

## Briefing Notes on Bill 21, “Legal Professions Act.”

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### **The 2024 *Legal Professions Act* (“Bill 21”) violates British Columbia’s obligations under international law and standards**

[Lawyers Rights Watch Canada](#) (LRWC) is a non-governmental organization in consultative status with the United Nations (UN) Economic and Social Council. LRWC conducts research, education, and advocacy on international law and standards regarding the rule of law, the independence and integrity of legal systems, the role of lawyers, and protection of lawyers and other human rights defenders in numerous countries.

This briefing note sets out concerns about British Columbia’s (BC) failure to implement international human rights law and standards regarding:

- **The *Legal Professions Act* (“[Bill 21](#)”)**, based on analysis conducted for LRWC found on [LRWC’s website](#);
- **Provision of legal aid in BC**, based on international standards, and discussed in LRWC’s [past reports on legal aid in BC](#); and
- **Public participation and democratic promulgation of laws**, based on international law and standards discussed in a 24 July 2024 article [republished by LRWC](#).

#### **A. International law context: BC’s obligation to comply with international law**

1. At international law, all levels and branches of Canadian governments have the legal duty to [implement Canada’s international law obligations](#), including human rights law such as the *International Covenant on Civil and Political Rights* ([ICCPR](#)). Provinces are obligated to implement Canada’s international law obligations according to their powers under Canada’s [Constitution](#); BC is obligated to implement the ICCPR as it relates to the administration of justice.

#### **B. The rule of law requires independence and integrity of legal systems, including independence of the profession of lawyers.**

2. Independence of the profession of lawyers is integral to judicial independence and the integrity of legal systems. The independence and impartiality of judicial decision making is reliant on submissions by lawyers whose independence and integrity are overseen by a legal profession that operates without interference from governments or other entities.
3. According to the UN [Basic Principles on the Role of Lawyers](#), an authoritative instrument welcomed by consensus of all members of the UN General Assembly in 1990, governments and lawyers share the duty to ensure the independence of both individual lawyers and professional associations of lawyers, and to ensure the effectiveness of legal aid.

4. The BC government has incorrectly claimed that Bill 21 preserves lawyers' independence by providing in its paragraph 6(1)(c) that the new regulator has the duty to "ensure the independence of licensees." However, Bill 21 fails to ensure the institutional independence of the profession of lawyers as required by the UN [Basic Principles on the Role of Lawyers](#). Basic Principle 24 stipulates institutional independence through lawyers' entitlement to membership in and governance of their executive bodies, e.g. Benchers of the Law Society of BC (LSBC).
5. Bill 21 abolishes the LSBC to which all lawyers in BC are obligated (and entitled) to be members, with membership rights that include the right to elect their executive body (called "Benchers" in the LSBC). These provisions are set out in the 1998 [Legal Profession Act](#).
6. Bill 21 unilaterally deprives BC lawyers of their LSBC membership and their right to elect or participate in their governing body except to elect a minority of five lawyers of a 17-member regulatory body, to which another four lawyers are to be appointed. The government of BC passed Bill 21 over the strong objections of the LSBC, the Canadian Bar Association of BC (CBABC), the Trial Lawyers Association of BC (TLABC), many local BC bar organizations, the Federation of Law Societies of Canada, Lawyers' Rights Watch Canada, and the International Commission of Jurists (Canada).

**C. Lawyers' self-governance is a right and a duty, not a "privilege."**

7. The BC government [describes the self-governance of lawyers](#) as a "privilege." However, lawyers' self-governance is not a "privilege;" it is a right and a responsibility to be shared by governments and lawyers. Governments rightly participate in lawyers' governance through legislation and some forms of participation; however, governments must not unilaterally legislate or otherwise dictate forms or structures of lawyers' governance bodies, without the free, fully-informed consultation and consent of lawyers. The duty and responsibility of lawyers' self-governance is essential to the rule of law and the independence of legal systems from interference from governments or other actors.
8. Under international standards set out in the UN *Basic Principles on the Role of Lawyers*,
  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." (Basic Principle 24).

The *Basic Principles* conceive of lawyers' "interests" not as "self-interest" but as coinciding with the public interest, which entails ensuring ongoing competence and professional integrity, protecting clients, and upholding the rule of law.

**D. Bill 21 does not show how it will enhance the right to equality of access to justice in BC.**

9. The ICCPR requires governments at all levels to ensure equality of access to remedies. This entails effective equality of access to impartial and independent courts as well as effective access to qualified legal representation.

