

September 18, 2024

Alberta Threatens the Independence of its Legal Aid Program

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Agreement comment on: [Governance Agreement Respecting Legal Aid](#) (September 6, 2024)

In early September, the Alberta government announced it had signed a new five year (2024 – 2029) legal aid governance agreement with [Legal Aid Alberta](#) and the [Law Society of Alberta](#). The government [news release](#) emphasized collaboration and a ‘shared understanding’ amongst the signatories on the importance of legal aid for access to justice. I read this narrative with suspicion because collaboration and ‘shared understanding’ are not words that I associate with the funding of public services by the UCP government. Moreover, only a couple of months have passed since the media [reported](#) that the Minister of Justice had unilaterally terminated negotiations on a new agreement in May; apparently seeking to impose a new funding structure for legal aid which critics allege would provide the Minister with significantly more control over the funding and operations of the legal aid program. This turn by the Minister from an authoritarian to a collaborative stance in just two months seems very unlikely to me, and my curiosity led to a closer look at the details in this new agreement. These details reveal that the Minister has not backed off plans to restructure legal aid, and the independence of legal aid in Alberta is under attack.

What is legal aid? Essentially, it is a funding program that allocates public money to pay the cost of legal representation for Albertans who are unable to afford the cost of hiring a lawyer in legal proceedings including criminal, immigration, mental health, family, and domestic violence. Legal aid also pays for a roster of duty counsel in docket courts and bail hearings within 24 hours of initial detention who are available to provide free initial legal advice to any person facing prosecution or with family court matters, regardless of their financial means or ability to pay. Most legal services funded by legal aid in Alberta are for legal representation on criminal matters for persons who meet the eligibility (financial need) requirements. All of this information (and much more detail on what services legal aid pays for) is summarized and published annually by Legal Aid Alberta (see annual reports going back to 2013-2014 [here](#)). Over the years, ABlawg has published a few comments on matters concerning access and eligibility for legal aid (see e.g., [A Smart Decision – Access to Counsel for the Poor and Disabled in a Legal Aid Crisis](#) and [When is Legal Aid Funding a Right in Criminal Cases?](#)).

Who funds legal aid? The funding is provided by the federal government, the Alberta government, and the Alberta Law Foundation. The Alberta government provides the majority of funding for legal aid. The federal government contributes approximately 20% of the legal aid funding to the provinces and territories (for an overview see [here](#)). And section 123 of the *Legal Profession Act, RSA 2000, c L-8*, requires the [Alberta Law Foundation](#) to allocate 25% of its revenue from the interest generated on lawyers’ trust accounts, to fund legal aid. The 2024-2025 contribution from the Alberta government is budgeted at \$110 million (of note, this figure would presumably include

the federal contribution, although Alberta does not explicitly acknowledge this). To put that number in perspective, the Alberta government contributed \$104 million in 2018-2019 (see the Legal Aid Alberta revenue and expense statement for 2018-2019 [here](#)). The UCP government began cutting the provincial legal aid contribution in 2019-2020, with a draconian slash down to \$70 million in 2020-2021 (see the Legal Aid Alberta revenue and expense statement for 2020-2021 [here](#)) and announced its push to ‘modernize’ legal aid in 2022 (translation: apply a heavy dose of [neoliberalism](#)).

In 2022, criminal justice lawyers in Alberta began to [sound the alarm](#) on how a chronically underfunded legal aid system would significantly impair access to justice and rule of law. The UCP government has since restored provincial funding to 2019 levels (albeit still much less of an Alberta contribution in real dollars when accounting for inflation and the fact that the federal component of this amount has remained constant). However, as I explain below the ‘modernization’ of legal aid is poised to begin.

How is legal aid governed? This is where things get even more interesting. The statutory basis for legal aid in Alberta consists entirely of section 4 in the *Legal Profession Act*:

Legal aid plan

4(1) Subject to the approval of the Lieutenant Governor in Council, the Minister, the Society and the Legal Aid Society of Alberta may enter into an agreement respecting the operation by the Legal Aid Society of Alberta of a plan to provide legal aid to persons in need of it in civil matters or criminal matters or both.

(2) No action lies against the Legal Aid Society of Alberta or its members, officers or employees in respect of anything done by any of them in good faith in the operation of a legal aid plan established under this section.

