



No. S173843
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**SINGLE MOTHERS' ALLIANCE OF BC SOCIETY,
NICOLINA BELL (also known as Nicole Bell), and A.B.**

PLAINTIFFS

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA and LEGAL SERVICES SOCIETY**

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: The Legal Services Society (the "Society")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 3-5, 7-8, 10, 29-30, 69, 73-77, 79-85, 88, 90-92 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 2, 9, 28, 36, 41, 48, 49, 66-68, 70, 78, 86, 87, 89, 93 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1, 6, 11-27, 31-35, 37-40, 42-47, 50-65, 71, 72 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Society.

Division 2 – Defendant's Version of Facts

Overview

1. In response to the whole of the claim, the Society agrees that single mothers often require access to the courts to obtain family law relief for themselves and their children, and that this can be difficult without legal representation. Most applicants for legal aid—whatever the nature of their legal issues—are vulnerable and have vital interests at stake, but the Society lacks the financial resources to meet all the need that exists. The Society acts fairly and reasonably in allocating its scarce resources among applicants according to their degree of need and vulnerability.

2. In response to paragraph 2, whether Bell, A.B. and members of the S.M.A. have the characteristics described in paragraph 1 is outside the knowledge of the Society but the Society admits the remainder of the paragraph.
3. In response to paragraph 9, children in Family Law Proceedings are dependent on both parents (not just their mothers) to articulate and advance their interests.

Ms. Bell

4. In response to paragraph 28, Bell applied to the Society for legal aid on 20 December 2012 and disclosed an RRSP of approximately \$9,000. The Society admits the remainder of the paragraph.
5. In response to paragraph 36, Bell had two legal aid lawyers. The stop date on the contract with the first lawyer was 12 March 2015. That lawyer's final bill was dated 28 May 2013. Bell applied again to the Society for legal aid on 28 May 2013 and was approved and referred to a different lawyer. The stop date on that contract was 28 May 2015. That lawyer's final bill was dated 7 July 2014.
6. In response to paragraph 41, Bell applied again to the Society for legal aid on 4 August 2015 and the reasons given on the review were dated 11 September 2015. The Society admits the remainder of the paragraph.
7. In response to paragraph 48, Bell needs legal representation for the reasons stated but the Society must allocate its scarce resources according to degree of need and vulnerability and Bell is not among the most needy applicants.
8. In response to paragraph 49, whether Bell was counselled to reapply is outside the knowledge of the Society but the Society admits the remainder of the paragraph.

Ms. A.B.

9. In response to paragraph 66, A.B. applied to the Society for legal aid in December 2014 and her application was approved. In May 2015, A.B. applied to the Society to change lawyers and that application was approved.
10. In response to paragraph 67, the Society authorized A.B.'s lawyer to jointly retain an expert, with C.D.'s lawyer, to prepare a section 211 report subject, to a maximum number of billable hours at a maximum hourly rate. If the expert exceed his or her allotted hours, or billed at a higher rate, the Society's funding would cover less than half of the report, but whether this occurred in this instance, and if so who paid for the difference, is outside the knowledge of the Society.
11. In response to paragraph 68, the stop date on the contract with A.B.'s legal aid lawyer was 16 December 2016. The Society does not use a concept of "legal aid allotment".

12. In response to paragraph 70, A.B. requires the assistance of a lawyer for the reasons stated but the Society must allocate its scarce resources according to degree of need and vulnerability and A.B. is not among the most needy applicants.

Legal Aid in Family Law Proceedings

13. In response to paragraph 78, many (but not “most”) of the individuals who would benefit from legal aid in Family Law Proceedings are women.
14. In response to paragraph 86, the Society amended its policies in January 2017, due to budgetary constraints, and no longer grants extended coverage in Family Law Proceedings.
15. In response to paragraph 87, the preparation hours available under the Society’s tariff are not frequently inadequate for lawyers of reasonable competence and experience to obtain effective relief for clients in moderately complex Family Law Proceedings, but the preparation hours are limited and lawyers must work efficiently to stay within them. The Society admits the remainder of the paragraph.

Role of the Province

16. In response to paragraph 89, whether the Province’s control over the administration of legal aid is “significant” is a matter of subjective judgment. The Attorney General “may” approve the Society’s budget and, if the Attorney General does not respond to a budget within 30 days after receipt, the Attorney General is deemed to have approved the budget. The prohibitions are accurate but are created by subsections 17(2) and (3) of the *LSS Act*.

Demographics of Legal Aid Recipients

17. In response to paragraph 93, between 25% and 42% of individuals who received legal aid in 2015/16 were women. The uncertainty arises because 17% of legal aid recipients did not disclose their sex or gender to the Society.

