



THE CANADIAN
BAR ASSOCIATION
Alberta Branch

JUSTICE MATTERS

CBA ALBERTA'S AGENDA FOR JUSTICE

FEBRUARY 2019



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BAR ASSOCIATION
Alberta Branch





ACCESS TO JUSTICE

BACKGROUND:

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

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

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

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

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

THE ISSUE:

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

- 1 The Parliamentary Budget Officer (PBO). 2018. *Update on Costs of Incarceration*. Office of the Parliamentary Budget Officer. https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2018/Update%20Incarceration%20Costs/Update%20on%20Costs%20of%20Incarceration_EN.pdf.
- 2 Access to Justice Committee. 2013. "Reaching Equal Justice Report: An Invitation to Envision and Act." Canadian Bar Association. http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf.
- 3 See note 2 above.

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

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

The stress and financial strain—even for people who have adequate resources—results in increased government spending on social and health services. Over half (**51%**) of people who reported having a legal problem experienced stress or emotional difficulty as a direct consequence of having that problem⁵, which can lead to other legal, social, financial, and health-related problems.

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

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

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

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

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

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

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

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

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

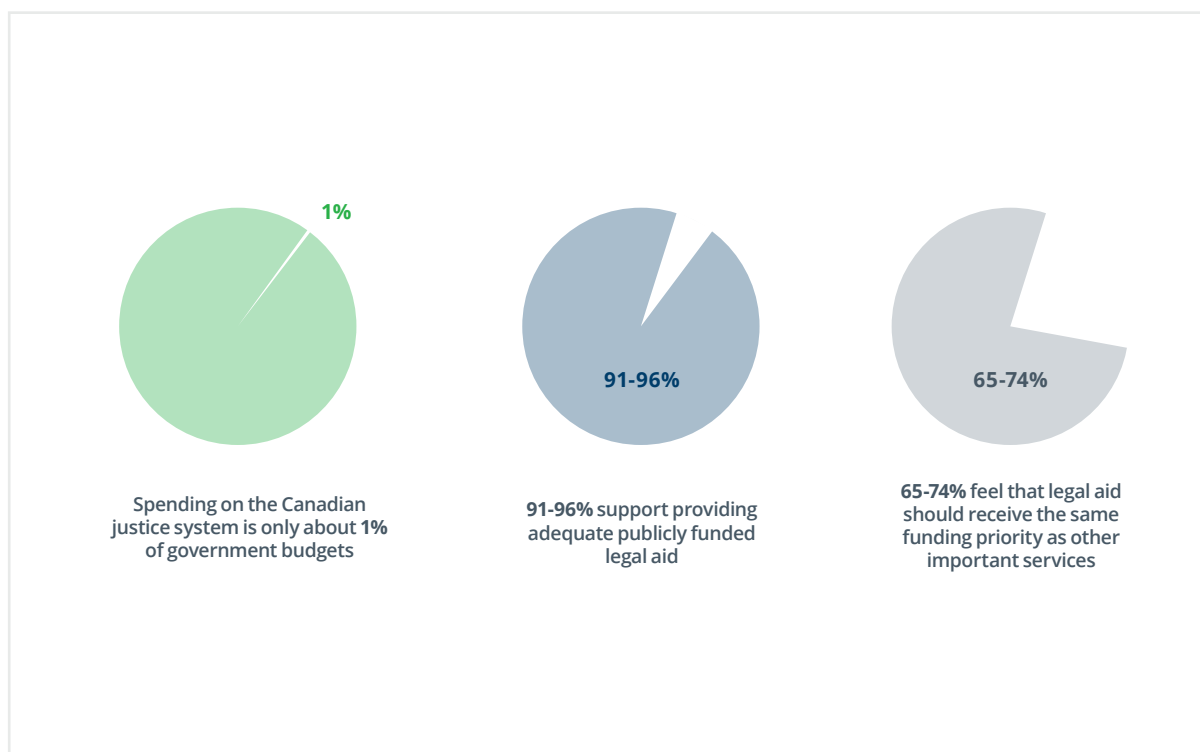
7 See note 6 above.

8 See note 4 above.

9 See note 4 above.

10 Government of Alberta. 2018. “Ensuring Albertans have access to justice.” Alberta Government Services. <https://www.alberta.ca/release.cfm?xID=60793E6DDEF58-0BE7-24D3-9B8FBD4F514EE274>.

