No. S-243258
Vancouver Registry

In the Supreme Court of British Columbia

Between

Law Society of British Columbia

Plaintiff

and

Attorney General of British Columbia,
His Majesty the King in right of the Province of British Columbia,
and Lieutenant Governor in Council of British Columbia

Defendants

No. S-243325
Vancouver Registry

In the Supreme Court of British Columbia

Between

Trial Lawyers Association of British Columbia and Kevin Westell

Plaintiffs

and

Attorney General of British Columbia,
His Majesty the King in right of the Province of British Columbia,
and Lieutenant Governor in Council of British Columbia

Defendants

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(Stay/Injunction Applications)

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Overview

1. This application is premature. Only a few provisions of the *Legal Professions Act*, S.B.C. 2024, c. 26 (the "**Act**") are in force, and all they do is begin a transitional planning process.[1] As these provisions do not have any practical consequences for lawyers or their clients, they pose no risk of irreparable harm or any harm. At worst, some modest resources will be spent planning for something that is not ultimately implemented in its present form.

2. The rest of the Act is not yet in force. The Lieutenant Governor in Council ("**LGIC**") will not bring it into force until the necessary transitional planning is complete, which will likely take at least 18 to 24 months. A *quia timet* injunction should not be granted unless "there is a high degree of probability the alleged harm will in fact occur imminently or in the near future".[2] As there is no prospect of the substantive provisions being brought into force for at least 18 months, there is no prospect of any consequences occurring imminently or in the near future.

3. The balance of convenience almost never favours suspending or staying legislation on an interlocutory basis. Courts are rightly reluctant to interfere with the Legislature's law-making function by granting interlocutory orders, before anything has been decided on the merits, suspending legislation that has been enacted by our democratically elected representatives. The jurisprudence recognizes that this kind of relief should be granted only in the clearest of cases.[3]

4. The Law Society argues the Act "does not best serve the public interest" and "will not improve access to justice or access to legal services".[4] The Law Society says

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[1] Sections 215 and 223 to 229 are the transitional provisions that are currently in force. Sections 311-314 and 317 are also in force but are not material to this application. Sections 311-313 codify the Law Society's innovation sandbox. Section 314 amends the *Notaries Act*, R.S.B.C. 1996, c. 334, to modestly expand notaries' scope of practice with respect to wills. Section 317 sets out which provisions are in force on assent and which come into force by regulation.

[2] *Nourifard v. Emadzadeh*, 2024 BCCA 49 at para. 44.

[3] See e.g. *Shrieves v. British Columbia (Attorney General)*, 2024 BCSC 889 at para. 29.

[4] Law Society notice of application, part 3, paras. 36(a), 42.

a better way to improve access to legal services would be to use PST revenue to expand legal aid.[5] These submissions "amount to little more than an attack on the wisdom or efficacy of the impugned legislation"[6] and ask the Court to engage in the kind of "judicial inquiry into whether the government is governing well" that the Supreme Court of Canada has held is inappropriate in these sorts of applications.[7]

5. Although the merits of the action are not at issue in this application, the plaintiffs' position invites the Court to recognize a novel constitutional principle with no textual or historical basis, then use it, contrary to recent authority of the Supreme Court of Canada, to invalidate legislation.[8] The plaintiffs advance a maximalist conception of the independence of the bar according to which lawyers must be "free from influence or incursion by any source".[9] However, lawyers are not currently and have never been "free from influence or incursion by any source". Lawyers have always been subject to some kinds of external regulation and influence from non-lawyers. The traditional understanding of the independence of the bar is that lawyers should be free from state interference, in the political sense, with matters affecting their advice or advocacy on behalf of clients. The Act does not constitute or enable state interference with lawyers on matters affecting their advice or advocacy on behalf of clients.

6. The Legislature can validly regulate the legal professions or entrust their regulation to a statutory body. The current regulatory role and governance structure of the Law Society exist only because the Legislature chose to enact legislation so providing. The current model of bencher elections is not constitutionally protected, and it is open to the Legislature to provide for a different statutory regulator with different governance arrangements. The Act is within provincial legislative competence under ss. 92(13) and (14) of the *Constitution Act, 1867*.

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[5] Law Society notice of application, part 3, para. 41(b).
[6] *Shrieves* at para. 61.
[7] *RJR-MacDonald Inc. v. Canada (Attorney General),* [1994] 1 S.C.R. 311 at p. 346.
[8] See *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at paras. 49-63 (holding that unwritten constitutional principles cannot invalidate legislation).
[9] Law Society notice of civil claim, part 3, para 84.

7. At the stage of this interlocutory application, it is dispositive that the few provisions of the Act that are currently in force do not have any practical consequences, and there is virtually no chance of the substantive provisions being brought into force for at least 18 months. The application should be dismissed on that basis. Such a dismissal would not affect the plaintiffs' right to reapply if there is a material change in circumstances and it starts to become realistic that any of the substantive provisions may be brought into force in the near future.

8. There will likely come a time when a decision must be made about which provisions of the Act, if any, can be brought into force while litigation is pending. That decision does not need to be made now and, respectfully, should not be made now in a factual vacuum. The plaintiffs express concern about how things might play out in the future. They are concerned about the role of the transitional Indigenous council and its influence on the first rules, for example. At this point in time, such concerns are entirely speculative. If the transitional planning process is allowed to begin, a concrete factual basis will begin to develop. 18 to 24 months from now (or longer), as the transitional planning process nears completion and concrete facts exist, the Court will be in a better position to assess irreparable harm and the balance of convenience.

Facts

I. Legislative context

9. Some of the problems the Act seeks to address are the cost of legal services and the governance issues arising from bencher elections.

i. Legal services are unaffordable

10. Legal services have become so expensive that few people in British Columbia can afford them. It costs $30,000 to retain a lawyer for an average family law claim and

$90,000 for an average civil action (with a hearing of five days or less).[10] The median gross household employment income in British Columbia is approximately $85,000.[11] British Columbians cannot spend the equivalent of their gross annual income to resolve an average civil dispute.

11. Approximately 60% of people with a legal problem in British Columbia do not receive any assistance from a lawyer.[12] This Court does not publish statistics on self-represented litigants, but even in the Court of Appeal, where pro bono assistance is more readily available, 30% of civil appeals and 49% of family appeals involve at least one self-represented litigant.[13]

12. The Act will not solve these problems overnight, but it is intended to lay the groundwork for some legal services to become more affordable over time, including by providing more access to, and more choice among, different kinds of legal service providers.

