

## Policy Brief

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Trial Lawyers Association of British Columbia (TLABC) is a nonprofit organization representing more than 1,500 legal professionals across the province. TLABC members include:

- Criminal Lawyers
- Commercial-Corporate Lawyers
- Family Law Lawyers
- Estate Litigation Lawyers
- Medical Malpractice Lawyers
- Personal Injury Lawyers
- Retired & Non-Practicing Lawyers
- Articling Students
- Law Students
- Paralegals & Legal Assistants

As an association, TLABC is committed to promoting the rights of individuals in British Columbia and providing access to justice for all. Our members represent individuals rather than corporations or governments and are united with the goals of the organization.

This document outlines the current public policy priorities of the organization.

### CURRENT ISSUES

#### Legal Aid

All British Columbians, regardless of socio-economic circumstance, should have the right and be afforded the means to access the justice system in BC.

In March 2019, Government of British Columbia approved a short-term increase in legal aid funding. To serve BC's most vulnerable, Attorney General David Eby must now commit to reforms to the legal aid system and increase long-term funding. TLABC stands with the Association of Legal Aid Lawyers (ALL) in the fight for access to justice.

TLABC has been working with a wide range of stakeholders including the Legal Services Society (LSS) and ALL to build a coalition in support of the above changes. Meetings have also been held with elected representatives and senior officials from all three major political parties in BC to discuss policy concerns.

### Legal Aid Funding for Family Law Services

Currently, LSS is permitted to fund restraining orders in cases of custody or domestic violence. Nothing else in family services qualifies for legal aid funding.<sup>1</sup>

#### *Recommendation:*

This limitation in funding needs to be reviewed by the Attorney General to ensure that low income British Columbians have equal access to legal services.

### Legal Aid Tariffs

TLABC supports LSS in its call to increase tariffs to be in line with Crown Counsel compensation. Crown Counsel salaries increased by nearly 60% from 2006 to 2016, yet legal aid tariffs saw a 0% increase in the same period. According to LSS, the current rates do not allow the Society to attract and retain a sustainable group of experienced lawyers.

#### *Recommendation:*

TLABC requests the BC government increase tariffs to be in line with other government paid lawyers.

### Legal Aid and Provincial Sales Tax (PST)

Since 1992, as a means of funding legal aid, the BC Government has required lawyers to charge PST for legal advice and representation. Successive governments have redirected these funds to general revenue. In 2017, the BC Government collected \$211 million from PST on legal services, yet only directed \$75 million to legal aid.

#### *Recommendation:*

TLABC requests the BC government direct PST funds solely to legal aid.

### Wrongful Death Act

In British Columbia, the three most common wrongful death cases are medical malpractice, motor vehicle crashes, and workplace fatalities. Despite the changes to the *Family Compensation Act* in 1996, British Columbia's legal framework regarding wrongful death has not seen significant change since the adoption of *Lord Campbell's Act* in 1846. Under the current law, only the sole income earner in a household qualifies for damages, resulting in financial and emotional hardship. Compensation for family members recognizes that individuals matter under the law.

Currently, Alberta, Manitoba, Saskatchewan, New Brunswick, Ontario, and Nova Scotia allow claims for non-financial (non-pecuniary) damages, with varying degrees of restriction in their legislation. Sole income earners are the only individuals who qualify for damages. These claims still leave the families of seniors, people living with a disability and minors without any legal recourse.

#### *Recommendation:*

TLABC recommends the government adopt the following legislative changes, whether through a Miscellaneous Statutes Amendment Act or a separate bill to immediately address the outdated statutes:

Wills, Estates and Succession Act SBC 2009 (WESA) c13 s. 150 (4) (a): (4) Recovery in a proceeding under subsection (2) does not extend to (a) damages in respect of non-pecuniary loss unless for loss of love,

<sup>1</sup> Legal Services Society (2018, May 11) *Adequate Tariffs To Meet Client Needs* Retrieved on June 18, 2018 from: [https://lss.bc.ca/assets/media/newsReleases/2018-05-11\\_LSStariffInformation.pdf](https://lss.bc.ca/assets/media/newsReleases/2018-05-11_LSStariffInformation.pdf)

affection and companionship, or (b) damages for loss of future income for a period following death.

