



**Legal
Services
Society**

Providing legal aid
in British Columbia
since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

Tel: (604) 601-6000
Fax: (604) 682-0914
www.lss.bc.ca

ACCESS TO JUSTICE – WHAT THE PEOPLE WANT
Mayland McKimm, QC, Chair, The Legal Services Society
Speech to the Law Society of BC Benchers, March 4, 2011

INTRODUCTION

Thank you....

ISSUE

I am here today to tell you what the Legal Services Society has learned from a series of consultations about access to justice.

The results might surprise you.

The Chief Justice of Canada, the Chief Justice of BC, and the media have pushed access to justice into the public arena and it is now an issue discussed by average taxpayers in the lineup at Starbucks.

But what judges and lawyers say when they talk about access to justice is not necessarily what the average British Columbian wants to hear.

Access to our government-sanctioned dispute resolution mechanisms – be they courts, mediators, or administrative tribunals – takes on a whole new meaning

when looked at from the perspective of people caught up in the legal system, often against their will.

Access to justice is of particular importance to the Legal Services Society because without an effective and efficient means of resolving legal problems, we will end up spending more on process than on resolution and the cost of legal aid will climb.

The Legal Services Society also has a statutory mandate to advise the Attorney General on access to justice issues.

Before turning to this important issue, I am going to begin with a quick update on the current state of legal aid in BC.

Then I am going to talk about access to justice and what it means to the people who use BC's justice system.

And finally, I am going to outline two initiatives the Legal Services Society is championing in 2011 that will improve access to justice.

UPDATE ON LEGAL AID

A lot has happened at the Legal Services Society since I spoke to you last April, and all of it is positive.

In the interests of time, I am only going to mention the highlights. These include reinstating coverage for minor criminal offences, a new family law telephone advice line, and simplified tariffs.

We have expanded our duty counsel programs, particularly in Aboriginal communities, and we have added a new community engagement department to advance our outreach and education programs and to consult with local agencies about how we can build local solutions to their legal needs.

LSS has also increased the compensation paid to lawyers with some year-end payments, and we have introduced a new award program to recognize the work of legal aid lawyers.

These new and reinstated services are the direct result of the board of directors' decision to replace several of our regional centres with local agents so more money could be put into services. It was an extremely difficult decision, but our clients have benefited.

Mark Benton and his team have done a lot in the past year and the board is justifiably proud of their accomplishments. I've distributed a handout with more information.

ACCESS TO JUSTICE

I turn now to my main theme today – what access to justice means to the people who use our legal system or, perhaps more accurately, are ensnared in our legal system.

You will note that I am defining access to justice from the perspective of people who face legal problems, not from the perspective of the judiciary or the legal profession.

If we want to improve access to justice, it is essential that we understand the public's needs and experiences.

It is essential that we look at the justice system from the bottom up, not the top down, in order to understand its relevance to the resolution of legal problems that people face in their lives.

This is the approach legal policy makers and social scientists around the world now take when researching justice reform initiatives.

It is also the approach we take at the Legal Services Society when developing programs and when gathering information for our discussions about access to justice with the Ministry of Attorney General.

And I assume it is an approach the Law Society endorses given its public interest mandate.

One example of LSS's research in this area is a poll conducted in 2008 that looked at how low-income British Columbians experience legal problems and the steps they take to resolve them. This was a local version of the research carried out by Dr. Ab Currie at the Department of Justice in Ottawa that many of you will be familiar with.

More recently, the Legal Services Society held community engagement workshops in three cities, and with a group of community workers from around the province, to find ways to improve access to our information, advice, and representation services.

These are the consultations I mentioned at the beginning of my presentation. They were part of a program that lasted a day-and-a-half and we heard from more than 100 people.

The people attending our workshops work with legal aid clients – social workers, community advocates, native courtworkers, victim services staff, community health advocates, transition house volunteers, battered women counsellors, and Aboriginal leaders. We even had a high-school law teacher at one session.

Many were from very remote and isolated communities. One advocate said her circuit included regular stops at a nameless community of 300 on the west coast of Vancouver Island; a health counsellor said she often visited a village of just 12 people.

At each workshop, we asked the participants to list the biggest barriers to accessing legal aid services in the communities they served.

They gave us answers not just about legal aid but about access to justice in general.

Is the biggest barrier the shortage of lawyers or the high cost of legal fees that some commentators have mentioned?

The answer is “No.”

It turns out that for many people there are a number of hurdles to get over before they can even start worrying about the lawyer shortage or legal fees.

Here are some of the things we heard.

The number one barrier is actually a cluster of obstacles that includes poverty, transportation, and child care.

For many people, particularly in remote communities, the biggest barrier to accessing justice is simply getting to the courthouse or even having the means of getting to the courthouse.

Participants also noted that their clients do not know what legal services are available and that they fear lawyers and the legal process.

