

# AN AGENDA FOR JUSTICE

Platform considerations presented by  
the Canadian Bar Association, BC Branch

February 2013



THE CANADIAN  
BAR ASSOCIATION  
British Columbia Branch





## INTRODUCTION

*"If we do not maintain justice, justice will not maintain us," FRANCIS BACON*

An effective justice system is one that actively supports the ability of families, communities and businesses to evolve and thrive. People want practical laws to govern their affairs and fast, effective resolution of legal conflicts that interfere with their lives and businesses. British Columbians want a government that is ready to take action and deliver a justice system that provides:

Stability for  
*Families*

Security for  
*Communities*

Certainty for  
*Business*

Accountability  
to the *Public*

**Today, the justice system in British Columbia is not meeting these objectives.** Delays in child custody decisions can amount to half or more of a child's life. Those accused of criminal offences have had their charges dropped due to delay in the courts, while those seeking to clear their names must wait for lengthy periods of time for their day in court. Businesses seeking to collect a debt or resolve a shareholders' dispute may wait 18 months or more to resolve their dispute through the court system.

The Canadian Bar Association, BC Branch (CBABC) is pleased to present a series of justice and legislative reforms and recommendations aimed at improving access to justice for all British Columbians. The legislative reforms and initiatives outlined here are based on the CBABC's extensive research and previous submissions to government as a collaborative partner focused on improving laws and the administration of justice. As the voice of the legal profession in Canada, we represent over 38,000 lawyers, judges and law students, including 6,900 members in BC. The CBABC is a strong advocate for the public and an important resource for governments on justice issues and legislation.

In advance of the upcoming provincial election, we have prepared this document to provide concrete suggestions for action that will make a tangible difference for British Columbia's families, businesses and communities.

The following pages discuss the importance of a strong justice system, outline the top issues we face today, and provide a series of legislative recommendations under the four pillars of family, communities, business and accountability. Members of our organization welcome the opportunity to discuss these in more detail and to answer any questions.



## THE VISION: A JUSTICE SYSTEM FOR ALL BRITISH COLUMBIANS



*“In matters of truth and justice,  
there is no difference between  
large and small problems, for  
issues concerning the treatment  
of people are all the same,”*

**ALBERT EINSTEIN**

The ability to access our justice system is a fundamental right and a foundation on which our society is based. It is also an important issue for British Columbians. We care about equality and about everyone finding a fair resolution to their legal problems. Public opinion surveys clearly demonstrate that British Columbians show strong support for the justice system but they do not feel our current justice system is meeting their needs.

We tend to think about justice as being about police, the courts, and prisons. It is much more than that—it is about people and their everyday problems. It is about the child who is the subject of a custody case that cannot get before the courts for nine months or more—a lifetime for a small child. It is about the couple dealing with health, financial and related legal decisions for an aging parent. It is about the family business trying to arrange a succession plan or settle a contract dispute. Our justice system is about people. When it does not work as it should, people suffer. The old saying: **“justice delayed is justice denied”** is true, especially in these cases.

Our vision is that society and individuals should be able to 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 even more serious.



## PRESSURES ON OUR JUSTICE SYSTEM TODAY

*“Think about the harm that flows from diminishing the court’s effectiveness and traditional role through underfunding; think about ‘going over the cliff in slow motion’— once our institution is critically wounded it will never be the same again.”* CHIEF JUSTICE ROBERT BAUMAN, NOVEMBER, 2011

All elements of our justice system are interdependent and challenges in one area of the system often create new problems in other areas. This is why we are proposing a multi-pronged approach to change. Following is an overview of some of the most significant pressures facing our system.

Even with new appointments in 2012, there are not enough judges or court staff to hear cases in a timely manner. In the case of criminal charges, matters not heard within 18 months are at risk of being dismissed. Currently, civil and contract cases can face delays of up to two years, adding costs to the justice system, to business and to other parts of government.

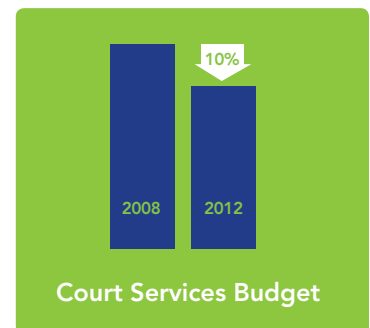
*In the case of criminal charges, matters not heard within 18 months are at risk of being dismissed.*

Between 2008 and fiscal 2012/2013, the Court Services’ budget has been reduced by over 10 percent. The situation is particularly challenging in BC’s rural areas. In 2002, government closed 24 courthouses, and due to a lack of funding, the Legal Services Society closed 45 Branch offices, including community law offices. This is having a profound impact on timely access to justice for many people living outside major urban centres.

Legal aid funding is so limited that in provincial court, a startling 90 to 95 percent of British Columbians in family court cases are unrepresented by a lawyer, 40 percent are unrepresented in criminal cases and 90 percent in civil court cases. The impact is that, through no fault of their own, people who are unrepresented take up more court time and more taxpayer-funded resources to go through the system.