13. The Supreme Court of Canada has recognized that "ordinary Canadians cannot afford to access the adjudication of civil disputes". The Court has described ensuring access to justice as "the greatest challenge to the rule of law in Canada today" and called for a culture shift in the profession.[14]

14. Chief Justice Wagner, writing extrajudicially, has remarked that the access to justice crisis is diminishing public confidence in the legal profession.[15] Former Chief Justice McLachlin, also writing extrajudicially, has encouraged the legal profession to recognize and embrace the need for change:

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[10] Affidavit #1 of Courtney Blatchford, made June 7, 2024 ("**Blatchford #1**"), Ex. A at p. 8. In these submissions, all pinpoint citations to affidavit exhibits are to the cumulative page numbers in the top right corner.
[11] Blatchford #1, Ex. B at p. 14.
[12] Blatchford #1, Ex. C at p. 41.
[13] Blatchford #1, Ex. D at pp. 102-103.
[14] *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 1-2. See also *Mide-Wilson v. Hungerford Tomyn Lawrenson and Nichols,* 2013 BCCA 559 at para. 89; *Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 1718 at paras. 104-105.
[15] Blatchford #1, Ex. E at p. 107.

> I believe that a strong, independent legal profession is essential to the rule of law and democratic society. It is vital to provide justice to individuals; to buttress the economy and investment; and to ensure that state power is exercised constitutionally. In a word, it is vital to maintaining the rule of law.
>
> […]
>
> If we believe, as do I, that an independent and vibrant legal profession is essential to the public welfare and the rule of law, if we want the legal profession to remain relevant into the next century, our only choice is to turn the changes that are already upon us into opportunities to build a new and invigorated legal profession.
>
> The first step is to accept the idea of change. Lawyers and judges need to stop fearing change. Rather, they must accept that change may be necessary. Change should not be seen as an evil, but rather as the source of new opportunities.[16]

15. This is the context in which the plaintiffs ask this Court to immediately stay the legislation that our elected representatives have enacted to try to improve the availability of legal services in the Province.

ii. Bencher elections have disadvantages

16. The Act also seeks to address some of the disadvantages of the governance structure prescribed by the *Legal Profession Act*, S.B.C. 1998, c. 9 (the "**Old Act**"). Electing directors has some advantages, but also significant disadvantages.

17. Electing individuals makes it less likely that the board will have the complete range of competencies that a public interest regulator should have. The Canadian Bar Association ("**CBA**") has said the current emphasis on elections is "problematic" for a number of reasons, including that "it does not necessarily provide appropriate diversity of expertise, perspective, and lived experience".[17]

18. Bencher elections also create the appearance—and, frankly, have sometimes created the reality—that benchers are beholden to the lawyers who elect them

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[16] Blatchford #1, Ex. F at pp. 112, 115.
[17] Blatchford #1, Ex. K at pp. 314-315; see also Ex. L at pp. 452-458.

rather than to the public interest. Mr. Cayton was blunt on this point in his governance review of the Law Society:

> […] Benchers seeking reelection must respond to the interests of their constituents not to the interests of the public. This is reflected in the electoral statements made by candidates. Eleven candidates stood in two by-elections in 2021. Only three mentioned the Society's purpose to uphold and protect the public interest, none had plans relating to it, most promised to work for improvements in the financial and personal well-being of lawyers and to promote and expand the interests of the profession in the geographical area from which they came. These are the kinds of ambitions one would expect of a membership association not a regulatory body and these professional ambitions are inevitably reflected in Benchers' decisions about the Society's priorities and work programmes.[18]

19. The CBA has expressed similar concerns, writing that the status quo of bencher elections "lends some truth to the perception that self-regulation may tend to protect the interests of the profession".[19] The CBA has said it is "no longer in the public interest to govern our profession with 80% elected lawyers" and recommended that regulators' boards include "a significant number of appointed lawyers and non-lawyers" who are "selected by an independent appointment process".[20] As described in more detail below, the Act contemplates that five directors will be appointed by the board through a merit-based application process and three directors will be appointed by the government through a merit-based application process (in addition to the nine directors who will be elected by legal professionals).[21]

II. Lawyer regulation has evolved in the United Kingdom

20. The United Kingdom has gone much further than the Act with no diminution to the independence of the bar. Given that our constitution is similar in principle to that of

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[18] Greenberg #1, Ex. 8 at p. 490. While Mr. Cayton's opinion is not admissible as evidence of its truth, it is admissible of evidence of the public perception of bencher elections.
[19] Blatchford #1, Ex. K at pp. 314.
[20] Blatchford #1, Ex. K at pp. 314-315.
[21] Act, s. 8.

the United Kingdom, the UK experience is important when considering the plaintiffs' submission that the Act is contrary to an unwritten constitutional principle.

21. There are nine regulated legal professions in the United Kingdom.[22] Each is regulated by an "approved regulator". The approved regulators for barristers and solicitors are, respectively, the Bar Standards Board and the Solicitors Regulation Authority. All approved regulators are overseen by the Legal Services Board.[23]

22. The board of the Bar Standards Board must be chaired by a lay person and the majority of the directors must be lay persons. All directors are appointed by the board on merit after a nomination and selection process.[24]

23. The board of the Solicitors Regulation Authority must be chaired by a lay person and the majority of the directors must be lay persons. If a decision on regulatory functions is ever taken at a meeting where there is not a lay majority present, the decision must be ratified by a lay majority. All directors are appointed by the board "on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups".[25]

24. The board of the Legal Services Board must be chaired by a lay person and the majority of the directors must be lay persons. All directors are appointed by the government.[26]

25. Despite these arrangements—or perhaps, in part, because of them—the UK legal system is venerated worldwide. Residents of the UK obtain fearless and loyal representation from lawyers, including in matters adverse to the state.[27] The Court

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[22] Barristers, solicitors, legal executives, licensed conveyancers, patent attorneys, trade mark attorneys, costs lawyers, notaries, and chartered accountants.
[23] *Legal Services Act 2007*, U.K. 2007, c. 29.
[24] Blatchford #1, Ex. G at p. 123; Ex. H at pp. 129-130.
[25] Blatchford #1, Ex. I at pp. 251-252.
[26] *Legal Services Act 2007*, Schedule 1, ss. 1-2.
[27] See e.g. *R. (on the application of Miller) v. The Prime Minister,* [2019] UKSC 41, in which the appellant successfully challenged the lawfulness of Prime Minister Boris Johnson's advice to Her Majesty Queen Elizabeth that the British Parliament should be prorogued.

of Appeal for England and Wales has emphasized the continued independence of the bar:

> The existence of the principle of the independence of advocates is not in doubt. It is a long-established common law principle and one of the cornerstones of a fair and effective system of justice and the rule of law. If clients are not represented by advocates who are independent of the state, the judge and their opponents, they cannot have a fair trial.[28]

26. Australia and New Zealand have made similar reforms.[29] When this action is determined on its merits, evidence about the United Kingdom, Australia, and New Zealand will be important. For now, the point is simply that elections are not synonymous with independence. Directors do not represent the interests of the persons who appoint them to the board. Directors govern the regulator in the public interest. Appointed directors are not beholden to the state or potential conduits for state interference with lawyers' advice or advocacy.

