



Submission to Select Standing Committee on Finance and Government Services 2021 Budget Consultations

The Canadian Bar Association British Columbia Branch
June 26, 2020

Introduction

The Canadian Bar Association British Columbia Branch (CBABC) is the voice of British Columbia's legal profession. CBABC advocates for a fair, just, and affordable justice system, and for the concerns of our members. CBABC supports the rule of law, access to justice, improvements in law, and protecting the independence of the judiciary and the Bar.

We are a member-funded, not-for-profit organization that represents over 7,000 lawyers, judges, and law students from every region of British Columbia. CBABC is part of the national network of provincial and territorial bar associations that represents over 36,000 members across the country. The Canadian Bar Association is recognized as the national and international voice of Canadian lawyers on matters of law and justice, and the advocate for the interests of its members and the legal profession. This is our 18th submission to the Select Standing Committee for the provincial budget.

The CBABC released a platform paper in 2017 entitled [*An Agenda for Justice*](#) that outlined several recommendations and reforms to address gaps in British Columbia's justice system and to identify ways to improve. *An Agenda for Justice – Platform Updates 2018* was released in September 2018 to update our key issues. This submission references some of our recommendations from those published Agendas for consideration by this Standing Committee.

Over the past several months during the state of emergency, lawyers have assisted clients from vulnerable populations to understand and apply to the special COVID fund supports. Lawyers have ensured that our construction and real estate industries continued with the timely flow of money to complete projects and transactions to keep those parts of the economy going. British Columbians have continued to seek advice and representation from lawyers as they faced employment challenges, needed to change parenting arrangements and child support, and made their wills. Lawyers provide key supports to basic societal functioning, and through this work

learn what would help people who face legal issues. The following submission incorporates the CBABC's key priorities for 2020/2021, with a focus on the important role of the legal profession in improving access to justice for residents of British Columbia during these challenging times.

CBABC Priority Issues for Budget 2021

Technology to Improve Court Access – the CBABC asks that the Court Digital Transformation Strategy be funded for immediate implementation of telephone, internet and videoconference access to court services, as well as adding public computers and internet access for those in remote areas, low-income residents and those incarcerated who seek legal counsel.

Legal Aid Funding: Increase Scope for Family Law and Mental Health Detainees – the CBABC asks that funding be reinstated to provide legal aid for family law matters, as well as funding of legal representation for involuntary detainees under the *Mental Health Act*.

Indigenous Justice and DRIPA – the CBABC calls for continued funding of transformational change and programs to address issues of over-representation of Indigenous peoples in the justice system, and to provide sufficient resources to implement the Declaration of Rights on Indigenous Peoples Act (DRIPA).

Discussion

1. Technology to Improve Court Access

The government must enable British Columbians, no matter where they live, to have access to courts, tribunals and justice services using digital technology. Specifically, we ask the government to allocate funding and accelerate the work of the [Court Digital Transformation Strategy](#) which includes a requirement to provide residents in smaller or remote communities, including Indigenous communities, with the publicly accessible spaces to electronically access courts, tribunals and justice services.

The COVID-19 pandemic has dramatically emphasized the need for fast solutions to ensure ongoing access to justice. While the legal profession was identified as an essential service in British Columbia and was required to react quickly to manage the needs of those requiring legal services, the challenge was stymied by the fact that most of the courts and court staff were unable to manage operations remotely or through the use of technology that is readily available in most service industries. In some situations, self-represented litigants or clients were unable to participate in court proceedings due to lack of available technology (at one or both ends). Those incarcerated were often unable to access advice from their legal counsel prior to matters being heard, as they were confined to jails without access to private video conferencing. The backlog in court proceedings which continues to mount is only being added to the already overburdened and under-resourced justice system.

In our 2017 Agenda for Justice, the CBABC called on the government to fund the development of an overall technology strategy for justice and the expanded use of technology within the court service branch to drive efficiency and address backlogs. Existing technology can be used to connect judges, parties and witnesses in different parts of the province, alleviating staffing challenges and balancing out the caseload. Technology, such as the regularly available video-conferencing, can be used to enable remote and electronic proceedings – and can increase the efficiency of court services staff by allowing court registries with extra capacity to remotely assist other registries dealing with a backlog of matters.

Shortly after this recommendation was published, the House of Commons produced the [House of Commons Standing Committee April 2018 report](#), “Broadband Connectivity in Rural Canada: Overcoming the Digital Divide”, wherein a recommendation was made to develop a national strategy to coordinate broadband deployment across Canada that would involve key stakeholders including provincial governments and Indigenous communities. The CBABC supports this strategy, which is intended not only to provide the needed bandwidth to remote areas to improve internet access, but also meaningful consultations with communities to ensure

digital literacy is developed. By employing such a strategy, significant progress would be made to increase access to justice.

The CBABC acknowledges that this government followed through with our recommendation by developing the [2019-2023 Court Digital Transformation Strategy](#), which promotes a user-centric approach to innovative technology which, in turn, creates efficiencies for the justice system. One of the stated strategic priorities of this overall plan is improving access to justice, also a key priority for the CBABC. This Strategy was developed following a year's worth of effort by representatives from the Court Services Branch, all three levels of our Courts, users of these services including Indigenous peoples, lawyers working in the Courts, and the Office of the Chief Information Officer.