Additional pressures caused by the increasing complexity of the law and criminal justice processes in general (in particular, “mega trials”), the impact of Charter litigation, and disclosure issues are also causing delays and making trials last longer.

The closure or failure of mental health services, addictions and Fetal Alcohol Spectrum Disorder (FASD) facilities and programs have added further pressures to the justice system. Leonard T. Doust, QC notes in his report *Foundation for Change—Report on the Public Commission*





on *Legal Aid in British Columbia*, “Accused persons with mental or cognitive disabilities, including Fetal Alcohol Syndrome Disorder, (of which there are a large number in the North and in remote communities), may require representation in all criminal proceedings. Some went so far as to say that the system is so complex now, most if not all people need representation.”

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## WHERE WE ARE TODAY

Currently, government only spends about one per cent of its expenditures on the administration of justice, which includes prosecution, court services and justice services such as legal aid and law reform. Yet, in any three-year period, a BC resident has a 45 percent chance of coming into contact with the justice system. The funding cuts of more than \$113 million since 2002 have led us to where we are today—a **crisis**.

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In February 2012, the government commissioned Geoffrey Cowper, QC to provide recommendations for improving the justice system. In his report: *A Criminal Justice System for the 21st Century (the Cowper Report)*, Mr. Cowper provided 12 recommendations to government, including one for a fixed complement of judges in the Provincial Court and several recommendations designed to improve the overall efficiency of the justice system.

The government responded to the *Cowper Report* by issuing a *White Paper (A Modern, Transparent Justice System)* outlining steps to reform the justice system. Many of the initiatives proposed by the *White Paper* are focused on long-term innovations to improve efficiencies in the justice system.

The CBABC endorses many of the initiatives set out in the *White Paper*. All parties in the justice system, including government, need to work as collaborative partners so that we can provide this essential service in an efficient, measurable and cost-effective way. That is our goal and we are committed to working with all sectors of the system to make that happen.

Having said that, the results of these innovations will be realized in years, not months. The reality is that the justice system requires attention now to avert a growing crisis in our system. There is an urgent need for appropriate investments to prevent further harm, and to ensure that funding reforms can succeed.

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## WHERE WE CAN GET TO

What is the ideal justice system? It is a system that is available to all who need it. It is a system where those who need legal aid can get it regardless of where they live in BC. It is a system where there are enough judges and court services support staff to have matters heard within the shortest possible time. It is a system that innovates, that examines what we do well and improves on it, and looks at what is not working and gets rid of it. It is a system that looks at how we can integrate social services and the justice system to resolve issues without recourse to the courts. This is our vision and that is what we will work with our partners in the justice system to achieve:

- A fully funded Legal Aid Service available to those who need it throughout BC;
- A full complement of judges, reviewed every three years, supported by a full complement of court services staff including Crown Prosecutors, Sheriffs and support staff to ensure that the courts are accessible and efficient;
- Timely and efficient access to justice whether it be through community courts, arbitration or in the Provincial Courts of BC, the Supreme Court or the Court of Appeal;
- A commitment by all parties to continued innovation within the justice system to ensure taxpayers' dollars are being spent wisely;
- Low-cost or no-cost legislative reforms that improve British Columbia as a place to live, work in and do business; and
- Legislation and law reform which anticipates or responds to changes in society.

We will not get there overnight. The CBABC recognizes that government today is operating under considerable financial constraints. That is why our platform document recommends both small, incremental investments in the justice system that should be made now, as well as longer-term investments. In addition, we recommend several legislative reforms that can be implemented now, at little or no cost.





## FOUR PILLARS OF JUSTICE FOR BRITISH COLUMBIANS

The justice and legislative reforms we describe in this document fall under four key pillars, based on issues that matter to British Columbians.

### Stability for *Families*

Legal issues that affect families have repercussions for everyone involved, whether it relates to family breakdown, compensation for death or injury, decision-making around health care, or other issues of family security. And as our population ages, there is an increasing variety of legal issues related to estate, guardianship, and end-of-life matters. When left unresolved, life-changing family issues increase government spending not just on justice but also on social programs, housing and health care. The resulting costs and harms are avoidable with early, effective intervention and resolution.

### Security for *Communities*

Everyone wants to feel safe where they live and work. People do not want criminal charges being dropped due to court backlogs – immediate action is needed to resolve a multi-year build-up of unresolved cases. In addition, new technological realities demand legislative reforms to deal with issues such as protection of privacy.

### Certainty for *Business*

A strong economy requires a strong justice system. BC needs legislation that supports enterprise while protecting individual and societal rights, and a justice system that is funded to quickly deal with issues that cannot be resolved on their own. Civil, criminal and family matters are all dealt with by the same courts, so delay in any case slows down all. Reducing court backlog will help businesses resolve civil cases and get back to generating revenue and creating jobs.

