

B.C. Statutes

Legal Services Society Act

S.B.C. 2002, c. 30, as am. S.B.C. 2003, c. 2, s. 38; 2003, c. 70, s. 211;
2003, c. 75, s. 44; 2005, c. 1, ss. 5, 6; 2007, c. 14, s. 44

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Definitions

1 In this Act:

"**board**" means the board of directors of the society;

"**client**" means an individual who is receiving or who has received legal aid;

"**financial obligation to the society**" means, in relation to a client, the money that is to be paid by the client to the society under a legal aid contract between the client and the society;

"**fiscal year**" means a period beginning on April 1 in one year and ending on March 31 in the next year;

"**funded agency**" means a person who receives money from the society to provide legal aid but does not include a practising lawyer or notary public;

"**law society**" means the Law Society of British Columbia;

"**legal aid**" means legal and other services provided under this Act;

"**legal aid contract**" means, in relation to a client, the contract between the client and the society under which the society provides legal aid to the client;

"**society**" means the Legal Services Society continued by this Act.

Part 1 — Continuation of the Legal Services Society

Society continued

2(1) The corporation called the Legal Services Society is continued.

(2) The members of the society are the directors appointed under section 4.

(3) The society must be operated without purpose of gain for its members, and any right or other accretions to the society must be used for promoting its objects.

(4) Carrying on a business, trade, industry or profession as an incident to the purposes of the society is not prohibited by subsection (3), but the society must not distribute any gain, profit or dividend or otherwise dispose of its assets to a member of the society without receiving full and valuable consideration.

Business Corporations Act and Society Act not to apply

3(1) The *Business Corporations Act* and the *Society Act* do not apply to the society.

(2) Despite subsection (1), the Lieutenant Governor in Council may order that one or more provisions of the *Business Corporations Act* apply to the society.

Board of directors

4(1) The board consists of 9 directors.

(2) Five directors are to be appointed by the Lieutenant Governor in Council, on the recommendation of the Attorney General.

(3) Four directors are to be appointed by the law society after consultation with the executive of the British Columbia branch of the Canadian Bar Association.

(4) The members of the board must elect one of their members to be chair of the board.

(5) For the purposes of subsections (2) and (3), the Attorney General and the law society must make the recommendations or appointments, as the case may be, that they consider will provide to the board as a whole knowledge, skills and experience in the following areas:

(a) business, management and financial matters of public and private sector organizations;

(b) law and the operation of courts, tribunals and alternate dispute resolution processes;

(c) the provision of legal aid;

(d) the cultural and geographic diversity of British Columbia;

(d) the social and economic circumstances associated with the special legal needs of low income individuals.

(6) The term of office of a director must be not longer than 3 years from the date on which the appointment becomes effective.

(7) A director must not hold office for more than 6 consecutive years.

(8) Despite anything else in this section, a director whose term of office has expired may continue to hold office until a successor is appointed.

(9) The board must meet at least quarterly.

(10) Subject to subsection (9), the board must control and direct the business of the society and may, by resolution, determine its own procedure.

(11) A director must be reimbursed for reasonable out of pocket travelling and other expenses incurred in the discharge of duties and may be paid a fee for services.

Executive committee

5(1) By resolution at its first meeting in each fiscal year, the board

(a) must appoint an executive committee consisting of

(i) the chair of the board, and

(ii) at least 2 other directors, and

(b) may reconstitute the committee.

(2) Between the meetings of the board, the executive committee has all the powers of the board except

(a) the power to fill vacancies on or change the membership of a committee of the board, and

(b) powers excluded by resolution of the board.

Executive director

6(1) The board may appoint an executive director and must set the salary of the executive director.

(2) The executive director must supervise, manage and administer the business of the society in accordance with the policy of the board and subject to its control and direction.

Staff

7(1) The board or, if authorized by the board, the executive director, may appoint officers and employees and engage and retain specialists and consultants required to carry out the business of the society and may determine their remuneration and benefits.

(2) The *Public Service Act* and the *Public Service Labour Relations Act* do not apply to the society or its officers and employees appointed under this section.

(3) For the benefit of its officers and employees and their dependants, the society may establish, support or participate in any one or more of

(a) a pension or superannuation plan, or

(b) a group insurance plan.

