

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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Canada: British Columbia's draft law on regulation of the legal profession violates international law and standards

Bill 21 compromises the independence of lawyers and the rule of law

Briefing Paper

17 April 2024

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A. Introduction and overview in the international context

LRWC and its advocacy around the world including British Columbia, Canada

1. Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote international human rights law, the rule of law, and the integrity of legal systems through advocacy, legal research and education. LRWC is a volunteer-run non-governmental organization (NGO) in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN) since 2005.
2. Lawyers play key roles in the protection of the rule of law¹ and the integrity of legal systems including protection of the independence of both lawyers and judges and the administration of justice. LRWC members have over two decades of experience advocating for protection of the independence of the legal profession in more than 80 countries. Included in LRWC's work has been a focus on the failure of British Columbia (BC) to fulfil its obligation to implement human rights treaties binding on Canada and its provinces and territories. LRWC has been particularly concerned with BC's longstanding failure to ensure equal access to justice and its continued violation of the rights of Indigenous Peoples and persons,² despite BC's passage of a 2019 law requiring implementation of the UN *Declaration on the Rights of Indigenous Peoples* (UNDRIP).³
3. LRWC submits that it is essential to the rule of law, the protection of rights and freedoms, and the public interest that the profession of lawyers be independent of government and capable of protecting fundamental procedural and substantive rights within and outside of the formal legal system. A principal function of lawyers is to protect clients from rights violations imposed, promoted, or allowed by State authorities. It is also vital that lawyers' professional membership organizations ensure the protection of individual lawyers from unjustified interferences, restrictions, persecutions, or limitations that restrict their ability to represent clients effectively. This briefing paper identifies the international law and standards that require the BC government to protect the public interest by guaranteeing and protecting the independence of lawyers and their governing bodies.

Overview of LRWC's concerns and recommendations

4. On 10 April 2024, the BC government introduced Bill 21, *Legal Professions Act*, to the Legislative Assembly of BC.⁴ The Bill, if enacted, would replace the 1998 *Legal Profession Act*⁵ and the *Notaries Act*⁶ with a "single regulatory authority" over lawyers, notaries, and paralegals.

5. Since November 2022, LRWC has repeatedly⁷ alerted the BC government that its published plans for new legislation to amend or replace the 1998 Legal Profession Act were not in compliance with the *International Covenant on Civil and Political Rights* (ICCPR)⁸ and the *UN Basic Principles on the Role of Lawyers* (UN Basic Principles).⁹ In March 2024, LRWC called on the Attorney General of BC (AG) to release the full provisions of the draft law and ensure full public consultation before tabling any bill in the Legislative Assembly of BC.
6. A second reading of Bill 21 is scheduled for 22 April 2024. The current legislative session ends on 16 May 2024, suggesting the BC government’s intention to rapidly move Bill 21 to law. This rapid process fails to facilitate adequate public consultation and informed public debate, particularly in light of the fundamental constitutional and human rights at stake regarding the independence of lawyers.
7. The stated purpose of the BC government’s introduction of Bill 21 is to “modernize the regulatory framework for legal service providers in British Columbia to help make it easier for the public to access legal services and advice.” Bill 21 requires the regulator “exercise its powers and perform its duties under this Act in the public interest.” However, Bill 21 fails to define the “public interest,” violates the independence of the profession of lawyers, and represents a continuing failure to address BC’s serious lack of access to justice.
8. The main thrust of Bill 21 is to abolish the Law Society of BC (LSBC) as the self-governing professional membership association of all BC lawyers who elect their governance body (“Benchers”). Bill 21 replaces the LSBC and the Society of Notaries Public of BC with a 17-member regulatory body called “Legal Professions BC,” which would have only five members elected by lawyers. See paragraphs 14 and 15 below for details of the composition and selection of the governing body.
9. Bill 21 was introduced over strong objections by the LSBC, the Canadian Bar Association BC Branch (CBABC), the Federation of Law Societies of Canada, and other BC lawyers’ associations.¹⁰ It is important to emphasise that the LSBC does not object to the concept of a single regulator or to the licensing of paralegals. There have been persistent objections to the lack of transparent consultation, and to the intrusion on the independence of the profession of lawyers, to the detriment of the rule of law and to the independence of lawyers essential to fulfilment of rights to legal representation.
10. LRWC’s examination of Bill 21 confirms that it fails to comply with the requirements of the ICCPR¹¹ and the UN Basic Principles.¹² This briefing paper does not include analysis of BC’s obligations under other treaties, declarations, and instruments relevant to the right of equality of access to justice.¹³ LRWC’s summary analysis of Bill 21 is set out in paragraphs 13 to 22 below.

