



ENDING VIOLENCE

Association of BC

June 18, 2019

Honourable David Eby, Attorney General
Office of the Attorney General
Room 232, Parliament Buildings
Victoria, B.C. V8V 1X4

Attention: David Eby, Q.C., Attorney General
CC: Richard Fyfe, Deputy Attorney General

Re: Legal Services Society Funding of section 278 applications

Dear Mr. Eby,

We write today as two provincial organizations along with one of EVA BC member agency. All of us have expertise in addressing gender-based violence and all are concerned about the increasing incidence of accused persons requesting the counselling records of sexual assault complainants from service providers, and the subsequent financial burden on service providers to defend their clients' right to privacy. We are writing to request that your Ministry provide funding to Legal Services Society (LSS) to provide legal aid to anti-violence organizations who face section 278 applications within sexual assault trials.

This situation has occurred numerous times over the past 10 years and is now at a point that, in a growing number of cases, victim service/women's organizations are being served with records subpoenas to allow defence counsel in these cases to examine and cross examine confidential information in these files. We acknowledge that there is already legislation and recent caselaw to assist in protecting victim privacy however, these legal protections are not readily available to anti-violence organizations who support survivors/victims to navigate through the criminal justice system. Legal protections cannot be relied on by those who cannot afford to access them: in this case, anti-violence organizations cannot reasonably afford to access legal protection of their victim service records.

As you are aware, currently, the LSS funding agreement related to Section 278 applications only covers independent legal representation for the victim themselves to respond to applications for disclosure of their personal information/records from a variety of sources. This funding however is not available to victim service organizations, or other agencies that have received a subpoena for records relating to the files they own, and have custody and care over. Recently, the LSS funding criteria was expanded

to include coverage for victims of sexual assault defending against submission of evidence related to past sexual activity or release of records of sexual assault victims in the possession of accused persons. Funding is still not available to victim service organizations, or other agencies, that have received a subpoena for confidential victim records.

Current legal aid funding allows that a complainant's assigned lawyer may receive funding to defend a records subpoena. However, there are some circumstances where funding to individual complainants is not sufficient to ensure the confidentiality of the individual survivor's records, the integrity and credibility of the victim service organization, or the appropriate development of the law around the release of victim records more generally. These circumstances include:

- When a victim does not oppose the release of her records;
- When a victim does not/has not retained counsel to defend against a records' subpoena (or not in a timely manner); and
- When the interests of anti-violence organizations and the women themselves do not align, so they need separate representation.

At times, anti-violence organizations will have more systemic concerns in mind while an individual survivor's primary concern will, justifiably, be their own safety and privacy.

Surrey Women's Centre's recent experiences are an important example of the problem we are describing. In the last 7 months, Surrey Women's Centre has been served subpoenas to release clients' records in two cases of sexual assault. In responding to the first subpoena, the Centre retained counsel to fight what was seen as a fishing expedition on the part of defence, to defend against the subpoena to protect the security of their promise of privacy to survivors. While the Centre was successful in the application to protect the release of the client's records, the organization incurred costs of over \$5000.00 plus staff time. These resources could have been put to better use in meeting the long wait list of their clients who desperately need their services. The Centre recently responded to a second subpoena. Again, the Centre was required to obtain counsel at their own cost. Again, these funds could have been used instead to meet client needs.

The core of the relationship between victim support agencies and their clients is confidentiality. Their clients are women at their most vulnerable who need to feel secure that they can freely discuss their fears in a safe and confidential environment. To successfully assist their clients, all victim-serving organizations must be able to ensure that each victim/survivor of sexual violence can trust the promise of confidentiality and be safe in that environment. Anti-violence organizations will not function if the confidentiality of their services and the work they do with individual clients cannot be maintained. The core principles of access to justice and safety for survivors are impacted by these subpoena requests and the lack of funding to defend against them.

Currently, anti-violence programs in British Columbia lack funded legal support in these situations. As well, as stated in the case of Surrey Women's Centre, a loss in these

legal battles erodes the principles of privacy, fairness and protection.

We submit that the repeated pattern of subpoenas for release of records of women who access anti-violence organizations may begin to weaken the mandate of these anti-violence services.

Sincerely,



Tracy

Tracy Porteous, Executive Director, EVABC (signed on behalf of all parties listed below)

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