



# Foundation for Change

REPORT OF THE PUBLIC COMMISSION  
ON LEGAL AID IN BRITISH COLUMBIA

**Leonard T. Doust, QC**

**March 2011**

**FOUNDATION FOR CHANGE:** Report of the Public Commission on Legal Aid in British Columbia

by Leonard T. Doust, QC

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## ACKNOWLEDGMENTS

The Public Commission on Legal Aid (the “Public Commission”) was launched in June 2010 to engage British Columbians in a discussion about the future of legal aid in the province.

The Public Commission was funded by The Canadian Bar Association British Columbia Branch, The Law Society of British Columbia, The Law Foundation of British Columbia, The British Columbia Crown Counsel Association, The Vancouver Bar Association and The Victoria Bar Association.

I wish to thank the Steering Committee made up of representatives of these groups and others for their valuable guidance, assistance and for the opportunity to engage in this process.

I wish to acknowledge and express my gratitude to Michael Litchfield, the co-ordinator of the project, for making all the necessary arrangements and ensuring that the Public Commission process ran smoothly and in a timely manner throughout. He attended to all of the details in moving the Public Commission forward to its conclusion.

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I would like to thank all of the politicians, Federal, Provincial and Municipal who took the time to sit as co-Commissioners and who made a valuable contribution by adding their perspective to the Public Commission process. A list of these co-Commissioners is provided in the appendix to this report.

I gratefully acknowledge the assistance provided in the course of interviews with various of the judges at various court levels.

The Legal Services Society and the Law Foundation of British Columbia provided me with their insight into the system and I found it to be very helpful and for that I thank them.

Most importantly, I am extremely thankful to all of the individuals and groups who obviously gave considerable thought to and spent a great deal of time in the course of preparing and providing to me both written and oral submissions outlining their concerns with respect to the legal aid system and their views on how to deal with those concerns. I was the beneficiary of an extensive cross section of representative individuals and groups, particularly those involved in the system who brought considerable experience, knowledge and wisdom to me in the course of their submissions. Let there be no doubt that their thoughtful comments helped in shaping this final report. A complete list of those who provided both oral or written submissions is set out in the appendix. These individuals and organizations certainly share fully in credit for any meritorious aspects of the report. I, of course, accept full responsibility for errors and omissions.

# Executive Summary

The Public Commission on Legal Aid (the “Public Commission”) was launched in June of 2010 for the purpose of engaging British Columbians regarding their views on the future of legal aid in the Province of British Columbia.

In the course of the Public Commission process, submissions were made by both individuals and organizations, detailing their stories and experiences and sharing constructive proposals for the improvement of the legal aid system in the future. The overwhelming majority of submissions spoke to the general failure of our legal aid system, the negative repercussions for needy individuals and families, and the consequent adverse impact on our communities and justice system. There were also many representations made by organizations and groups involved in the process of the delivery of legal aid services — those who were extremely knowledgeable and were able to point clearly to the deficiencies, and the consequences of the deficiencies, and to assist me in terms of making recommendations for reform. The range of individuals and organizations included legal aid clients, legal services providers, and those representing the broader public interest.

The representations constituted a cross-section of views on a province-wide basis. The response was outstanding and the Public Commission was called upon to sit for extended hours on a number of occasions. There can be no doubt that the public was indeed engaged; many of the submissions were made passionately and out of a clear sense of the need for reform.

**In the course of the Public Commission process, submissions were made by both individuals and organizations, detailing their stories and experiences and sharing constructive proposals for the improvement of the legal aid system in the future.**

## The Commission of Inquiry

The Public Commission was a joint initiative of the Canadian Bar Association British Columbia Branch, the Law Society of British Columbia, the Law Foundation of British Columbia, the British Columbia Crown Counsel Association, the Vancouver Bar Association, and the Victoria Bar Association.

The objective of the Public Commission was to obtain the views of British Columbians regarding legal aid and to make recommendations that would serve as a foundation for the development of an effective legal aid system in the province. In order to carry out this mandate, the Public Commission issued an open call for written submissions and held hearings in 11 communities throughout British Columbia to hear in-person submissions.

The Public Commission received written submissions from approximately 73 individuals, organizations, and groups familiar with the legal aid system, its benefits and deficiencies throughout the province. The Public Commission also held hearings in 11 communities across the province, during which in excess of 80 presentations were made to the Public Commission.

**There were many representations made by organizations and groups involved in the process of the delivery of legal aid services — those who were extremely knowledgeable and were able to point clearly to the deficiencies, and the consequences of the deficiencies, and to assist me in terms of making recommendations for reform.**

## Legal Aid in British Columbia

Until the 1960s, legal aid in British Columbia was provided through the pro bono efforts and volunteer services rendered by the legal profession to those who could not afford, but required, legal services. In the early 1970s the federal and provincial governments began to contribute to funding for legal aid. In 1979 the Legal Services Society (“LSS”) was established by provincial statute.

Since then, the present legal aid system in British Columbia has experienced many highs and lows and has been the subject of numerous government reports. The demand for legal aid services has grown steadily while government contributions have been inconsistent. In the mid-1990s British Columbia had one of the most comprehensive programs in Canada, but the continued increasing demand consistently outpaced budget allocations, giving rise to shortfalls in service.

Reductions in government commitment to legal aid became evident through the 1980s and 1990s when the federal government capped transfer payments and reconfigured its cost-sharing for civil legal aid and moved to a general transfer of funds to the provincial government rather than a transfer specifically designated for legal aid. The commitment of the provincial government has also gradually eroded and in 2002, the budget of LSS was reduced by close to 40 percent over a three year period. Budget reductions have necessitated changes in service delivery by LSS including the closure of approximately 45 branch offices, which were replaced by seven regional centres, and services from local agents. In 2010 the number of regional centres was further reduced to two. Most notably, poverty law services and many family law services were eliminated.

Today, the legal aid system operates in a severely circumscribed environment. LSS has taken a strategic approach to working within the strictures imposed on it and are running a cost effective and efficient legal aid program within the narrow financial parameters available to it.

While LSS has prioritized the protection of its core services in an environment of insufficient and uncertain funding, it is clear to me that the legal aid system is failing to meet even the most basic needs of British Columbians. Additional reductions in service occurred in 2009 — on top of what was then an unsustainable and highly volatile legal aid system.

Based on the evidence presented to me, I cannot come to any conclusion other than the services provided in British Columbia today are too little, their longevity or consistency too uncertain. This result is the consequence of the cutbacks and lack of sufficient and consistent financing, even though LSS has done its very best, and in my view has done everything possible, to accommodate the needs within their limited budgetary restrictions.

Other groups have attempted to fill the gaps within the system, but have largely fallen short in their efforts. The lawyers through Access Pro Bono as well as the Law Foundation of British Columbia have made considerable efforts, but at the end of the day, I am satisfied that we have fallen from being a leader in legal aid provision to seriously lagging behind other jurisdictions. We can no longer avoid the fact that we are failing the most disadvantaged members of our community, those for whom legal aid exists within our province.

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## What the Commission Heard

The submissions received by the Public Commission clearly evidenced the gaps — the inability of the present system to respond to what can only be characterized as the obvious and dire needs of many of the disadvantaged, their inability to obtain even the basic benefits to which they are legally entitled because of the lack of assistance.

The submissions also outline the downstream consequences — the economic and social costs of this failure. The submissions and representations made it abundantly clear that the system is failing. They provided constructive and thoughtful ideas with respect to reform and assisted me significantly in coming to my conclusions and recommendations in this report. On the basis of the evidence presented before me, I have made seven overarching findings:

- The legal aid system is failing needy individuals and families, the justice system, and our communities.
- Legal information is not an adequate substitute for legal assistance and representation.
- Timing of accessing legal aid is key.
- There is a broad consensus concerning the need for innovative, client-focused legal aid services.
- Steps must be taken to meet legal aid needs in rural communities.
- More people should be eligible for legal aid.
- Legal aid should be fully funded as an essential public service.

## Specific Areas of Concern

I have no hesitation in concluding that legal aid is an essential public service in our society. For the reasons contained in this report it is my view that in a just society, it is a public service that is as essential as education, healthcare, and social assistance. There must be a broad consensus on this point. Indeed, the significance of the legal aid system is that it picks up where our other social systems fail and timely legal aid can often significantly reduce the strain on healthcare and social assistance.

Legal aid is essential in criminal matters where persons are accused of serious crimes and they cannot otherwise afford to pay for a lawyer. Their liberty is at stake. Timely and appropriate criminal legal aid actually results in significant cost savings to the system. Over 80 percent of all criminal trials in the province are resolved before trial. However, when a litigant in a criminal trial is unrepresented it is extremely difficult, if not impossible, to either resolve the matter without a trial or to even expedite the trial process.

Legal aid is necessary in many other situations where, once again, the provision of timely and adequate legal advice and representation results in justice and satisfaction of the basic necessities of life; it also provides downstream economic and social benefits to society. Timely legal aid may prevent additional healthcare costs, the commission of criminal offences as a response to the failure to properly access legal benefits, and further burden on the social welfare system.

In the child protection context, parents face the threat of losing custody and care of their children to state authorities. The implications of this are obvious not only to the parents but to the well-being of the children.

Individuals who are involuntarily committed to a provincial health facility have the right to have their detention reviewed at specific intervals—this is an important safeguard given they are being deprived of their liberty. These individuals face insurmountable barriers in representing themselves but all too frequently the process grinds to a halt without the assistance of legal aid or legal representation.

Similarly, refugees seeking asylum in British Columbia are faced with adversarial state representation and must deal with a complex process. The fairness of this process depends absolutely upon adequate representation and the stakes for the individual are high, including risk of life, family separation, and possible return to a country to which a refugee may have no connection whatsoever or may face serious wrongful political persecution.

Legal aid is absolutely essential in family law and poverty law matters. The family law regime provides important legal rights and protections to address the consequences of the breakdown of a marriage or long term relationship, including those pertaining to child custody, access and child support, division of property and spousal support. These issues relate to the most fundamental aspects of their lives, their relationship with their children, and their ability to provide their families with adequate housing and other necessities of life.