Unlike other provinces such as British Columbia (see the *Legal Services Society Act*, [SBC 2002, c 30](#)) or Ontario (see the *Legal Aid Services Act, 2020*, [SO 2020, c 11, Sch 15](#)) which have a dedicated statute on the structure and operation of legal aid in the province, Alberta governs legal aid entirely pursuant to an agreement negotiated between the Minister of Justice, Legal Aid Alberta, and the Law Society of Alberta. Some relevant sections of the 2024 Agreement in relation to governance include:

- sections 4.1 - 5.2 which reference the establishment and responsibilities of the governance Board for Legal Aid Alberta;
- section 7.2 which gives the Minister power to establish funding levels for services provided by the legal aid plan;
- sections 10.1 - 10.12 which give Legal Aid Alberta powers to administer the legal aid program;
- section 12.1 which obligates Legal Aid Alberta to submit an annual budget and business plan for the Minister’s approval;

- sections 15.1 - 15.5 which make reference to the periodic review of financial eligibility requirements to qualify for legal aid services and the tariff payable to lawyers who perform those legal services under the program; and
- sections 16.1 - 16.5 which require amounts under the approved budget to be allocated to Legal Aid Alberta for the purposes of operating the legal aid program.

Amongst the many implications of this structure for governance, the absence of a legislative framework for legal aid in Alberta significantly impairs the prospect of legal accountability on the administration of the program; in particular, the rules on financial eligibility, legal services to be provided by legal aid, and tariffs payable to lawyers who provide the services are established by the governance Board of Legal Aid Alberta (see Part VIII of the [Rules](#) and publication of policies and the tariff [here](#)) and there is no reference to the enactment of these rules in the agreement, other than reference in sections 13.2 and 13.3 which essentially state the Board may enact or change the rules. As well, this structure exposes the legal aid program to the sort of political influence we have seen in Alberta since 2019, and which is now explicit in the new agreement.

What's new in the 2024 Agreement? To identify new provisions in the 2024 Agreement, I compared it on a line-by-line basis with the 2019 Agreement. Two changes captured my attention.

First, the Preamble now includes a reference that the Minister shall determine the legal services to be provided under the legal aid program and determine the amount of funding appropriate to those services. This is an odd statement in the Preamble because the substantive terms of the Agreement still contemplate these essential features of the legal aid program being decided by Legal Aid Alberta. This certainly leaves the reader with an impression that the Minister will be directing core components of the legal aid program, despite an agreement which purports to give that power to Legal Aid Alberta.

Second, there is now a termination provision in section 29: Either the Minister or Legal Aid Alberta can terminate the governance agreement with 18 months written notice. While written in mutual terms, clearly this is a unilateral power granted to the Minister because it is inconceivable that Legal Aid Alberta would seek to terminate its funding. So, while the new Agreement states it is a five-year term, the context here is very different. Section 15.6 requires the Minister to begin consulting with Legal Aid Alberta (and prescribed others) on a plan to 'modernize' legal aid before March 2025, and sometime thereafter (but before September 6, 2027 – see section 29) the Minister is likely to exercise the termination power concurrently with proposing to 'modernize' the legal aid program in accordance with the consultation process set out in the new Appendices III and IV. Missing from those who will be consulted by the Minister on this 'modernization' project: the public, including those served by the legal aid program. While the Minister backed off a unilateral assertion of control over legal funding and operations back in May, it seems apparent those changes are forthcoming under the ruse of a 'modernization'.

All of this demonstrates the legal aid program in Alberta is vulnerable to political influence. In other words, the program is not institutionally independent from the executive branch of government, despite assertions to the public otherwise by the government and Legal Aid Alberta, as well as clumsy drafting in section 9.1 of the Agreement: "Subject to this Agreement, Legal Aid Alberta is independent from the Minister and the Law Society, and is accountable to both for the

operation and governance of Legal Aid Alberta and the Legal Aid Plan”. Independent and accountable. Say what?

The absence of a proper statutory framework for the Alberta legal aid program looms large here. The Minister has ‘negotiated’ for powers in the 2024 Agreement which, if the legal aid program was governed by a dedicated statute, would almost certainly require legislative action and be subject to the democratic scrutiny and public debate that goes along with legislative changes. Simply put, if the legal aid program were governed by legislation in Alberta, it would be much more difficult for the Minister to obtain the power to unilaterally terminate the funding and operation of the program. The UCP government has seized on this governance weakness, and now threatens the independence of the Alberta legal aid program.

This post may be cited as: Shaun Fluker, “Alberta Threatens the Independence of its Legal Aid Program” (18 Sept 2024), online: ABlawg, http://ablawg.ca/wp-content/uploads/2024/09/Blog_SF_Legal_Aid.pdf

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