



JUSTICE REFORM FOR BC

Priorities for the Attorney General and Solicitor General of BC

Fall 2017

Our organizations are dedicated to strengthening our justice system, to the advancement of human rights, and to ensuring that the principles of equality, freedom and human dignity are respected.

We have joined together to set out a number of priorities for reform and improvement of the justice system in British Columbia. Many aspects of the justice system have been severely under-resourced, many portions of the justice system remain inaccessible and many aspects of the system are designed in a way that results in unfairness and the violation of people's rights. While the past years have seen a number of notable reforms, including change to the family law system, reforms to the civil justice system and to our court system generally, changes in how the justice system approaches missing persons cases, and advancements in police accountability, much more needs to be done to advance justice and fairness in British Columbia.

The priorities identified below fall primarily under the responsibilities of the Attorney General and the Solicitor General. A commitment to justice and fairness, however, must animate the whole of the government. We believe that the well-being and human rights of British Columbians – including those most marginalized by our society – depends on a strong justice system that works in an integrated and collaborative fashion with the other pillars of our public system.

The organizations authoring this agenda share expertise in the way the justice system operates to both support and undermine human rights and dignity, and how it could be improved to better support all of those impacted by it, including our most marginalized citizens. Although we do not share the same mandate, and therefore do not each necessarily have specialized knowledge or a position on every individual recommendation listed below, we share a commitment to improving the justice system and furthering respect for human rights. Together, we envision a justice system in BC based on the fundamental principles of equality, freedom and respect for human dignity.

To this end, our justice reform priorities for the new provincial government include the following:

1. Work closely with Indigenous Nations to implement the United Nations Declaration on the Rights of Indigenous Peoples and the calls to action of the Truth and Reconciliation Commission, and to respect Aboriginal Rights and Title.
2. Ensure genuine **access to justice** by strengthening legal aid and legal services. Examples of specific and necessary actions include:
 - a. Expand funding for family, criminal, mental health, poverty, and refugee legal aid (the latter in collaboration with your federal counterparts), and create a mixed model of legal service delivery, including tariff services, legal aid clinics, and funding for in-house counsel located in front line service delivery organizations.
 - b. Eliminate the Legal Services Tax for legal services delivered to low to middle income earners and commit to spending all proceeds of the tax on delivering legal aid services.
 - c. Adapt the BC government's existing loan forgiveness program for recent law school graduates who agree to practise in a high-needs rural community for five years, as well as for those who practice in legal aid clinics or who take a significant number of legal aid files on a contract basis.
 - d. Expand funding for community-based and court-based victim services, as well as supporting regional coordination committees for women's safety.
 - e. Extend funding for legal services to all people whose liberty is being infringed, including under the following Acts: the *Adult Guardianship Act*, *Mental Health Act*, *Patients Property Act*, *Health Care (Consent) and Care Facility (Admission) Act*.
3. Ensure rule of law and government **compliance with existing protections** for rights and dignity, including outstanding inquiry recommendations. Examples of specific and necessary actions include:
 - a. Ensure measures are in place to ensure the compliance of provincial legislation, regulation and government action with the *Canadian Charter of Rights and Freedoms*, constitutionally-protected Aboriginal and Treaty Rights, and Canada's international human rights obligations.
 - b. Implement all recommendations of the provincial Missing Women Commission of Inquiry (the Oppal Inquiry), and ensure full and active participation of the government and relevant provincial agencies in the National Inquiry into Missing and Murdered Indigenous Women and Girls.
 - c. Work with the Ministry of Children and Family Development to ensure it acts in accordance with s.2(c) of *Child, Family and Community Service Act* re providing support for families instead of separating them (including supporting mothers with disabilities to parent).

4. Ensure that **provincial policing** respects the rule of law and the human dignity and rights of all people, and take systemic action to eliminate racial discrimination against First Nations and racialized minorities by police, both in the RCMP and municipal police services. Examples of specific and necessary actions include:
 - a. Enhance the accountability of law enforcement in British Columbia through amendments to the *Police Act*:
 - i. allowing the Office of the Police Complaint Commissioner to initiate its own systemic investigations and/or hearings,
 - ii. expanding the mandate of the Independent Investigations Office so that it has jurisdiction over allegations of sexual offences committed by police officers
 - iii. clarifying liability for the misconduct of police officers
 - iv. ensuring that police agencies cooperate and disclose documents to municipalities, the Police Complaint Commissioner, and the Independent Investigations Office when the agencies and officers are the subject of an investigation or a civil lawsuit
 - v. ensuring that witness officers have a duty to cooperate with the Police Complaints Commissioner and Independent Investigations Office
 - vi. Following the recommendations of the Tulloch report in Ontario, commencing a process of change in police accountability in B.C. to shift investigations of misconduct within the jurisdiction of the Police Complaint Commissioner from investigation by police departments to investigation by the Commissioner.
 - b. Improve training for police to reduce police-involved deaths among people experiencing a mental health crisis.
 - c. Improve training for police, Crown and judicial responses to sexual assault, having regard to the unique nature of sexual assault, and the myths and stereotypes about sexual assault, in order to repair complainants' relationship with the criminal justice system and encourage reporting of sexual assaults
 - d. Ensure that police forces throughout BC take a harm reduction approach when engaging people who use drugs and, more specifically, ensuring that that policing practice conforms with the *Good Samaritan Drug Overdose Act*;
 - e. Direct police forces throughout BC to follow the lead of the Vancouver Police Department by committing to a harm reduction approach through the adoption of policies and practices ensuring that:
 - i. Targeting and arresting people who use drugs can have significant negative public health consequences and, as such, simple possession of small amounts of illicit substances is a low law enforcement priority; and
 - ii. A public health approach is prioritized over the enforcement of Canada's drug possession laws at 'overdose prevention sites' and in other scenarios where supervised consumption is taking place for the purposes of preventing and responding to overdoses.