The need for legal aid for poverty law matters is perhaps the least well understood but is clearly a pressing area of concern. Poverty law problems include issues such as debt, access to social assistance and housing, worker's compensation claims, access to pension benefits, and many other social welfare benefits to which individuals are legally entitled.

Those on the margins of our society are unable to deal with ruthless and unscrupulous landlords with respect to their housing needs. Debt left unattended can lead to loss of housing and/or the

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ability to meet basic needs; such losses may contribute to the breakdown of relationships, giving rise to a whole new range of legal aid and social assistance requirements.

The list of poverty law requirements is set out more fully in this report.

## Summary of Recommendations

I have made nine recommendations in this report based on my analysis of the evidence, information and material provided to the Public Commission, and my best effort to address the deficiencies of our legal aid system.

Without adequate legal aid, we all fail in our social obligation to ensure that every citizen of our province has available at least the basic necessities of their lives so they can adequately sustain themselves and their families. My recommendations are designed to overcome what I perceive to be the deficiencies that exist, addressed in the representations made to me in the course of the hearings and a complete review of the written submissions provided.

I am compelled to point out that this Executive Summary cannot possibly capture fully what I outline in this report in terms of the problems, the needs, and the solutions facing our legal aid system in British Columbia.

**My recommendations are designed to overcome what I perceive to be the deficiencies that exist, addressed in the representations made to me in the course of the hearings and a complete review of the written submissions provided.**

### Recommendation 1: Recognize legal aid as an essential public service

The *Legal Services Society Act* should be amended to include a statement clearly recognizing legal aid as an essential public service and the entitlement to legal aid where an individual has a legal problem that puts into jeopardy their or their family's security—be it their liberty, health, employment, housing, or ability to meet the basic necessities of life—and he or she has no meaningful ability to pay for legal services.

### Recommendation 2: Develop a new approach to define core services and priorities

A new approach to defining core public legal aid services and priorities should be developed which merges the traditional legal categories approach (e.g., criminal law, family law, and poverty law) with an approach based on the fundamental interests of the most disadvantaged clients, where the need is most pressing and the benefit is likely to be the greatest. At a minimum this will require reinstating coverage for many family law and poverty law matters.

### Recommendation 3: Modernize and expand financial eligibility

- (a) Financial eligibility criteria should be modified so that more needy individuals qualify for legal aid and the criteria should be linked to a generally accepted measure of poverty such as Statistics Canada's Low-Income Cut-Off or Market Basket Measure.
- (b) Legal aid should be made available to the "working poor," defined as those earning up to 200 percent of the poverty rate through a sliding scale contribution system.
- (c) Basic legal aid services such as legal information and limited legal advice should be available to all residents of British Columbia, but only to the extent that the entitlements under (a) and (b) to comprehensive legal aid is fully met.

**The Legal Services Society Act should be amended to include a statement clearly recognizing legal aid as an essential public service.**

#### **Recommendation 4: Establish regional legal aid centres and innovative service delivery**

Legal aid service delivery should be modeled on evidence-based best practices, which take into account the needs of economically disadvantaged clients for lasting outcomes and the geographic and cultural barriers they face in accessing public services. This model should include the following nine features:

1. Establishment of Regional Legal Aid Centres across the province to serve as the point of entry hub of legal aid service delivery for all core services to facilitate early intervention in resolving legal problems;
2. Mobile outreach services to individuals who cannot access the Centres due to geographic, cultural and/or other barriers;
3. Enhanced team approach to the delivery of legal aid services with greater emphasis on the role of community advocates and legal advocates acting with adequate support, training and supervision by lawyers;
4. Gradual expansion of the role of duty counsel and staff lawyers where monitoring and evaluation demonstrate the effectiveness of these modes of service delivery in meeting client needs;
5. Greater integration of legal aid services with other support services to meet client needs in a more holistic manner;
6. Enhanced case management of large criminal cases and in other situations, where warranted;
7. Targeted strategies to meet the needs of under-served communities including Aboriginal communities, women leaving abusive relationships, individuals with mental or cognitive disabilities, migrant workers and the elderly;
8. Re-establishment and expansion of LawLINE; and
9. Cautious expansion of information technology in delivering legal aid services bearing in mind the proven barriers to accessing and using legal information, particularly by the most disadvantaged.

#### **Recommendation 5: Expand public engagement and political dialogue**

Justice system stakeholders, including those that established this Commission and members of the Coalition for Public Legal Services, should continue to take steps to expand public engagement and political dialogue on the urgent need to renew the legal aid system in British Columbia.

#### **Recommendation 6: Increase long-term, stable funding**

The provincial and federal governments must increase funding for legal aid and provide this funding through a stable, multi-year granting process. The provision of essential public legal services is a governmental responsibility and the delivery of core services should not depend upon charitable contributions from the Law Foundation, the Notary Foundation, community groups, and pro bono efforts of the legal profession, paralegals and others.

### **Recommendation 7: The legal aid system must be proactive, dynamic, and strategic**

The legal aid system should be more proactive, dynamic and strategic in its approach, which requires enhanced research, policy development, monitoring, and evaluation capacities.

### **Recommendation 8: There must be greater collaboration between public and private legal aid service providers**

Mechanisms to facilitate collaboration between public legal aid providers and private service providers, such as an “Access to Justice Committee”, should be established on both a province-wide and regional basis. These committees could also play an important function in providing input to broader court reform and access to justice initiatives.

### **Recommendation 9: Provide more support to legal aid providers**

Steps should be taken to develop, support, and recognize community advocates, legal advocates, paralegals, and lawyers who provide both public and private legal aid services in order to ensure the quality of these services. These steps should include: increased training and professional development opportunities, increased informational resources and other forms of support, quality assurance mechanisms, and ensuring that remuneration is sufficient to make it economically feasible for lawyers and others to perform these essential services.

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## PART 1: INTRODUCTION

# Making the Case for Legal Aid as an Essential Public Service

**In my function as sole Commissioner for this initiative, I have come to a much deeper appreciation of the devastation wreaked by the absence of adequate legal assistance and representation.**

Our legal aid system is failing the people of British Columbia.

Every day many people struggle and fail to gain the necessary access to the justice system in order to enforce or defend their rights and to benefit from entitlements and protections guaranteed to them by law. There has always been a shortfall and significant gaps between legal aid needs and legal aid services. Over the past decade or so this has grown into a wide chasm resulting in human suffering and related social and economic costs borne by our community.

Public service providers, community organizations, legal foundations and the legal community have scrambled to fill the void through the often-heroic individual efforts of community advocates and lawyers. The days of scrambling must come to an end.

The social and economic costs of an inadequate legal aid system are simply too high to allow us to postpone fundamental change any longer. The damage and deprivation to individuals, and in particular those on the margins of our society, the resultant mental and health problems, and the impact on our sense of justice are all matters of obvious social concern. These matters result in significant down-stream economic costs to society. I will reference these economic costs later in this report.

Over the more than 40 years of my life as a lawyer I have done my fair share of legal aid cases across the province for which I have been paid a relatively low fee and represented many clients on a pro bono basis without any expectation of payment. I have served on the Board of Directors of the Legal Services Society (LSS), which manages publicly-funded legal aid services. As a result I thought that I was reasonably familiar with the legal aid system in this province, both the benefits and the deficiencies. In my function as sole Commissioner for this initiative, however, I have come to a much deeper appreciation of the devastation wreaked by the absence of adequate legal assistance and representation.

While there are problems throughout the system, the needs are greatest and have the most serious consequences in family law, in child protection, and in poverty law matters where individuals have unresolved legal problems that affect their ability to meet their basic needs for housing and subsistence. The barriers to access are compounded for people living outside the Lower Mainland. Frankly, I was shocked by the compelling stories that I heard. I hope in my report to honour the individuals who came forward to share their experiences with me and to galvanize the people of British Columbia and our political leaders to act. And act we must.

No one group, organization, or party is to blame. My purpose is not to point fingers but to issue a wake-up call to everyone in British Columbia. My mandate is to try to identify the steps necessary to establish a strong and adequate legal aid system for the future, consistent with the views of the public.

## What is Legal Aid?

The term legal aid refers to a range of services including legal information, legal advice, and legal representation. Historically, legal aid consisted largely of legal representation. Current legal aid delivery in British Columbia, however, has moved towards an approach that takes into consideration a wide range of needs and recognizes the benefits of a variety of services other than just legal representation.

Legal aid is often compared to healthcare, but healthcare in Canada is universal and virtually everyone requires it from time to time. It is therefore front and centre for all members of our society. On the other hand, legal aid is designed for those who simply cannot afford to pay for legal services, those with the lower and lowest income levels of our society. The large majority of the public is not aware of these needs, nor are they aware of the deprivation and damage that result from a failure to address them. They are unaware because they have no contact with these individuals or their needs. Furthermore, the large majority of the public do not rely on these services. They therefore simply do not equate these needs with healthcare. In fact, such an equation is entirely appropriate and if the full impact of their absence was in the face of the public, I have no doubt they would endorse the satisfaction of the needs of these people. They would do so out of a sense of fairness and equality to ensure provision of the essentials of life — food, clothing, shelter, subsistence, adequate parenting and the assertion of basic guaranteed rights, all of which the majority of our society already have and indeed, to some extent, take for granted. Those involved in the legal aid system and those of us involved in the justice system are far more aware of the absence of the provision of these essential needs.

Thus, there is a critical distinction between health care and legal aid. It is not a distinction in terms of need, but rather only in terms of the public's awareness and understanding of the necessity of providing legal aid.

Over time, legal aid programs have recognized the importance of providing a range of services from information and advice to assistance and representation. Legal aid should, however, be distinguished from other methods of increasing access to legal information and services, including general public legal education and information, privately funded legal clinics, and pro bono legal services.

