



# ACCESS TO JUSTICE

## BACKGROUND:

Access to justice demands not only that we consistently and adequately support legal aid, but that we do not deny a fair trial to vulnerable Albertans by failing those who cannot afford a lawyer but make too much money to qualify for legal representation under programs like Legal Aid Alberta.

Legal Aid Alberta does provide legal representation to the very needy, but underfunding means they are not able to help Alberta's working poor—those people who are just getting by and have a hard time paying their rent, let alone paying for a lawyer.

Our court system is the envy of the world, but, by design, it only works when both sides have adequate legal representation. Putting someone into prison who doesn't belong there means taxpayers must pay for that person to be in jail (which costs about **\$115,000** per year for a federal prison), to say nothing of the damage that it causes to the family of the accused.<sup>1</sup>

Almost half of Canadians over 18 will experience at least one civil or family justice problem over any given three-year period.<sup>2</sup> Although Canada has one of the best legal systems in the world, many people cannot afford to use it.

Canada ranks **54th** in the world in **access to civil legal aid**—especially for marginalized segments of the population—well behind many countries with lower Gross Domestic Product (GDP), **including the US.**<sup>3</sup>

## THE ISSUE:

At the funding levels received in recent years, inadequate legal aid is significantly contributing to a systemic failure to provide equality and justice to Albertans. The risk that Alberta's most vulnerable will be unable to effectively respond to, or satisfactorily resolve, their everyday legal problems increases significantly without access to Legal Aid.

1 The Parliamentary Budget Officer (PBO). 2018. *Update on Costs of Incarceration*. Office of the Parliamentary Budget Officer. [https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2018/Update%20Incarceration%20Costs/Update%20on%20Costs%20of%20Incarceration\\_EN.pdf](https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2018/Update%20Incarceration%20Costs/Update%20on%20Costs%20of%20Incarceration_EN.pdf).

2 Access to Justice Committee. 2013. "Reaching Equal Justice Report: An Invitation to Envision and Act." Canadian Bar Association. [http://www.cba.org/CBAMediaLibrary/cba\\_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf).

3 See note 2 above.

When people are unable to adequately respond to their legal problems, it costs the parties involved, as well as society. Marginalized citizens deemed ineligible for legal aid support are often forced to represent themselves in court:

Self-represented litigants use **significantly more public court resources** than when represented by counsel, and empirical research has demonstrated that **unrepresented parties lose significantly more often**—and in a bigger way—than represented ones.<sup>4</sup>

The stress and financial strain—even for people who have adequate resources—results in increased government spending on social and health services. Over half (**51%**) of people who reported having a legal problem experienced stress or emotional difficulty as a direct consequence of having that problem<sup>5</sup>, which can lead to other legal, social, financial, and health-related problems.

A 2016 report assessed the **cost to the state** for Canadians' **everyday legal problems** due to increased use of health care or social programs to be **\$800 M per year**.<sup>6</sup>

There are no Canadian studies regarding “return on investment” for dollars spent on legal aid, but findings from the UK, the US, and Australia suggest that for every **\$1** spent on legal aid, the average social return on investment is **\$6.17**.<sup>7</sup>

This is a significant finding: **for every dollar spent on legal aid**, about **\$6 of public funds** are saved elsewhere.<sup>8</sup>

The federal and provincial governments could save substantial amounts on social spending, and those funds could be re-directed to other areas or used to reduce deficits.

Spending on the Canadian justice system is only about **1%** of government budgets. Public opinion polls show overwhelming support (**91 - 96%**) for providing adequate publicly funded legal aid, with **65 - 74%** expressing the view that legal aid should receive the same funding priority as other important social services.<sup>9</sup>

A new governance agreement made in October 2018 between the provincial government, the Law Society of Alberta, and Legal Aid Alberta is a substantial step in improving the predictability and stability of threshold funding for Legal Aid over the next five years.<sup>10</sup> The agreement provides **\$70 million** in additional funding distributed over four years. It also provides indexing of financial eligibility guidelines to inflation, possible transfers of monies to an innovation fund, and an independent assessment of performance and governance practices through an external management consultant.

4 Access to Justice Committee. 2013. “Reaching Equal Justice Report: An Invitation to Envision and Act.” Canadian Bar Association. [http://www.cba.org/CBAMediaLibrary/cba\\_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf).

