



A 360° view on *Single Mothers' Alliance v BC:* Why this case matters

There is an urgent need for legal help for people fleeing family violence. With a fair and equal family law legal aid system, survivors of gender-based violence will face fewer barriers to attaining safety for themselves and their children. It will also mean that they can rebuild their lives on their own terms.

In BC, most applications for family law legal aid are denied or the support is insufficient. As a result, many survivors of relationship violence are faced with an impossible choice: they can navigate the family law system alone, including facing their abuser in court, or they can give up their legal rights. Without full legal representation (that only the wealthy can afford), survivors may face drawn-out conflict with their abuser, escalating and life-threatening violence, and risk of losing custody of their children.

So how did we get here, and how do we change things? Lets explore context of our historic court case challenging BC's failing legal aid system, *Single Mothers' Alliance v BC*.

2002 - 2005

Legal aid budget cut by **40%**
Family law legal aid cut **60%**

2017 - 2021

Small increases are announced with fanfare, giving the impression that legal aid funding is a non-issue.

These modest investments are just a drop in the bucket when stacked against the cuts made in the early 2000s.

3/5 applications for family law legal aid are **denied**.

Of those approved, there is a cap on the hours that the lawyer can spend on a case.

For people fleeing violence these minimal hours are usually only enough time to get an initial protection order to keep a violent spouse away in the short term.

Political Context

Short-changing legal aid is a **false economy** since the costs of unresolved problems are shifted to other government departments in terms of more spending on social and health services, the cost of caring for children in state custody, and so on.

- Commissioner Leonard Doust
in the Public Commission on Legal Aid in BC

We have **progressive family laws** in BC, yet legal rights are meaningless if they are out of reach for all but the wealthiest among us.

SMA v BC is framed around women's experiences because this is where existing family violence research is focused. However, we know that all people marginalized by gender can experience family violence.

There is a **housing crisis** in the Lower Mainland, and increasingly across BC.

People fleeing violence may not be able to afford to leave their homes to seek safety.

Transition houses often lack options that keep older families together, e.g. those with teenage sons. Supports for queer and trans people are lacking.

Cutbacks to **public transportation** further reduce options and safety, especially in rural and remote areas.

Women are disproportionately poorer than men, and poorer still after a relationship ends. They are less likely to be able to afford a lawyer than their exes.

Going to court can cost
\$100,000s

This lack of access to legal advice and representation leads to **unfair results**.

Women may walk away from their entitlements or accept less than they and their children are owed, which can exacerbate the **feminization of poverty**.



Economic Context

There is an extremely **low income threshold** to be eligible, meaning that only the poorest qualify.

This leaves out a huge number of people who still cannot afford a lawyer, including many **minimum wage earners**.

People fleeing violence have to make decisions about **what they can sacrifice** in order to pay for a lawyer and secure safety:

- counseling and mental health support
- health related expenses for themselves and their children
- bill payments
- taking on debt, etc.

In order to access legal aid, you must **liquidate your savings**.

There are long-term economic consequences of **going deep into debt** to pay for a lawyer or having to use up your savings.

Establishing **independence** after fleeing a relationship is challenging for women, as they have less economic security to begin with after separation.

Some people are **forced into poverty** in order to access a lawyer.

Family disputes are seen as “**private issues**,” and family violence is often not viewed through a **systemic lens**. Many of us don’t think about how broken the system is under we’re in it ourselves.

We have supported the development of a **National Action Plan** to address the root causes of gendered violence, alongside other feminist organizations. BC has yet to respond with robust health-based or justice-sector supports or services for survivors of family violence.

Covid-19

- Increased economic stressors
- Impact of isolating at home in dangerous family situations

Gender-based violence reporting has increased

- Social distancing requirements reduce service provider capacity
- Resources are redirected to addressing the pandemic

Life saving programs have been scaled back, are overburdened, or are less accessible.



Why not just call the police?

Reasons that people experiencing family violence do not go to the police include:

- fear of being blamed or disbelieved
- risk of retaliation
- not wanting to get their partner in trouble
- not wanting others to know about the violence
- fear of the court process

The pandemic has deepened existing inequalities, making life saving programs even less accessible to the most marginalized.

Problematic treatment by police, lawyers, judges, and other justice system personnel is a barrier to reporting, especially for those who have experienced overt or implicit **discrimination or abuse in the justice system**.

Those most at risk are transgender and gender non-conforming people, and those who face significant additional barriers, including Black, Indigenous or people of colour, those with status as an immigrant, refugee or undocumented person, those who work in the sex trade, people with disabilities, and people experiencing homelessness or living in remote parts of the province.

Increasing numbers of people are left to navigate an intimidating system without a lawyer or the social and health-based supports they need. These stressors are exacerbated where they must navigate the family law system alongside criminal law, child protection, or immigration processes, as these **systems are often working in silos and at cross-purposes**.

We are in an access to justice crisis.

The court system is overburdened, there are not enough judges, and delays in cases are common.

The dramatic rise in self-representing litigants contributes to the system being bogged down.

Lawyers don't feel they can provide good service because of the constraints in the legal aid system.

Due to shortages of legal aid lawyers, there often isn't much choice in who you get. Access only decreases in more rural and remote areas.

David and Goliath

There is often a big power difference in family law cases: one person is represented by experienced counsel, while the other is self-representing and trying to navigate a complex system with little knowledge or support.

Violent exes may continue to harass their ex-partners in a legally sanctioned setting, through the courts, continuing the abuse.

There is often the assumption that it is in the best interests of the child to continue to see the abusive parent.

"**Innovation**," capping hours of services, and financial eligibility criteria have been put forward as solutions to an under-resourced legal aid system.

There has been a push towards resolving family law cases outside of court through **mandatory mediation**, which often favours fathers and is unsafe in cases of family violence.

Legal Aid BC provides self-help portals and other public legal education materials, but **representation services** are what's desperately needed.

Positive steps

- Definition of family violence clarified in the *Family Law Act*, *Residential Tenancy Act*, and *Employment Standards Act* so that it does not require the **intention to harm**.
- Changes to how the federal *Divorce Act* addresses family violence.

These shifts suggest a growing awareness of the needs of survivors and **reducing barriers to safety**.

In ***Colucci v Colucci*** and ***Michel v Graydon*** the Supreme Court of Canada set out much needed clarifications in child support law that make it easier for mothers and other single parents to receive the child support that they are owed.

These decisions demonstrate a shift in the way the courts are approaching the feminization of poverty through family law.

Council of Canadians with Disabilities v BC

This appeal is about the ability of public interest organizations – like West Coast LEAF – to challenge the constitutionality of laws on behalf of those most impacted by them.

Marginalized communities, such as women fleeing violence, may not be in a position to challenge laws and government actions.

Without **public interest organizations** representing their interests, cases like *Single Mothers' Alliance v BC* cannot move ahead and unjust laws may go unchallenged.