### Accountability to the *Public*

Investments in the justice system must be accompanied by a constant drive by those who work in and administer the system to find efficiencies and to look at innovative ways to serve those who need access to justice. Taxpayers justifiably expect that their tax dollars will be used effectively. A justice system that is accountable to the public is one where government, courts, lawyers and other stakeholders commit to work together to drive innovation and efficiency.



## PROPOSALS FOR CHANGE

In the pages that follow, we move through the four pillars identified above to outline specific immediate and long-term investments in the justice system, as well as legislative reforms to help make our justice system more accessible, relevant, effective and efficient for all British Columbians. A comprehensive list of proposed legislative reforms (with links) is provided in the appendix.

### Stability for *Families*



In January 2002, the provincial government announced cuts to the legal aid system which saw government funding reduced from \$85 million to \$55 million over three years. Budget reductions to the Legal Services Society (LSS) – the organization responsible for administering BC’s legal aid system – necessitated the closure of approximately 45 branch offices, which were replaced by seven regional centres, and services from local agents. In 2010 the number of regional centres was further reduced to two.

Notably, due to underfunding of the legal aid system, LSS has had to eliminate many family law services. The majority of family law matters such as child support, spousal support, division of assets and general custody matters are not covered.

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Legal aid representation in family law cases is provided only in circumstances where 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 problem.

Financial eligibility to receive legal aid representation is currently \$1,470 net monthly income for a one person household and \$3,230 net monthly income for a four-person household, subject to personal property exemptions of between \$2,000 and \$6,000.



The result, through both a restriction on services and a very low financial eligibility cutoff, is that in the Provincial Court of British Columbia, 90 to 95 percent of family law cases involve a person who is not represented and in the Supreme Court it is 10 to 15 percent.

This has real, tangible consequences for those going through family breakdown. A young mother involved in a custody dispute may have to represent herself in court while her estranged husband, through the financial support of extended family, has legal representation. We do not believe that in a society such as ours, this should be permitted to happen.

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## Incremental Steps

We endorse recommendations made to the government and the official opposition by the Legal Services Society, which, after three years, would cost approximately \$4.9 million per year. These include incremental increases to allow expanded duty counsel, enhanced family advice, new community partnerships including legal information outreach workers and paralegals, and improved access to Aboriginal services.

CBABC applauds the re-establishment of a family LawLINE by the Legal Services Society and recommends its expansion to serve a wider range of needs so that it can operate evenings and weekends—this would be especially helpful to all working parents with legal issues who cannot access this service during regular business hours. LSS estimates that the cost for this expansion would be \$387,000 per year.

## Longer-Term Measures

British Columbia currently stands 10<sup>th</sup> of 13 provinces and territories on legal aid spending per capita, with spending of \$11.81 per capita. The national average is \$16.21 and Ontario spends the most at more than \$20 per capita.

CBABC recommends a commitment to adding an \$18 million increase to the budget of LSS over the next election cycle, which would bring BC in line with the national average and would satisfy the most urgent needs within the legal aid program, including \$7 million to cover family law matters not currently covered.

Over the long term, it will take \$50 million to restore the legal aid system to pre-2002 levels taking into account inflation and population growth. We recommend the government keep this objective in mind as the province's current financial circumstances improve.



## Low-Cost or No-Cost Legislative Reforms That Can be Implemented Now to Support Families

In addition, the following legislative initiatives could be enacted after the election as there are little or no cost implications to these proposed reforms:

- Amend the *Family Compensation Act* to provide for bereavement damages in the event of a death of a family member caused by the wrongdoing of another person or entity. The current failure of the law to recognize such losses is offensive and inexplicable to BC families who experience such tragedies, and is out of line with the law in most jurisdictions in Canada.
- Enact the Ombudsperson of BC's proposal to amend the *Health Care (Consent) and Care Facility (Admission) Act* to add a legal duty for health care providers administering medication to document that they have informed consent from persons in care to whom they administer medication. While the *Health Care (Consent) and Care Facility (Admission) Act* requires a health care provider—doctor or nurse—to have informed consent from the senior in a residential care facility before administering medication, there is no legal duty to document that consent. Consent can be oral, written or inferred from the conduct of the resident. The problem is that without document, it is difficult to ensure that informed consent has been obtained and verified before medication is administered to people in care. To protect the rights of people in care, who are often vulnerable, the *Health Care (Consent) and Care Facility (Admission) Act* needs to be amended.
- Eliminate a medical health officer's discretion to allow residential care operators to move a resident to another facility without that person's consent. The Ombudsperson's proposed amendments to the Residential Care Regulation under the *Community Care and Assisted Living Act* would limit this discretion to emergency situations and require the facility operator to obtain the patient's consent in all other instances.

### Low or No Cost Reforms to Support Families

- Amend *Family Compensation Act* to provide for bereavement damages.
- Enact the Ombudsperson of BC's proposal to amend the *Health Care (Consent) and Care Facility (Admission) Act*.
- Eliminate a medical health officers' discretion to allow residential care operators to move a resident to another facility without that person's consent.
- Implement the *Wills, Estates and Succession Act (WESA)*.
- Amend the *Power of Attorney Act* to delete the witness requirement.
- Amend several health-related statutes to protect the privacy of British Columbians' health information.
- Enact reverse mortgage legislation.



