

In the Supreme Court of British Columbia

Between:

The Canadian Bar Association

Plaintiff

and:

Her Majesty the Queen in Right of the Province of British Columbia,
The Attorney General of Canada, and
Legal Services Society

Defendants

STATEMENT OF CLAIM

Introduction and Overview

1. Legal aid is the means by which Canadian Governments ensure that Poor People (as defined in para. 8) are equal beneficiaries of the rule of law and enjoy the equal benefit and protection of the law. However, in British Columbia, publicly funded and provided civil legal aid ("BC Civil Legal Aid") is characterized by exclusions and severe restrictions that result in inadequacies that frustrate the goal of civil legal aid.

2. The inadequacies in BC Civil Legal Aid are particularly pronounced in the areas of family law, poverty law, and immigration and refugee law, and effectively deny access to justice to people who cannot afford legal counsel in matters that threaten their fundamental interests as follows:

- (a) life;
- (b) liberty;
- (c) livelihood;
- (d) equality;

- (e) health;
- (f) housing;
- (g) safety;
- (h) security; and
- (i) sustenance.

(collectively, "Fundamental Interests").

3. BC Civil Legal Aid does not comply with the Canadian Constitution and obligations under international human rights law because it:

- (a) is inconsistent with the rule of law, a foundational constitutional principle which guarantees:
 - (i) meaningful access to the courts; and
 - (ii) equal access to the courts;
- (b) is inconsistent with the norm of constitutional equality, a foundational constitutional principle which further guarantees equal and meaningful access to the courts;
- (c) undermines independence of the judiciary, a foundational constitutional principle;
- (d) violates s.7 of *The Canadian Charter of Rights and Freedoms* (the "Charter")
- (e) violates s.15(1) of the *Charter*;
- (f) violates s.28 of the *Charter*;
- (g) violates s. 36(1) of the *Constitution Act, 1982*; and
- (h) is inconsistent with Canada's obligations under international human rights law.

4. BC Civil Legal Aid results in a systemic denial of access to justice to, and systemic discrimination against, Poor People who cannot afford legal assistance and representation in matters that threaten their Fundamental Interests.

5. The Canadian Bar Association ("CBA") brings this claim in the public interest on behalf of Poor People who are denied access to justice in matters where their Fundamental Interests are threatened by the unconstitutional inadequacies in BC Civil Legal Aid.

The Parties

6. The CBA is a professional organization that was formed in 1896 and incorporated by a Special Act of Parliament on April 15, 1921 with a head office at 500-865 Carling Avenue Ottawa, Ontario, K1S 5S8. Approximately two thirds of all practising lawyers in Canada belong to the CBA. The CBA has branch offices in every province and territory in Canada including British Columbia.

7. The mandate of the CBA includes the improvement of the administration of justice; the improvement and promotion of access to justice; and the promotion of equality in the justice system. This mandate includes addressing the inadequacies of legal aid and the problems of Poor People who are denied access to justice. Poor People directly affected by inadequate legal aid do not have the means to bring a systemic challenge to BC Civil Legal Aid. There is a general public interest in a justice system that ensures equal access to all people in accordance with the Canadian Constitution.

8. The CBA brings this claim on behalf of people living on low incomes as defined by Statistics Canada Low Income Cut-offs ("LICOs") and who lack sufficient means to obtain proper advice and to obtain redress, including legal representation if necessary, in matters where their Fundamental Interests are threatened. ("Poor People").

9. The defendant Her Majesty the Queen in Right of the Province of British Columbia (the "Provincial Crown") has an address for service of legal process care of the Deputy Attorney General of British Columbia at 11th Floor, 1001 Douglas Street, Victoria, British Columbia, V8V 1X4.

10. The defendant The Attorney General of Canada (the "Federal Crown") has an address for service of legal process care of the Deputy Attorney General of Canada at the Justice Building, 239 Wellington Street, Ottawa, Ontario, K1A 0H8.

11. The defendant Legal Services Society ("LSS") has an address for service of legal process care of the Executive Director, 510 Burrard Street, Suite 400, Vancouver, British Columbia, V6C 3A8.

12. The Provincial Crown and the Federal Crown are jointly responsible for the provision of BC Civil Legal Aid. The LSS administers BC Civil Legal Aid on behalf of the Provincial and Federal Crowns.

