory and interim injunctive relief enjoining the coming into force of Bill 21;
- (f) costs of this proceeding; and
- (g) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

A. Mr. Westell and TLABC have private and public interest standing

- 1. Mr. Westell is a lawyer, a member, and a bencher of the Law Society of British Columbia. He is directly affected by the enactment and enforcement of Bill 21 in each of these capacities. Mr. Westell has private standing to seek constitutional relief.

2. TLABC represents thousands of lawyers in British Columbia. It has public interest standing to seek constitutional relief.

B. Independence of the bar is a constitutional imperative

3. 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.
4. Independence of the bar is a constitutional principle that flows 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 recognized as unwritten constitutional principles.
5. An independent bar is a necessary element of and precondition to an independent judiciary and the rule of law.
6. The principle of independence of the bar also finds substantive expression in the fundamental rights guaranteed by the *Charter*, 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, one of which is a lawyer's duty of commitment to the client's cause;
 - (b) s. 10(b), which guarantees the right to retain and instruct counsel on arrest or detention; and
 - (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.
7. 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*, unwritten constitutional principles, and the individual rights guaranteed in the *Charter*.

C. The key aspects of independence of the bar

8. There are two intertwined dimensions to the constitutional principle of the 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 preservation of the rule of law, 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.

9. 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 be constrained only by its obligation to act in the public interest in the administration of justice.
10. Individual and institutional independence require that professional regulation of lawyers is free from incursion from any government interference, including self-governing Indigenous governments.
11. Independence of the bar is necessary to maintaining an independent and impartial judiciary, and the public perception of an independent and impartial judiciary.
12. Under s. 96 of the *Constitution Act*, 1867, the federal government appoints judges to superior courts of the province from the independent bar.
13. 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.

D. Bill 21 is *ultra vires* the Province

14. Bill 21 is designed to and does eliminate the independent bar in British Columbia. It does so by, among other things:
 - (a) Effectively eliminating lawyer self-regulation in British Columbia;
 - (b) Compromising, directly and indirectly, lawyers' duties to be zealous, independent advocates within the bounds of the law and their oath;
 - (c) Circumscribing the regulator's duties to act in the public interest in the administration of justice;
 - (d) Imposing a co-governance model of regulation on lawyers, thereby allowing the standards for the conduct of lawyers and the practice of law by lawyers to be established by non-lawyers;
 - (e) Imposing a co-regulation model of regulation on lawyers;
 - (f) Empowering 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”;

- (g) Creating a prescriptive governance regime, administered by the government, including by codifying matters of conduct, competence and discipline;
 - (h) Granting regulation-making authority of uncertain scope to the Lieutenant Governor in Council which, in cases of inconsistency or conflict, will prevail over the regulation-making authority of Legal Professions British Columbia; and
 - (i) Directly compromising the independence of the judiciary, whose members must be selected from an independent and impartial bar.
15. The individual parts of Bill 21, or in the alternative Bill 21 in its collectivity, purport to legislate in respect of the administration of justice in the province in a manner that is inconsistent with the independence of the bar, the independence of the judiciary, and the rule of law. It is *ultra vires* the Legislative Assembly of British Columbia.
16. 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.

E. Bill 21 infringes individual rights under ss. 7, 10(b), and 11(d) of the *Charter*

17. Bill 21 infringes individuals’ rights under ss. 7, 10(b), and 11(d) of the *Charter* by virtue of its inconsistency with the independence of the bar, as follows:
- (a) Bill 21 infringes individuals’ 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, as protected by s. 7 of the *Charter*. Section 7 provides a right to the effective assistance of counsel in the face of state action interfering with personal autonomy and/or psychological integrity. Effective assistance of counsel is dependent upon an independent bar. Further, section 7 guarantees an accused’s right to a fair trial absent abuse of process. This right is dependent on the integrity of the judicial process, which is dependent on the independence of the bar. Legislation inconsistent with the maintenance of an independent bar therefore undermines individuals’ right to effective assistance of counsel in the face of state action interfering with personal autonomy and/or psychological integrity and accuseds’ right to a fair trial.
 - (b) Bill 21 infringes individuals’ right to retain and instruct counsel on arrest or detention, as protected by s. 10(b) of the *Charter*. The right to retain and instruct counsel is hollow without effective representation. The individual and institutional independence of lawyers plays an important role in the effective protection of the rights of an accused within the criminal justice system. Legislation inconsistent with the maintenance of an independent bar therefore infringes individuals’ rights to retain and instruct counsel.