11. In summary, Bill 21:

- a. Represents BC's persistent failure to ensure to all persons in BC adequate remedies for violation of their rights (often referred to as "access to justice") (ICCPR Article 2), including legal representation by an independent lawyer of their own choosing in criminal, civil, and administrative law matters (grounded in ICCPR Article 14). See paragraphs 32-36 below.
- b. Violates the rule of law by failing to respect, protect, and ensure the separation of powers and the self-governance of the legal profession that is essential to the independence of lawyers, which is in turn essential to fulfilment of everyone's rights to legal representation. See paragraphs 37-46 below.
- c. Fails to comply with BC's duty to ensure democratic promulgation of laws, including fulfilment of the right to adequate participation at all levels of decision making in all matters that affect their rights (ICCPR Article 25). See paragraphs 47-50 below.

12. LRWC calls on the BC government to withdraw Bill 21 and to engage in a full, cooperative, and transparent consultation process with the LSBC, BC lawyers, notaries and paralegals, judges, law schools, civil society groups, and the general public, along with Indigenous Peoples, with the intention of ensuring free, prior, and informed consent of all relevant stakeholders to this and all other proposed legislation. Full recommendations to the government and to lawyers' organizations are found in paragraphs 51-52 below.

B. LRWC's analysis of Bill 21

13. This briefing paper is confined to concerns about the role of lawyers. LRWC takes no position on the idea of a single regulator for lawyers, notaries, and paralegals or on the roles of notaries and paralegals in providing legal services to the public, other than to affirm that lawyers are to be regulated by the members of the profession of lawyers, and not by others. LRWC also notes comments by the LSBC that the BC government in May 2023, declined its proposals for regulation of paralegals, instead deciding unilaterally to pursue its current legislative agenda.¹⁴
14. A central concern is the failure of Bill 21 to set out a definition of the "public interest," leaving its meaning vague and subject to overbroad interpretation in violation of the customary international law principle of legality.¹⁵ In this regard, Bill 21 discontinues a key provision of the 1998 *Legal Profession Act*, which sets out the meaning of the "public interest," stating:

3 It is the object and duty of the society [LSBC] 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, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law (underlines added).

Bill 21 fails to make any reference to the rule of law or the rights and freedoms of all persons.

15. In summary, Bill 21, among other provisions, would:

- a. Replace the LSBC, a compulsory membership organization of BC's approximately 14,000 lawyers, and the approximately 400-member Society of Notaries Public of BC, with a single entity called "Legal Professions BC" to be composed exclusively of 17 members. Those 17 members would also constitute its governing "board of directors." (See sections 5 to 8 of Bill 21.)
- b. Abolish LSBC as the membership body of lawyers through which, in association with other BC lawyers, they exercise their right and duty to govern and regulate themselves in the public interest. Members of the bar would no longer be "members" of the LSBC or the legal profession. Instead, they would become "licensees" of one of several "legal professions" established by the Bill.
- c. Abolish the LSBC's governance body, currently composed of 25 "Benchers" all elected by lawyer members of the LSBC, plus the Attorney General (ex officio) and six (6) persons appointed by the BC government.¹⁶
- d. Replace the LSBC with a 17-member entity and board to be elected or appointed according to the following formula:
 - i. five (5) directors would be lawyers elected by licenced lawyers;
 - ii. two (2) directors would be notaries elected by notaries;
 - iii. two (2) directors would be elected by paralegals (once there are at least 50 regulated paralegals; otherwise, they would be appointed by a majority of the board);
 - iv. three (3) directors would be appointed in a "merit-based process" by government, one of whom must be an "individual of a First Nation;"
 - v. the remaining five (5) directors would be appointed by a majority of the board of Directors using a "merit-based" process, including four (4) lawyers and one (1) non-lawyer notary; one of these board-appointed persons must be an "Indigenous person." (See Sections 8-10 of Bill 21.)
- e. Establish an independent "Legal Professions Tribunal" (Tribunal) to review decisions of board committees concerning licencing, including denial of enrolment, suspension, or cancelling of licences. The Tribunal would be selected by the board and would include only two lawyers among its eight members. Members of the Tribunal are appointed in "merit-based" processes by the Chair of the Tribunal, who is appointed by the board. The Chair, who is not required to be a lawyer, may issue "practice directives." There is an appeal from Tribunal decisions to the Court of Appeal. (See Sections 95-132 of Bill 21.)
- f. Establish an advisory Indigenous Council appointed by the board. (See sections 29-34 of Bill 21.)
- g. Create a Chief Executive Officer (CEO) who is appointed by the board but whose functions are otherwise not overseen by the board. Rather, the CEO has its own statutory

