

BC PROVINCIAL CUTS TO

INFORMATION ACCURATE AS OF APRIL 10, 2002

LEGAL AID

ANTICIPATED IMPACT ON WOMEN WHO EXPERIENCE VIOLENCE

FUNDING FOR LEGAL AID in British Columbia has been steadily declining over the past two decades. Systemic inequalities between legal aid coverage for criminal legal aid cases and coverage for family and poverty law cases have always existed. For example, the Charter mandates that people facing criminal charges receive legal representation where if conviction would result in jail time or the inability of the person charged to pursue their livelihood, whereas charter cases only set out similar requirements in one civil matter – child protection cases where a child has been apprehended (Bain, Chrest & Morrow, 2000). Even prior to the recent cuts by the Liberal government, the legal aid system in British Columbia was criticized for its inaccessibility and for its inadequate coverage for women who are the primary civil legal aid applicants (Addario, 1997; Bain, Chrest & Morrow, 2000). For example, research shows that between 1992 and 1999 the approval rate for family law applicants (primarily women) declined at a faster rate than the approval rate for criminal applicants (primarily men) (McEown, 1999).

The Liberal government's most recent cuts will further exacerbate these inadequacies and be keenly felt by the most marginalized groups of women (single mothers, immigrants and refugees, Aboriginal

women), whose primary use of legal aid is for civil (e.g., family and poverty) law matters. **It is anticipated that the current cuts will make it much more difficult for women to leave abusive relationships and to maintain custody of their children.** The potential result is decreased safety and protection for women and their children and increased exposure to violence.

Last year the provincial government collected \$91.6 million as a result of a special tax imposed on all legal services. Additionally, the federal government contributes \$9-\$18 million a year to the province for criminal legal aid. When the special tax on legal services was first introduced (by the previous government) it was meant to be used to pay for legal aid. The current Attorney General has indicated that he plans to divert the money collected as a result of this tax and the money from the federal government into general revenue. This decision shows a disregard for individuals requiring legal services who are unable, because of poverty and marginalization, to afford lawyers.

In addition to the changes listed below, further amendments to the Legal Services Society Act are expected to be introduced in the spring sitting of the legislature.



INFORMATION

BC Institute Against Family Violence
(604) 669-7055
1-877-755-7055 (toll free)

BC Association of Specialized Victim Assistance and Counselling Programs
(604) 633-2506

BC/Yukon Society of Transition Houses
(604) 669-6943

RESOURCES

Government of British Columbia, Minister of Finance
www.bcbudget.gov.bc.ca

PovNet
www.povnet.org

BC Coalition of Women's Centres
www3.telus.net/bcwomen/bcwomen

Access Justice
www.accessjustice.ca

Canadian Centre for Policy Alternatives
www.policyalternatives.ca/bc

BC Coalition of People with Disabilities
www.bccpd.bc.ca

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Provincial funding for legal aid will be cut by 38.8% over 3 years*. The funding will drop from \$88.3 million in 2001-2002 to \$54 million in 2004-2005 (Legal Services Society Budget Bulletin #3, Jan.18, 2002). This will require a 74% cut in staff positions (Legal Services Society, Budget Bulletin #7, Feb. 7, 2002).

Of specific relevance to women is that expenditures for family law matters will be reduced by 10 million in 2004-2005.

On February 26, 2002 the Legal Services Society (LSS) announced that all of the 60 offices that deliver legal aid would close as of August 31st. 7 regional centres will replace the offices. 24 or one third of all court houses are also being closed (Ministry of Attorney General Service Plan, 2002:3).

LSS will provide legal aid to assist women in getting domestic violence restraining orders or an order to keep the father of their children from removing them permanently from the province, and to vary current custody and access orders in cases where the safety of the women and their children are at risk (LSS Bulletin, March 11, 2002). Exceptions to the above coverage rule will be granted under extenuating circumstances (e.g., references in court documents to sexual, physical or emotional abuse).

Legal aid will continue to be provided for child protection cases.

