

No. S243325
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE 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 IN COUNCIL

DEFENDANTS

APPLICATION RESPONSE

Application response of: The Society of Notaries Public of British Columbia
(the “application respondent”)

THIS IS A RESPONSE TO the notice of application in filed by the plaintiffs on April 8, 2025.

This matter is not within the jurisdiction of an Associate Judge.

The application respondent estimates that the application will take 14 days.

Part 1: ORDERS CONSENTED TO

The application respondents consent to the granting of the orders set out in none of the paragraphs of Part 1 of the notice of application on the following terms.

Part 2: ORDERS OPPOSED

The application respondents opposes the granting of none of the orders set out in Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondents takes no position on the granting of the orders set out in all of Part 1 of the notice of application.

.

Part 4: FACTUAL BASIS

1. British Columbia is a common law jurisdiction within a constitutional order which traces its legal roots to the English constitution and legal system. That legal system has, for a very long time, functioned under the premise of the rule of law.
2. Within the Anglo-Canadian legal order, learned professions have always played an important role in the maintenance of the rule of law. However there has never been a single legal profession within this structure. Barristers, searjents, solicitors, attorneys, and proctors have all, at one time or another, practice law within what were essentially limited spheres.
3. The profession of Notary Public has a long history in the Province. Notaries have been providing legal services to British Columbians since before confederation.¹ They are one of three learned professions who are presently authorized to engage in legal practice.²
4. Notaries are learned professionals and subject to significant educational requirements, training, and rigorous professional standards.³
5. Within the scope of their authorized practice, Notaries Public perform virtually all of the same services of lawyers undertaking the same work⁴ and are held to precisely the same standard of care that lawyers are held to.⁵
6. Notaries Public play an essential role in ensuring the smooth operation of our legal order. They provide legal advice and assist clients in navigating all manner of legal issues, within the scope of their authorized practice areas.⁶
7. Notaries Public, while not authorized to engage in litigation and contentious matters, do represent clients in transactions and assist them in resolving difficult legal issues, sometimes concerning government influence and interests.⁷
8. Notaries provide critical legal services and advice to a large segment of the population, playing in an important role in ensuring access to justice within the province. The services they provide often involve important and consequential decisions by clients

¹ Aff #1 H. El Masri, paras. 36 to 37

² That term being used in the functional sense, rather than the term of art employed in the current *Legal Profession Act*

³ Affidavit #1 H. El Masri, paras. 6, 7, 11 to 15

⁴ Aff#1 H. El Masri, paras. 20 to 25

⁵ *Normak Investments v. Belciug*, 2015 BCSC 700, at para. 69

⁶ Aff #1 H. El Masri, paras. 20 to 25

⁷ Aff #1 H. El Masri, para. 26 to 29

which require informed legal advice and practiced representation to ensure the client's wishes are carried out and interests protected.⁸

9. The scope of a Notary Public's practice is defined by statute and the common law;⁹ however the profession is self-regulating. SNPBC was privately incorporated by its members in 1926 for the purpose of representing, organizing, and regulating the notarial profession in the public interest. Since that time, the applicant has been the independent regulator of the profession.¹⁰
10. The applicant's status as regulator was formally recognized by statute in the 1950s and is currently recognized and enabled by the *Notaries Act*, R.S.B.C. 1996, c. 334.
11. On May 15th, 2024 the Legislature passed Bill 21, the *Legal Professions Act* (the "new *LPA*"). Bill 21 received Royal Assent the same day.
12. The new *LPA* represents a significant redesign of the state of regulation of legal professionals in the Province. All legal professions, including Notaries and subject to exceptions reserved by the government, are to be regulated by a single regulator which is governed by a mix of legal professionals, elected and appointed. All legal professionals, including Notaries and again subject to certain exceptions reserved to government, will also be subject to a consistent framework for discipline and certain incidents of practice, such as handling of trust funds.
13. Material provisions of the new *LPA* to this application provide that:
 - a. A new regulator of legal professions is to be created;¹¹
 - b. That regulator is to be governed by a board of directors, made up of a mix of elected and appointed lawyers and notaries, as well as paralegals and members of the public;¹²
 - c. The majority board of directors is composed of lawyers and notaries;¹³
 - d. The government is granted the authority to create new legal professions by regulation;¹⁴

⁸ Aff #1 H. El Masri, paras. 30 to 34

⁹ See *Reference re Society of Notaries Public of British Columbia*, (1969) 6 D.L.R. (3d) 447 (B.C.C.A.)

¹⁰ Aff #1 H. El Masri, paras. 4, 8, 38 to 39

¹¹ *Legal Professions Act*, S.B.C. 2004, c. 26 ("Bill") 21, s. 5

¹² Bill 21, ss. 8 to 9

¹³ Bill 21, ss. 8 to 9

¹⁴ Bill 21, s. 4

- e. The government is granted the authority to create regulations in respect of any new legal professions it creates;¹⁵ and
- f. The government's regulations prevail over any rules or regulations of the new regulator.¹⁶

Part 5: LEGAL BASIS

- 1. Bill 21 purports to create a single regulator—created by the provincial government—that would oversee lawyers, notaries, paralegals, and entirely new classes of legal professionals.
- 2. The plaintiffs submit that by creating a single regulator, Bill 21 nullifies lawyers' association rights guaranteed by s. 2(d) of the *Charter*. They base this submission on the following propositions:
 - (a) Lawyers have a constitutional right to associate protected by s. 2(d) of the *Charter*;
 - (b) The Law Society is a manifestation of lawyers' s. 2(d) right in that it supports lawyers' collective objective to be free from government influence and the "influence of persons who represent other interests" (eg, notaries), and allows individual lawyers to "join together to meet the power of government"; and,
 - (c) Bill 21 nullifies this right of association by eliminating the Law Society and the system of self-regulation, thereby infringing lawyers' s. 2(d) right.
- 3. To the extent that the Applicants' argument on this point suggests that a purported single regulator would infringe lawyers' s. 2(d) right by compelling association with non-lawyers, the argument must be rejected.