powers. The CEO has consultation and other duties in relation to the Indigenous Council and Indigenous Peoples pursuant to the UNDRIP, and to “work with the Tribunal chair to ensure the independence of the Tribunal from the Regulator.” However, Bill 21 provides the CEO with no statutory duty to consult with lawyers, notaries, and paralegals or to ensure their independence. (See sections 20-21 of Bill 21.)

- h. Provide the board with rule-making powers that require consultation with the Indigenous Council but no requirement to consult with lawyers, notaries, and paralegals, nor any independent review procedure to determine the fairness or legality of the board’s rules. (See sections 25 to 28 of Bill 21.)
16. In summary, under Bill 21, the 14,000 lawyers in BC would elect five members of the 17-member governance board (one elected director for each 2,800 lawyers). By contrast, the 400 notaries in BC and as few as 50 paralegals would each be represented by two elected board members (one elected director per 200 notaries and one elected director per 25 paralegals). Those 12 board members – nine elected and three appointed – of which only five are elected lawyers – would then appoint to the board four additional lawyers and one additional notary). Elected lawyers on the board will be in the minority – 5 out of 12 – and would have no majority say in the additional appointments. The reduction of BC lawyers’ elected members to five also provides inadequate representation for BC’s diverse urban and rural regions. The five elected lawyers on the full board of 17 would have no effective power in decisions of the board irrespective of how damaging such decisions might be to lawyers, the public, the rule of law, or the integrity of BC’s legal system.
 17. The BC government has attempted to demonstrate the independence of their proposed board by noting that the AG would no longer have a seat on the board (as the AG does on the LSBC), and that the overall number of government appointees would be reduced.¹⁷ Given the reduction in size of the governing body, the proportion of government appointees would be slightly reduced from about 22 percent to approximately 18 percent. At the same time, the proportion of lawyers on the governing body would be dramatically reduced to a bare majority of nine with only five of the 17 elected by BC lawyers and four additional lawyers appointed by the partially-elected board. The percentage of board members elected by notaries and paralegals or appointed by the partially-elected board would be dramatically increased. See paragraphs 15(c) and (d) and 16 above for more particulars demonstrating the unjustly disproportionate composition of the proposed governing board.
 18. The board’s executive committee of no more than five persons would have only one lawyer. One member of the executive committee would be required to be a government appointee, not necessarily a lawyer. The chair of the board would not necessarily be a lawyer and could be a government appointee. The CEO would not need to be a lawyer. Committees appointed by the board, including discipline committees would have minimal representation of lawyers.
 19. A transitional board of seven persons appointed by the Benchers of the LSBC, none of whom are required to be lawyers or Benchers, would be created to prepare and facilitate transition from the existing *Legal Profession Act* to Bill 21’s provisions. Members of the transitional board would be appointed as follows: four by the benchers of the LSBC, one by the Society

of Notaries Public of BC, one by the BC Paralegal Association, and one by the BC government. Any transitional board members not appointed within two months of s.223 coming into force, would be appointed by the BC government. The LSBC is required to cooperate with the transition board, but the transition board is not required to consult with the LSBC or lawyers.

20. Potential resistance to the implementation of Bill 21, if enacted, is addressed in its offence and penalty sections (Sections 202-204), which include punishment of up to \$200,000 or two years of imprisonment for anyone who “wilfully interferes with or obstructs another person in the exercise of a power or performance of a duty under this Act or in carrying out an order under this Act.”
21. Thus, Bill 21 removes from the profession of lawyers in BC their right to association for the purpose of self-governance and self-regulation. Lawyers’ right to freedom of association would be limited to joining voluntary bar associations that have no governance or regulatory authority. With only five elected representatives on the 17-member board, lawyers will be unable to protect the public’s rights to representation by lawyers or the right of lawyers to fully discharge professional duties free from regulatory or other interference by State or other external actors.
22. While Bill 21 requires all directors to take and sign an oath of office that includes a “commitment to act in the public interest,” there is no statutory requirement that elected or appointed directors act independently, nor is there any definition of the public interest. What constitutes the public interest would apparently be determined by the board and appointees such as the CEO and the Tribunal hearing panels. See sections 136, 85 and 114 and 122 respectively.
23. Bill 21 eliminates the right of the body of BC lawyers to oversee or effectively participate in the governance of lawyers, other than the election of a minority of five lawyers to the board.