**The social and economic costs of an inadequate legal aid system are simply too high to allow us to postpone fundamental change any longer.**

**Research has shown that timely access to good information helps people deal quickly with legal issues and often gives them the tools to solve their legal problems.**

An important feature of legal aid services in British Columbia is the provision of legal information and education about the law and the legal system. Research has shown that timely access to good information helps people deal quickly with legal issues and often gives them the tools to solve their legal problems. These services can be provided by legal outreach workers, through telephone services, or via the Internet. If more help is needed, legal advocates or duty counsel may provide legal advice. In some cases, a lawyer may represent a person at a hearing before an administrative board or the court.

Access to justice is also enhanced by a number of government policies and programs and by a range of services provided by other organizations and individuals. These initiatives include programs to reduce cost and delay through alternative dispute resolution, public legal education, community mediation services, and many others. Legal aid plays a central and indispensable role within this broad array of initiatives.

Legal aid is an important part of our social safety net. It is the means by which we as a society ensure that low-income persons can protect their legal rights, and access entitlements and protections that are guaranteed to them by law. The impact of inadequate legal aid varies according to the type of legal proceeding and the interests that are at stake.

We are perhaps most familiar with legal aid in criminal matters. Persons who are accused of serious crimes and who cannot otherwise afford to pay for a lawyer must be provided with publicly-funded counsel in order to ensure their right to a fair trial and to safeguard the presumption of innocence. The underlying rationale for this protection of the presumption of innocence is two-fold. First, from the perspective of the individual, legal aid ensures that individuals who face the potential of incarceration have the means to adequately defend themselves. Second, from the perspective of the system, legal aid ensures that the criminal justice system can effectively avoid wrongful convictions, function fairly, and ensure that there are proper checks on police and prosecution so that we are all safe from arbitrary arrest, detention, and wrongful conviction. We have deemed it essential that we make our best efforts to ensure that each and every one of us can be confident that we live in a society where we will never be punished for something that we did not do, nor will any of our family, friends, associates, or fellow members of our society.

The rights of all of us are on trial in every criminal case. Without proper representation, pre-trial processes such as disclosure, admissions of fact, and plea bargaining are ineffective, and unrepresented accused are left floundering with complex processes, procedural, evidentiary, and legal issues. Sentencing discussions are restricted. I was advised by a representative of the British Columbia Crown Counsel Association that upwards of eighty percent of all criminal cases are resolved by negotiation with the defence by way of plea discussion. The majority of cases that go to trial are expedited by way of admissions of fact. Without legal representation, the individual is at far greater risk, the system itself breaks down or takes significantly more time, and the costs to the system are substantially increased. The burden on the courts and the system is much heavier.

Despite our shared understanding of the importance of the criminal legal aid system, there are problems with its operation. For example, it was noted in numerous submissions that adequate representation is often not available in the remotest parts of the province. Individuals charged with lesser offences are left to face a bewildering system on their own with the attendant debilitating psychological stress, often failing to understand the serious repercussions of a criminal conviction. Outcomes are unjust and may take the form of unworkable non-custodial sentences, sometimes leading to further court processes and potential incarceration. These problems are

compounded for individuals with intellectual, mental, or linguistic barriers that affect their ability to comprehend and effectively participate in criminal justice procedures. Inadequate criminal legal aid costs society in additional court appearances, longer trials, extended jail times and increased recidivism, all of which can be minimized through the provision of timely and effective legal aid.

The case for legal aid in several other types of legal proceedings is analogous to the criminal justice scenario. In the child protection context, parents face the threat of losing custody and care of their children to state authorities. This occurs despite the fact that in recognition of the serious interests at stake and the complexity of the proceedings, their right to representation is constitutionally guaranteed. However, the lack of adequate legal aid causes undue delays in the process. Children are separated from their parents for unnecessarily extended periods of time; this causes extreme psychological stress, results in health repercussions for the individuals in the family unit and adds significant additional public expense.

Individuals involuntarily committed to a provincial mental health facility have the right to have their detention reviewed at specified intervals. This is an important safeguard given that they are being deprived of their liberty. These individuals face insurmountable barriers representing themselves; the process grinds to a halt without legal aid representation, leading to extended detentions at high cost to the individual and to the public purse. Costs of the administrative process are exacerbated when detention hearings have to be adjourned due to lack of representation.

Similarly, refugees seeking asylum in British Columbia must face adversarial state representation and deal with a complex process established by statute, in this case a federal one, the fairness of which depends upon adequate representation. The stakes for the individual are high and include risk of life, family separation, and return to a country to which the refugee has no connection. Once again, lack of legal aid results in unfairness to the individual and compromises a process that is guaranteed under both the Canadian Constitution and Canada's international legal obligations.

In these examples, the rationale for legal aid is based to some extent on the fact that the individual is engaged in a complex, adversarial legal process in which the adversary is the state with resources and legal representation. In criminal matters and administrative hearings and appeals, that the fundamental nature of the process is adversarial; there is a necessity for balance by way of equal representation on the part of both parties. In all matters of significance in these fields the state is armed with a knowledgeable representative and it is obvious that an individual without such assistance is at an extreme disadvantage. The result of this imbalance is that the assumption that the adversarial process will produce the desirable result breaks down. It not only breaks down in terms of achieving the most appropriate result but also in terms of achieving results in the most timely and cost efficient manner. There are innumerable administrative hearings and appeals which require representation on both sides, such as mental health review hearings, appeals in relation to entitlement to social benefits, and the examples given above.

It is once again worth noting that with the exception of criminal law there is a relative lack of knowledge by the public about the essential legal needs of individuals who cannot provide them on their own.

It is difficult to second-guess the requirement of legal representation in these circumstances: to balance the scales, to ensure fairness, and to make the process work efficiently. The impact on the

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individual's health and well-being, as well as the social and economic costs of failing to provide legal aid are also readily apparent.

Legal aid is just as essential in family law and poverty law matters and yet the reasons why are less well understood. The family law regime provides important legal rights and protections to address the consequences of the breakdown of a marriage or long-term relationship, including those pertaining to child custody, access and support, division of property and spousal support. These issues relate to the most fundamental aspects of our lives, our relationship with our children and our ability to provide ourselves and our families with adequate housing and the other necessities of life. In addition to providing a legal framework to contribute to the fair resolution of family law disputes, law reforms were developed in part to recognize the disadvantage that women faced in separation and divorce proceedings. They were intended to contribute to women's social and economic equality.

Many spouses are able to come to an agreement upon separation or divorce, especially when provided with assistance in understanding their legal rights and an assisted resolution process such as mediation. Without adequate and timely legal assistance, however, matters go awry very quickly with serious consequences, including severe stress with health repercussions, unworkable child custody and access arrangements, inadequate and unstable financial situations, all of which can lead to dependence upon scarce and inadequate social assistance benefits and the attendant extra costs borne by society.

Women are disproportionately affected by inadequate legal aid in family law because they are frequently in a situation of relative economic disadvantage and they often bear the lion's share of both the short-term and long-term consequences of our failures in this regard. The need for adequate legal aid is very compelling in situations where a woman is attempting to leave an abusive relationship, and her life and her physical and emotional security are at risk, as is the safety of her children. Less obvious but no less pressing is the need for legal assistance to ensure that women and their children do not face poverty in the short and long term.

At the same time, men are increasingly facing the risk of jail for failing to meet their support obligations. Legal aid representation would allow them to ask the court to vary these obligations when their circumstances have changed, such as through a loss of employment.

The need for legal aid for poverty law matters is perhaps the least well understood but is clearly a pressing area of concern. Poverty law problems include issues such as debt, access to social assistance and housing, and employment matters. The legal regimes that regulate the lives of the indigent are complex. It is difficult, if not impossible, for many people to ensure that decision-makers have all of the right information and are applying the law fairly, and to push for review of incorrect decisions. For a person of minimal income today in British Columbia, access to these legal entitlements and protections can mean the difference between having a safe place to live or living on the streets, between having food, or going hungry. Inadequate legal aid jeopardizes the survival of our most vulnerable citizens, including people with mental or physical disabilities, the elderly, and single mothers with young children.

Finally, while I have made the case for legal aid based on different types of legal problems and issues, it is important to realize that legal problems rarely occur in isolation. All too frequently disadvantaged individuals experience a number of interconnected problems, some of which require legal solutions and some which do not. It is not at all uncommon for one unresolved legal problem to trigger a number of cascading legal consequences. For example, an individual

**Women are disproportionately affected by inadequate legal aid in family law because they are frequently in a situation of relative economic disadvantage and they often bear the lion's share of both the short-term and long-term consequences of our failures in this regard.**

with an unattended debt problem can result in loss of housing and/or the ability to meet their subsistence needs; it may also contribute to relationship breakdown which gives rise to a whole range of legal aid needs.

## Key Themes and Report Overview

The current legal aid system in British Columbia has failed to address the human, economic and social needs of our citizens for appropriate and effective legal services and legal representation when serious interests are at stake. We need to build a broad consensus which recognizes that legal aid is an essential public service. Along with education, healthcare, and social assistance, it is the fourth pillar of our steadfast commitment to a just society. Without this fourth pillar we have a four-legged chair trying to stand on the remaining three legs. The significance of the legal aid system is that it picks up where our other systems fail and timely legal aid can often reduce strain on healthcare and social assistance.

This pillar of consensus on the essential role of legal aid is the foundation for change. Without this foundation, it is likely that my report will join the wasteland of the many other fine investigations and reports into how to fix the legal aid system that have been carried out by my predecessors over the past four decades.

Following is a description of my mandate and the process I undertook. My report is divided into two parts. The first part provides an overview of what I heard, a summary of the rich detail about the importance of legal aid and the ways in which our current system is failing British Columbians. In the second part I briefly set out the past and current features of the legal aid system to set the stage for my main discussion of the changes required and how to achieve them. I outline what I believe is required to renew the legal aid system in British Columbia and make nine recommendations for change. I start with the important foundation of recognizing legal aid as an essential public service, after which I identify eight building blocks to be laid on this foundation to give practical force and effect to this legal entitlement. The building blocks set out where we need to go and how we get there.