- iii. The safety of sex workers is of paramount importance and, as such, consensual adult sex work is not a law enforcement priority in BC.
 - f. Promote public safety by encouraging municipal police and the RCMP to implement strong Access Without Fear policies to ensure that victims of crime and witnesses feel safe to come forward to police.
 - g. Create an advisory committee of sex workers and other experts to guide British Columbia in the development of laws, policing, and law enforcement practices to support health, safety, and human rights of sex workers.
 - h. Conduct an immediate review of the *Civil Forfeiture Act*, restore court oversight in the civil forfeiture process and ensure that the burden is on the government to justify property seizures, consistent with the rule of law.
5. Ensure the **family law system** respects and promotes the rights, safety and wellbeing of women and children. Examples of specific and necessary actions include:
- a. Provide adequate funding for family law mediation so public services are available where appropriate.
 - b. Collaborate with your federal counterparts to develop a Unified Family Court.
 - c. Reduce wait times for family justice counselors to conduct psychological assessments of parents (as per s.211 of the *Family Law Act*) and views of the child reports.
 - d. In consultation with anti-violence agencies in the community, develop binding and consistent standards governing all assessors in the preparation of reports under s.211 of the *Family Law Act*, including limiting the use of psychological testing in parenting assessments and mandating consideration of family violence. Further, ensure that all assessors have comprehensive and community-informed training on the dynamics of family violence.
 - e. Revise the *Family Law Act* to include a rebuttable presumption that protection orders will be in place for at least one year, and ensure enforcement of protection orders.
6. Reform the **provincial correctional system** to ensure the just and humane treatment of those who are incarcerated, promoting rehabilitation and reintegration of prisoners into society. In particular, there is an urgent need to end the over-incarceration of Indigenous people. Examples of specific and necessary actions include:
- a. Appoint an Independent Advisor on Corrections Reform, as exists in Ontario, to identify opportunities for corrections reform and advise government implementation of those reforms.
 - b. Commit to the elimination of over-representation of Indigenous people in prison, including curbing the rising over-incarceration of Indigenous women, for example by:
 - i. Providing stable funding for alternatives to incarceration.

- ii. Ensuring that Gladue factors are incorporated into provincial corrections decision-making to the extent that it may not already be.
 - iii. Increasing funding to ensure timely production of Gladue reports.
 - c. Create adequate and appropriate prison facilities for women and youth on Vancouver Island.
 - d. With the ultimate goal of abolishing the use of solitary confinement in provincial correctional facilities, in the short term, the province should adopt the UN Standard Minimum Rules on the Treatment of Prisoners (“Mandela Rules”) relating to solitary confinement including an absolute prohibition of solitary confinement in excess of 15 days. Further, the province should enact a robust independent review process for the use of solitary confinement in provincial institutions. Finally, the province should immediately prohibit solitary confinement of prisoners with mental illnesses or disabilities and for women and minors.
 - e. Fund and implement needle distribution programs, heroin-assisted treatment, and injectable hydromorphone therapy in provincial correctional centres.
7. Ensure the realization and fulfilment of the **human rights** of all British Columbians by enforcing the *Human Rights Code* and educating the public about their rights and obligations to respect the human rights of all. Examples of specific and necessary actions include:
- a. Expand funding for legal supports for those filing and pursuing human rights complaints across the province, including in remote areas and Indigenous communities, as well as for systemic advocacy, including important judicial reviews and appeals.
 - b. Ensure that the Human Rights Tribunal is adequately resourced.
 - c. Create a Human Rights Commission to ensure that there is a public body dedicated to fulfilling a vital educational and systemic advocacy role in fostering human rights awareness and preventing discrimination in employment, accommodation, services and other areas.
 - d. Amend the *Human Rights Code* to extend the statutory timeline for filing a complaint, to allow a complaint to proceed where the complainant is dying or has just died, and to add social condition as a further protected ground of discrimination.
8. Protect and strengthen the institutions and legal framework of **democracy**. Examples of specific and necessary actions include:
- a. Reform the laws dealing with information rights, including long-needed reforms to access to information. Such reforms include:
 - i. Mandatory privacy breach notification
 - ii. A positive ‘duty to document’ for public bodies