This strategy incorporates:

- remote appearances for pre-trial hearings in criminal, civil and family matters;
- digital information-sharing platforms so that the system is not reliant on paper documents; and
- a digitally skilled workforce which requires training of the existing workforce and establishing new jobs for people with those skills to support the justice system.

The Chief Justice and Chief Judge of all three levels of court support the Court Digital Transformation Strategy, stating:

We support the increased use of technology inside and outside of the courtroom to enhance our ability to fulfill our obligation to be neutral and impartial arbiters of disputes and to support and enhance respect for the rule of law.

When the entire justice system, which includes an independent judiciary, the Ministry of the Attorney General, police services, lawyers and others, have collaborated and collectively agreed to a strategy, it shows that the participants in this complex system are ready to move forward in

a coordinated direction. With that level of readiness and co-operation, government must allocate funding as quickly as possible.

Now that the overall five-year strategy has been published, the CBABC asks that the timeline be adjusted and that required funding be immediately directed to the justice system and internet infrastructure to ensure that matters can be processed and heard by decision-makers in a reasonable and timely fashion. Expanded Wi-Fi capabilities in courthouses and increased ability for remote appearances by video is urgently needed due to the COVID-19 restrictions. This has become a priority because it is needed to maintain and increase public confidence in our justice system, to improve access to justice, and to make efficient use of the limited resources available. Although it was fortunate that some parts of the system already had some digital tools, none of this is at the level required or expected by the public in 2020.

For the past several months during this unprecedented state of emergency, the courts have had to significantly limit the number of people inside courthouses, be that users of this service, lawyers and other community service providers, judges or the government employees working in this space. To do this, the courts had to restrict the services they provide because they do not have a sufficient digital infrastructure to conduct all types of court proceedings. They did not have the hardware, software, systems, or training.

There is a critical need for full allocation of funding for the Digital Transformation Strategy now. We need this strategy implemented so that the parents who cannot agree on a parenting schedule for their children, can make a video appearance before a judge who will decide, and their children's anxiety is reduced. We need it so the young offender charged with mischief for damaging a business storefront, can participate in a restorative justice program offered via video to make amends. We need it so that those charged with a criminal offense can obtain legal advice before a court appearance by secure phone or video.

The CBABC believes that many court services will need to be available virtually and conducted electronically as part of the “new normal” that will extend even beyond the end of the current state of emergency. This becomes a necessity, as the intermittent interruption of services due to social distancing requirements are expected to continue over the next couple of years.

In the 2020 budget, \$35 million was allotted to court services, increasing to \$44 million in 2021/22 and \$53 million in 2022/23. However, in the weeks that followed this announcement, COVID-19 dramatically changed how we all must conduct business, and this includes the operation of the justice system. The funding for the strategy needs to be made sooner than the original timeline, given the current need.

The cost of upgrading the existing system to enable participants to file documents electronically, appear in court by video and/or telephone and to have judges equipped with computer equipment to view evidence and testimony may be significant, but it is long overdue.

2. Legal Aid Funding

The people of British Columbia rely on the justice system to ensure that legal needs are met and that residents receive fair and timely treatment in legal dealings with others. The costs of engaging with the justice system are prohibitive for many people and there is a lack of resources to support those who cannot afford to pay for legal representation. The CBABC asks that additional funding be allocated to specific legal aid services to ensure that the most vulnerable in our society have access to justice.

Public legal assistance services ought to be provided to individuals, families and communities with essential legal needs who are otherwise unable to afford assistance. Essential legal needs are legal problems or situations that put into jeopardy a person or a family’s liberty, personal safety and security, health, equality, employment, housing or ability to meet the basic necessities

of life. These essential legal needs include legal matters involving child custody and support, as well as the involuntarily detention of patients under the *Mental Health Act*.

a) Expansion of Scope in Family Law Matters

The CBABC asks the government to fund an expansion of the scope of family law services offered to those who qualify for legal aid assistance. Since the funding cuts announced in 2002, Legal Aid BC has had no funding to provide family law legal services for the majority of family law matters, including child support, spousal support, division of assets and general custody issues. This disproportionately impacts the most vulnerable in our society: stay-at-home parents and their children. As a result, about 40 per cent of family law cases in Provincial Court involve a person without legal representation. Only those where there is actual or threatened safety concerns or a serious denial of access to children are offered legal aid representation through Legal Aid BC.

As courts fill with self-represented litigants, even more costs are incurred in the justice system and other systems because self-represented litigants are unfamiliar with the process and are attempting to navigate it while under stress resulting from the end of a relationship or economic hardship. As a result there are adjournments, delays, and additional time required by judges and court services staff to explain processes and legal requirements. These delays prevent the prompt resolution of legal disputes and that delay has a negative effect on children whose parents may be without the proper child support to provide for them, or who remain in conflict over parenting arrangements, adding stress to the family environment.