**The significance of the legal aid system is that it picks up where our other systems fail and timely legal aid can often reduce strain on healthcare and social assistance.**

## PART 2

# How the Commission Carried Out its Mandate

**The Commission issued an open call for written submissions to all individuals and organizations in the province that have ideas to share about the needs and the future of legal aid.**

The Public Commission on Legal Aid was launched in June of 2010 to engage British Columbians in a discussion and to seek their views and input on the future of legal aid in this province. The need for a Public Commission on Legal Aid was identified through a series of meetings that took place in 2009 between a variety of community and legal organizations. The attendees at the meetings all expressed concern about the availability of legal aid in British Columbia and the need to establish an effective legal aid system for the future.

The Public Commission was funded by the Canadian Bar Association British Columbia Branch, the Law Society of British Columbia, the Law Foundation of British Columbia, the British Columbia Crown Counsel Association, the Vancouver Bar Association and the Victoria Bar Association.

The Public Commission issued an open call for written submissions to all individuals and organizations in the province that have ideas to share about the needs and the future of legal aid. The call stated that the focus of the Commission's mandate was to develop progressive solutions for improving legal aid in British Columbia and it identified four issues.

- In what circumstances should legal aid be provided in BC?
- For what legal issues should legal aid be provided in BC?
- How should legal aid in BC be funded?
- What should be the priorities of the legal aid system in BC?

I received 73 written submissions from a wide range of individuals and groups. Submissions were made by: individuals with legal problems who had been denied legal aid and individuals who had been assisted by legal aid; front line service agencies; community advocacy organizations; lawyers, including crown prosecutors and their association; other legal service provider organizations, including law student clinics and pro bono organizations; civil society organizations; unions; and administrative and governmental agencies, including the Legal Services Society and the Ministry of the Attorney General.

The Public Commission also conducted hearings in 11 communities throughout British Columbia to hear in-person submissions. The Commission issued an open invitation to politicians to sit as co-Commissioners at the hearings and I am pleased to report that municipal, provincial, and federal politicians actively participated at many of the hearings. We heard over 80 oral submissions during these hearings, from an even broader range of individuals and organizations, both those directly involved as legal aid clients or legal services providers and those representing the wider public interest. The dates and locations of the Public Commission hearings were:

Williams Lake	September 20, 2010
Prince George	September 21, 2010
Terrace	September 23, 2010
Kamloops	September 27, 2010
Kelowna	September 28, 2010
Cranbrook	September 30, 2010
Nanaimo	October 4, 2010
Victoria	October 5, 2010
Surrey	October 8, 2010
Chilliwack	October 12, 2010

There were important differences in the written and oral submissions. The hearings provided me with the valuable opportunity to ask questions, although time constraints left limited opportunity for discussion.

The complete list of hearing participants and submissions received is appended to my report.

I believe that the Commission met one of its principal goals of engaging the people of British Columbia about the future of legal aid in the province. People from many different walks of life actively participated in the Commission process by sharing their stories, experiences, and ideas, providing me with both local and province-wide perspectives. I thank all of you for your time and effort in assisting me to become well-informed about the current situation and helping me to formulate what I hope are relevant proposals for the future shape of legal aid in British Columbia.

**The Commission conducted hearings in 11 communities throughout BC to hear in-person submissions, and issued an open invitation to politicians to sit as co-Commissioners.**

## PART 3

# What the Commission Heard

*“These days, the clients I serve are finding that their food, shelter, and medical care, among other basic needs, are directly affected by their inability to access basic justice services in BC. If basic justice is something that everyone is entitled to, along with food, shelter, and medical care, then many women, men, and children are falling through the cracks in BC.”*

*“No matter how one defines the differences, it is clear that British Columbia is falling behind standards set in other parts of Canada and the world.”*

*“Legal aid has lost its way.”*

In the course of preparing my report, I read all of the written submissions and reviewed the transcripts of the 11 hearings and the copious notes that I took at the hearings. I did not count the total number of pages but I can tell you that the two large binders and 11 volumes of transcripts (each several hundred pages long) made for hefty and moving reading. In this section, I set out the main messages that I heard, organized under two headings:

- (1) overarching findings, and
- (2) findings pertaining to specific types of legal problems.

I have highlighted a number of quotes and stories that seemed to best capture a major point. I have tried my best to reflect the range of voices that I heard and their convergence on many, many issues. I do not attribute the input to specific individuals or organizations unless this identification is necessary to a full understanding of what is being said. I have chosen this approach for two reasons. First, some individuals, particularly vulnerable legal aid clients, expressed a concern about retribution. Second, the vast majority of the points made were made more than once and it would be unwieldy to fully reference all of the submissions.

I hasten to point out that what I heard from the various individuals and groups that made submissions to me at times described instances of events which were not consistent with what I understand to be the policies of LSS. It was not, however, my mandate to review the submissions in light of the policies of LSS. The mandate of the Public Commission was to give the people of the province the opportunity to provide information with respect to their experiences with the legal aid system in the province

and to make suggestions for its improvement in the future. I have accepted at face value the representations that were made to me on the basis of my observations of the individuals making the oral presentations and the lack of any motive on the part of presenters or those providing written submissions to pervert the truth or attempt to mislead me.

## Overarching Findings

### **The Legal Aid System is Failing Needy Individuals and Families, the Justice System, and Our Communities**

Submission after submission spoke to the general failure of our legal aid system, the negative repercussions for needy individuals and families, and the consequent adverse impact on our justice system and communities.

Many of the submissions described the very real struggles experienced by unrepresented persons trying to resolve their legal problems through the court system as a result of the elimination of legal aid for poverty law matters and the steady erosion of family, criminal, child protection, mental health, and immigration/refugee legal aid services. Individuals, community advocates, and numerous organizations expressed the view that the devastating impact of the 2002 cuts has resulted in a widespread feeling of abandonment and loss of trust in government.

Individuals provided detailed accounts of unbearable stress and hopelessness and of feeling overwhelmed and unable to understand many facets of the legal system, let alone deal with managing the seemingly endless obstacles to resolving their problems. Numerous submissions highlighted the spiraling and multiplying effect of inadequate legal assistance when a legal issue surfaces. Many voiced a deep sense of betrayal and unfairness in having to go it alone regardless of whether the outcome was acceptable to them and the dread of having nowhere to turn when things go terribly wrong.

Many more listed in concrete terms the injustices that have had a negative, long-lasting impact on their ability to meet their basic needs. In criminal cases, people pleaded guilty, not fully understanding their rights. In family and criminal cases people entered into consent orders without thinking out or understanding the consequences, or were bullied by opposing parties with greater financial or personal resources. People lost their homes and their ability to access basic social benefits. In litigation, unrepresented people were unable to identify the relevant legal issues or focused on irrelevant issues wasting a great deal of court time, undermining their cause and enhancing systemic costs. These perverse effects tend to be especially steep when one party is represented and the other not; however, an unrepresented bully can also wreak havoc inside and outside the courtroom. More often than not the harm is irreparable.

The Commission also heard from justice organizations, community groups and concerned citizens who amplified these individual accounts and emphasized the negative

*“With the office closures, people have nowhere to turn when they need legal aid. People don’t know who to ask for help. There’s simply nobody there to help them with their problem.”*

*“A woman came running into the library saying the sheriff was at her residence ready to remove all her belongings. She needed a form to stop the process. The registry said that she needed to start a judicial review. They wouldn’t tell her what form. I assisted her looking through the court forms, but it wasn’t clear what form she needed. She started crying and asked why no one would help her. I assured her I was trying to help her but she ended up running back to the registry to plead some more. She never came back to the library.”*

*“So, I am supposed to do my own cross-examining up against a very experienced lawyer in opposition? Judges don’t like this from what I have been told. They prefer represented people, so that there is an assurance that the proper flow of court procedures and structures remain intact. Self-represented litigants are at risk of missing key points — not understanding the Law and its various sections, sub-sections, case law, proper use and submission of evidence and outlining the relevant facts.”*

*“This submission encourages the reinstatement of legal aid in its fullest form. The people that are most affected by the withdrawal of this service are those who have minority status in Canada. This group includes women, senior citizens, Aboriginal peoples, racialized minorities, immigrants/refugees, and gays and lesbians. When certain citizens are denied human rights the rest of society essentially inferiorizes and stigmatizes them, which only compounds the battles they face. Removing access to legal aid by closing offices and shutting down legal assistance programs is a form of prejudice and discrimination which contributes to unequal treatment and disadvantaged life conditions.”*

impact and life-long implications of inadequate legal aid for impoverished people, and in particular on members of socially disadvantaged groups including women, people with mental or cognitive disabilities, Aboriginal persons, refugees, the elderly, and temporary foreign workers.

It was unanimous that there are many people who are left behind by legal aid in British Columbia and that it is the most disadvantaged members of our community who are suffering the most as a result of inadequate legal aid, the very people for whom the service was created. The time is long past due to put people ahead of budget juggling:

*It is fine to talk about statistics, percentage of referral rates, and other bureaucratic record keeping but it is always important to remember that the people applying for legal aid are often dealing with the legal system for the first time and are unsure and intimidated by the process. They require patience and understanding in explaining the process in guiding them through the legal system.*

Meanwhile, hundreds of thousands of BC residents struggling with a range of legal problems do so without the benefit of a lawyer or any qualified assistance. They face hearings, trials, judges, lawyers and legal documents alone, putting their children, their mental and physical health, their economic independence and their personal safety at risk.

Many individuals and groups commented upon the broader harmful effects of inadequate legal services on the justice system personnel and processes. Court staff, crown prosecutors, judges and members of administrative tribunals experience the impact of unrepresented persons desperately trying to navigate our complex legal system and it affects their ability to carry out their functions. They also see the negative impact on both procedures and outcomes of legal processes.