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



WHY CBA IS INVOLVED:

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

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

DESIRED OUTCOME:

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

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

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

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

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

LEGAL AID (CRIMINAL LAW CONTEXT) HYPOTHETICAL CASE STUDY

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

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

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

BILL'S RESULTING EXPERIENCE WITH THE JUSTICE SYSTEM:

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

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

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



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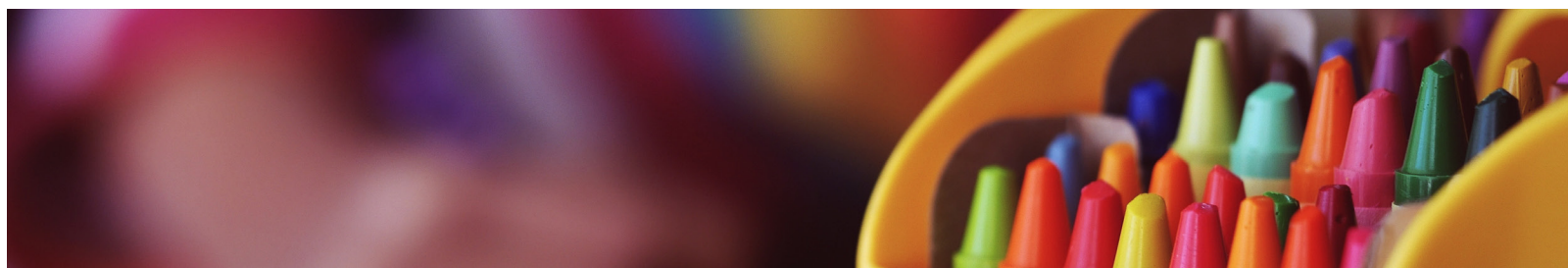
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FAMILY JUSTICE

BACKGROUND:

A large percentage of Alberta's population is affected by family law issues at some point in their lives, with respect to child support, spousal support, parenting arrangements, child protection, guardianship, and contact with a child.

Family law cases account for just over **35% of all civil court cases in the seven reporting provinces and territories** (including Alberta).¹

Many Albertans experience inadequate and/or unequal access to the family justice system, especially Alberta's most marginalized and vulnerable citizens.

THE ISSUE:

The increased prevalence of family legal problems complexity of issues and legal proceedings, and the severe and disruptive impact of unresolved legal problems—which can escalate and cause undue personal hardship in additional triggering non-legal problems like social welfare issues that inhibit people's ability to participate effectively in society—has grown considerably over the past two decades.² As a result, an increasing number of Albertans are having difficulty accessing the family justice system—even those that might have the knowledge and means to effectively navigate the system.

Since family justice matters can involve two different Court levels (Provincial and Superior Courts including Court of Queen's Bench)—and can involve concerns associated with criminal and other matters simultaneously—we are seeing an increasingly convoluted process, chronic backlog, and lengthy delays.

Further exacerbating the issue is that more than one court system, and many different judges, can have the power to grant orders on the *same* matter at the same *time*.

1 Kelly, Mary Bess. 2015. "Divorce cases in civil court, 2010/2011." Statistics Canada . <https://www150.statcan.gc.ca/n1/pub/85-002-x/2012001/article/11634-eng.htm>.

2 Buckley, Dr. Melina. 2016. A National Framework for Meeting Legal Needs. Canadian Bar Association Access to Justice Committee.

Those who are unable to afford counsel, ineligible for legal aid, and face the challenges above are left unrepresented or under-represented.

We are also turning our attention to the **knowledge of brain science** and the **impact of adverse childhood experiences**. “The harm that occurs through **adversarial processes in family matters** is well documented through the **Adverse Childhood Experiences (ACEs) studies**. **Children who experience ACEs are at risk of lifelong negative outcomes**.³

The consequences of this are broad and far-reaching. It impacts the parties and the rest of the family (especially children), can affect family members’ physical and mental health, can involve the criminal justice system, and can affect schooling and employment. Delayed resolution of issues prolongs and exacerbates these problems.

The financial and social costs can be quite significant for all parties. They can include:

FAMILY	GOVERNMENT
<ul style="list-style-type: none"> • Lawyer fees • Court fees • Other advisors and mediators • Child care • Missed work • Transportation / parking • Chronic stress • Decreased physical and mental health • Loss of income, loss of employment, and loss of housing 	<ul style="list-style-type: none"> • Increased spending on physical and mental services, family services, social support services, police services, etc.

WHY CBA IS INVOLVED:

Reports from several organizations, including the CBA, conclude that the current system of resolving family law issues requires dramatic systemic change to ensure healthy outcomes for families, regardless of means, capacity, or social situation.

Specifically, the Reforming the Family Justice System (RFJS) Initiative has taken meaningful steps to effect system-wide change in the family justice system through a multi-disciplinary approach between courts, government, dispute resolution, the legal community, social health organizations, educators and researchers.⁴ The CBA supports the work of the RFJS Initiative to improve the current family justice system through collective action.

