

Media Backgrounder

Single Mothers' Alliance v BC

April 27, 2017

West Coast Women's Legal Education and Action Fund (West Coast LEAF) and the BC Public Interest Advocacy Centre (BCPIAC) are representing the plaintiffs in this case to challenge the province's laws and policies restricting access to legal aid in family law cases as violating women's rights to equality, life and security.

This case is being brought on behalf of the Single Mothers' Alliance of BC (SMA), a non-profit organization made up of many single mothers who have been harmed by their inability to access legal aid in BC for family law court proceedings, and two individual women who have experienced harms flowing directly from their inability to access legal aid for family matters. For women who are fleeing violent spouses, a lack of legal representation in a family law dispute can mean protracted conflict and an escalation of violence – their safety is threatened, their children's well-being is at risk, and they stand to lose custody of their children, all because they cannot afford a lawyer.

Legal aid is essential to family justice

Legal aid is administered in BC by the Legal Services Society (LSS), a non-profit organization created by provincial statute and primarily funded by the provincial government. Legal aid in the province includes providing clients with general legal information, legal advice tailored to their specific concerns, and representation by a lawyer in regard to their case. At present, BC offers some level of legal aid in criminal law, family law, and a few other areas. This case is about access to legal aid in family law cases.

Legal aid for family justice is inadequate

Between 2002 and 2005, legal aid in BC was drastically cut by 40% overall and by 60% for family law legal aid. Today, access to family law legal aid is generally restricted to those who are recognized as needing an immediate interim court order to ensure their own or their children's safety and security. In addition, the income cut-off for legal aid is extremely low: a single person (without children) working a minimum-wage full-time job does not qualify for legal assistance.

Individuals who do qualify for family law legal aid are eligible to receive only 25 hours of lawyer time for "general preparation" for provincial court cases, far too few hours to properly address many women's actual legal needs. General preparation time is important as it is the time a lawyer will spend outside of court to understand the client's case, to communicate with the client and other lawyers, to review documents, negotiate with the other side, and prepare for court. If the family law proceeding is in Supreme Court, LSS will provide an additional 10 general preparation hours. LSS has some discretion to approve additional hour allocations in limited circumstances, and will only in the rarest circumstances approve more than one such request.

In comparison to the other provinces and territories, BC ranks the third lowest on per capita spending on legal aid.

BC's legal aid regime harms women and children

Women are disproportionately harmed by the severe restrictions on the availability of legal aid. Statistically, women earn less than men, and therefore are less likely to be able to afford to hire a lawyer. Women are disproportionately primary caregivers for children. Women are more likely to experience violence from their spouse. As a result, the stakes are very high for women who are unrepresented in family law cases: their safety and the safety of their children, along with their relationship with their children, may be at risk.

Legal aid is essential to the safety of women in abusive relationships. When women who cannot otherwise afford a lawyer are turned down for legal aid, or use up their allotted legal aid hours, they are left on their own to seek protection from family violence for themselves and their children. They are also faced with having to obtain necessary court orders about custody arrangements on their own. Without legal aid, family disputes often become more protracted and more complex. The longer a family conflict goes on without resolution, the more the risk of serious family violence increases.

Children suffer from the lack of legal aid as well. When a parent is not adequately represented and is struggling to navigate the legal system, courts do not have access to the full story behind the custody dispute. Without all the necessary information and arguments to consider, courts struggle to determine where the best interests of the children lie.

BC's legal aid regime is unconstitutional

This case is a constitutional challenge to the limitations on family law legal aid in BC. The plaintiffs are challenging two aspects of the legal aid regime.

First, the financial cut-off to qualify for service does not correspond to the actual needs and circumstances of women seeking legal assistance. In other words, many people who cannot afford to hire a lawyer do not qualify for legal aid because their income levels exceed the very low financial cut-off.

Second, for those who do qualify for legal aid, 25 or 35 hours are insufficient to resolve the legal issues in even moderately complex family law proceedings, and is usually only enough time to obtain an initial protection order (an order that can keep a violent spouse away), which is often time limited.

The plaintiffs claim that these limitations on family law legal aid are unconstitutional on a number of grounds. Under section 15 (equality rights) of the *Canadian Charter of Rights and Freedoms*, the plaintiffs argue that they are being discriminated against because they disproportionately suffer the harms of the restrictions on legal aid. Under section 7 (right to life and security of the person) of the *Charter*, the plaintiffs point out that their safety is at risk and they suffer severe psychological stress from being forced to either represent themselves against their abusive ex-spouse or give up their legal rights to avoid further escalating the conflict.

About the plaintiffs

Single Mothers' Alliance of BC is an alliance of diverse single mothers. Members find common ground, build community, and advocate for change. Incorporated as a non-profit organization in June 2014, SMA

aims to build capacity among single mothers and women to work together towards progressive social change, including access to legal aid.

Nicole Bell is a single mother of two living in the Lower Mainland. Her ex-spouse has been physically, sexually, and emotionally abusive to her over the course of their relationship and their separation. Since 2013, Ms. Bell has intermittently had the assistance of a lawyer through legal aid and by liquidating her retirement savings to pay for a lawyer's time. With a lawyer's help, she was able to obtain short term protection orders, obtain a parenting order, and resolve other aspects of the family law dispute. Following these court orders, the police began receiving tips that her ex was making plans to kill her, and has made death threats against her children and other family members. Ms. Bell is seeking to have a non-expiring protection order put in place to protect herself and her children, but her application for legal aid to obtain this protection was initially denied. While Ms. Bell was eventually able to obtain a lawyer's assistance at a very reduced rate, she has had to go into debt and forgo recommended treatment for her special-needs child in order to pay legal fees. Nearly three years after her request and appeal for legal aid was denied, Ms. Bell was finally granted legal aid for the upcoming hearing.

The plaintiff A.B. has chosen to remain anonymous in order to protect herself and her children.

About West Coast LEAF

West Coast Women's Legal Education and Action Fund (West Coast LEAF) works to advance women's equality and human rights through litigation, law and policy reform, and public legal education in British Columbia. West Coast LEAF has advocated for greater access to legal aid for well over a decade, and in 2016 partnered with UBC's Peter A. Allard School of Law to open Rise Women's Legal Centre, providing free and low-cost legal services to women. To learn more, visit: www.westcoastleaf.org.

About BCPIAC

British Columbia Public Interest Advocacy Centre (BCPIAC) is a non-profit law office with a mission to promote equality, fairness, and social inclusion by providing legal representation on systemic social and policy issues. BCPIAC's current areas of focus are improving access to welfare and legal aid, addressing energy poverty and the cost of utility services, and legal issues arising at the intersection of racial discrimination and insecure legal status. To learn more, visit: www.bcpiac.com.