C. The international context: BC must provide a global model of respect for the rule of law and international human rights

24. The goal of “modernization” of the legal profession and legal systems must first and foremost focus on implementation of international human rights law and standards. Modernization entails adherence to international law, standards, and best practices that have emerged over the past several decades, including the UN Basic Principles, as interpreted by contemporary experts, including the Special Procedures of the UN Human Rights Council.
25. In LRWC’s experience, authoritarian governments hamper effective opposition to repressive measures by creating laws that violate the independence of judges and lawyers. Laws that create non-independent regulatory bodies, together with the rules made by those bodies, are often misused to facilitate unwarranted vilification, discipline, suspensions, disbarments, or judicial harassment of lawyers or the legal profession.

26. Canadian jurisdictions, including BC, must in all legislation, policies, and practices, set exemplary models of adherence to the rule of law and international human rights law and standards.
27. The AG's Intentions Paper, Update, and other statements subsequent to the introduction of Bill 21 have continually stated that the BC government's proposals will not affect the right of individual lawyers to independence in the representation of their clients. While protection of the independence of individual lawyers is crucial, it is incomplete. Independence of lawyers must not be individualized or divorced from lawyers' right to form their own independent, self-governing associations and governance bodies. The latter is necessary to enable lawyers as a professional association to protect and ensure the fulfilment of the public interest in legal representation by a lawyer of choice who is free to act without interference by State or non-state actors.
28. In LRWC's experience, the lack of strong, independent self-governing associations that protect lawyers' rights leads to a chilling effect on individual lawyers, who become cautious or unwilling to represent unpopular clients or causes for fear of offending government appointees or authorities, or non-independent governing bodies. A bar that is stripped of its right of association for robust self-governance cannot be relied on to provide lawyers with the necessary protection to enable them to conduct vigorous representation in the face of powerful official or corporate interests. This ultimately reduces the ability of the judiciary to ensure independent and impartial justice.
29. Bill 21's offence sections 198-204 create offences and penalties that potentially violate the principle of legality.¹⁸ An example of a potentially illegitimate offence is Bill 21's section 198(2) (d) which provides for harsh fines or imprisonment for a person who "wilfully interferes with or obstructs a person in the exercise of a power or performance of a duty under this Act or in carrying out an order under this Act." This offence is vague and has the potential for overbroad interpretation. Given the wide powers of the board to make rules under the Act outside any democratic process, a lawyer could potentially risk charges for peacefully protesting the enactment or implementation of the provisions of Bill 21.

D. International law and standards related to the role of lawyers

BC's obligation to implement international law and standards

30. At international law, all governments¹⁹ at every relevant level (national, regional or local) or branch (executive, legislative or judicial)²⁰ are obligated to ensure the right to equal and effective access to remedies for violations of rights (often termed "access to justice") as well as democratic promulgation of laws. Equality of access to justice entails effective administration of justice, including competent, independent courts and lawyers. Democratic promulgation of laws requires effective implementation of everyone's right to participate in public affairs, including public consultation on proposed laws that affect rights.²¹
31. International standards stipulate that the appropriate role of government is to engage cooperatively with the legal profession to facilitate the proper functioning and independence

of lawyers and their governance bodies.²² The role of the legal profession is to cooperate with governments to ensure that all legislation, policies, and practices regarding access to justice, the administration of justice, and the governance of the legal profession, adhere to international human rights law and standards and ensure the rights of all members of the public to timely and confidential access to independent legal counsel of choice without interference by State or non-state actors.