3 Vincent J. Felitti, Robert F. Anda, et al (1998) “Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences Study”, *American Journal of Preventative Medicine*. 14(4), 1998, pp.245-258

DESIRED OUTCOME:

Improvements to the justice system that will make it more easily and equally accessible by all will require the following commitments:

1. Ensure the government provides continued support of the Reforming the Family Justice System (RFJS) Initiative in order to effect system-wide change through a collaborative, multi-disciplinary approach between all key stakeholders.
2. Focus on people and how the justice system professionals and institutions can meet their needs.
3. Empower people and build their capacity to participate by managing their own matters and having supports to co-parent and achieve positive outcomes for their families.
4. Focus attention and resources on preventing legal problems, not just on resolving them after they arise.
5. Create a coherent system and a continuum of services to ensure people receive timely help and find the most direct route to justice.
6. Ensure access to justice is tailored to the individual and the situation, responding to both legal and related non-legal dimensions to ensure services are meaningful and effective.
7. Ensure that justice institutions are “learning organizations”, committed to evidence-based best practices and ongoing innovation.

FAMILY LAW CASES IN REPORTING PROVINCES AND TERRITORIES



35% of all civil court cases in the seven reporting provinces and territories are Family Law cases.

CBA Alberta has adopted the long-term recommendations of the Equal Justice Report through several national CBA Council Resolutions, including:

- Improve Legal Capabilities
- Effective Triage and Referral
- Using Technology for Equal Justice
- Increasing Awareness of Legal Aid

There are also several components that could assist with the immediate improvement of justice in the family law context:

1. Commit to adequate legal aid funding for a broader variety of family law matters.
2. Address the problem of the timely appointment of judges (especially at the Superior Court level) and the immediate provision of appropriate staff and resources to the courts.
3. Implement legislation to simplify the division of property when unmarried couples separate.
4. Pursue the creation of a Unified Family Court system in Alberta. A Unified Family Court system that provides a single point of contact with the court system, along with a designated and diverse group of judges familiar with family law, would significantly advance access to justice in Alberta.



CASE STUDY: TED AND EILEEN

Ted and Eileen have been married for 15 years and have three school-age children. Domestic violence has escalated in their household, and Eileen has told Ted she wants a divorce and asked him to move out. It would be impractical to move the children, and Eileen's family is in Newfoundland. Ted has family in town he could stay with, but he will not leave the house voluntarily since he "paid for it."

Eileen stayed home to raise the children and now works part-time around the children's schedule, earning about \$20K per year. Ted has built his career and earns \$90K annually. Eileen feels trapped and doesn't know where to turn.

WITH ACCESS TO LEGAL AID, EILEEN WOULD KNOW HER OPTIONS AND BE ABLE TO:

- Apply **quickly for exclusive possession, parenting, and support orders.**
- Access the courts **effectively.**
- Get help accessing other support services that can **improve a family's welfare.**
- Potentially resolve matters **without going to court.**

WITHOUT LEGAL COUNSEL, EILEEN AND HER CHILDREN ARE AT INCREASED RISK:

- Eileen will have to wait between **six to eight weeks** for an appointment with Resolution Services to help her apply for a **Parenting Order.**
- Without legal advice, **Eileen wouldn't know** that she might be entitled to exclusive possession of the **family home.**
- Eileen's chances of getting a **support order quickly are decreased.**
- Eileen and the children **may need to access a shelter.**
- The children may be apprehended by **Child and Family Services** if the violence escalates and Eileen **has not sought safe shelter.**
- **Unresolved family violence** issues often escalate and **lead to Emergency Protection Orders** and criminal proceedings.
- Without a lawyer, there will be **more appearances, more adjournments, and more court time and support services required.**



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<https://www150.statcan.gc.ca/n1/pub/85-002-x/2012001/article/11634-eng.htm>.

For more on the Reforming Family Justice Initiative, ACEs and brain science, please visit: Talking About Reforming the Family Justice System – Helping Families Thrive:
<https://rfjslab.wordpress.com/2019/01/02/an-update-from-the-co-convenors/>



RESOURCES FOR THE JUSTICE SYSTEM

BACKGROUND:

The importance of a timely and effective legal system cannot be overemphasized. A well-developed and properly resourced justice system is critical to a healthy democracy. An inadequately resourced system results in significant delays and accessibility challenges.