In the 2017 Agenda for Justice, the CBABC called for adequate funding to ensure that people who qualify financially for family law legal aid (71 per cent of whom are women) receive representation for services that promote family security and financial stability. This includes: support for the issues of divorce, child access and custody, financial support and asset division.

Approximately \$20 million in additional funding to the Legal Services Society would be required to expand the scope.

b) Involuntary Detainees under the *Mental Health Act*

In the 2017 An Agenda for Justice, the CBABC advocated for the patient's right to legal representation during the review proceeding when a person has been involuntarily detained under the *Mental Health Act*. The CBABC supports the Ombudsperson's recent [recommendations](#) that a legal aid funded service be created to provide independent legal advice to people detained under that Act. BC is one of the few Canadian jurisdictions that does not have some form of independent legal advice service for detainees; this has accounted for a large part of the non-compliance and rights violations that were documented in the [2019 Report, Committed to Change](#).

The system provides legal services for people accused of criminal charges; yet, it does not provide legal services for those detained involuntarily due to mental health issues. The unfairness of this cannot be overstated. The CBABC supports the recommendations of the Ombudsperson and also Health Justice, whose goal is to protect basic human rights for those involuntarily committed under the *Mental Health Act*. The government is asked to expand legal aid services to those individuals most vulnerable under this legislation.

The CBABC acknowledges that this is a challenging time to secure additional funding for programs such as legal aid. However, we note that the PST tax introduced in 1992 that targets the legal services industry exclusively acts as an additional financial barrier to those requiring legal assistance to access the justice system. This tax is also regressive: it has a disproportionate impact on low and modest-income individuals and small businesses who are least able to afford it. This very committee has, in the past, agreed that this tax is discriminatory and unfair, yet it remains in place for one main purpose: to generate revenues. In the 2017 Agenda for Justice, the CBABC asked for this unfair tax to be eliminated for legal services. In the alternative, the

CBABC asked that proceeds be directed to legal aid, as this was stated by the government to be the reason for introducing the tax.

Legal aid services are already paid for by taxpayers, but the scope of these services remain limited; by re-allocating the PST revenues generated from legal services, the scope could be expanded. The CBABC submits that the PST charged on legal services ought to be designated for legal aid to expand services in family law cases and to provide legal aid funded services to people detained under the *BC Mental Health Act*.

Indigenous Justice and DRIPA

The CBABC continues to be concerned with the over representation of Indigenous people in our justice system and is committed to advocating for a culturally appropriate and culturally responsive legal system.

In the 2017 Agenda for Justice, the CBABC called for action on how Indigenous people interact with the justice system, including:

- Reducing the over-representation of Indigenous inmates in our prisons;
- Reducing the over-representation of Indigenous children in care;
- Recognizing that Indigenous communities suffer from disproportionate levels of crime; and
- Expanding the use of restorative justice.

In February 2020, the BC First Nations Justice Council, Ministry of Attorney General and Ministry of Solicitor General announced the [BC First Nations Justice Strategy](#). To be successful, to actually complete the transformational change in the relationship between indigenous people and the justice system, and to reach the desired outcomes, the Strategy must be funded.

The Strategy includes elements which CBABC has previously called for: restorative justice initiatives, expansion of Indigenous courts, and expansion of legal aid services. It also calls for the implementation of the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), which was recently passed.

The CBABC also welcomes DRIPA. This legislation creates a path forward which respects the unique experiences of Indigenous peoples while encouraging the spirit of co-operation. However, the legislation is only the starting point; the CBABC calls upon the government to ensure funds are available for the necessary review and development of legislative amendments that may be required as a result of the implementation of DRIPA. Throughout 2020-21 CBABC members will examine key legislative areas through the lens of DRIPA to contribute to this review process.

Conclusion

Through its membership, the CBABC has unique insight into the justice system and is committed to steadily improving access to justice in this province. The government can help improve the lives of British Columbians by taking proactive measures to ensure justice is delivered in a timely manner with up-to-date technology and services. Expansion of legal aid services will open the door to many who are currently unable to obtain representation to access the justice system. Funding to improve the lives of Indigenous people – whether that be through their interaction with the justice system or through the recognition of their rights – will result in a positive outcome for all residents. Creating a stable justice system that meets the needs of the public benefits everyone, and the CBABC remains committed to ensuring that government funding is made available to meet the current challenges faced by the most vulnerable in our society.

In conclusion, we want to acknowledge that the justice system is not something you hear about from your constituents very often. The system and its multiple parts is not utilized by everyone, although we know that 45% of the population will have a legal matter arise in a three year period.

The point is that when someone needs to use the justice system or is unexpectedly brought into it, the system needs to be functional and accessible. That means government needs to make sustained investment as part of its job to keep peace and order, a successful economy and a thriving society.

CBABC welcomes the opportunity for input to the Select Standing Committee on Finance and Government Services. We acknowledge the government's efforts to increase access to justice in British Columbia, but more can, and should, be done. CBABC appreciates working with government to keep improving access to justice in British Columbia and asks that you consider our recommendations.