Access to justice: Rights to remedies and legal representation of choice

32. The BC government's stated rationale for the proposed legislation is to "modernize" the regulatory framework for access to legal services. The primary means proposed by the BC government is to facilitate "better access to legal services for the public"²³ by broadening the range of practitioners authorized to provide legal representation.
33. However, the BC government's proposals do not contemplate updating relevant legislation in accordance with contemporary international human rights law and standards related to access to justice. In particular, the BC government has not ensured the right of access to justice through the provision of adequate legal aid in all criminal, civil, and administrative law matters where free, competent, independent legal assistance is required for effective access to the courts and fair hearings, as required by international standards.²⁴
34. The BC government has chosen to focus its legislative efforts on the reorganization of the governance and regulatory body lawyers and a redefinition of the practice of law to include additional groups of legal service providers authorized to practice law, such as paralegals and notaries. To the knowledge of LRWC, the BC government has produced no information or evidence-based opinions demonstrating that the proposed measures have the capacity or are likely to improve access to the courts, competent legal representation, or legal remedies.
35. While international standards recognize the value of a range of legal practitioners including paralegals, choice of legal representation is a fundamental principle of international law. LRWC is concerned that extending the definition of the practice of law and the range of groups entitled to practice law to paralegals, notaries, and others, particularly without meaningful consultation, could potentially result in depriving people of the right to be represented by a lawyer. This could happen, for example, if government provided funding of legal aid schemes to allow for paralegal services but not representation by a lawyer.
36. To substantially increase access to adequate and competent legal representation by qualified lawyers or other recognized legal practitioners, LRWC recommends that the BC government dedicate the full amount of provincial sales taxes collected on the legal services of lawyers to fully fund Legal Aid BC so as to ensure the right of all persons to representation by a lawyer in all cases where they require legal representation by a lawyer to secure their rights.

Concern about the independence of the legal profession

37. The BC government has proposed a law that would unilaterally abolish the 14,000-member Law Society of BC (LSBC) composed of lawyers, replacing it with a 17-member corporation which also constitutes its board, a CEO with significant rule-making powers and limited

oversight, and an advisory Indigenous Council. BC lawyers will be “licensees” with no role in the governance of lawyers other than electing five of 17 board members.

38. The dramatic changes proposed by Bill 21 would result in serious impairment of democratic governance by lawyers and contravene the UN Basic Principles,²⁵ which require that lawyers’ governing body be elected by lawyers (Principle 24). The current BC *Legal Profession Act*²⁶ provides for the AG’s ex officio status as a Bencher plus an additional five government appointees. This, too, contravenes the UN Basic Principles, which stipulate that all members of lawyers’ governing bodies be lawyers elected by the members of the legal profession (referring to lawyers).
39. Bill 21 contradicts the UN Basic Principles by arbitrarily curtailing the right and duty of lawyers to participate in their governance and by restricting their role to the election of five board members. The right of lawyers to self-regulate cannot be meaningfully carried out without rights to participate in decision making by the governing body. Members of the bar must remain free to reject measures proposed or imposed by the governing body that endanger or restrict peoples’ right to representation by an independent lawyer of choice.
40. The Special Rapporteur on independence of judges and lawyers has affirmed that the “executive body of the [lawyers’] professional association shall be elected by its members and shall exercise its functions without external interference,” citing the UN Basic Principles, Article 24.²⁷ The Special Rapporteur has also emphasised “that the central role in the establishment, work and appointment of executive bodies of the legal profession needs to remain with the lawyers...” and that “Bar associations should not act as a part of a bureaucratic apparatus allowing for government control of the legal profession; they should operate as professional associations, working to protect the rights of its members.” The Special Rapporteur specifically included reference to situations where “membership in the organization is compulsory.”²⁸ The Special Rapporteur’s reference to “bar associations” refers not only to voluntary organizations like the Canadian Bar Association or local bar associations, but also to professional regulatory associations and law societies such as the LSBC.

International standards concerning the public interest and protection of lawyers’ interests

41. The BC government suggests that its motivation for Bill 21 is to prevent members of the BC legal profession from seeking to protect unidentified self-interests at the expense of the public interest. LRWC has not seen evidence to support the BC government’s implications that BC lawyers have in the past or might in the future abuse their authority as members of the LSBC to promote their unjustified personal self-interests.²⁹ In fact, international standards contemplate that professional associations of lawyers must be able to protect their members, individually, as well as the public interest, and that these interests are intertwined.

42. The preamble of the UN Basic Principles confirms that:

“...professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest” (underlines added).

43. UN Basic Principle 24 further stipulates that:

Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference” (underlines added).

