



ACCESS TO JUSTICE

The cost of legal representation is out of reach for many lower-middle and middle-income Albertans, resulting in many choosing to represent themselves. Evidence shows that self-representation is costly to the system due to fewer out-of-court settlements, and delays due to more court bookings and hearings. CBA Alberta commissioned analysis showing that investing \$4-6 million/year in supports for self-represented litigants could save \$11 million/year, potentially more with increased investment. We believe this would also yield more satisfactory outcomes.

CBA Alberta urges the Government of Alberta to consider innovative justice solutions as seen through the lens of Fair Access, Inclusivity, Sustainability, and Fair Outcomes - to both save money and improve results. This includes a review of Financial Eligibility Guidelines for legal aid to reduce the number of self-represented litigants.



**“THERE IS NO JUSTICE
WITHOUT ACCESS TO JUSTICE.”**

Former Chief Justice Beverly McLachlin

All parts of the legal system play a role in access to justice, including courts, Legal Aid Alberta (LAA), and local community resources such as free/pro bono clinics.

We also see that in an increasingly diverse and pluralistic society, everyday Albertans, particularly Indigenous peoples, have needs and ways to contribute to legal systems to ensure true justice that is preventative, restorative, and culturally appropriate.

BACKGROUND

This section focuses on community resources that empower Albertans to participate effectively in essential legal processes, including youth and adult criminal justice, child welfare, divorce and family law matters, civil claims, tenancy, employment, and human rights.

Legal Aid Alberta, as an independent non-profit, provides legal representation to people at the poverty line with serious legal conflicts and in only a few areas of law.

CBA Alberta recently confirmed that many Albertans believe that the Financial Eligibility Guidelines (FEGs) for legal aid are too restrictive. Many individuals earning minimum wage would not qualify for representation. Albertans support an increase in the maximum income threshold so that more Albertans can qualify for legal aid services when needed. Those who may not even be able to afford basic necessities with current inflation could certainly not pay for legal assistance privately.¹

Given the limited funding resources granted to Legal Aid Alberta and the present rules for eligibility, getting government supported legal help is largely out of reach for all but the poorest of Albertans.

¹ See Nanos Public Opinion Research (quantitative) in Appendix B; page 72, slide 9; and Nanos Focus Group Research (qualitative) on page 84, slide 16.

Those with a modest income, but particularly vulnerable people and families, risk more severe consequences when they cannot access appropriate help for legal issues such as evictions, criminal charges, and family conflict. Many such individuals do not qualify for assistance through LAA because of their income or the legal issue they face.

Free (pro bono) clinics, law student groups, and Indigenous paralegal organizations serve only a few communities in Alberta and in an uncoordinated fashion that requires individuals to call, email, and visit multiple organizations with no guarantee they will get the legal help their situation requires.

The private market and public legal services available in Alberta have not achieved access to justice, and an organized, strategic framework and resources are required to bridge this divide.

THE ISSUES

Albertans have proven that we can adapt to sudden crises like the COVID-19 pandemic, as well as long-term challenges such as the energy market. Now is the time to address the longstanding barriers to access to justice that keep Albertans from contributing fully to our society and economy because they are held up in ineffective legal processes that can then lead to unjust outcomes.

Some individuals and families are caught up throughout their lives by legal systems that lack the design or resources to address underlying social issues including child welfare, family court, youth justice, immigration, and adult criminal systems.

The legal system is really meant to be a system of last resort. An adversarial system is not best designed to handle complex social issues or situations where the relationship of the parties involved needs to be preserved, such as families with a family law issue to resolve.

Updating and reforming legislation is important, but it is long-term work, and the people affected by the systems that apply those laws cannot be left to simply wait. They need relief now, as do their families, employers, neighbours, and communities.

Without meaningful change, Alberta may damage people who would otherwise be or develop into skilled workers, accomplished students, experienced volunteers, healthy parents, and role models, because they are mired in inefficient and unfair legal conflicts.



KEY METRICS

Fair Process: Access to legal representation for all Albertans.

Inclusivity: Access to legal representation for all Albertans.

Sustainability: Recruitment of skilled and diverse support resources; culturally appropriate dispute resolution services.

Fair Outcomes: Public confidence, gaps between urban and rural are bridged; community empowerment for local challenges.

Equity

Canada is at a crossroads in the work of Truth and Reconciliation and cannot move forward while 32% of all individuals in custody are Indigenous despite Indigenous peoples making up only 5% of adult Canadians.²

Courts and other systems contribute to this through the ways Indigenous Albertans are discriminated against in employment, education, criminal diversion, and sentencing, such that the number of white individuals in jail continues to decrease while the proportion of Indigenous and Black Canadians is increasing.³

Some progress is being made because leaders and the public generally are supportive, but these efforts need greater coordination and resourcing.