The above amendment to WESA s. 150 (4)(a) would be made more fulsome by amending the Family Compensation Act [RSBC 1996] c126 s.3 (2) adding the following:

- 3 (2) *The court or jury may give damages, including but not limited to non-pecuniary damages for loss of love, affection and companionship, proportioned to the injury resulting from the death to the parties respectively for whose benefit the action has been brought;*
- *Expand the class of eligible claimants to include siblings.*

According to the *BC Wrongful Death Law Reform Society*, it is cheaper for a defendant to kill someone than to merely injure them.<sup>2</sup> Addressing this outdated gap in the law would bring a greater sense of fairness and compassion to families experiencing a tragedy.

### Jury Hearing Fees

TLABC was successful in winning a court challenge against unjustly high court hearing fees in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59. A ruling was made that no fees that were unduly burdensome on litigants could be charged. The government responded by authorizing a broader exemption, with the caveat to being applicable to judge-only trials. This presented an exploitable loophole.

Despite two unsuccessful appeals by TLABC, the *Jury Act, Court Rules and Sheriff's Policy Direction*

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remain in place. This leaves the poor and middle class with no right to choose between available lawful forms of adjudication (judge alone or judge and jury) in civil cases.

Following this TLABC victory, this presents a new opportunity for the current government to help poor and middle class litigants.

#### *Recommendation:*

TLABC requests the BC Government remove all court hearing fees through an Order in Council.

### Unified Family Court

TLABC endorses a government initiative to establish the amalgamation of all family cases into one court, the Unified Family Court in British Columbia. Based on the models established in Manitoba, Nova Scotia, Ontario and other Canadian jurisdictions, the following parameters and government commitments are also recommended.

#### *Recommendations:*

- A Unified Family Dispute Resolution Centre be established in both major urban areas of British Columbia and smaller, more remote locations using existing government facilities, including

<sup>2</sup> BC Wrongful Death Law Reform Society (2015, November) *Wrongful Death Act – Explanatory File*. Retrieved on June 15, 2018 from: <https://1zn9utoyoto3xz-1pv14zv971-wpengine.netdna-ssl.com/wp-content/uploads/2015/10/Wrongful-Death-Accountability-Act-explanatory-file.pdf>

courthouses, government office space, recreational centers, and community centres.

- The government commit sufficient funding, on a permanent basis, to provide the required resources at each centre including Provincial Court Judges, Supreme Court Justices, duty counsel, Law Society accredited mediators, arbitrators, and parenting coordinators, accredited parenting counselors, accredited debt counselors, and Family Justice counselors to assist with client intake and forms.
- Judges in the Unified Family Court should be specialists in family law.
- Family Legal Aid be expanded to ensure that all clients can avail themselves to the services offered, including means testing for access to services.
- Replacement of the current two sets of court rules (Supreme Court and Provincial Court) with one set of simplified court rules and court forms.
- Implement the Unified Family Court model across the province so that all British Columbians can access the available services and resources, regardless of their location.

### Minor Injury Caps

On April 1, 2019, TLABC launched a constitutional challenge to protect the charter rights of British Columbians from the government's new minor injury caps scheme. The enabling legislation and associated regulations are a threat to the rights of British Columbians and their ability to access justice through the courts.

Specifically, the new injury cap legislation discriminates against British Columbians with brain injuries, psychiatric injury, and chronic pain by treating their harms and losses differently, and results in a complicated and almost impossible reverse onus of establishing their injuries have caused "incapacity" or "serious impairment".

In addition, British Columbians' access to justice will be limited by sending those involved in road accidents

outside of the independent judicial system and into the Civil Resolution Tribunal (or CRT). The CRT has limited capacity, and has no legitimate specialized expertise in hearing these cases or making decisions that impact the Charter rights of British Columbians.

#### *Recommendation:*

TLABC is advocating for – at a minimum – a narrowing in scope of the definition of a minor injury and for a return to the courts for all motor vehicle accident disputes.

### Conclusion

TLABC recognizes that those involved in government share the desire for a justice system that protects the rule of law, treats everyone fairly, removes barriers to accessing justice and operates with an eye to fiscal prudence.

TLABC members bring decades of experience and insight into these legal matters. Policy leaders and decision-makers are urged to take action on the above recommendations.

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For further information, please contact:

#### **Trial Lawyers Association of British Columbia**

1111-1100 Melville Street  
Vancouver, BC V6E 4A6  
Phone: 604 682-5343  
Toll Free: 1 888 558-5222 (1 888 55-TLABC )  
Email: tla-info@tlabc.org

Attention: Shawn Mitchell, CEO