Background Material Facts

The Vulnerability of Poor People

13. Poor People are vulnerable because:
- (a) they disproportionately belong to societal and/or demographic groups that have historically been disadvantaged and continue to be discriminated against, such as:
 - (i) women;
 - (ii) Aboriginal people;
 - (iii) racial or visible minorities;
 - (iv) people with disabilities;
 - (v) immigrants and/or refugees; and
 - (vi) people with language and culture barriers;
 - (b) they lack economic security and must struggle to ensure that their basic needs are met first at the expense of all other interests;
 - (c) they are often dependent on others, including governments, to meet their basic needs;

- (d) they are stigmatized, blamed, stereotyped, excluded and marginalized;
- (e) they often have lower levels of education than people who are not poor;
- (f) they are often illiterate; and
- (g) they encounter discrimination in accessing housing, employment and income support programs.

14. The causes and consequences of Poor People's vulnerability act together to exacerbate and entrench their poverty.

15. Poor People experience great difficulty navigating the Canadian judicial and quasi-judicial systems.

The Legal Aid Needs of Poor People

16. Poor People experience legal problems that are:

- (a) multi-dimensional in nature;
- (b) frequent;
- (c) not necessarily confined to discrete disputes; and
- (d) systemic.

17. Poor People experience legal problems:

- (a) accessing work and/or resolving disputes with public and private income support programs including:
 - (i) social assistance or welfare;
 - (ii) disability benefits;
 - (iii) employment insurance;
 - (iv) Canada Pension Plan benefits;
 - (v) Old Age Pension Plan benefits;
 - (vi) workers' compensation; and

- (vii) work permits for refugees;
- (b) accessing housing, including housing disputes:
 - (i) with landlords;
 - (ii) with residential housing authorities; and
 - (iii) pertaining to foreclosures.

18. Poor People are subject to extra layers of regulation as compared to people who do not live in poverty. For example, embedding social assistance in legislation and regulations greatly increases the legal needs of Poor People in the interpretation and application of such legislation and regulations.

19. Income support programs have complex bureaucracies and regulatory schemes. Obtaining benefits to which a person is entitled under law may involve complex judicial or quasi-judicial proceedings. Similar complexities frequently arise regarding access to housing. Administrators of income support programs, landlords and residential housing authorities are usually represented by counsel in any legal dispute that arises.

20. In addition, Poor People are exposed to the same type of civil legal problems as people who are not living in poverty but with greater frequency because of inherent vulnerabilities caused by their poverty.

History of Legal Aid

21. The recognition that the integrity of the justice system requires that the state provide the means to ensure equal access to justice is rooted in the Magna Carta which declared in 1215:

“To no one will we sell, to no one will we refuse or delay, right or justice.”

22. BC Legal Aid has been provided through a variety of methods since approximately 1970.

23. From 1979 until 2002, the *Legal Services Society Act*, R.S.B.C. 1979, c.227 (“Former LSS Act”) guaranteed a minimum level of legal aid to Poor People by:

- (a) mandating that services ordinarily provided by a lawyer were to be afforded to individuals who would not otherwise receive them because of financial or other reasons;
- (b) mandating that education, advice and information about law were to be provided for the people of British Columbia; and
- (c) requiring the LSS to ensure that legal services were to be available in the following circumstances:
 - (i) criminal proceedings that could lead to imprisonment;
 - (ii) civil proceedings that could lead to confinement or imprisonment;
 - (iii) domestic disputes that affected the individual's physical or mental safety or health or that of the individual's children;
 - (iv) legal problems that threatened:
 - (1) the individual's family's physical or mental safety or health;
 - (2) the individual's ability to feed, clothe or provide shelter for himself or herself and the individual's dependents; or
 - (3) the individual's livelihood.

24. BC Civil Legal Aid was substantially changed in 2002 with the introduction of the *Legal Services Society Act*, S.B.C. 2002, Ch.30 ("LSS Act"), which radically altered and reduced the provision of BC Civil Legal Aid.

25. The combination of a change in the method of Federal Crown funding of civil legal aid and cutbacks of all legal aid funding by both the Federal Crown and Provincial Crown has resulted in reductions in the funding of BC Civil Legal Aid since approximately 1995. In the same time frame, civil legal matters have become increasingly complex and expensive in British Columbia. As a result, there is less access to BC Civil Legal Aid for Poor People who are faced with more difficult and complex legal problems.