Personal liability protection

8(1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the executive director of the society, against any directors, officers or employees of the society or against any trustee appointed under section 25 because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act, or

(b) in the exercise or intended exercise of any power under this Act.

(2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

(3) Subsection (1) does not absolve the society from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the society would be vicariously liable if this section were not in force.

Part 2 — Role of the Legal Services Society

Objects

9(1) The objects of the society are,

(a) subject to section 10(3), to assist individuals to resolve their legal problems and facilitate their access to justice,

(b) subject to section 10(3), to establish and administer an effective and efficient system for providing legal aid to individuals in British Columbia, and

(c) to provide advice to the Attorney General respecting legal aid and access to justice for individuals in British Columbia.

(2) The society is to be guided by the following principles:

(a) the society is to give priority to identifying and assessing the legal needs of low-income individuals in British Columbia

(b) the society is to consider the perspectives of both justice system service providers and the general public;

(c) the society is to coordinate legal aid with other aspects of the justice system and with community services;

(d) the society is to be flexible and innovative in the manner in which it carries out its objects.

Powers and capacity

10(1) For the purposes of its objects, the society has, subject to subsections (2) and (3) all the powers and capacity of an individual and, without limiting this, may

(a) establish priorities for the types of legal matters and classes of persons for which it will provide legal aid,

(b) establish policies for the kinds of legal aid to be provided in different types of legal matters,

(c) determine the method or methods by which legal aid is to be or may be provided, with power to determine different methods for different types of legal matters and different classes of persons,

(d) determine who is and who is not eligible for legal aid based on any criteria that the society considers appropriate,

(e) undertake, inside or outside British Columbia, commercial activities that it considers appropriate for the purposes of obtaining funds for the pursuit of its objects,

(f) recover, through client contributions or any other methods it considers appropriate, its costs of providing legal aid, and

(g) facilitate coordination among the different methods, and the different persons and other entities, by which legal aid is provided.

(2) The society must not provide prescribed services to prescribed persons or classes of persons in prescribed circumstances unless it does so without using any of the funding provided to it by the government.

(3) The society must not engage in an activity unless

(a) it does so without using any of the funding provided to it by the government, or

(b) it does so in accordance with this Act, the regulations and the memorandum of understanding referred to in section 21 and money for that activity is available within the budget approved by the Attorney General under section 18.

(4) The society is not an agent of the government or of the law society.

Methods of providing legal aid services

11(1) Subject to subsections (2) to (4), the society may provide legal aid by any method that it considers appropriate, including without limiting this,

(a) by providing one or both of

(i) services ordinarily provided by a lawyer, and

(ii) other services,

(b) by providing duty counsel,

(c) by assisting individuals representing themselves, including by providing them with summary advice, information packages, self-help kits and assistance in preparing documents,

(d) by funding alternative dispute resolution services, and

(e) by providing public legal education and information.

(2) The society may provide legal aid through lawyers or any other persons, whether or not those lawyers or other persons are employed by the society.

(3) In determining the method, if any, by which legal aid is to be provided in any circumstance, the society must have regard to the costs involved, the needs of the person or persons involved and the society's financial resources.

(4) The extent to which legal aid may be provided in relation to any legal problem is not to exceed the extent of legal and other services that a reasonable person of modest means would employ to resolve the problem.

Persons providing legal services

12 Despite the *Legal Profession Act*, the society or a funded agency may employ, with or without remuneration, an individual who is not a lawyer or an articulated student to provide services that would ordinarily be provided by a lawyer so long as the individual is supervised by a lawyer, but the individual may not appear as counsel in a court except with leave of the court.

Part 3 — Recovery of Financial Obligations to the Legal Services Society

Confirmation of financial obligation to the society

13(1) Without limiting any other right or remedy available to the society in respect of a client's financial obligation to the society, the society may issue a certificate in the prescribed form setting out the amount of the client's financial obligation to the society at the time the certificate is issued.

(2) After issuing a certificate under subsection (1), the society must

(a) mail a copy of the certificate to the client at the most recent address shown for the client in the records of the society, or

(b) deliver a copy of the certificate to the client.

(3) Within 30 days after the mailing or delivery of a copy of the certificate to the client, the client may apply to a registrar of the Supreme Court for an appointment to review the certificate as if it were a bill for fees, charges or disbursements of a lawyer, and for the purpose of that review Part 8 of the *Legal Profession Act* applies.

