

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

www.lrwc.org; lrwc@portal.ca; Tel: +1 604 738 0338; Fax: +1 604 736 1175

BC legal aid gaps violate international law

Lawyers' Rights Watch Canada calls for independent legal aid body

Press release

For immediate release

22 November 2018 - Lawyers' Rights Watch Canada (LRWC) today told the government of British Columbia that BC's inadequate legal aid system fails to measure up to international law obligations to ensure everyone's equality before the law.

LRWC's [submission](#) today to BC's legal aid services review says legal aid in BC currently "falls so short of international human rights law obligations that the legitimacy of BC's legal system is in question." The submission cites UN human rights bodies' regular criticism of legal aid in BC from 2006 to July 2018.

Lois Leslie, author of several LRWC publications on legal aid, pointed out that equal protection of the law is a fundamental human right protected by international treaties binding on Canada. "By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. BC's current legal aid legislation is in violation of these undertakings," said Ms. Leslie.

"International treaties ratified by Canada are binding on all levels of government in their areas of responsibility," said LRWC's UN Liaison coordinator, Catherine Morris. "That means BC has international law obligations to ensure everybody's right of equal access to the law and to protection of their rights in courts and tribunals. BC has an international law duty to guarantee the right of adequate access to justice for every child, woman and man regardless of their means, background, or circumstances. That applies to all cases, including family and civil law cases," said Ms. Morris.

Independence of legal aid administration and service delivery is critical

LRWC's submission emphasizes that the administration of legal aid must be independent of government control and legal aid services providers must be guaranteed the right to carry out their work on behalf of their clients "effectively, freely, and independently without intimidation, hindrance, harassment, or improper interference."

Independence is key, says lawyer Michael Mulligan. "In addition to the profound underfunding of legal aid in BC, the Legal Services Society, since 2002, has lacked the independence from

government control required by international law. Because the government is responsible for the prosecution of criminal cases, and litigation with respect to the apprehension of children, it is not appropriate, or consistent with international law obligations, for the government to control the operation of the Legal Services Society by appointing the majority of board members and dictating how the organization is to provide services,” said Mr. Mulligan.

“Independence is critical both to the administration of legal aid and to the delivery of legal aid services,” Ms. Morris emphasized. “Independence of those providing legal services to their clients in all matters – criminal, civil and administrative – is fundamental to the rule of law. Legal aid clients are equally entitled to independent legal representation.”

LRWC recommends a new statutory body, “independent of executive control, that is mandated and resourced to provide an explicit right to adequate legal aid in criminal, civil matters, and administrative matters where legal assistance is indispensable for a fair hearing to determine rights by a court or tribunal.”

“When rights are at issue and legal aid is denied or inadequate, the resulting inequality, discrimination and unfairness undermines the legitimacy the legal system,” said LRWC Executive Director Gail Davidson. “As they say in Colombia, *sin abogados, no hay justicia* -- without lawyers, there is no justice.”

For the full text of LRWC’s submission see: <https://www.lrwc.org/?p=13808>.

Contact:

Catherine Morris,
Email: research@lrwc.org
Tel: 250-477-0129

Michael Mulligan
mulligan@mtplaw.com
Tel: 250-480-4040

Gail Davidson,
Email: lrwc@portal.ca
Tel: 604-736-1175