Adult criminal policing and prosecution could benefit from incorporating the diversion and sentencing practices that have proven effective with youth, while Indigenous youth should be able to access the healing court model available to adults in Calgary criminal court.

In addition, we must invest in civil, family, and administrative law systems that disproportionately impact racialized Albertans.

² *Office of the Correctional Investigator Annual Report 2021-2022 pg 96*

³ *Office of the Correctional Investigator Annual Report 2021-2022 pg 95 and 45*

Self-Represented Litigants

Canada ranks 22nd in the world in access to civil justice, especially for accessibility, affordability, having effective alternative dispute resolution processes, and unreasonable delay in justice process – well behind many countries with lower Gross Domestic Product (GDP).⁴

All Albertans, but particularly those outside urban centres, need to be able to quickly and fairly mediate civil disputes, address employment or labour law rights violations, and settle consumer or debt related issues.

The Canadian Forum on Civil Justice (CFCJ) has found that within a three-year period, 48.4% of adult Canadians will face at least one serious or complex civil or family legal issue.⁵ Individuals facing criminal charges risk losing their employment or housing which can have a devastating, long-lasting effect not only on them but also on their families.

The Court of King's Bench and Alberta Court of Justice have noted that people representing themselves because they cannot afford legal representation strain the court system further through:

1. **Increasing the number of court bookings and hearings** (as matters without legal counsel are less likely to be settled out of court and then more likely to require multiple hearing types to address all issues).
2. **Decreasing the likelihood that cases will be cancelled prior to the hearing date** (again because without legal counsel, cases are less likely to be settled out of court).
3. **Cases with self-represented litigants taking more court time.** In Alberta Court of Justice matters, 40% of cases feature at least one self-represented litigant.⁶

⁴ See *Access to Civil Justice Scores for Canada, World Justice Project, Rule of Law Index 2021*. <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf>

⁵ Trevor CW Farrow et al, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016) at 6, online

⁶ Alberta Civil Liberties Research Centre (ACLRC), *Access to the Civil Litigation System* at <https://www.aclrc.com/access-to-the-civil-litigation-system>

Accessibility

Many court and tribunal locations - even those within larger centres - are not readily accessible to people with visual, hearing, or mobility impairments, which sends the message that those Albertans are not facilitated by our justice system.

These are people who may be parties to a legal case, jurors, counsel, witnesses, or public spectators.

As well, a number of persons who come before the courts as witnesses or parties may have developmental disabilities. Similarly, no systemic training is provided for court services staff, legal clinic volunteers and staff, duty counsel, judges, or others on how to engage with individuals with brain injuries or developmental delays who have the same rights to procedural fairness and legal information as all other Albertans.

Cost

There are no insurance plans for Albertans to prepare for legal emergencies, and in the wake of pandemic-related economic losses, most individuals and families have, at best, limited savings. When a legal issue arises, many will risk severe loss without assistance from a lawyer.

Albertans recognize that leaving even minimum wage earners financially ineligible for legal aid services is unacceptable, and have voiced their support for increased public funding to ensure people can get legal help when they need it.⁷

The stress and financial strain—even for people who have adequate resources—results in increased government spending on social and health services.

A recent study conducted by CBA Alberta found that investing \$4-6 million per year in supports for self-represented litigants could save \$11 million per year.⁸ Increased investments, totaling in the range of \$20 to \$30 million per year, would be expected to have continuing savings offsets given that the author considered his estimates to be conservative. These cash savings to government are on top of the benefits to individuals and families of having proper legal representation.

A study of the return on investment for Pro Bono Ontario's court based programs found that for every \$1 invested, \$10 were saved.⁹

⁷ See Nanos Public Opinion Research (quantitative) in Appendix B; pg 72, slide 9; and Nanos Focus Group Research (qualitative) on pg 84, slide 16.

⁸ See GK Fellows, "Estimates of Alberta Court Time and Public Expenditure Savings Resulting from Reduced Rates of Self Representation", in Appendix A, pg 51

⁹ *Investing in Justice: A Literature Review in Support of the Case for Improved Access*, Lisa Moore, Trevor Farrow, pg.48

Similarly, Calgary Youth Justice Committees, local volunteers who engage with young offenders and their families to divert youth from the criminal justice system, have also been found to provide a return of \$5.52 for every \$1 spent.¹⁰

These issues impact Alberta communities greatly but have been largely left to individual judges, lawyers, law students, and community groups to address on an *ad hoc* basis and without stable, systemic funding.