- Implement the *Wills, Estates and Succession Act (WESA)*. The modernized wills statute, WESA needs to be put into force as soon as possible to provide peace of mind and security for families. WESA allows families to choose how their estates are distributed, to ensure that their children will be provided and cared for, and that a death in the family does not create a legal burden on the family.
- Amend the *Power of Attorney Act* to delete the requirement that the attorney (the person being granted power by the donor) sign the attorney document before witnesses. The witness requirement, which was brought into force in September 2011, increases costs and causes confusion, potentially leading to invalid powers of attorney being signed. The attorney should be able to sign the document without a witness.
- Act on the CBABC's recommendations to amend several health-related statutes to protect the privacy of British Columbians' health information and permit its disclosure in limited circumstances. The recommendations would require government and its agencies to limit their disclosure of personal health information, provide oversight over government's handling of sensitive health information, and ensure that government and health agencies are accountable and comply with the law.
- Enact reverse mortgage legislation as recommended by the British Columbia Law Institute. Unlike conventional mortgages, reverse mortgages do not require a borrower to make periodic repayments of principal and interest since the loan is repaid after the borrower's death or when the borrower's principal residence is sold or abandoned. Most borrowers of reverse mortgages are seniors. Many people do not appreciate the effect of compounding interest coupled with no repayment of interest until the loan comes due. The risk is that seniors may be exploited by unscrupulous lenders of reverse mortgages. Seniors are vulnerable consumers because of their age, infirmity and social isolation. Reverse mortgage legislation would protect not only seniors but all consumers and reduce the need for courts to intervene in disputes that would be prevented by the Act.



## Security for *Communities*



Today, our justice system is in crisis. Over the past two years, not a week has gone by without a media story about another stay of proceedings in a criminal matter, a report about delays, or an article about the frustration of the public or of lawyers trying to move a case to resolution for their clients.

By Canadian law, a criminal case may be considered vulnerable to dismissal if it takes more than 18 months to resolve. In BC, there are thousands of cases that are already at, or within six months of reaching, that critical threshold. As Geoffrey Cowper, QC, noted in his final report, *A Criminal Justice System For the 21st Century*, the reasons are multiple and inter-twined, however there is one key fact that is clear: the current court infrastructure is inadequate to resolve the backlog and keep pace with the daily volume of increasingly complex cases that require resolution.

This is not a matter of bricks and mortar; today's justice system infrastructure relies on two key resources – people and technology. A working justice system requires court clerks, registry staff, Crown, sheriffs and a full complement of judges – not only for court but also for alternate dispute resolution processes that help resolve issues before court. The human sector of the justice system has been under-resourced for years, but the past two years in particular have seen exceptional strain as work demands have increased and full-time position numbers have decreased.

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New judges were appointed in 2012 which will assist in managing daily case loads. However, the Provincial Court is still about 12 full time judges short of the 2005 complement, and court backlogs remain. In his recent report, Mr. Cowper recommended that the government and judiciary work together to determine the level of judicial complement necessary to meet the goals of the justice system, including the timely delivery of justice and maintaining public confidence in the administration of justice. He further recommended that the pre-determined complement be re-addressed on a regular basis, perhaps every three to five years.



The Court Services Branch, whose employees administer the court, and provide prisoner escort and court security support to the Court of Appeal, Supreme Court and Provincial Court, has seen its budget reduced by more than 10 percent since 2008.

According to Chief Justice Bauman, the Supreme Court has had courtrooms that cannot proceed because no clerk is available. Also, fewer registry staff are available and there has been a shortage of sheriffs to provide security. This leads to delays for all litigants in the timely resolution of disputes.

As noted by the Select Standing Committee on Finance and Government Programs in its recommendations on the 2013 budget, **“the justice system requires stable and long term funding for the effective delivery of justice. This entails providing necessary support and programs to ensure equitable access and alternative dispute resolutions.”**

*According to Chief Justice Bauman, the Supreme Court has had courtrooms that cannot proceed because no clerk is available.*

## Incremental Steps

CBABC applauds the government’s appointment of nine provincial court judges in December 2012. However, there are a number of judges scheduled to retire or join the part-time (senior judge) program in 2013. Failure to immediately fill these vacancies could very well negate the anticipated positive impact of recent judicial appointments, and increase the growth of backlog in the courts. As vacancies occur, they need to be filled. A fixed complement is a longer-term solution but given the current strain on the system, there can be no question of dropping any lower now.

The CBABC also calls for lifting, as soon as possible, the current hiring freeze imposed in 2012 on the Court Services Branch (the freeze was imposed across government). The inability to hire registry staff or court clerks has delayed significantly the entry (and therefore enforcement) of court orders and the processing of documents. The Branch needs funding as soon as possible to stop these delays in processing documents in important areas such as probate and divorce.

