

Closing the Gap:

A joint proposal to address the staff lawyer wage disparity at
Legal Aid B.C.¹

¹ This document is created for the express purpose of fulfilling a commitment in the 2019-2022 Collective Agreement between Legal Services Society and Professional Employees Association and for no other purpose. Statements herein are made for the particular effort of advancing a collective agreement, and cannot be used for litigation or other purposes.

I. Introduction

The growing wage inequality between Legal Aid BC (LABC) staff lawyer classifications and BC Crown Counsel, as well as comparable staff lawyers in Crown employ, is a constitutional risk for the Crown. At some point, the wage gap achieves indirectly what no Government could do directly – interference with a fair trial. To malnourish legal aid while satiating Crown budgets compromises defendants constitutional rights to a fair trial, of their right to counsel, and of their liberty and security of the person, contrary to principles of fundamental justice. The wage gap further risks constitutional liability for the failure to adequate representation of parties in a child protection matter. The inequity and constitutional risk may further exacerbate recruitment and retention for under-served, largely rural communities.

We recognize that these concerns cannot be fully addressed during the term of a single collective agreement. Following discussions at the Joint Standing Committee we have developed this joint proposal for government consideration.

All parties involved recognize the importance of access to justice and the essential role of legal aid in sustaining the rule of law and complying with the due process guarantees in the *Charter of Rights and Freedoms*. This proposal presents the wage disparity concerns facing LABC Staff Lawyers and provides suggestions on how to address these concerns.

II. Executive Summary

Access to justice is one of the foundational rights of any functioning democracy, and the *Constitution Act, 1982*. Access to justice is not, however, a principle for which the public consistently demands attention; like the fundamental freedoms protected in the *Charter*, these rights are too important to be left solely to the vicissitudes of the ballot box. Yet time and again, whenever a BC Government seeks to address public fears about public safety, it bolsters the police and prosecution system, without a thought to its impact on legal aid.²

It is axiomatic that legal aid in BC and across Canada is underfunded, compared to the Crown Prosecution Service, or otherwise. As a recent Attorney General of BC put it, the administration of justice has suffered from this long-running underfunding of legal aid.³

The disparity in wages for legal aid staff lawyers, in contrast to other relevant comparators, is not sustainable. LABC staff lawyer salaries are now over 30 per cent lower than other relevant comparator lawyer positions within government and other Crown Corporations.

The 28 LABC staff lawyers serve the front lines of justice for those most in need. They manage and supervise criminal, child protection and immigration matters and appeals. These staff lawyers, the

² Eg., see the recent Safer Communities Action Plan: <https://news.gov.bc.ca/releases/2022PREM0090-001743>.

³ Per Hon. David Eby: <https://news.gov.bc.ca/releases/2019AG0113-001973>

majority of whom work in Parent's Legal Centres (PLCs), represent clients in some of the most under-served jurisdictions in British Columbia. PLC clients are predominantly women and Indigenous.

These lawyers are responsible for assisting clients coming into contact with the justice system. These clients are marginalized, financially disadvantaged, and often racialized, or mentally ill, or addicted, or all the above. These dedicated individuals are the ones managing and staffing 10 Parent Legal Aid and Regional Legal Aid Centres throughout the province. Typically, the majority of these staff lawyers are women, rendering a further inequity: gender pay equity as between Crown versus LABC counsel. Not only does this wage gap disadvantage against the already discriminated, but it discriminates against the people who serve these clients.

III. Executive Summary

B.C. ranks 10th among the 12 provinces in terms of per capita spending on legal aid.

In 1997, the government of the day froze LABC funding and ordered the organization to eliminate an \$18 million deficit within four years. The next government cut the LABC budget by 40 per cent over three years beginning in 2002.

When the Legal Aid board informed the government of the day that it could no longer meet its legally required services, the board was terminated and the provincial Legal Services Society Act revised to allow the majority of members to be appointed by the province. The Crown thereby assumed elevated responsibility and accountability for the provincial legal aid system, making itself liable for any conflicts thereto. In the ensuing years, 85 per cent of legal aid offices around the province were closed and 75 per cent of employees were terminated.⁴

There remain 28 Legal Aid staff lawyers, located in Surrey, Vancouver, Victoria, Kamloops, Smithers, Terrace, Campbell River, Duncan, Williams Lake and Prince George. Most are located in regions outside of major metropolitan areas, communities with severely constrained private legal representation options.

