



**AGENDA**  
FOR  
**JUSTICE** 2021

## INTRODUCTION

## ACCESS TO JUSTICE FOR FAMILIES

## MEANINGFUL CHANGE FOR INDIGENOUS PEOPLES

## MODERNIZING BC'S JUSTICE & LEGAL SYSTEMS

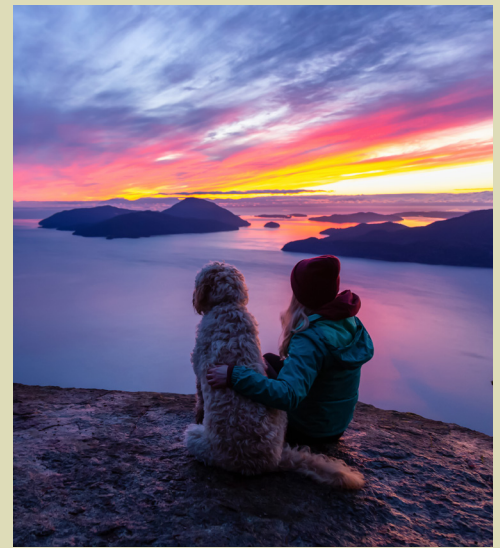
## ENSURING FAIRNESS FOR EVERYONE

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THE CANADIAN  
BAR ASSOCIATION  
British Columbia Branch



## JUSTICE FOR ALL BRITISH COLUMBIANS

# **FAIR. MODERN. ACCESSIBLE.**

We tend to think about the justice system as being police, courts and prisons. When we discuss legal systems, we talk of legislation and rules of conduct. But these systems are much more than that—they are about people and their everyday problems.

A family in crisis, navigating the courts without access to legal representation. A couple dealing with health, financial and related legal decisions for an aging parent. A family business trying to settle a contract dispute. Indigenous people struggling in a system that has not served them well. Rural residents and businesses lacking local technology and resources to access basic legal services.

Effective legal and justice systems actively support the ability of families, communities and businesses to evolve and thrive.

### **RECENT PRESSURES AND CHALLENGES**

The COVID-19 pandemic changed the expectations of our interactions with each other and how we connect. It also put a spotlight on our justice systems—and found them wanting.

Initial responses to the pandemic prompted some overdue changes, including funding to critical programs and agencies. The digital transformation of the courts and other related systems evolved in a rapid and unprecedented manner. However, legislative reform, government funding, and changes to legal service delivery have not kept pace with societal change and new technological requirements.

There is still a long way to go.

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## **NOW IS THE TIME TO ACT**

Decades-long underfunding and understaffing have led to long delays in the administration of justice. These issues were always apparent, but in the last year became impossible to ignore.

As the pandemic restrictions begin to ease, businesses return to operations and people return to work—but their expectations remain high. British Columbians deserve a modern set of laws and access to the justice system to resolve issues fairly and efficiently. Recommendations for law reform, justice initiatives and court funding have been in place for years and remain low-priority action items. With the post-pandemic momentum, now is the time to enact change.

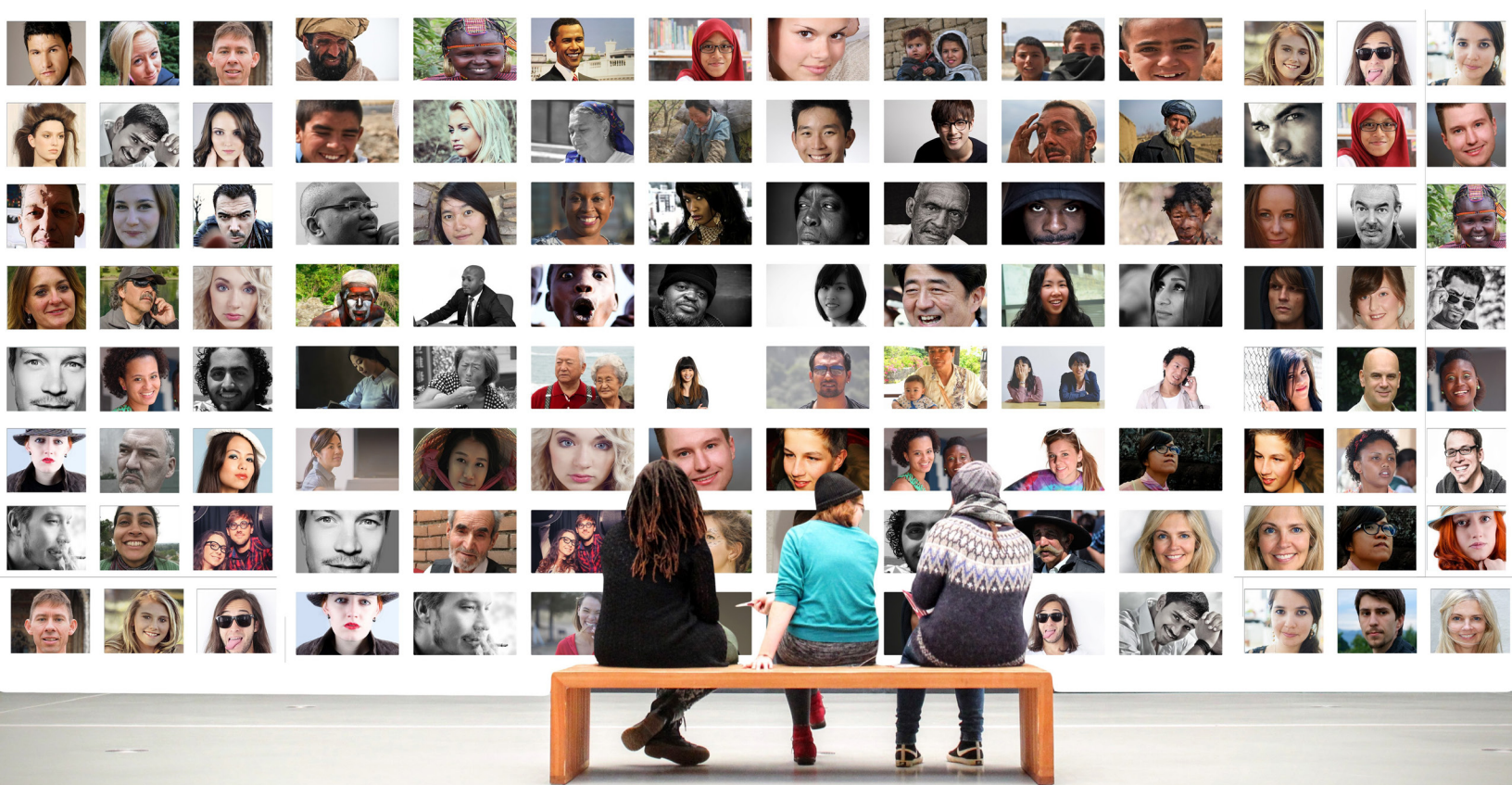
## **A ROADMAP FOR ACTION**

Our vision is that society and individuals will access the justice system to resolve issues in a timely and effective way so that matters can be dealt with impartially, swiftly and before they become more serious.