- iii. A prohibition on public bodies unauthorized destruction of records
 - iv. Automatic fee waivers when a public body fails to meet its legislated timeline for responding to requests
 - b. Reform our electoral system to ensure that every vote counts.
 - c. Follow the example of other Canadian jurisdictions by amending the *Election Act* to exclude expenditures below \$500 from the regulations on third-party advertising.
 - d. Enact anti-SLAPP legislation, such as exists in Ontario, to protect the freedom of expression of those who participate in the political life of their communities, and to stop people from being intimidated into silence when they speak out on matters of public interest (“SLAPP” is an acronym for a strategic lawsuit against public participation), and ensure that provincial law and policy related to injunctions and contempt of court in the context of political activity operate in a way that is consistent with the freedoms of expression, assembly and association.
- 9. Ensure the just treatment of people with **mental illnesses and addiction**. Examples of specific and necessary actions include:
 - a. Pursue serious action and find effective and rights-respecting means to address the overdose crisis, including for example:
 - i. Set provincial standards to prevent the enactment of anti-harm reduction zoning and bylaws.
 - ii. Reform the drug treatment court process so as to not require a guilty plea to access the drug treatment program.
 - iii. Expand funding for drug-user led groups and organizations.
 - b. Commission an independent, systemic review of provincial legislative mechanisms for detention and rights deprivations for people with mental disabilities, including but not limited to the following necessary reforms:
 - i. Replace the deemed consent provisions of the *Mental Health Act* and the consent override provisions of the *Health Care (Consent) and Care Facility (Admission) Act* and the *Representation Agreement Act* with a legislative mechanism that protects and respects the patient’s autonomy in making health care decisions and allows the patient to include trusted family members and friends in their treatment and recovery process, even if they are involuntarily detained.
 - ii. Ensure that patients detained under any provincial legislation are provided with independent legal advice rather than rights information from medical staff without legal training.

- iii. Create legislative standards regulating the use of isolation in mental health facilities and the use of physical, mechanical, environmental, and chemical restraints against mental health patients to ensure compliance with *Charter* rights. Likewise, create legislative standards regulating the scope and nature of conditions of extended leave under the *Mental Health Act*.
 - iv. Create an independent body or empower the Mental Health Review Board with the jurisdiction to review: a patient's capacity to consent to treatment; the appropriateness of treatment; the use of restrictions and restraints on a patient; the conditions of extended leave; and enforcement of standards. Such a body would provide recourse to patients whose liberty has been restricted and could ensure that significant rights deprivations are procedurally fair, as minimally intrusive as possible, and respectful of *Charter* rights.
- 10. In collaboration with the many other Ministries responsible, address **poverty and economic inequality** through the design and implementation of a comprehensive poverty reduction strategy. Examples of specific and necessary actions include:
 - a. Amend the *Employment Standards Act* to allow for leaves of absence and flexible work conditions for women fleeing violence, and create paid sick leave and caregiving leave provisions
 - b. With guidance from housing advocates, amend the *Residential Tenancy Act* and increase resources to the Residential Tenancy Branch. In particular, amendments should include:
 - i. addressing vacate clauses to close the loopholes on rent control and evictions,
 - ii. protection for tenants with pets,
 - iii. creating a registry for eviction notices where landlords register/file all notices before serving them on tenants,
 - iv. amending notice periods, and increasing compensation to tenants for evictions for landlord's use and renovations.
 - c. Amend the *Employment and Assistance Act* and *Employment and Assistance for Persons with Disabilities Act* to better support women's financial independence. The current definitions of "dependent" and "spouse" put women at heightened risk of relationship violence, undermine their independence, and interfere with their ability to enter new relationships. Amendments should:
 - i. Clarify that only relationships that display significant financial dependence or interdependence are relevant for the purposes of income and disability assistance eligibility;

- ii. Remove financial interdependence by default on the basis that a person indicates a parental role for a child unless a spousal relationship can be established;
- iii. Recognize the legal right of spouses to separate but live in the same residence, consistent with family law;
- iv. Alter the length of cohabitation before a couple may be deemed “spouses” to align with parallel provisions in BC’s *Family Law Act* and other provincial legislation;
- v. Provide guidance on how separated spouses can live together, consistent with BC’s *Family Law Act*; and
- vi. Provide clarification on the reconciliation provisions in the current legislation consistent with BC’s *Family Law Act*.