(4) Unless a client has applied to the registrar under subsection (3) within the time required by that subsection, the society,

(a) at least 31 days after mailing or delivering a copy of the certificate to the client under subsection (2), may file that certificate in the Supreme Court, and

(b) may enforce the filed certificate as if it were a judgment of the Supreme Court in favour of the society for the amount set out in the certificate.

Society may register lien against land

14(1) In this section, "**charge**" has the same meaning as in the *Land Title Act*.

(2) Without limiting section 13 of this Act, in order to secure repayment of the client's financial obligation to the society, the society may register a lien in accordance with subsection (3) against any land owned by the client or in which the client has an interest.

(3) A lien may be registered under subsection (2)

(a) by registering a certificate of lien, in the prescribed form,

(i) in the appropriate land title office,

(ii) in the same manner that a charge is registered under the *Land Title Act*, and

(iii) without fee for registration under the *Land Title Act*, and

(b) whether or not the society has issued or filed a certificate under section 13.

(4) Registration of a certificate of lien against land under this section creates a lien in favour of the society on the client's interest in the land against which the registration is made.

(5) Subject to section 16, the lien referred to in subsection (4) is security, ranking in priority to any charge registered after the lien is registered, for the whole of the client's financial obligation to the society,

(a) whether some or all of that financial obligation to the society arose before or after the registration of the lien,

(b) whether some or all of that financial obligation to the society arose before or after the registration of any charge registered after the registration of the lien,

(c) whether the society issued or filed one or more certificates under section 13 for some or all of that financial obligation to the society, and

(d) whether the society realized, through execution on a filed certificate, some or all of the amount set out in the certificate.

(6) The society, without fee to the client, must execute and provide to the client a registrable discharge of the registered lien when,

(a) in the opinion of the society, the matter in respect of which the legal aid contract was entered into with the client is concluded, and

(b) the client's financial obligation to the society is repaid or recovered in full.

(7) A discharge provided to a client under subsection (6) may be registered without fee in the applicable land title office.

(8) Nothing in subsection (6) or (7) precludes the society from registering a further lien under this section against any land owned by the client or in which the client has an interest if, after a discharge is provided under subsection (6), the client incurs a further financial obligation to the society under the same or any other legal aid contract.

Society may register lien against personal property

15(1) In this section:

"perfected" and **"perfection"** have the same meaning as in the *Personal Property Security Act*;

"security interest" has the same meaning as in the *Personal Property Security Act*.

(2) If a client has a financial obligation to the society,

(a) the society acquires, in accordance with this subsection, a registrable interest in the personal property of the client,

(b) the society may register the registrable interest as a claim under and in accordance with the *Miscellaneous Registrations Act, 1992*, and

(c) the registrable interest arises immediately prior to its registration as a claim.

(3) Registration of the registrable interest as a claim against personal property under subsection (2) creates a lien in favour of the society on the client's interest in that personal property.

(4) Subject to section 16, the lien referred to in subsection (3) is security, having the same priority in relation to the personal property that is subject to the lien as would a security interest in that property that was perfected under the *Personal Property Security Act* at the time that the lien was created, for the whole of the client's financial obligation to the society,

(a) whether some or all of that financial obligation to the society arose before or after the creation of the lien,

(b) whether some or all of that financial obligation to the society arose before or after the perfection of any security interest that is perfected after the creation of the lien,

(c) whether the society issued or filed one or more certificates under section 13 of this Act for some or all of that financial obligation to the society, and

(c) whether the society realized, through execution on a filed certificate, some or all of the amount set out in the certificate.

(5) The society, without fee to the client, must discharge a registration referred to in subsection (3) when,

(a) in the opinion of the society, the matter in respect of which the legal aid contract was entered into with the client is concluded, and

(b) the client's financial obligation to the society is repaid or recovered in full.

(6) If, after the society has discharged a registration affecting a client under subsection (5), the client incurs a further financial obligation to the society under the same or any other legal aid contract, subsections (2) to (5) apply in respect of the client's financial obligation to the society.

(7) If the registrable interest is registered as a claim under subsection (2) against a manufactured home, the Registrar of Manufactured Homes must not, except with the consent of the minister or in prescribed circumstances,

(a) issue a transport permit under section 15 of the *Manufactured Home Act*, or

(b) register a transfer, or an agreement for sale, of the manufactured home.

