



**Legal
Services
Society**

Providing legal aid
in British Columbia
since 1979

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**LEGAL AID FUNDING AND THE LAW SOCIETY OF BC
Mayland McKimm, QC, Chair, The Legal Services Society
Speech to The Law Society of BC Benchers, April 23, 2010**

INTRODUCTION

Thank you....

ISSUE

I am here today to outline for you what I believe are the best ways the Law Society can assist the Legal Services Society to get more funding from government for legal aid.

The Attorney General has said repeatedly that increased funding is not available in the short term. I draw your attention to my one and only PowerPoint slide which shows the current state of the provincial economy and future projections.

As this slide makes clear, now is not the time to be asking for more money. Therefore, we must talk about how LSS can best position itself for funding increases when the provincial economy improves.

I am going to begin with some background so you know the current state of legal aid in BC.

Then I am going to talk about some recent legal aid research and what that means for future funding.

And finally, I will outline the ways in which I believe the Law Society can best assist us.

BACKGROUND

First, the background.

Today, the Legal Services Society has 33 offices around the province providing services at more than 50 locations. At each of these locations you can get legal information, referrals to other social service agencies, and apply for legal aid.

I'm sure you are already familiar with our statutory mandate. But it is a complex one, so let me take a minute to summarize it.

The society's statutory mandate is "to assist individuals **to resolve** their legal problems and facilitate their access to justice."

I want to emphasize the words "**to resolve**" in our mandate. They mean that our goal has to be outcomes not process.

We work toward those outcomes by providing "**legal aid**" which is defined in the legislation as "legal and **other services**." This a very broad definition taking us beyond those services traditionally provided by a lawyer. It includes non-legal services that help clients to resolve problems.

Outcomes and non-traditional services are themes I'll return to later.

To fulfill its mandate, the Legal Services Society provides three types of legal aid:

- The first is by providing free legal information and self-help materials through legal information outreach workers, our website, and our publications. Our Family Law website alone is used 16,000 times a month.
- The second is legal advice. This is primarily through duty counsel and our Brydges Line. Last year these lawyers provided help more than 100,000 times.
- The third is representation by a lawyer in court. In the fiscal year just ended more than 26,000 clients received representation assistance.

Our revenues in 2010 – 2011 from government will be \$2 million less than the previous year. This reduction applies only to large criminal cases. We are negotiating a new funding protocol with the Ministry of Attorney General for these cases and do not expect the cut to impact other services.

Law Foundation revenues will remain unchanged. Revenues from the Notary Foundation are expected to remain at historic lows for another year.

In 2009 LSS had expenditures of \$82 million dollars, of which 69 percent (\$56 million) went to lawyers. In 2001, LSS had expenditures of \$89 million of which only 58 percent (\$52 million) went to lawyers.

The Legal Services Society now devotes a larger portion of its revenues to services provided by lawyers than it did prior to 2002. Leaving aside inflation and operational changes, the Legal Services Society now devotes more money to services provided by lawyers.

Many people urge the government to restore funding to the level it was at in 2001. When you factor in inflation and population growth, we would need an additional \$47 million to match 2001 funding. In today's economy, I doubt very much there is an additional \$47 million to be found in the government's accounts.

This doesn't mean I am content with the current state of funding. Let me make it clear, and I have made this clear to the government as well – the Legal Services Society does not have adequate funding to deliver the services we, the board of directors, believe are necessary to serve our clients.

Nor do we have adequate funding to pay lawyers what they deserve to be paid for the work they do.

The society's key challenges are largely driven by external factors over which we do not have control. These include the revenue provided by government, the number of people charged with criminal offences, family break up, immigration policies, and the number of children placed in government care.

Faced with these challenges, I and my fellow board members had to make some difficult choices. In the end, we decided that our priority had to be services to clients.

This meant eliminating many valuable staff positions. It also meant eliminating poverty law services such as LawLINE.

As a long-time legal aid lawyer and as chair of the board, I can tell you these were difficult decisions. But we made them so that money could be put into services – services for the poor and disadvantaged of this province.

As a result of the restructuring, the Legal Services Society now has about \$1.5 million that can be devoted to services.

With this money we have reinstated a number of services that were previously cut and we will be introducing new services as well. These programs were announced last December, but I will summarize them quickly:

- Extended services for clients in particularly difficult family law matters.
- New family duty counsel programs to provide legal advice between court appearances and outside the court setting.
- Services for civil issues such as foreclosure, bankruptcy, housing and debt, that are related to a family law problem.
- Funding to enhance our award-winning Family Law website.
- Funding to continue public legal education initiatives around BC and in Aboriginal communities.

- New criminal duty counsel assistance for persons charged with minor criminal offences, in particular the Category I offences that were cut last year.

We have also reinstated tiered rates for criminal duty counsel back to April 1, 2009 and will be introducing a simplified tariff to reduce the administrative burden on lawyers. But, as I said before, we do not have adequate funding to pay lawyers what they deserve to be paid for the work they do. But we have made small improvements.

POSITIONING LSS FOR FUTURE FUNDING

I turn now to the core of my comments today – how best to position LSS for future funding.

LSS has already taken steps to ensure its own house is in order. On anyone's analysis, the Legal Services Society runs a cost-effective, efficient legal aid program that provides maximum benefit to clients with available funding.

This is a credit to our executive director and his staff who have developed a culture of continuous improvement in the society's business processes.

