

Briefing Notes on Bill 21, “Legal Professions Act.”
Catherine Morris, member and former Executive Director, [Lawyers Rights Watch Canada](#)
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Bill 21 “Legal Professions Act” is fundamentally flawed and should be withdrawn. Why?

These notes are based on LRWC’s 17 April 2024 briefing paper on Bill 21. See the [full paper](#).

1. *The public interest: BC government says Bill 21 aims to protect the public interest. But the public interest is already protected by the current *Legal Profession Act* (LRWC paper, paragraph 14)*

- a. The current *Legal Profession Act* already makes it “the object and duty” (underline added) of the Law Society of BC to uphold and protect the public interest (LPA 1998, section 3), including the “rights and freedoms of all persons.”
- b. Bill 21 provides no definition of the “public interest,” which renders its meaning in the Bill vague and potentially subject to overbroad interpretation. The absence of a definition of the “public interest” makes Bill 21 unclear as to how it would advance the public interest.
- c. The duty to protect rights and freedoms of all persons entails the duty to ensure and enable respect, protection and fulfilment of the rights of Indigenous peoples, including affirmative action necessary to redress existing inequalities and injustices within an independent legal system and an independent profession of lawyers.

2. *Access to legal services: The BC government says Bill 21 would expand access to legal services, however:*

- a. It is not clear how Bill 21’s fundamental and unilateral change of the regulatory infrastructure for lawyers, notaries, and paralegals will provide more equality of access to legal services for the BC public than would, for example, existing proposals by the Law Society of BC for licencing paralegals, [rejected by the Attorney General in 2023](#).
- b. Legal aid in BC fails to measure up to international standards. Legal aid remains inadequate for family law, child protection, criminal law and poverty law. (See more on [legal aid in BC](#).) Among other measures to ensure legal aid according to international standards, the BC government should fully dedicate the PST imposed exclusively on lawyers to the funding of legal aid as promised when the tax was imposed on lawyers' services in [1992 by the then NDP](#) government.

3. *Democratic promulgation of laws: Bill 21 is not being promulgated democratically: Siloed consultation and engagement with stakeholders together with silencing of those consulted (see references in LRWC, paras 47-50).*

- a. International standards provide that all members of the public – particularly affected members of the public – are entitled to be consulted on any proposed law that affects rights – before it is introduced in the legislature.
- b. BC lawyers have not been consulted, except through non-disclosure agreements (NDAs) with several, but not all, Benchers. This lack of transparency in engagement process means that BC lawyers remain largely unaware that:

- i. Bill 21 would abolish their law society, their membership rights of self-governance of lawyers, and dramatically reduce their right to elect their governing board;
 - ii. Bill 21 would provide new offences (Bill 21 sections 198-204), which would impose huge fines (\$200,000) and/or imprisonment of up to two years, including for those who “interfere” with those carrying out their duties, and those who file “incomplete” applications for licences. The 1998 LPA contains no offence provisions, and such offences and punishments are not necessary. These offences are broad and vague and may not measure up to international standards. For example – what does it mean to “interfere” (198(2)(d)) or “incomplete” (Section 198(2)) and 198(2)(b)). These offences may potentially be subject to overbroad or discriminatory interpretation.
 - c. Indigenous Peoples’ organizations have also been subjected to NDAs during BC’s legislative processes. While there was a lengthy public engagement period starting in 2022 on the broad brush-strokes of the proposed legislation, public and stakeholder engagement concerning Bill 21’s provisions has been non-transparent:
 - i. Consultation and engagement was conducted by BC officials with organizations and persons, based on unknown criteria;
 - ii. Consultations with Indigenous Peoples and other engagements with stakeholders were subjected to NDAs, which prevented those consulted from communicating with their constituencies or with one another;
 - iii. Open deliberation among Indigenous Peoples, stakeholders, and the public has been time limited and was not allowed until Bill 21 was introduced on 10 April 2024;
 - iv. The BC First Nations Justice Council has publicly endorsed the bill, but it is not known what kind of consultation was held among the BCFNJC’s constituents.
 - v. It is not known which Indigenous Peoples’ groups have been consulted on the provisions of Bill 21, or at what levels.
4. ***The rule of law: The independence and integrity of legal systems require independence of the legal profession as a whole, not only individual lawyers*** (see LRWC briefing paper paragraphs 41-46)
- a. Bill 21 abolishes the Law Society of BC to which all lawyers in BC belong and vote for their board (called “Benchers”). International human rights standards provide that all lawyers should be full, voting members of their governing organizations including their regulatory bodies.
 - b. Bill 21 disenfranchises BC lawyers from participating in their governing body, except for electing a minority of 5 lawyers to a 17-member partially-elected board. It is not enough for a partially-elected board to appoint four more lawyers to create a bare majority of lawyers. All BC lawyers should have the right to vote for all board members of their regulatory bodies.
 - c. Independence of the legal profession is essential to and intertwined with the independence and integrity of the judiciary and the legal system as a whole. See LRWC paper paragraph 28.

- 5. *Rights of Indigenous Peoples: Attempts to remedy failures to respect rights of First Nations and other Indigenous Peoples must also uphold the independence of the profession of lawyers:***
- a. Bill 21 provides for board representation of one First Nations government appointee, and one board-appointed Indigenous person, as well as a new Indigenous Advisory Council, requirements of at least one Indigenous person appointed to the Licencing Committee, Discipline Committee, and Tribunal, and the presence of at least one Indigenous adjudicator on discipline Tribunals where either the complainant or the lawyer complained of is Indigenous. Bill 21 also provides for consultation with Indigenous Peoples.
 - b. Currently, there are five elected Indigenous Benchers, about 16%, who do not necessarily need to be lawyers. The Law Society of BC's Benchers and members have improved Indigenous representation. With a dramatically reduced board size, there is no guarantee that more than about 12% of the Board (appointed either by government or the board) would be Indigenous persons or Indigenous lawyers elected by BC lawyers.
 - c. There is an urgent need to redress historic historical and ongoing systemic discrimination perpetrated through Canada's justice system against First Nations and Indigenous Peoples in Canada. Increased inclusion and leadership of Indigenous persons in the governance of the profession of lawyers is a vital objective that must be fulfilled as a matter of priority by all relevant actors, but cannot be accomplished through Bill 21's measures to abolish lawyers' democratic membership rights in their governance body or the BC government's corrosion of the independence of the profession of lawyers.
- 6. *Why withdraw Bill 21 instead of amending it? The destruction of the independence of the profession of lawyers coupled with abandonment of the statutory purpose of the Law Society of BC (see paragraph 1 above), put all rights at risk in BC.***
- a. There are too many concerns about this bill to amend it, particularly the overriding concern about lack of transparent consultation and engagement, and opposition to Bill 21 by BC lawyers' organizations including the Law Society of BC, and the Canadian Bar Association's BC branch.
 - b. The Bill should be withdrawn to allow for proper consultation, engagement, deliberation, and consensus building among First Nations and Indigenous organizations, as well as all stakeholders, as Bill 21 dramatically affects rights of all people in BC.