



**THE CANADIAN  
BAR ASSOCIATION**  
British Columbia Branch

**Submission to the Standing Committee on Finance & Government Services  
2014-15 Provincial Budget**

**Prepared by:**

**The Canadian Bar Association**

**British Columbia Branch**

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Good afternoon.

My name is Dean Crawford and I am the President of the Canadian Bar Association, British Columbia Branch (CBABC). I am joined today by Don McDonald our Government Relations Director.

As President, I am pleased to speak on behalf of 6,900 lawyers, judges and students from across B.C. today which marks our 11th Submission to the Standing Committee on Finance and Government Services.

The last few years have seen an increased focus on the justice system by the provincial government. The scope of reform undertaken by government has been significant. In just the last two years, the following initiatives have been undertaken:

- In February 2012, the government commissioned Geoffrey Cowper, QC to provide recommendations for improving the justice system. In his report: *A Criminal Justice System for the 21st Century* (“the Cowper Report”), Mr. Cowper provided 12 recommendations to government and these are now being implemented.
- In December 2012, the government and the Office of the Chief Judge of the Provincial Court signed a protocol agreement to work together on two backlog reduction projects, one focused on child protection cases and the other on reducing the criminal case backlog.
- British Columbia’s new *Family Law Act* became effective in March of 2013. Importantly, the *Act* encourages out-of-court dispute resolution processes and resolution through agreements, with court as a valued, but last resort.

I could go on and discuss several other initiatives, but these examples demonstrate the scope of the reforms that have been implemented. And I am proud to say that in many of these instances, the CBABC has made substantial contributions to the development of these initiatives.

And we are starting to see some positive changes to the justice system emerging from these initiatives. I will briefly refer to two of them.

Mr. Cowper, in his report, recommended the statutory establishment of a formal Justice Summit to ensure collaboration amongst justice participants, including the judiciary, the senior executive of the Ministry of Justice and other organizations. The first Summit was held in March of this year and the CBABC was pleased to participate in the discussion to identify criminal justice system priorities.

Secondly, there is the backlog reduction project. The Legal Services Society (LSS) is responsible for administering the legal aid program in British Columbia, including funding representation in criminal cases. It notes that because of the backlog reduction initiative, along with the Provincial Court's increased capacity, the time it takes a criminal trial to get to court in cases where the LSS is funding representation has been reduced significantly.

This brings me to the CBABC recommendation to this committee. With the government having put into motion much of its reforms of the justice system, it is now time to focus on access to justice issues for those most in need.

By that we mean assisting British Columbians in resolving very important, personal legal issues by making an investment in legal aid.

As part of the ongoing conversation on justice reform, the CBABC released *An Agenda for Justice*, our election platform document, in February 2013.

*An Agenda for Justice* proposes a series of investments in the justice system and legislative reforms and recommendations aimed at improving access to justice for all British Columbians.

As part of *An Agenda for Justice*, we recommended an immediate investment in legal aid. Access to legal aid remains the major stumbling block to B.C.'s justice system. Lack of adequate funding for legal aid not only affects those who need it the most, but it reverberates through the whole justice system causing delays everywhere.

A few years ago, I had the experience of attending a custody dispute to assist a witness who was testifying in a B.C. Supreme Court trial. The parents of the child were young, probably 20 years old. On one side of the courtroom was the estranged husband, who had with him his extended family. He was ably represented by a family law lawyer and I thought it likely that his extended family was paying for the lawyer's fees.

On the other side of the room was the estranged wife – again, probably 20 years old. She had no one else in the courtroom supporting her and did not have legal representation.

Because of the provincial government's current funding levels of the Legal Services Society, legal representation was not available for this young woman. As I watched these proceedings, I noted the following:

- The judge was doing his best to assist the young woman in achieving a fair trial, but it was not the judge's job to be her advocate;
- The trial was probably taking twice as long as it would have had this young woman had legal representation. In fact, had she been able to obtain legal representation and advice, a settlement may have been possible, freeing up important judicial resources;
- Lastly, I could not envision too many challenges more daunting than having to argue for the custody of your own child without any legal support while the other parent has legal representation.