## Longer-Term Measures

The CBABC supports the recommendation of a fixed judicial complement of Provincial Court judges and a formalized objective process for regular re-assessment and adjustment. However, the *White Paper* commitment to development of a methodology for determining the judicial complement by March 31, 2014 is inadequate. The time proposed is too lengthy. The current crisis requires committing to a specific and much shorter time frame not just for developing a methodology but also for implementing a fixed judicial complement. It is further the view of the CBABC that the fixed



complement package must also include fixed time lines within which vacancies must be filled.

As Chief Justice Bauman said in November 2011, as well as having a fixed complement of judges, we also need a restoration of staffing levels for court services personnel to support the judiciary.

As we work together to restore funding to legal aid as recommended earlier in this platform, there are a number of priority areas for additional funds which will assist communities:

- Provide regional access to services. Rural areas and small communities are currently underserved in terms of access to justice. The presence of Regional Centres and mobile outreach services would facilitate early intervention in resolving legal problems.
- Integrate legal aid services with other essential services. Service integration will reduce the strain on resources and prevent the cascade of associated social, legal and health care issues that often arise from unresolved legal problems. As well, the provision of legal aid services in appropriate community settings will assist in reducing access barriers that prevent vulnerable individuals from seeking legal advice.
- Establish pilot projects in partnership with community funding organizations. Community-based pilot projects provide a potential for innovative service delivery mechanisms that are designed to best serve the legal aid needs of vulnerable communities in ways that best address the particular barriers faced by individuals in those communities.

It is clear that inefficiencies and added economic and social costs result from the rising number of unrepresented litigants in the justice system. These individuals do not qualify for legal aid at current funding levels and are ill-equipped to effectively and efficiently represent themselves in court, particularly on serious matters that will have long-lasting consequences for their lives and those of their families. The CBABC recommends the gradual expansion of the role of duty counsel and staff lawyers where monitoring and evaluation demonstrate the effectiveness of these modes of service delivery in meeting client needs.

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## Low-Cost or No-Cost Legislative Reforms That Can be Implemented Now to Support Communities

- Amend the Insurance (Vehicle) Regulation (B.C. Reg. 447/83) under the *Insurance (Vehicle) Act* to provide the option of obtaining underinsured motorist protection for British Columbians who don't own cars or live with someone who does. Currently, the Regulation only provides underinsured motorist protection for persons who are ordinarily resident in BC, who own or rent a car, or who are a member of a household of a person who owns or rents a car. The current law excludes ordinary British Columbians without a car from insurance protection.
- Amend the *Motor Vehicle Act* to remove the Insurance Corporation of British Columbia (ICBC)'s discretion to withhold driver's licenses from persons who have declared bankruptcy. Under the *Motor Vehicle Act*, ICBC has discretion, without a hearing, to refuse to issue a driver's license to a person who is indebted to ICBC. Under the federal Bankruptcy and Insolvency Act, persons who have declared bankruptcy are discharged from all debts, including debts owed to ICBC. It is unfair to penalize persons twice; first, by bankruptcy, and second, by ICBC preventing them from having a driver's license. Persons who are bankrupt often cannot pay ICBC and are effectively barred from driving in BC. ICBC's discretion is not reviewable by BC courts.
- Enact a "made for BC" *Unincorporated Non-Profit Associations Act* as recommended by the Uniform Law Conference of Canada (ULCC). The Act, designed for enactment across Canada, protects and limits the liability for organizations such as community groups, sports teams and religious organizations. Currently, these non-profit organizations are governed by common law, which is a disadvantage since members may be liable for the organization's debts. Right now volunteers and directors may unknowingly take on responsibilities and liabilities that could be incurred by the organization through mishap or mismanagement. BC would be a leader as the first government in Canada to enact such legislation.

### Low or No Cost Reforms to Support Communities

- Amend the *Insurance (Vehicle) Act* to provide the option of obtaining underinsured motorist protection for people who don't own cars or who live with someone who does.
- Amend the *Motor Vehicle Act* to remove ICBC's discretion to withhold driver's licenses from persons who have declared bankruptcy.
- Enact an *Unincorporated Non-Profit Associations Act* as recommended by the Uniform Law Conference of Canada.
- Amend the *Integrated Pest Management Act* as recommended by the all-party Special Committee of the BC Legislature on Cosmetic Pesticides.



- Amend the regulation under the *Integrated Pest Management Act* as recommended by the all-party Special Committee of the BC Legislature on Cosmetic Pesticides. The public would be protected by having pesticide products locked away or stored behind the counter so that a consumer must interact with a certified dispenser before the sale occurs. People seeking to use a pesticide would not be able to purchase it without speaking with a certified pesticide dispenser, receiving information on alternative pest management strategies, and learning how to safely apply the product.



## Certainty for **Business**



Civil, criminal and family matters are all dealt with by the same courts, so delay in any case slows down all cases. Businesses that face long waits to access the justice system incur greater costs of doing business in BC. If you are attempting to collect a debt, resolve a dispute with your tenants or settle a shareholders' dispute, you need reasonably quick and efficient access to the courts.