5 Trevor C.W. Farrow, Ab Currie, Nicole Aylwin, Les Jacobs, David Northrup, Lisa Moore. 2016. *Everyday Legal Problems and the Cost of Justice in Canada. Overview Report*, Toronto: The Canadian Forum on Civil Justice (CFCJ)

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

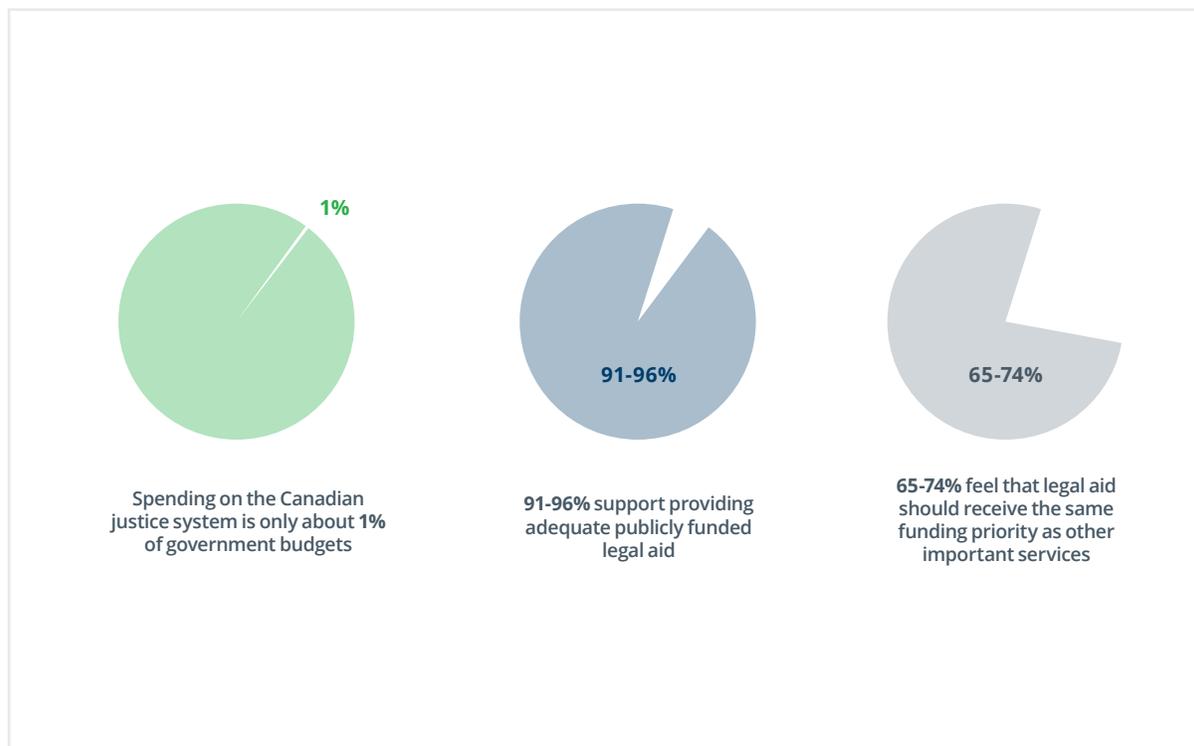
7 See note 6 above.

8 See note 4 above.

9 See note 4 above.

10 Government of Alberta. 2018. “Ensuring Albertans have access to justice.” Alberta Government Services. <https://www.alberta.ca/release.cfm?xID=60793E6DDEF58-0BE7-24D3-9B8FBDAF514EE274>.

While this development is promising, the implementation of the new agreement and the improvement of legal aid service delivery in this province, in conjunction and cooperation with pro bono services, remain an essential requirement for ensuring access to justice in Alberta.



## WHY CBA IS INVOLVED:

The Canadian Bar Association (CBA) has advocated for legal aid and better access to justice for over 50 years. CBA's 2013 Reaching Equal Justice Report—which calls for national legal aid benchmarks, reasonable eligibility policies, and an approach to legal aid that meets community needs and delivers meaningful access to justice—recognizes legal aid as “an indispensable component of a fair, efficient, healthy, and equal justice system.”<sup>11</sup>

The CBA strongly believes there is an urgent need for governments to adequately fund access to justice by providing adequate and predictable funding for Legal Aid and other pro bono legal services.

## DESIRED OUTCOME:

Access to justice as a democratic ideal requires us to process citizens' everyday legal problems in a system that is open and fair. It is time to abandon a decades-long systemic underfunding of legal aid programming that has led us to a system that is perpetually in crisis.

The return on investment of a properly funded legal aid program far outweighs the cost, and the government's support for Legal Aid should be considered holistically to evaluate the costly personal, social, and economic consequences of inadequate funding.

