



Submission to the Standing Committee
on Finance and Government Services

2012 Provincial Budget
September 15, 2011
Canadian Bar Association
British Columbia Branch

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Good afternoon.

My name is Sharon Matthews 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 6,700 practicing lawyers, judges and law students from across B.C. I am proud to say that this is our ninth submission to the Standing Committee of Finance. We value the invitation to participate in this process each year.

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; promoting access to justice is a fundamental part of that.

The Government of British Columbia is 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 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 improve issues affecting access to justice. BC lawyers donate tens of thousands of hours of pro bono and low-cost or legal aid services every year. As a very recent example, over two days this past week, more than 100 lawyers in Vancouver and Kelowna provided free legal advice in outdoor clinics. A similar event will be held in Victoria tomorrow.

The problem we face as a society is that lawyers alone cannot possibly fill all of the cracks in our justice system. This is a key area where we believe the government needs to act: in particular, adequate and stable funding of legal aid is essential, particularly in a tough economic climate when more people face financial barriers and are forced to deal with their legal problems without representation. Crown and defence lawyers and judges know from experience that unrepresented litigants result in added costs to the justice system in several ways, most notably by: bringing unviable issues to court that a lawyer would screen out beforehand; bringing cases to court that would otherwise be settled if both sides had representation; and by extending the time required to deal with cases in court due to lack of knowledge of legal processes.

Research from other jurisdictions - notably the US and Australia - shows that for every dollar invested in legal aid, at minimum \$1.70 and in some cases many times more is saved in other areas of spending such as health care and social welfare. When government is faced with the need to contain spending, it makes sense to invest in programs that save money.

Cost-benefit analysis demonstrates that cuts to legal aid have created greater costs in the justice system, and have “slowed down” the administration of justice. With increased funding for legal aid:

- The 26,620 legal aid referrals provided in 2009-2010 would increase and there would be fewer self represented litigants, thus decreasing court costs;
- Civil and criminal case filings would decrease due to screening of legal issues;
- Family applications would decrease due to higher likelihood of mediation and resolution of issues outside of the courtroom;
- Hours of trials and hearings would decrease;
- The government’s expenditures on court costs would decrease, and based on existing research, other costs in health care and social welfare would also decrease.

Without an adequately funded legal aid program, the justice system will continue to face increased cost and stresses from unnecessary case filings, prolonged hours of trials and hearings and the attendant delays, and decreased public confidence as important cases get thrown out due to delay.

In March 2011, after extensive consultations with stakeholders and citizens in communities across the province, Leonard T. Doust, QC, Commissioner of the Public Commission on Legal Aid in British Columbia, released his Report and recommendations. The Commissioner identified legal aid as the fourth pillar of a just society, along with education, healthcare and social assistance. The CBA supports the Commissioner's findings and recommends that:

- In recognition that adequate and long term funding of legal aid is essential, and that an investment in legal aid saves money in the justice, health and social welfare systems, the Government of BC increase its allocation for legal aid funding in the 2012-2013 budget.

We strongly believe that additional resources allocated toward legal aid will create significant savings for government, while at the same time improving the BC justice system. The findings of the Doust Report clearly show that British Columbians do not feel the current justice system is meeting their needs. The current story of the justice system in British Columbia is that unrepresented litigations consume a disproportionate amount of resources and the current state of underfunding of legal aid is causing a public crisis of confidence in our justice system. A more compelling, and indeed progressive story for the government to share would be that they are committed to stable and long term funding of our justice system as an essential service, and that by doing so, substantial financial savings are generated that can be allocated to further improve government services.

The second issue I would like to raise today is the impact of large law student loan debt and the fact that it is creating the unintended consequence of widening an already large rural-urban gap in access to legal services in BC. 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 approximately 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.

There are now almost twice as many practicing lawyers between 51 - 60 as there were 10 years ago and more than three times as many practicing lawyers between ages 61 - 70 today as there was in 1998. 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. As well there has been a clear trend with younger lawyers to practice in urban regions. In addition, 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 an impact on the number of self represented litigants appearing before the court, particularly in the rural areas, which in turn 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 their part where we can. In 2009 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. 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 five-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 in 2011, through the REAL Initiative, we placed twenty students this summer in communities within every county in the province; places like Invermere, Qualicum Beach, Lumby, and Fernie. Over half of all of the REAL students have received and accepted articling positions in rural areas after the program.

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

For the past three 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 the REAL Initiative, but the government can help attract lawyers to rural areas who will remain there if the following three 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, be extended to lawyers.

We are confident that these changes to the BC student loan program will help address the growing deficit of rural lawyers practicing in BC ensuring that all British Columbians who can afford it have access to basic legal services, regardless of where they live.

Along with recognizing that the adequate and stable funding of legal aid is essential to those who cannot afford legal assistance, these measures 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,

Sharon Matthews, President

Canadian Bar Association BC Branch

Appendix A - Legal Aid Research Materials

Publications (all available at <http://www.publiccommission.org/resources/main/default.aspx>)

- Ab Currie - "[Unmet Need for Criminal Legal Aid: A Summary of Search Results](#)"
- Alison Brewin - "[Legal Aid Denied](#)"
- The Canadian Bar Association - "[Making the Case: The Right to Publicly Funded Legal Representation in Canada](#)"
- Department of Justice - "[The Purchaser - Supplier Approach in Legal Aid](#)"
- Dianne Martin - "[A Seamless Approach to Service Delivery in Legal Aid](#)"
- Eugene Kung - "[Renewing our Commitment to Legal Aid](#)"
- [Legal Services Society - Various Publications](#)
- Melina Buckley - "[The Legal Aid Crisis: Time for Action](#)"
- Melina Buckley - "[Moving Forward on Legal Aid](#)"
- Michael Trebilcock - "[Report of the Legal Aid Review 2008](#)"
- PriceWaterhouse Coopers - "[Economic Value of Legal Aid](#)"