The Agenda was developed collaboratively by CBABC members, based on extensive research, consultation with industry stakeholders, collective experience and previous submissions to the BC Government. We provide concrete suggestions for action that will make a tangible difference for British Columbia's families, businesses and communities. The document offers plain language to expand public understanding of how law reforms and justice system issues affect day-to-day life.

Our goal is to improve laws and the administration of justice. CBABC looks forward to working with the BC Government and justice sector stakeholders to make these recommendations a reality.





# ACCESS TO JUSTICE FOR FAMILIES

Family law is complicated and can be confusing even during the best of times. Add the emotional trauma of a separation or parenting dispute, and the financial stress within a dissolving family economic unit, and the situation becomes untenable. For those families, it is crucial to be able to access readily available assistance to solve their legal problems.

Our legal aid system falls short. It is expected to support the most economically vulnerable in our society, yet it doesn't have sufficient funding to meet the demand. The scope of legal support for typical family issues is extremely limited. These complexities are made worse by having two courts with jurisdiction for family law issues in BC, each with their own set of rules and procedures. And for those who fall into the child protection system, they encounter a law and system in desperate need of review.

Families deserve better from their government. Family security and financial stability depend on laws and supporting systems that provide timely and fair resolution informed by legal advice and representation.

# A SUSTAINABLE MODEL FOR LEGAL AID

Legal aid ensures that our most vulnerable, impoverished and marginalized citizens have access to justice. Yet only a small percentage of very low-income British Columbians qualify for it. For example, a person who received CERB as income replacement during the pandemic would not be eligible for legal aid.

“There is no justice without access to justice.”

*Former Chief Justice Beverly McLachlin  
UofT Faculty of Law Access to  
Civil Justice for Middle Income  
Canadians Colloquium, 2011*

Even for someone who qualifies, the types of problems covered by legal aid are extremely limited. A parent who needs child support isn't helped with an out-of-court settlement or at a trial. A young adult charged for the first time isn't guided through the system to an appropriate resolution.

In addition, the number of lawyers in BC who are prepared to take on legal aid cases continues to dwindle.

Recent increases to legal aid lawyers' fees have been insufficient and do not cover the services provided. For example, restorative justice measures such as victim-offender mediation, family group conferencing, sentencing circles and band counsel mediation are not adequately compensated under the existing legal aid tariff.

Although PST on legal services was introduced in 1992 with the stated intention to use these funds for legal aid services, that has not happened—leaving a significant gap in funding. Then in 2002, the British Columbia legal aid system was gutted. Since then, the agency primarily responsible for delivery of legal aid services, Legal Aid BC, and legal aid lawyers have tried to help as many British Columbians as possible with less than adequate funding.

For almost two decades, CBABC and others have advocated for an increase in funding. The promises made by the BC Government to seriously examine the legal aid system with a view to expanding eligibility and coverage, and improving the compensation provided to those who deliver legal representation have only been partially met. More is required to avoid the further deterioration of access to justice for those who need these supports.



## RECOMMENDATION

CBABC calls on the BC Government to take the following actions.

- Fund a legal aid system that:
  - » Expands financial eligibility for all services;
  - » Expands the scope of coverage for family, criminal, immigration and poverty law services;
  - » Establishes a compensation system that allows for legal representation in both court and out-of-court resolution systems; and
  - » Provides a fair compensation to legal aid lawyers.
- Establish legal aid as an essential service.
- Direct all PST revenue collected annually on legal fees to fund legal aid, as that was the rationale for the tax when it was introduced in 1992.

## EXPANDED SCOPE FOR FAMILY LAW SERVICES

Legal aid funding for the majority of family law matters—such as child support, spousal support, division of assets/debts and parenting arrangements—was cut in 2002. As a result, legal aid representation in family law cases is provided only when there are actual or threatened safety or violence issues, or to resolve a serious denial of access to children, and then only to resolve that single problem.

About 27% of low-income residents of British Columbia will have a serious legal matter that involves family law issues.

*Legal Aid BC, Everyday Legal Needs—2020 Survey*

Low-income family law litigants often do not have legal representation because they can't afford to pay. Approximately 40% of family law cases in the Provincial Court involve unrepresented litigants, who need extra time and attention from judges and registry staff, leading to a strain on available resources. In addition,

those without legal guidance often struggle to progress through the family justice system and turn to other government programs for further assistance. Any money “saved” by restricting funding for legal aid is often spent on other government resources.

In addition, some self-represented litigants in the family justice system are unable to access the courts at all. Although many positive steps were taken during COVID-19 to maintain access to the courts, they rely on technology that is not available to all families. For example, many do not have access to a phone plan or computer with internet access and bandwidth that allows them to wait on standby to be heard in court. If digital platforms for court administration continue to increase, accessibility at a community level must be available to the most vulnerable. This could be delivered through the Family Justice Centres, Parent Legal Centres, and Indigenous Justice Centres across the province.

### RECOMMENDATION

CBABC recommends that the BC Government make the following critical investments to support families who need legal aid services:

- Expand the scope of representation on issues of divorce, guardianship and parenting arrangements, child and spousal support, and asset/debt division.
- Increase access to and support in using technology to access legal advice and representation as well as courts and out-of-court resolution services.



# TRANSFORMATION OF THE CHILD PROTECTION SYSTEM

Access to fair and timely justice is essential for the protection of children's rights, including the right to be safe and thrive, while maintaining familial, cultural, linguistic, and spiritual or religious ties. The child protection system is currently failing children, particularly Indigenous children who are disproportionately impacted by state intervention.

The *Child, Family and Community Services Act* needs to be updated to reflect current expectations of the child protection system. Specifically, parenting and caregiving changes within a family in the protection system by the state or court must be made and reviewed in a timely manner. Parents and children must be aware of their rights and have legal representation.

Indigenous children represent 52.2% of children in foster care in private homes in Canada but account for only 7.7% of the overall child population.

*Indigenous Services Canada, 2018*

Legal Aid BC has opened ten Parent Legal Centres in BC, which provide welcome support for early and collaborative resolution of child protection disputes. However, the services do not include legal representation in contested hearings, which is when parents need the knowledge and skills of a lawyer.

Recent studies and reports have made recommendations that have not been implemented in a co-ordinated way to achieve the changes required. By making child protection reform a priority, the BC Government can achieve changes that will help children achieve security, safety, and a supportive growth environment, free from uncertainty.

## RECOMMENDATION

CBABC recommends that the BC Government prioritize a review and transformation of the child protection system to modernize its policies, programs, funding and legislation, so that the rights of children will be protected and changes to their circumstances completed in a timely manner.

Children and families engaged in the system must be able to make informed decisions and have legal representation, with affected low-income families having access to legal aid. In particular, the review and transformation must address the over-representation of Indigenous children in care, and enable Indigenous laws and traditions in a reformed system.



