

Submission to Select Standing Committee on Finance and Government Services 2020 Budget Consultations

The Canadian Bar Association, British Columbia Branch
June 28, 2019

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 7,200 lawyers, judges and law students from every region in British Columbia.

CBABC is part of the national network of provincial and territorial branches 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.

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 identify how to make improvements. *An Agenda for Justice – Platform Updates 2018* was released in September 2018 to identify progress and highlight current issues.

This submission outlines CBABC's key recommendations for provincial investment for 2020, funding for legal aid services and the establishment of a Unified Family Court, as well as other areas we believe can be reformed to improve access to justice in British Columbia.

Priority Issues

Legal Aid

We recognize that certain programs and services that foster the well-being of individuals also improve the well-being of society.

If health care was not publicly funded, many people would not be able to afford the cost of hospitals, clinics, and doctors.

If education was not publicly funded, some people could not send their children to school.

The same goes for legal issues. The law plays a significant role in everyone's daily interactions. It is essential to recognize a public responsibility to ensure funding that permits reasonable and meaningful legal advice and representation for those who otherwise could not afford it.

CBABC members hear and see many cases of people struggling to solve their legal problems. For example, a single mother trying to get custody of her children after the father had falsely alleged the mother was suffering from mental health issues. Upon receiving support from a legal aid lawyer, the woman gained custody of her children and has since completed a master's degree in *Women's Studies* from UBC and works at women's shelters and centers, thus positively contributing to our society.

Our members also observe an increase in the number of parties presenting with mental health issues in family justice proceedings. Whether it is mild depression, anxiety or major mental disorders from bipolar to schizophrenia, people who experience these conditions need help to understand court processes and to make decisions. The assistance of a lawyer is crucial to assist these parties in navigating various court procedures, completing documents, and advocating in hearings or mediations. Lack of counsel often means relevant information is not presented to child protection authorities, the Crown, or the Court. This results in resolutions that are ineffective.

Last year, thousands upon thousands were turned away from legal aid because eligibility thresholds are so restrictive that very few people can qualify for the legal help they need. For example, a single mother who has two children and earns over \$3,000 per month would not qualify for legal aid for standard cases. For those who do qualify, legal aid coverage often runs out before their legal problem is resolved.

Another CBABC member added that women are often more likely to be economically disadvantaged in relationships and are often the victims if there is abuse or violence. Therefore, there is a gendered impact in the context of family law. When people, mainly women, reach a point where they must extract themselves from a relationship, they are often unable to do so due to the lack of legal advice and the unavailability of legal representation to obtain protection orders and financial support orders.

A lack of government investment in the people who need legal aid not only hurts those people, it also hurts our economy and society. For example, a parent who cannot get help to collect child support from an ex-spouse may have to turn to social services and assisted housing instead. Or, some people who could benefit from diversion out of the criminal court and into treatment for their issues end up jailed, untreated and possibly in a worse physical and mental condition.

To not provide people with legal representation effectively means others in the court system will experience delays in the hearings of their cases – this also affects other parties such as witnesses who have taken time away from work to be present for a hearing.

An increased investment in legal aid would:

- increase the eligibility thresholds and thereby increase the number of people helped;
- provide legal representation to an increased scope of family law problems, and
- lead to resolutions that create more outcomes that are positive for people in all areas of legal aid.

The current service delivery model of legal aid is a combination of web-based legal information, community advocates, duty counsel at courthouses, general advice lawyers and individual legal representation. The economic realities of sustaining a law practice have reduced the number of lawyers able to take legal aid cases. The tariff rates paid to legal aid lawyers in BC are less than the cost of most lawyers' overhead. The rates are also lower than rates paid to lawyers representing the government in child protection and criminal law cases. The consequences of

the low pay are that fewer and fewer new lawyers are willing to join the legal aid bar; overall fewer lawyers are financially able to take on legal aid cases; and fewer experienced lawyers are able to take on the complex cases.

Lawyers providing legal aid services are paid based on a tariff that was raised only once since 1991. CBABC appreciates the one-time funding announced on April 28, 2019 to avert the potential of a withdrawal of services by the *Association of Legal Aid Lawyers*, but the funds expire November 3, 2019. This funding was a good start, but sustained, reasonable investment in legal aid is needed in order to make it economically realistic for lawyers to provide legal aid counsel and representation so that eligible British Columbians can get the effective representation and resolution they need for their legal problems.

Lawyers simply cannot afford to provide legal aid services because of the low tariff and the unrealistic compensation under the block funding model.

Therefore, CBABC recommends the government increase funding for the Legal Services Society to compensate properly those who provide these critical services to this high-need population. An additional annual investment of \$38-49 million would allow for an increase to the tariff that brings it in line with comparable jurisdictions.

CBABC acknowledges that increased funding to the Legal Services Society is only one way of improving the justice system in British Columbia. We also recognize the many programs, initiatives and improvements made through government, community-organizations and individuals in the justice system. However, the Legal Services Society carries the responsibility of providing publicly funded legal representation to those who cannot afford it. To do so, the public funds allocated must be sufficient to provide a sustainable service model.

Unified Family Court

Someone facing the end of a personal relationship, and who cannot directly resolve with their spouse issues like property division, parenting, child and spousal support, will need to access the courts. In this province, the Supreme Court provides a forum to address and to decide all family law issues, while the Provincial Court provides a forum for parenting, child and spousal support only.

A Unified Family Court (UFC) is one level of court that deals with all family matters. UFCs would simplify the rules and procedures, and provide a specialized bench, a federally appointed judge, a strong cooperative resolution focus, and extensive services for children and families. Instead of society bearing the cost of two courts, there would be one.

UFCs are currently expanding across Canada, but not yet in British Columbia. The 2018 Federal Budget included funding for the establishment of a UFC in Alberta and the expansion of existing UFCs in Ontario, Nova Scotia and New Brunswick. The federal government remains committed to working with British Columbia to establish such a court.

CBABC encourages the BC government to negotiate with the federal government to implement a UFC in British Columbia.

Indigenous Justice

CBABC applauds the government for introducing and investing in reforms and initiatives aimed at addressing British Columbia's relationship with Indigenous people and, in the context of justice, addressing the over representation of Indigenous people in our justice system. CBABC is committed to advocating for a culturally appropriate and culturally responsive legal system. In addition to expanded funding for restorative justice initiatives, expansion of Indigenous courts, legal aid services, and child protection reform, CBABC notes a gap remains in the availability of *Gladue* reports which assist judges in sentencing Indigenous offenders. While funding has increased to provide more reports, there is now an insufficient number of trained report writers to meet the demand. To address this shortage, CBABC asks for funding of training programs for Indigenous people so the reports can be prepared without further delay.

Conclusion

CBABC welcomes this opportunity to provide 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 continue improving access to justice in British Columbia and thanks you for considering our recommendations.