When businesses cannot get access to the justice system in a timely manner, investment decisions may be put on hold, hiring decisions may be delayed and frustration builds. Businesses would prefer to resolve their disputes quickly and efficiently so that energy can instead be spent on making investments that grow business and create jobs in British Columbia.

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That is why the CBABC's recommendations in this platform around funding of legal aid and the Court Services Branch and maintaining an appropriate complement of Provincial Court judges are sound policy decisions in support of business, as well as families and communities.

The incremental approaches and the longer-term measures proposed in this platform are initiatives that will improve the business climate in our province.



## Low-Cost or No-Cost Legislative Reforms That Can be Implemented Now to Provide Certainty to Businesses

In addition, there are several legislative reforms that government can implement immediately to provide certainty for business. Businesses rely on a proper legal and regulatory environment that evolves and is responsive to business realities. The CBABC recommends the following no-cost or low-cost legislative reforms in support of B.C. businesses:

- Amend the *Limitation Act* (2012), to allow parties to extend or vary, but not shorten, limitation periods by agreement, for claims. This amendment would align BC with similar legislation in Alberta and Ontario. Further, the basic two-year limitation period in the Act should be extended to government, instead of the six year limitation period that applies to the debts owed to the government. This amendment would treat government the same way as business is treated.
- Amend the *Class Proceedings Act* so that BC is consistent with other jurisdictions that permit an opt-out on national class action suits. Currently, the Act only permits residents of BC to commence class proceedings. That means the law does not permit a BC court to certify a class action that includes members residing outside of the Province. BC is only one of three provinces in Canada that does not allow opt-out of national class actions; both Alberta and Ontario allow these class actions. To ensure an even playing field for class actions and to harmonize the law with other jurisdictions, the CBABC recommends that the Act be amended to permit national opt-out class actions.
- Amend the *Administrative Tribunals Act* to comply with the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. BC normally amends statutes to comply with Supreme Court of Canada decisions. The CBABC also recommends that BC consider whether the Act (or portions of it) should be extended to additional tribunals.

### Low or No Cost Reforms to Provide Certainty to Businesses

- Amend the *Limitation Act* (2012) to allow parties to extend/vary, but not shorten, limitation periods by agreement, for claims.
- Amend the *Class Proceedings Act* to permit an opt-out on national class action suits.
- Amend the *Administrative Tribunals Act* to comply with the Supreme Court's decision in *Dunsmuir v. New Brunswick*, 2008 SCC9, [2008] 1 SCR 190.
- Enact the *Contract Fairness Act* and *Uniform Civil Enforcement of Money Judgments Act* as recommended by the British Columbia Law Institute.
- Write a new, modernized *Society Act*.
- Enact a *Franchise Act* to provide protection to small business franchisees.



- Enact the *Contract Fairness Act* as recommended by the British Columbia Law Institute. The Act creates a duty of good faith in the performance of contracts. This Act addresses remedies for misrepresentation. Currently, the law is a complicated patchwork of confusing rules. The Act would make it easier for business to resolve disputes, reduce court cases, reduce court time and increase clarity in the law.
- Enact the *Uniform Civil Enforcement of Money Judgments Act* as recommended by the British Columbia Law Institute. The Act modernizes, harmonizes and consolidates the law governing enforcement of money judgments. The Act would reduce red tape by repealing three current statutes: *Court Order Enforcement Act*, *Creditor Assistance Act* and *Law and Equity Act*. Alberta already has a similar statute.
- Write a new, modernized *Society Act*, as proposed by the government in its 2011 discussion paper. There is a need to move quickly to modernize the corporate governance framework for societies operating in BC, which has not been substantively updated since 1977. The purposed new framework will increase flexibility and provide simple, accessible rules for societies.
- Enact a *Franchise Act*. In 2012, the British Columbia Law Institute began a project on a *Franchise Act* for BC. Franchisees are usually run by small business owners operating businesses under licenses by franchisors. Franchisees are found in many industries: food, retail and services. Small business owners in BC make up 98 percent of all businesses in BC and many of these businesses are franchisees. These small businesses often lack the resources to fight unscrupulous franchisors. Where there are disputes, BC franchisees often have to litigate in Ontario or even the United States since it is common for franchise agreements to require disputes to be resolved by the governing law of the franchisor, which is usually a foreign jurisdiction. Litigating outside of BC is often prohibitively expensive for BC franchisees. A *Franchise Act* for BC would fairly balance the interests of both parties and it would provide protection to small business franchisees.



## Accountability to the *Public*



In 2012, the government spent considerable time and resources on studying the criminal justice system and looking for efficiencies and innovation. These efforts culminated in the publication of the *Cowper Report* and the government's *White Paper* outlining steps to reform the justice system.

Many of the initiatives proposed by the *White Paper* are focused on long-term innovations to improve efficiencies, and effectiveness of, in the justice system.

Taxpayers demand no less. They expect that their tax dollars will be used effectively and expect the government will take action now that it has completed its studies.