We were told that many people simply do not know what lawyers do, how the courts work, or that the justice system can help them. Those who do know often feel stigmatized if they have to see a lawyer.

Another often-cited barrier was the lack of trained community advocates, especially in smaller communities.

At each workshop, we also asked participants to brainstorm solutions to overcome these barriers and improve access to justice.

Does access to justice mean simplified court rules or plain language legislation?

Again, the answer is “No.”

Based on the suggestions made at these workshops, many British Columbians view access to justice as a much more ground-level concept.

Based on the suggestions we received, access to justice has two components.

The first is simply making the legal system more accessible or user friendly.

For example, people suggested many of the access to justice barriers associated with poverty, transportation, and child care could be eliminated if courts were more flexible in their scheduling or if there was a daycare in the courthouse.

Workshop participants told us that if you live in a remote village, a morning hearing often means that you have to take the day before your court appearance off work and stay overnight to get there on time.

But if the hearing were scheduled later in the day, you could leave early in the morning and only lose one day of work.

For some people, taking a day off work means not having money for food the next day. People want hearings scheduled with their travel needs in mind or after work.

And what does it matter if there are more lawyers, or that they all agree to slash their fees, if a single mother looking for child support has no one to look after her kids while she is in court?

The second component of access to justice is helping people understand how the legal system can help them.

Studies have shown that the root cause of clients fearing lawyers and the legal process is a lack of knowledge about the justice system and concern about the dangers of becoming involved in its procedures because of its presumed unpleasantness, expense and unpredictability.

More public education is required but not education about laws or regulations. We have to start at a much more basic level and teach people how to recognize that a problem might have a legal remedy.

Research has shown, and this includes the LSS poll I mentioned, that most people do not realize that many of the problems they face have a legal solution.

At our workshops, we heard that the best way to teach people about the law, and to help them recognize legal problems, is not by sending them lawyers. Rather, it is by working with trusted social service providers who are already in place.

Participants at our workshops explained that these intermediaries have long-standing relationships with their clients and are more likely to spot a problem at an early stage and to be trusted when they suggest a legal solution.

Trusted intermediaries do not need to be taught about torts or contracts or even welfare law. What they need to be taught is simply how to identify a potential legal issue and where to refer someone for assistance.

We were told more than once that arming the travelling community health nurse, the local social worker, or an Aboriginal elder with information about child protection law or welfare rights – and a list of who to contact for help – was more important than having a lawyer available.

At the Legal Services Society we call this “putting legal aid in the path of the client.” A more formal description is “integrated services.”

TWO INITIATIVES

This brings me to my final topic—two initiatives that we believe will improve access to justice. I will also mention ways you, the Benchers, can help us with these initiatives.

The first is integrating legal services with existing, trusted social services.

As I explained a moment ago, integrated services do not have to be as complicated and costly as the Community Court. They can be as simple and inexpensive as giving a health worker information about child protection law. This is something our legal information workers have been doing for years. But more needs to be done in this area if legal aid is going to be truly effective.

LSS currently has two successful medical-legal partnerships in place. One is at BC Women’s Hospital and the other is at a Hastings-and-Main drop-in centre.

Both are for women who are pregnant or have babies and have drug and alcohol problems. Most of the women are Aboriginal.

We have a legal information outreach worker who stops by the clinics regularly, and recently we have arranged for duty counsel to attend a half-day per week at each.

The benefit of these programs is early detection of legal problems – child protection is a big issue – and referral to appropriate resources. The total cost is about \$30,000 a year, which is a small amount in comparison to the benefits.

And here's an anecdote to show you how simple integrated services can be in the criminal context.

LSS has a legal information worker at the Community Court. One day, a man she had helped in the past stopped by with some good news. He got a job. It is out of town so he will be leaving the Downtown Eastside, and he will be off the streets. Our information worker reminds him that he is subject to a court order that requires him to meet with a probation officer at specific times. The man does not realize that if leaves town, he can be arrested for breaching the order. So our information worker takes him to duty counsel who gets the order varied and he is good to go.

The benefit to the man is huge – he won't be arrested. The benefit to society is also huge – we now have one less citizen in breach of a court order. And the cost to legal aid was minimal – a few minutes of an information worker's time.

The Legal Services Society is now developing plans for pilot projects that integrate legal aid with social services. One of the purposes of our consultations is to identify organizations we can partner with.

Here is what what you can do to help. If there are areas of need in your community that could be addressed by integrating legal aid with health care, housing, education, or counselling services, please let me or Mark Benton know about it. We want ideas for new pilot projects and your input is welcome.

The second initiative the Legal Services Society is working on is reducing the cost of large criminal cases.

If we can lessen the resources – financial and judicial – that the guns-and-gangs cases eat up, there may well be more resources available for access to justice initiatives and legal aid.

Defence funding for large criminal cases is a bit complicated, so here is a very simple summary. If the defence costs are less than \$175,000, it comes out of the LSS budget. If the costs are more than \$175,000, or if it is a court-ordered counsel case such as a Rowbotham, it is funded by the Ministry of Attorney General.

