



**Submission to the Standing Committee on Finance &  
Government Services -- 2013 PROVINCIAL BUDGET**

**Prepared by: The CANADIAN BAR ASSOCIATION**

**BRITISH COLUMBIA BRANCH**

October 1, 2012

Good morning.

My name is Kerry Simmons and I am the President of the Canadian Bar Association - British Columbia Branch (CBABC). 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 6,800 lawyers, judges and law students from across B.C. I am proud to say that this is our tenth submission to the Standing Committee of Finance. We value the invitation to participate in this process each year.

We have spoken to this Committee in the past about many different initiatives and ideas to improve our justice system and the public's access to justice. These include: changes to the student loans program to encourage new lawyers to provide legal services in smaller or rural communities; the protection of Registered Retirement Plans; the elimination of any tax on legal services; and increased funding for legal aid. I would encourage you to review those submissions.

In the past, we've sought to provide a mix of recommendations, including some that cost more and some that cost comparatively very little. We have also explained what lawyers themselves are doing to contribute to improvements in speed and efficiency in the administration of justice. We base our recommendations on the experience of our members, but also on our established credibility as advisors to government. We are often consulted by ministries considering changes in law and policy, and we have made substantial submissions on a wide variety of topics including law reform, judicial and Crown compensation, and regulatory matters including the provision of legal services by paraprofessionals.

In February 2012, the government appointed Geoffrey Cowper, QC to review BC's justice system, and requested feedback on the state of the justice system in the province. The CBABC formed a nine-person Advisory Panel that produced a comprehensive 60-page report

offering 25 recommendations related to the issues surrounding Justice Reform, and reiterated the need for an increased allocation of funding to Legal Aid. The report submitted in June, entitled [Justice In Time](#), was the combined result of years of research, dialogue and outreach to all the key stakeholders in the legal system in BC. As well, in March 2012, the CBABC responded to the Legal Services Society with a comprehensive submission responding to its letter entitled ["Shaping the Future of Legal Aid and the Justice System in BC"](#).

The CBABC appreciates being a valued participant in the discussions on law reform and justice reform. We routinely liaise with representatives of the courts, the Ministry of Justice, not-for-profit advocacy organizations, the Law Society, Trial Lawyers Association, and lawyers throughout the Province. We continually strive to exchange timely and accurate information with a view to achieving exceptional law reform, greater access to justice, and an efficient and effective justice system.

One of the key elements of the CBABC is to provide a common voice for our members – to speak up on their behalf about what they strongly believe in; sometimes in support of an initiative, sometimes in opposition, yet always with diplomacy and non-partisan debate. It is with this in mind that we come to you today.

The CBABC requests that the 2013 Budget makes an immediate and substantial financial investment in two areas:

- The infrastructure, both human and technological, supporting BC's courts; and
- Legal Aid services.

Citizens of our province look to our elected government to:

- provide a foundation for businesses and families that includes transportation systems, schools, health care infrastructure, and a functioning justice system; and
- protect its vulnerable citizens by providing child protection services, income replacement, housing **and** legal aid.

This is a time when governments everywhere are being challenged to “do better” by an increasingly informed and empowered electorate. It is clear from our own polling research in BC -- and from media coverage and public dialogue over the last 12 months in particular – that British Columbians want a well-functioning court system and fair access to legal services.

### **Funding Justice Infrastructure For the Future**

Today, our justice system is in crisis. Over the past two years, not a week has gone by without a media story about another stay of proceedings in a criminal matter, a report about delays, or an article about the frustration of the public or of lawyers trying to move a case to resolution for their client.

By Canadian law, a criminal case may be considered vulnerable to dismissal if it takes more than 18 months to resolve. In BC, there are thousands of cases that are already at, or within 6 months of reaching, that critical threshold. As Mr. Cowper noted in his final report, *A Criminal Justice System For the 21<sup>st</sup> Century*, the reasons are multiple and inter-twined, however there is one key fact that is clear: the current court infrastructure is inadequate to resolve the backlog and keep pace with the daily volume of increasingly complex cases that require resolution.