Discretion to enter into priority agreements

The society may enter into agreements in writing varying the priority of a lien referred to in section 14(4) or of a lien referred to section 15(3).

Part 4 — Financial Accountability

Limit on expenditures

(1) In this section, "**revenue**" means, for a fiscal year of the society, the revenue of the society from all sources for that year, including, without limiting this, all grants made or to be made to the society for that year by the government or any other person or agency.

(2) The aggregate of the expenditures made by the society in a fiscal year and the liabilities incurred by the society that might reasonably come due in the fiscal year must not exceed the total of the society's

(a) revenue for that fiscal year, and

(b) accumulated surplus from previous fiscal years.

(3) Despite subsection (2), the society may make an expenditure or incur a liability that would have the effect of placing the society in contravention of that subsection if the expenditure or liability is first approved by the Attorney General and the Minister of Finance.

Budget

18(1) The society must provide a budget to the Attorney General when directed to do so by the Attorney General.

(2) If the Attorney General does not approve the budget provided under subsection (1), the Attorney General may return the budget to the society and require the society to prepare a revised budget.

(3) If a budget is returned to the society under subsection (2), the society must promptly revise the budget and provide the revised budget to the Attorney General.

(4) The Attorney General may approve a budget provided under this section and, if the Attorney General does not return to the society a budget presented under subsection (1) or (3) within 30 days after receipt, the budget is deemed to have the approval of the Attorney General.

(5) Subsections (2) to (4) apply to a revised budget prepared under subsection (3).

Society to supply information

19 The society must submit to the Attorney General, in the format and within the time required by the Attorney General, any financial, statistical or other information that the Attorney General may require respecting the operations of the society and the services provided by it.

Reports

20 The society must, in respect of each fiscal year ending March 31, prepare a report respecting the operations of the society and an audited financial statement and must, within 180 days after the end of the fiscal year, forward the report and financial statement to the Attorney General, who must as soon as practicable lay them before the Legislative Assembly.

Memorandum of understanding

21(1) The Attorney General and the society are to enter into negotiations in an attempt to arrive at a memorandum of understanding as follows:

(a) promptly after the coming into force of this Act, the parties are to enter into negotiations in an attempt to arrive at a memorandum of understanding that is to apply until March 31, 2005;

(b) before the end of the 2004-2005 fiscal year and before the end of every third fiscal year after that, the parties are to enter into negotiations in an attempt to arrive at a memorandum of understanding that is to apply until the end of the third fiscal year following the fiscal year in which the negotiations for that memorandum of understanding begin.

(2) The matters that may be negotiated as part of the memorandum of understanding include the following:

(a) an estimate of the government funding that the Attorney General anticipates will be provided to the society in each of the 3 fiscal years to which the memorandum of understanding is to apply;

(b) the types of legal matters in relation to which the society may provide legal aid, and those in relation to which the society must not provide legal aid, with government funding;

(c) the priority to be accorded to the types of legal matters in relation to which the society may provide legal aid with government funding;

(d) how, if at all, the society is to be able to provide, with government funding, legal aid in circumstances that are not contemplated by, or do not accord with, the terms and conditions established under paragraphs (b) and (c);

(e) the society's participation in justice reform initiatives;

(f) an annual review with the Attorney General of the budget of the society and the measures taken and to be taken by the society to implement the terms of the memorandum of understanding.

(3) The Lieutenant Governor in Council may make regulations respecting matters set out in one or more of paragraphs (b) to (d) of subsection (2) if,

(a) in the case of a memorandum of understanding to be negotiated under subsection (1)(a), the parties have not signed a memorandum of understanding before March 31, 2003,

(b) in the case of a memorandum of understanding to be negotiated under subsection (1)(b), the parties have not signed that memorandum of understanding before the expiry of the most recent memorandum of understanding, or

(c) the society has not complied with one or more of the terms and conditions of the memorandum of understanding that were established under subsection (2)(b), (c) or (d).

(4) No act of the society is invalid merely because the act contravenes the memorandum of understanding;

(5) No legal proceeding for damages lies or may be commenced or maintained against the society because of any breach by the society of the memorandum of understanding.