Critical gaps in legal services and court/tribunal outcomes will continue unless this changes. The non-profit sector, local bar/judiciary, and community have much of the expertise to craft effective solutions for emerging and long-standing problems.

However, what Alberta needs is a province-wide scaffolding that communities can draw upon for support as they develop such processes and services. This would not be a new department to create or control access to justice initiatives, but an organized framework from which local stakeholders can tap into expertise, funding, and other resources to plan, implement, evaluate, and improve their own innovative solutions.

Communities are the experts on their own needs and with the right support and collaboration, can determine if a particular local issue is best addressed through providing free or specialized legal information, an Indigenous justice initiative, or a specialized court.

In areas where there is an LAA office or other established public interest organization, they may be able to fill a gap in access to justice with additional support, and in others it may be best to develop a new service. Having resources to meaningfully record and report challenges in access to justice in various communities and the impact of local initiatives would help inform efforts around the province and allow everyone to better address those issues.

This is particularly so given the challenges non-profits have faced in securing grants and fundraising in the wake of the COVID-19 pandemic. As critical public infrastructure, community legal resources cannot be expected to continually “do more with less”, and to recruit and maintain a skilled, diverse, and inclusive workforce, with wages and benefits far below that of the public sector, particularly in remote areas.



¹⁰ Investing in Justice pg.64

RECOMMENDATIONS

A framework for innovative, holistic responses to local justice issues and community values with special priority to Indigenous peoples and communities.

A starting point could be the Alberta Law Foundation's provincial legal needs assessment.

The Foundation's assessment from 2018 is being updated for 2023, and will include an environmental scan of legal services and legal problems using demographics, note best practices and areas for law reform. The assessment will confirm what services are being provided in various Alberta communities as well as what the needs are and if they are being met.

The CBA Alberta Economic Analysis confirms a minimum \$6 million in additional funding for legal aid would provide a return on investment, while noting a higher investment would likely yield even more savings and improved outcomes.

FAIR PROCESS AND PEOPLE-CENTERED SERVICE

1. Legal services (legal advice, court/tribunal information and forms, duty counsel, etc.) should be fully accessible/compliant with human rights at/near all locations.
2. Legal information and help on issues impacting fundamental rights including Indigenous rights, human rights, and *Charter* rights should be available:
 - at/near all communities physically and/or virtually; and
 - trauma-informed & culturally competent.
 - Level/degree of access should be based on:
 - regularly reviewed financial eligibility criteria;
 - more flexible eligibility criteria for urgent & serious legal issues;
 - the average cost of private representation; and
 - the availability and capacity of other free/low-cost legal assistance.



INCLUSIVITY

1. Restorative Justice Initiatives pursuant to the Indigenous justice strategy of the Alberta Court of Justice are funded.¹¹
2. Resources must be given to support the Alberta Court of Justice strategy to further address needs for Indigenous peoples in civil and family law.
3. A strategy must be developed for the equitable, diverse, and inclusive recruitment, training, and consultation of BIPOC people for administrative law tribunals; incorporation of technology to make tribunal processes fully accessible to people with disabilities and living in more remote areas.
4. A commitment must be made to increase the appointment of Indigenous judges and other diverse legal decision makers.

SUSTAINABILITY

1. Pro bono, community legal organizations, and LAA must be adequately resourced to be employers of choice, recruiting and maintaining diverse, skilled staff and volunteers. LAA roster counsel must be compensated to provide competent service and sustain their businesses.
2. Organizing and investing in an access to justice framework and services must include a wide range of culturally appropriate, accessible dispute resolution services to reduce the backlog in cases and court time by self-represented litigants as well as delays stemming from the COVID-19 pandemic.

FAIR OUTCOME

1. Community confidence in the justice system can be increased through:
 - continuous evaluation using best practices, including Indigenous methods, to allow for ongoing improvement/efficiency and the sharing of information;
 - participants (parties, offenders, victims) participating in processes that address their unique backgrounds and goals;
 - decrease in harsher outcomes for BIPOC and vulnerable individuals.
2. Gaps in services and outcomes between urban and rural communities must be bridged.
3. Data that is essential to establish greater financial contributions from the federal government for access to justice must be gathered systematically.
4. Communities should be strengthened and empowered to take ownership of local challenges in access to justice and relationships between government ministries, lawyers providing private and pro bono services, non-profit organizations, and community groups.

¹¹ <https://albertacourts.ca/pc/about-the-court/administration-of-the-provincial-court/indigenous-justice-strategy>