Furthermore, it was noted that the law develops where resources are directed. Thus, unequal access to justice also has implications for substantive law. One submission put it this way:

*There is rich case law on impaired driving issues for example. There are many estate-planning ideas for the wealthy. If legal resources are not allocated to middle and low income individual’s legal issues, then those parts of the community are left out of one of the great benefits from the rule of law and an unbalanced legal system grows. Solicitors develop legal ideas and devices for clients they serve, so allocation of legal resources to solicitor services is also important for low income people.*

By way of contrast, many former legal aid clients and legal aid lawyers spoke eloquently about the positive impact of well-timed and caring legal aid. People told the Commission that under the more robust previous legal aid system, legal aid lawyers saved their lives, eased the trauma and consequences of marital breakdown, made sure they had a roof over their heads, ensured that they were fairly treated in complex refugee claims procedures, and ensured they were not unfairly punished. In the words of one lawyer: “I encounter on almost a daily basis family clients who have been able to move on with their lives because of the help they received through the legal aid system.”

## Legal Information is Not an Adequate Substitute for Legal Assistance and Representation

Another overarching comment that was made repeatedly is that while self-help materials are very important and useful in advising individuals of their rights, they are an inadequate substitute for legal advice and representation. The self-help model does not take into account the comparatively low levels of literacy in British Columbia—particularly among low-income earners. In fact, reports show that 40 percent of British Columbians have literacy rates that affect their capacity to function in the modern world—and the number is predicted to increase in coming years. In addition, for many residents of BC, English is a second language.

Even for those with good comprehension and fluency in English, there are limitations on the benefits of legal information. A submission by Courthouse librarians who assist unrepresented litigants in finding legal information noted that accessing legal information is beneficial in many ways, including: helping determine whether a situation would benefit from legal advice; preparing for a meeting with a lawyer; and complementing the services of a lawyer. At the same time, they said: “It often feels as if there is little hope for them in successfully acting on any information that we can assist them in finding.” Courthouse librarians joined the many individuals and groups who unequivocally stated that pamphlets and brochures are neither a substitute for legal advice by a lawyer or other qualified advocate, nor a replacement for representation where that is required.

There are very real limits to the usefulness of self-help materials:

- They are inaccessible to many people due to language and literacy barriers and due to lack of computer/Internet access since many materials are distributed that way;
- They may explain a client’s rights but are of limited use without advice and representation; and
- No matter how comprehensive materials are, they cannot teach someone to represent themselves effectively in legal proceedings.

## Timing of Accessing Legal Aid is Key

The vast majority of submissions that I received emphasized the importance of making effective legal aid services available as early as possible. Early legal intervention has both individual and systemic benefits. First, in most cases early advice and assistance can address a problem quickly, thereby minimizing the stress and harmful effects on the individual. Second, prompt measures are usually more straightforward in resolving a legal problem and therefore less time-consuming and expensive both in terms of the legal aid budget and court processes. For example, I heard that in many instances an accused will appear in court three or four times before legal aid counsel is assigned—causing stress on the individual accused and wasting valuable court time. Similarly, addressing debt issues on a timely basis can assist in avoiding a whole cascade of legal issues that can be triggered when legal assistance is delayed. We all

*“Low self-esteem, fear of retaliation, inability to express themselves when under pressure are just a few of the barriers that block persons with mental illness from following through with many challenges. They require emotional support along with legal information and advocacy in order to get a legal remedy – and this is not deliverable unless there is a trust relationship with someone who can explain the process in terms that are customized to the person’s disability and can commit to walking through the system with them.”*

*“Finally, I mention safety is a factor. For many of the reasons that I have already mentioned, in both civil and criminal matters, self-represented accused tend to take matters much more personally, for obvious reasons, to be more emotional, to display poor judgment, and to feel that they have been unfairly treated by a system that is stacked against them. All of those things lead to a greater likelihood of unpredictable and disrupted behaviour, which slows down the court process, sometimes bringing it to a complete stop. And all of which leads to an increased likelihood of violence.”*

know this to be true; every recent legal aid, access to justice, and general court reform report published in the last few decades has spelled out the value of early, effective intervention in the life of a legal dispute. Our current legal aid system, however, still contains many barriers to timely access to legal aid.

### **There is a Broad Consensus Concerning the Need for Innovative, Client-Focused Legal Aid Services**

*“The idea that many of these clients would be able to “self-help” or navigate a simplified court process is sadly laughable. Leaving aside the complexities of their legal issues, the degree to which people I see in pro bono clinics are functionally illiterate is staggering.”*

*“Having access to legal information helps develop understanding and confidence in the options available. However, access to legal advice and representation [is] fundamentally important for clients to effectively resolve their legal problems. People need support to know how the law applies to their individual situation, and many simply cannot effectively navigate the legal system without effective representation. While as librarians we can assist many clients in finding and using information, the reality remains that many people need the personal assistance and guidance only a legal professional can provide.”*

It was brought to my attention that a great deal of legal aid research, program evaluation, and policy development has been undertaken in British Columbia, across Canada, and worldwide over the last decade or so. Many of the submissions received by the Commission drew on this extensive body of work to amplify the individual experiences and organizational expertise. My overall conclusion is that we have a strongly shared sense of how the legal aid system could be fixed but many doubts about the political willingness to do so.

There are a number of aspects to consider in the design and administration of a legal aid system. Ultimately these questions need to be resolved on a principled basis through a clear policy framework that sets out the overall policy objectives to be served by the public legal aid system in this province. I would like to highlight 14 major points that were broadly supported by what I heard and appear to be based on a strong evidentiary basis:

1. Legal aid should focus on client needs, early intervention, and achieving positive, long-lasting outcomes.

*“The success of the provision of legal aid should be determined by asking whether lives and life chances have been improved.”*

2. Early intervention, lasting outcomes, and a focus on client needs are most effectively achieved when legal aid services are integrated with other social services.
3. A greater role can and should be played by paralegals and trained advocates under proper legal supervision.
4. Nothing replaces a one-on-one meeting between a client and a service provider.
5. Legal representation must be available in a greater range of situations than is the case under the current legal aid scheme.

*“Getting legal advice from a LawLINE is like getting a Health Line staff to talk you through your own heart surgery.”*

6. Most legal aid clients need more assistance in the early stages. In particular, they need a lot of explanation of the process and what to expect. Community advocates play this role but their workloads are completely

unmanageable. One suggestion is for “peer counselors” (i.e., former legal aid clients) to carry out this function:

*“Uninformed, destitute people who face criminal charges, loss of their children, abusive situations or loss of income need a kind of pre-process when they enter the legal system. They need to know what they face and how to deal with it. They need peer counselors to guide them to the service they need.”*

7. A very significant number of people need legal assistance. This “latent demand” surfaces whenever an opportunity presents itself (i.e., a new program or pro bono clinic).
8. Specialized and targeted services are required to meet the needs of particularly marginalized and vulnerable communities (e.g., Aboriginal, temporary foreign workers, women leaving abusive relationships).
9. Legal aid clinics should be re-established across the province and they should be community-based and work in conjunction with other community organizations.
10. Criminal and family law duty counsel are a very cost-effective way to deliver legal advice. However, while duty counsel are very successful in terms of number of clients served, many face challenges related to location, organization and equipment, and do not have enough time to serve clients adequately.
11. Another key measure is one-stop shops: coordinated, front door assessment and assistance in the community where clients live.
12. The Justice Access Centres and Community Court were also seen as providing client-centered and, at least to some extent, integrated services. Both are seen as “clear successes” which could form the basis of future developments.
13. Interesting innovations occurring at the local level should be encouraged. Examples include: (a) “Street Legal” in Nanaimo and “The Travelling Poverty Advocate” in the East Kootenays which were designed to bring poverty law services to where clients live, and (b) targeted services to meet the needs of specific groups, including a volunteer advocacy clinic for temporary foreign workers.
14. Legal aid in whatever form it takes must have a local context and be community-based. There is no one-size-fits-all solution.

*“My experience overall is that I had to spend entirely too much time trying to figure out the steps, the process, and the players. I often felt like I was given a jigsaw puzzle but all of the pieces were the same size and there was no colour or picture and I couldn’t figure out how to put them together.”*

*“When there is no access to meaningful legal assistance at critical junctures in an individual’s life, more than legal rights suffer. Early intervention is less costly on all fronts: legal, medical and social.”*

*“What strikes me most is this: the vast number of people who seek pro bono assistance at one time had a problem that was solvable with a little common sense and a little legal guidance. By the time we see them in a pro bono clinic, they have made so many false starts and bungled process it would take Houdini to extricate them from the mess. The client’s emotional entanglement with the dispute is also now acute, having struggled with the problem for so long without any resolution.”*

## Steps Must Be Taken to Meet Legal Aid Needs in Rural Communities

I was particularly struck by the lack of accessible legal services in rural communities. While the legal aid system is failing across the province, the situation is particularly acute outside the Lower Mainland. It is worth noting that the perspective of LSS on this point differs from the bulk of other submissions received. In its written submission LSS stated:

*“Over the years I have witnessed a sharp and steady decline in the delivery of legal aid services in the communities of Lytton and Lillooet. Today this service is reduced to a toll free number with a machine waiting to pick up on the other end. Legal aid clients can call Kamloops during business hours, however, this service may be on its way out due to funding cuts.”*

*“LSS argues it has replaced the regional offices with local agents, which are “private lawyers who contract with LSS to administer legal aid and provide community legal outreach in the area.” In fact, the argument goes, there are now more local agents than there were regional offices. However, advocates have difficulty accessing these new agents because office hours are often reduced for legal aid intake, agents are inadequately trained on intake procedures and have less investment in ensuring accessibility of public legal services, and clients find the private law practice environment more intimidating than public legal aid offices.”*

*“Today, LSS has 33 offices around the province providing services at more than 50 locations including local agent offices, courthouses and community agencies. At each of these locations, you can get legal information and referrals to other social service agencies, and apply for legal aid.”*

More typical submissions that I heard bore witness to the severe decline in the availability of legal aid in rural communities. The system of local agents established by LSS was found to be a wholly inadequate substitute for the former regional offices and community law offices and Native community law offices. Centralization of the legal aid system is hurting many communities across British Columbia and is exactly the opposite of what is required. Cutbacks in legal aid go hand in hand with closure of courthouses and diminished court services: “Courts are out of synch. There are: no court forms, no registry to file forms, no computer access.”