The Role of the Federal Crown

26. The Federal Crown is obligated to provide legal aid in civil matters for the following reasons:

- (a) the Federal Crown possesses jurisdiction in unemployment insurance matters pursuant to s.91(2A) of the *Constitution Act, 1867*;
- (b) the Federal Crown possesses jurisdiction in immigration and refugee matters pursuant to s.91(25) of the *Constitution Act, 1867*;
- (c) the Federal Crown possesses jurisdiction in matters pertaining to marriage and divorce pursuant to s.91(26) of the *Constitution Act, 1867*;
- (d) the Federal Crown possesses jurisdiction in matters pertaining to old age pensions pursuant to s.94A of the *Constitution Act, 1867*;
- (e) the Federal Crown has joint responsibility to provide essential public services pursuant to s.36(1) (c) of the *Constitution Act, 1982*;
- (f) the Federal Crown possesses spending power pursuant to ss.91(13), 91(1A) and 106 of the *Constitution Act, 1867* which permits it to attach conditions to transfer payments to the Provincial Crown and allows for cost sharing arrangements entered into with the Provincial Crown;
- (g) the Federal Crown has responsibility for Peace, Order, and Good Government of Canada pursuant to s.91 of the *Constitution Act, 1867*;
- (h) the Federal Crown has responsibility to ensure equal access to the courts and to protect the unwritten foundational constitutional principles of the rule of law, the norm of equality and the independence of the judiciary;
- (i) the Federal Crown has responsibility to ensure that *Charter* rights are protected and can be enforced; and
- (j) the Federal Crown has responsibility to fulfill Canada's obligations under international human rights law.

27. From approximately 1966 to 1996, the Federal Crown contributed to BC Civil Legal Aid through the Canada Assistance Plan pursuant to the *Canada Assistance Plan Act*, R.S.C. 1970, c. C-1. Under the Canada Assistance Plan, cost-sharing for civil legal aid was open-ended, with the size of the federal contribution calculated as 50% of eligible expenditures on civil legal aid in a given year.

28. From 1996 onwards, the Federal Crown's contribution to BC Civil Legal Aid has been made through a block fund transfer to the provinces to support post-secondary education, social assistance and social services under the Canada Health and Social Transfer and/or the Canada Social Transfer pursuant to the *Federal Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

29. At present, the Federal Crown funds BC Civil Legal Aid for immigration and refugee matters through a bilateral agreement with the Provincial Crown.

30. The Federal Crown has failed to fulfill its BC Civil Legal Aid obligations, particulars of which include:

- (a) the Federal Crown has severely reduced the funding for civil legal aid;
- (b) the Federal Crown has failed to stipulate minimum national standards for civil legal aid;
- (c) the Federal Crown does not stipulate mandatory areas of civil legal aid coverage;
- (d) the Federal Crown does not adequately stipulate how immigration and refugee legal aid funding shall be spent;
- (e) the Federal Crown does not require that the Provincial Crown expend any of the funds intended for civil legal aid on civil legal aid; and
- (f) the Federal Crown no longer tracks or reports on how much it contributes to civil legal aid nor is it able to account for its contribution.

The Role of the Provincial Crown

31. The Provincial Crown is obligated to provide legal aid in civil matters for the following reasons:

- (a) the Provincial Crown possesses jurisdiction for property and civil rights in the province pursuant to s.92(13) of the *Constitution Act, 1867*;
- (b) the Provincial Crown possesses jurisdiction for the administration of justice in the province pursuant to s.92(14) of the *Constitution Act, 1867*;
- (c) the Provincial Crown has joint responsibility to provide essential public services pursuant to s.36(1) (c) of the *Constitution Act, 1982*;
- (d) the Provincial Crown has responsibility to ensure equal access to the courts and to protect the independence of the judiciary pursuant to unwritten foundational constitutional principles;
- (e) the Provincial Crown has responsibility to ensure that *Charter* rights are protected and can be enforced; and
- (f) the Provincial Crown has responsibility to fulfill Canada's obligations under international human rights law.

32. The Provincial Crown has failed to fulfill its BC Civil Legal Aid obligations. Particulars of its failure include:

- (a) the Provincial Crown has severely reduced the funding for civil legal aid;
- (b) the Provincial Crown has imposed restrictive financial eligibility requirements such that many Poor People are ineligible to receive any civil legal aid;
- (c) the Provincial Crown has restricted coverage for legal aid such that matters that threaten the Fundamental Interests of Poor People are excluded from civil legal aid coverage;
- (d) the Provincial Crown has restricted legal aid services such that Poor People who do receive civil legal aid do not receive meaningful legal aid

in cases where the service provided does not include legal representation;
and

- (e) the Provincial Crown has restricted the amount of counsel time and/or services provided such that the legal representation provided to Poor People is inadequate.

Overlapping Crown Roles and Responsibilities

33. There is an overlap in the federal and provincial spheres of constitutional jurisdiction and obligations to provide legal aid.

34. Due to this overlap, the Federal Crown and Provincial Crown are obligated to act jointly and severally to provide BC Civil Legal Aid that is consistent with written and unwritten provisions of the Canadian Constitution.