Negative aspect of the s. 2(d) *Charter* right

- 4. Section 2(d) of the *Charter* reads as follows:
 - 2. Everyone has the following fundamental freedoms:
 - (d) freedom of association.
- 5. Section 2(d) has been held to encompass both a positive and negative aspect. The positive aspect protects the freedom to associate, while the negative aspect protects the freedom not to associate and to be free from compelled association.

¹⁵ Bill 21, ss. 211 to 213

¹⁶ Bill 21, s. 214

Bernard v. Canada (Attorney General), 2014 SCC 13 at para. 38
citing *Lavigne v. Ontario Public Services Employees Union*, [1991] 2 S.C.R. 211
and *R. v. Advance Cutting & Coring Ltd.*, 2001 SCC 70

6. But, the negative aspect of s. 2(d) is not a constitutional right to isolation. It does not protect against the kinds of association that are “necessary and inevitable in modern democratic communities.”

Lavigne at 320–21;
Advance Cutting at para. 194

7. It follows then, as the Supreme Court of Canada has directed, “that the mere fact of compelled association will not, by itself, involve a breach of the *Charter*. More is needed in order to trigger the negative component of s. 2(d).”

Advance Cutting at para. 223

8. To that end, the Supreme Court of Canada has provided a two-stage approach for invoking the negative component of s. 2(d). First, the court must inquire “whether in a particular case it is appropriate for the legislation to require persons with similar interests in a particular area to become part of a single group to foster those interests.” Second, even where the threshold inquiry is established, “freedom of association will not be violated unless there is a danger to a specific liberty interest” on the part of the applicant.

Advance Cutting at para. 196
citing *Lavigne* at 328–29

It is appropriate to compel association of lawyers with notaries in collective regulation

9. The order to satisfy the threshold issue in determining a breach of the negative component of s. 2(d) “one must...be satisfied that the ‘compelled combining of efforts towards a common end’ is required to ‘further the collective social welfare’”.

Lavigne at 328–29

10. The new legislation harmonizes the regulation of legal professions within the province in order to achieve more efficient and balanced oversight of legal professionals. This new single regulator will ensure an efficient and centralized approach to regulating the legal profession in the public interest.¹⁷
11. The structure of the board of directors, moreover, will ensure that one group of professionals cannot overwhelm and diminish others within the regulatory pool. This in turn promotes access to legal services for the public.

The single regulator presents no danger to lawyers’ liberty interests

¹⁷ Aff #1 of H. El Masri, paras. 45 to 49

12. In *Lavigne*, Justice LaForest provided “four primary dangers” to individuals’ liberty interests that ought to be protected by the freedom of non-association, as follows:

The first is governmental establishment of, or support for, particular political parties or causes. The second is impairment of the individual's freedom to join or associate with causes of his choice. The third is the imposition of ideological conformity. The fourth is personal identification of an objector with political or ideological causes which the service association supports.

Lavigne at 328

13. At issue here is whether a collective regulator would engage one of the latter two dangers: ideological conformity, or personal identification of an objector with political or ideological causes which the service association supports.
14. These dangers are not readily engaged where the proposed association takes the form of a regulator, particularly one constituted almost entirely by similarly-situated professionals¹⁸ undertaking the same or similar work.
15. Much of the s. 2(d) jurisprudence concerns labour organizations and the proper ambit of their activities, particularly where workers are compelled to pay dues to a union engaged in the promotion of political aims beyond the scope of workplace regulation. Such was the case in *Lavigne* where LaForest J. found that “[e]xpenditures relating to items such as the disarmament movement and opposition to the SkyDome” were “not sufficiently related to the concerns of the appellant’s bargaining unit”, therefore grounding a *prima facie* s. 2(d) breach.

Lavigne at 333

16. There is no evidence to suggest that a new professional regulator would undertake analogous activities that would engage the aforementioned dangers to individuals’ liberty interests. Regulators are apolitical organizations that oversee their respective profession through the establishment and enforcement of rules and regulations. It remains to be seen how any of its actions could foster ideological conformity among the membership or force individual members to identify with contrary political or ideological causes that the regulator supports.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Hassan El-Masri, sworn April 25, 2025 and filed in Action No. S243258; and
2. The pleadings and other materials filed in these proceedings.

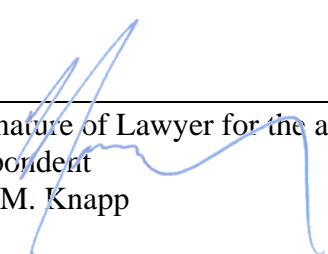
¹⁸ As described in the application response filed by SNPBC in S243258

- ☒ 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:

Mackenzie Fujisawa LLP
1600 – 1095 West Pender St.
Vancouver, B.C., V6E 2M6
Attention: Ian M. Knapp

(e) quduong@macfuj.com, iknapp@macfuj.com & txu@macfuj.com

Date: April 25, 2025



Signature of Lawyer for the application
respondent
Ian M. Knapp