The Ministry of Attorney General knows that any new money for legal aid will be properly managed.

But we need to go one step further. We need to show other government ministries that legal aid can help them to achieve their own goals.

And it is here that I return to the themes of outcomes and non-traditional services that I mentioned earlier.

In any legal dispute, the ideal outcome is a speedy resolution that stands the test of time so the parties can get on with their lives.

Legal aid clients are no different, but achieving the ideal outcome for them often involves helping them address non-legal issues such as homelessness, poverty, or addiction that have an impact on their legal problems.

This is best accomplished when legal aid and multiple government ministries integrate their services and make them available early in the legal process or, better still, before the legal process is even needed.

Examples of how this might work include lawyers providing advice outside court at native friendship centres, women's agencies, welfare offices, or hospitals.

Legal advice and representation are of pre-eminent importance in ensuring both fairness in, and proper functioning of, the justice system, and many BC lawyers provide exemplary service to the poor and disadvantaged through the legal aid program. Legal advice and representation are the backbone of any legal aid program and will always be.

Now imagine what could be achieved if legal aid worked in concert with all the various social services providers to address all facets of a person's problems – including legal problems – at an early stage before those problems fester and become even more costly. We would have a much greater chance of achieving

the ideal outcome I just described – a speedy resolution that stands the test of time so the parties can get on with their lives.

Research here in BC by the Legal Services Society, in Canada by the Department of Justice, in the UK, the US, and elsewhere confirms that this is the best way to provide maximum benefit with limited dollars.

A 2008 study by the Legal Services Society found that 80 percent of British Columbians reported experiencing a legal problem that was serious and difficult to resolve in the previous three years. In real life, the survey results might look like this: A family gets into debt (the number two problem identified in our survey). This leads to family discord (number five on the list) and the spouses separate. The stress of the separation leaves one of the spouses an emotional wreck (60 percent said legal problems triggered emotional health problems) and unable to work. Without work, he or she seeks social assistance, troubles continue, and costs to the justice, health care, and social services systems mount up.

Obviously, this all-too-common downward spiral (and its burden on the social safety net) could have been averted by some early legal advice and debt counselling when the first cheque bounced.

In the criminal context, the concepts are the same. Rather than assuming a person's legal aid needs flow exclusively from the charges and the court process, better outcomes can be achieved by complementing the lawyer's services with other services that address the root cause of the criminal activity.

If you have not already done so, I recommend you look at a paper published by the Department of Justice in 2003 called "The Unmet Need for Criminal Legal Aid." It talks about outcome-based legal aid and explains that it does not replace the services traditionally provided by lawyer. Rather, an outcome-based approach suggests a number of client characteristics that should be taken into account in order to achieve a resolution that has stronger preventative or reparative aspects for that particular individual.

If you think this is a radical notion, let me assure you it is not. There is really nothing new here at all. Legal aid in Canada actually began as an initiative of the federal ministry of health not an initiative of the Department of Justice.

Here in BC, the Attorney General already has some projects underway that build on this model such as the Vancouver Downtown Community Court and the Nanaimo Justice Access Centre. These are very much first-generation projects and they must get faster, better, and cheaper if they are to be effective, but there is research and evaluation in progress.

Current revenues limit the Legal Services Society's involvement in these projects, but they are excellent examples of how non-legal services can complement the services traditionally offered by lawyers to provide better outcomes for people and better use of scarce financial resources.

To sum up, I believe the Legal Services Society can best position itself for future funding increases by doing two things:

- First, by continuing to demonstrate fiscal responsibility and maximum benefit to clients with available funding,
- And second, by reaching out to other government ministries that share a common interest in improving the lot of the poor and disadvantaged in BC.

HOW LSBC CAN ASSIST

And that brings me to my final comments – the ways in which I think the Law Society can best assist us to achieve those goals.

1. Communications

The first is communications.

Assist LSS to get consistent and accurate messages to the public, the legal profession and justice system partners.

This can be done through LSBC publications and meetings with Law Society stakeholders.

This is extremely important because there is a great deal of misinformation about legal aid floating around. For example, organizations have reported that we were closing offices that were not being closed and that we were cutting services that have, in fact, not been cut.

2. Develop a Law Society vision for publicly funded legal aid services

Second, develop a Law Society vision for publicly funded legal services. The Law Society's public interest mandate will bring a unique perspective to this issue and may well be different from other law-related organizations.

One issue you may wish to consider is what legal aid services the province must provide as a matter of law, what services are desirable on social justice and other policy grounds, and what services, if not provided, end up costing the citizens and taxpayers more.

3. Promote lawyer involvement in legal aid

Third, promote lawyer involvement in legal aid. This could be done by building on the Law Society's success in encouraging lawyers to provide pro bono services.

I note, by the way, that only two of the current Benchers have taken a legal aid referral in the past 12 months. I realize that for some of you legal aid is not possible given your area of practice. And before anyone asks, the answer is "Yes" I have taken a legal aid referral in the past year.

4. Leadership and strategy development

Fourth, continue to champion initiatives that make justice more accessible such as the work of the Unbundling of Legal Services Task Force, the Delivery of Legal Services Task Force, and the Access to Legal Services Advisory Committee.

CONCLUSION

I urge you all to give serious thought to the action plan I have outlined. It's not a radical new way of looking at legal aid. Rather, it's a part of a trend that is growing across Canada, throughout the Commonwealth and in the US. And it is a trend we need to be part of if we are going to get more money.