Sadly, this state of affairs continues today. Legal representation is not available through legal aid in most child custody cases, no matter the income of the parent. Nor is it available for child support, spousal support or division of assets cases. We acknowledge and applaud the government's focus in the new *Family Law Act* on resolving such disputes out of court, but the reality is that there are and will continue to be many cases where individuals are not able to resolve their disputes and will turn to the courts for a decision.

The current funding shortfall means that in Provincial Court 90 to 95 percent of family law cases involve an unrepresented person and the figures are also quite high in the Supreme Court.

We recognize the fiscal challenges that we face in British Columbia. We also recognize the importance of the government's current Core Review process. As part of its terms of reference, the Core Review is required to identify opportunities where savings can be re-directed to high-priority programs. It is our view that legal aid is certainly a high-priority program and we hope that savings in other areas of government operations will be identified so that government can re-direct some of these savings to legal aid.

The CBABC recommends incremental steps for legal aid funding. We support the recommendations by the Legal Services Society for an immediate injection of \$4.9 million per year into legal aid funding.

- This money will provide for:
  - expanded duty counsel;
  - enhanced family advice;
  - new community services including running *LawLine* seven days a week and in the evenings;
  - legal information outreach workers and paralegals; and
  - improved access to Aboriginal services.

We recommend that this funding be included in the 2014/2015 budget.

CBABC also recommends a commitment to an \$18 million increase to the budget of LSS over the next election cycle, as the government's financial position improves. This would satisfy the most urgent needs within the legal aid program, including \$7 million to cover family law matters not currently covered.

We note that we are not alone in recommending an enhanced investment in legal aid. Mr. Cowper, in his report, expressed the view that an investment in legal aid "would be money well spent."

Earlier this week, on Wednesday, the Union of B.C. Municipalities, recognizing the impact that individuals' unresolved legal problems have on their communities, endorsed a resolution calling for increased, long-term and stable funding for legal aid.

Importantly, the government itself has made a commitment to the public to enhance legal aid in the area of family law. In Part 2 of the *White Paper* on Justice Reform, published in February of this year, the government recognized that there are situations where people need legal information or advice from a lawyer, even when they intend to resolve disputes outside of court. The government then made the following commitment:

“Government intends to support LSS to expand the family legal aid services it currently provides.”

We emphasize, then, that the recommendations we are bringing to you regarding investments in legal aid reflect priorities and commitments already made. In order for government to meet this commitment, however, an investment of money will be required.

The government has announced that it will be increasing the budget of the Legal Services Society in 2014-2015 by \$2 million. While this increase is welcomed, most of the additional funding will need to be directed to criminal legal aid to meet existing constitutional requirements for funding. That will leave very little funding for family law services. It is very unlikely, in our view, that LSS will be able to expand its family legal aid services as envisioned by the government's commitment in the *White Paper*.

By contrast, our recommendation to increase funding by \$4.9 million now and \$18 million over the election cycle will make a real difference in the ability of the Legal Services Society to help those who need family law advice and representation. In turn, this investment will enable the government to maintain the commitment it has already made in the *White Paper*.

Lastly, I wish to speak to funding of the Court Services Branch within the Ministry of Justice. As the CBABC noted in its presentation to you last year, and as set out in *An Agenda for Justice*, today's justice system infrastructure relies on two key resources – people and technology. The human sector of the justice system has been under-resourced for years,

but the past three years in particular have seen exceptional strain as work demands have increased and full-time position numbers have decreased.

Chief Justice Bauman of the Court of Appeal, while he was the Chief Justice of the Supreme Court, noted that the Supreme Court has had courtrooms that cannot proceed because no clerk is available. Also, fewer registry staff are available and there has been a shortage of sheriffs to provide security. This leads to delays for all litigants in the timely resolution of disputes.

It is imperative, therefore, that the advances that have been made in the justice system are not lost through cuts to the Court Services Branch. We call for the government to make a commitment to long-term, stable funding of the Court Services Branch.

In closing we ask that you speak with your colleagues and relay the importance of getting this right, the importance of a sustainable legal aid system, the importance of courts that are available and efficient, and the importance of access to justice.

We ask that you consider carefully our strong message that there is an urgent and compelling **need to invest in justice now**.

On behalf of the Canadian Bar Association B.C. Branch, I thank you for the opportunity to appear before your committee. We look forward to working with you to make justice accessible to all British Columbians.