



THE CANADIAN
BAR ASSOCIATION
Newfoundland & Labrador Branch

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Via mail and email

January 27th, 2021

Subject: Newfoundland and Labrador Provincial General Election 2021 – A Platform for Justice

The Canadian Bar Association – Newfoundland and Labrador Branch (“CBA-NL”) is interested in hearing your party's position on justice issues in advance of the provincial general election. We are canvassing all provincial parties and will share the responses with our membership and on our website, www.nl-cba.org.

Formed in 1896, the Canadian Bar Association (“CBA”) is a national association representing over 36,000 lawyers, judges, notaries, law teachers and law students from across Canada. Our mandate includes seeking improvements in the law and administration of justice, and access to justice.

As lawyers in the CBA, we have an interest in ensuring that our justice system is as effective as it can be and that our province has an adequately funded and appropriately functioning justice system. With that objective in mind, we invite you to answer the following questions as they relate to your party's plans for the justice system in Newfoundland and Labrador.

I. Technology, Modernization and the Impacts of Covid-19

Across the country, the Covid-19 pandemic has shed light on the immediate need to modernize the justice system and has brought into focus the urgency of forging an accessible, modern and user-centered justice system.

To provide examples specific to this province, members of the bar have been pleased with the increased use of videoconferencing for court proceedings, which we hope will continue post-pandemic. As well, at the beginning of the pandemic, courts in the province allowed for electronic filing, a measure later rolled back and previous procedures for filing re-instated, much to the dismay of members of the bar. Going forward, we encourage the courts to examine electronic filing as a common and accepted practice, as it is in many other jurisdictions.

While the COVID-19 pandemic has required us all to adjust and adapt, we are optimistic that the current situation will lead to critical examination and modernization of court procedures, updated legislation and an increased utilization of technology to benefit all participants in the judicial system of Newfoundland and Labrador.

What is your government's plan to modernize the justice system in Newfoundland and Labrador through investments in technology and learnings from the Covid-19 pandemic?



For our part, in April 2020, the CBA established a national task force on justice issues arising from the Covid-19 pandemic, bringing together leaders from across Canada's justice system including courts, tribunals, government and CBA groups.

The full task force report, to be released on February 17th, will examine the new measures, procedures and technologies used during the pandemic, identifying what has worked and what has not. Recommendations are expected to focus on innovation and sustainability, what investments are required, and what we have to do to make the justice system operate more efficiently and effectively. We look forward to sharing the full report with you when released next month.

II. Resourcing

An inadequately resourced justice system results in delays that lead to unmet legal needs. It is important that all residents of the province can access the justice system to resolve issues in a timely and effective way so that matters can be dealt with impartially, swiftly and before they become even more serious. Appropriate levels of staffing are required to ensure legal needs are met in a timely manner, including obtaining trial and settlement conference dates, returns of procedural applications, etc.

What will your government do to ensure that our justice system is appropriately staffed, including judges (at all levels), support staff, clerks, sheriffs' officers and prosecutors, to meet, in a timely way, the legal needs for Newfoundlanders and Labradorians?

III. Infrastructure

Access to justice includes the ability to access court facilities that are free of physical barriers and in a safe and secure manner. CBA-NL has longstanding concerns regarding the state of the court facilities throughout the province, notably the Provincial Courts in Stephenville and Happy Valley-Goose Bay and the Supreme Court - General Division, St. John's. CBA-NL members frequently raise issues facing these facilities including accessibility by persons with impaired mobility or disabilities, along with the provision of a safe environment for court staff, lawyers, judges and members of the public who use the facilities.

What would your government do to improve the physical infrastructure, accessibility and security of court facilities in our province?

IV. Access to Justice

In 2013, the CBA's Access to Justice Committee prepared a report titled *Reaching Equal Justice*, available online at www.cba.org/cba/equaljustice/secure_pdf/Equal-Justice-Report-eng.pdf, which informs our perspective on access to justice issues.

As the *Reaching Equal Justice* report indicates, over three years, forty-five percent (45%) of Canadians will encounter a problem requiring a legal solution. Many will not get the help they need because of perceived or actual barriers. Unresolved problems tend to escalate, and to exacerbate problems in other areas – health, social welfare and economic well-being, social exclusion and poverty.



