

Legal Aid and Access to Justice

BACKGROUND

- The CBA policy position on coverage and eligibility is set out in the 1993 *Charter for the Provision of Legal Services*. The CBA has lobbied for three important safeguards in funding and jurisdiction:
 - that sufficient levels of funding be maintained for both civil and criminal legal aid;
 - that funding for civil legal aid be “carved out” of the Canada Health and Social Transfer (CHST) in order to protect it; and
 - that funding and administration of criminal and civil legal aid be combined in justice departments. (Civil legal aid is now funded and administered by federal and provincial social service ministries. Human Resources Development is the federal department.)
- Criminal legal aid cost-sharing agreements are periodically renegotiated between the federal and provincial governments, with some recent increases in the federal contribution. While welcoming increased funding, the CBA does not see funding levels as sufficient to remedy current problems.
- For years, federal government officials have stated that funding for civil legal aid is part of the CST. While attempts had been made to negotiate principles to guide operation of the CST, the provinces have been resistant, and no principles exist.
- CBA Council has adopted resolutions to lobby for federal legislation creating national standards for legal aid coverage (2000 Mid-Winter), to urge the federal government to add \$20 million to criminal and immigration legal aid on a permanent basis, to ensure that additional funds are dedicated to civil legal aid ([2001 Annual Meeting](#)) and to pursue the creation of a coalition and a litigation strategy to further the constitutional right to legal aid ([2002 Annual Meeting](#)).
- The [CBA Legal Aid Watch](#) was launched at the 2000 Annual Meeting. The Watch is an email network of legal aid lawyers who report stories about consequences of limited access to justice, which are publicized through regular open letters to MPs, MPPs and national newspapers. The network also provides news on any improvements or deterioration in legal aid at the provincial and territorial level. Eight Watch stories have been published to date.
- CBA staff developed an Advocacy Resource Kit to assist Bar leaders to deliver a consistent message on legal aid. The Kit is updated periodically.
- Then President Daphne Dumont, Q.C. wrote to former Finance Minister Paul Martin in October 2000, asking that a portion of the budget surplus be used to improve access to justice.
- In Spring 2001, former Justice Minister McLellan announced that \$20 million would be added to legal aid for 2001 and 2002. Ten million dollars were dedicated to criminal legal aid and ten to “unique pressures.” In addition, money was devoted to research into the extent of unmet access to justice across the country. The CBA applauded the infusion of funds, but cautioned that the crisis in funding of civil legal aid was at least as acute as that in other areas.
- In November 2002, then President Simon Potter and Daphne Dumont, Q.C. were invited to present concerns about legal aid to Federal/Provincial/Territorial Ministers of Justice. Their message was well received.

- L&GA staff and the Legal Aid Committee followed up on the \$20 million promise. Past President Daphne Dumont, Q.C. met with Deputy Minister of Justice to discuss other possible initiatives. In October 2003, F/P/T Ministers of Justice agreed to a three-year legal aid renewal strategy, giving provinces and territories another \$10 million per year for criminal legal aid and \$20 million per year for a new Investment Fund for innovative solutions to unmet need for criminal legal aid.
- In 2002, CBA started to consider litigation as an alternative strategy to supplement lobbying efforts (see separate note on [Legal Aid Test Case](#)).
- At the [2003 Annual](#) Meeting in Montreal, CBA Council unanimously called for the federal government to create a separate Access to Justice Transfer payment, to make funding for civil legal aid more transparent.
- At the [2004 Mid-Winter](#) Meeting in Whitehorse, CBA Council called for the federal government to designate one federal Minister responsible for civil legal aid, and to dedicate new federal funding to any province and territory prepared to match funds to improve civil legal aid.
- CBA made access to justice its key issue for the 2006 election, and wrote to the party leaders asking for their plans to improve the crisis. Responses were published on the CBA's website.
- Legal aid funding was a key issue in CBA's pre-budget submissions to the Finance Committee (September 2005) and the Minister of Finance (April 2006).
- In 2005, CBA filed suit in British Columbia, naming the federal and provincial government, and the legal aid plan, as failing to provide adequate access to justice through legal aid for poor people in that province. The case ran into procedural challenges at first instance, and CBA appealed those issues to the BC Court of Appeal.
- At the Federal/Provincial/Territorial Ministers of Justice meeting in October 2006, provincial and territorial AGs called on the federal government to take immediate action to meet the crisis in legal aid funding, by providing more money for civil and criminal legal aid.
- CBA President J. Parker MacCarthy Q.C. wrote to Federal Minister of Justice in October 2006, supporting the AGs' resolution and urging immediate federal action to improve legal aid and ensure adequate national standards.
- In the 2007 budget, \$30 million was added to the previous base of \$89.1 million for legal aid funding. This so-called addition actually represents the \$10 million initially added in 2001 and the \$20 million added in 2003, referred to as the "investment fund". This keeps funds at existing levels for the next five years. No additional federal funding was designated for civil legal aid.
- In November 2007, Federal/Provincial/Territorial Ministers of Justice met, and the P/T Ministers called legal aid, and particularly civil legal aid, their highest priority. The Ministers called for greater federal contributions toward legal aid, and new funding to support for civil legal aid.
- The BC Court of Appeal upheld the lower court's decision on the CBA's Test Case on Legal Aid, and the SCC did not grant leave. In 2009, the CBA Board agreed to continue litigation as one on its access to justice strategies, using a more conventional approach.

