
GUIDE BOOK:

Public Commission on Legal Aid



What is legal aid?

The term legal aid in British Columbia can refer to a range of services including legal information, legal advice and legal representation. Historically legal aid largely consisted of legal representation by a lawyer in order to assist a client through the court process. Current legal aid delivery in British Columbia however, has moved towards an approach that takes into consideration a wide range of needs and recognizes the benefit of a variety of services other than just legal representation.

An important feature of legal aid services in British Columbia is the provision of legal information and education about the law and the legal system. Research has shown that timely access to good information helps people deal quickly with legal issues and often gives them the tools to solve their legal problems. These services can be provided by legal outreach workers, through telephone services, or via the Internet. If more help is needed, legal advocates or duty counsel may provide legal advice. In some cases, a lawyer may represent a person at a hearing before an administrative board or the court.

It is important to note that the term legal aid most often refers to publicly-funded legal services that are provided to those who can otherwise not afford them. Over time, legal aid programs have recognized the importance of providing a range of services, from information and advice to assistance and representation. However, legal aid should be distinguished from other avenues to increase access to legal information and services including general public legal education and information, privately funded legal clinics, and pro bono legal services.

Access to justice is also enhanced by a number of government policies and programs and by a range of services provided by other organizations and individuals. These initiatives include programs to reduce cost and delay through alternate dispute resolution, public legal education, community mediation services, and many others. Legal aid plays a central and indispensable role within this broad array of initiatives.



What is the Public Commission on Legal Aid?

The Public Commission on Legal Aid (the “Public Commission”) was launched in June 2010 to engage British Columbians in a discussion about the future of legal aid in the province.

The Public Commission is a joint initiative of The Canadian Bar Association British Columbia Branch, The Law Society of British Columbia, The Law Foundation of British Columbia, The British Columbia Crown Counsel Association, The Vancouver Bar Association and The Victoria Bar Association.

The need for a Public Commission on Legal Aid was identified through a series of meetings that took place in 2009 between a variety of community and legal organizations. The attendees at the meetings all expressed concern about the availability of legal aid in British Columbia and the need to establish a strong legal aid system for the future.

The Public Commission has issued an open call for written submissions to all individuals and organizations in the province who have ideas to share about the future of legal aid. Written submissions are due by October 31, 2010.

The Public Commission is also conducting hearings in 11 communities throughout British Columbia to hear in-person submissions. The dates and locations of the Public Commission hearings are:

Williams Lake	September.20.2010	Nanaimo	October.4.2010
Prince George	September.21.2010	Victoria	October.5.2010
Terrace	September.23.2010	Vancouver	October.7.2010
Kamloops	September.27.2010	Surrey	October.8.2010
Kelowna	September.28.2010	Chilliwack	October.12.2010
Cranbrook	September.30.2010		

When the Public Commission has received and reviewed all written and in-person submissions, the Commissioner will prepare a comprehensive report that will contain recommendations to improve the delivery of legal aid in British Columbia.

How did legal aid develop in BC?

While a shared belief in equal access to justice has been part of the Canadian legal tradition for quite some time, legal aid as a state funded institution did not emerge in Canada until the 1970s. Prior to then, legal aid was largely a charitable service provided by members of the legal profession who offered pro bono (free) legal services.

The first legal aid legislation in Canada was passed in Ontario in 1967 and in 1972, the federal government entered into a cost-sharing agreement with the provinces to split the cost of legal aid for criminal cases. At about the same time, the federal government began to provide funding for legal aid in civil (non-criminal) matters, such as family law, through cost-sharing programs with the provinces. This funding was originally provided through the health and welfare portfolio in recognition of the significant social consequences that result from unresolved legal problems.

The Province of British Columbia passed the Legal Services Society Act in 1979, which established the Legal Services Society (LSS) as the primary delivery organization for legal aid services in the province. In the following years, legal aid services expanded due to a strong commitment to social justice in Canada. LSS and other providers expanded their services to include delivery of legal information, education, and community based advocacy.

Did you know?

In 1495, King Henry VII of England proclaimed the *In Forma Pauperis Act*, which allowed judges to assign counsel to the poor. This is thought by many to constitute the first acknowledgement of the duty to provide legal aid services to those who cannot afford them.

Beginning in the 1990's however, legal aid services began a period of reductions, the beginning of which is often traced to a decision by the Federal Government to limit their funding for legal aid. This was soon followed by reductions in legal aid funding by successive provincial governments including the most recent round of reductions announced in British Columbia in 2002 that decreased government funding for legal aid in the province by 38 percent.



The current provincial budget in British Columbia has maintained funding levels for legal aid services. Organizations that fund and provide legal aid in the province are facing new challenges however with significant financial pressure due to the current economic climate and an increased demand for legal aid services. As a result, legal aid providers must now find cost-effective and efficient ways to deliver services that meet the diverse needs of their clients.

Who provides legal aid in BC?

The primary provider of legal aid services in British Columbia is the Legal Services Society (LSS). The mandate of LSS is to:

- help individuals resolve their legal problems and facilitate access to justice;
- establish and administer an effective and efficient system for providing legal aid to individuals in BC; and
- provide advice to the Attorney General respecting legal aid and access to justice for individuals in BC.

LSS carries out its mandate through offices and local agents located around the province. It provides a range of services, including legal information, legal education, legal advice and legal representation for financially eligible individuals who have serious family, child protection, criminal, or immigration issues.

