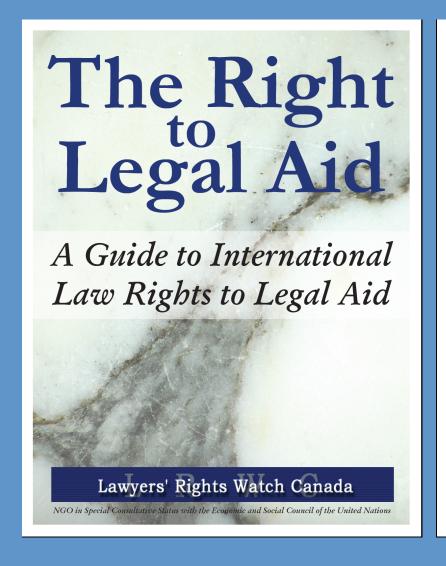
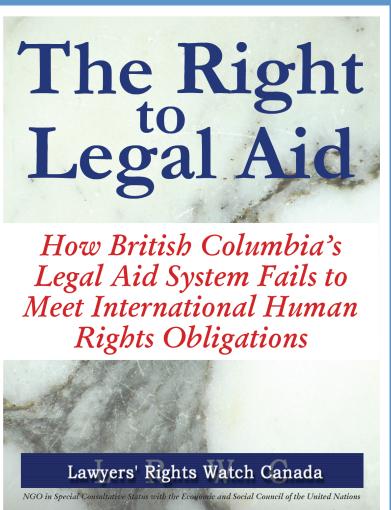


Legal Aid: A Right or a Privilege?





Legal Aid: A Right or a Privilege?

- Sources of international law right to legal aid
- Scope of international law right to legal aid
- Canada's duty to implement international law rights to legal aid
- Right to legal aid in British Columbia

"Legal aid is an essential component of a fair and efficient justice system founded on the rule of law."

(Report of the United Nations Special Rapporteur on the Independence of judges and lawyers, Gabriela Knaul, 15 March 2013.)

Sources of right to legal aid in international law – <u>explicit</u> references

United Nations instruments:

- International Covenant on Civil and Political Rights (ICCPR), s. 14(3)(d)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), s. 18(3)(d)
- Basic Principles on the Role of Lawyers, para. 6
- Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, para. 17(2)
- Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
- Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), para. 15.1 (right to apply for free legal aid "where there is provision for such aid in the country")
- Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), para. 18(a) (right to apply for free legal aid "where such aid is available")
- UN Standard Minimum Rules for the Treatment of Prisoners, para. 93 (right to apply for free legal aid "where such aid is available").

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Sources of right to legal aid in international law – explicit references

Regional instruments:

- European Convention on Human Rights (ECHR), Article 6(3)(c).
- The Charter of the Organization of American States (OAS Charter), Article 45(i)
- American Convention on Human Rights (ACHR), Article 8(2)(e).
- The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (African Guidelines)
- Various Council of Europe recommendations, resolutions and directives
- The Hague Convention on Civil Procedure, Article 20(1)

UN Principles and
Guidelines on Access to
Legal Aid in Criminal
Justice Systems

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Sources of right to legal aid in international law – implied right

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- Right to non-discrimination and to equality before the law
- Right to an effective remedy

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- Criticism by international treaty bodies
 - failure to provide effective access to justice
 - denial of fair process
 - discrimination

- Criminal Code of Canada
- Legal Services Society Act, SBC 2002, c. 30
- Canadian Jurisprudence

- Legal Services Society Act
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- Canadian (BC) legal aid jurisprudence
 - Little reference to international law
 - No general constitutional right to counsel
 - ■No right to legal aid at all stages
 - Civil right limited to violations of right to liberty and security of the person

- Canadian (BC) legal aid jurisprudence
 - No general constitutional right to counsel
 - Right to a fair trial and right to liberty and security of the person
 - Right to equality
 - ■Right to a remedy

Charter of Rights and Freedoms, s. 10 (b):

Everyone has the right on arrest or detention

. . .

(b) to retain and instruct counsel without delay and to be informed of that right;

- Canadian (BC) legal aid jurisprudence
 - No general constitutional right to counsel
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 - Right to equality
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 - No general constitutional right to counsel
 - Right to a fair trial and right to liberty and security of the person - Charter, sections 7 and II(d)
 - Right to equality
 - Right to a remedy

Charter of Rights and Freedoms, s. II (d):

Any person charged with an offence has the right

• • •

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

- Canadian (BC) legal aid jurisprudence
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 - Right to a fair trial and right to liberty and security of the person - Charter, sections 7 and II(d)
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Charter of Rights and Freedoms, s. 7:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

- Canadian (BC) legal aid jurisprudence
 - No general constitutional right to counsel
 - Right to a fair trial and right to liberty
 - Right to equality Charter, sections 15 and
 - ■Right to a remedy

Charter of Rights and Freedoms, s. 15 (1):

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination....

- Canadian (BC) legal aid jurisprudence
 - No general constitutional right to counsel
 - Right to a fair trial and right to liberty and security of the person
 - Right to equality
 - Right to a remedy Charter, section 24

Charter of Rights and Freedoms, s. 24 (1):

Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Conclusions and Recommendations

- Legal aid in BC falls short of Canada's obligations to provide legal aid under international human rights law.
- LRWC recommends the enactment of legislation creating a provincial duty to ensure the right to legal aid in civil, administrative and criminal law matters.