Division 3 – Additional Facts

A.B.’s Earlier Family Law Legal Aid

1. The Society has funded legal representation for A.B. on three previous occasions.
2. In September 2007, the Society approved A.B.’s application for legal representation to seek orders relating to parenting issues.
3. In September 2008, the Society approved another application for legal representation to vary orders relating to parenting issues.
4. In October 2014, the Society approved another application for legal representation to seek an order relating to a threat by C.D. not to return their children to A.B.

The Society's Decision-Making

5. The need for legal representation greatly exceeds what the Society is able to provide, given its limited financial resources and the fact that it is required by statute to balance its budget every year.
6. In 2015/16, the Society received approximately 37,500 applications for legal representation.
7. Most applicants have vital interests at stake and are deserving of legal representation, but they present with varying degrees of need and vulnerability.
8. To ensure it allocates its scarce resources as efficiently and effectively as possible among applicants according to their degree of need and vulnerability, the Society employs robust planning, demand management and program evaluation practices and has adopted various policies which govern when, and the extent to which, it will fund legal representation (collectively, the “**Policies**”).
9. The Policies prioritize providing representation to individuals with serious criminal law, family or child protection problems; who face a refugee or deportation hearing or a Mental Health Review Panel or B.C. Review Board hearing; or who have a prison issue for which the *Charter* establishes a right to counsel.
10. The fact that so many legal aid recipients have criminal law issues is largely a reflection of the applicant pool. In 2015/16, of the 37,456 applications for legal representation received by the Society, 25,341 (67%) had criminal law issues, 7,888 (21%) had family law issues and 3,122 (8%) had child protection issues.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Society consents to the granting of the relief sought in **none** of the paragraphs of Part 2 of the Notice of Civil Claim.
2. The Society opposes the granting of the relief sought in paragraphs **1 (in part) and 2 to 6** of Part 2 of the Notice of Civil Claim.
3. The Society takes no position on the granting of the relief sought in paragraph **1 (in part)** of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

Impugned Statutory Provisions

1. The Society takes no position on whether sections 10(2), 10(3), 11(3), 11(4), 17, 18, 19, 21(1), 21(2) or 21(3) of the *LSS Act* are constitutional.

2. Subsections 11(1) and 11(2) of the *LSS Act* empower the Society to provide a variety of legal aid services. These subsections are constitutional. If they were declared to be of no force or effect, the Society would be hindered in its ability to provide those services.
3. Subsections 21(4) and 21(5) of the *LSS Act* (i) provide that no act of the Society is invalid merely because it contravenes the MOU and (ii) immunize the Society from any liability it would otherwise have for contravening the MOU. These subsections are constitutional.

Remedial Power in this Action

4. The Policies are not law and, accordingly, cannot be declared to be of no force or effect under subsection 52(1) of the *Constitution Act, 1982*.
5. A particular decision made by the Society in conformity with the Policies may give rise to an *in personam* remedy under subsection 24(1) of the *Charter*, but such a remedy may be granted only in a petition for judicial review of the particular decision and will be limited to the particular person affected. The Policies are not reviewable as such.

Section 7 of the Charter

6. Alternatively, if the Policies are law, which is denied, the Policies do not deprive the plaintiffs of life, liberty or security of the person.
7. In the further alternative, if the Policies do deprive the plaintiffs of life, liberty or security of the person, which is denied, they do not do so in a manner that is arbitrary, grossly disproportionate, overbroad, or contrary to any other principle of fundamental justice.

Section 15 of the Charter

8. The Policies are collectively a program or activity which has as its object the amelioration of conditions of disadvantaged individuals or groups within the meaning of subsection 15(2) of the *Charter*.
9. Alternatively, if the Policies are not immunized from review by subsection 15(2) and the Policies are law, which is denied, the Policies do not give rise to differential treatment on the basis of an enumerated or analogous ground or intersecting grounds.
10. In the further alternative, if the Policies do give rise to differential treatment on the basis of an enumerated or analogous ground or intersecting grounds, which is denied, that differential treatment is not discriminatory.

Section 1 of the Charter

11. In the further alternative, if the Policies infringe the plaintiffs' rights under section 7 or 15 of the *Charter*, which is denied, that infringement is justified under section 1.

Section 96 of the *Constitution Act, 1867*


12. Alternatively, if the Policies are law, which is denied, the Policies are not inconsistent with section 96 of the *Constitution Act, 1867*.
13. In the further alternative, if the Policies are inconsistent with section 96, which is denied, that inconsistency is caused entirely by the fiscal constraints imposed by the Province and not by any act or omission of the Society.

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Dated: 28 July 2017



Lawyers for the Defendant Legal Services Society
Brent B. Olthuis / Trevor J.S. Bant

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.