Beginning April 1, 2002, LSS will start to phase out legal representation for:

1. All family law cases where violence is not involved (approximately 8,000 cases per year).

2. All summary advice services. That is, basic legal information provided to assaulted women by paralegal staff at legal services offices (25,000 cases).

LSS estimates that the new level of funding "would deny legal aid services to as many as 100,000 clients"(Legal Services Society, Budget Bulletin #7, Feb. 7, 2002).

Research has shown that women outnumber men as family law applicants 2 to 1 (McEown, 1999). The cuts to family law will make it extremely difficult for women to receive assistance for family law matters.

The centralization of services and closure of court houses will have a disproportionate impact on women experiencing violence in rural and remote communities, in terms of their abilities to access justice. For example, court closures may result in stays of proceedings in physical or sexual assault cases due to the distance needed to travel to court for hearings and trial. It may also result in the use of alternative measures in cases which have previously been deemed inappropriate for the use of these types of measures.

Requiring the presence of domestic violence to be the determinant factor in whether or not a woman will receive legal aid will leave women open to allegations that they are claiming abuse by ex-partners only to receive legal aid. It is a commonly held misbelief that separating partners raise a large number of false allegations of abuse; research and extensive documentation has shown that this misbelief has no basis in truth. Further, it is unclear what criteria will be used to determine "cases where safety of women or children are at risk".

Women who choose not to disclose violence because of the fear of repercussions by their abusers on them or their children, or women who, because of language or cultural barriers, are not able to tell their full stories at intake will not have access to legal aid.

Women whose ex-husbands/partners are using the court system as a continued means of domination and harassment (e.g., constantly requesting changes to maintenance or custody and access orders) will have very little legal recourse. This may force some women to give up custody of their children even in cases where their ex-husband/partner is abusive. Women who are trying to have maintenance orders enforced may have a more difficult time doing so and may be pushed further into poverty.

Women will not be able to obtain para-legal advice. The potential result is that fewer women experiencing violence will know their rights under the law.

* The infusion of 7.7 million dollars to the LSS budget announced in early April is a one time only grant to allow LSS to reduce its deficit and help cover transition costs for restructuring its service delivery model. This will free up some funds for services in the family law area, specifically to continue coverage of family law cases that have already been approved or are currently underway, and to fund family law initiatives that will "enhance services to clients and efficiency in the justice system in the context of reduced family law representation" (LSS Budget Bulletin #17, April 3, 2002).

3. All poverty law matters (e.g., social assistance appeals, worker's compensation appeals, employment insurance appeals, pension appeals, residential tenancy disputes, etc.) as a result of laying off poverty and native law paralegals and lawyers in offices throughout the province.

4. Public legal education and information will be cut back including grants to local organizations for community development and public legal education projects (LSS Budget Bulletin #12, February 25, 2002).

5. Assistance with human rights matters has been eliminated.

Service fees will be implemented to partially recover costs for Family Maintenance Enforcement Program (Ministry of AG Services Plan, 2002:3).

Reduction of fees to legal aid lawyers (e.g., the current holdback system will be removed and all tariffs will be reduced by 10%).

The Ministry of Attorney General will work with LSS to expand mediation.

This will have a severe impact on the ability of low-income women, especially Aboriginal women, to obtain legal assistance.

Without LSS publications and public legal education projects, women will have a lot more difficulty obtaining information about legal processes and their legal rights. Women now representing themselves in court will have an even more difficult task without public legal education supports.

This cut has the potential to impact on the most marginalized women who are seeking assistance to protect their basic rights (e.g., Aboriginal women, immigrant women and women of colour).

Service fees will mean that less money will go directly to child support and some women will be unable to get help enforcing maintenance orders.

Lawyers will have less time to spend with their clients and may even drop cases before they are resolved. Some lawyers may refuse to take legal aid cases entirely. The result is that women will increasingly have to represent themselves in court.

Research has shown that the use of mediation in situations where a woman is experiencing violence in her relationship is unsafe (Greatbatch, 1999; Dingwall, 1999; Scutt, 1988). The potential for intimidation makes fair settlement unlikely and the need for ongoing contact prolongs conflict, putting women and children at risk.