## UNIFIED FAMILY COURT

Families facing serious legal issues at the end of a relationship have to navigate a complex system with two separate but parallel courts. The Provincial Court deals with more than half of the family law cases in BC, but there are many matters it cannot deal with. The Supreme Court has full family law jurisdiction, but fewer locations and more complex procedures. The overlap in services and jurisdiction are confusing to the public and waste scarce resources.

This current two-court system increases the cost and time required to resolve disputes, creates additional emotional strain on families during challenging times, and reduces access to justice.

A Unified Family Court is a specialized family law division that has been developed and used successfully in most other provinces for decades. A UFC would provide a single access point for all family law disputes that require court resolution. It would have simplified rules and procedures, judges who specialize in family law, and a strong cooperative resolution focus for children and families. Seven provinces already operate UFCs in one form or another and funding is readily available from the federal government.

## RECOMMENDATION

CBABC recommends that a Unified Family Court system be developed for British Columbia, as recommended by various studies such as the Family Justice Reform Working Group 2005 report, produced as part of the BC Justice Review Task Force.



## MEANINGFUL CHANGE FOR INDIGENOUS PEOPLES

CBABC recognizes that systemic discrimination toward Indigenous peoples needs to be examined at every level of the provision of government services, including how policies are framed and services are delivered in the administration of justice. We support critical evaluation of policy and program implementation in provincial corrections, policing, legal aid funding, the exercise of prosecutorial discretion, and broadly the overall operation of the courts in a manner that will promote the objectives of reconciliation.

The experience of Indigenous peoples with our justice system has not been a positive one. Our First Nations communities suffer from ongoing and disproportionate levels of violence and crime. In 2018, Statistics Canada reported that nearly a quarter of all homicide victims in Canada are Indigenous and that in the previous decade, admissions of Indigenous males into custody had increased 83% in British Columbia—the most in all of Canada.

Clearly, our Indigenous communities require and deserve a unique and collaborative approach to justice that recognizes and addresses the issues more prevalent within their population.

The foundation has been laid with the establishment of legislation such as the *Declaration on the Rights of Indigenous Peoples Act* and historic agreements such as the *BC First Nations Justice Strategy*. Now is the time for real and substantive actions within our justice system, to address inequities and make a meaningful change in the lives and experiences of our Indigenous peoples.

## MOVING FORWARD WITH DRIPA

The BC Legislature passed the *Declaration of the Rights of Indigenous Peoples Act* in November 2019. DRIPA's stated aim is "to create a path forward that respects the human rights of Indigenous peoples while introducing better transparency and predictability in the work we do together."

To be more than an abstract acknowledgment, DRIPA must be implemented with clear opportunities for consultation and involvement, particularly with those who engage in law reform and see first-hand the impact on Indigenous peoples.

"This legislation means that we can look squarely at each other and say this is how we're going to work together."

*Kukpi7 Judy Wilson, Union of BC Indian Chiefs*

Legislation that impacts Indigenous peoples as individuals or as groups needs to be reviewed. For example, the *Limitations Act* and other statutes of limitations could be reviewed to ensure that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Indigenous peoples.

More than a year after the introduction of DRIPA, it is unclear what has been done to bring provincial laws into harmony with the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*.

Law reform takes time and funding, but without knowing the roadmap the BC Government expects to take, it is difficult for anyone to assist with this analysis or contribute to it.

### RECOMMENDATION

CBABC recommends that the BC Government move forward with section 3 of the *Declaration on the Rights of Indigenous Peoples Act*; namely, to take all measures necessary to ensure the laws of British Columbia are consistent with UNDRIP, and to do so in consultation and co-operation with the Indigenous peoples in BC.



# BC FIRST NATIONS JUSTICE STRATEGY

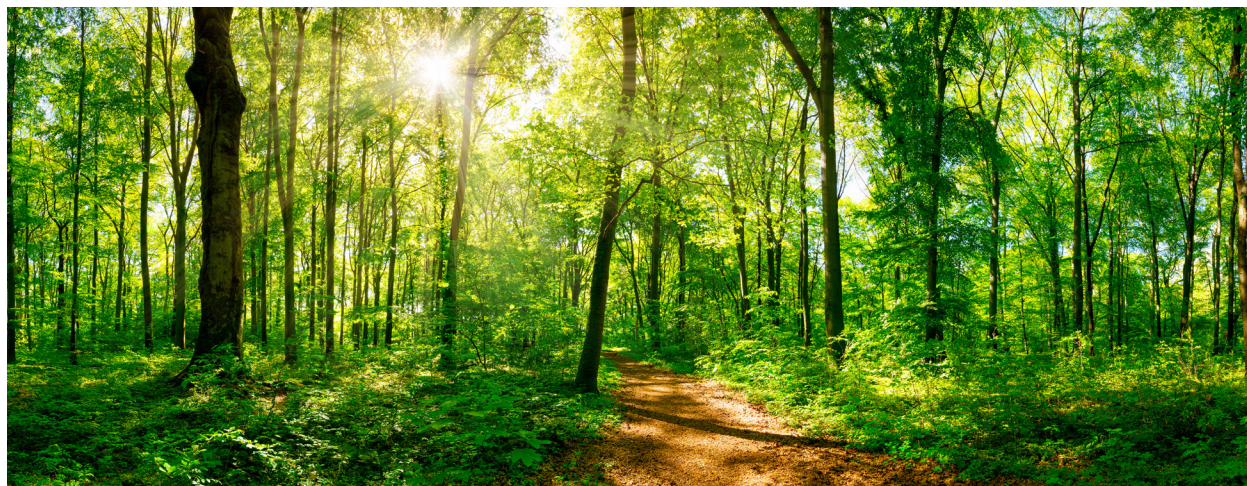
In March 2020, the BC Government and the BC First Nations Justice Council announced the *BC First Nations Justice Strategy*, a comprehensive plan to transform the experience of Indigenous peoples with the criminal justice system. The Strategy is a historic agreement that will require significant infrastructure for its implementation.

The Strategy is based on the expectation of an integrative, holistic, and comprehensive approach that addresses all forms of interaction between First Nations and the justice system. It includes lines of action to reform the current justice system and restore First Nations legal traditions and structures consistent with the standards of the *United Nations Declaration on the Rights of Indigenous Peoples*.

The goal of the Strategy is to achieve a 180 degree shift from the current reality of First Nations people being over-represented in all stages of interaction with the justice system, while at the same time being under-represented as actors with roles and responsibilities within the system.

## RECOMMENDATION

Given the urgent and pressing need for change, CBABC recommends that the BC Government provide proper funding and resources to fully implementing the *BC First Nations Justice Strategy*. This includes transparently reporting on the magnitude and sources of funding, so all British Columbians can trust the Government's commitment to changing the experience of Indigenous peoples in a meaningful manner.



# RESTORATIVE JUSTICE

Indigenous peoples are overrepresented in the criminal justice system, both as criminals convicted of crimes and as people harmed by crime. The rate of Indigenous women harmed by crime is almost double that of non-Indigenous women.