LSS has a superb case management program that applies to any case expected to take longer than two weeks in court. We also provide case management services to the Ministry of Attorney General (on a fee-for-service basis) for some, but not all, of the large criminal case the ministry funds.

With the case management program, defence counsel provide LSS with an outline of evidence, and issues, as well as the time required for preparation. The outline is then reviewed by independent case review lawyers and a budget is set proportionate to the needs of the case. This ensures better cost projections, earlier resolution, and more focused trials.

The problem is that the case management program only applies to the defence. Trial costs are driven by all parties.

If we are going to do something about reining in the cost of large criminal cases and reducing their impact on court resources, all justice system stakeholders – the judiciary, the federal and provincial governments, police, prosecution, legal aid, and the Law Society – are going to have to work together on an integrated solution.

You can help us by supporting this approach as we engage the government in discussions about developing a stakeholder committee to find ways to reduce the costs of large criminal cases.

CONCLUSION

This brings me to the end of my comments.

Access to justice is of fundamental importance today.

We can talk about the rule of law or the independence of the legal profession all we want, but the public will not support these lofty ideals if they do not have a justice system that assists them to resolve their problems effectively and efficiently.

At the end of the day, what people really want from their justice system is resolution of their problems so they can get on with their lives.

The best way to build a justice system that meets this objective is by analyzing access to justice from a user's perspective. It is only when we are armed with data from court users and people facing legal problems that we can set about making changes that will give the public a justice system that ensures timely and cost-effective dispute resolution.

And when we have a justice system that delivers these services, we will have a justice system the public respects and supports.

I understand that the Legal Aid Commission will be releasing its report next week. I do not know what recommendations it will make. But I do not expect its recommendations on access to justice to be any different from what I have outlined today because that is what the people want.

The Legal Services Society is committed to talking to ordinary British Columbians about our justice system. We have more workshops planned. You are welcome to attend and hear what people have to say about access to justice.

I also ask that you give some thought to the ways in which you can support the two initiatives I mentioned – integrated services and large case management.

Thank you.



LEGAL AID UPDATE

Mayland McKimm, QC, Chair, The Legal Services Society

Addendum to Speech to The Law Society of BC Benchers, March 4, 2011

When I spoke to the Benchers in April 2010, I suggested the Law Society adopt a four-point action plan to assist the Legal Services Society with its efforts to obtain more government funding.

Those four points are set out below with a list of initiatives undertaken by the Legal Services Society.

1. Communications

- A new stakeholder engagement initiative that includes meetings with elected officials to increase awareness of our work and how integrated legal aid services can assist various ministries to achieve their goals.
- A new community engagement department to advance our outreach and education programs and to consult with local agencies about how we can build local solutions to their legal needs.

2. Develop a vision for publicly funded legal services

- LSS's vision is set out in its annual service plans which are posted on our website and tabled in the Legislature. I encourage you to look at the most recent one which outlines our strategies and goals for the next three years.
- LSS also prepared submissions to the Public Commission on Legal Aid describing the society's long-term vision. We did this so the commissioner, when formulating his recommendations, would know what the Legal Services Society will be doing in the coming years to ensure legal aid remains both viable and meaningful.

3. Promote lawyer involvement in legal aid

- New, simplified tariffs that significantly reduce the administrative burden on legal aid lawyers.
- \$3,000 retention payments to family law practitioners in communities where lawyer recruitment has been a problem.

- Year-end retention payments to all legal aid lawyers based on the number of referrals they took last year.
- A new award program to recognize the contributions of legal aid lawyers around BC.

4. Leadership and strategy development

- New and reinstated services. These services are the direct result of the board of directors' decision to replace several of our regional centres with local agents so more money could be put into services. It was an extremely difficult decision, but our clients have benefited.
 - Coverage for minor criminal offences (the former Category 1 offences).
 - New family law telephone advice service.
 - Five new lead duty counsel positions in high-demand courthouses.
 - New family advice clinics in New Aiyansh, Old Hazelton, Smithers, and Gitanyow, and we have arranged for duty counsel on Haida Gwaii.
 - Extra coverage for clients with particularly difficult family law matters
- LSS is now reviewing a number of piloted Aboriginal services to determine which should become core programs and how all LSS services can be designed to meet the identified needs of Aboriginal communities.
- LSS has held a number of "Gladue workshops" to train people to prepare pre-sentencing reports in cases involving Aboriginal people.
- A significant amount of time and resources has been spent ensuring legal assistance is available for the Tamil refugees who arrived during the summer.
- Mark Benton has been instrumental in helping the Association of Legal Aid Plans of Canada develop a strong, national voice similar to that of the Federation of Law Societies. He also continues to work with the inter-governmental Federal-Provincial-Territorial Working Group on Legal Aid.