In particular, legal aid is failing in rural Aboriginal communities. This is true even in criminal matters, where one lawyer reported that at a recent court appearance 90 per cent of the accused were First Nations, many making their second or third appearance without counsel.

The most serious legal aid inadequacies are clearly in rural areas and they extend to all types of services. For example, the elimination of the LawLINE is felt particularly harshly in non-urban centres because there are so few other accessible legal advice resources. Similarly, many commented on the usefulness of duty counsel but described the paucity of services of this type in most communities outside the Lower Mainland:

*“It is difficult for litigants in small cities and towns to get any real legal assistance when duty counsel is only available 3 or 4 hours on a Provincial Court family list days. Family court list days only happen 1 or 2 days a month to as little as 3 or 4 times a year, depending on the location and the size of the community. Many do not get any real help because duty counsel is available so infrequently.”*

Numerous submissions noted that family law duty counsel was often not able to meet the high demand for their services, especially in smaller communities. This means that there is no access to advice on property and divorce in other communities. It is difficult to access lawyers in small communities because there are fewer lawyers and in some cases even they have conflicts of interest (e.g., when someone in their firm is representing or has represented the opposing party in a family law matter). Referrals to lawyers in other communities are not feasible, because most clients do not have the funds required to travel.

Access Pro Bono now has more clinics around the province than does LSS. Nevertheless, pro bono services are also more limited in rural communities:

*"I also find that the pro-bono legal clinics available in my region have a number of disadvantages. Namely, it is difficult to get a timely appointment (most people wait 2 weeks to a month), 15 minutes is hardly enough time with the lawyer if an issue is complex, many clients cannot follow through with complicated instructions or advice, and trying to navigate an ongoing issue while accessing a rotation of lawyers becomes redundant or too difficult for clients. Some clients cannot get to the clinics because of transportation barriers."*

### **More People Should Be Eligible for Legal Aid**

The vast majority of submissions noted that financial eligibility thresholds are too low and have counterproductive consequences. Many referred to this as the problem of the "working poor"—low-income earners who earn too much to be eligible for legal aid but cannot afford to pay for legal services. One example given was of a child support variation application where the additional funds would make a huge difference but the mother cannot access it because she makes a small amount over the social assistance rate. Other problems mentioned are people, particularly the elderly, who are "house rich but cash poor" or have some other inaccessible assets such as RRSPs. As one submission read: "For your office to deem her ineligible for legal aid simply because she is a hard working, frugal and responsible citizen is unconscionable" (i.e., because she has RRSPs).

### **Legal Aid Should be Fully Funded as an Essential Public Service**

I heard a united chorus of voices urging that we move to full acceptance of legal aid as an essential public service. Submission after submission compared legal aid to health care and education as well as other essential services such as policing and firefighting. This statement was backed up by arguments based on the individual and societal costs of unresolved legal problems, the health consequences for individuals, families, and our communities and untenable strain on both the justice system and our shared sense of fairness and justice.

Many submissions also proposed a more extensive right to legal aid, setting out a clear rights-based analysis founded on federal and provincial laws, on the Canadian Constitution, and on Canada's obligations under international human rights law. The extent of the right to legal aid is contested ground and legal challenges are brought from time to time to remedy the lack of state-funded counsel in specific circumstances. Almost inevitably, governments vigorously oppose these claims, seeking to minimize the constitutional obligation to provide legal aid. I was asked to urge governments to take a more generous, proactive approach and recognize their positive duty to provide legal aid where fundamental interests are at stake, in a manner that is fully consistent with the Charter values of equality and protection of liberty and security of the person as well as their extensive obligations under international human rights

*"Legal aid is not a business. It is a service designed to bring fairness to the criminal and family justice systems. Unfortunately in the face of recent funding cuts, LSS have centralized all of their services to larger urban centers, have reduced staff to minimal levels and have significantly curtailed services. Nowhere is the impact felt more deeply than in Rural BC."*

*"It is imperative that rural communities have access to a legal aid agent and that they be available to support them with family law and criminal law matters. Clients do not need support with the context of law, they do not need reading materials, websites, education with their legal aid subsidy. What they require is a lawyer to represent them in court and to provide concrete advice that supports their safety and rights. The process for applying for legal aid is far too difficult. It requires access to telephones, computers, fax machines, transportation and literacy. This is not a system that is accessible to all who need it."*

*“In a very real sense those people from those communities are off our horizon. And I mean the horizon of those here in this room but also the horizon of those who do the plans for the criminal justice system and for the provision of legal services. They live lives that most people cannot contemplate.”*

*“A study on legal aid in Texas showed that investment in legal aid services led to economic growth in the community by increasing jobs, reducing work days missed due to legal problems, creating more stable housing, resolving debt issues and stimulating business activity. In fact, “For every direct dollar expended in the state for indigent civil legal services [legal services for low-income people], the overall annual gains to the economy are found to be \$7.42 in total spending, \$3.56 in output (gross product), and \$2.20 in personal income.” Reductions in legal aid spending, therefore, have a negative impact on spending and create an economic burden on the community.”*

*“Moreover, a decision to underfund legal aid creates a false economy because it is simply a decision to increase costs in other areas of the justice system, and other areas of society.”*

law. Governments can and should act to provide entitlements that are consistent with human rights; they should not wait until the court tells them that they are failing in their duties.

A number of submissions also commented on the economic cost of inadequate legal aid. It was pointed out that short-changing legal aid is a false economy since the costs of unresolved problems are shifted to other government departments in terms of more spending on social and health services, the cost of caring for children in state custody, and so on. Others pointed me to studies showing how the court system is less efficient and more expensive because of the rise of unrepresented litigants and accused<sup>1</sup> and how spending on legal aid can actually contribute to the provincial economy.<sup>2</sup>

All of the submissions called for increased, stable, funding arrangements. I address these points in further detail later in this report.

## Findings Pertaining to Specific Types of Legal Problems

It is also important to highlight what I heard about the consequences of inadequate legal aid in specific legal contexts. Considering the issue from this perspective, it brings us down from the more abstract realm of the legal aid system as a whole to the actual situations in which our legal aid system is failing our fellow British Columbians every day.

### Poverty Law

Poverty law services were provided by LSS through community law offices and Native community law offices around the province until 2002 when all of these services were eliminated from LSS's mandate and budget. Poverty law was defined by LSS as involving legal issues that threaten a person's ability to meet basic needs (such as shelter, food, and other necessities of life), or that threaten a person's ability to earn a livelihood. Poverty law issues may relate to:

- Income security matters, such as:
  - government benefits (e.g., provincial income assistance, CPP, EI, WCB, old age security, criminal injury compensation, etc.); and
  - employment issues (e.g., employment standards, wrongful dismissal).

1 See for example, PricewaterhouseCoopers, *Economic Value of Legal Aid* (Prepared for National Legal Aid Australia, 2009).

2 See for example, The Perryman Group, “The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential,” (February 2009).

- Shelter issues, such as:
  - residential tenancies and ruthless landlords violating laws regarding their tenants' rights;
  - foreclosures;
  - housing on reserve land;
  - co-operative housing; and
  - housing subsidies.
- Debt issues, such as:
  - unfair lending practices;
  - bankruptcy; and
  - debtor harassment.
- Consumer matters, such as unconscionable transactions.

Many of these legal issues do not reach a courtroom; most are decided by administrative tribunals or resolved through informal processes. In order for people to be treated fairly, it is critical that they have an understanding of the laws and regulations that are being applied to their situation. They must have access to a review process in which their positions are heard, there is a fair and impartial decision-maker and the decision is communicated to them in a way that is comprehensible.

Clients that typically have poverty law problems may be the most vulnerable in our society as they often have very low levels of education and comprehension, mental health and addiction issues, and have experienced significant trauma. People living in poverty are often dependent on government benefit programs and administrative decision makers, which often have systemic unfairness and accessibility problems. In this context, many people with low incomes are unable to effectively assert their rights without legal advice and representation. Legislation governing poverty law issues is complex and expertise is required. Furthermore, common law rules not apparent in the legislation can impact on process and decision-making, a concept that is generally mystifying to individuals without legal training.

There are virtually no government-funded poverty law services today. The Law Foundation of British Columbia has provided direct funding for poverty lawyers over the past years but, despite their best efforts, a large gap in service remains. One submission compared the present situation with the more than forty lawyers providing poverty law services through the government-funded LSS community law offices in 2002:

*"We estimate that there are no more than 10 lawyers actually providing poverty law services in all of BC. These lawyers are employed by not-for-profit agencies and are funded either by the Law Foundation of BC or some other non-government source."*

*"When legal aid is not provided in the poverty law arena, our most vulnerable community members experience a system that is alienating, confusing, disempowering, difficult to participate in, and depressing. And they often abandon their rights. Anybody who faces circumstances where their rights are being violated must have access to justice. Justice from the bottom up, period."*

*"It is hypocrisy to say that women are important citizens and then deny them basic rights by making poverty law unavailable."*

*"Duty counsel see many people who come to them after unsuccessfully trying to help themselves on the LSS website. This includes university-educated people. I have seen at least 3 persons this year with masters degrees who could not help themselves using the website. The justice system is simply too complex. For persons with less than grade 12 education, the Supreme Court is a confusing maze that leads only to frustration."*

*“The elimination of legal aid for poverty law and human rights in BC has led to increasing marginalization, homelessness and the loss of social inclusion, human dignity and justice for many. To make matters worse, since 2002 the Ministry of Housing and Social Development (MHSD) has pursued a strategy of aggressively filing legal suits against impoverished individuals on income assistance for allegations of “overpayments.” When individual cases are examined they often do not withstand scrutiny. However, there is no legal aid for the individuals charged with this “civil fraud” even though the consequences for the individual can be dire.”*

*“I don’t think it’s a coincidence that after withdrawing legal aid and implementing only telephone hearings for residential tenancy matters that the rate of homelessness started its steady rise to its now epic proportions.”*

This situation of inadequate legal advice and representation for low-income clients creates significant systemic costs when tribunals and, more rarely courts, are overwhelmed with self-represented litigants facing poverty law issues. Even more troubling is the fact that when unrepresented litigants are unable to effectively assert their rights, the result is most often an unjust outcome in our adversarial legal system. The lack of adequate legal assistance is particularly detrimental given that British Columbia’s social assistance regime has been found to be systemically unfair by the Ombudsperson. Statistics show that most judicial reviews of administrative decisions on issues related to welfare and residential tenancies, for example, are successful where the petitioner is represented.

