

THE FUTURE OF LEGAL AID*

By Mayland McKimm, Q.C.

I am here to outline for you what I believe are the best ways the Law Society can assist the Legal Services Society (“LSS”) to get more funding for legal aid.

The Attorney General has said repeatedly that increased funding is not available in the short term. Therefore, we must talk about how LSS can best position itself for funding increases when the provincial economy improves.

Today, the LSS provides services through its toll-free call centre, and at more than 50 legal aid offices and courthouse locations across British Columbia. At each of these locations you can get legal information and referrals to other social service agencies, and apply for legal aid.

The society’s statutory mandate is “to assist individuals to resolve their legal problems and facilitate their access to justice”. The words “to resolve” 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 is a very broad definition, taking us beyond those services traditionally provided by a lawyer. To fulfill its mandate, the LSS provides three types of legal aid: self-help information (which is free to everyone), advice from a lawyer and representation in court (which both require coverage and income eligibility).

In 2009, the LSS had expenditures of \$82 million, of which 68 per cent (\$56 million) went to lawyers. In 2001, it had expenditures of \$89 million, of which only 58 per cent (\$52 million) went to 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 that there is an additional \$47 million to be found in the government’s accounts.

This doesn’t mean that 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 LSS does not have adequate funding to deliver the services that 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.

As a result of its recent restructuring, the LSS now has about \$1.5 million that can be devoted to services. With this money we have reinstated some

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family law services that were previously cut, and we will be introducing expanded family and criminal duty counsel programs.

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 B.C. 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 that the parties can get on with their lives.

If you think this is a radical notion, let me assure you it is not. 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.

To sum up, I believe the LSS can best position itself for future funding increases by continuing to demonstrate fiscal responsibility and maximum benefit to clients with available funding and by reaching out to other government ministries that share a common interest in improving the lot of the poor and disadvantaged in B.C.

The Law Society can best assist us to achieve those goals by ensuring consistent and accurate messages about legal aid to the public, the legal profession and justice system partners; developing a Law Society vision for publicly funded legal aid services; promoting lawyer involvement in legal aid and showing leadership through the Law Society's related task forces and committees.