



**Submission of the  
Federation of Law Societies of Canada  
to the  
Senate Standing Committee on Legal and  
Constitutional Affairs**

***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***

**April 29, 2019**

## Introduction

1. The Federation of Law Societies of Canada (“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 125,000 lawyers, Quebec’s 3,800 notaries and Ontario’s nearly 10,500 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.
3. 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 this Committee.

## Bill C-75 and Access to Justice

4. As indicated in testimony before the House Standing Committee on Justice and Human Rights, 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.
5. The Federation is concerned that Bill C-75 will restrict the ability of Canadians charged with summary conviction offences to adequately defend themselves by limiting representation by agents.
6. Given the stated aims of the Bill, the Federation does not believe that an intended outcome is to diminish Canadians’ access to justice when defending themselves on summary conviction charges. In response to the concerns raised by the Federation and other stakeholders, an amendment was adopted by the House of Commons on the recommendation of the House Standing Committee on Justice and Human Rights (“House Standing Committee”). That amendment does not, however, adequately address the problem.

## New Restrictions on the Use of Agents for Summary Convictions

7. The Federation’s concern with Bill C-75 as initially written was that the proposal to increase the maximum imprisonment for summary conviction offences would have had 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 initially proposed no change to this provision.

8. In August 2018, the Federation raised its concerns in submissions to the House Standing Committee. The Federation submitted that absent an amendment to section 802.1, if the maximum sentence for summary conviction offences were increased to two years less a day, defendants would no longer be able to have an agent represent them on the charges. The Federation anticipated that this reform would eliminate the ability of licensing candidates, law students and paralegals to represent clients charged with summary conviction offences. In our view, the inability to use an agent would have negative implications for access to justice; Canadians who cannot afford legal counsel would be unable to retain the lower-cost (or free) alternative services of paralegals, licensing candidates, and law students.
9. The House Standing Committee indicated in its October 2017 report on legal aid that the demand for legal aid cannot be met with current resources, and too many Canadians who do not qualify for legal aid cannot afford legal representation.<sup>1</sup> The Federation argued that Bill C-75's resulting restriction on the use of agents would place greater strain on the already-taxed legal aid system, and it was likely to have a disproportionate impact on vulnerable community members who, for reasons like illiteracy or trauma, cannot adequately represent themselves in court.
10. The House Standing Committee was sensitive to the concerns raised by the Federation and others and proposed an amendment to Bill C-75 which was subsequently accepted by the House of Commons. The amendment would preserve the right of agents to appear when authorized to do so under a program approved by the lieutenant governor in council of a province and would also permit the lieutenant governor in council to establish criteria expanding the right of agents to appear. While the Federation recognizes that the intention of the amendment was to respond to the access to justice issues raised before the House Committee in our view the amendment does not adequately address the problem.
11. The amendment would place near total reliance on provincial cabinets to enable agents to appear in summary conviction matters. The Federation sees a number of potential problems with this approach. It leaves open the possibility that the provinces will adopt different programs or criteria leading to inconsistent access to legal services across the country. It also raises the possibility that some or all provinces may not act quickly to preserve the appearance rights of agents. This could force agents who are currently acting on matters to seek leave to withdraw, forcing clients to try to find alternative assistance. Even if jurisdictions were to act expeditiously, there might still be a time period during which agents would be prohibited from acting. Finally, the proposed amendment raises the possibility that one or more provinces may not act at all. Although s. 802.1 of the *Criminal Code* has long provided the lieutenant governors in council of the provinces with the jurisdiction to authorize programs which expand the ability of agents to appear, few have done so.
12. Licensing candidates and law students, who fall under the regulatory scrutiny of law societies make important contributions to access to justice. Law students and licensing candidates provide indispensable, often free services to the community when appearing

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<sup>1</sup> 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>

as agents on summary conviction offences; in so doing, those law students and licensing candidates also receive valuable, practical training that strengthens their professional abilities. In its 2014 *Futures* report, the Canadian Bar Association, recognising the value of law student and licensing candidate representation, recommended broadening the rights of audience for law students.<sup>2</sup> The House Standing Committee has noted that students in legal clinics 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.<sup>3</sup>

## Conclusion

13. Given the significant access to justice issues at stake, the Federation reiterates the position it took before the House Standing Committee. The Federation advocates that this Committee recommend further 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 licensing candidates acting as agents.
14. Apart from these concerns, the Federation reiterates its concern 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.

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<sup>2</sup> 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](https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf)

<sup>3</sup> *Supra* note 1 at pp. 15-19.