III. The plaintiffs misunderstand how directors will be chosen

27. Many of the plaintiffs' concerns arise from misunderstandings of how directors will be chosen under the Act.

28. The composition of the board is depicted in the following diagram (a larger version of which is attached as Schedule A):

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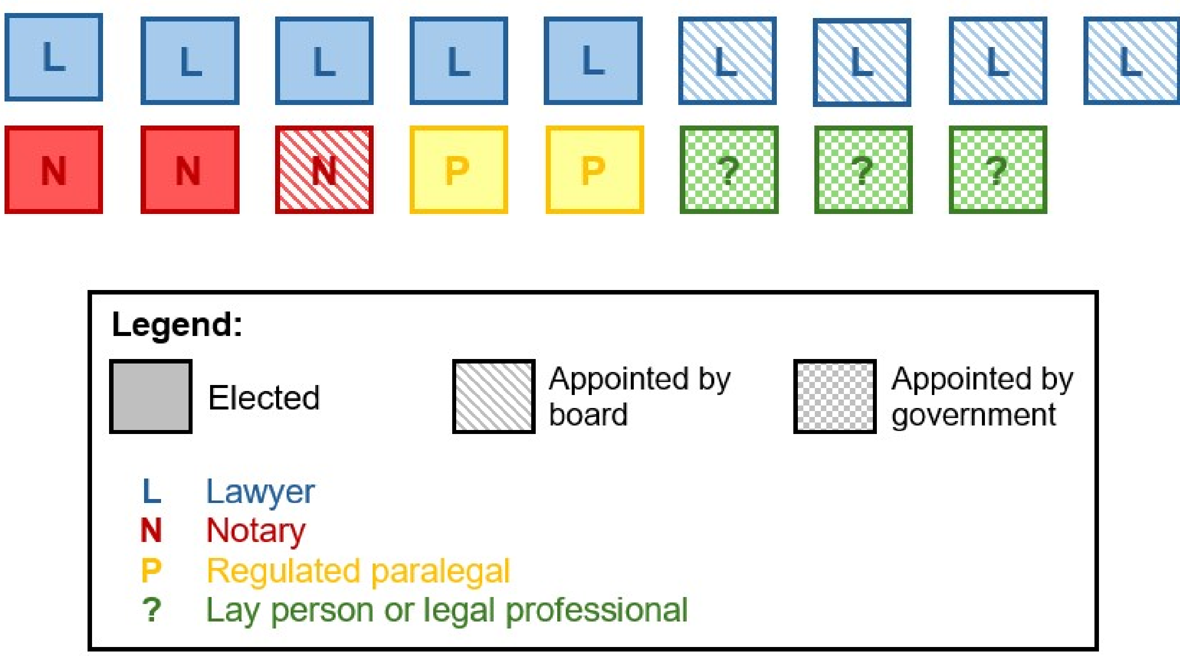
[28] *Lumsdon & Ors v. Legal Services Board & Ors*, [2014] EWCA Civ 1276 at para. 14. A narrow appeal on one issue was dismissed, [2015] UKSC 41. See also *Legal Services Act 2007*, ss. 1(1)(f) (prescribing "encouraging an independent, strong, diverse and effective legal profession" as a regulatory objective), 3(a) (prescribing it is a "professional principle" that legal professionals "should act with independence and integrity").

[29] See generally Blatchford #1, Ex. L at pp. 456-457, 469; Francesca Bartlett, Linda Haller, "Australia: Legal Services Regulation in Australia—Innovative Co-regulation" in Boon, ed., *International Perspectives on the Regulation of Lawyers and Legal Services* (Portland: Hart Publishing, 2017) (describing the co-regulatory model in most states of Australia and opining at p. 180 that "[c]oncerns about the threat to the rule of law from State involvement in legal services regulation have not surfaced in Australia"); Selene E. Mize, "New Zealand: Finding the Balance between Self-Regulation and Government Oversight" in Boon, ed., *International Perspectives* (describing the co-regulatory model in New Zealand and opining at p. 138 that "government powers are not being exercised in a way that deprives the profession of necessary independence or that undermines the rule of law").



29. There are 17 directors:

    a. at least **nine lawyers** (five elected, four appointed by the board);

    b. at least **three notaries** (two elected, one appointed by the board);

    c. at least **two regulated paralegals** (elected); and,

    d. **three lay persons or legal professionals** (appointed by the government).[30]

30. Based on the current practice for bencher elections, the plaintiffs mistakenly assume that, every few years, the terms of all 17 directors will end and a new slate of 17 directors will need to be chosen. Based on that mistaken assumption, the plaintiffs express concern that lawyers will not be the majority of the "first 12" directors (nine elected and three appointed by government) who choose the "second five" directors (who are appointed by the board).

[30] Act, s. 8. The two regulated paralegals will be appointed on the recommendation of the BC Paralegal Association, after a merit-based process, until there are at least 50 regulated paralegals: Act, s. 8(1)(c)(i), 8(2).

31. The Act does not create a “first 12” set of directors who then choose a “second five” set of directors. Unlike the current practice for bencher elections, directors’ terms do not have to all start and end at the same time. The Act empowers the transitional board and board to set terms of office and stagger terms of office.[31] Contemporary best practices for governance include staggering directors’ terms to promote continuity and knowledge-transfer on the board. Thus, the board will likely provide for staggered terms and ensure that only a few directors’ terms end in any given year.

32. One or two board-appointed directors will likely term-out and need to be replaced (or re-appointed) every year by the other 15 or 16 directors holding office at the time. As lawyers are the majority on the board, lawyers will typically be the majority whenever the board must appoint more directors. The transitional board and board, if they wish to do so, can stagger terms in such a way as to guarantee that lawyers will always be the majority whenever the board appoints more directors, subject only to the possibility of unplanned resignations.

33. The transitional board or board can also create a committee consisting solely of lawyer directors, or elected lawyer directors, to screen and nominate candidates for the board-appointed director positions.[32] Such a committee would ensure that lawyers, or elected lawyers, always have a veto on the board-appointed directors.

IV. Directors appointed by government do not represent government and are not beholden to government

34. The plaintiffs’ concern about government-appointed directors overlooks that the current boards of the Law Society and Legal Services Society already feature government appointed members.