It is undisputed that, during the past **20 years**, it is taking dramatically longer for matters to be heard in the Alberta court system. The delays that are being experienced clearly show that **“justice delayed is justice denied.”**

The ever-increasing pressure on Alberta’s court system—due to funding deficiencies, budget cuts, and lack of investment in infrastructure and technology—significantly and negatively impacts the efficiency and effectiveness of the justice system in Alberta.

There are three main causes of delays:

1. The federal and provincial governments have not added commensurate resources to keep pace with Alberta’s unprecedented population growth.
2. The Supreme Court of Canada’s decision in *R. v Jordan*, which places limits on acceptable delays for criminal trials, has caused all court systems to prioritize criminal matters at the expense of all other matters.
3. Insufficient funding of Legal Aid Alberta (LAA) has led to a rise in the number of self-represented litigants, who take up significantly more court time and resources than represented litigants.

THE ISSUE:

Alberta’s judicial system must be given sufficient resources to manage its current workload, the power to adapt to its new reality, and the mandate to make the necessary changes to resolve disputes in a timely manner.

The unreasonable length of time it is taking for matters to be resolved by the Alberta Courts means that it is costing Albertans more time and money to resolve their disputes. Unresolved matters prevent the parties involved from moving past their dispute.

The **current delays** are cause for great concern in the area of family law, where prompt resolution is often **critical to individual and family wellbeing**. Currently, an application for an **Emergency Protection Order** can take **two to three months** before a hearing is scheduled. Where a trial is required, parties may be waiting **34 to 188 weeks before their matter is heard**. These delays prevent justice from being done and **indirectly impact other social support systems** and medical services (i.e. mental health).

A lack of government investment in infrastructure and technological innovation further impedes accessibility to the justice system and adds to delays. The reduction of provincial court locations as a result of budgetary restraints, particularly in rural communities, has further limited access to justice. In some cases, this lack of access to justice can result in justice potentially denied because it is impractical—or impossible—for some Albertans to travel outside their home community to attend court or access court programs.

Similarly, the Civil Claims Duty Counsel program and other programs available to assist Albertans with free legal advice and guidance on the court process are not available or accessible in rural communities.

The Canadian Bar Association (CBA) notes that reforming the Family Justice System, including early resolution and referral, is a main focus within the Court of Queen's Bench strategic plan. The plan also includes the goal of an Alberta Family Court that unifies the current Provincial Family division with the Court of Queen's Bench Family division, and a diversion to non-court services.

Resources will need to be allocated to achieve these goals. These resources include the appointment of more judges, support staff, clerks, and a continued collaboration with the Courts and the Ministry of Justice and Solicitor General.

WHY CBA IS INVOLVED:

The CBA strives to promote and foster an understanding of the key role our justice system plays in society.

An **inadequately resourced system**, and the **resulting delays**, means Albertans' legal needs will **not be met**. The CBA hopes that by advocating for and **calling attention to deficiencies**, we can ensure all Albertans have **equal and timely access** to the justice system.

The judicial system must adapt to changing realities. Judges are cognizant of this but are faced with an unmanageable workload that greatly impedes their ability to consider changes, let alone implement them, and negates the confidence of Albertans that they are able to see "justice done."

The CBA hopes that by calling attention to these deficiencies and their impact on Albertans, the government will consider assigning more resources and funds to the justice system.

DESIRED OUTCOME:

The justice system needs further investment in infrastructure, technological innovation, judicial complement, and support staff. This investment will dramatically relieve the current unsustainable pressure and allow the Alberta Courts to improve their functioning to be more efficient and effective in the administration of justice in our province.

The CBA is calling for increased funding in the following areas to allow the courts to deliver justice to Albertans:

- Sufficient staffing of clerks, sheriffs, prosecutors, and the judiciary at all levels of court in Alberta, including a proper complement of appropriate support staff, such as judicial assistants and court coordinators to assist the Courts in expediting matters.
- Time and energy allocated by the government to explore new technologies that would enhance and streamline the court system to reduce inefficiencies and delays. This would include considering the use of digital filing of court documents and reconsidering the implementation of the Judicial Information Management System Software.
- Capital investment in court infrastructure and technology innovations, including buildings and more efficient IT systems, which could dramatically improve the functioning of the system.
- A commitment from all stakeholders and an investment by the Government of Alberta into accessibility technologies, such as video-conferencing and other online tools including chat modules to improve access to justice in Alberta's rural communities.

CONSEQUENCES OF AN UNDER-RESOURCED JUSTICE SYSTEM

Justice X serves on the Court of Queen's Bench in Alberta and has been tasked with assigning Justices for trial. The recent decision in *R. v Jordan* has changed the framework for determining whether a criminal trial has been heard in a reasonable period of time, setting ceilings for what would constitute unreasonable delay. Charges may be withdrawn in cases where delays are deemed unreasonable. The deleterious consequences of numerous criminal charges being withdrawn due to delay means that the Justice X has no choice but to prioritize criminal trials to the detriment of commercial and civil matters.