I perceive overwhelming evidence that community advocates working for front line groups and community-based organizations play a very important role in helping people deal with poverty law issues. These advocacy services have unfortunately been overwhelmed by the demand for services since the elimination of poverty law and most of the LSS-funded community law offices and Native community law offices across the province. Along with the increased, completely unmanageable workload, the work of community advocates has been made impossible through the paucity of poverty lawyers to supervise their work. I heard evidence that there was insufficiency in relation to available assistance to poverty law advocates and this deficiency should be addressed. Poverty law lawyers must also receive funding to supervise advocates. In addition, poverty law lawyers are needed because some proceedings absolutely require a lawyer due to the expertise and skill level required. For example, only lawyers should appear in British Columbia Supreme Court for complicated poverty law cases with serious implications for their clients. Furthermore, without significant resources and training, it is very difficult for even the most skilled community advocate to develop and maintain expertise in the wide range of legal areas relevant to poverty law (e.g., residential tenancies, welfare, EI, WCB, CPP, foreclosure, bankruptcy, and many more).

Supreme Court decisions provide important guidance and clarification of the many statutes, regulations and rules that shape poverty law matters. This important function is not being upheld today because of lack of legal representation within appeals systems, resulting in a lack of systemic consideration of these legal regimes and issues.

Many, many community advocates made submissions concerning the growing need for poverty law legal aid services and reported on the greater demands they face for more complex matters. One submission put it this way:

*“As we seek to connect our clients with appropriate and affordable services, we increasingly discover that they do not exist. Many of the services people request from us today used to be provided by Legal Aid. These services are being downloaded onto non-profit community organizations as well as ordinary citizens who have no legal training. I often find myself in the position of telling more and more people that I cannot help them and neither can anyone else, unless they can afford a lawyer, which for most of us is a luxury item.”*

The implications of the elimination of poverty law services are devastating both to the individuals who suffer the direct consequences and to our province as a whole. The

immediate result is increased social isolation and poverty and the longer-term result is greater demands on social services and unhealthy communities. The shortsighted and perverse nature of the cuts are explained this way:

*“One claim I will make is that many cases began with a client in poverty, but part of the success of the case was to reduce the depth of poverty, or to build a base to get out of low income. By the end of a good case the client would no longer be poor. The government saves a lot of money each time someone on Disability benefits gets any source of unearned income. Or combined with employment income when a family gets off assistance. Generally those benefits go to the Government without regard to the legal services that got them.”*

A province-wide poverty law needs assessment and gap/overlap analysis was commissioned by the Law Foundation of British Columbia and prepared by Denise Barrie in 2005 and it identifies the huge gaps in service. It concludes that front line advocates are the key people in poverty law service delivery but there are no advocacy services in some communities. It also found that the most significant gap in the poverty law service delivery continuum is the lack of lawyers doing poverty law work.<sup>3</sup>

## Family Law

In terms of causing human suffering, the reduction in family law legal aid over the last decade is second only to the elimination of poverty law services. As noted in many submissions, there is a significant overlap between family and poverty law services, given the economic consequences of marital breakdown.

While all members of a family are affected, the breakdown of a marriage or other long-term relationship is a critical juncture in women’s lives, resulting in an intersection of legal issues that affect women’s equality rights. There is no doubt but that reduction in family law legal aid has had a dramatic and disproportionate impact on women in British Columbia. Continued reduction in coverage means fewer women have access to the legal system to resolve their problems. This results in more women staying in situations that are at a minimum unhealthy and sometimes dangerous, or giving up on legal entitlements when they do leave, with long-term economic consequences:

*“Cuts to legal aid put women at risk of further violence, poverty and dependence on social assistance. Legal aid cuts have already put thousands of women and their children in an extremely vulnerable position.”*

Without legal representation, women are vulnerable to fear and intimidation and, as a result, many women accept orders that do not take their rights and needs into account or do not meet the needs of their children. In situations where legal aid is granted, the time allotted is severely limited. Many submissions noted that lawyers who deal with opposing parties represented by legal aid lawyers can intentionally and strategically use up the legal aid lawyer’s available time with a variety of applications,

*“Ultimately, legal aid in BC should be a rights-based system. Our legal aid system today has been stripped down to almost exclusively cover only those services that have been proven in court to be constitutionally required. A rights-based system would recognize that there is a human right to access justice and courts with adequate representation in all matters where human dignity is at stake. Human dignity is at stake in legal matters such as custody and access issues, property division in family law, spousal and child support, major and minor criminal offences, immigration and refugee matters, poverty law problems such as debt and access to social assistance, and employment matters, among others. The government has a responsibility to provide access to legal representation in these circumstances when a person cannot afford to pay a lawyer themselves while maintaining an adequate standard of living. The right to equality (enshrined in Section 15 of the Canadian Charter of Rights and Freedoms), the right to security of the person (Section 7) and the fundamental principle of the rule of law require such access, not only as a matter of sound policy in a constitutional democracy, but also as a matter of law.”*

<sup>3</sup> Law Foundation of British Columbia, *Poverty Law Needs Assessment and Gap/Overlap Analysis* (2005).

*“Complex legal matters require complex solutions, the current legal aid system does not take this into account. Most family situations involving abuse are complex in nature. Often multiple legal issues are involved (e.g., immigration, criminal, family). Legal aid services and coverage need to take into account that this requires comprehensive coverage and representation that is coordinated effectively.”*

*“It is as if the client struggles with the legal problem for a period of time, gives up exhausted, and then returns to the struggle repeatedly, seeking some sort of help each time, but advancing little or nothing.”*

long affidavits, and various other maneuvers such that the legal aid client ends up self-representing. Similarly, a represented spouse can move a case to the Supreme Court as a way of ensuring that the unrepresented spouse will quickly use up the available time allotment to his or her legal aid lawyer and become an unrepresented litigant.

On the other side of the coin, the lack of legal aid for the Family Maintenance Enforcement Program or variation applications disproportionately affects men because they are more often the payors of support. It was brought to my attention that many men face jail time because they cannot put together the material needed to vary the amount of support where their situation has materially changed because of a change in earnings or circumstances. Without legal assistance to make the application, they end up in default and vulnerable to court sanction.

The current inadequacies in family law legal aid are irrational and have perverse consequences. For example, the elimination of non-emergency family law coverage for property matters is in many ways counterproductive. The old system was described as “an effective user-pay system” since legal aid was reimbursed for services provided when property matters were settled:

*“Since this tariff item was eliminated, many family law litigants, most of whom are low-income and poorly educated women living in poverty, have been unable to resolve property issues, pursue adequate child and spousal support and properly defend themselves in a family action. The net result is that the spouse (more often men) who has money is at a greater advantage to get court orders leaning in their favour... In many cases, women simply give up because they cannot get any legal help.”*

Similarly, the reduced services for lengthy family law cases means that unless a discretionary extension of services is granted, clients end up representing themselves in the more complex cases, rather than the simpler ones:

*“... what this means is that in long and difficult cases lawyers will either have to agree to work for free or the client will have to represent him or herself. If the lawyer decides that he or she cannot afford to work for free and asks LSS to cancel the legal aid referral, the client will not be able to get a lawyer to continue the case as LSS will not provide a second lawyer except in rare cases.”*

In the years since 2002, LSS, along with other organizations, has introduced or enhanced some forms of family law legal aid service, such as extended family law duty counsel and family law clinics, but these innovations have fallen prey to cutbacks. For example, the Commission was told that the cuts to family law duty counsel mean that these lawyers are so overrun they rarely can spend more than 5 or 10 minutes with a client. As noted above, duty counsel cutbacks have particularly adverse consequences in smaller communities where there are far fewer legal aid resources and alternatives.

I was told that in the area of family law legal aid, BC is falling behind services available in other provinces. In Alberta and most other provinces, legal aid is generally available for family law matters if there is merit to the proceeding (in other words, a likelihood of success). By comparison, British Columbia provides representation only for very serious family matters, particularly those involving reasonably apprehended or actual violence. A great many family law matters that would be funded in other provinces fall outside the legal aid system in British Columbia.

### Specific Needs of Women Leaving Abusive Relationships

According to LSS policy, legal aid is meant to be available to women and children who are at risk of violence. Many individuals and groups reported, however, that these services are inadequate in several important respects. The starting point is that a complete and comprehensive service is essential, given:

- (1) that the legal aid services required to leave an abusive relationship are extensive;
- (2) the dynamics of domestic violence are complex; and
- (3) that life and security of the person are at stake.

Despite it being a clear LSS priority, many battered women do not receive legal aid representation. When they do receive legal aid it was reported that it is often inadequate, as one submission summed it up: "In our experience paid legal aid hours do not cover it."

Women who are fleeing abuse and who are unable to access legal aid are often re-victimized. They and/or their children continue to be subjected to various forms of abuse and unimaginable stress. They are vulnerable to a range of threats by their spouse if they try to leave, including deportation, loss of children, court harassment, loss of finances and the threat that they will not be believed. When a woman is denied legal aid for a family court process and is summoned to court, she may be cross-examined by her abuser, putting her in a very vulnerable position. In addition, the limited hours provided by legal aid can sometimes create a scenario where the abuser makes multiple court applications in an attempt to use up the lawyer's hours, manipulate the system, and leave her without representation. She is left feeling more victimized, exhausted, and defeated by the whole process.

