



**THE CANADIAN
BAR ASSOCIATION**
British Columbia Branch

Submission To The Standing Committee
On Finance & Government Services

2016-17 Provincial Budget

Prepared By:

The Canadian Bar Association
British Columbia Branch

September 21, 2016

Good afternoon Mr. Chair and Committee Members,

My name is Michael Welsh, and I am here today in my capacity as President of the BC Branch of the Canadian Bar Association. I thank you for hosting these consultations, and our association welcomes the opportunity to appear before you.

The BC Branch of the Canadian Bar Association is the voice of this province's law profession on matters of law and justice, and we advocate on behalf of both a fair, just and affordable justice system and the concerns of our members. We support the rule of law, access to justice, improvements in law, and the administration of justice.

We are a member-funded, not-for-profit, organization that represents some 7,000 lawyers, judges and law students in every region of this province. The Canadian Bar Association is a national network of Provincial and Territorial Bar Associations that together represent more than 36,000 members.

Our varied membership in BC includes the major firms in Vancouver, Victoria and other larger BC cities, as well as sole practitioners and small firms across the province. In fact, I am from one of those small firms comprising three lawyers in Penticton. As the only President of our Branch from the Okanagan in over a decade, but also having worked in Vancouver in the first decade of my practice, I have witnessed the problems we face across this province.

And I can say that while the CBABC has a diverse membership, we have a common and united voice across that membership, as we all share the belief in advocating for a just society and the betterment of our profession and our laws.

Over the years we have had a history of collaboration with government, and have made substantial submissions. Our *Agenda for Justice* Policy document submitted in 2013 outlined a number of low or no-cost proposals for the government to enact, and we are pleased there has been progress by government in implementing some of our recommendations including the *Wills, Estates and Succession Act*, amendments to the *Franchise Act*, and the modernization of the *Society Act*. We will be presenting a new *Agenda for Justice* later this year, which will highlight the justice and legislative issues that need addressing in this province.

We were pleased when Premier Clark announced the Justice Innovation and Transformation Initiatives in 2012. We are encouraged by the findings of the Initiatives' pilot projects to date and support their expansion. We also were pleased when the government implemented its Rural Dividend program several months ago to build infrastructure in small communities and rural areas. I will return to this initiative and our vision to add to it.

We appreciate these actions but know there is more that needs to be done.

We are mindful that you need to control spending and maintain a balanced budget, but we need to ensure access to justice for all British Columbians. Too often justice issues

are compartmented as affecting only a small part of our citizens, and that somehow their problems do not affect us all. That is not so. Communities cannot thrive unless their residents have speedy and affordable access to justice. We have pointed out where there are actions we can take that are either no-cost or low-cost, but we do also need investments in legal aid and court resources to ensure that all British Columbians have adequate representation, particularly when it comes to family law and criminal law. Families are the basis of our society, and we cannot be a strong society without strong support to families. Persons charged are not thereby guilty, and they - and we - need a system that provides adequate support so that their cases are resolved correctly, and our courts have adequate time for all disputes that come to them.

In the past, members of our association have spoken to the committee about these issues, and we appreciate your understanding and previous support of the need for increased legal aid funding. But the issue remains: we still are very far behind 2002 funding levels. This is hurting many residents - families, children, our citizens - throughout our province.

I mentioned family law and want to speak more about that. In 2002 the government reduced overall legal aid funding by 40 per cent and limited legal representation and counsel in family law cases to emergency situations where there was domestic violence or a crisis involving children. According to the Legal Services Society, approximately 60 per cent of legal aid applicants in family law matters, the majority of the applicants being female, are now rejected due to this limited scope of representation.

This creates unjust situations and takes up more resources in the court system. Those individuals, not knowing how to tell their stories and ask for what they need, have to bring their cases to a judge, without any real knowledge of the law that applies, how to present their case, and even what they should be asking for. And even more tragically, many of these cases involve children. This causes unnecessary delays, takes up further court time as they struggle through, and leaves judges trying to assist while still remaining impartial, which is often onerous. Families, whole or broken, and children, deserve a system that works and solves their problems expeditiously.