The *BC First Nations Justice Strategy* calls for a complete shift in how Indigenous peoples are treated by the justice system in all roles, including:

- Establishing a presumption of diversion to divert First Nations people from the court system, wherever possible.
- Improving cultural competency in the justice system.
- Establishing roles for Elders and Knowledge Keepers within the justice system.
- Increasing community justice programming in each First Nations community.

Indigenous inmates make up 30% of the federal prison population compared to 5% of the Canadian population

*Office of the Correctional Investigator Report, January 2020*

Recent policy changes at the BC Prosecution Service, including requiring Crown Counsel to consider all reasonable alternatives to prosecution and the use of alternative measures like restorative justice, have been a positive step forward. Further progress can be achieved through a Restorative Justice Strategy.

Restorative justice is an approach that provides an expanded set of tools that complement and can work within all levels of the traditional justice system. Restorative justice recognizes that both people and communities are harmed by crime, and therefore both have a role to play in seeking a just outcome. Involving the person harmed, the offender, and their communities, restorative justice seeks outcomes that meet the needs of those who have been harmed and address the underlying causes of the act.

While the value of restorative justice programs has been well demonstrated, they remain on the fringes of the criminal justice system. CBABC believes that a robust and comprehensive restorative justice program, which can be accessed at the discretion of police forces and Crown counsel, has potential for significant cost savings to both the judicial and corrections systems.





## RECOMMENDATION

CBABC calls on the BC Government to increase access to restorative justice services in communities across the province, including Indigenous communities, through the following actions:

- Development of a Restorative Justice Strategy and Action Plan in consultation with the Restorative Justice Association of BC, First Nations Justice Council and Métis Nation BC Justice Council, BC Community Corrections, police, Crown Counsel, as well as other legal stakeholders and restorative justice providers.
- Increased funding to restorative justice associations and societies to enable services in all parts of British Columbia, not just in urban areas or where by luck programs exist.
- Continued funding for education of police, Crown Counsel, criminal defence counsel and BC Community Corrections teams about the benefits of and access to restorative justice programs.

## RURAL ACCESS TO LAWYERS & TECHNOLOGY

British Columbians who live in rural areas face challenges in accessing online legal information, digital/virtual services of the courts, out-of-court resolution services, and basic legal and support services. Many of these rural areas include Indigenous communities.

Many remote communities offer limited options for residents to access online legal information and services. Internet bandwidth remains a challenge for these communities. Libraries and community centres have very few public computers with the necessary software. Some Indigenous Justice Centres and community-based organizations have the required hardware and software, but they are not always available to members of the public for independent and confidential use to attend a court hearing or access a lawyer. They also offer limited, if any, support for users who need help with technology.

In addition to poor technology infrastructure, most rural BC communities face an ever-increasing shortage of lawyers. Substantial student loan debt prevents many recent law graduates from seeking positions in rural or remote communities. Paying this debt as quickly as possible is a significant priority, so many young lawyers seek positions in urban centres where they are offered a high salary. Smaller communities, where the financial compensation is less, have difficulty attracting law graduates.

A simple solution is to implement a student loan debt forgiveness program, similar to what the BC Government offers doctors and nurses who practice in remote areas. By reducing some of the debt load in exchange for establishing a practice in a rural community, new law graduates would have the incentive to serve rural and Indigenous communities.

Poor access to the internet, lack of technology infrastructure and support, and a shortage of lawyers contribute to the general inequity between rural and urban communities, and widen the access to justice gap for those in rural communities, including Indigenous communities.

### RECOMMENDATION

CBABC recommends that the BC Government:

- Provide rural communities, including Indigenous communities, with high-speed internet access and necessary computer equipment and training so that they can access and participate in court and justice services.
- Encourage new lawyers, through a student loan forgiveness program, to establish legal services in rural communities to increase the geographic proximity of lawyers to the people they serve.



## MODERNIZING BC'S JUSTICE & LEGAL SYSTEMS

The key stakeholders in the justice system—litigants, lawyers, court services staff and judges—all agree that change is needed to modernize our courts and laws, improve the experience of litigants, make the justice system more effective, and ultimately reduce costs.

The need for this change was highlighted by the additional pressures brought on by the COVID-19 pandemic. Before and during the pandemic, the BC Government initiated consultations, with CBABC and other justice system stakeholders offering advice through various task forces, action committees and reports. Many studies and solutions have been proposed but the most relevant is the *Court Digital Transformation Strategy 2019-2023*.

British Columbia needs enhanced virtual technology so that more people can access the justice system; updated, streamlined legislation so small businesses can thrive; and varied paths in and out of judges' courtrooms so timely justice can be delivered. British Columbia residents deserve a system that will meet the demands of the 21<sup>st</sup> century.

## CIVIL COURT SCHEDULING & FILING

British Columbians are accustomed to a certain level of technology when accessing services in their daily lives and expect a similar level of convenience and ease from legal services and the courts. Unfortunately, the Supreme Court of British Columbia has not been able to keep up with the fast pace of technological change, particularly in the areas of court scheduling and filing.

“Almost three times more long chambers applications were bumped in 2019 than in 2018 across the province, with the highest percentage of chambers applications bumped in the past 11 years.”

*Supreme Court of British Columbia 2019 Annual Report*

Whether someone is attempting to schedule a hearing in an urban or rural court, the process is an exercise in frustration. Court schedules are almost always overbooked and being “bumped” to another date is common, resulting in delay and uncertainty, loss of income for time taken off work, increased legal fees, and additional stress on the litigants.

Outside of Vancouver and New Westminster, the Supreme Court operates on the assize system, where hearings and trials are scheduled during a one- or two-week period. Lawyers and self-represented litigants must prepare for their scheduled court date, not knowing when (or if) their hearing will start. Litigants and witnesses find it challenging to arrange time off work to attend court. Lawyers find it difficult to meet their clients’ needs and deliver legal services efficiently and cost-effectively. The assize system does not provide a positive experience to the public.



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The Vancouver and New Westminster courts use the fixed date method of scheduling. Due to frequent overbooking, court cases are often re-scheduled weeks or months in the future. Scheduling trials and hearings is time-consuming and ineffective. It is done by telephone, calling the court registry to speak to a court scheduler who checks available dates, marks a time in a schedule with the lawyer or litigant, and follows up with a court document to confirm the date.

The Supreme Court still requires paper filing of documents with the court registry for review by the judge or master. When there is a change in court location or judicial official, paper documentation must be physically transferred. If the documents can't be couriered in time, the case can't proceed. In Summer

"For civil trials apart from motor vehicle accident trials, the wait for available dates was generally 17 months for Vancouver and New Westminster, and an average of 15 months for other registries."

*Supreme Court of British Columbia 2019 Annual Report*

2020, the Court of Appeal moved all court filings to a digital model, enabling a more efficient use of resources and avoiding the delays caused by paper filings.

To improve the public's confidence in our justice system and ensure it is as efficient as possible, financial resources are needed to modernize the courts' scheduling and document filing systems.