44. The interests referred to as “their interests” in UN Basic Principle 24 refer to the professional interests of lawyers to ensure the fundamental purpose of the legal profession to uphold

“... adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession...”

45. It is not properly within the jurisdiction of the BC government, nor is it in the public interest, to unilaterally abolish the LSBC as a fully independent membership organization with the right to determine its own governance structures.

46. LRWC takes no position concerning the proposal for a single regulator for the licencing of lawyers, paralegals, notaries, and others, nor on the particular composition of the governing body of lawyers, other than what has been stated above. However, any such changes must be decided by the LSBC, including its members, in cooperation with the BC government, and not unilaterally by the BC government.

Duty to consult on legislation: Right to participate in public affairs

47. Prior to the introduction of Bill 21, the BC government declined to provide the draft legislation to the membership of the legal profession, civil society organizations, or the public. LRWC is not privy to information about the scope, type, or levels of consultation that may have taken place with Indigenous Peoples about this proposed legislation. LRWC understand that a few individuals, whose identities were not made known to LRWC, viewed the draft law, and that all of these people were required to sign non-disclosure agreements. LRWC understands this to be the BC government’s standard practice concerning consultation on draft legislation.

48. The BC government’s practice of declining broad and full consultation with stakeholders and the public on draft legislation that affects rights is a constraint on the right of public participation guaranteed by Article 25 of the ICCPR and is contrary to the public interest.
49. The UN Special Rapporteur on the situation of human rights defenders has emphasised the requirement of public consultation on proposed laws, saying that before a piece of legislation is adopted, “it must be promulgated democratically, meaning that it should be subject to broad consultations with individuals and associations concerned, including civil society” (underline added).³⁰ Full public consultation should occur before legislation is tabled in the legislature.
50. The process of consultation on legislation in BC does not comply with international standards, best practices, or emerging norms regarding public consultation.³¹ Democratic promulgation of legislation requires fully informed, open, and consensus-seeking processes with time for all stakeholder groups, in this case, lawyers, notaries, paralegals, other legal services providers, judges, civil society groups, Indigenous Peoples, and the public, to discuss and offer appropriate revisions. In the case of the currently proposed legislation on the legal profession, the process of consultation has lacked sufficient transparency and specificity to satisfy BC’s obligations under international law and standards, thereby denying sufficient opportunities for participation and open debate by those whose rights may be affected, including lawyers, paralegals, notaries public, relevant sectors of civil society in Canada, Indigenous Peoples, and all members of the public.

E. Recommendations to the BC government and the legal profession

51. LRWC recommends that the BC government:
 - a. Immediately withdraw Bill 21, which is fundamentally flawed;
 - b. Fully consult and cooperate with lawyers, notaries, paralegals, relevant civil society organizations, judges, law schools, the general public, and Indigenous Peoples on all further intentions for proposed laws related to the governance of lawyers or other practitioners engaged in the provision of legal services.
 - c. Create, in cooperation with all actors within the justice system, including lawyers and other providers of legal services, a comprehensive plan on access to justice, including utilization of the Provincial Sales Tax (PST) on legal services to fully fund Legal Aid BC so as to ensure the right of all persons to representation by a lawyer in all cases where they require representation by a lawyer to secure their rights.
 - a. Ensure adequate education and training of all public officials on international human rights law, standards, and best practices.³²
52. LRWC recommends that the LSBC, bar organizations, and lawyers urgently take all necessary measures, in cooperation with the BC government, to:
 - b. Promote or ensure laws, policies, and practices that uphold and guarantee the independence of lawyers in BC in accordance with international law and standards.

- c. Promote or ensure laws, policies, and practices to ensure access to justice for all persons in BC, including adequate provision of legal aid in accordance with international human rights law and standards.
- d. Ensure adequate education and training of all lawyers and other legal practitioners on international human rights law, standards, and best practices.³³

¹ In accordance with UN principles, LRWC defines the rule of law as:

“a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (underlines added).

UN Security Council, Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), 2004, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law-archived/>.

² See the list of LRWC’s research, education, and advocacy concerning BC since 2002, <https://www.lrwc.org/lrwc-british-columbia-canada-list/>.

³ *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44, <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>

⁴ Bill 21, *Legal Professions Act*, 5th Session, 42nd Parl, 2024, 1st reading, 10 April 2024, <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/5th-session/bills/first-reading/gov21-1>. Second reading is scheduled for 22 April 2024, see <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/5th-session/orders-of-the-day/o240422a>.