35. Under the Old Act, the government appoints six lay benchers. There has never been any concern that these lay benchers are representatives of the government

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[31] Act, ss. 28(2)(a), (e), (g), 226(1).
[32] Act, s. 28(2)(f).

or conduits for potential government interference with the regulation of lawyers. The current lay benchers are a past executive director of the John Howard Society of North Island, a former chief operating officer of the First Nations Technology Council, a former CEO of North Island College, a public health consultant, a designated paralegal, and an HR consultant.[33]

36. By way of comparison, the board of the Legal Services Society consists of nine directors, four appointed by the Law Society and five appointed by the government.[34] The role of the Legal Services Society includes managing legal aid retainers in criminal matters, meaning that the Legal Services Society is directly involved in decisions about how specific lawyers act for specific persons who are being prosecuted by the Crown. There has never been any concern that the Legal Services Society lacks independence from government because a majority of its directors are appointed by government. There has never been any concern that lawyers acting on legal aid retainers somehow lack independence.

V. The Act does not define or limit "public interest"

37. The plaintiffs submit the Act limits the regulator from acting according to its own conception of the public interest. This concern arises from a misunderstanding of the legislation. Section 6 provides that the role of the regulator includes regulating the practice of law and that the regulator must do so in the public interest. The Act does not define what constitutes the public interest: that is largely for the regulator to determine. There are some general guiding principles in s. 7 of the Act that the regulator must consider, but these principles are not exhaustive. The regulator cannot define the public interest in a manner that is contrary to the guiding principles, but the regulator can and presumably will go beyond the guiding principles to consider other matters the regulator regards to be components of the public interest.

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[33] Blatchford #1, Ex. J at pp. 256-261.
[34] *Legal Services Society Act*, S.B.C. 2002, c. 30, s. 4.

VI. Requirement that first rules be approved by transitional Indigenous council should not be controversial

38. The Act requires that the first rules be approved by the transitional Indigenous council.[35] The plaintiffs say this "ends self-regulation" because the Act does not require that the members of the transitional Indigenous council be lawyers.[36]

39. This submission overlooks the fact that Indigenous elders, who have valuable knowledge about Indigenous dispute-resolution practices, never had a fair opportunity to become lawyers. The legal profession was not open to them. Having deprived itself for so long of Indigenous perspectives that would have enriched lawyers' professional norms and practices, the Law Society should not now be insisting on remaining closed.

40. In any event, the bodies that appoint the members of the transitional Indigenous council might well choose lawyers. At this point, the plaintiffs' concerns are speculative.

41. Moreover, the transitional Indigenous council cannot unilaterally make rules that will be binding on lawyers. It may make suggestions to the transitional board, but no rules can be made without the agreement of the transitional board. Lawyers chosen by the benchers constitute the majority on the transitional board. It is possible that an impasse may develop between the transitional board and the transitional Indigenous council with respect to the first rules, but this concern is hypothetical and speculative.[37]

42. The requirement for the first rules to be approved by the transitional Indigenous council was inspired, in part, by the Law Society's "Report of the Indigenous

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[35] Act, s. 226(2)(b).
[36] LSBC Notice of application, part 2, at para. 23; TLABC Notice of application at para. 9 (adopting paras. 1 to 25 of the LSBC Notice of application)
[37] If an impasse develops between the transitional board and the transitional Indigenous council with respect to the first rules, and cannot be resolved, the LGIC cannot bring the substantive provisions of the Act into force. The Act would need to be amended to enable the first rules to be made before the LGIC could bring the substantive provisions into force.

Engagement in Regulatory Matters Task Force", which was unanimously approved by the benchers in July 2023. One of the recommendations in that report was that the "Law Society should retain an Indigenous expert to identify and remove unnecessary colonial principles from the Rules, Code, policies, procedures, and practices".[38]

43. After the amalgamation date, there is no general requirement that proposed rule changes be approved by the Indigenous council. The approval of the Indigenous council is required only for rules (if any) that are influenced by Indigenous practices in relation to dispute resolution and tribunal rules that are designed to meet the specific needs of Indigenous persons who are parties or witnesses in a proceeding before the tribunal.[39]

VII. Transitional provisions currently in force merely begin planning process

44. It bears some emphasis that the provisions of the Act currently in force (ss. 215 and 223-229) merely begin the transitional planning process. All they do is:

    a. establish the transitional board, transitional Indigenous council, and advisory committee;

    b. require the transitional board to:

        i. appoint a person responsible for managing the transition, who will eventually become the first CEO of the regulator;

        ii. develop the first rules of the board in collaboration with the Indigenous council;

        iii. appoint a transitional tribunal chair, who must develop the first tribunal rules;

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[38] Greenberg #1, Ex. 62 at p. 1105.
[39] Act, ss. 94(3), 131(6),

c. require the Law Society and Society of Notaries to cooperate with the transitional board and pay certain transition costs; and,

d. immunize the members of the transitional board, transitional Indigenous council, and advisory committee from any liability for things done in good faith.

45. None of these steps will have any consequences for lawyers or their clients until the LGIC brings the substantive provisions of the Act into force.

VIII. LGIC will not bring substantive provisions into force for at least 18 to 24 months

46. A number of conditions precedent must be satisfied before the LGIC can bring the substantive provisions of the Act into force. Among other things:

a. the transitional board must have completed the first rules;

b. the first rules must have been approved by the transitional Indigenous council;

c. the transitional tribunal chair must have completed the first tribunal rules; and

d. the transitional board will need to develop a transition plan to address all necessary operational considerations for the new regulator to commence operations (e.g. budget, policies, IT structures, real estate, assets, Customer Relationship Management systems, organizational structures and HR contracts, information and document transfers, etc.).[40]

47. The defendants estimate—and the Law Society agrees—this will likely take at least 18 to 24 months.[41]

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[40] Affidavit #1 of Paul Craven made 7 June 2024 ("**Craven #1**") at para. 21.
[41] Craven #1 at paras. 7, 21 and Ex. A at p. 6; Greenberg #1 at para. 133(e).