In addition to the legal aid services provided by LSS, there are also a variety of other organizations that provide access to legal information and other related services in the province. This includes legal information provided by organizations such as the British Columbia Courthouse Library Society, public school education programmes provided by the Justice Education Society, advisory services such as those provided by the Tenants Resource Advisory Centre and the provision of front line advocacy services such as those provided by poverty law advocates throughout the province.

Lawyers also continue to fill the gap in legal aid services and fill unmet legal needs through pro bono services. Pro Bono services are available in British Columbia through organizations such as Access Pro Bono who operate over 85 summary legal advice clinics in communities throughout the province. Pro bono services make an important contribution to meeting legal needs but are wholly based on a lawyer's sense of professionalism and charitable duty. These services are an important addition to, but not a substitute for publicly-funded legal aid services.

By the Numbers

23,000 the number of times that the LSS Family Law website is visited per month.

100,000 the number of publications distributed by LSS in 2009/2010

26,000 the number of clients who received legal representation assistance by LSS

9000 the approximate number of visitors to the legal information website Clicklaw in the month of August, 2010

85 the number of communities in which Access Pro Bono operates free summary advice legal clinics

Who funds legal aid in BC?

Funding for legal aid in British Columbia is a complex issue as funding levels change over time and funding comes from a variety of sources. Below you will find a basic summary of current legal aid funding:

- Approximately 90% of funding for LSS comes directly from the provincial government of British Columbia;
- The federal government of Canada reimburses the province for legal aid costs related to immigration and federal prosecutions;
- The federal government of Canada provides funding for civil legal aid through the Canada Social Transfer that is used for various programs throughout the province;
- The Law Foundation of British Columbia provides funding for LSS and other legal information, education and advisory services.
- The Notary Foundation of British Columbia provides funding for LSS and other legal information and education services.



What have we learned about delivering legal aid?

Research on legal aid initiatives in Canada, the UK, and Australia has helped us understand how people experience legal problems and the best way to deal with them. This has resulted in development of a “client centred” approach, which means that a person’s legal problem is not dealt with in isolation from other problems.

Here are the key findings from research on legal aid:

- Individuals who are vulnerable, marginalized, or socially excluded tend to experience a greater incidence of legal problems.
- Legal problems often appear in clusters and a high proportion of people often suffer from multiple legal problems.
- A cascade effect can often happen where one legal problem may trigger other problems.
- Legal problems can have a serious impact on an individual’s health and welfare.
- Providing legal aid services at an early stage can often result in costs savings later.



Research from British Columbia

88% of BC residents report that they support legal aid services.

43% of BC residents think that legal aid is not adequately funded.

71% of BC residents agree that governments should give funding for legal aid the same priority as they give to funding for other social services such as health care, education, welfare and child protection.

97% of BC residents agree that everyone should have the right to access the justice system.

*Source: Legal Services Society
2010 Public Opinion Poll*

Where do we go from here?

The Public Commission on Legal Aid wants to hear from you about how to improve legal aid services in BC. This guide book gives you some basic background information that we hope will be helpful. However, the focus of the Public Commission is about how to improve the legal aid system for the benefit of all British Columbians. Here are some questions we invite you to consider:

- In what circumstances should legal aid be provided in BC?
- For what legal issues should legal aid be provided in BC?
- How should legal aid in BC be funded?
- What should be the priorities of the legal aid system in BC?



How to contact us

Here's how you can contact the Public Commission on Legal Aid:

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E-mail

legalaid@publiccommission.org

Our website

www.publiccommission.org



Resources

There is a wealth of information and resources available about legal aid in BC. Here is partial list of publications that you can find online:

Canadian Bar Association. *Moving Forward on Legal Aid*. Ottawa: Canadian Bar Association, 2010. <http://www.cba.org/CBA/Advocacy/legalAid>.

Canadian Bar Association. *The Right to Publicly-Funded Legal Representation in Canada: Making the Case*. Ottawa: Canadian Bar Association, 2000. http://www.cba.org/CBA/pdf/2002-02-15_case.pdf

Currie, A. *The Unmet Need for Criminal Legal Aid: A Summary of Research Results*. Ottawa: Department of Justice Canada, 2003. http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la9-rr03_aj9/rr03_la9.pdf.

Legal Problems Faced in Everyday Lives of British Columbians. Vancouver: Legal Services Society, 2008. http://www.legalaid.bc.ca/assets/aboutUs/reports/legalAid/IPSOS_Reid_Poll_Dec08.pdf.

Long, A. and Beveridge, A. *Lessons learned from delivering poverty law services in BC and abroad*. Vancouver: SPARC BC, 2004. <http://www.sparc.bc.ca/resources-and-publications/doc/60-report-delivering-poverty-law-services.pdf>

McEown, C. *Civil Legal Needs Research Report*, Vancouver: Law Foundation of BC, 2009. <http://www.lawfoundationbc.org/files/Civil%20Legal%20Needs%20Research%20FINAL.pdf>.

National Legal Aid. *Economic Value of Legal Aid: Analysis in Relation to Commonwealth Funded Matters with a Focus on Family Law*. Melbourne, Australia: PricewaterhouseCoopers, 2009. http://www.legalaidact.org.au/pdf/economic_value_of_legalaid.pdf

Reid, G. with Jackson, D. and McEown, C. *Clicklaw and Beyond: Public Legal Education and Information Materials in BC*. Vancouver: Law Foundation of BC, 2009. <http://www.pleiportal.org/wp-content/uploads/2009/06/clicklaw-and-beyond-public-legal-education-and-information-materials-in-bc.pdf>

Trebilcock, M. *Report of the Legal Aid Review*. Ontario: Ministry of the Attorney General, 2008. http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/legal_aid_report_2008_EN.pdf.



A joint initiative of
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