Even with this prioritization, there are not enough resources to allow for each of the criminal trials to proceed within the timeline prescribed by *Jordan*. There is simply not enough support staff and judges to adequately address the growing demands on the Alberta justice system. Lack of adequate funding means that potential technological advances that could also be utilized to address these concerns are not being explored or implemented.



Faced with this lack of resources, Justice X must decide which criminal matters will likely result in dismissal due to delay while creating the lowest risk to public safety by the release of individuals who are charged with serious offences. The Justice must also decide which commercial and civil matters may need to lose their trial dates to accommodate the criminal matters, some of which have been awaiting trial for years and will suffer prejudice in witness availability and financial harm. Without sufficient resources, the Alberta Courts must make decisions that will ultimately cause irreparable harm to individuals, corporations, and the public's faith in the judicial process.



DRUG TREATMENT COURTS

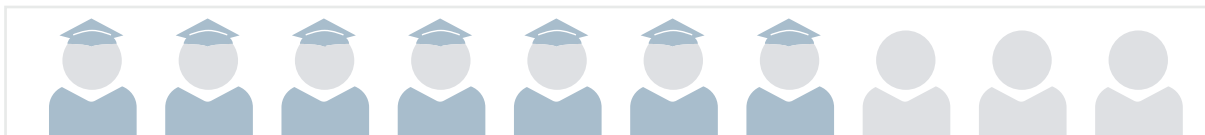
BACKGROUND:

CBA supports innovative and responsible approaches to justice, including specialized courts such as mental health, Indigenous, domestic violence and drug treatment courts. Drug Treatment Courts (DTCs) are pre-sentence treatment programs that try to rehabilitate non-violent offenders. DTCs divert offenders away from imprisonment on the condition they complete an intensive, judicially-supervised drug addiction recovery program.

These programs are proven to deliver a significant return on investment to society by reducing costs associated with policing, courts, and corrections, as well as decreased systemic marginalization, victimization, and property loss.

DTCs have been operational in Calgary and Edmonton since 2005 and 2007, respectively, and they have been operating in other parts of North America for more than 25 years.

The **majority of participants** who graduate from **intensive, judicially-supervised drug addiction recovery programs** become **contributing, tax-paying members of society**. For example, **7 out of 10 graduates** from Calgary's Drug Treatment Court have **no new criminal charges** or convictions post treatment.¹



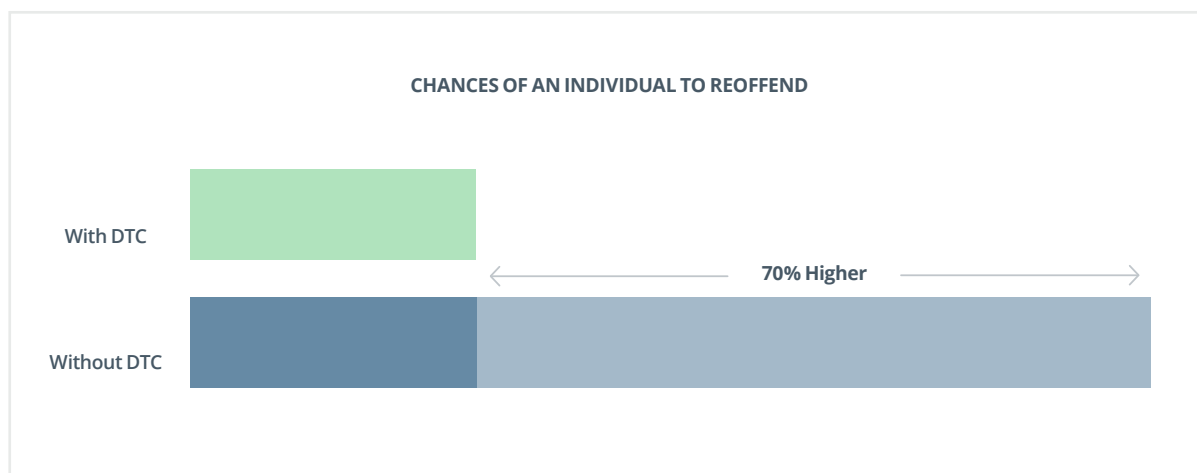
THE ISSUE:

The provincial and federal governments should strive to divert people with addictions and mental illness away from the criminal justice system and direct them towards programs to support rehabilitation and reintegration into society.