Submissions

I. Portions of plaintiffs' affidavits inadmissible

48. The affidavit #1 of Mr. Greenberg, KC includes a few passages of argument and opinion that are not admissible as evidence and should be treated as submissions from counsel.[42] The affidavits filed by TLABC and Mr. Westell consist largely of argument and should also be treated as submissions.[43]

II. Legislation should be stayed or enjoined only in clearest of cases

49. Courts have recognized that orders staying legislation, or enjoining legislation from being brought into force, are fundamentally different from injunctions in private law matters. The Court is not merely preventing an individual from exercising some private right. An order staying legislation, or enjoining legislation from being brought into force, interferes with the Legislature's law-making function and deprives the public of the benefit of a law that their elected representatives have determined to be in the public interest, before anything has been determined on the merits. Accordingly, such orders should be granted only in the clearest of cases. This Court recently summarized the relevant principles in *Shrieves*:

> Special considerations apply where, as here, the applicant seeks an interlocutory injunction to suspend the operation of legislation alleged to be unconstitutional. It has been said that such applications will succeed only in the clearest of cases. Interlocutory invalidation of legislation in advance of a constitutional ruling has been described as an extraordinary remedy. Cases that seek such relief therefore stand on a different footing from ordinary cases. It is only in rare and exceptional circumstances that democratically-enacted legislation can be suspended before a finding of unconstitutionality. For those reasons, most applications to enjoin legislation fail, even in the face of proof of irreparable harm to the applicant in the refusal of interlocutory relief.[44]

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[42] See e.g. Greenberg #1 at paras. 69, 75, 101, 107-109, 112, 113, 117, 118, 123, 125, 126.
[43] Collins #1 at paras. 5-30; Gourlay #1 at paras. 20-25, 28-32, 36-42, 44; Gandhi #1 at paras. 7-20, 22.
[44] *Shrieves* at para. 29 (internal quotation marks and citations omitted).

III. "Serious question to be tried" not onerous, but plaintiffs' position has frailties

50. The "serious question to be tried" threshold is not high and this element of the *RJR* test is unlikely to be dispositive of this application. That said, some frailties in the plaintiffs' position merit mention.

i. Unwritten constitutional principles cannot invalidate legislation

51. The immediate problem for the plaintiffs is that the Supreme Court of Canada recently held that unwritten constitutional principles cannot invalidate legislation.[45]

ii. Plaintiffs' maximalist conception of the independence of the bar not an unwritten constitutional principle

52. In any event, it will be difficult for the plaintiffs to establish that their maximalist conception of the independence of the bar is an unwritten constitutional principle.

53. An unwritten constitutional principle is a principle, like democracy, without which it would "be impossible to conceive of our constitutional structure".[46] The plaintiffs say it is an unwritten constitutional principle that lawyers must be "free from influence or incursion by any source" (presumably excluding the influence of the Law Society, although that is left unsaid).[47] However, lawyers are not currently "free from influence or incursion by any source" and never have been.

54. The Law Society has recently, and rightly, been influenced by the Truth and Reconciliation Commission.[48] There is a long tradition of lay benchers, i.e., non-

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[45] *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at paras. 49-63.
[46] *Toronto (City)* at para. 49.
[47] Law Society notice of civil claim, part 3, para. 84; TLA notice of civil claim, part 3, para. 3. The Law Society also pleads that "professional regulation of lawyers [must be] free from incursion from <u>any</u> entity lawyers may be bound to challenge on behalf of clients" (part 3, para. 90, emphasis in original), but that too cannot be taken literally. The Law Society is itself an entity that lawyers are sometimes bound to challenge on behalf of clients, for example, when acting for other lawyers in professional conduct matters at the Law Society Tribunal.
[48] In direct response to calls to action 27 and 28 of the Truth and Reconciliation Commission, the benchers amended the *Law Society Rules* to require all practising lawyers to complete an Indigenous intercultural course (see Rule 3-28.1).

lawyers who have influenced the regulation of lawyers in their capacity as benchers. There is also a long history of legislation in British Columbia and the United Kingdom directly regulating aspects of legal practice. To give some examples:

a. The criteria for admittance to the legal professions were traditionally prescribed by legislation[49] and, today, the Old Act prohibits lawyers from entering into certain sorts of fee agreements with clients.[50] It has never been controversial that the Legislature can regulate aspects of the solicitor-client relationship from a consumer protection standpoint.

b. Lawyers are subject to legislation of general application that constrains how they can act on behalf of clients (e.g., the *Criminal Code* and *Human Rights Code*). Again, this has never been controversial.

55. In short, lawyers are not and have never been "free from influence or incursion by any source". Lawyers have always been subject to some kinds of influence by non-lawyers and external regulation.

56. In *Federation #1*,[51] the Court of Appeal recognized the independence of the bar as a principle of fundamental justice under s. 7 of the *Charter*. In *obiter*, the Court stated that "the independence of the Bar consists of lawyers who are free from incursions from any source, including from public authorities".[52] However, the tests for a principle of fundamental justice and an unwritten constitutional principle are different and, in any event, the Supreme Court of Canada allowed the appeal in part. Justice Cromwell, writing for the Court, stated that there was "considerable merit" to the submission that the Court of Appeal had defined independence too

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[49] See e.g. *An Act to consolidate the Laws relating to the Legal Professions in this Province*, S.B.C. 1877, c. 136, ss. 3-4; *An Act for the better Regulation of Attornies and Solicitors* (1729), 2 Geo. 2, c. 23, ss. 1-15.
[50] Old Act, s. 67.
[51] *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2013 BCCA 147 [***Federation #1* (CA)**], rev'd in part 2015 SCC 7 [***Federation #1* (SCC)**].
[52] *Federation #1* (CA) at para. 113.

broadly.[53] The Court recognized a narrower principle of fundamental justice that "the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes",[54] which is consistent with the traditional view of the independence of the bar described below.

57. The UK experience is also instructive. As noted above, our constitution is similar in principle to that of the UK. In the UK, lawyers are regulated by entities with boards that are mostly lay persons and chaired by lay persons. Directors are appointed by either the boards or the government. The UK experience shows it is not "impossible to conceive of our constitutional structure" with lawyers being regulated differently than they are now.[55] Despite its very similar constitutional structure, the UK has gone much further than the Act (with no diminution to the independence of the bar).

iii. The Act does not diminish the independence of the bar as it has traditionally been understood

58. The traditional understanding of the independence of the bar is that lawyers should be free from state interference, in the political sense, with matters affecting their advice or advocacy on behalf of clients.[56] The Act will not result in state interference with anything affecting lawyers' advice or advocacy.[57]

59. The plaintiffs' conception of lawyers' independence is far broader than judicial independence. Judicial independence does not mean that judges must be "free from influence or incursion by any source". Rather, courts have defined judicial independence in functional terms, by considering what arrangements are necessary to provide assurance in both fact and appearance that judges will be

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[53] *Federation #1* (SCC) at para. 80.
[54] *Federation #1* (SCC) at para. 84.
[55] *Toronto (City)* at para. 49.
[56] See e.g. *A.G. Can. v. Law Society of B.C.*, [1982] 2 S.C.R. 307 at pp. 335-336; *Federation #1* (SCC) at para. 84. See also Alice Woolley, "Rhetoric and Realities: What Independence of the Bar Requires of Lawyer Regulation" (2012) 45:1 UBC Law Review 145 at 149.
[57] The defendants do not concede this is a constitutional requirement. It is a policy choice.

able to fulfil their function of judging impartially.[58] Thus, for example, the state cannot interfere with administrative decisions that bear "directly and immediately on the exercise of the judicial function", such as the assignment of judges, sittings of the court, courts lists, and the allocation of courtrooms.[59]

60. Any unwritten constitutional principle about the independence of the bar should be interpreted in an analogous functional manner. If there is such a principle, it would mean, at most, that the state cannot interfere with those aspects of the regulation of the bar that bear directly and immediately on a lawyer's function of advising and advocating on behalf of clients.[60] The plaintiffs do not contend that the Act may result in state interference with regulatory matters that bear on lawyers' advice or advocacy on behalf of clients. If anything, the Act reduces the government's influence on the regulation of lawyers: the Attorney General is currently a bencher of the Law Society, but will not be a director of the new regulator.

