

WOMEN PAY THE PRICE OF LEGAL AID CUTS

Imagine... You are the parent of two young children. You work hard — holding down two part-time jobs — but don't make a lot of money. A year ago, you and your spouse split up. Since then, you've been trying to settle custody arrangements for your children through the courts.

You tried to get help — your lawyer's hourly fee was impossible to manage for very long. You were told by legal aid that unless your ex is violent, there's nothing they can do to help.

Since then you have had to appear in court by yourself, without a lawyer, many times. You've had to research and file your own paperwork. You know you aren't able to advocate for yourself the way a trained lawyer could, and you are worried you will lose custody of your children. You are exhausted all the time from staying up at night trying to navigate the legal system, and are worried you might lose one of your jobs because your boss is tired of giving you days off to go to court...

This sounds like a nightmare situation that no one should have to face. But because of deep cuts to legal aid, it is exactly the kind of circumstance many British Columbians — especially women — are finding themselves in.

Women and the legal aid cuts

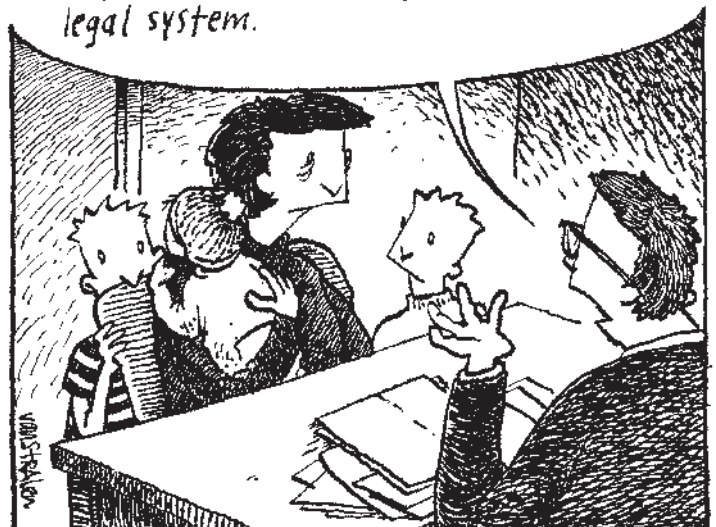
In 2002, the provincial government announced a series of massive cuts to public services in BC. As part of these cuts, the Legal Services Society's budget was slashed by almost 40% over three years. (The Legal Services Society, or LSS, is the agency that provides legal aid services to British Columbians.)

Most of this 40% cut came from family and poverty law legal aid. Family law includes things like divorce and custody disputes that the courts deal with when couples split up. Poverty law covers things like appealing decisions about welfare and Employment Insurance benefits and disputes with landlords (such as evictions).

So why does this have such a negative impact on women? Women's need for legal services is overwhelmingly in the areas of family and poverty law, where deep cuts were made (not criminal law legal aid, where almost no cuts were made).

The result: people who need legal aid, especially women, are being denied assistance. And without proper legal representation, they are losing custody of their children, giving up valid legal rights to support, and being subjected to harassment through the courts.

Look - I'd love to help you, but due to your gender and poor economic status, the Provincial Government obliges me to make it impossible for you to have fair and equal access to the legal system.



What was cut?

In 2001/02 — before the cuts were made — the Legal Services Society received about \$90 million in provincial funding. In 2004/05 it will be only \$55 million. Full-time staff have been cut from 460 to 155. BC's 42 legal aid offices and 14 area directors have been reduced to 7 offices and 22 local agents.

Here's how legal aid services have been cut:

- Family law legal aid is no longer available based just on a person's need. It is now available only in emergency situations.
- To qualify under this new emergency-only rule, a person must be in economic need (meaning they have a very low monthly income) *and* fear for her own or her children's safety, or have reason to believe their spouse may flee the province with the children.
- Even in cases where there is violence, the amount of legal representation a person can receive has been cut — to almost nothing. When legal aid is granted, it is now limited to a maximum of 8 hours. And, it is only provided to assist with obtaining a restraining order or change in custody agreement to protect a person's safety or the safety of her children.
- Poverty law legal aid has been completely eliminated.
- Provincial funding for immigration law has been cut significantly.

The majority of legal aid coverage in BC is now for criminal law matters.

Why is legal aid important for criminal and family law?