The Role of LSS

35. The Federal Crown and the Provincial Crown provide BC Civil Legal Aid solely through the LSS.

36. The LSS is an agent of the Provincial Crown and/or the Federal Crown.

37. All Federal Crown funding to the LSS for BC Civil Legal Aid flows through the Provincial Crown and forms part of the funding provided to LSS. The Federal Crown has delegated its responsibilities for civil legal aid to the Provincial Crown which has in turn delegated these responsibilities to LSS.

38. The ability of LSS to provide BC Civil Legal Aid is restricted by s.10 of the LSS Act and in particular its capacity is restricted to:

- (a) funding provided by the Provincial Crown at the discretion of the Provincial Crown; and
- (b) funds the LSS generates other than from the Provincial Crown.

39. The LSS carries out a governmental function and by its very nature is part of the apparatus of the Provincial Crown that controls it. In carrying out its mandate, the LSS is acting in furtherance of the specific governmental legal aid policies of the Provincial Crown and the Federal Crown.

40. In carrying out its duties on behalf of the Federal and Provincial Crowns, the LSS has failed to fulfill its legal obligations, particulars of which include:

- (a) LSS has imposed restrictive financial eligibility requirements such that many Poor People are ineligible for any civil legal aid;
- (b) LSS has restricted coverage for legal aid such that matters that threaten the Fundamental Interests of Poor People are excluded from civil legal aid coverage;
- (c) LSS has restricted legal aid services such that Poor People who do receive legal aid do not receive meaningful civil legal aid where the service provided does not include legal representation; and
- (d) LSS has restricted the amount of counsel time and/or services provided such that the legal representation provided to Poor People is inadequate.

Inadequacies in BC Civil Legal Aid

41. BC Civil Legal Aid is inadequate in the following ways:

- (a) matters that engage Fundamental Interests are excluded from BC Civil Legal Aid coverage, either expressly or by omission from inclusion;
- (b) financial eligibility guidelines for BC Civil Legal Aid are too restrictive in that they exclude many Poor People; and
- (c) where a matter is covered by BC Civil Legal Aid, the services provided and litigation expenses, including disbursements, are too restrictive.

42. Inadequacies in BC Civil Legal Aid are the result of the failures of the Federal Crown, the Provincial Crown and LSS to discharge their obligations to provide BC Civil Legal Aid.

43. BC Civil Legal Aid is broadly inadequate in many areas and these inadequacies are profoundly experienced in the following areas where Fundamental Interests of Poor People are engaged:

- (a) family law;
- (b) poverty law; and
- (c) immigration and refugee law.

44. Each of these areas of law involves complex and sophisticated substantive law and procedural rules which cannot be accessed in a meaningful way in the absence of assistance from a lawyer. Further particulars of the inadequacies in BC Civil Legal Aid in these areas of law follow.

Family Law

45. Many family legal issues and disputes are excluded from coverage under BC Civil Legal Aid. As a result, many Poor People proceed without legal representation in family law disputes each year.

46. Where coverage for a family law matter is provided, the legal aid services provided are severely restricted and Poor People receive inadequate representation due to:

- (a) time limits placed on the amount of funded legal aid representation; and
- (b) limits placed on aspects of the case for which funded legal aid representation will be provided.

47. Unequal access to justice for Poor People results in the following inappropriate, unfair and unjust circumstances in family law proceedings, especially where the litigants are unrepresented or receive inadequate representation:

- (a) they do not understand the legal issues involved and their legal rights;
- (b) they must self-represent in court, and/or in mediations and negotiations;
- (c) they are unable to articulate their positions;

- (d) they may agree to inappropriate and unworkable custody and access arrangements, or inadequate spousal or child support due to their ignorance of their rights or their inability to articulate them;
- (e) they may intentionally or unintentionally abandon their rights with no remedy; and
- (f) courts make orders that are flawed because of the inadequacies in the case presented.

48. The risks and the harm associated with the inadequacies in BC Civil Legal Aid in family law matters are particularly acute where the opposing party is represented by counsel.

49. These problems are compounded for Poor People who are also Aboriginal or who face language or cultural barriers, who are disabled, or who face racism, homophobia and other forms of discrimination.

50. Women are disproportionately poor compared to men and are disproportionately reliant on legal aid in family law matters. Therefore, inadequacies in BC Civil Legal Aid in family law matters result in disproportionately unequal access to justice by poor women and disproportionately expose poor women to certain adverse effects, such as the risk of continued abuse in domestic relationships.