## RECOMMENDATION

CBABC recommends the BC Government fully fund the *Court Digital Transformation Strategy 2019-2023* and, in co-operation with the Supreme Court of British Columbia, invest in the following areas:

- Review the assize system of scheduling trials and long chambers applications and explore alternative models.
- Develop an online booking system for trials, chambers and other proceedings.
- Move all chambers records online so they are accessible to judges, masters and court clerks regardless of where they are physically located.



## COURT SERVICES STAFFING

Inadequate staffing in the Court Services Branch, particularly in smaller communities, leads to lengthy wait times and difficulties in scheduling, which delay family, civil and criminal cases.

In all communities, the turn-around time for receiving orders, whether e-filed or filed by paper, is longer than desired. This fact puts additional pressure on litigants who need proof of the court order to take the next step in their case, such as enforcing child support, obtaining document disclosure, or changing the land owner registry title.

Courthouses in smaller communities could take advantage of the sudden availability of judges or masters if they had sufficient court services staff. Similarly, the centralization of some tasks has left these courthouses unable to provide the necessary services in a timely and efficient manner, as many have not kept pace with technological change. As a result, litigants experience even greater delays and uncertainty as to when their cases will be heard and when they will receive proof of their court order.

The current e-filing system has its limitations when filing documents, creating some practical challenges for litigants. An electronic platform for dealing with documents on video conferences would allow judges who suddenly become available to have access to the material necessary to hear a case. Additionally, technologically-adept court staff are needed to operate a digital system and support the litigants and judges using it.

Despite government funding in 2018 allocated towards increasing the number of sheriffs and the injection of emergency funding in 2020 during the early stage of the pandemic, more government funding is required for the court system to meet the needs of British Columbians in the 21st century.

### RECOMMENDATION

CBABC recommends that the BC Government:

- Increase funding to the Court Services Branch to increase court staffing in smaller communities and enhance training of court staff in all communities to support a modernized court administration system.
- Fully fund the development of the initiatives outlined in the *Court Digital Transformation Strategy 2019-23* and *Modernizing Justice and Public Safety: A Digital Strategy for the Justice and Public Safety Sector 2019/2020*.

An injection of funding in these areas would modernize the court system, increase efficiency, and address backlogs.

# JUSTICE SYSTEM DATA COLLECTION & DISCLOSURE

Collecting and sharing data publicly enables research, promotes system improvements and facilitates access to justice. Effective data collection and public disclosure reduces duplication and enables coordination of scarce resources. Data can support calls for change and makes it possible to measure the impact of reforms.

A glaring gap exists in the collection and disclosure of data as it relates to the operation of our justice system, particularly with respect to our courts. In contrast, both the education and health care systems have robust data collection and disclosure protocols. It's time for the justice sector to catch up.

In February 2020, several justice sector stakeholders participated in a series of meetings to explore how to make a larger amount of useful data more readily available. They proposed ideas to move beyond the theory of collecting and disclosing data to actual implementation. Part of the solution is the existing Government's Data Innovation Program, where data from other sectors is collected and disclosed to researchers.

Responsibility for data collection and distribution in the courts is a joint endeavour, but leadership from the BC Government to recognize the gap in its processes and enact a response for modernization would lead others to do the same.

## RECOMMENDATION

CBABC calls on the BC Government to take the following actions:

- Establish a robust data collection and disclosure infrastructure within Court Services, BC Corrections and administrative tribunals.
- Provide adequate funding for all levels of court to establish their own robust data collection and disclosure infrastructure.
- Actively develop data protocols and standards to ensure alignment across the justice sector so that information can be collected and disclosed in a consistent manner.

## COLLECTION & REPORTING OF DISAGGREGATED DATA

Governments around the world collect and use data about their residents to make decisions about the allocation of resources and to determine how programs and services are delivered. “Disaggregated data” (data divided into more detailed sub-categories) provides more relevant information that improves resource allocation, resulting in more responsive systems and positive structural change.

British Columbia’s data collection in multiple government service areas (including public safety, judicial and court services) has gaps related to the experiences of disadvantaged communities, including:

- Black, Indigenous and persons of colour (BIPOC)
- Lesbian, gay, bisexual, trans-gender, queer, two-spirit, intersex, non-binary and other sexual minority (LGBTQ2S+)
- Persons with disabilities
- Francophones and others with a primary language other than English
- Other socioeconomically disadvantaged communities

In June 2020, the Human Rights Commissioner of BC considered issues related to “race and ethnicity-based data collection and dissemination of disaggregated data that protects individual privacy” and how such collection could be applied across multiple ministries including “housing, education, policing, poverty reduction, and healthcare.” The special report, *Disaggregated demographic data collection in British Columbia: The grandmother perspective*, was presented to the BC Government in September 2020.

56% of Black Canadians report layoffs or reduced working hours during COVID-19

Only 25% of Indigenous communities in BC have basic internet access

40% of homeless youth are LGBTQ2S+

“These powerful statements are made possible by disaggregated data. By making systemic inequalities in our society visible, data can lead to positive change.”

*BC Office of the Human Rights Commissioner*



## RECOMMENDATION

CBABC recommends that the BC Government adopt the recommendations of the Human Rights Commissioner's special report *Disaggregated demographic data collection in British Columbia: The grandmother perspective*, and move forward immediately to:

- Draft the *Anti-Discrimination Data Act* to govern the collection, use and disclosure of demographic data for social change.
- Develop data standards that include an equity impact assessment requiring consideration of the purpose of a data project, ensuring a respectful collection process, and the scope and limitations of data collection tools.

CBABC further recommends that the collection of disaggregated data be expanded to:

- Court actions;
- Complaints filed with the Office of the Ombudsperson, Human Rights Tribunal, Health Professions Review Board, Residential Tenancy Board, and Employment Standards Branch;
- Complaints filed with municipal police departments, RCMP detachments, and the Office of the Police Complaints Commissioner;
- Applicants for positions and appointments to the Provincial Court, administrative tribunals, and other public service boards;
- Public service employment in policing, corrections, prosecution and court services, and the Ministry of Attorney General and Ministry of Public Safety in general; and
- Applicants for and recipients of provincial legal aid funding.

## VIRTUAL WITNESSING OF LEGAL DOCUMENTS

Most people require the services of a lawyer to prepare and execute estate planning documents, including powers of attorney and representation agreements. A power of attorney allows someone to look after financial and legal matters for another person if they need assistance or lose capacity. A representation agreement permits someone to make health care decisions for another person.

Without accurate and effective documentation and arrangements, many people experience additional challenges while supporting aging or sick family members. For example, without these documents, a daughter has to make a costly court application to be granted the authority to make financial, legal or health care arrangements for her mother with dementia. This additional cost and time heightens an already stressful situation.

The BC Government responded to CBABC's requests at the start of the pandemic by issuing orders to allow electronic witnessing of wills, powers of attorney and representation agreements, which made it possible for lawyers to meet with and provide legal advice to clients virtually and electronically. The Government subsequently passed amendments to the *Wills, Estates and Succession Act* to accept electronic wills and permit remote witnessing of wills beyond the expiration of the state of emergency. However, the same has not happened for powers of attorney and representation agreements.