Having access to proper representation — a lawyer — for important legal matters is a fundamental right. How else can we be sure that everyone gets a fair shake? That's why we have a legal aid system: to make sure people who cannot afford to pay for a lawyer aren't left to fend for themselves.

Family and criminal law are different legal areas. In criminal law cases the government is threatening to put a person in jail, so our justice system has stressed the importance of a fair trial. The right to a lawyer at trial is recognized in Canada's *Charter of Rights and Freedoms*, and has been part of our legal system for many years.

Family law, on the other hand, is viewed by the courts as a dispute between private individuals.

This view of family law as "private" has been used by governments across the country to justify inadequate funding for legal aid in areas other than criminal law.

However, women are less likely to need assistance with criminal matters. They are more likely to experience discrimination in their "private" relationships and when these relationships break down. Poverty is also more common for women, and they are more likely than men to become poor when marriages end (even more so if they have children).

Before the cuts, women in BC were twice as likely to access family law legal aid than men. On the other hand, men were five times more likely to access criminal legal aid.

By getting rid of poverty law and severely restricting family law, the provincial government has created a situation where the vast majority of legal aid resources are being spent on male clients.

Violence as a criteria for legal aid

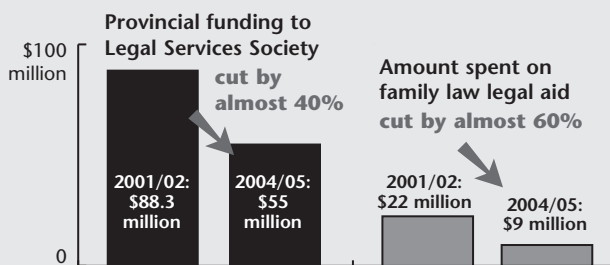
Family law legal aid is now available only in situations where someone is fearful for her safety or that of her children. But there is no guarantee that women in violent or potentially violent situations will actually get the legal help they need.

Domestic violence is complex. Women may be afraid or ashamed to talk about what's going on. Or they may not be

"This case has been addressed in court approximately thirty-eight times. Of those, I appeared on my own approximately twenty-five times... I am not a lawyer. Not only is it difficult to spend hours getting ready, but the children suffer, I am a nervous wreck, and then the judge demands to know if 'this is all I have'."

A CLOSER LOOK AT THE NUMBERS

Women are most likely to need family or poverty law legal aid. Yet these areas have seen the deepest cuts. As the chart below shows, funding for family law legal aid was cut by much more than the overall legal services budget.



In terms of actual services provided, legal aid referrals for criminal law matters have decreased by far less than those for family or poverty law matters.

Since 2001 (the last year before the cuts were made):

- ➔ Referrals for criminal law legal aid are down 10%
- ➔ Referrals for family law legal aid are down 53%
- ⬇ Poverty law legal aid was eliminated (down 100%)

“ I was so scared at that time that I was physically sick, but I had to be strong because no one else would represent me. I have been through a lot but this was the most embarrassing experience...I feel betrayed by the courts and having to represent myself. When I came to Canada, I was told I could get help and this country supports the best interest of children — I just don't agree or see this happening. ”

able to communicate what is happening because of language or cultural barriers. Women from First Nations and immigrant communities are often not willing to bring police into their lives. Yet it is these women who are often most in need of help navigating a foreign legal system.

Making violence a criteria also means women may be accused of claiming abuse by an ex-partner just so they can receive legal aid.

Only access to quality legal representation based on need will help women free themselves from violent relationships.

Welcome to the real world

Just because a government policy doesn't discriminate against certain people *explicitly* doesn't necessarily mean people's rights are being protected.

The BC government has not said, or written into any law, that women should have less access than men to the legal services they need. But in the real world, the cuts to legal aid impact women more severely than men, undermining women's equality. This is especially true in light of the full program of deep spending cuts outlined in the box on the right.

Canada's *Charter of Rights and Freedoms* says that everyone is equal before the law and has the right to equal protection of the law (section 15). And it says that all the fundamental rights outlined in the *Charter* must apply equally to men and women (section 28).

Governments are not allowed to explicitly discriminate against women. But they are also obligated to make sure their policies don't discriminate *in practice*. The *Charter of Rights and Freedoms*

IT'S NOT JUST ABOUT LEGAL AID

Since 2002, the provincial government has implemented spending cuts outside of health care and education totalling \$1.9 billion. Many of these cuts are directly related to human rights, women's programs, and social services in general, which women access more often than men.

