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**West Coast LEAF's Submission to the  
Standing Committee on Finance and Government Services:  
Adequate Funding for Legal Aid**

The West Coast Legal Education and Action Fund (West Coast LEAF) urges the Select Standing Committee on Finance and Government Services (the Committee) to make investing in legal aid a budget priority for 2012.

Our submissions this year reiterate the call we made last year in detailed submissions to the 2011 Budget Consultation undertaken by the Committee in October 2010. However, neither our submissions, nor legal aid and access to justice concerns generally, were referred to in the Committee's 2011 Budget Consultation Report. This silence on an issue so vitally important to British Columbians was a disappointment at best, and at worst a misrepresentation of the types of submissions made to the Committee. We look forward to rectification of this omission in the Committee's 2012 Report, and hope the submissions that follow will be helpful to the Committee in making recommendations to the government to adequately fund legal aid as a matter of fundamental social and economic importance.

**Introduction**

West Coast LEAF formed in 1985, the year the equality guarantees of the *Canadian Charter of Rights and Freedoms* came into force. Our mission is to achieve equality by changing historic patterns of discrimination against women through BC-based equality rights litigation, law reform and public legal education. West Coast LEAF is an incorporated non-profit society and

federally registered charity, and an affiliate of LEAF National. We are governed by an elected Board of Directors and supported by members, volunteers, and staff.

West Coast LEAF has a long and extensive history of involvement in access to justice issues, family law reform, and the application of substantive equality principles to a wide range of laws. In 2004 West Coast LEAF and the Canadian Centre for Policy Alternatives co-published [\*Legal Aid Denied: Women and Cuts to Legal Services in BC\*](#), and in 2010 published an update, [\*Rights-Based Legal Aid: Rebuilding BC's Broken System\*](#), which provide detailed information about the impacts of a decade of cuts to BC's legal aid system, as well as recommendations for reform. For more information about West Coast LEAF and our work on these and other issues, please visit our website at [www.westcoastleaf.org](http://www.westcoastleaf.org).

### **The State of Legal Aid in BC**

Legal aid is administered by the Legal Services Society (LSS), a statutory body funded primarily by the Ministry of the Attorney General. Our submissions focus on one particular aspect of legal aid: the availability of *legal representation and advice*. While access to legal *information* – another aspect of LSS's mandate – is important, it is access to lawyers that has been most under attack in BC. In particular, the ability to access lawyers in family law matters – areas in which women are most likely to need legal assistance – has been especially hard hit.

Over the past ten years, the BC government has vastly reduced its investment in legal aid to the point that BC is now the third lowest province in Canada in per capita spending on legal aid. Further, our system does not cover representation for many family law issues that other provinces do. Indeed, family law services have been reduced to cover only those cases involving family violence or child protection matters, with very limited exceptions. Since 2002, when the BC government cut funding to LSS by 40% (to be implemented over the following three years), the number of family law cases approved for legal aid dropped from 15,526 to 6,270, while poverty law referrals for cases in which housing, welfare, and disability benefits were at issue went from over 40,000 to zero with the complete elimination of funding for these cases. Representation for human rights cases was also eliminated, and criminal law services were reduced to cover only those cases where the accused faces a reasonable likelihood of jail time.

This extremely limited amount of assistance is only available to individuals whose income falls below LSS's financial eligibility threshold, which is set so low that only a small proportion of the people who need legal assistance and cannot afford a lawyer will qualify. Judges have lamented the state of access to justice in this province; in a recent family law case involving middle class parties who did not qualify for legal aid but who could not afford representation, the judge noted: "It is shameful that in our wealthy province we no longer have resources available which would give real help to parties in this situation."<sup>1</sup> In another recent decision, the BC Supreme Court ruled that parents involved in a child apprehension case may be entitled to legal aid even

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<sup>1</sup> *De Kova v. De Kova*, 2011 BCSC 1271 at para. 15.

when their income exceeds this cut-off, acknowledging that many people earning more than the cut-off are still unable to afford legal representation.<sup>2</sup>

Since January 2009, the family law clinic – the last remaining LSS legal aid clinic in BC – was eliminated, five of the seven regional offices were closed, and the LawLINE – the legal information phone line originally touted as the replacement for the massive reduction in legal services between 2002 and 2005 – was also eliminated. The Family LawLINE created in 2010 does little to fill the vacuum created by this series of cuts.