### RECOMMENDATION

CBABC recommends that the BC Government amend the *Power of Attorney Act* and the *Representation Agreement Act* to permit virtual witnessing of powers of attorney and representation agreements. This would continue the permissions granted during the state of emergency due to the COVID-19 pandemic.



# REFORM FOR COMMERCIAL LEASES

Commercial leasing is a major component of the provincial economy and has grown substantially since the *Commercial Tenancy Act* was passed in 1897. Commercial leasing is a complex area of law that often leaves small businesses at a disadvantage, as they may not have the resources to understand and navigate outdated rules and leases presented by sophisticated landlords.

The BC Law Institute's *Report on Proposals for a New Commercial Tenancy Act* contains proposals for draft legislation to make the Act a relevant and useful tool for owners and tenants. The report addresses core rules required in tenancy law: a landlord's consent to assignment or subletting, applying common contractual law to commercial leasing, and bankruptcy of the tenant. It also contains a summary dispute resolution procedure and proposes the removal of obsolete rules in the existing legislation.

An amended *Commercial Tenancy Act* gives owners and tenants an even playing field with a clear set of rights and responsibilities and an effective dispute resolution model. This practical framework would reflect a modern, progressive British Columbia that is attractive to small business.

## RECOMMENDATION

CBABC recommends that the *Commercial Tenancy Act* be amended and modernized to address the current complexities in commercial lease agreements, as recommended by the BC Law Institute.



## ENFORCEMENT OF MONEY JUDGMENTS

One of the foundations of a fair and just legal system is for a successful litigant to be able to collect the amount awarded by the court or through a settlement, as outlined in a money judgment order. This should be the end of a litigant's quest for compensation. Instead, it often marks the beginning of a more difficult and frustrating experience—collection of the payment. Without a simple and effective method to collect, people lose confidence in the justice system.

The existing law on money judgments in British Columbia is archaic, fragmented and inefficient. In 2005, the BC Law Institute recommended the *Uniform Civil Enforcement of Money Judgments Act* to modernize, harmonize and consolidate the law. The Uniform Law Conference of Canada subsequently endorsed the proposed Act.

The BC Government concluded a public consultation on this Act in May 2020; however, no new legislation has been proposed. By introducing the *Uniform Civil Enforcement of Money Judgments Act*, the Government would significantly improve the experience of people who come to the court to have their disputes resolved by the judge, ensuring they are able to actually receive their monetary award without having to endure more process and delay to collect.

### RECOMMENDATION

CBABC recommends that the BC Government replace the *Court Order Enforcement Act* with the *Uniform Civil Enforcement of Money Judgments Act* as recommended by the BC Law Institute and as endorsed by the Uniform Law Conference of Canada.



## ENSURING FAIRNESS FOR EVERYONE

One of the core principles of our justice system is the equality, inclusion and protection of human rights for everyone, particularly our most vulnerable residents and those challenged by difficult circumstances. Seniors, LGBTQ2S+ communities, racialized populations, Indigenous peoples, mental health detainees and low-income residents have been historically marginalized by legal systems.

All British Columbians expect that laws are not only fair and reasonable, but also clear and understandable. Small businesses need to resolve their disputes quickly and efficiently so that efforts can instead be focused on growing their businesses and creating jobs in British Columbia. Those injured need to be fairly reimbursed for expert costs and certain expenses incurred to prove their case. Consumers should not be restricted from making complaints within a reasonable time.

We need to address issues in public policies, programs and legislation to ensure that all members of society are treated fairly and with respect.



## LEGAL AID FOR THE LGBTQ2S+ COMMUNITY

British Columbia's lesbian, gay, bisexual, trans, queer, two-spirit, intersex, non-binary, and other sexual minority (LGBTQ2S+) communities face disadvantages in accessing government services. Access to justice is also a particular challenge for these communities. They are overrepresented in the lowest income brackets and have a greater need for legal services than the general population. Racialized LGBTQ2S+ persons face a particularly large gap in accessing justice (especially trans black, Indigenous, and persons of colour).

Despite this heightened need, there are no legal aid clinics or law reform organizations run by an LGBTQ2S+ community group or with a specific mandate to serve LGBTQ2S+ members, where members in need feel free to come forward and disclose their legal problems in a safe and understanding environment.

More focused attention and resources to address these gaps are essential to promote equal access to justice for LGBTQ2S+ British Columbians.

### RECOMMENDATION

CBABC calls upon the BC Government to take the following actions to reduce the systemic barriers to justice for the LGBTQ2S+ community:

- Fund legal aid services (information, advice and representation) provided specifically to and by the LGBTQ2S+ community.
- Implement measures to address discrimination and institutional bias within the justice system, including meaningful and specific LGBTQ2S+ training for all people involved in the legal aid delivery model.
- Track legal aid resources flowing to the LGBTQ2S+ community in an ongoing and comprehensive manner through better collection of disaggregated data on the sex, gender, sexual orientation, gender identity, and gender expression of clients or other recipients receiving legal aid services.
- Fund a collaborative platform where LGBTQ2S+ practitioners and allied lawyers delivering legal aid services can collaborate, develop and enhance LGBTQ2S+-specific legal knowledge and skills.



# REPRESENTATION FOR MENTAL HEALTH DETAINEES

Every person has the constitutional right to receive legal advice and representation when their personal freedom is being denied. However, patients with mental health issues who have been involuntarily detained do not have a clear option to have legal representation when their review or hearing is held. The *Mental Health Act* addresses who can attend a hearing to give evidence or make submissions but does not make specific reference to legal representation for the patient.

British Columbia is one of the only provinces that does not provide for independent legal advice for people who are involuntarily detained for mental health treatment. Having someone readily available to provide legal advice ensures that patients will have access to an advocate who can explain what is happening and help them understand their legal rights and choices.

## RECOMMENDATION

CBABC recommends that the BC Government implement the recommendations in the 2019 Ombudsperson's report *Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act* to ensure detainees under the *Mental Health Act* will have access to independent legal representation.



# COST RECOVERY FOR VEHICLE ACCIDENT VICTIMS

A person injured in a vehicle accident incurs many expenses to litigate their case, whether before a court or tribunal.

For instance, the injured person and the insurer defending that case can use the evidence of experts to prove to the court what happened and what compensation is fair. Experts are authorities in their field such as doctors and engineers who provide their professional opinion to the court about technical, specialized facts and likely outcomes. Experts charge for their time to provide a written report and to prepare for and give evidence in court. There is no limit on what fees an expert can charge. Because of the expertise and time involved, it can cost thousands of dollars to obtain the expert evidence required.

In addition to experts' fees, the injured person will have general expenses such as fees paid to government; private court reporters and mediators; and reimbursement to cover lawyers' travel between communities to attend court. The successful party in a dispute needs to recoup these expenses so that they are not losing money by proving their case.

