

November 22, 2018

Delivered by email: review@maclarenlaw.ca

Jamie Maclaren, QC
853 East Georgia Street
Vancouver, BC V6A 2A4

Re: Legal Aid Services Review – CBABC SOGIC BC Submission

Dear Jamie Maclaren, QC:

It was a pleasure meeting you at your in-person consultation with the Canadian Bar Association on November 8, 2018, regarding your review of British Columbia's legal aid service delivery model. I write on behalf of the executive of the CBA BC's Sexual Orientation and Gender Identity Conference (SOGIC) to reiterate and elaborate on my comments at that meeting in the form of a written submission for your consideration. This SOGIC BC submission reflects the views of the members of the SOGIC BC's executive only and do not necessarily reflect the views of the CBABC as a whole.

We understand that legal aid funding is beyond the scope of your review. As such, we limit our comments on funding to the following: a chronically underfunded legal aid system is incapable of meeting the needs of British Columbians, regardless of the service delivery model used. Further, the underfunding of legal services for those in financial need disproportionately affects lesbian, gay, bisexual, trans,¹ queer, and two-spirited (LGBTQ2S*) people, who are both overrepresented in the lowest income brackets and have a greater need for legal services than the general population.

While we cannot comment on which legal aid delivery model would best serve LGBTQ2S* British Columbians, we do know that there is significant unmet legal need among this group and that the need is particularly acute among trans* people and racialized LGBTQ2S* people. As I noted at our meeting, SOGIC BC is considering a legal needs assessment project to better understand the nature and scope of the legal needs of the LGBTQ2S* communities in British Columbia.

In the meantime, we refer you to "Legal Problems Facing Trans People in Ontario", the first report of TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario, supported by the HIV & AIDS Legal Clinic Ontario. The data collected for the report showed that:

¹ Trans/transgender: an umbrella term for people whose gender identity does not 'match' the sex or gender they were assigned at birth.

- trans respondents experienced justiciable legal problems in far greater proportion than the general population in Canada;
- experiences of social exclusion, harassment, and violence based on respondents' trans status often caused or complicated justiciable legal problems; and
- obtaining legal assistance for justiciable legal problems was very rare, such that most of the problems were left unaddressed, at least formally, even when the impact of the problems was significant.²

In our view, any legal aid service delivery model for British Columbia should include the following characteristics:

- explicit consideration of the unique legal needs of BC's diverse LGBTQ2S* population, including the different experiences of people with different intersecting identities;
- mechanisms to reduce barriers to access legal aid, such as:
 - LGBTQ2S* specific legal advice and information services,
 - a platform (be it a designated legal clinic, law reform centre, or other service delivery format) where LGBTQ2S* practitioners and allied lawyers can collaborate and develop and enhance LGBTQ2S* specific legal knowledge and skills,³ and
 - measures addressing discrimination within the legal system and among legal service providers, including meaningful and specific LGBTQ2S* training for all people involved in the delivery model to counter institutional bias; and
- an evaluation and feedback process to assess whether the system is meeting its goals.

² See <https://www.halco.org/wp-content/uploads/2018/09/TransFJ-Report2018Sept-EN.pdf>

³ We note that Ontario had previously committed to funding a LGBTQ2S* specific legal clinic, which has been put on hold by the current Ontario government. The proposed clinic model in that instance may be worth reviewing. See: <https://www.thestar.com/news/gta/2018/09/26/ontario-tories-withholding-funding-for-lgbtq-legal-clinic-amid-spending-review.html>.

Thank you for taking the time to review our submission. Please do not hesitate to contact me if you require additional information.

Yours truly,

Lisa M.G. Nevens
Chair, Sexual Orientation and Gender Identity Conference
Canadian Bar Association, British Columbia

Enclosures:

1 – “Legal Problems Facing Trans People in Ontario”, first report of TRANSforming JUSTICE: Trans Legal Needs Assessment Ontario (<https://www.halco.org/our-services/trans-legal-needs-assessment-ontario>)

2 – “Poverty is a Queer and Trans Issue”, factsheet by BC Poverty Reduction Coalition (<http://bcpovertyreduction.ca/campaigns/lgbtq/>)⁴

⁴ For additional information on the intersections between LGBTQ2S* identities and poverty, see “Where am I Going to Go?” in Intersectional Approaches to Ending LGBTQ2S Youth Homelessness in Canada and the US, Alex Abramovich and Jema Shelton (eds), Canadian Observatory on Homelessness, <https://bit.ly/2DSGQbI>