For over fifty years the CBA has been involved in advocating for legal aid. The *Reaching Equal Justice* report calls legal aid “an indispensable component of a fair, efficient, healthy and equal justice system.” Among other things, the report calls for reasonable eligibility policies and an approach to legal aid that meets community needs and delivers meaningful access to justice.

Access to justice goes beyond mere funding issues. It requires an analysis of how current funds are spent and how resources are being utilized to ensure that our legal aid systems serve as many people as need it. There is a well known “access to justice gap” between those who are able to obtain full legal aid coverage and those who can afford to retain private counsel for trial. This is especially concerning in criminal matters, where a conviction can have serious consequences on an individual’s future.

What will your government do to ensure an adequately funded legal aid system in Newfoundland and Labrador?

What will your government do to ensure there is adequate access to legal aid assistance for the public?

Does your government have any plans to address the “access to justice gap”?

V. Alternative Approaches

Courts specialized by both problem type and target group, such as Family Violence Intervention Court, Drug Treatment Court and Mental Health Court, have been demonstrated to contribute to access to justice and quality of decision making. CBA-NL has long been an advocate for specialized courts which play an important role in the provincial justice system.

What are your plans for the continued use, and expansion of, specialized courts in Newfoundland and Labrador?

In addition, how will your government utilize alternative approaches to justice and restorative justice principles?

VI. Legislation and Law Reform

As the advocate for the legal profession, CBA-NL members bring to our attention concerns and ideas relating to the administration of law and justice in our province, for which there have been few avenues to direct reform ideas or offer opinions.

Last fall, CBA-NL formed a Legislation and Law Reform Committee to address the practical problems our membership encounters in dealing with the law and its operation. There is, at present, no direct avenue for the practicing bar to submit its recommendations to government. The role of the CBA-NL Legislation and Law Reform Committee will be to engage with our membership to draft reports and legislative reform recommendations based on our members’ experience and expertise. We hope to engage in constructive and cooperative dialogue with government and the legislature to modernize and advance the law of Newfoundland and Labrador.



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Will your party commit to review and dialogue with CBA-NL on its legislative and law reform efforts with the appropriate Cabinet members?

CBA-NL is currently working on two legislative reform projects that have been the subject of complaints of our membership, on which we anticipate issuing detailed reports for recommended reforms. Our members are interested to know your party's position on the following.

a) *Lands Act*

Section 36 of the *Lands Act* prohibits adverse possession (a.k.a. "squatters' rights") against the Crown, except if land was occupied for the period between 1956 and 1977. Members have long raised issues with the strictures of this requirement and the difficulties it poses for the operation of property law in this province. The Legislation and Law Reform Committee is currently engaged in a public consultation process on this matter on behalf of the CBA-NL membership, and anticipates releasing a report in March.

Would your government commit to discussion with CBA-NL regarding its law reform report on this topic?

Would your government consider changes to the rules surrounding private property interests against the Crown?

b) *Mechanics' Lien Act*

Across the country, almost every jurisdiction has updated its lien legislation except Newfoundland and Labrador, where the *Mechanics' Lien Act* has been substantially unchanged since 1970. Within the construction industry, liens are recognized as a way to protect vulnerable suppliers and cap liability for owners, but antiquated legislation undermines availability and effectiveness.

Members have expressed a number of concerns about our current *Act*, indicating that it is in desperate need for modernization to meet the needs of the modern commercial sector. Our Legislation and Law Reform Committee will be preparing a report on this *Act*, and engaging in member consultation to find solutions to modernize this law.

Would your government commit to discussion with CBA-NL regarding its law reform report on this topic?

Would your government consider reform of the *Mechanics Lien Act*?

We thank you in advance for taking the time to respond to our questions. We look forward to receiving your reply, and any additional information regarding your party's justice platform that you may wish to share with our members. Responses may be submitted to CBA-NL by email at cba-nl@cba.org.



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Respectfully submitted,

(original letter signed by Gregory J French)

Gregory J. French

President (2020-21) Canadian Bar Association – Newfoundland and Labrador Branch