

Canada: British Columbia government's sweeping changes to the legal profession undermine the international human rights and the rule of law

Statement

15 May 2024

The undersigned are deeply concerned by sweeping changes to the legal profession proposed by the government of British Columbia (BC) in Bill 21 (Legal Professions Act).

Bill 21 was first introduced in the BC legislature on 10 April 2024 after public engagement comprising a 2022 Intentions paper, a “what we heard” document summarizing a limited public consultation, a 15 March 2024 update document of 10-pages, and discussion of drafts with selected, undisclosed individuals who are bound by non-disclosure agreements (NDAs). Since 10 April 2024, the BC government has been pressing ahead to pass Bill 21 by the end of the legislative session in mid-May 2024, though the government has not publicly indicated its intended timeline. This short time-frame provides insufficient time for transparent consultation and public engagement on the Bill’s 317 sections that provide for dramatic changes to the governance and rights of lawyers, who comprise a key pillar of the administration of justice and the protection of rights and freedoms in BC.

The BC government is continuing the rapid pace of the legislature’s debate of Bill 21 despite serious concerns that the Bill undermines the independence of the legal profession in BC in violation of international human rights law and standards. Bill 21 potentially impairs the capacity of individual lawyers to act vigorously for clients free from government interference, control or punishment, and impairs the duty of the legal profession to act as an effective safeguard against unconstitutional laws and the abuse of power by government.

The BC government should withdraw the Bill and ensure full and transparent public consultation and engagement on the provisions of this and all proposed legislation.

The BC government’s claims about Bill 21 fail to hold up under scrutiny

The government’s public statements claim that Bill 21 is intended to “modernize” the governance of legal service providers in BC. The government has emphasized the important purposes of protecting the public interest and access to justice, while screening from public scrutiny that the clear objective set out in the provisions of Bill 21 is primarily to abolish the self-regulation of lawyers and remove lawyers’ rights to freedoms of association by eliminating BC’s 14,000 lawyers’ membership in their democratically elected governance organization.

If enacted, Bill 21 would replace BC’s current 1998 *Legal Profession Act* (1998 LPA) and the existing *Notaries Act* with a “single regulatory authority” over lawyers, notaries, and paralegals. The Bill would effectively abolish the approximately 14,000-member Law Society of BC

(LSBC) and replace it with a 17-member organization that would also constitute its board of directors.

Bill 21 also authorizes the appointment of persons from First Nations and Indigenous Peoples to its proposed regulatory board and its other bodies, including an advisory Indigenous council. This proposal appears to violate the right to self-determination as defined by the UN system and in the UNDRIP itself. The right to self-determination would indicate representatives chosen by the First Nations and Indigenous constituencies they are proposed to represent, rather than appointments by others.

Under Bill 21, lawyers would be governed by a partially-elected body with a bare majority of nine lawyers. Only five of these lawyers would be elected by BC's lawyers with no guarantees of regional representation of lawyers from across BC's diverse regions. The other four lawyers on the board would be appointed by the board itself, which would also include elected and appointed notaries and paralegals, and three government appointees. The board appointees would also include one person from a First Nation and one Indigenous person, not necessarily lawyers.

Bill 21 would eliminate the duty of the lawyers' regulatory body to protect the rights and freedoms of all persons

The profession of lawyers is internationally recognized as essential to the protection of rights and freedoms of all persons and to the independence and integrity of legal systems and an independent judiciary. Other than its mention of the UNDRIP, however, Bill 21 is entirely silent about the duty of the legal profession to protect the "rights and freedoms of all persons," which are explicitly protected in the 1998 LPA.

Bill 21 fails to comply with BC's obligations under international human rights law and standards binding on BC, particularly the *International Covenant on Civil and Political Rights* and the UN [*Basic Principles on the Role of Lawyers*](#) (UN Basic Principles)

In 1990, the [UN General Assembly](#) adopted a consensus resolution on "human rights in the administration of justice" which welcomed the UN Basic Principles on the Role of Lawyers in 1990 and invited all governments "to respect them and to take them into account within the framework of their national legislation and practice." In the context of Canada's federal State, "national legislation" includes Provincial legislation.

The UN Basic Principles emphasize the role of lawyers in upholding the independence and integrity of legal systems that governments or other external actors must not control the governance of lawyers.

According to the UN Basic Principles:

24. 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.

It is not properly within the jurisdiction of the BC government, nor is it in the public interest, to unilaterally abolish the Law Society of BC as a fully independent membership organization with the right to determine its own governance structures, or to replace it with a regulatory structure of its own devising.