Even when legal aid is approved, the current tariff rates for family, criminal and immigration matters are insufficient to allow lawyers to effectively represent their clients. The small number of hours funded under the legal aid tariff in family matters, child protection cases and immigrant and refugee cases seriously undermines the capacity of lawyers to provide the quality of legal services low income British Columbians so desperately need.

### **Under-Funding Legal Aid undermines Access to Justice and the Rule of Law**

Inadequate legal aid hurts all of us, and undermines the entire justice system. LSS's own research shows that 83% of BC residents with annual incomes under \$50,000 – 1.5 million people – are likely to have a civil legal problem over a three-year period, and only 11% retain a lawyer. Canadian Lawyer Magazine reports that a two-day civil trial in Western Canada costs an average of \$81,063, while the average annual after-tax income of a two parent family in BC in 2008 was \$85,400, and the average income of a single mother-led family was \$41,900. Median after-tax incomes are even lower: \$78,600 for two-parent families and \$35,800 for female lone-parent families. While incomes have dropped with the economic downturn, the need for legal services has increased with the increased stress on families, workers and other individuals; in fact, the increase in demand for legal services was actually cited by LSS as a justification for recent cuts to legal aid services.

While inadequate legal aid affects us all, the lack of legal aid has a devastating and disproportional impact on women, particularly women living in poverty, women of colour, Aboriginal women, women with disabilities, and other marginalized women. Women are especially affected by inadequate legal aid in family law cases because they are more likely to be economically disadvantaged by the breakdown of a relationship. The need for adequate legal aid is particularly compelling in situations where a woman is attempting to leave an abusive relationship and her life and physical and mental security, as well as that of her children, is at stake. No less pressing is the need for legal assistance to ensure that women and their children do not face poverty upon the end of the relationship.

Unresolved family and poverty law problems affect people's ability to meet their basic needs for housing and subsistence. Without access to legal representation, a huge subset of our

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<sup>2</sup> *British Columbia (Attorney General) v. T.L.*, 2010 BCSC 105.

population is unable to protect their rights and unable to access the protections and entitlements that are guaranteed to them by law. Poverty law encompasses such issues as debt, access to social assistance and housing, and employment matters. For people with low incomes, access to these legal entitlements can mean the difference between safe housing and homelessness, between sufficient food and malnourishment. Access to adequate legal assistance is all the more pressing given that BC's Ombudsperson has found the province's social assistance regime to be systemically unfair.<sup>3</sup> Without legal assistance, many unrepresented litigants are unable to assert their rights and end up with an unjust outcome: statistics show that most judicial reviews of administrative decisions on issues related to welfare and residential tenancies are successful when the petitioner is represented.

The rule of law, a fundamental concept underpinning Canada's constitutional democracy, requires that all citizens have access to justice so that laws can be applied equally and fairly to all citizens. The Supreme Court of Canada has affirmed that "there cannot be a rule of law without access, otherwise the rule of law is replaced by the rule of men and women who decide who shall and who shall not have access to justice. ... We have no doubt that the right to access to the courts is under the rule of law one of the foundational pillars protecting the rights and freedoms of our citizens."<sup>4</sup>

Legal aid is a vital social service, necessary for the effective functioning of our justice system and the promotion of equality and fairness in our society. Failure to ensure that all citizens have access to justice and the assistance of a lawyer to assert their rights undermines our democracy and the rule of law.