CBA Alberta members are concerned about the shortage and the lack of stability of funding for DTCs in Calgary and Edmonton.

¹ Calgary Drug Treatment Court. 2018. Calgary Drug Treatment Court. Accessed 12 04, 2018. <http://calgarydrugtreatmentcourt.org/>

These programs are **proven effective for affected individuals**, and they **save the entire system** significant costs over the long-term by diverting individuals from incarceration, facilitating their productive return to society, and **reducing** recidivism rates.²



Demand for DTC programs have exceeded their capacity from the start. Historically, funding has come from government. However, continuous reductions in government funding has decreased the number of people the programs are able to serve.

Studies suggest that the **average cost** of having an **individual in custody is 2.5 times higher** than the cost of putting **that person in a Drug Treatment Court program**.³

Private funding has made up a portion of the difference, but it is inadequate to provide the stable, predictable, and sustainable core operating funding required to make a meaningful, measurable difference over the long-term.

Inadequately funding the programs saves only a small amount of money and result in almost immediate net losses in other areas. There is evidence that people otherwise served by the program would return to crime, use other social services, and occupy police, court, and corrections resources.

WHY CBA IS INVOLVED:

One of CBA's goals is to promote and improve the administration of and access to justice and equality, supporting the corollary benefit of crime reduction. It benefits members of the CBA and society as a whole to work toward ensuring the public has a fair, effective, and efficient justice system. CBA supports innovative and responsive approaches to justice, including specialized courts such as mental health, indigenous, domestic violence and DTCs.

DTCs proactively support those struggling with addictions and add value to the justice system as a whole, and their programs are a critical component of an integrated approach, which increases awareness, support, and advocacy regarding the social issues impacting the justice system.

² Edmonton John Howard Society. 2018. "Drug Treatment Court Services." Edmonton.

³ Matchett, Terrence. 2013. <http://calgarydrugtreatmentcourt.org/wp-content/uploads/2015/06/AlbertaDTCs-An-Essential-Part-of-Albertas-Justice-Strategy.pdf>. Provincial Court of Alberta.

DESIRED OUTCOME:

An increase in stable, predictable government funding in DTC programs would significantly increase the capacity of the DTC programs to divert eligible people, as well as play a key role in reducing drug use and criminal involvement among repeat offenders suffering from the disease of addiction.

The CBA supports the provincial and federal governments extending the funding commitment for the DTCs and, as part of that effort, establishing the DTCs in the province as permanent fixtures of our criminal justice system. Funding of the DTCs and other drug treatment courts fits with results-based budgeting, and the goal that government programs deliver maximum value for tax dollars to Albertans.

CASE STUDY:

#1

Ryan* had “given up on life” prior to his last arrest in 2011. After hearing about the DTC program, and wanting to make a change for the better, he voluntarily assigned himself to the Calgary DTC.

Since graduating from the program in 2013, Ryan has been successfully employed and credits the stringent program for his recent marriage and child, as well as the return of the children he had previously lost due to his addictions.

CASE STUDY:

#2

Ten years ago, Amy* was facing a serious addiction issue. She was in and out of the criminal system, felt completely lost, and thought she had no options.

She had five children, but all of them were apprehended by the authorities (her youngest at only two weeks of age).

Amy applied to the Edmonton DTC and successfully graduated from the program. She regained custody of all of her children, and she is now employed at the Edmonton DTC helping others work through their addiction.

Her children are doing well, and the oldest is now attending university.

* *REAL STORIES: Names have been changed*



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JUDICIAL INDEPENDENCE

BACKGROUND:

Provincial Court judges face tough decisions that affect the daily lives, liberty, and security of Albertans. The quality of those decisions will be maintained only if the quality of the judges making them is maintained, which impacts the administration of justice for all Albertans.

Establishing salaries and benefits that attract the best candidates for judicial appointment protects public confidence in the independence of the judiciary, both financially and as an independent branch of the government.

Judicial independence is important to Albertans because it **guarantees that judges are free to decide honestly and impartially, in accordance with the law and evidence, without concern or fear of interference, control, or improper influence from anyone.**¹

THE ISSUE:

The Provincial Court is at the front line of the public's perception of our justice system, and faith in this institution is paramount.

Once appointed, judges do not have the same opportunity for growth in their salary or benefits as other professionals do—i.e., market and economic conditions, increasing productivity and/or efficiency, working longer hours, gaining more experience, and taking advantage of technology.