LABC staff lawyer salaries are now over 30 per cent lower than Crown Counsel and other relevant comparator Crown Corporation Lawyer positions and significantly lower than comparable staff lawyer positions within government. As a result, the Crown invests, per lawyer, considerably more in prosecuting defendants than in legal aid.

In October 2019, LABC staff lawyers expressed their concerns over wage disparity by holding a one-day strike in Vancouver. All Legal Aid staff lawyers care deeply about access to justice, and they are determined to address this historic oversight and obtain an equitable contract that provides stable and sustained effective legal aid services throughout the province

⁴ https://gallery.mailchimp.com/b3e42486da1bfd2b3134f26d0/files/d6662707-1292-4255-824e-3c79c3d2dcce/Restoring_Funding_For_Legal_Aid_ALL_Proposal_Feb_2019_.pdf

IV. The Case for Wage Equity

a. Public Service Comparators

A review by Legal Aid BC in December 2018 of rates at comparable public sector and not-for-profit organizations⁵ found:

- Non-Caseload Lawyers were on average 32% below comparators
- Caseload Lawyers were on average 13% below comparators
- Managing Lawyers were on average 46% below comparators

This survey of the comparison organizations was conducted by external compensation consultants, including the collection and comparison of the content of positions and the collection of detailed information on the following components of compensation:

- salaries;
- incentive/salary holdback plans;
- perquisites;
- group benefits;
- retirement/savings benefits; and
- paid time off.

The organizations that were used for comparison purposes are BC Human Rights Tribunal, BC Hydro, BC Public Service Agencies (Crowns), City of Vancouver and WorkSafe BC.

b. Recruitment and Retention

Wage gaps spin off further inequities, by their very nature. It is a pernicious barrier that exacerbates existing barriers arising from inequality on the basis of gender, race, ethnicity, disability, and other categories of discrimination. Without equitable rate increases, legal aid centres throughout the province cannot recruit and retain qualified staff lawyers.

This differential gets amplified by the broader legal community, less of whom see a legal aid career as sustainable, and more of whom turn to Crown and private bar opportunities that exclude a legal aid practice.

c. Defending Legal Aid

With considerably more being invested in a prosecution than a fair trial, low-income British Columbians facing a variety of serious legal challenges would have to take on a complicated and unaffordable justice system all on their own. Correcting the wage disparity, on the other hand, permits the Crown to

⁵ Criteria: a provincial legal aid organization; a BC provincial crown corporation/agency; has a provincial mandate; typically similar in size to LABC

simultaneously address the administration of justice, reconciliation, anti-racism, gender and many other categories of equality.

We believe all British Columbians must be afforded the same access to justice.

d. Precedents

British Columbia has a public sector negotiating mandate that applies to all public sector employees. The 2019 mandate offers a three-year term with general wage increases of two per cent in each year.

Recent Government bargaining plans had a provision within the public sector negotiating mandate that allowed for targeted funds to address chronic challenges -- like the LABC Staff Lawyer wage disparity. LABC has appreciated this additional “sustainable services” funding budget allowance for Market Adjustments, and other such premiums to help continue address this wage disparity. The Treasury ought to consider the continuation of this additional budget allowance in the upcoming Bargaining Mandate currently being developed.

It must be noted that the 2008 increase for Crown Counsel was not a single adjustment but, rather, a 12-year market adjustment that brought them back to the historically recognized target of the highest-earning Crown counsel at 85 per cent of the salary of a provincial court judge. But that 2008 fiscal reconciliation was not matched on the other end of a fair trial. The disparity increased to date.