In July 2020, the BC Legislature passed the *Evidence Amendment Act*, which limits the amount a successful party may recover for expert fees and legitimate expenses in a vehicle injury case. Future regulations will specify the precise limitations.

Setting arbitrary limits on the recovery of reasonable experts' fee and legitimate expenses is unfair, particularly to the injured person who is fighting for reasonable compensation to help them deal with the effects of their injury.

## RECOMMENDATION

CBABC recommends that the *Evidence Act* regulations regarding vehicle injury cases be further amended to give the court or tribunal the discretion to:

- Decide the reasonable amount of recoverable disbursements based on the individual case.
- Decide the reasonable amount of recoverable experts' fees based on the individual case, or alternatively, establish a mandatory tariff of experts' fees based on consultation with the professional associations representing experts in vehicle injury cases.

## WRONGFUL DEATH LEGISLATION

If a person is injured by the wrongful act of another and survives that event, they are able to claim compensation for their losses, both financial and non-financial. The same options should be in place for close family members of those who die due to the wrongful act of another. No amount of monetary compensation will ever make up for the loss of a family member but the opportunity to hold someone accountable for the wrongful act is fundamental.

The *Family Compensation Act* currently takes into account only the financial losses resulting from death of a family member. Children, stay-at-home parents, seniors and people with disabilities, whose death may not result in a financial loss that is measurable, are groups of people whose loss of lives are not compensated in BC. However, their families still experience grief and loss of their care, guidance and companionship.

Nearly every other jurisdiction in Canada has legislation that compensates survivors for this loss. In BC, the *Family Compensation Act* must be modernized to recognize and compensate the pain and suffering of family members of someone killed as a result of the negligent and/or intentional acts of another.

### RECOMMENDATION

CBABC recommends that the *Family Compensation Act* be amended to enable:

- Claims for both financial and non-financial losses to be made by the spouse, parent or child of a deceased, as well as certain other family members in specific circumstances.
- Recovery of bereavement damages, including grief and loss of guidance, care and companionship.
- Claims for punitive damages to be made in appropriate cases.

# CONTRACT FAIRNESS

For the most part, commercial contracts are governed by common law principles based on legal precedents established by the courts. Interpreting and applying the common law when a dispute arises can be a difficult and confusing process. The result is that businesses in a commercial contract are frequently involved in costly and lengthy litigation due to unresolved contract disputes. This issue primarily affects individuals such as free-lancers, gig economy workers, sole proprietors and small business partners (e.g. husband and wife).

Legislation that clearly states the application of contract rules and the remedies under the common law could help. In September 2011, the BC Law Institute proposed new legislation, the *Contract Fairness Act*, to address these issues. The BC Government has not yet introduced this legislation, and the number of cases filed for contract disputes continues to grow, contributing to the backlog in the court system.

## RECOMMENDATION

CBABC supports the enactment of a *Contract Fairness Act* that would clarify the law and make it easier for businesses to resolve disputes, thus reducing the number of commercial disputes brought to court.



## LIMITATION PERIODS

The *Limitations Act* determines the set period of time that people have to begin a court action or tribunal claim. In most circumstances, that period is two years from the date a claim is discovered.

Consumers entering lengthy standard form contracts rarely read “the fine print,” which is where changes to limitation periods are included. Unlike in Alberta and Ontario, businesses in BC can make this time period as short as they wish.

These reduced deadlines make it unreasonable for a consumer to discover a deficiency with a good or service and take legal action to bring a complaint or claim.

51% of low-income British Columbians experienced a consumer problem in the past 3 years.

*Everyday Legal Needs 2020 Survey*  
— Legal Aid BC

## RECOMMENDATION

The BC Government should amend the *Limitations Act* to allow parties to agree to extend, but not shorten, limitation periods. This would ensure all consumers have a fair and reasonable amount of time to bring forth a complaint or claim.



## REVERSE MORTGAGES

Recent media reports suggest that many older persons are reconsidering their retirement plans in light of the inadequacies and dangers of care homes exposed by the pandemic. Some of them may consider borrowing funds through a reverse mortgage in order to remain in their own homes. Reverse mortgage lenders and brokers may seek to capitalize on those fears in the next few years to increase uptake of reverse mortgages.

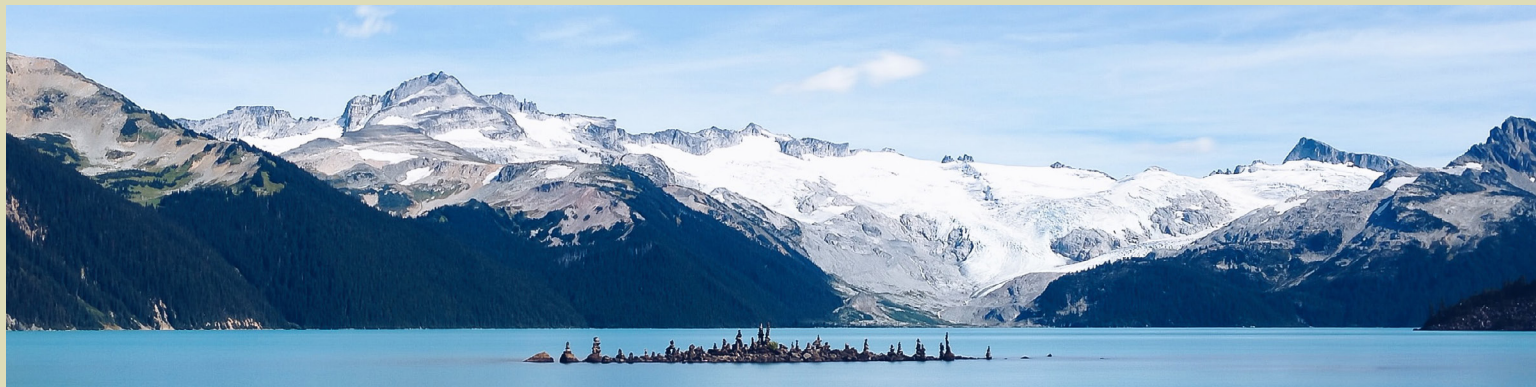
While reverse mortgages may be the right choice for some choosing to “age at home,” the drawbacks need to be made clear to borrowers before they enter into such a transaction.

CBABC is concerned that the disclosure statements required under the *Business Practices and Consumer Protection Act* are not broad enough and borrowers may be surprised at the large amounts owed after a period of time.



### RECOMMENDATION

CBABC asks the BC Government to enact legislation that will specifically address reverse mortgages to focus on disclosure and related consumer protection measures, as outlined in the BC Law Institute's *Report on Reverse Mortgages*. This will ensure that reverse mortgage borrowers have the information they need to evaluate the merits of entering into the transaction.



## AN ADVOCATE FOR CHANGE

The members of the Canadian Bar Association in British Columbia have unique insight into our justice system and the impact our laws have on people.

