



Submission to the Standing Committee
on Finance and Government Services
2010 Provincial Budget

September 28, 2009

**Canadian Bar Association
British Columbia Branch**

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Prepared by:

The CANADIAN BAR ASSOCIATION – BRITISH COLUMBIA BRANCH

September 28, 2009

Good morning.

My name is James Bond and I am the President of the Canadian Bar Association - British Columbia Branch. I am joined by Caroline Nevin, the Executive Director of our Branch.

As President I am pleased to speak to you today on behalf of approximately 6,300 practicing lawyers, judges and law students from across B.C.

I am proud to say that this is our seventh submission to the Finance Committee. We value the invitation to participate in this process each year.

I would also like to take this opportunity to thank the government for the implementation of the RSP protection legislation that we were pleased to consult with you on last year. We proposed this legislation not only because it was important to our members, but because it is important for all British Columbians who save for retirement outside of a company pension plan.

This year, I would like to focus our comments on Access to Justice.

Like many stakeholders in the justice system, the British Columbia lawyers represented by the CBA are concerned about both perceived and real barriers to British Columbians accessing the justice system and its component parts.

Access to justice is a fundamental part of our legal system and the foundation upon which our society is based.

The Canadian Bar Association has a legislative mandate, which appears in its parliamentary charter, to protect and preserve the administration of justice, and promoting access to justice is a fundamental part of that.

However, the government of British Columbia is also responsible for ensuring that British Columbians have access to justice. British Columbians must be able to enforce their rights

and seek legal remedies where their rights have been ignored or impeded. Otherwise, our laws become hollow words.

Those rights of individuals and their ability to seek redress where those rights have been impacted upon are as fundamental to a proper functioning of society as the rights of British Columbians to healthcare or to education.

In fact, it is rule of law, the administration of justice, and the ability to access that justice that are the keys to ensuring that all other rights of our citizens are protected.

British Columbia's lawyers and judges see first-hand the problems associated with limited or no access to our justice system. Lack of lawyers, increasing numbers of self-represented litigants, clogged courts which result from both, and the subsequent impacts on health and social services systems are clear.

Lawyers understand the privileged place they hold in society as officers of the courts and defenders of the rule of law.

And we are doing what we can to alleviate the issue, as I will describe.

However, there are three key areas where we believe the government needs to act to assist also.

First, taxation of any kind on legal services creates an additional barrier to access, and should be removed.

While the proposed HST system will allow corporate entities to claim input tax credits, the full cost of the tax will still be borne by individuals - and it is individuals (such as parents involved in custody and access disputes, or injured individuals seeking compensation) that are least able to bear such a burden.

Second, reasonable and sustainable funding for Legal Aid must be implemented. There is an increasing proportion of the population that does not qualify for the very limited services available through Legal Aid currently, cannot afford a lawyer, and need more legal services than are available to them through pro bono clinics provided by the profession.

In communities across the province, the legal profession does its part to help fill that gap, by providing tens of thousands of hours of free and reduced fee services. However, we can only do so much.

A properly funded legal aid system is crucial to bridge the growing chasm between available services and those who need them in today's economy.

We know that those who administer the justice system are struggling to ensure access to legal services, court resources and timely resolution of legal problems. Certainly, the government is to be commended for not cutting the government funding of the Legal Services Society for the current fiscal year. However, the increased demand for services by those most in need will not be met because other, economy-sensitive sources of funding have plummeted by at least \$2 million.

Just like employment insurance in the federal system and social assistance in the provincial system, legal aid needs more funding in times of financial crisis.

The current economic circumstances have hit hardest those who need legal services but cannot afford to pay. This is amply demonstrated by the \$4.7 million dollar increase in demand for services supplied by the Legal Services Society (“LSS”) in its last fiscal year.

One of the responses implemented by the LSS was to cut the family dispute resolution services program which was already a downgrade from actually supplying a legal aid lawyer (since 2002, only those families with safety issues in marital break-down or emergency child access issues qualify for actual legal aid).

Behind the statistics are people. The problem has been well studied and surveyed and numerous reports have been written. It is time for action. The problem is that there is a largely silent group of people being harmed, and that is why I am speaking up today. I encourage you to come and see unrepresented people trying to solve difficult legal problems in our courts. Or, go to your local LSS office and ask them to let you meet some of the people that they turn away every day.

The problem is significant and growing, and when individuals who are unable to access Legal Aid services represent themselves in court, their lack of understanding of the legal regime, their inability to determine whether they “have a case”, or to articulate it if they do have one, increases the burden on court resources and leads to longer wait times for disputes to be resolved.

Third, the significant collapse of legal services in rural areas of the province must be addressed.