Audit

22 Unless the Auditor General is appointed in accordance with the *Auditor General Act* as the auditor of the society, the society must appoint an auditor to audit the accounts of the society at least once each year.

Part 5 — General

Privilege

23(1) Information disclosed by a client or an applicant for legal aid to a director, employee or agent of the society or funded agency is privileged and must be kept confidential in the same manner and to the same extent as if it had been disclosed to a solicitor under a solicitor and client relationship.

(2) If a civil or criminal proceeding is or may be brought against a person respecting the person's eligibility for legal aid, subsection (1) does not apply to information respecting eligibility.

Costs

- 24(1)** The court may award costs to an individual in a proceeding in which the individual has received legal aid from or through the society or a funded agency even though the individual has not paid and will not be liable to pay counsel.
- (2)** If costs are awarded under subsection (1), those costs are assigned to the society and recoverable by it.

Official trustee

- 25(1)** The Lieutenant Governor in Council may appoint an official trustee to manage the property and conduct the affairs of the society if, in the opinion of the Lieutenant Governor in Council, the appointment is in the public interest and is required to ensure continued and effective delivery of legal aid.
- (2)** When an official trustee is appointed under subsection (1), the directors of the society cease to hold office.
- (3)** An official trustee appointed under subsection (1) has the exclusive right to exercise all of the powers of the society and the board, and must, subject to section 17,
- (a) ensure compliance of the society with this Act and the regulations and,
 - (b) ensure proper performance of the duties of the society.
- (4)** Subject to subsections (5) to (8), an official trustee's appointment under this section must be for a term that expires not more than 12 months after the date of appointment.
- (5)** The Lieutenant Governor in Council may, on application by the official trustee appointed under this section,
- (a) remove the official trustee from office before the end of the official trustee's term of office if the Lieutenant Governor in Council and the official trustee are satisfied that the matters in response to which the official trustee was appointed have been substantially corrected, or
 - (b) extend the term of the official trustee by not more than 12 months if the Lieutenant Governor in Council and the official trustee are satisfied that that extension
 - (i) is in the public interest,
 - (ii) is required to ensure continued and effective delivery of legal aid, and
 - (iii) is required to provide a sufficient opportunity to the official trustee to meet the goals set out in subsection (3).
- (6)** If an official trustee's term of office has expired, the Lieutenant Governor in Council may appoint a successor for the official trustee, for a term that expires not more than 12 months after the date of appointment, if the Lieutenant Governor in Council is satisfied that the appointment
- (a) is in the public interest,
 - (b) is required to ensure continued and effective delivery of legal aid, and
 - (c) is required to allow the society to realize the goals set out in subsection (3).

(7) The Lieutenant Governor in Council may remove or replace an official trustee before the end of the official trustee's term if the Lieutenant Governor in Council is of the opinion that the official trustee is acting in a manner that is inconsistent with his or her responsibilities under subsection (3).

(8) A replacement official trustee appointed under subsection (7) holds office for the unexpired portion of the term of the official trustee being replaced unless the Lieutenant Governor in Council orders otherwise.

(9) Directors are to be appointed under section 4 to assume office when the society ceases to be subject to the direction of an official trustee.

(10) An official trustee appointed under this section is to be remunerated out of the funds of the society or otherwise as the Lieutenant Governor in Council determines.

Offences

26 A person who by false representation of a material fact obtains a service under this Act that is ordinarily provided by a lawyer commits an offence and is liable to the fine specified in section 4 of the *Offence Act*.

Power to make regulations

27(1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing services, persons, classes of persons and circumstances for the purposes of section 10(2);
- (b) prescribing the form of any record for which a prescribed form is contemplated by this Act;
- (c) prescribing circumstances for the purposes of section 15(7);
- (d) respecting the matters referred to in section 21(2)(b) to (d).

Repeal

28 The *Legal Services Society Act*, R.S.B.C. 1996, c. 256, is repealed.

Legal Profession Act

29 Section 15(1)(d) of the *Legal Profession Act*, S.B.C. 1998, c. 9, is amended by striking out "in section 9" and substituting "in section 12".

Social Service Tax Act

30 Section 48 of the *Social Service Tax Act*, R.S.B.C. 1996, c. 431, is amended by striking out "of section 3" and substituting "of section 9".