51. Inadequacies in BC Civil Legal Aid in family law matters impair the Fundamental Interests of Poor People, particulars of which include:

- (a) financial impoverishment and attendant deprivations, including the lack of adequate sustenance;
- (b) an abused spouse being financially compelled to remain in an abusive relationship;
- (c) reduced financial security and access to the means to meet basic needs;
- (d) being forced to rely on social assistance;
- (e) the risk of incarceration and the loss of other civil liberties;

- (f) lack of control over the determinations of marital and family status which affect other rights including the right to marry;
- (g) the right to be legally recognized through adoption and the rights and obligations which flow therefrom;
- (h) impairment of equality and dignity; and
- (i) threats to physical and psychological security of themselves and their children.

Poverty Law

52. Poverty law matters include:

- (a) housing issues;
- (b) income support programs including disability benefits, welfare, Employment Insurance matters, Canada Pension Plan and Old Age Pension matters, and workers' compensation matters;
- (c) work-related issues including employment standards, occupational health and safety; and
- (d) consumer and debt problems.

53. Poverty law matters are excluded from coverage by BC Civil Legal Aid.

54. In most poverty law cases, Poor People are involved in disputes where the opposing party is a government, a government entity, a corporation or a landlord. In such cases, the opposing party is usually experienced in the type of legal dispute involved and is usually represented by legal counsel.

55. Unequal access to justice can result in the following inappropriate, unfair and unjust circumstances in poverty law proceedings, especially where the Poor People are unrepresented or receive inadequate representation:

- (a) they do not understand the legal issues involved and their legal rights;
- (b) they must self-represent in court or before administrative tribunals;

- (c) they are unable to articulate their positions;
- (d) they may agree to inappropriate and/or unworkable settlements of their cases due to their ignorance of their rights or their inability to articulate them;
- (e) they may intentionally or unintentionally abandon their rights with no remedy; and
- (f) courts make orders that are flawed because of the inadequacies in the presentation of the case.

56. These problems are compounded for Poor People who are also Aboriginal or who face language or cultural barriers, who are disabled, or who face racism, homophobia and other forms of discrimination.

57. Inadequacies in BC Civil Legal Aid in poverty law matters impair the Fundamental Interests of Poor People, particulars of which include:

- (a) financial impoverishment and attendant deprivations, including lack of adequate sustenance;
- (b) evictions and foreclosures which can lead to homelessness, and in turn, loss of custody of children;
- (c) no housing or inadequate housing;
- (d) loss of income assistance benefits;
- (e) impairment of equality and dignity;
- (f) threats to physical and psychological security to themselves and to their children; and
- (g) compulsion to engage in dangerous and demeaning survival strategies due to lack of access to financial security.

Immigration and Refugee Law

58. Many immigration and refugee matters are excluded from BC Civil Legal Aid.

59. As a result, many Poor People who are immigrants and refugees to Canada proceed without legal representation in immigration or refugee proceedings in British Columbia every year.

60. Where BC Civil Legal Aid coverage for an immigration or refugee matter is provided, the services provided are severely restricted and the Poor People are therefore under-represented due to:

- (a) time limits placed on the amount of funded legal representation; and
- (b) limits placed on aspects of the case for which funded legal representation will be provided.

61. Poor People who are immigrants and refugees arriving in Canada through British Columbia for the first time are often:

- (a) suffering from the emotional and physical affects of mistreatment and/or persecution in the countries from which they have come;
- (b) unable to speak or read English or French;
- (c) not literate in their mother tongues or any other language;
- (d) not legally trained;
- (e) lack formal or any education;
- (f) in cultural shock;
- (g) afraid of authority figures and persons in uniforms due to experiences in the countries they are leaving;
- (h) unaware of their rights;
- (i) lack a permanent place to live or stay in Canada;
- (j) lack social support networks;
- (k) unable to access social security; and
- (l) unable to access work.

62. The judicial and quasi-judicial system that applies to Poor People who are immigrants and refugees is complex. The hearings and other processes that determine the applications of immigrants and refugees are complex, subject to short timelines, and subject to strict filing and disclosure requirements. In addition, the disbursements involved in immigration and refugee matters, including translation and interpretation costs, are extremely high.

63. Immigrants and refugees must advocate for their rights against the Federal Crown, which employs trained and experienced personnel, including, lawyers.

64. Inadequacies in BC Civil Legal Aid result in lack of equal access to justice for Poor People who are immigrants and refugees.

65. Unequal access to justice for Poor People can result in the following inappropriate, unfair and unjust consequences in immigration and refugee proceedings where Poor People are unrepresented or receive inadequate representation:

- (a) they do not understand the legal issues involved and their legal rights;
- (b) they are unable to articulate their positions which must be articulated in English or French, languages in which they are not fluent;
- (c) tribunals and courts make orders which are flawed because of inadequacies in the presentation of the case;
- (d) they may intentionally or unintentionally abandon their rights with no remedy;
- (e) the interests of their children are not adequately represented;
- (f) they are subject to detention;
- (g) they are subject to removal from Canada; and
- (h) they face deportation orders.