- CBA President Bernard Amyot met with Minister of Justice Nicholson in April 2008, asking that the CBA be invited to the Federal/Provincial/Territorial Ministers of Justice meeting in September representing the profession's role as legal aid service providers.
- CBA President Guy Joubert met with Minister of Justice Nicholson in August 2008, urging that all parties work together to improve legal aid. The President encouraged the Minister to follow up on earlier discussions to facilitate a joint meeting with himself, the Finance Minister and the CBA.
- In April 2009, President Joubert again met with Minister Nicholson to discuss problems with legal aid. The President also wrote to Finance Minister Flaherty to request a meeting to discuss federal support for civil legal aid. The request was denied.

SCC Interventions

- The CBA intervened in the *J.G.* appeal to the Supreme Court of Canada in 1998. The appeal involves a parent's eligibility for legal aid in a child protection matter ([see separate note](#)).
- In April 2006, CBA intervened in the Supreme Court of Canada in *Little Sisters v. CRA*, focusing on the issue of advance costs in the broad context of access to justice, as part of its strategy to build a foundation for the legal aid test case. ([see separate note](#)).
- In November 2006, CBA intervened in the Supreme Court of Canada in *Attorney General of British Columbia v. Christie*, to support the argument that a tax on legal services is unconstitutional in that it impedes access to justice. ([see separate note](#)).

CURRENT STATUS

- CBA commissioned a comprehensive overview of recent developments and policy directions in legal aid, *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches*. The report contains ten important suggestions as to possible future directions for the CBA's work to improve access to justice. The report was released in June 2010, and is posted on CBA.org.
- The Legal Aid Liaison Committee launched a new Legal Aid Watch, as a national email network to facilitate information sharing and communications among legal aid lawyers, in October 2009. The network is being well used, and is expected to be a useful resource in seeking appropriate cases for ongoing litigation.
- The CBA Board of Directors met with counsel in October 2008, to discuss options for continuing litigation as one of the tools CBA will use to improve legal aid. In February 2009, the CBA Board of Directors voted to proceed with litigation with an individual or group of individuals, subject to approval of the Branch in which the case would take place. Further cases will be considered subject to Branch approval and funding considerations.
- A consultant updated research for use by *pro bono* counsel. A survey was distributed to CBA members involved in legal aid in September 2009 to gather information on which types of cases are most pressing.
- In January 2010, the Test Case Advisory Committee met to consider the best strategies for CBA's renewed litigation efforts and the type of case(s) CBA should seek. Guy Joubert reported on the recommendations to the CBA's Board of Directors in February 2010. Letters were sent to relevant

CBA and external groups in May 2010, outlining in general terms the type of cases and pro bono counsel the CBA is seeking.

- The Test Case Advisory Committee has created subcommittees to develop specific criteria for the optimal test case in each of five areas of law. Subcommittees are concluding their work and drafting letters to elicit offers of test cases.
- The BC Public Commission on Legal Aid was launched in Fall 2010, as a joint project of CBA- BC Branch, the BC Law Society, the Law Foundation of BC, the BC Crown Counsel Association, and the Vancouver and Victoria Bar Associations. The Committee prepared a written submission from a national perspective to the Commission before the October 31 deadline. The Commission's report, *Foundation for Change*, was issued in March 2011.
- The Committee has updated its website, to include ongoing additions such as media coverage of the issue. At its April 2011 meeting, it held a successful reception to reach out to lawyers involved with legal aid in the Greater Toronto Area. The reception generated significant interest in the CBA's efforts.

PLANC

- CBA is working with poverty law advocates in the Poverty Law Advocacy Network of Canada (PLANC) to create common messages to promote poverty law services. CBA received funding from the Law for the Future Fund to create advocacy materials following a national consultation in Vancouver in Fall 2006. Funding for the consultation from Law Foundations of Ontario and BC.
- In November 2006, PLANC had its first national consultation, and about 50 legal and non legal poverty law advocates discussed shared goals and possible advocacy messages. A tool kit of resources for poverty law advocates was planned, and several committees created at the consultation are working on structures and plans for PLANC to move forward.
- PLANC's advocacy tool kit was mailed to conference participants in May 2008, and also included a significant on line component.
- PLANC members shared election platforms and strategies by email. PLANC members continue to use the group to share information and news.

Access to Justice Committee

- At the 2011 Mid-Winter Meeting in Charlevoix, Council amended the Legal Aid Committee's mandate, and created a new Access to Justice Committee. The Access to Justice Committee will coordinate CBA advocacy on issues including pro bono, legal aid, and access to justice for the middle class. The Legal Aid Committee continues to act as a hub for national information on legal aid, support for CBA's test case litigation, and will seek ways to recognize and support the work of legal aid lawyers.

- The Access to Justice Committee met for the first time in September 2011, to set priorities and develop a work plan. It is applying for Law for the Future Fund support for its work, based on the suggestions to the CBA from the *Moving Forward* report.

NEXT STEPS

- The Access to Justice Committee and the Legal Aid Committee continue to consider proposals from *Moving Forward* that can be advanced with current resources, as well as resource options to pursue other proposals.
- The Legal Aid Committee will continue to develop a lawyer recognition program for its website, and hold annual outreach events in conjunction with its in person meetings.
- The Legal Aid Committee will invite offers of test cases concerning the right to counsel, and provide CBA resources and financial support for disbursements to *pro bono* counsel.