### **Investing in Legal Aid makes good economic sense**

Underfunding legal aid is also damaging to our economy, detrimental to the health and well-being of families in conflict, and grossly inefficient. In fact, it is costing BC more to deny low-income people legal aid than it would to adequately fund legal aid in the first place. The costs of underfunding legal aid include the costs associated with delays and increased court operation costs associated with unrepresented litigants, as well as the broader societal costs associated with unresolved legal problems, such as health care and social assistance costs. Several international studies show that legal aid more than pays for itself when viewed from this more holistic perspective.

A study on legal aid from Texas, for example, showed that investment in legal aid 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.

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<sup>3</sup> BC Ombudsperson, "Last resort: Improving fairness and accountability in BC's income assistance program" (March 2009).

<sup>4</sup> *British Columbia Government Employees' Union v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214 at paras. 25-26.

In fact, “for every direct dollar expended in the state for indigent civil legal services [legal services for low-income people], the overall annual gains to the economy are found to be \$7.42 in total spending, \$3.56 in output (gross product), and \$2.20 in personal income.”<sup>5</sup> A study from Australia also found a significant cost savings when legal aid was sufficiently funded.<sup>6</sup>

Additionally, research in the UK shows that unresolved legal conflicts perpetuate social problems, and therefore social costs.<sup>7</sup> Over one quarter of study participants were suffering from a stress-related illness as a consequence of their civil legal problem, while 14.2% experienced physical illness, with the vast majority visiting a health care professional about that illness. These health problems represent a significant cost to the individual, society and the economy. The study also found that other social costs tend to cluster with civil legal problems, including domestic violence, relationship breakdown and job loss. This research suggests that increased legal aid services will reduce these other social problems and associated costs.

Finally, investing in legal aid is a smart move politically. A 2011 poll published by LSS found that 89% of British Columbians support legal aid, with 52% saying they strongly support it.<sup>8</sup> Further, BC residents overwhelmingly agree that everyone should have the right to access the justice system, even if that means spending more money to reach people in remote and rural communities (92%, with 54% agreeing strongly). Residents place the greatest importance on providing legal aid in family court (96%), followed by other civil proceedings (90%), criminal court (88%) and in immigration/refugee hearings (80%). Seventy-three percent agreed that “Government should give funding for legal aid the same priority as they give funding for other social services such as health care, education, welfare and child protection.”

Legal aid is a non-partisan issue that affects British Columbians of all political affiliations. Further, British Columbians recognize and accept the responsibility to provide legal services for disadvantaged individuals when required, and support public provision of these services to ensure fairness in the justice system.

## **Conclusion**

West Coast LEAF calls upon the Committee to issue a strong recommendation to government to remedy the severe and chronic underfunding of legal aid in this province. In our submission, legal aid must be recognized as the essential public service it is, and funded accordingly. Underfunding legal aid undermines our democracy and the rule of law; hurts families,

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<sup>5</sup> The Perryman Group, “The impact of legal aid services on economic activity in Texas: An analysis of current efforts and expansion potential,” (February 2009).

<sup>6</sup> PricewaterhouseCoopers, “Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law,” prepared for Legal Aid Queensland, 2009.

<sup>7</sup> Pleasence, Pascoe et al. “Civil Justice in England and Wales: Report of the 2007 English and Welsh Civil and Social Justice Survey”, London: Legal Services Commission, 2008

<sup>8</sup> LSS 2011 Public Opinion Poll, 8 April 2011, online:

<[http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/LSSPublicOpinionPoll04\\_11.pdf](http://www.lss.bc.ca/assets/aboutUs/reports/legalAid/LSSPublicOpinionPoll04_11.pdf)>.

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communities and our economy; and ends up costing more than ensuring adequate funding in the first place. This is an untenable situation that is opposed by a majority of British Columbians.

West Coast LEAF urges the Committee to heed these concerns and recommend that government adequately fund legal aid in the next budget.

Yours truly,

A handwritten signature in black ink, appearing to read 'Laura Track', written in a cursive style.

Laura Track  
Legal Director  
West Coast LEAF