66. Inadequacies in BC Civil Legal Aid in immigration and refugee matters impair the Fundamental Interests of Poor People who are immigrants and refugees, particulars of which are as follows:

- (a) their physical safety is jeopardized in the event of deportation to a country in which they were or may be mistreated or persecuted;
- (b) they face detention;
- (c) they face financial impoverishment and attendant deprivations, including lack of adequate sustenance;
- (d) they face separation from their families;
- (e) their physical and psychological security is threatened;
- (f) their well-being in Canada is threatened as a result of becoming prey to exploitation by unscrupulous non-lawyer agents or representatives who fraudulently claim to be able to sell them services to achieve immigrant or refugee status; and
- (g) their equality and dignity is impaired.

Constitutional Breaches

67. Inadequacies in BC Civil Legal Aid result in the denial to Poor People of equal access to justice in matters affecting their Fundamental Interests and violate implicit and explicit provisions of the Canadian Constitution either alone or in combination.

68. The Federal Crown, Provincial Crown and LSS are in breach of written and unwritten constitutional obligations due to the inadequacies in BC Civil Legal Aid.

The Rule of Law and Substantive Equality

69. The rule of law is a foundational principle of the Constitution and requires that every person have equal and meaningful access to justice, regardless of wealth and without discrimination.

70. In order for access to justice to be meaningful and accord with the rule of law, participants in the judicial system and quasi-judicial systems must be able to obtain proper advice and obtain redress, including legal representation if necessary, in matters where their Fundamental Interests are threatened.

71. In addition, and in the alternative, the rule of law is to be applied in conjunction with the constitutional norm of substantive equality which further underscores the commitment to the inherent dignity and worth of the person upon which the ordering of Canadian society rests.

72. The rule of law and norm of substantive equality require that Poor People have equal access to justice.

73. Inadequacies in BC Civil Legal Aid violate the constitutional guarantees of the rule of law and the norm of equality for Poor People as follows:

- (a) directly, by interfering with their access to courts and tribunals; and
- (b) indirectly, by their failure to remove impediments to their access to the courts and tribunals.

Independence of the Judiciary

74. Judicial Independence is also a foundational constitutional principle. Without independent judges, the rule of law is undermined.

75. Inadequacies in BC Civil Legal Aid results in unrepresented and inadequately represented Poor People appearing before courts and tribunals. This violates the principle of judicial independence, particulars of which include:

- (a) drawing judges and tribunals into assisting unrepresented or under-represented Poor People in a way that undermines the appearance of judicial impartiality;
- (b) compromising the adversarial system; and
- (c) creating a conflict between the duty to ensure a fair hearing and the duty to ensure impartiality.

Breach of the Right to Life, Liberty and Security of the Person Under S. 7 of the Charter

76. Section 7 of the *Charter* provides:

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.

77. Inadequacies in BC Civil Legal Aid impair the rights to life, liberty and security of Poor People in a manner that is not in accordance with principles of fundamental justice. Therefore inadequacies in BC Civil Legal Aid violate s.7 of the *Charter* and are not saved by s.1.

78. Particulars of the breaches of s.7 include:

- (a) the Provincial Crown repealed s.3 of the Former LSS Act;
- (b) the Provincial Crown and LSS are in violation of s.7 through the exclusions and limitations on eligibility, coverage and quality of service which systemically deny state funded counsel in situations that put into jeopardy the rights to life, liberty and security of the person of Poor People;
- (c) the Federal Crown is in violation of s. 7 by failing to provide adequate BC Civil Legal Aid to Poor People for civil matters within its jurisdiction; and
- (d) the Federal Crown is in violation of s.7 by failing to establish, monitor and enforce minimum national standards for civil legal aid for Poor People.

Breach of Equality Rights Under SS. 15(1) and 28 of the *Charter*

79. Section 15(1) of the *Charter* provides:

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 and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

80. Inadequacies in BC Civil Legal Aid violate the rights of Poor People pursuant to ss.15(1) of the *Charter* because they result in discrimination, either direct or through adverse impact, on the basis of income status or poverty, sex, gender, disability, race, and national/ethnic origin, and are not saved by s.1.