This is not a matter of bricks and mortar; today’s justice system infrastructure relies on two key resources -- people and technology. A working justice system requires court clerks, registry staff, Crown, sheriffs and a full complement of judges – not only for court but also for alternate dispute resolution processes that help resolve issues before court. The human sector of the justice system has been under-resourced for years, but the past two years in particular have seen exceptional strain as work demands have increased and full-time position numbers have decreased. Equally important, there is a need to invest in technology and data

collection to improve the use of the available resources, and to increase transparency by sharing meaningful data with all participants in the justice system. At a time when it is imperative for all participants to work together to improve the justice system, it is essential that data collection systems be put in place to provide accurate measures of the system's strengths and weaknesses, and the effect of new interventions and reforms.

### **Funding Legal Aid and Preventing Future Costs**

Legal Aid provides for early resolution of problems, resulting in benefits not just to the justice system but also to social services, health, housing, policing and other government services. A critical finding of the work of Leonard Doust, QC, Public Commissioner for the 2011 review of Legal Aid in BC, was that legal aid “more than pays for itself” in terms of the hard costs incurred in its absence: “costs associated with delays in court and administrative proceedings; increased court operation costs attributable to unrepresented litigants and accused; and, more broadly, costs associated with legal problems that are not resolved (including increased health care costs, increased social assistance costs, and so on).”

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 multiple times more is saved in other areas of spending such as health care and social welfare, and gained back in personal income and productivity. A study on legal aid in Texas, for example, showed that “investment in legal aid services led to economic growth in the community by increasing jobs, reducing work days missed due to legal problems, creating more stable housing, resolving debt issues and stimulating business activity.” When government is faced with the need to contain spending, it makes sense to invest in programs that save money and increase the productivity and earning power of its citizens.

An investment in legal aid can increase savings directly within the justice system, and speed-up the administration of justice. With increased funding for legal aid:

- The 27,433 legal aid referrals provided last year 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, adding to other government savings in health care and social welfare, as demonstrated in the research referred to above.

It is clear that an investment in legal aid is key to increasing effectiveness in the justice system, particularly at a time when there is a need to spend every dollar with a view to future gains.

### **Why Funding Justice Matters**

Access to justice is not just a phrase; it is a fundamental foundation upon which our society is based. And ensuring that access to justice is meaningful in practice is the responsibility of government. We look to you, our elected representatives, to ensure that our collective wealth is used to even the playing field for those who need to access to our justice system.

Meaningful access to justice is as fundamental to a proper functioning of society as access 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 social and economic structures of our society are protected.

We have spoken to you before of the immense work that lawyers and judges have done in terms of innovation, law reform and thousands of hours of no-charge services provided by lawyers to clients every year. The problem we face as a society is that lawyers alone cannot possibly fill all of the cracks in our justice system. We are at a significant juncture in the development – or demise – of our justice system, and government has a make-or-break role to play in the outcome.

The good news is that everyone involved acknowledges there is a problem, and that change is required in order to stop, and then reverse, the crumbling of the foundation of our justice system. Collaboration and transparency by all justice system participants is acknowledged as a basic requirement for moving forward. The reality is, however, that change without funding will change nothing... funding is needed for people resources -- court services staff, judges, Crown, and legal representation through legal aid -- and for basic operational requirements such as technology and data management systems. Immediate action will make the most impact years from now. Immediate *measurable* action taken even a few years ago would have prevented much of the harm we now see. Our submission to you is that it is time to take that action now, to prevent even more harm and to create a more effective and accessible justice system for British Columbians.

In his 2011 Report, Public Commissioner Len Doust, QC 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.***

## Conclusion

The current story of the justice system in British Columbia is that the underfunding of legal aid and justice infrastructure is causing a public crisis of confidence in our justice system. A more compelling, and indeed progressive, story for our elected representatives to share would be that you are committed to stable and long term funding of our justice system as an essential service, and as a means to create financial savings that can be allocated to further improve government services throughout the province.

In closing, we hope that you will relay to your colleagues the significance of addressing these important issues. This is the tenth of our submissions to this Committee, and I suggest that it is the most important of them all. On behalf of our members, I ask that you consider carefully our strong message that there is an urgent and compelling need to make a substantial investment in justice **now**.

On behalf of the Canadian Bar Association BC Branch, I thank you for the opportunity to appear before your Committee. We look forward to reviewing your report and recommendations later this Fall.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kerry L. Simmons', with a long horizontal flourish extending to the right.

Kerry L. Simmons

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](#)"