- (c) Bill 21 infringes any person charged with an offence's right to a fair and public hearing before an independent judiciary, as protected under s. 11(d) of the *Charter*. An independent bar is necessary for a fair trial. An independent bar is further essential to and forms the foundation of an independent judiciary. Legislation inconsistent with the maintenance of an independent bar therefore infringes individuals' rights to a fair trial, either by virtue of its inconsistency with an independent bar alone, or its consequent inconsistency with an independent judiciary.
18. Bill 21 infringes individuals' rights under ss. 7, 10(b), and 11(d) of the *Charter* in a manner that cannot be justified in a free and democratic society under s. 1 of the *Charter*.
- F. Bill 21 infringes Mr. Westell and British Columbia lawyers' rights under s. 2(d) of the *Charter***
19. Bill 21 infringes Mr. Westell and British Columbia lawyers' rights to freedom of association under s. 2(d) of the *Charter* by substantially interfering with lawyers' right to act collectively in pursuit of other constitutional rights and to meet the government on more equal terms.
20. The activities of the Law Society fall within the range of activities protected under s. 2(d) of the *Charter* for the following reasons:
- (a) The Law Society is a professional regulator and association of lawyers. It was established before the existence of the Province of British Columbia to self-regulate the legal profession and the practice of law, protect and advance lawyers' independence, and the public interest. These objects are consistent with those of the current Law Society reflected in s. 3 of the *LPA*.
 - (b) The Law Society is an association of lawyers established to effectuate lawyers' collective objective—and right—to self-regulate and self-govern their profession, free from government interference and control.
 - (c) The Law Society is the instrumentalization of lawyers' right to assemble and act collectively for the purposes of self-regulation and self-government.
 - (d) The Law Society facilitates the rights of individual lawyers to act collectively and pursue other constitutional rights and to join together to meet the power of governments, including when governments threaten the independence of the bar, including its right to self-regulate, the independence of the judiciary, and the rule of law.
21. Bill 21 substantially infringes Mr. Westell and British Columbia lawyers' right to associate under the *Charter* by, among other things:
- (a) eliminating the self-regulation and self-governance of the legal profession by the Law Society, which compromises Mr. Westell and lawyers' ability to assemble and

act collectively in regulating the profession of lawyers and the practice of law in British Columbia;

- (b) eliminating the institutional independence of the bar as set out in Part 1 of this Notice of Civil Claim, which in turn compromises lawyers' ability to collectively challenge government action, exercise and advance other constitutional rights, advance the rule of law and other constitutional values, and otherwise meet the government on a more even footing;
- (c) substantially eliminating lawyers' ability to democratically participate in the Law Society's governance and hold the Board of Legal Professions British Columbia accountable, and select goals and priorities for an independent bar, consistent with the public interest, the rule of law, and the Canadian constitution; and
- (d) eliminating the ability of lawyers to maintain their current association under the Law Society, including removing the Law Society's physical, administrative and financial resources and infrastructure, all of which enables and facilitates lawyer's ability to act collectively to pursue other constitutional rights and to meet the government on a more even basis.

22. Bill 21 violates s. 2(d) of the *Charter* in a manner that cannot be justified in a free and democratic society under s. 1 of the *Charter*.

G. Bill 21 infringes Mr. Westell's rights under ss. 7 and 8 of the *Charter*

23. Bill 21 infringes Mr. Westell's rights under ss. 7 and 8 of the *Charter* as a result of its provisions directly regulating the conduct, competence, and discipline of lawyers.

24. Section 78 authorizes the chief executive officer of Legal Professions British Columbia, on the basis of any complaint regardless of its merit, to conduct a unilateral investigation on a lawyer's competence, conduct a warrantless search of a lawyer's business premises, and to compel any person to give information or records relevant to an investigation into the competence of a lawyer.

25. A warrantless search conducted without reasonable grounds contravenes s. 8 of the *Charter*.

26. There are no limits on the ability of Legal Professions British Columbia to seek and obtain documents and information protected by solicitor-client privilege or other legally recognized privilege.

27. Section 78 authorizes unreasonable searches of lawyers, including Mr. Westell. Section 78 violates Mr. Westell's reasonable expectations of privacy.

28. Section 78 violates Mr. Westell's rights under s. 8 of the *Charter* to be free from unreasonable search and seizure.

29. Section 78 contravenes s. 8 of the *Charter* in a manner that cannot be justified in a free and democratic society under s. 1 of the *Charter*.

30. Section 88 authorizes the chief executive officer to unilaterally compel a lawyer to receive medical treatment or counselling, the refusal of which may result in prosecution and imprisonment.
31. Section 7 of the *Charter* is engaged because Mr. Westell's liberty and security of the person interest is at risk for failure to comply with s. 88.
32. Section 88 infringes Mr. Westell's rights under s. 7 to liberty and security of the person in a manner that is inconsistent with the principles of fundamental justice.
33. Section 88 contravenes s. 7 of the *Charter* in a manner that cannot be justified in a free and democratic society under s. 1 of the *Charter*.

H. Conclusion

34. Bill 21, in whole or in part, is inconsistent with the constitution of Canada. It is therefore of no force or effect under s. 52 of the *Constitution Act, 1982*.

Plaintiff's address for service: Fasken Martineau DuMoulin LLP
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E-mail address for service: gcameron@fasken.com
tposyniak@fasken.com

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1

Dated: May 21, 2024



Signature of Lawyer for the Plaintiffs

GAVIN CAMERON

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A challenge to the Provincial Government's attempt to eviscerate the independence of the bar, contrary to the public interest and Constitution of Canada.

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:

The Solicitors for the Plaintiff are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: gcameron@fasken.com & tposyniak@fasken.com (Reference: Gavin Cameron/Tom Posyniak/253729.21499)