61. The board of the regulator will have fewer directors who are directly elected by lawyers than the Law Society currently has, but elections are not the only way to ensure independence from the state. Providing for some directors to be appointed by the board on merit will reduce some of the problems associated with bencher elections while also improving the overall effectiveness of the board. There is simply no reason to think that directors appointed by the board or even directors appointed by the government will be any less independent.

iv. If the board makes a rule that diminishes the independence of the bar, the rule will be *ultra vires* the Act

62. Concerns that the Act might result in some diminishment of the independence of the bar are hypothetical and based on speculation about what the board might do. The Act confers certain powers, but none of those powers have been exercised

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[58] See e.g. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.),* [1997] 3 S.C.R. 3 [***Remuneration Reference***].
[59] *Remuneration Reference* at para. 117.
[60] See e.g. *Federation #1* (SCC) at para. 84.

yet. Moreover, if any rule made by the board jeopardized the independence of lawyers or other legal professionals, it would be vulnerable to being quashed on judicial review on administrative law grounds. The rules will be subordinate legislation made under the Act, subject to judicial review for consistency with the purposes of the Act (like the *Law Society Rules* are currently). The Act expressly requires the regulator "to ensure the independence of licensees".[61] If the regulator made a rule that compromised the independence of licensees, that rule would be *ultra vires* the Act and invalid as a matter of administrative law (before getting to any potential constitutional issues).

v. Law Society is not an association of lawyers for the purposes of s. 2(d) of the *Charter*

63. TLABC and Mr. Westell, but not the Law Society, argue that the Act infringes lawyers' freedom of association under s. 2(d) of the *Charter*. This argument misconceives the nature of the Law Society: it is a statutory regulator, not an association of lawyers dedicated to advancing lawyers' interests.

64. It is true that the Law Society was founded as an association of lawyers in 1869. Incidentally, it was Attorney General Crease who in 1869 proposed the founding of the Law Society and called the meeting at which the Law Society was founded. Alfred Watts KC, who was secretary of the Law Society from 1947 to 1967, described Attorney General Crease as "the father" of the Law Society,[62] a description the Law Society itself adopted in a pamphlet it published in 2009.[63] Mr. Watts KC also praised "the close relationship between the office of Attorney-General and the Society throughout the years" as having "contributed much […] to the administration of justice".[64]

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[61] Act, s. 6(1)(c).
[62] Alfred Watts, *Lex Liberorum Rex: History of the Law Society of British Columbia* (1973) (Vancouver: Law Society of British Columbia, 1973) at pp. 5.
[63] Law Society of British Columbia, "1884 to 2009: Protecting the public interest 125 years" at p. 3 (describing Attorney General Crease as "father of the Law Society").
[64] Watts, *Lex Liberorum Rex* at p. 11.

65. Although the Law Society was founded as an association of lawyers in 1869, it has ceased to be an association and has become a statutory regulator. Admittedly, it is difficult to pinpoint exactly when that transition was completed. The Law Society arguably ceased to be an association as early as 1874, when the Legislature enacted legislation assigning it some regulatory functions.[65] In 1987, the legislation was amended to require, for the first time, that the Law Society act in the public interest[66] (previously the legislation had referred to "the protection and well being of those engaged in the practice of law").[67] However, the 1987 revisions maintained the Law Society's traditional dual mandate to "regulate the practice of law" and to "uphold and protect the interests of its members".[68] In 2012, that latter function was removed.[69] By 2012, certainly, the Law Society had ceased to be an association and had become a statutory regulator.

66. Section 2(d) of the *Charter* does not confer on regulated persons a constitutional right to control their statutory regulator. The Act does not restrict lawyers from associating, including through organizations like the CBA and TLABC. Since the Law Society is not an association of lawyers, the Act does not engage s. 2(d) of the *Charter*.

vi. TLA's *Charter* challenges to ss. 78 and 88 are contrary to settled law

67. TLABC and Mr. Westell also challenge ss. 78 and 88 of the Act on *Charter* grounds. Their arguments are contrary to settled law.

68. Section 78 empowers the chief executive officer, subject to the rules, to compel certain information from licensees, trainees, and law firms. In this respect, the Act

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[65] *An Act respecting the Legal Professions*, S.B.C. 1874, c. 18.
[66] *Legal Profession Act*, S.B.C. 1987, c. 25 [***1987 Act***], s. 3(a).
[67] *Barristers and Solicitors Act*, R.S.B.C. 1979, c. 26, s. 39(1)(a).
[68] *1987 Act*, s. 3(b).
[69] *Legal Profession Amendment Act, 2012*, S.B.C. 2012, c. 16, s. 2 (enacting the current language of "supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law").

largely just transfers the current authority of the executive director of the Law Society under ss. 26, 27, and 36 of the Old Act and Rules 3-5 and 4-55 of the *Law Society Rules* to the chief executive officer of the new regulator.

69. The Court of Appeal has held that s. 36(b) of the Old Act and Rule 4-55 are consistent with lawyers' rights under s. 8 of the *Charter*.[70] The same reasoning applies to s. 78 of the Act as a matter of *stare decisis*.

70. Section 88 empowers the chief executive officer, if they determine that a licensee, trainee, or law firm has practised law incompetently, to make certain competence orders. Among other types of competence orders, the chief executive officer can require a licensee or trainee to receive counselling or medical treatment. Contrary to the submission of TLABC and Mr. Westell, non-compliance with a competence order is not an offence under the Act and cannot result in imprisonment. If a licensee does not comply with a conduct order, s. 59(1) empowers the chief executive officer to impose limits or conditions on the licensee's licence, suspend the licensee's licence, or apply to the tribunal for an order cancelling the licensee's licence.

71. It is settled law that s. 7 of the *Charter* does not create a right to be licensed to work in any particular profession.[71] An order requiring that a person obtain certain medical treatment, failing which their licence may be suspended or made subject to conditions, does not engage s. 7.