II. Wage Redress Proposal Options Ranked in Order of Preference:

1. Across the board market adjustment through one of the following approaches:
 - Tie to parity or % parity with Crown Counsel over term of agreement
 - Tie to comparators in 2018 report (adjusted for four-year differential) and reach the average salary of the comparators over the term of agreement.
 - Provide across the board market increases for all positions – based on agreed upon percentage for each year
2. Pot of Market Adjustment Funds to be provided over the term – with agreed upon principles regarding disbursements and a third-party process if no agreement between parties.
3. Increase SLBP.

As to the impacts on other public sector lawyers of providing the proposed increase to LABC Staff Lawyers, we are seeking parity not fiscal superiority. LABC staff lawyers are trailing the comparators by up to 40%. None of their salaries have been implicated by LABC underfunding. LABC finds it increasingly difficult to attract candidates for term and full time positions as salaries lag far behind comparators in the justice sector. We are seeking to raise the basement, not the ceiling.

III. Conclusion

The disparity in wages between Legal Aid staff lawyers and other government-funded and public sector counsel creates a real and perceived imbalance that diminishes the administration of justice in BC. As

presented by the Association for Legal Aid Lawyers, the most significant risks include a decline in public confidence in the justice system and an increasing number of self-represented litigants. British Columbia residents' liberty and child custody is being tested by a system of justice that invests far less in due process than in prosecuting people presumed innocent.

British Columbians believe legal aid is an essential public service and should be given the same priority as health care, education, social assistance and child protection.⁶ Regardless, even if unpopular, equitable legal aid staff lawyer funding is a constitutional imperative on the Crown.

The joint proposal we provide suggests a plan to address relief in the wage disparity between LABC staff lawyers and other government-funded lawyers performing comparable services.

As stated in the Canadian Bar Association's National Framework report, there is an enormous gap between people's legal needs and the public legal assistance available to address those needs and assist people when they most need help.⁷

"The results can be devastating," it says. "Unresolved legal problems escalate, cause undue personal hardship and trigger non-legal problems like health and social welfare issues. They inhibit people's ability to participate effectively in society... there is increasing acknowledgement in many circles that inadequate legal aid is costly."⁸

Be that as it may, we remain most concerned with the impact of this inequity upon the constitutional health of our administration of justice and its impact upon the already vulnerable. The juggernaut of the Crown, whether in prosecution of crimes or seeking to remove children from their parents, creates a colossal power imbalance for those on the other side of that juggernaut. The only defence against that power imbalance is a legal aid system that can stand up to the Crown, with the force of our constitution as the people's power – of no help, for the unrepresented, and little for the underrepresented. They are the people paying the price for this wage inequity.

⁶ <https://legalaid.bc.ca/sites/default/files/2019-03/legalAidInBCIpsosReidPollMar09.pdf>

⁷ [CBA Benchmarks](#)

⁸ Study on Access to the Justice System – Legal Aid, CBA

IV. Appendices

Reference Documents:

CBA Benchmarks: https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/LLR/A-National-Framework-for-Meeting-Legal-Needs_Proposed-National-Benchmarks.pdf

Study on Access to the Justice System – Legal Aid, Canadian Bar Association, December 2016
<https://www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a>

AG News Release, one-time grant for legal aid funding, March 29, 2019:
<https://news.gov.bc.ca/releases/2019AG0026-000525>

AG News Release, A.L.L. agreement Oct. 15, 2019: <https://news.gov.bc.ca/releases/2019AG0113-001973>

Maclaren Report, Roads to Revival, January 2019: https://news.gov.bc.ca/files/Roads_to_Revival-Maclaren_Legal_Aid_Review-25FEB19.pdf

A.L.L. report, Restoring Funding for Legal Aid, February 2019:
https://gallery.mailchimp.com/b3e42486da1bfd2b3134f26d0/files/d6662707-1292-4255-824e-3c79c3d2dcce/Restoring_Funding_For_Legal_Aid_ALL_Proposal_Feb_2019_.pdf

Canadian Centre for Policy Options, Women Pay the Price of Legal Aid Cuts:
https://www.policyalternatives.ca/sites/default/files/uploads/publications/Popular_Primers/bc_issues/bc_issues_primer_legal_aid.pdf