⁵ *Legal Profession Act*, [SBC 1998] Chapter 9 [LPA 1998], https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/98009_01.

⁶ *Notaries Act*, R.S.B.C. 1996, c. 334, https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96334_01.

⁷ LRWC’s relevant submissions to the AG since 2022 are:

- Submission of November 2022 expressing concern about the Attorney General of BC’s (AG) September 2022 Intentions Paper ([Intentions Paper], <https://engage.gov.bc.ca/app/uploads/sites/121/2022/09/MAG-Intentions-Paper-September-2022-1.pdf>). LRWC’s submission of November 2022 may be found at https://www.lrwc.org/wp-content/uploads/2022/11/LRWC.Statement.BC_.LegalProfessions.Intentions.18Nov2022.pdf;
- Expression of concerns in person to the BC AG on 26 March 2024 urging public consultation on the full provisions of the draft legislation after reviewing the Legal Professions Regulatory Modernization: Ministry of Attorney General Public Update [Update], 18 March 2024, section 6.0, <https://engage.gov.bc.ca/app/uploads/sites/121/2024/03/LPA-Reform-Public-Update.pdf>.

- Brief dated 10 April 2024 expressing concern that then proposed legislation would violate international law and standards on independence of the legal profession, https://www.lrwc.org/wp-content/uploads/2024/04/BCAG.LegalProfession.Brief_10April2024.F.pdf. See the accompanying letter of 10 April 2024 at https://www.lrwc.org/wp-content/uploads/2024/04/AG.letter.April2024.10April2024.FF_NOSIG.pdf.
- The current briefing paper elaborates on concerns iterated in LRWC’s 10 April 2024 brief and is found at https://www.lrwc.org/wp-content/uploads/2024/04/BCAG.LegalProfession.Brief_10April2024.F.pdf along with a cover letter copied to other stakeholders as well as the UN Special Rapporteur on independence of judges and lawyers and the UN Special Rapporteur on the situation of human rights defenders. The accompanying letter is at https://www.lrwc.org/wp-content/uploads/2024/04/AG.letter.April2024.10April2024.FF_NOSIG.pdf.

⁸ *International Covenant on Civil and Political Rights* [ICCPR], 16 December 1966, acceded to by Canada in 1976, Articles 2, 14, 22, and 25, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁹ *UN Basic Principles on the Role of Lawyers*, [Basic Principles] 7 September 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

¹⁰ LSBC, <https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2024/updates-and-timeline-proposed-single-legal-regula/>. The Federation of Law Societies of Canada also requested full public consultation. Twelve lawyers’ organizations expressed concern to the BC AG about the Single Legal Regulator reform process, signed by the Canadian Bar Association, BC Branch, Trial Lawyers Association of BC, Federation of Asian-Canadian Lawyers (BC), South-Asian Bar Association (BC), Alberta Civil Trial Lawyers Association, Saskatchewan Trial Lawyers Association, Abbotsford & District Bar Association, Cowichan Valley Bar Association, Kamloops Bar Association, South Cariboo Bar Association, Surrey Bar Association, Vancouver Bar Association, https://www.cbabc.org/CBAMediaLibrary/cba_bc/pdf/Advocacy/Submissions/Letter_to_Attorney_General_Concern_Single_Legal_Regulator_Reform_Process.pdf;

¹¹ ICCPR, *supra* note 8

¹² UN Basic Principles, *supra* note 9.

¹³ Other treaties relevant to access to justice include the *International Covenant on Economic, Social and Cultural Rights*, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>; *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>; *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>; *Convention on the Rights of the Child* (CRC), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; *Convention on the Rights of Persons with Disabilities*, <https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx>; Inter-American Commission on Human Rights (IACHR), *American Declaration of the Rights and Duties of Man*, <https://www.oas.org/en/iachr/mandate/Basics/declaration.asp>; UN Declaration on Human Rights Defenders, <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders>

¹⁴ BC government responds to Law Society request to license paralegals, 25 May 2023, <https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2023/bc-government->

[responds-to-law-society-request-to-l/](#). In 2020, the Benchers approved the Licensed Paralegal Task Force's proposal to advance the licensed paralegal initiative within a "regulatory sandbox," <https://www.lawsociety.bc.ca/our-initiatives/access-to-justice/licensed-paralegals/>.