81. Particulars of the breaches of s.15(1) include:

- (a) the Provincial Crown and LSS unduly restrict Poor People's eligibility for BC Civil Legal Aid in a discriminatory manner;
- (b) the Provincial Crown repealed s.3 of the Former LSS Act;
- (c) the Provincial Crown and LSS excluded funded services and expenses (including disbursements) for certain civil legal matters from BC Civil Legal Aid, in a discriminatory manner;
- (d) the Provincial Crown and LSS restricted the provision of legal services in civil legal matters by BC Civil Legal Aid in a discriminatory manner;
- (e) the Federal Crown exercised the federal spending power in a discriminatory manner;
- (f) the Federal Crown failed to establish, monitor and enforce minimum national standards for civil legal aid; and
- (g) the Federal Crown failed to provide adequate BC Civil Legal Aid for civil matters within its jurisdiction.

82. Section 28 of the *Charter* provides:

Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

83. Inadequacies in BC Civil Legal Aid violate s.28 of the *Charter* by denying poor women equal protection of ss.7 and s.15(1) of the *Charter* and are not saved by s.1.

Breach of S. 36 of the *Constitution Act, 1982*

84. Section 36 (1) of the *Constitution Act, 1982* provides:

Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercises of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to:

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and
- (c) providing essential public services of reasonable quality to all Canadians.

85. BC Civil Legal Aid is an essential public service pursuant to s.36(1)(c) of the *Constitution Act, 1982*.

86. As a result of inadequacies in BC Civil Legal Aid, the Federal Crown and the Provincial Crown have failed to provide essential public legal services of reasonable quality and are in violation of s.36(1)(c) of the *Constitution Act, 1982*.

87. In particular, the Federal Crown has violated s.36(1)(c) by failing to establish minimum national standards for the provision of civil legal aid.

Breach of International Human Rights Law

88. The constitutionality of BC Civil Legal Aid must be assessed in light of Canada's obligations under international human rights law, which inform the interpretation and application of foundational constitutional principles of the rule of law, the norm of equality and the independence of the judiciary, the *Charter*, and s. 36(1)(c) of the *Constitution Act, 1982*.

89. The plaintiff relies on the following obligations under international human rights law:

- (a) Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948);
- (b) American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948);
- (c) International Covenant on Civil and Political Rights, 999 U.N.T.S. 17, ("ICCPR");
- (d) International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, ("ICESCR");
- (e) Charter of the Organization of American States (1952), 119 U.N.T.S. 48;
- (f) Convention on the Elimination of All Forms of Discrimination against Women, Can. T.S. 1982 No. 31 ("CEDAW");
- (g) Convention Relating to the Status of Refugees, 189 U.N.T.S. 150;

- (h) Convention on the Rights of the Child, Can T.S. No.3;
- (i) International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, (“CERD”);
- (j) Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331; and
- (k) such other international human rights law as may be relevant.

90. Inadequacies in BC Civil Legal Aid in matters where Fundamental Interests violate obligations under international human rights law in that they:

- (a) infringe the rights of Poor People to equality before the courts and tribunals and to a fair hearing, contrary to Canada’s obligations under international human rights law, including article 14(1) of the ICCPR;
- (b) infringe the rights of Poor People to resort to the courts to ensure respect for their legal rights, contrary to Canada’s obligations under international human rights law, including article 18 of the American Declaration of the Rights and Duties of Man;
- (c) deny Poor People access to the courts to seek a domestic remedy for violations of their rights under ordinary domestic law, the Constitution, and international human rights law. This denial is contrary to Canada’s obligations under international human rights law to ensure that any person whose rights have been violated shall have access to an effective remedy, including article 3 of the Universal Declaration on Human Rights, article 2 of the ICCPR, and the ICESCR;
- (d) deny Poor People equality before the law and discriminate with respect to the equal protection of the law, based on the grounds of race, sex, national or social origin, property, birth or other status, contrary to article 26 of the ICCPR, articles 15.1 and 15.2 of the CEDAW, article 15.3 of the Convention Relating to the Status of Refugees, and article 3 of the CERD;

- (e) accord a lesser standard of protection for rights in civil law matters for Poor People, in disregard of the international human rights law principle that all rights are indivisible and interdependent;
- (f) categorically exclude poverty law from the ambit of BC Civil Legal Aid thereby depriving Poor People of the opportunity to seek a domestic remedy for violations of social and economic rights, including article 3 of the ICESCR which recognizes the right of everyone to an adequate standard of living for themselves and their dependents, including adequate food, clothing and housing;
- (g) substantially exclude family law from the ambit of BC Civil Legal Aid thereby discriminating against Poor People, and more particularly women, contrary to article 26 of the ICCPR, and articles 15.1 and 15.2 of the CEDAW and compromise the right of children to have their best interests made a primary consideration in any action concerning them and to be heard in any judicial or administrative proceeding affecting them pursuant to articles 3 and 12 of the CRC;
- (h) infringe the ability of refugees to access the courts, obtain public relief and access social security contrary to the obligations of the Federal Crown and Provincial Crown under the Convention relating to the Status of Refugees, including Articles 16, 23 and 24; and
- (i) infringe the right of refugees to not be expelled from Canada except, in accordance with the due process of law including the opportunity to present evidence and to be represented, contrary to the obligations of the Federal Crown and Provincial Crown under the Convention relating to the Status of Refugees, including Article 32.