Amongst the initiatives proposed by the *White Paper*, the CBABC urges action on them without delay:

*The CBABC endorses many of the White Paper recommendations and urges action on them without delay.*

- **The development of a technology strategy for justice.** The goal is to transform information management and technology supports that serve civil, family, administrative and criminal processes and to ensure timely delivery of justice services and the most efficient flow of information through the system. The CBABC supports the use of appropriate, affordable standardized technology within the justice system. However, any technology strategy will have costs associated with it. As a result, the CBABC recommends that sufficient new funding be provided by government so that the technology strategy can be meaningfully implemented.
- **The development of a business intelligence system to provide meaningful data on system performance.** In order to deliver transparent, timely and balanced justice, the government must be able to see and understand how the system operates. The CBABC supports the development of systems that will provide complete and accessible information about justice system performance.



- **Collaboration between government and the courts on efficient case management to reduce court backlogs and provide for early resolution of cases.** The *White Paper's* proposed options to achieve this goal include increasing use of mediation to resolve child protection cases, review of existing prosecution files where delay is an issue, creating a pilot disposition court, expanding duty counsel services for early resolution, improving the Provincial Court scheduling system, improving Provincial Court workflow through the use of electronic files and developing consistent Crown file ownership. The CBABC supports collaboration on efficient case management, including these proposals.



## CONCLUSION

During an election it is important to identify and discuss issues that need government's attention. By preparing and distributing this platform document, we seek to encourage discussion on the importance of justice issues facing British Columbians. In conjunction with the distribution of this document to all party leaders, CBABC members from across the province will be meeting with candidates in their communities to discuss the recommendations made in this document. We also hope that the citizens and voters of BC will use this document to encourage discussion about justice issues now and after the election.

Appended is the list of proposed legislative changes with links that will provide more detail to readers. Regardless of which political party is elected in May 2013, the CBABC strongly urges leaders, advisors and decision-makers to include ***An Agenda for Justice*** in their policy platforms.

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## LAW REFORM PROPOSALS

### Stability for Families

#### *Family Compensation Act*

[http://www.cba.org/BC/Initiatives/main/family\\_compensation\\_act\\_background.aspx](http://www.cba.org/BC/Initiatives/main/family_compensation_act_background.aspx)

#### *Ombudsperson of BC: Health Care (Consent) and Care Facility (Admission) Act*

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96181\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96181_01)

The Best of Care: Getting it Right For Seniors in British Columbia (Part 2) (February 2012)

[https://www.ombudsman.bc.ca/images/pdf/seniors/Seniors\\_Report\\_Volume\\_2.pdf](https://www.ombudsman.bc.ca/images/pdf/seniors/Seniors_Report_Volume_2.pdf)

#### *Ombudsperson of BC: Community Care and Assisted Living Act, S.B.C. 2002, c. 75*

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_02075\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02075_01)

The Best of Care: Getting it Right For Seniors in British Columbia (Part 2) (February 2012)

[https://www.ombudsman.bc.ca/images/pdf/seniors/Seniors\\_Report\\_Volume\\_2.pdf](https://www.ombudsman.bc.ca/images/pdf/seniors/Seniors_Report_Volume_2.pdf)

#### *Ombudsperson of BC: Section 50 of the Residential Care Regulation (B.C. Reg. 96/2009) to repeal medical health officer's discretion under the Community Care and Assisted Living Act*

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/96\\_2009](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96_2009)

[https://www.ombudsman.bc.ca/images/pdf/seniors/Seniors\\_Report\\_Volume\\_2.pdf](https://www.ombudsman.bc.ca/images/pdf/seniors/Seniors_Report_Volume_2.pdf)

#### *CBABC: Wills, Estates and Succession Act, S.B.C. 2009, c.14 (Bill 4)(WESA)*

[http://www.leg.bc.ca/39th1st/3rd\\_read/gov04-3.htm](http://www.leg.bc.ca/39th1st/3rd_read/gov04-3.htm)

#### *Ombudsperson of BC: Community Care and Assisted Living Act*

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_02075\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02075_01)

[http://www.ombudsman.bc.ca/images/resources/reports/Public\\_Reports/Public\\_Report\\_No\\_46.pdf](http://www.ombudsman.bc.ca/images/resources/reports/Public_Reports/Public_Report_No_46.pdf)

#### *CBABC: Miscellaneous Statutes Amendment Act (No. 2), 2010, S.B.C. 2010, c. 6 (Bill 11)*

Health privacy provisions of Bill 11 amendments to the *Health Authorities Act*, the *Ministry of Health Act* and the *Public Health Act*, including sections 149, 166 and 167 of Bill 11

[http://leg.bc.ca/39th2nd/3rd\\_read/gov11-3.htm](http://leg.bc.ca/39th2nd/3rd_read/gov11-3.htm)

[http://www.cba.org/BC/Initiatives/PDF/cbabc\\_submission\\_05\\_25\\_10.pdf](http://www.cba.org/BC/Initiatives/PDF/cbabc_submission_05_25_10.pdf)

#### *British Columbia Law Institute: Enact legislation on reverse mortgages*

Report on Reverse Mortgages (No. 41, 2006)

