



Court File No. S-243325
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA and
KEVIN WESTELL

PLAINTIFFS

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA, THE ATTORNEY GENERAL OF BRITISH COLUMBIA and
THE LIEUTENANT GOVERNOR OF BRITISH COLUMBIA

DEFENDANTS

APPLICATION RESPONSE

Application response of: Law Foundation of British Columbia, (the “**Application Respondent**”)

THIS IS A RESPONSE TO the Notice of Application of Trial Lawyers Association of British Columbia and Kevin Westell filed 7 April 2025.

The Application Respondent estimates that the Application will take 14 days.

Part 1: ORDERS CONSENTED TO

The Application Respondent consents to the granting of the Orders set out in paragraphs NIL of Part 1 of the Notice of Application.

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the alternative relief set out in paragraphs 1 and 3 of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the primary relief set out in paragraphs 2 and 4 of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

The Notice of Application

1. The Law Foundation (the “Foundation”) takes no position on the facts raised by the Plaintiff, Trial Lawyers Association of BC and Kevin Westell, in its notice of application. Rather, the Foundation seeks to provide background tailored to the impact of Bill 21 on the Foundation’s mandate.

Bill 21 in Summary

2. Bill 21’s ss. 152-65 (substantive) and 242-50 (transitional) propose changes to the Foundation’s governance structure, through absorption of the Notaries Foundation and corresponding changes to its Board of Governors (restyled to “Board of Trustees”).¹
3. If the Court dismisses the claim and denies the orders sought, the Foundation will proceed with steps to absorb the Notaries Foundation and to restructure its board. This process, however, will have significant impacts on the Foundation’s internal governance structure and ability to fund justice projects per its mandate.²

Foundation Background

4. The Foundation was established in 1969 as an independent, non-profit organization that makes grants to promote access to justice for people in British Columbia.³
5. The Foundation acquires revenue for access to justice projects pursuant to the scheme outlined under s 62 of the *Legal Profession Act*, SBC 1998, c 9 (“Current Act”), which requires that lawyers and law firms must deposit money received or held in trust in an interest-bearing account, at a designated savings institution. Lawyers and law firms hold the interest earned on funds in their pooled trust accounts for the Foundation, and must remit the interest to the Foundation.⁴
6. Interest earned on funds held in trust accounts represents the Foundation’s primary source of income. The Foundation’s revenue and income is naturally affected by the amount of money held in trust accounts, but also by the interest rates offered by the savings institutions.
7. The Foundation uses moneys it acquires for the funding of programs and projects in all regions of BC to benefit the public in the Foundation’s five legislated mandate areas: legal education, legal research, legal aid, law reform, and law libraries.⁵

¹ Affidavit #2 of Josh Paterson, at paras 5, 7.

² Affidavit #2 of Josh Paterson, at para 5-7.

³ Affidavit #1 of Josh Paterson, at para 2.

⁴ Affidavit #1 of Josh Paterson, at para 4.

⁵ *Ibid.*

8. The Foundation is currently governed by a board, which holds general governance powers and is responsible for making decisions concerning grants. The board consists of 18 volunteer members, as follows:⁶
- (a) 12 members of the Law Society of British Columbia, or the judiciary, appointed by the Benchers of the Law Society to represent all geographical areas of the province;
 - (b) 3 persons, not lawyers, appointed by the Attorney General;
 - (c) 2 members of the Law Society, appointed by the BC Branch of the Canadian Bar Association; and
 - (d) the Attorney General or her appointee.

Effect of Bill 21 on the Foundation

9. Following the transitional period, the Foundation will have a board of trustees composed of a maximum of 18 trustees, as follows:⁷
- (a) no more than 12 trustees appointed by the new regulator, of whom
 - (i) at least 2 must be lawyers,
 - (ii) at least 2 must be notaries public,
 - (iii) if the total number of regulated paralegals in British Columbia is 50 or more, at least 2 must be regulated paralegals, and
 - (iv) at least one must be an Indigenous person;
 - (b) no more than two appointed by the trustees referred to in paragraph (a),
 - (c) the Attorney General of British Columbia or their designate as a non-voting trustee, and
 - (d) no more than three trustees appointed by the Attorney General (of whom at least one must be an individual of a First Nation).
10. The Foundation requires a stable and predictable governance structure to fulfill its mandate.⁸ It similarly requires a strong single regulator—whether through the changes proposed by Bill 21 or in its current state—to work effectively and provide consistent decision making on its various projects.