¹⁵ The UN Human Rights Committee, in its General Comment No. 34, explains the principle of legality as follows:

... a norm, to be characterized as a "law," must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.

UN Human Rights Committee (HRC), *CCPR General Comment No. 34: Freedom of Opinion and Expression*, 12 September 2011, CCPR/C/GC/34, para. 25, available at:

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

¹⁶ LPA 1998, sections 4, 5 *supra* note 5.

¹⁷ Statement of the AG on 12 April 2024 at a conference sponsored by the CBABC entitled Through the Looking Glass, <https://www.cbabc.org/BCLC-Independence/Home>.

¹⁸ Principle of legality, *supra* note 15

¹⁹ *Vienna Convention on the Law of Treaties*, U.N.T.S. Vol. 1155, Article 26-27, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

²⁰ UN Human Rights Committee, *General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant*, [GC 31], UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para.3, available at <http://www.refworld.org/docid/478b26ae2.html>. The UN Human Rights Committee is the body of independent experts established by the ICCPR and mandated to oversee States Parties' implementation of the treaty. The International Court of Justice (ICJ) has confirmed that interpretations of the Committee and other treaty monitoring bodies are to be given great weight. *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of The Congo)*, ICJ, 30 November 2010, para 66-68, <https://www.icj-cij.org/sites/default/files/case-related/103/103-20101130-JUD-01-00-EN.pdf>.

²¹ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, A/67/292, 10 August 2012, paras 65-67, <https://undocs.org/Home/Mobile?FinalSymbol=A%2F67%2F292&Language=E&DeviceType=Desktop&LangRequested=False>.

²² Basic Principles, Article 25 *supra* note 9,

²³ *Intentions Paper*, at p 5, *supra* note 7, .

²⁴ LRWC summarized the international law and standards in its 2013 publication, *The Right to Legal Aid: A Guide to International Law Rights to Legal Aid*, <https://www.lrwc.org/the-right-to-legal-aid-a-guide-to-international-law-rights-to-legal-aid/>; LRWC, *International Law Obligations to Provide Legal Aid: Submission to the Public Commission on Legal Aid*, March 2013, <http://www.lrwc.org/wp-content/uploads/2012/03/Legal-Aid-LRWC-Oct-25-2010.pdf>.

²⁵ Basic Principles, *supra* note 9.

²⁶ LPA 1998, Sections 4, 5, *supra* note 5.

²⁷ Report of the Special Rapporteur on the independence of judges and lawyers, Diego Garcia-Sayan, Report to the UN General Assembly, A/73/365, 5 September 2018, para. 38, <https://www.ohchr.org/en/calls-for-input/bar-associations-report>.

²⁸ A/HRC/50/36, 22 April 2022, *ibid.* See also the Report of the Special Rapporteur on the independence of judges and lawyers, Monica Pinto, Report to the UN General Assembly, A/71/348, 22 August 2016, Section D, <https://undocs.org/A/71/348>.

²⁹ Update, section 6.0, *supra* note 4.

<https://engage.gov.bc.ca/app/uploads/sites/121/2024/03/LPA-Reform-Public-Update.pdf>.

³⁰ UN, A/67/292, 2012, paras 65-67, *supra* note 21

³¹ See, e.g. Guidelines on the right to participate in public affairs, UN High Commissioner for Human Rights, A/HRC/39/28, 20 July 2018, <https://www.ohchr.org/en/calls-for-input/report-guidelines-right-participate-public-affairs>; Promotion, protection and implementation of the right to participate in public affairs in the context of the existing human rights law: best practices, experiences, challenges and ways to overcome them. Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/30/26, 23 July 2015, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F30%2F26&Language=E&DeviceType=Desktop&LangRequested=False>.

³² See the UN Human Rights Council, United Nations Declaration on Human Rights Education and Training : resolution / adopted by the Human Rights Council, A/HRC/RES/16/1, 8 April 2011, <https://www.ohchr.org/en/resources/educators/human-rights-education-training/united-nations-declaration-human-rights-education-and-training>; also see LRWC, The Right to Know Our Rights: International law obligations to ensure international human rights education and training, 2012, <http://www.lrwc.org/wp-content/uploads/2012/05/The.Right.to.Know.Our.Rights.May2012online1.pdf>.

³³ *Ibid.*