

Article rank | 14 Aug 2011 | Ottawa Citizen | BY RICHARD FOOT | POSTMEDIA NEWS

Basic rights at risk, chief justice warns 2

Civil justice becoming unaffordable for many working- and middle-class Canadians, McLachlin tells lawyers

HALIFAX • Millions of middleclass Canadians are routinely denied basic legal rights because access to everyday civil justice is unaffordable for too many, says the country's most senior judge.

Beverley McLachlin, chief justice of the Supreme Court of Canada, said while efforts have been under way for years to provide legal funding for people in the criminal courts, access to legal help in the civil domain — such as the making of wills, resolving family disputes, and settling problems between landlords and tenants — is largely overlooked.

"Ordinary, working-class or middle-class people of no great means, who have legal needs — be they in relation to problems they encounter with personal injuries, renovations to their house, family matters, maybe getting a will done ... people feel they cannot take a step of finding a lawyer or launching a lawsuit, or doing what they feel should be necessary to protect their legal rights," McLachlin said Saturday at the Canadian Bar Association's annual conference.

"They fear expense. They fear delay. In the family law area, they fear getting mired in processes that exacerbate the dispute and have very bad consequences for preserving as much of the family assets as can be preserved.

" These are the concerns (and) we should do better."

McLachlin cited recent studies by the World Justice Project, a global initiative that examines legal rights in 66 countries. Canada ranks among the top nations in the world on the group's overall Rule of Law Index, but in a sub-index of the 12 wealthiest nations of Europe and North America, Canada ranked only eighth out of 12 last year in terms of access to civil justice. This year, Canada is ranked ninth — ahead of only Spain, Italy and the United States.

Melina Buckley, a Vancouver lawyer who chairs the CBA's access to justice committee, called the ranking "shocking."

She said one reason for the low number is that legal aid funding for civil cases has been gutted in most provinces in recent years. In provinces including British Columbia and New Brunswick, for example, she said legal aid offers only limited coverage for family law cases, and almost no help for other civil matters.

"There are some really tough questions for the public and for public spending — do we want to be ranked ninth out of 12? Is that where we want to be?" she asked. "We certainly wouldn't be happy if that's where we were in international health-care rankings, and I think we should have the same pride and put the same emphasis on access to justice."

McLachlin said one of the best solutions might be the introduction of legal insurance, purchased as part of regular homeowners' insurance.

In parts of Europe, including Sweden and Germany, homeowners are required to have a basic measure of legal insurance as part of their property insurance. Legal insurance is extremely rare in Canada, except in Quebec, where some public-sector and industrial unions provide it as part of their benefit plans.

"I think at the beginning (of civil disputes), it's important for people to be able to see a lawyer," said McLachlin.

Buckley said another solution is for Canadian lawyers to offer "unbundled" legal services. Rather than charging an expensive retainer and representing a client through a lawsuit from beginning to end, lawyers could charge smaller fees for only specific services — such as drafting a civil claim, or offering advice on how to proceed through the court system.

This change would require provincial law societies to loosen their rules governing how lawyers represent clients, she said.

In a speech to the CBA's governing council, Buckley said years of efforts by the legal profession to improve access to justice in Canada — by lobbying for increased public funding, or encouraging law firms to boost their pro bono work — have largely failed.

"There is no evidence that despite all of our initiatives, access to justice is improving," she said. "The message we get from our judges, and the chief justice this morning, is that Canadians are going backwards in this area."

Printed and distributed by NewspaperDirect | www.newspaperdirect.com, US/Can: 1.877.980.4040, Intern: 800.6364.6364 | Copyright and protected by applicable law.