



**Submission of the
Federation of Law Societies of Canada
to the
House of Commons Standing Committee on
Justice and Human Rights**

***Statutory Review of An Act to amend the
Criminal Code, the Youth Criminal Justice Act
and other Acts and to make consequential
amendments to other Acts***

August 7, 2018

Introduction

1. The Federation of Law Societies of Canada (“The Federation”) appreciates the opportunity to provide comments to the Committee on the occasion of its review of Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts* (“Bill C-75”).
2. The Federation is the national coordinating body of Canada’s 14 law societies, which are mandated by provincial and territorial statutes to regulate the country’s 120,000 lawyers, Quebec’s 3,800 notaries and Ontario’s nearly 9,000 licensed paralegals in the public interest. Communicating the views of the governing bodies of the legal profession as they direct, the Federation is a leading voice on national issues critical to the public’s right to an independent legal profession, the public’s interest in accessing legal services, and other issues relating to the administration of justice and the rule of law.

Bill C-75 and Access to Justice

3. As indicated by the Minister of Justice, the Honourable Jody Wilson-Raybould, in her introductory remarks before this Committee on June 19, 2018, Bill C-75 seeks not only to modernize the criminal justice system, but to address the overrepresentation of Indigenous people and marginalized Canadians in the criminal justice system.
4. As we explain in more detail below, we are concerned that a discrete aspect of Bill C-75 will restrict the abilities of Canadians to adequately defend themselves from summary conviction offences.
5. Given the stated aims of Bill C-75, the Federation does not believe that an intended outcome is to diminish Canadians’ access to justice when defending themselves from summary conviction offences. We thus urge this Committee to make a recommendation to prevent this outcome.

New Restrictions on the Use of Agents for Summary Convictions

6. The Federation is concerned that the proposal to increase the maximum imprisonment for summary conviction offences will have the unintended consequence of restricting access to justice for low- and middle-income Canadians charged with summary conviction offences. Section 319 of the bill seeks to amend section 787 of the *Criminal Code* by increasing the maximum imprisonment for summary conviction offences from six months to two years less a day. Under sections 800(2) and 802 (1) of the *Criminal Code*, a defendant to a summary conviction charge may appear by counsel or agent, but pursuant to section 802.1 an accused is prohibited from using an agent if he or she is liable, on summary conviction, to imprisonment for a term of more than six months. Bill C-75 proposes no change to this provision.
7. Absent an amendment to section 802.1, if the maximum sentence for summary conviction offences is increased to two years, defendants will no longer be able to use an agent to defend the charges. The Federation anticipates that this reform will eliminate the ability of articling students, law students and paralegals to represent clients charged with summary conviction offences. In the Federation’s view, the inability to use an agent would have negative implications for access to justice; Canadians who cannot afford a lawyer will be unable to retain the lower-cost (or free) alternative services of

paralegals, articling students, and law students. As this Committee indicated in its October 2017 report on legal aid, the demand for legal aid is greater than that which can be met with current resources, and too many Canadians who do not qualify for legal aid cannot afford legal representation.¹ Clearly, Bill C-75's resulting restriction on the use of agents will place greater strain on the already-taxed legal aid system, and it is likely to have a disproportionate impact on vulnerable community members who, for reasons like illiteracy or trauma, cannot adequately represent themselves in court.

8. Articling students and law students, who fall under the regulatory scrutiny of law societies through the professional responsibilities placed on their supervising lawyers, make important contributions to access to justice. Law students and articling students provide indispensable, often free services to the community when appearing as agents on summary conviction offences; in so doing, those law students and articling students also receive valuable, practical training that strengthens their professional abilities. The Canadian Bar Association, recognising the value of law student and articling student representation, has sought to broaden these rights of audience for law students.² Again, your Committee has noted that students in legal clinics, when supervised by staff lawyers, provide appropriate and low-cost services to community members, and has recommended that the role of law school clinics be expanded to increase access to justice.³
9. The Law Society of Ontario is the sole regulator of paralegals in Canada, and as such, will be conveying their unique concerns about Bill C-75 and its impact on paralegals in separate submissions to the Minister of Justice and to this Committee.

Conclusion

10. Given the significant access to justice issues at stake, the Federation advocates that this Committee recommend supplementary amendments to Bill C-75 in order to align s. 802.1 with the summary conviction clauses in the proposed legislation. Canadians charged with summary conviction offences deserve appropriate and accessible legal representation, which in the view of the Federation includes paralegals, law students, and articling students acting as agents.
11. Apart from these concerns, the Federation also notes that the length and size of Bill C-75 makes it very difficult for members of the public to provide sufficient scrutiny of the proposed legislation, which in turn can undermine public confidence in proposed legislative reform, however well-intentioned.
12. We would welcome the opportunity to discuss these matters further and to otherwise assist the Committee in its review of the Act.

¹ House of Commons Canada, Report of the Standing Committee on Justice and Human Rights, "Access to Justice, Part 2: Legal Aid," October 2017, at pp. 9-11, online:

<https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP9186121/justrp06/justrp06-e.pdf>

² In their 2014 *Futures* report, the CBA recommended easing restrictions on rights of audience for law student appearances in courts. Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada*, August 2014, Recommendation 18, online:

https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf

³ *Supra* note 1 at pp. 15-19.