[http://bcli.org/sites/default/files/Reverse\\_Mortgages\\_Rep.pdf](http://bcli.org/sites/default/files/Reverse_Mortgages_Rep.pdf)

#### *Amend the Power of Attorney Act*

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96370\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96370_01)



## Security for Communities

BC Legislature Special Committee on Cosmetic Pesticides: Integrated Pest Management Regulation (B.C. Reg. 604/2004) under the *Integrated Pest Management Act*

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_03058\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_03058_01)

<http://www.leg.bc.ca/cmt/39thparl/session-4/cp/reports/PDF/Rpt-CP-39-4-Report-2012-MAY-17.pdf>

Amend the Motor Vehicle Act to remove the Insurance Corporation of British Columbia (ICBC)'s discretion to withhold driver's licenses from persons who have declared bankruptcy

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/96318\\_00](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96318_00)

[http://www.cba.org/BC/Initiatives/pdf/CBABC\\_Automobile\\_Insurance\\_Committee.pdf](http://www.cba.org/BC/Initiatives/pdf/CBABC_Automobile_Insurance_Committee.pdf)

CBABC: Insurance (Vehicle) Regulation (B.C. Reg. 447/83) under the *Insurance (Vehicle) Act* regarding underinsured motorist protection

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/447\\_83\\_09](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/447_83_09)

[http://www.cba.org/BC/Initiatives/pdf/CBABC\\_Automobile\\_Insurance\\_Committee.pdf](http://www.cba.org/BC/Initiatives/pdf/CBABC_Automobile_Insurance_Committee.pdf)

Enact an *Unincorporated Non-Profit Association Act*

Uniform Law Conference of Canada, *Unincorporated Non-Profit Associations Act* (Uniform Act)

<http://ulcc.ca/en/uniform-acts-en-gb-1/551-unincorporated-nonprofit-associations-act/82-unincorporated-non-profit-associations-act>

British Columbia Law Institute: Privacy Act

Report on the Privacy Act of British Columbia (No. 49, 2008)

[http://www.bcli.org/sites/default/files/Privacy\\_Act\\_Report\\_Website.pdf](http://www.bcli.org/sites/default/files/Privacy_Act_Report_Website.pdf)

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96373\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96373_01)

## Certainty for Business

Amend *Limitation Act*, S.B.C. 2012, c. 13 (Bill 34)

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96266\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96266_01)

Amend *Class Proceedings Act* to permit national opt out class actions

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96050\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96050_01)

[http://www.cba.org/BC/Initiatives/pdf/CBABC\\_Class\\_Action\\_Section\\_submission\\_to\\_BC\\_MOAG\\_012012.pdf](http://www.cba.org/BC/Initiatives/pdf/CBABC_Class_Action_Section_submission_to_BC_MOAG_012012.pdf)

Amend *Administrative Tribunals Act* to accord with Supreme Court of Canada

[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_04045\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_04045_01)

[http://www.cba.org/BC/Initiatives/pdf/Law\\_Reform\\_Proposal\\_of\\_the\\_CBA\\_Administrative\\_Law\\_\(BC\\_Branch\)\\_Section.pdf](http://www.cba.org/BC/Initiatives/pdf/Law_Reform_Proposal_of_the_CBA_Administrative_Law_(BC_Branch)_Section.pdf)



Enact British Columbia Law Institute: *Contract Fairness Act*  
Report on Proposals for Unfair Contracts Relief (No. 60, 2011)

[http://bcli.org/sites/default/files/2011-09-28\\_BCLI\\_Report\\_on\\_Proposals\\_for\\_Unfair\\_Contracts\\_Relief\\_\(FINAL\).pdf](http://bcli.org/sites/default/files/2011-09-28_BCLI_Report_on_Proposals_for_Unfair_Contracts_Relief_(FINAL).pdf)

Enact British Columbia Law Institute: *Uniform Civil Enforcement of Money Judgments Act*  
Report On The *Uniform Civil Enforcement Of Money Judgments Act* (No. 35, 2005)

[http://bcli.org/sites/default/files/Unif\\_Civil\\_Enf\\_Money\\_Judgments\\_Act\\_Rep.pdf](http://bcli.org/sites/default/files/Unif_Civil_Enf_Money_Judgments_Act_Rep.pdf)

Write a new modernized *Society Act*

Report on Proposals for a New *Society Act* (No. 51, 2008)

[http://bcli.org/sites/default/files/BCLI\\_Report\\_on\\_Proposals\\_for\\_a\\_New\\_Society\\_Act.pdf](http://bcli.org/sites/default/files/BCLI_Report_on_Proposals_for_a_New_Society_Act.pdf)

*Franchise Act*. Currently, there is no *Franchise Act* for BC.

British Columbia Law Institute project on a *Franchise Act* for British Columbia

<http://www.bcli.org/blog/bcli-launches-project-franchise-act-british-columbia>



THE CANADIAN  
BAR ASSOCIATION  
British Columbia Branch