There are 10,200 lawyers licensed to practice law in BC. Of these, fully 80% practice in the counties of Vancouver, New Westminister or Victoria. Of the 263 students currently articling, only 40 (about 15%) are located outside of those three areas.

We know that the average age of lawyers in rural areas of the province is 50 and growing, but we also know that in some communities the numbers are significantly higher and growing. For example, in Castlegar, the average age of lawyers is 62.

There are now almost twice as many practicing lawyers between 51 – 60 as there was 10 years ago (2864 vs. 1501) and more than three times as many practicing lawyers between 61 – 70 today as there was in 1998 (1115 vs. 343).

The aging of the profession in some ways mirrors the changing demographics of BC's population. However, the impact of the baby boom generation's aging is exacerbated by the five year retention rate among lawyers, which has ranged between 75% - 80%.

This means that in the first 5 years of practice about 20 – 25% of lawyers cease to practice. Even worse, the number of lawyers being called to the bar upon graduation from law school is decreasing.

So we have a crisis of aging lawyers in rural areas, and as these rural lawyers age and retire, there are fewer new lawyers arriving to take their place in small and medium sized communities.

This also has a huge impact on the number of self represented litigants appearing before the court which in turns costs the province untold hours and dollars in delay and resources.

Citizens without representation, or even indeed, the availability of having legal counsel, are left significantly without access to basic justice for such everyday legal needs as family law, estate law, or personal injury law.

As I said, the lawyers of British Columbia are doing their part where we can.

In March of this year the Canadian Bar Association launched the Rural Education and Access to Lawyers (REAL) Initiative funded by the Law Foundation of BC. The program places second year law students in summer positions around the province in communities with less than a population of 100,000 where the lawyer ratio is less than 1 to 500.

Our intention is to expose young law students to the opportunities available outside of the lower mainland and Victoria. Our hope, and we will see the results at the end of the three-year project, is that we can begin to address the impending decline in lawyers available to serve rural British Columbians.

I am proud to report that through the REAL Initiative, we placed eleven students this summer in the communities of Trail, Nanaimo, Kamloops, Powell River, Vanderhoof, Fort St John, Campbell River, Smithers, Vernon, and, shared community placements in Squamish/Whistler and Cranbrook/Fernie/Kimberley.

2010 will see us placing seventeen students around the province.

This leads me into our next request for government action, which is in student loans.

Last year when we addressed this Committee, we brought to your attention our concern about the overwhelming debt carried by law students upon graduation.

Students are making economic decisions to practice in urban areas (where they can earn more money) instead of rural areas because of high student loan debt upon graduation. I was one of those students 15 years ago.

We applaud the government's reaction to the difficulties faced by rural British Columbians trying to access health services by implementing a loan forgiveness program for medical, nursing and pharmacy students who moved to rural areas to work.

But as I said earlier, access to justice is just as fundamental as access to medical services - and the lack of lawyers in rural areas has reached crisis proportions.

I was in Wells last weekend for the meeting of the Cariboo County Bar Association. I was told by the lawyers in the Cariboo that they turn away multiple clients every day. I was told by one lawyer in Terrace that when a potential client called to ask for an appointment, his next available time was 2 months away.

The CBA has the REAL Initiative, but the government can help attract lawyers to rural areas who will remain there if the following two recommendations of the CBA are implemented:

First, we recommend that the government acknowledge that the articling period is a full time educational period. This is the period between class-based studies and being called to the Bar to be able to practice law. Students are under the direction of the Law Society during this period. The Law Society has the authority to set educational standards and requirements, oversees the completion of the program, and evaluates students – just like any other educational institution in B.C.

However, currently, articling students must begin to repay their student loans during their articles. The financial burden to these students is preventable.

We propose that the period while a student articling be considered 'full time study'. This would result in student loans staying in the "no payment / interest free" status for the entire 12 months of articles and then converting to "no payment / interest accruing" status for the six month period following. Currently, this period commences the moment university classroom studies cease.

Second, we recommend that the current BC Loan Forgiveness program, which forgives student loans at the rate of one third per year for three years for doctors, nurses and pharmacists who work for 3 years in rural British Columbia, should be extended to lawyers.

This is a tangible commitment to access to justice as well as to supporting our own BC trained students into meaningful community practice and service to our local populations.

In closing, we look forward to reviewing your report and recommendations later this fall and hope that you will relay to the government the significance of addressing these important issues.

On behalf of our membership, I thank you for the opportunity to appear before your Committee.

I would be pleased to answer any questions that the Committee may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Bond', with a large loop at the start and a trailing flourish.

James M. Bond
President
Canadian Bar Association BC Branch