10. The BC government sought to [justify Bill 21](#) by saying it would expand choices of legal services for people in BC. However, analysis of Bill 21 does not indicate how this legislation would ensure choice of legal services more than would BC's 2018 legislation for licencing paralegals. In 2023, the BC Attorney General [rejected](#) the request of the LSBC to bring the 2018 paralegal legislation into force, saying that she instead intended to enact comprehensive legislation for a single regulator for several legal professions.
11. Bill 21 fails to address BC's failure to live up to [international standards for legal aid](#), which require both adequate funding and administrative independence from governments. BC government funding of legal aid is inadequate for family law, child protection, criminal law and poverty law. Both the provisions and implementation of the *Legal Services Society Act* (which governs Legal Aid BC) fall short of [international standards](#) for independent, autonomous administration of legal aid. A majority of board members are government appointees, and the Attorney General issues [mandate letters](#) requiring each Board member to acknowledge the BC government's expectations of the Board.

**E. Bill 21 has no definition of “the public interest” and removes the duty of the regulator to protect rights and freedoms of all persons.**

12. The BC government has stated that the purpose of Bill 21 was to ensure a regulatory body that upholds the public interest, stating in subsection 6(2) that “the regulator must exercise its powers and perform its duties under this Act in the public interest.”
13. However, 1998 *Legal Profession Act* provides more robust public interest protection than Bill 21. The 1998 Act stipulates in Section 3 that the object and duty of the LSBC is to “uphold and protect the public interest in the administration of justice,” with a definition of the “public interest” that includes protection of “the rights and freedoms of all persons.”
14. Bill 21 provides no definition of the “public interest” whatsoever. During debate on Bill 21 in the legislature, the Attorney General stated that the government chose not to “dictate” the definition of public interest ([Hansard](#), 15 May 2024 at approximately 4:10 pm). Thus, the government deliberately chose to remove legislative guidance for interpretation of the “public interest,” rendering Bill 21's many references to the “public interest” vague, unclear, and subject to potentially overbroad interpretation by the regulatory body.
15. At international law, the duty to protect rights and freedoms extends to all levels of government, including provincial governments. While Bill 21 specifically fosters implementation of the UN *Declaration on the Rights of Indigenous Peoples*, the Bill is entirely silent on BC's international law obligations to respect, protect, and fulfil the rights and freedoms of all persons within its jurisdiction.
16. Remedial action by governments and lawyers is undoubtedly required to redress inequalities and injustices against Indigenous Peoples in BC, including Indigenous lawyers. Equally important is the full implementation of all international human rights law and standards, particularly those pertaining to equality of access to justice, the rule of law and independence and integrity of legal systems, including the UN *Basic Principles on the Role of Lawyers*.

**F. Bill 21 was not promulgated democratically: Siloed consultation and inadequate engagement with stakeholders, plus severe curtailment of debate in the legislature.**

17. International human rights law and standards require that laws be promulgated democratically, with full respect for the right of public participation (ICCPR Article 25). All members of the public, particularly those directly affected, are entitled to be consulted on any proposed law that affects rights, before it is introduced in the legislature.
18. Despite public engagement starting in 2022 which set out broad brush-strokes of the proposed legislation, public and stakeholder engagement on concerning Bill 21’s specific provisions was non-transparent.
19. The Attorney General of BC refused to provide to the public the full details of Bill 21 before it was introduced in the legislature on 10 April 2024. This meant there were no reasonable opportunities for public participation by those most directly affected, including lawyers, Indigenous persons, and concerned civil society and human rights organizations. BC lawyers were not consulted about the major changes to their rights or the creation of new offences with major penalties.
20. Selected Benchers and other persons, whose identities and criteria for selection remain undisclosed, were consulted individually under non-disclosure agreements (NDAs). This lack of transparency meant that even after Bill 21 was introduced in the legislature on 10 April 2024, BC lawyers and the general public remained largely unaware of its provisions.
21. A truncated parliamentary process was used by the BC government to rush Bill 21 through the legislature from 10 April to 16 May 2024. Elected members of the Legislative Assembly, Benchers, lawyers, civil society organizations, the full range of Indigenous Peoples and people, and the public had only days to analyse and [discuss](#) Bill 21’s 317 sections, before second reading. The government’s use of “[time allocation](#)” meant that the Committee of the Whole had time to debate only 30 sections – less than 10 percent. This hurried process denied elected parliamentarians sufficient time to consult with constituents and fully debate a Bill that has dramatic effects on the rights of all people in BC.

**G. LRWC recommends the following to persons elected to Legislative Assembly of BC:**

22. Repeal the *Legal Professions Act 2024* and engage in proper consultation, engagement, deliberation, and consensus building among all people in BC, including First Nations and Indigenous Peoples and their organizations, as well lawyers and other stakeholders to ensure that legislation on governance of lawyers fulfils BC’s obligations under international law and standards.
23. Ensure the provision of legal aid according to international law and standards, including dedication to legal aid of the full proceeds of the Provincial Sales Tax imposed exclusively on lawyers’ services, as promised when the tax was imposed in [1992](#).
24. Ensure the independence of Legal Aid BC by reviewing the Legal Services Society Act to ensure it measures up to international standards, and particularly requiring that board members act independently from government, the Law Society of BC or any other entity.