⁶ Affidavit #1 of Josh Paterson, at para 7.

⁷ Affidavit #1 of Josh Paterson, at para 18.

⁸ Affidavit #1 of Josh Paterson, at para 21.

11. The primary relief sought by the Plaintiff would, if fully granted, prevent the provisions related to the Foundation from coming into force. The Foundation takes no position on this. It would mean that the status quo would prevail, and the Foundation would continue under the Current Act. This would bring certainty.
12. The Plaintiff's alternative relief presents a very different case. The alternative relief targets portions of Bill 21, without providing specifics. This relief may result in Part 18 (Transitional Provisions, etc) being struck down without including Part 11 (Law Foundation of British Columbia). If the court were persuaded to grant that alternative relief, the Foundation would find itself in the post-transitional world—without the benefit of the provisions tailored to easing the transition—and its governance would be far from clear cut.
13. For instance—and without limitation—the Foundation may under the plaintiff's alternative relief have a board of trustees including at least two notaries public (Bill 21, s. 155(a)(ii)). But the provisions dissolving the Notary Foundation and transferring its assets to the Foundation (Bill 21, s. 243) would not be in effect. There will be no “grandfathering” provision for the Foundation's current board of governors (Bill 21, s. 249), creating a potential leadership vacuum.
14. Assuming the Foundation could navigate those obstacles, the two or more notarial trustees would remain governed by the Society of Notaries Public under the *Notaries Act*, R.S.B.C. 1996, c. 334. The notarial trustees would not, however, be licensees—in fact, the alternative relief may leave us without any definition for “licensees”⁹—and thus the removal provisions in Bill 21 s. 157(1)(c) would not on their face apply to the removal of the notary trustees. Compounding this, the Foundation's board would find themselves frustrated when it comes to their discretion to remove a notarial trustee under s. 157(1)(c)(ii), which:
 - (a) refers, circularly but impossibly, to that trustee as a “licensee”; and
 - (b) indicates that the trustee may be removed for having contravened a provision of Bill 21 or the rules.

Without a definition of “rules” (also in Part 1, s. 1), and with no reference to the Society of Notaries Public of BC, there would be no rules for a notarial trustee to contravene—assuming that person might otherwise fall within the description of s. 157(1)(c)(ii).

15. The lack of a definition for “licensee” would potentially lead to other mischief, given the several references to that class of persons in Part 12 (Trust Accounts).
16. This is a mere sampling to illustrate that the result of the alternative relief will be uncertainty and instability in the Foundation's operations and governance.

⁹ Licensee is defined in Part 1 (s. 1) of Bill 21. There is no definition of “licensee” in the Current Act, and in fact the term does not appear at all in the statute.

Part 5: LEGAL BASIS

17. The Foundation makes this application response pursuant to Rule 8-1(9) of the *Supreme Court Civil Rules* and the Judicial Case management Orders made in this proceeding.
18. The Foundation generally adopts and agrees with the legal principles outlined in Part 3 of the Plaintiff's Notice of Application, where applicable.
19. The Foundation is statutorily mandated to serve the public interest by promoting access to justice and administering grants to programs that improve access to justice.¹⁰
20. Without a single regulator providing stable guidance and direction, the Foundation will necessarily be encumbered in its ability to fulfil this mandate and freely fund projects that act as vital resources for the legal profession and public at large.

Part 6: MATERIAL TO BE RELIED ON

21. Affidavit # 1 of Josh Paterson, made 11 July 2024;
 22. Affidavit #2 of Josh Paterson, made 7 January 2025; and
 23. Such further and other material as counsel shall advise and the court may allow.
- ☒ The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.
- ☐ The Application Respondent has not filed in this proceeding a document that contains an address for service. The Application Respondent's ADDRESS FOR SERVICE is:

c/o Brent Olthuis KC and Ramisha Farooq
Olthuis van Ert
1915 - 1030 West Georgia St
Vancouver BC
V6E 2Y3

Date:

25 April 2025


Signature of ☐ Application Respondent
☒ Lawyer for Application Respondent

Ramisha Farooq

¹⁰ *Legal Profession Act*, SBC 1998 c 9, s 61; See also *Cronk v LinkedIn Corporation*, 2023 BCSC 2165, at para 42.