Prior to 2002, legal representation for family law services included child custody and access, and financial support and maintenance. Legal Aid Alberta and Legal Aid Ontario have a far greater scope that includes custody, access, child maintenance and support, and spousal support. We are the second lowest paying legal aid system in Canada, according to statistics. At \$84 per hour, we pay so little to represent our neediest that most lawyers simply cannot afford to act for them. Their overhead in almost all cases vastly exceeds that. Most other provinces, such as Ontario and Newfoundland, pay in the area of \$135 per hour. Even this province pays the lawyer acting for the government in child protection cases that same amount, while the lawyers acting for the families get some 2/3 of that amount. We have a crisis in our child care system and we need to invest money for the families caught in that system. That is why the need

to increase per capita funding for legal aid continues to be a top priority for the Canadian Bar Association.

As I intimated earlier, another area we would like to talk to you about today is access to justice in our smaller communities. This is a problem that we recognized years ago, and that led to our creation of the Rural Education and Access to Lawyers program, or REAL.

REAL is a coordinated set of programs that address the current and projected shortage of lawyers practising in small communities and rural areas of British Columbia. We deliver this initiative thanks to assistance in funding from the Law Society of BC and the Law Foundation of BC.

We have looked carefully at where there is a crisis in access to legal services in our communities and have found a number of them – many of which are the same ones that the Rural Dividend program is set to assist – that have no lawyers setting up practice. When we think about it, this is not surprising. When the costs to get by month to month are calculated, especially in these times when student debt is in the six figures, what student would consider it financially prudent to start a new practice from scratch in a rural area or small town? They need steady and reasonable incomes from the time they start practice to pay back that debt to government. The easiest path to pay down that debt is to work for established firms in the large urban centres. And our smaller communities suffer. Just as they do when doctors, nurses and other health professionals do not come because they simply cannot afford it. But in those cases, this government has offered a solution to bring them where they are most needed.

The situation is harder when it comes to lawyers, however. Even for those who want to establish a life and practice in the smaller communities that need them, there is the issue of finding appropriate training and articling opportunities when there is already a lawyer shortage in those communities.

This lack of access to lawyers in some of our smaller communities affects many areas including family law, criminal law, wills and estates, corporate matters, and real estate transactions. And the list goes on.

REAL is trying to ensure that British Columbians have access to legal representation throughout the province. Among REAL's accomplishments are:

- + Funding for second year summer student placements in rural and small communities throughout British Columbia;
- + Promotional support to assist with the marketing of regions to law students and new lawyers;
- + Professional support from the Regional Legal Careers Officer for students who are interested in practicing in rural and small communities;

- + Professional support from the CBABC Regional Legal Careers Officer to assist law firms and practitioners with the recruitment, hiring and retention of students and new lawyers in rural and small communities.

We hope to do more. It helps the members of our profession and the citizens across our province. But government must also help, as governments with similar problems in many jurisdictions are already doing to keep their rural communities vibrant.

In early August we made a submission to the government to do something significant for communities that need legal services for small local business, families and citizens. Just as we do now with health professionals, we have proposed a student loan forgiveness program for lawyers who commit themselves to living and working in our small communities. For those communities recognized as needing lawyers, they will have their provincial share of debt forgiven on a five-year timeline. Expanding this existing program is a “win” for both the communities and the professionals who commit to them, whether they are doctors, lawyers, civil servants, or other needed professions. They will then live, work, buy homes, raise families and make those communities strong.

As a profession, we uphold a belief that we have a responsibility to British Columbians to ensure accessibility to the justice system.

As President, I am committed to finding solutions that will ensure all British Columbians have access to justice. It is too easy to sit back and criticize, but if we work together we can find solutions.

While many jurisdictions are facing uncertain economic times, British Columbia is the only province with a balanced budget and we commend this. But investment in our communities, our citizens, and our justice system that ensures we have a just, democratic and fair society, is also important. We understand the fiscal realities, but believe that reinvestment in the justice system is necessary to ensure that the ability to resolve our problems, plan our lives in business and estate planning, and resolve and move on with our lives when conflict arises, is a right for all of us in this province.

We are steadfastly committed to working towards solutions collaboratively and, with the committee’s support, we urge the government to match our determination to resolve these challenges.

In conclusion, I thank you for your time and consideration of our ideas today.

I am pleased to take your questions.