It is in the best interests of Albertans and the administration of justice to attract the most qualified candidates for judicial appointment. Therefore, an appropriate level of compensation is critical and must reflect and recognize:

- The significant role the Provincial Court and its judges play in shaping the administration and the public perception of the system of justice.
- The significant professional, financial, political, and social sacrifices that must be made when accepting a judicial appointment.

¹ "Judicial Independence." Provincial Court of Alberta. Accessed 12 04, 2018.
<https://albertacourts.ca/pc/about-the-court/judicial-information/judicial-independence>.

- The ever-increasing workload of the Provincial Court over the years, as its role has dramatically increased due to new offences being added to the Criminal Code, new and ever-expanding federal and provincial laws dealing with security issues, young offenders, and increasing numbers of self-represented litigants that add to the judiciary workload in terms of caseload, complexity, time, and energy.

WHY CBA IS INVOLVED:

The independence of the judiciary from the executive and legislative branches of government is a foundation of Canada's justice system, democracy, and overriding rule of law, and eliminates the risk of political interference in the appointment and compensation of judges.

As such, the Supreme Court of Canada has imposed a constitutional obligation on governments to set compensation for judicial officers through an independent, objective, and effective commission process.

In keeping with this obligation, the Government of Alberta establishes an independent Judicial Compensation Commission, which is beholden to neither the judiciary nor the government, every four years to review and recommend changes in judicial compensation.

As it has with past Commissions, the Canadian Bar Association – Alberta Branch (CBA Alberta) welcomes the opportunity to assist the 2017 Judicial Compensation Commission (the “Commission”) as it works to determine fair and just judicial compensation for the period between April 1, 2017 to March 31, 2021.

The CBA has an independent role from the work of the Commissions, but has regularly provided submissions to assist the Commissions in their work to ensure that judicial compensation and benefits are structured and maintained to:

- Protect and promote the independence of the judiciary through the institution and maintenance of appropriate financial safeguards for its members.
- Strengthen and advance the judiciary by ensuring adequate compensation for judicial officers in order to attract the best and most qualified candidates for appointment.

DESIRED OUTCOME:

To help guide the current Commission in its process of determining judicial compensation and benefits, and ensure the substantive outcome maintains the constitutional imperative of judicial independence, The Canadian Bar Association encourages support of the following principles:

1. Ensure the timely establishment of Commissions to review and recommend changes in compensation for the Judicial Officers.
2. Establish a formal schedule and process for the appointment of Commissions to maintain predictability and transparency and ensure mechanisms are put in place to resolve disputes between parties regarding the composition of a particular Commission.
3. Ensure that the majority of individuals appointed to the Commissions are Alberta residents, who adequately understand the province's judicial and financial circumstances and who are directly impacted by decisions made by the Commissions.

4. Ensure the government considers and responds to the Commissions' findings and recommendations in a timely manner.
5. Caution the legislature that its consideration of Commission reports involves special constitutional considerations that must not be endangered by a politicized approach, or by making any links between judges' remuneration and the decisions they make.
6. Ensure judicial salaries are consistent with prevailing and predicted market conditions and "comparables" of lawyers who are senior private practitioners and senior public servants.
7. Determine compensation levels that ensure judges and their dependents do not experience significant economic disparity between pre-appointment and post-appointment.
8. Ensure the government understands its obligation to show conclusive evidence of competing priorities between other fiscal obligations of similar importance to judicial independence before they can be used as rationale to reduce what the Commissions conclude to be appropriate compensation.



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TRUTH & RECONCILIATION CALLS TO ACTION

BACKGROUND:

Between 1883 and 1996, the Canadian Indian residential school system removed 150,000 First Nation, Métis, and Inuit children¹ from their homes, families, communities, and culture—often forcibly—in an effort to “civilize and Christianize”² Indigenous children by assimilating them into dominant society. This exposed a significant number of Indigenous children to poor living conditions as well as physical, emotional, and sexual abuse.

The final residential school was shuttered only slightly more than 20 years ago—which many Canadians don’t realize—but the lasting effects of more than 100 years of trauma continues to affect survivors and their families intergenerationally.

The legacy of the residential school system can be **clearly seen** in the continued and “significant **educational, income, and health disparities** between Aboriginal people and other Canadians—disparities that condemn **many** Aboriginal people to **shorter, poorer, and more troubled lives.**”³

In 2008, the Canadian government established the Truth and Reconciliation Commission (TRC) to inquire into residential schools and the lasting negative legacy they have had on former students, their children and families, their culture, and on all Canadians.

1 CBC Canada. 2016. “A History of residential Schools in Canada.” CBC.
<https://www.cbc.ca/news/canada/a-history-of-residential-schools-in-canada-1.702280>.