Bill 21 would weaken the duty to protect the “public interest”

A key claim of the BC government is that Bill 21 will protect the “public interest,” implying falsely that the 1998 LPA does not. On the contrary, Bill 21 discontinues the key provision of the 1998 LPA, which sets out a clear 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,[...]

In stark contrast, Bill 21 fails to set out any definition of the “public interest” or to protecting the rights and freedoms of all persons. Apart from references to the UNDRIP, Bill 21 fails to make any reference to the rights and freedoms of all persons.

Bill 21 fails to respect democratic processes and the rule of law

Internationally, the rule of law requires democratic promulgation of laws and entails everyone’s right to participate in public affairs, including public consultation and engagement on proposed laws that affect rights. The UN *Basic Principles on the Role of Lawyers* 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. The role of both governments and the legal profession is to cooperate 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.

Bill 21 represents BC's continuing failure to ensure access to remedies and legal representation of choice

The BC government's stated rationale for Bill 21 is to provide for "better access to legal services for the public" Equality of access to justice entails effective administration of justice, including competent, independent courts and lawyers. Bill 21 proposes that access to legal services will be fostered by broadening the range of practitioners authorized to provide legal representation. However, the BC government has provided no rationale for rejecting the proposals of the Law Society of BC to licence paralegals. Nor has the BC government provided any evidence of an improvement in access to justice in jurisdictions where paralegals are regulated to practice law.

The BC government has focussed its energy on removing self-regulation of lawyers rather than improving the right of access to legal services through the provision of adequate legal aid in all criminal, civil, and administrative law matters where free, competent, independent legal assistance by a lawyer is required for effective access to the courts and fair hearings, as required by international standards.

Bill 21 fails to respect the indivisibility of all human rights

Bill 21 fails to recognize and respect that all international law and standards must be implemented in all legislation, policies and practices. This includes all international human rights treaties binding at all levels of Canadian governments, the UNDRIP, the UN Basic Principles on the role of lawyers, standards for the provision of legal aid, and standard for democratic promulgation of law. There can be no trade-offs of rights. All rights are indivisible and must be implemented.

Summary:

- Bill 21 violates international human rights law and standards by failing to respect, protect, and ensure the self-governance of the legal profession that is essential to the independence of lawyers and in turn is essential to fulfilment of everyone's rights to legal representation;
- Bill 21 weakens existing provisions of the 1998 LPA that protect the "public interest;" instead, Bill 21 provides no definition of the "public interest" or any reference to protection of the "rights and freedoms of all persons," thus making the meaning of the "public interest" vague and potentially subject to overbroad interpretation and overreach;
- Consultation and engagement with the public regarding Bill 21 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;
- Bill 21 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"), including legal representation by an independent lawyer of their own choosing in criminal, civil, and administrative law matters.

Recommendation: Withdraw Bill 21 and conduct full, transparent, and cooperative consultation and engagement on all proposed legislation

The BC government should withdraw Bill 21 and engage in a full, cooperative, and transparent consultation and engagement processes with the Law Society of BC, BC lawyers, notaries and paralegals, judges, law schools, civil society groups, and the general public, together with Indigenous Peoples, with the intention of ensuring free, prior, and informed consent of all persons and Peoples in BC to this and all other proposed legislation.

Signed:

[signed]

Joey Doyle, Co-Chair
Lawyers' Rights Watch Canada

[signed]

Errol Mendes, President
ICJ-Canada

About LRWC

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. See other statements by LRWC on Bill 21 along with a fully referenced Briefing Paper on Bill 21 at <https://www.lrwc.org/bc-canada-analysis-bill-21/>. Contact: 126-1644 Hillside Avenue, PO Box 35115 Hillside, Victoria BC Canada V8T 5G2, www.lrwc.org; lrwc@lrwc.org.

About ICJ-Canada

ICJ Canada was established in 1958 as a national section of the International Commission of Jurists, with the following objectives:

- promote the rule of law and the right to a fair trial and to ensure the independence of the judiciary;
- expose and denounce violations of justice and freedom whenever and wherever they occur; and
- ensure that the fundamental freedoms of discussion of public affairs, freedom of association and freedom of assembly and of elections shall not be violated.

To this day, ICJ Canada continues the great ICJ mission of promoting the cause of international human rights and the rule of law throughout the world. We are an independent, non-governmental, non-partisan organization, and a registered Canadian charity.