CBABC members practice at the forefront of the justice system, providing services to British Columbians in every area of law. We witness and share with them personal and business challenges and crises. As the voice of the legal profession in Canada, the Canadian Bar Association represents more than 36,000 lawyers, judges and law students, including over 7,000 members in BC. The CBA is a strong advocate for the public and an important resource for governments on justice issues and legislation.

CBABC is committed to the steady progress of our legal and justice systems and improved access for all British Columbians. Strategic and efficient operations in those systems can be achieved through careful analysis and innovation. Fair access to justice can be achieved by acting with sensitivity and courage to meet the needs of those who suffer most under those systems today.

The BC Government has the opportunity to improve the daily lives of British Columbians by ensuring they have prompt access to justice delivered by courts with up-to-date legislation and technology that recognizes their needs and challenges.

We hope **Agenda for Justice 2021** will inspire action to address the highlighted challenges.

Members of our Association welcome the opportunity to discuss our recommendations in more detail and to answer any questions.

### **Canadian Bar Association, BC Branch**

604.687.3404  
1.888.687.3404  
cbabc.org

CBABC President:	<a href="mailto:president@cbabc.org">president@cbabc.org</a>
Advocacy Director:	<a href="mailto:advocacy@cbabc.org">advocacy@cbabc.org</a>
Media Contact:	<a href="mailto:media@cbabc.org">media@cbabc.org</a>

# BACKGROUND READING

The following reports, submissions and other materials informed the recommendations presented in **Agenda for Justice 2021**. Links to all Background Reading can be found at [cbabc.org/A4Jbackground](http://cbabc.org/A4Jbackground).

## ACCESS TO JUSTICE FOR FAMILIES

*Everyday Legal Needs 2020 Survey*, Legal Aid BC (Aug 2020)

*Roads to Revival: An External Review of Legal Aid Service Delivery in British Columbia*, J. Maclaren, QC (Jan 2019)

*External Review of Legal Aid Service Delivery in British Columbia*, CBABC Submission (Nov 2018)

*Foundations for Change: Report of the Public Commission on Legal Aid in British Columbia*, Leonard T. Doust, QC (Mar 2011)

*Reaching Equal Justice: An Invitation to Envision and Act*, Canadian Bar Association (2013)

*Serious Family Problems*, Legal Aid BC website

*Do I Qualify for Legal Representation*, Legal Aid BC website

*Wrapping Our Ways Around Them: Aboriginal Communities and the CFCSA Guidebook*, A. Walkem (2015)

*Indigenous Resilience, Connectedness and Reunification: From Root Causes to Root Solutions: A report on Indigenous Child Welfare in British Columbia*, Grand Chief Ed John (2016)

*Pathways in a Forest: Indigenous Guidance on Prevention-Based Child Welfare*, West Coast LEAF (Sep 2019)

*Consultation Paper on Modernizing the Child, Family and Community Service Act*, British Columbia Law Institute (Oct 2020)

*Response to BCLI Consultation Paper: Modernizing the Child, Family and Community Service Act*, CBABC Submission (Jan 2021)

*Unified Family Court, Summative Evaluation*, Department of Justice website, Government of Canada

## MEANINGFUL CHANGE FOR INDIGENOUS PEOPLES

*Declaration on the Rights of Indigenous Peoples Act* [SBC 2019] c. 44

*BC First Nations Justice Strategy*, BC First Nations Justice Council and Province of British Columbia (Feb 2020)

*Enhancing Access to Justice for Women Living in Rural and Remote Areas of British Columbia: Reviewing Practices from Canada and Abroad to Improve Our Response*, E. Skinnider and R. Montgomery (Jul 2017)

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## MODERNIZING BC'S JUSTICE & LEGAL SYSTEMS

*Court Digital Transformation Strategy 2019-23*, Ministry of Attorney General, Government of BC (2019)

*Modernizing Justice and Public Safety: A Digital Strategy for the Justice and Public Safety Sector 2019/2020*, Government of BC (2019)

*No Turning Back: CBA Task Force Report on Justice Issues Arising from COVID-19*, Canadian Bar Association (Feb 2021)

*Annual Report 2018/19*, Provincial Court of British Columbia

*Annual Report 2019*, Supreme Court of British Columbia

*Annual Report 2019*, Court of Appeal for British Columbia

*Justice Metrics Colloquium Report*, University of Victoria, Access to Justice Centre for Excellence (Feb 2020)

*The Justice Metrics Problem: Background Paper*, M. J. McHale, QC (Mar 2017)

*Measuring Access to Justice: A Survey of Approaches and Indicators in A2J Metrics Initiatives*, Action Committee on Access to Justice in Civil and Family Matters (2019)

*Access to Justice Measurement Framework*, Y. Dandurand and J. Jahn (May 2017)

*Memorandum of Understanding with Government* (Apr 2013)

*Time to Trial Report*: Provincial Court of British Columbia (Sep 2019)

*Disaggregated demographic data collection in British Columbia: The grandmother perspective*, British Columbia's Office of the Human Rights Commissioner (Sep 2020)

*In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care*, Hon. Dr. M.E. Turpel-Lafond (Aki-Kwe) (Nov 2020)

*Legislation modernizes how wills are signed, witnessed*, Government of BC Media Release (Jun 2020)

*Letter to Attorney General re: Remote Execution and Witnessing of Documents*, CBABC Submission (May 2020)

*Report on Proposals for a New Commercial Tenancy Act*, British Columbia Law Institute (Oct 2009)

*Letter to Ministry of Attorney General re: Uniform Civil Enforcement of Money Judgments Act*, CBABC Submission (Jun 2020)

*Report on the Uniform Civil Enforcement of Money Judgments Act*, British Columbia Law Institute (Mar 2005)

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## ENSURING FAIRNESS FOR EVERYONE

*Letter to Jamie Maclaren, QC re: Legal Aid Services Review, CBABC Submission (Nov 2018)*

*Annual Report 2019, Law Foundation of British Columbia*

*Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act, The Office of the Ombudsperson (Mar 2019)*

*Minister's statement on ombudsperson's involuntary admissions report, Minister of Mental Health and Addictions (Mar 2019)*

*A Pathway to Hope: A roadmap for making mental health and addictions care better for people in British Columbia, Government of BC (2019)*

*Operating in the Darkness: BC's Mental Health Act Detention System, Community Legal Assistance Society (Nov 2017)*

*Letter to Ministry of Attorney General re: Limits on Expert Reports and Disbursements in Motor Vehicle Personal Injury Litigation, CBABC Submission (Aug 2020)*

*Submission to Ministry of Attorney General re: Attorney General Statutes (Vehicle Insurance) Amendment Act, 2020 and Evidence Amendment Act, 2020, CBABC Submission (May 2020)*

*CBABC Briefing Note: Family Compensation Act, CBABC Submission (Aug 2014)*

*Bill M 213—2011: Family Compensation Act Amendment Act, 2011*

*Report on Proposals for Unfair Contracts Relief, British Columbia Law Institute (Sep 2011)*

*Report on Reverse Mortgages, British Columbia Law Institute (Feb 2006)*







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