<sup>11</sup> Access to Justice Committee. 2013. “Reaching Equal Justice Report: An Invitation to Envision and Act.” Canadian Bar Association. [http://www.cba.org/CBAMediaLibrary/cba\\_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf)

The CBA urges the Government of Alberta to build on its 2018 commitment to Legal Aid and support a specific, long-term plan for sustainable funding for this critical component of Alberta's justice system, including:

- Increased eligibility for legal aid. Currently, a family of four with income over \$37,434 is outside of the financial eligibility guidelines. The working poor, and those relying on minimum wage, do not currently qualify for fundamental legal assistance.
- Increased resources to encourage and sustain private counsel participation in providing legal aid roster services to disadvantaged clients in all areas of law, including criminal, immigration, family, and civil matters.
- Continued engagement of other provincial and territorial governments to demonstrate the financial return on investment through studies and statistical analysis that can be used to obtain greater financial contribution from the federal government in support of comprehensive legal aid programming.
- Recognition that the combination of private market and public legal services currently available in Alberta do not meet the demand for access, and that organized pro bono services are one of the main mechanisms to bridge this divide. Pro bono work provides legal services without fee to people or organizations that cannot otherwise afford them, but who fail to qualify for Legal Aid, and which have a direct connection to filling unmet legal needs. In this context, there is a role for government in ensuring that:
  - *Pro bono* service providers are recognized, encouraged and supported as part of access to justice.
  - Those service providers are consulted to ensure the most effective delivery of both private and public legal services.
  - Achieving a consensus on where responsibility for meeting legal needs falls on this spectrum, from private to public service deliverers, is a crucial aspect of access to justice.

## LEGAL AID (CRIMINAL LAW CONTEXT) HYPOTHETICAL CASE STUDY

Bill is a 22-year-old Indigenous father of Mary, age six. He had a challenging upbringing on a reserve just outside of Calgary, and he has a minor adult criminal record for mischief and a lengthy youth record. He has worked hard to overcome his troubled childhood, recently securing a position training to be an electrician, moving into an apartment, and being granted full-time care of Mary, who now lives with him.

Coming home from work on New Year's Eve, Bill sees a minor car accident and stops to help. One driver attacks the other driver with a tire iron as Bill approaches. He then turns on Bill, who is forced to defend himself. The other driver flees the scene. Bill and his attacker are found injured when the police arrive, but Bill has the tire iron in his hand.

Bill is arrested, charged with assault with a weapon, and assault causing bodily harm. He is taken into custody.

**BILL'S RESULTING EXPERIENCE WITH THE JUSTICE SYSTEM:**

- He **is held in custody pending** a bail hearing.
- With recent funding, **Legal Aid duty counsel is now available to him** but inadequate resources mean he may have to wait as long as 30 hours for assistance with his bail hearing.
- As one of the “working poor”, **Bill can't afford to hire a lawyer privately.**
- He calls the toll-free Legal Aid number provided, but they inform him a lawyer cannot be assigned to **appear in court** for him until the next week. They advise him to speak with duty counsel and say nothing to anyone else until then.
- **Bill can't stay in jail** until the next week:
  - Mary is waiting at home with a babysitter.
  - He has to meet with his landlord to pay rent.
  - As the new guy at work, he's on call over the holidays.
- Because he cannot afford to hire his own lawyer, **Bill represents himself at the bail hearing:**
  - Without a lawyer present, the prosecutor and the Justice of the Peace are prohibited from examining Bill's account of events [Criminal Code section 518(1)(b)].
  - Bill follows cursory preliminary advice and says nothing about the other motorist he was helping, or that he feels his ribs may be broken as a result of the attack.
  - Bill doesn't know the proper address of his new apartment, and he acknowledges having a series of prior assault and breach of recognizance convictions as a youth.
- **Bill is detained.** Without Crown consent to reopen bail, Bill is detained for at least 30 days.
- **Mary is taken into state care** by Child and Family Services since she would be without care until Bill is released.
- **Bill is evicted** since the landlord can't find Bill to collect the rent Bill owes.
- **Bill is fired.** Bill's boss had to manage 20 emergency calls over the holidays.

**WE ALL PAY (MORE) WHEN PEOPLE DON'T HAVE EQUAL ACCESS TO THE JUSTICE SYSTEM:**

If the Legal Aid Alberta duty counsel had been available to Bill within a short time after his arrest in order to plan and present his self-defense case, he would likely have been released—in fact, he may have been able to persuade the Crown prosecutor not to proceed with charges at all. In this scenario, one could expect the cost to society to have been minimal. However, adding the additional costs of extended remand, additional court date requirements, homelessness, unemployment, Child and Family Services, this cost everyone much, much more—especially Bill and Mary.

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