



Submission to the Standing Committee
on Finance and Government Services

2011 Provincial Budget
September 15, 2010
Canadian Bar Association
British Columbia Branch

**Submission to the Standing Committee on Finance & Government Services 2011
PROVINCIAL BUDGET Prepared by:
The CANADIAN BAR ASSOCIATION – BRITISH COLUMBIA**

September 15, 2010

Good morning.

My name is Stephen McPhee 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 6,400 practicing lawyers, judges and law students from across B.C. I am proud to say that this is our eighth submission to the Standing Committee of Finance. We value the invitation to participate in this process each year.

I would like to begin by taking this opportunity to thank the government for its decision to eliminate the \$6 fee for online searches of criminal and traffic court records. Our members asked us to make a strong case for the removal of a fee that, in our view, not only compromised access to the justice system but also risked increasing in-person demand and delay in court registry offices. We are pleased that the government listened to our concerns, and made the right decision in the best interest of the public and the administration of justice. Generally speaking, fees and the taxation of legal services is a barrier to accessing 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.

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 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 access to legal representation has led to increased numbers of unrepresented litigants in the courts, adding strain and backlog to the justice system, and increased demand on government-funded health and social services systems when important legal problems involving families and individuals are not properly prevented or resolved.

Next week, the Public Commission on Legal Aid hearings start - hearings in 11 communities across British Columbia starting in Williams Lake on September 20, and ending in Chilliwack on October 12. The Commission will engage the citizens of British Columbia in order to determine their priorities for the future.

The most recent research in this area clearly shows that increased public spending at an early stage of disputes involving citizens and the law, saves money in other areas of public spending - be it healthcare or other social services spending.

The research also indicates that it is important that developments in legal aid include comprehensive and integrated delivery models. This means that funding for those programs that have a positive impact in another service or budget area should receive priority when public resources are allocated.

Also, when success is seen in one area of the justice system - such as in the investigation and prosecution of gang related and other serious crimes, it is important to ensure that adequate additional resources are allocated to the other areas of the system that are impacted by these successes - and I am speaking specifically about court services, judicial resources and representation by counsel.

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 improve issues affecting access to justice. However, there are two key areas where we believe the government needs to act to assist. First, taxation of any kind on legal services creates an additional barrier to access justice, and should be removed. While the HST 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 for lost income) that are least able to bear such a burden. We have mentioned this concern many times before this committee and we are willing to address this topic in greater detail at your request.

However, today we would like to dedicate the majority of allocated time to speak to the issue of law student loan debt and how it is creating the unintended consequence of widening an already large rural-urban gap in legal services in BC.

I would like to highlight for the committee empirical data that demonstrates a dramatic decline in BC articling students choosing to practice in rural areas. Our organization believes this decline is due in large part to increasing student loan debt burden. This issue is particularly concerning to the CBA because it limits access to justice for rural British Columbians.

The significant decline 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 Westminster 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.

Compared to 10 years ago, there are now almost twice as many practicing lawyers between the ages of 51 and 60 (2864 vs. 1501) and more than three times as many practicing lawyers between the ages of 61 and 70 (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 unrepresented 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 without access to basic justice for such legal needs as family law, estate law, or personal injury law.

As I mentioned earlier, the lawyers of British Columbia are doing our part where we can. In March of 2009 the Canadian Bar Association launched the BC 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 and where the lawyer ratio is less than 1 to 500. The goal of the program 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 11 students the summer of 2009 and 21 students this past summer, 2010. All areas of the province were served and each unique placement has received high praise from the local lawyers and community. In many cases, these placements have led to offers of paid articles in rural communities. This leads me into our next request for government action, which is in student loans.

For the past two years when we have 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 often earn more money) instead of rural areas because of high student loan debt upon graduation. 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.

The CBA has responded with the REAL Initiative, but the government also has an important role in helping to protect access to legal services by attracting lawyers to rural areas. The following actions are recommended by the Canadian Bar Association BC Branch:

- First, we recommend that the government recognize the articling period as 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.

In past years there has been a lack of clarification about which level of government -- federal or provincial -- would be responsible for designating the Law Society as an educational institution for the purpose of administering student loans. Recent discussions between the CBA and the federal

government have confirmed that this decision making ability is at the sole discretion of the Province.

- Second, given the number of years required to obtain a law degree, we recommend that it be recognized as a post graduate degree within the provincial student loan program, so that the total loan amount allowable to law students matches that of students seeking a Masters degree in any other academic discipline. At present, many law students reach the maximum loan amount years before the end of their studies, requiring them to obtain higher interest funding and thus increasing their financial burden upon graduation. As we have already noted, high loan debt is a significant factor in a young lawyer's decision about where to locate and practice.
- Third, 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, be extended to lawyers.

These three steps are 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 your colleagues 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 'S. McPhee', with a stylized flourish extending to the right.

Stephen McPhee, President

Canadian Bar Association BC Branch