In the context of these broader cuts, the reductions in legal aid mean women's vulnerability to violence, inequality and poverty can only grow.

The broader government cuts include (but aren't limited to):

- ✗ Ministry of Women's Equality eliminated;
- ✗ BC's commitment to implementing universal daycare scrapped;
- ✗ Child care subsidies lowered and made less accessible;
- ✗ Funding for women's centres eliminated;
- ✗ BC Human Rights Commission scrapped;
- ✗ Welfare rates cut and benefits made more difficult to access; single parents considered employable when child is 3 (instead of 7) years old; funding for advocates who assist welfare recipients cut;
- ✗ Employment standards relaxed for part-time, low-wage jobs;
- ✗ Residential Tenancy Act protections for tenants reduced; Residential Tenancy Branch offices closed;
- ✗ Debtors' assistance office closed, including the program that assisted women under the federal New Identities for Victims of Abuse program;
- ✗ Funding for BC Ombudsman's office cut.

creates this obligation, as do international human rights treaties Canada has signed. In fact, the United Nations has already noted that the BC government's actions may be undermining women's equality.

PROVINCE COLLECTS MORE THAN IT SPENDS ON LEGAL AID

In March 1992, the provincial government introduced a 7 per cent tax on legal services (now 7.5 per cent), specifically to fund legal aid.

It is difficult to determine how much the government is now collecting through this tax (it is reported only as part of general revenues). Some estimates put the amount over \$90 million. The federal government also contributes \$9 million for criminal legal aid, putting the amount of funding earmarked for legal aid at nearly \$100 million. Yet the province is currently spending only \$55 million.

In May, 2000, when BC's current Attorney General Geoff Plant was a member of the opposition, he argued that the government of the day was not spending enough on legal aid. He said:

"I'm sure we can quibble about the numbers, but the larger public policy question still remains. Isn't there something wrong with the government taking all this money from legal accounts as a result of a tax which was imposed, the justification of which was for legal aid, yet it doesn't actually really direct all of that revenue into the legal aid system?"

Well said, Mr. Plant.

WHAT'S THE SOLUTION?

BC's legal aid system was never perfect. Throughout most of the 1990s, annual budget reductions meant that family law legal aid was already suffering when the massive provincial cuts were announced in 2002.

The province should begin by restoring legal services to pre-2002 levels. But it also needs to build a legal aid system that reflects the needs of women, and of all British Columbians.

BC's government should pursue the following recommendations:

1. Direct all revenues collected for legal aid to legal aid — federal government funding and the 7.5% tax on legal services created in 1992 specifically to fund legal aid.
2. Re-establish the arms-length relationship between the provincial government and the Legal Services Society. This is needed to protect the administration of justice from political interference.
3. Immediately end the requirement that violence be present in order to access family law legal aid.
4. Ensure that people have access to legal aid based on need, including for family, poverty and immigration law problems. All British Columbians have a right to access the legal system, and to equal treatment under the law.
5. Research women's experience with the justice system to identify the impacts of provincial government policy on them.
6. Develop a legal aid system in BC that reflects the government's constitutional, human rights and international obligations to end women's inequality.

“
I have no separation agreement in place with my husband, and receive no support from him, which I desperately need. I was forced to flee my home because of threats and violence and have struggled to survive on my own with little income. I have not been able to assert any rights of support because of my inability to file any court documents because of my lack of legal aid and support.
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This primer is based on the CCPA and West Coast LEAF study, Legal Aid Denied: Women and the cuts to legal services in BC by Alison Brewin, available free for download at www.policyalternatives.ca

Quotes from women in this primer were taken from affidavits collected by West Coast LEAF. West Coast LEAF is collecting sworn testimony to establish the constitutional obligation of the government to provide adequate civil legal aid.



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CANADIAN CENTRE
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BC Office



West Coast LEAF

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West Coast LEAF is a charitable organization founded in 1985 to advance the equality of women in Canada using the Charter of Rights and Freedoms and other human rights law. West Coast LEAF promotes women's equality through public legal education, law reform and litigation. West Coast LEAF aims to help law makers interpret the meaning of the law in a way that addresses the roots of women's equality.

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