2 “Overview of IRS System.” Truth and Reconciliation Commission of Canada.
<http://www.trc.ca/websites/trcinstitution/index.php?p=158>.

3 The Truth and Reconciliation Commission. 2015. *Canada’s Residential Schools: The Legacy. The Final Report of the Truth and Reconciliation Commission of Canada*, McGill-Queen’s University Press.
http://nctr.ca/assets/reports/Final%20Reports/Volume_5_Legacy_English_Web.pdf.

“The Truth and Reconciliation Commission spoke to **thousands of survivors** and found that what took place in residential schools in Canada **amounted to cultural genocide** of Indigenous Peoples.”⁴

In 2015, the TRC issued its final report that included 94 Calls To Action. The report called upon governments, institutions, other change-makers, and the public to act to redress the legacy of residential schools and advance reconciliation with Canada’s Indigenous peoples.

94 CALLS TO ACTION

THE ISSUE:

One of many areas where Indigenous people continue to experience marginalization and discrimination is in Canada’s justice system, where examples of systemic bias pervade at every level. This bias serves to deny Indigenous people equal access to justice and perpetuates the cycle of intimidation and mistrust.

A most compelling example of this bias is the fact that Indigenous peoples are over-represented in the Canadian criminal justice system as a whole, with Alberta historically having the highest level of Indigenous incarceration of any other province.⁵

A significant root cause of this overincarceration stems from the trauma experienced from over 150 years of government intervention and maltreatment, residential schools included, and the resulting educational, economic, health, and social disadvantages that Indigenous individuals, families, and communities continue to suffer from.

Not only are Indigenous people more likely to be imprisoned (than non-Indigenous people), **but they are also more often subjected** to some of the **most restrictive levels of punishment**, including segregation, forced interventions, higher security classifications, involuntary transfers, physical restraints, and self-harm.⁶

WHY CBA IS INVOLVED:

The Canadian Bar Association (CBA) and its members are committed to addressing persistent and critical Canadian problems and to the goal of reconciliation as a national concern relevant to the well-being of all Canadians.

4 The Truth and Reconciliation Commission. 2015. *Canada’s Residential Schools: The Legacy. The Final Report of the Truth and Reconciliation Commission of Canada*, McGill-Queen’s University Press.
http://nctr.ca/assets/reports/Final%20Reports/Volume_5_Legacy_English_Web.pdf.

5 Benjamin Perrin, Richard Audas. 2018. “Report Card On the Criminal Justice System.” Macdonald Laurier Institute.
<https://www.macdonaldlaurier.ca/report-card-criminal-justice-system/>.

6 Chartrand, Vicki. 2018. “Why is a quarter of Canada’s prison population Indigenous?” *The Conversation*.
<https://theconversation.com/broken-system-why-is-a-quarter-of-canadas-prison-population-indigenous-91562>.

The Calls to Action outlined in the report included a number of initiatives aligned with the CBA's efforts to seek improvements in the law and the administration of the justice system for all Canadians, including the call for:

- The establishment of Indigenous law institutes for the development, use, and understanding of aboriginal justice systems and access to justice.
- Criminal justice reforms to improve the circumstances of the disproportionate number of Indigenous people in conflict with the criminal law, and to better address the unique needs of Indigenous people in the criminal justice and corrections systems.
- A reduction in the number of Indigenous children in care, the improvement of their circumstances, and the improvement of educational opportunities.

The CBA also endorses "Jordan's Principle", which calls for equality in services so that steps are taken to ensure that Indigenous children on reserves receive the same services ordinarily available to other Canadian children.

DESIRED OUTCOME:

The CBA believes that through the implementation of the Calls to Action and meaningful reconciliation with Canada's Indigenous people, the link between the legacy of the Indian residential school system and systemic problems plaguing Indigenous communities can be broken.

The CBA has advocated for changes to services that might include:

- Meaningful, transparent action by the Government of Alberta to advance the Calls to Action in the Truth and Reconciliation Report, including those related to Alberta's Courts and correctional services.
- A commitment of funding and resources to the services necessary to enhance the circumstances of disadvantaged children both on and off reserve.
- Amendments to the Child Youth and *Family Enhancement Act* to take into consideration not only a child's Indigenous heritage but a family's history of exposure to the damages caused by residential schools and the general disadvantages that First Nations Communities experience living on reserve.
- Greater availability of culturally appropriate alternatives to traditional incarceration, such as aboriginal healing lodges.
- An end to solitary confinement.
- Flexibility to accommodate issues that are over-represented in Indigenous communities, such as Fetal Alcohol Spectrum Disorder.
- Culturally-relevant programming for incarcerated Indigenous people.

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