WHEREFORE the plaintiff claims against the defendants as follows based on the inherent jurisdiction of the Court and/or pursuant to s.24 (1) of the Charter and/or s.52 of the *Constitution Act, 1982*:

- (a) a declaration that the defendants are in breach of the foundational constitutional principles of the rule of law and/or the norm of equality and/or the independence of the judiciary due to inadequacies in BC Civil Legal Aid and by failing to establish and maintain a civil legal aid regime that ensures meaningful and effective access to justice by Poor People where their Fundamental Interests are at stake;
- (b) a declaration that the defendants are in breach of s.7 of the *Charter* due to inadequacies in BC Civil Legal Aid and by failing to establish and maintain a civil legal aid regime that ensures meaningful and effective access to justice by Poor People by denying publicly funded counsel in legal proceedings where rights to life, liberty and security of the person are jeopardized, which denial is not in accordance with the principles of fundamental justice, and is not justified under s. 1 of the *Charter*;
- (c) a declaration that the defendants are in breach of the right to equality before and under the law and to the equal benefit and protection of the law by discriminating on the basis of low income status or poverty, sex, disability, race, and national or ethnic origin contrary to s.15(1) of the *Charter* and by failing to establish and maintain a civil legal aid regime that ensures meaningful and effective access to justice by Poor People where their Fundamental Interests are at stake which breaches are not justified under s. 1 of the *Charter*;
- (d) a declaration that the defendants are in breach of s.28 of the *Charter* by denying women the equal protection of ss.7 and 15(1) of the *Charter* which denial is not justified under s.1 of the *Charter*;
- (e) a declaration that the Federal Crown and the Provincial Crown are in breach of s.36(1)(c) of the *Constitution Act, 1982* due to inadequacies in BC Civil Legal Aid by failing to establish and maintain a civil legal aid regime that ensures meaningful and effective access to justice by Poor People where their Fundamental Interests are at stake;

- (f) a declaration that the foundational constitutional principles of the rule of law, the norm of substantive equality and the independence of the judiciary, ss.7, 15(1) and 28 of the *Charter*, and s. 36(1)(c) of the *Constitution Act, 1982* compel the Federal Crown and the Provincial Crown to establish and maintain a civil legal aid regime that ensures meaningful and effective access to justice by Poor People where their Fundamental Interests are at stake;
- (g) a declaration that the constitutional obligation on the Federal Crown and the Provincial Crown to establish and maintain a civil legal aid system that ensures meaningful access to justice by Poor People is subject to these requirements with respect to eligibility, coverage and quality of legal aid services :
 - (i) Eligibility: BC Civil Legal Aid shall be provided to people on low incomes as defined by LICOs and who lack sufficient means to exercise their rights to obtain proper advice and to obtain redress, including retaining a lawyer where necessary;
 - (ii) Coverage: BC Civil Legal Aid shall be provided in all legal matters where the Fundamental Interests of Poor People or their dependents are at stake; and
 - (iii) Quality: BC Civil Legal Aid shall be provided of adequate quality so as to ensure effective and meaningful access to justice consistent with what a reasonable person of modest means would employ in like circumstances.
- (h) an order in the nature of mandamus directing the Federal Crown and the Provincial Crown to establish and maintain BC Civil Legal Aid that is consistent with the rule of law, the norm of substantive equality, independence of the judiciary, ss. 7, 15(1) and 28 of the *Charter*, and s.36 (1) (c) of the *Constitution Act, 1982* and the declaratory orders sought;

- (i) an order that this Honourable Court will maintain jurisdiction in this matter until the defendants have fully complied with the declaratory orders and directions sought;
- (j) costs; and
- (k) such other relief as this Honourable Court shall deem just.

PLACE OF TRIAL: Vancouver, British Columbia

DATED at Vancouver, British Columbia this _____ day of June, 2005.

J.J. Camp, Q.C.
Camp Fiorante Matthews
Solicitors for the Plaintiff

This Statement of Claim is filed by J.J. Camp, Q.C., Camp Fiorante Matthews, 400 – 555 West Georgia Street, Vancouver, British Columbia, V6B 1Z6. Tel: 604-689-7555.