IV. Stay and injunction must be distinguished

72. When assessing the irreparable harm criterion and the balance of convenience, it is necessary to distinguish between the two orders sought:

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[70] *A Lawyer v. Law Society of British Columbia*, 2021 BCCA 437 at paras. 32-40.
[71] See e.g. *Hoogerbrug v. British Columbia*, 2024 BCSC 794 at paras. 276-294 and the authorities cited there.

a. One is a stay of the transitional provisions that are currently in force.[72]

b. The other is *quia timet* injunction, enjoining the LGIC from bringing the substantive provisions into force.[73]

73. These orders are different and the legislative provisions at issue are different.

V. Transitional planning process poses no risk of irreparable harm

74. The transitional provisions pose no risk of irreparable harm, or any harm. They have no immediate practical consequences for lawyers or their clients. They just begin a planning process. At worst, some modest resources might be spent developing rules that are never ultimately implemented.

75. The Law Society estimates that the associated costs will be approximately $1 million.[74] Even accepting that estimate at face value and assuming it will be borne entirely by the Law Society, it is not a material amount of money for the Law Society or its members. It is $70 per practising lawyer.[75] Last year, the Law Society earned more than $1 million of interest income on the $39 million reserve in its general fund and had an operating surplus of more than $2 million.[76]

76. The Law Society's primary position is that the transitional provisions will cause irreparable harm because the Act is unconstitutional,[77] but that submission impermissibly assumes the very proposition at issue in the action.

77. Helpful contrasts can be drawn to the recent decisions of this Court in *Harm Reduction Nurses* and *Federation #2*.[78]

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[72] Notice of application, part 1, para. 1(a).
[73] Notice of application, part 1, para. 1(b).
[74] Greenberg #1 at para. 133
[75] There are approximately 14,500 practising lawyers: Greenberg #1 at para. 14.
[76] Greenberg #1, Ex. 58 at pp. 978-979.
[77] Notice of application at para. 36(a), (b).
[78] *Harm Reduction Nurses Association v. British Columbia (Attorney General)*, 2023 BCSC 2290, leave to appeal ref'd 2024 BCCA 87; *Federation of Law Societies of Canada v. Canada (Attorney General)*, 2023 BCSC 2068 [***Federation #2***].

78. In *Harm Reduction Nurses*, the Court stayed legislation for three months pending a constitutional challenge. The legislation prohibits people from consuming certain drugs in certain public areas. This Court found irreparable harm because, among other reasons:

    a. drug users would have to use drugs alone or in less public spaces, putting them at risk of dying from an overdose that may have been reversable if someone else had been nearby; and,

    b. drug users found by police in prohibited areas could have whatever remained of their drug supply destroyed, which could lead them to purchase cheaper, lower quality drugs that are more likely to be toxic and cause death.[79]

79. In *Federation #2*, the Court made an interlocutory order exempting legal professionals from certain amendments to the *Income Tax Act* pending a constitutional challenge. The amendments require certain professionals to report certain information about certain transactions to the CRA, or pay fines of up to $100,000. This Court found irreparable harm because, among other reasons:

    a. lawyers would have to report to the CRA information that is subject to their duty of client confidentiality;

    b. as the criteria for which transactions must be reported require the application of legal judgment, the CRA may be able to use a lawyer's analysis of a transaction for reporting purposes against the lawyer's client in a subsequent tax dispute;

    c. it may be in a lawyer's best interest to recommend a structure that is not in the client's best interest (so the transition is not reportable and the lawyer does not have to report or risk a fine); and,

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[79] *Harm Reduction Nurses* at paras. 76-84.

d. if lawyers have to report confidential and arguably privileged information to the CRA, or if lawyers are put in a conflict with their clients, those consequences cannot be undone if the constitutional challenge succeeds.[80]

80. The transitional provisions of the Act do not pose any risks of anything like the sort arising in *Harm Reduction Nurses* or *Federation #2*. The transitional provisions do not impose any new obligations on lawyers. At worst, if the constitutional challenge succeeds and any constitutional problems with the Act are incurable by amendment (an unlikely outcome, as developed below), some time and modest resources may have been spent developing rules that are not ultimately implemented. The resources involved are not material to the Law Society or its members, and likely would not be wasted in any event: the work of the transitional board and transitional Indigenous council will likely result in good ideas that, if nothing else, can be considered by the benchers for incorporation into the Code or *Law Society Rules*.

VI. No chance of LGIC bringing substantive provisions into force anytime soon

81. When the LGIC eventually brings the substantive provisions into force, a number of consequences will occur that would be difficult—not impossible, but difficult—to unwind. However, a *quia timet* injunction to prevent prospective harm should not be granted unless the applicant establishes “a high degree of probability the alleged harm will in fact occur imminently or in the near future” without the injunction.[81]

82. In this case, there is no prospect of these consequences occurring anytime soon. The parties agree it will likely be 18 to 24 months before everything is ready for the

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[80] *Federation #2* at paras. 31-35.
[81] *Nourifard* at para. 44; Robert J. Sharpe, *Injunctions and Specific Performance* (Toronto: Thomson Reuters, 2023) at §1:20.

substantive provisions to be brought into force.[82] Accordingly, this application is premature. If this action is not resolved by the time the transition planning nears completion and it starts to become realistic that the LGIC may bring the substantive provisions into force soon, then the Law Society can renew this application.

VII. Balance of convenience weighs against a stay/injunction

83. It bears repeating that an order staying or enjoining legislation is fundamentally different from a private law injunction and should only be granted in the clearest of cases. As this Court recently emphasized, "most applications to enjoin legislation fail, even in the face of proof of irreparable harm to the applicant in the refusal of interlocutory relief".[83]

84. The Supreme Court of Canada has held that, in these sorts of applications, "it is wrong to insist on proof that the law will produce a public good".[84] In this case, it is presumed that the Act will improve access to legal services and make lawyer regulation more responsive to the public interest. The public benefits of the Act must weigh heavily in the balance of convenience.[85]

85. It is open to an applicant to attempt to demonstrate, with evidence, that staying the legislation would also serve some valid public interest. However, this does <u>not</u> involve a "judicial inquiry into whether the government is governing well".[86] The Constitution "does not give the courts a licence to evaluate the effectiveness of government action".[87] Thus, the Court should not assess whether the legislation will be successful in achieving its stated goals, or is preferable to alternatives.

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[82] Greenberg #1 at para. 133(e).
[83] *Shrieves* at para. 29.
[84] *Harper v. Canada (Attorney General)*, 2000 SCC 57 at para. 9.
[85] *Harper* at para. 9; see also *Shrieves* at paras. 29, 59; *Harm Reduction Nurses* at paras. 40-42; *Federation #2* at paras. 43-45; *Bacon v. British Columbia (Minister of Finance),* 2020 BCSC 578 at paras. 47-54.
[86] *RJR* at p. 346.
[87] *RJR* at p. 346.

86. Most of the Law Society's submissions transgress this principle. Its primary arguments are that the Act "does not best serve the public interest" and "will not improve access to justice or access to legal services".[88] It says "there is nothing in the Act that actually promotes [access to legal services] and which is not already available using existing legislation and regulatory tools".[89] It says a better way to improve access to legal services would be to use PST revenue to expand legal aid.[90] These submissions "amount to little more than an attack on the wisdom or efficacy of the impugned legislation"[91] and ask the Court to engage in the kind of "judicial inquiry into whether the government is governing well" that the Supreme Court of Canada has held is inappropriate.[92]

87. In *Harm Reduction Nurses* and *Federation #2*, the Court did not evaluate whether the impugned legislation is actually in the public interest, will succeed in realizing its objectives, or is preferable to conceivable alternatives. The Court found that the balance of convenience weighed in favour of a stay because the legislation would cause serious and specific harm that could not be reversed if the constitutional challenge succeeded: potentially preventable overdose deaths in *Harm Reduction Nurses* and disclosure of client confidences to the state in *Federation #2*.

88. Again, nothing like that arises here. If the transitional provisions of the Act are not stayed, the worst that will happen is that some modest resources will be spent developing rules that are never ultimately implemented. If the LGIC is not immediately enjoined from bringing the substantive provisions into force, nothing will happen. Again, the parties agree it will likely be 18 to 24 months before everything is ready for the substantive provisions to be brought into force.

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[88] Notice of application, part 3, paras. 36(a), 42. The Law Society relies on a number of letters, statements, and op-eds in which persons have expressed opinions about the Act: see Greenberg #1, Ex. 37-39, 41-48, 54. Notably, every one of them was authored by a lawyer or lawyers' organization. Conspicuous by its absence are the views of people who need legal services – i.e. the *public* whom the Law Society is meant to serve.
[89] Notice of application, part 3, para. 39.
[90] Notice of application, part 3, para. 41(b).
[91] Shrieves at para. 61.
[92] *RJR* at p. 346.

89. Staying the transitional provisions of the Act, so that transitional planning cannot begin unless and until this action is dismissed, would cause delay that is almost certain to prove unnecessary. It is an important consideration in the balance of convenience that, even if the Law Society succeeds, any constitutional issues identified with the Act will likely be fixable by amendment. As Peter W. Hogg explained:

> Full declarations of invalidity have been rare in *Charter* cases. There are only a few cases in the Supreme Court of Canada where the entire statute was struck down under the *Charter*. The first (and for many years only) case *was R. v. Big M Drug Mart (1985),* in which the Court held that the Lord's Day Act was wholly bad. In most other cases, a more tailored remedy has been awarded that focuses on only part of a statute (often all or part of a particular provision).[93]

90. For example, if the Court were to conclude (contrary to the defendants' position) that elected lawyers must constitute a majority of the board, a minor amendment would fix the problem. In that circumstance, a stay that prevented preliminary planning will have caused unnecessary delay in the implementation of legislation that must be presumed to be in the public interest.

91. Staying the transitional provisions would also deprive the parties and the Court of factual information that would be helpful. The plaintiffs express concern about how things might play out in the future. They are concerned about the role of the transitional Indigenous council and its influence on the first rules, for example. At this point in time, such concerns are entirely speculative. If the transitional planning process is allowed to begin, a concrete factual basis will begin to develop. 18 to 24 months from now (or longer), as the transitional planning process nears completion and concrete facts exist, the Court will be in a better position to assess irreparable harm and the balance of convenience.

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[93] Peter W. Hogg, Wade Wright, *Constitutional Law of Canada*, 5th ed supp. (Toronto: Thomson Reuters, 2023) at § 40:3.

92. The facts that develop through the transitional planning process may also be helpful on the merits. The Supreme Court of Canada has long cautioned against determining constitutional issues on the “unsupported hypotheses of enthusiastic counsel”.[94] The plaintiffs’ positions on the merits are grounded in concerns about what might happen in the future. This Court and the parties would benefit from allowing a factual foundation to develop, upon which the Court can properly adjudicate the constitutional issues raised in the action.

93. There will likely come a time when a decision must be made about which provisions of the Act, if any, can be brought into force while litigation is pending. That decision does not need to be made now and, respectfully, should not be made now in a factual vacuum.

VIII. Law Foundation’s alternative relief should be dismissed

94. The Law Foundation’s submissions in support of the relief sought by the Law Society are of limited assistance to the Court. The Law Foundation concedes that the transitional provisions which are currently in force are immaterial to the anticipated merger of the Law Foundation and the Notary Foundation, except to the extent that some preliminary planning processes may occur under the direction of the transitional board.[95] The Law Foundation does not (and could not) suggest that any harm, let alone irreparable harm, will befall the Law Foundation if the transitional provisions continue to operate.

95. The balance of the Law Foundation’s application is directed toward preventing the LGIC from bringing the balance of the Act into force. In particular, the Law Foundation seeks to enjoin the LGIC from bringing into force ss. 152-68, 171, and 242–253 of the Act[96] until the determination of the action on its merits.

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[94] *Mackay v. Manitoba*, [1989] 2 S.C.R. 357 at 361-362; see also *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086 at 1099; *British Columbia (Attorney General) v. Christie*, 2007 SCC 21 at para. 28.
[95] Law Foundation application response to the Law Society’s application at para. 22(b).
[96] Sections 152-68, 171, and 242–253 of the Act address the amalgamation of the Law Foundation and the Notary Foundation.

96. The Law Foundation's argument is premised on the assumption that, if the Law Foundation and Notary Foundation are amalgamated under the Act and the plaintiffs ultimately succeed at trial, the foundations would need to be separated. This submission finds no support in the evidence or the law. The plaintiffs do not take issue with the concept of a single regulator for lawyers and notaries, but rather with the proposed governance structure for that regulator. If the plaintiffs ultimately succeed in persuading the Court that the constitution requires a different structure for the board of the new regulator, such amendments can be made to the Act with no impact on the Law Foundation.

97. In any event, even if the Law Foundation was correct that the amalgamation of the new foundation could conceivably have to be undone following trial, the Law Foundation's response is premature, as the parties agree that the LGIC will not be in a position to bring the balance of the Act into force for at least 18 to 24 months.

Conclusion and Order Sought

98. The defendants respectfully submit the application should be dismissed without prejudice to the plaintiffs' right to reapply if there is a material change in circumstances and it becomes realistic that the LGIC may bring the substantive provisions into force in the near future.

All of which is respectfully submitted on June 17, 2024.

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Schedule A – Diagram of Board Composition