Sometimes legal aid is denied because there is no proof of abuse or the client's income level is too high, even though most of the income goes to child care, bringing her closer to the poverty line. One of the main problems is financial dependency. Financial eligibility criteria are problematic because even women with good incomes may not have access to the assets, since in reality their partner often has total control over assets.

Another problem is that legal aid coverage is only extended where there is a risk of physical violence. Many submissions argued for the expansion of this criterion to include any form of abuse.

*"The limited amount of legal aid funding available to women who qualify is not being used as effectively as it could be. For example, multiple adjournments and high court fees use up legal aid dollars quickly without any real progress being made on the case."*

*"What is particularly devastating is the increased abuse clients experience from an abusive ex-spouse when they successfully represent themselves in court. Without legal representation as a buffer, the self-representing spouse often has to deal with retaliation from their ex, as a result of their successes in court. It is essential that Family law legal aid services become accessible to clients who are experiencing other forms of abuse. Without representation daily life becomes tenuous, economically disastrous, and the home environment becomes one where daily practical and emotional needs cannot be met."*

*“In our area of support, we encounter many domestic violence situations that fall under the serious child matters section of the Legal Aid Mandate, yet we do not see a lot of support for women needing assistance with custody issues as they relate to the domestic violence section of the Criminal Proceedings. In these cases, the criminal piece should not take precedence over the civil matter. The abused woman and children enter a horrific path due to illegal activity, but are channeled into the civil or family law process due to the nature of the request and not the criminal event.”*

*“An absence of legal advice and representation will almost certainly contribute to erroneous decisions going undetected, as claimants do not have the requisite knowledge and skill-set to allow them to identify appealable issues, let alone argue an appeal within the complex legal framework that forms the basis of all refugee claims.”*

It was reported to me that the legal aid application process is challenging, lengthy, and overwhelming for most clients trying to leave an abusive relationship. Some of the difficulties encountered include:

- The legal aid intake worker often does not ask about any history of violence or possible disability. Without support and advocacy the client would not know to mention this and so be denied coverage;
- When a woman has been traumatized by an abuser, she often finds it difficult to talk about it on the phone with a stranger;
- Clients often do not have access to a computer or a personal telephone, so waiting to hear back from legal aid or being referred to the website is not helpful;
- Many women find it shameful or embarrassing to talk about violence even when they really need the assistance;
- Extended waits on the telephone are difficult;
- It is often very difficult for clients to access financial records that are required without compromising their own safety; and
- The time it takes for approval of an application is problematic; the judge often expresses frustration at the litigant.

Many submissions noted that there is a lack of culturally appropriate and multilingual services, which further marginalizes women. Self-help approaches were not seen to be helpful.”

When a woman leaves an abusive relationship, there is often a web of legal issues that cross over areas of legal practice. Unfortunately, the legal aid that is granted relates to a specific issue or a legal proceeding rather than what the client needs to resolve multiple legal issues.

In situations of domestic violence, it is not unusual for the abusive partner to constantly oppose court applications, or make continuous applications for varying orders, all as tactics of harassing his ex-partner, keeping her engaged (and stressed) in an attempt to maintain control over her. The Commission received many submissions on the issue of court harassment as an extension of abuse and the importance of the legal aid system and court system working together to address this large problem. While recent LSS publications recognize court harassment as an extension of abuse, there is much work to be done to better protect women and to ensure that precious legal aid dollars are used efficiently to prevent such abuse.

## Immigration and Refugee Law

Refugee claimants are also a highly vulnerable group within the province and are currently under-served by the legal aid system. Vulnerability factors include: the refugee determination process is complex; the consequences of the determination are extremely grave (e.g., risk of life, family separation, return to country to which you have no connection); refugees are often new to Canada; many have suffered trauma, are economically disadvantaged, have limited education, and have limited or no linguistic capacity in English or French. Many refugees lack familiarity with the Canadian legal system, hence lawyers not only deal with legal process but also act as a “guide to our norms of communication to ensure clients are properly understood/understand proceedings.”

Continued erosion of legal aid services in this area results in both unfairness to the individual refugee and compromises the fairness of a process, which is guaranteed both under the *Charter* and under Canada’s international legal obligations. One submission brought to my attention a Canadian study concluding that the absence of legal advice and representation contributes to erroneous decision-making in the refugee determination process.<sup>4</sup>

The budget restrictions have meant that lawyers have to provide partial service for free. I was told that, in effect, lawyers are subsidizing the government’s failure to fund essential elements of the system by undertaking pro bono, which “is not a sustainable model in keeping with Canada’s moral or legal obligations.”

## Detention Hearings under the Mental Health Act

I was profoundly shocked to learn that annually over 400 individuals who are involuntarily detained in provincial mental health facilities have been denied legal assistance and representation in statutorily guaranteed proceedings to review their detention.

Individuals with mental illness who are involuntarily detained under the *Mental Health Act* for psychiatric assessment and treatment in British Columbia’s psychiatric in-patient facilities are often amongst the most vulnerable and marginalized people in the province. LSS policy guarantees legal representation in these detention hearings given that their liberty and security of the person are clearly at stake. This legal aid service is provided by specialist paralegals under the supervision of a lawyer through a program run by the Community Legal Assistance Society in the Lower Mainland and by private bar lawyers in other communities.

Over time, the erosion of legal advocacy and representation of this population has been notable and the outcomes profound. The Commission received detailed submissions detailing the systemic failure to deliver these legal services. Hundreds of individuals have been denied this fundamental legal service over the past several years.

*“Many newcomers rely on Legal Aid Services to guide them through a new and foreign legal system. For immigrants to successfully settle and integrate into our society and labour market, it is imperative that these services be responsive to their legal needs.”*

*“Whether it is the long-term permanent resident who came to Canada as a child, and now faces addiction and other mental health issues like depression or schizophrenia, or the refugee claimant who is a survivor of torture diagnosed with Post Traumatic Stress Disorder (PTSD), our clients are likely to be battling some form of mental health disability. These disabilities make it incredibly difficult for our clients to be able to tell their story in a coherent way and to remain engaged in the system without assistance. Collecting documents, filling out forms, and providing testimony at a hearing are very challenging for these clients. Lawyers are important to ensure that the needs and special circumstances of these clients are adequately explained to the authorities.”*

<sup>4</sup> Jon B. Gould, Colleen Sheppard and Johannes Wheeldon, “A Refugee from Justice? Disparate Treatment in the Federal Court of Canada”, *Law & Policy*, University of Denver, Vol. 32, No. 4, October 2010, p. 475.

*"I asked a long term client, who has a mental illness and has struggled with poverty law issues for quite some time, what his experience felt like in the past 7 years. He said, "Imagine calling the fire department because your house is burning and the dispatcher telling you they no longer provide service on your side of town. Imagine summoning the police because you hear an intruder and you are told they will only come after you are attacked. Imagine the hospital turning you away because they only provide services to people with certain medical problems. Imagine a public school not accepting students with a certain intelligence level, only because there is not enough money to spend on your problem. He compared this continual lack of access to justice like being a caged animal with the government poking sticks between the bars."*

Submissions indicate that LSS and the Ministry of the Attorney General have not adequately responded to reports of these systemic violations.

These mental health patients are left in the unenviable situation of choosing between proceeding without representation or extending their period of involuntary detention. In many cases, the detained patients elect not to proceed when assistance is unavailable or ask for an adjournment part way through hearings in which they are unrepresented. It almost goes without saying that this is a profound violation of the rights of one of the most vulnerable segments of our community:

*"When these individuals are impacted by acute psychiatric states and co-morbid conditions, such as cognitive and intellectual disabilities and multiple psychiatric disorders, they are at a significant and inhumane disadvantage when trying to present their cases for de-certification versus powerful, educated and skilled professionals, usually their own psychiatrists and other health care professionals. The severely mentally ill, which includes those living in the community and psychiatric patients in British Columbia are almost entirely disempowered and often have very little access to justice anywhere."*

In addition to descriptions of the terrible human cost, I received submissions from the Chair of the Mental Health Review Board to the effect that the lack of ready legal advice and representation poses a serious challenge to the Board's ability to deliver fair hearings. As with other legal aid reductions, there is a perverse financial result from inadequate access in this context. Too often it results in the cancellation or postponement of hearings at the last moment and is very costly to the system.

### **Child Protection Matters**

The Supreme Court of Canada has confirmed that legal representation in child protection matters is constitutionally guaranteed in situations where it is needed to ensure that the parent can participate meaningfully and effectively in the process.<sup>5</sup> The Court highlighted the fundamental interest at stake when state authorities take action to remove children from the custody of their parents. The reality of legal aid coverage in British Columbia, however, currently misses this constitutional mark. Particularly in rural areas, it often takes a parent an unreasonable amount of time to find a legal aid lawyer in a matter where time is of the essence. Aboriginal children and families involved with the child protection and family court systems are particularly vulnerable to rights violations. Early access to legal advice is critical: "Access to advice should be a practical reality from the moment the social worker knocks on the door." As one lawyer noted:

*"When I've been called and connect with parents very early, it has done a world of good, in calming, putting forward less disruptive measures, preserving evidence, and good short term planning and information about rights and powers of social workers. Some of those cases may never go further."*

<sup>5</sup> *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46.

In addition to these serious concerns regarding the timing of accessing legal aid services, submissions also highlighted the fact that the current tariff does not allow for sufficient preparation time to enable legal aid lawyers to properly assist their clients. Due to recent policy changes, the Ministry can disclose 800-1200 pages of evidence in a given case and the five hours of preparation time and six hours hearing time make it impossible for legal aid lawyers to do their job, thereby further jeopardizing the rights of both parents and children. A third concern is that the financial eligibility threshold means that many parents have too much income to qualify for legal aid in child protection matters but still do not have a realistic ability to pay for counsel on their own. A recent British Columbia case granted state-funded counsel to parents who found themselves in these circumstances.<sup>6</sup> The court decision, however, provides a remedy only to those parents involved in that specific case. While it does not provide a system-wide solution to this serious problem, it is a clear recognition of it.

## Criminal Law

Legal aid is provided to a criminally accused person where there is a reasonable risk of incarceration. One of the cutbacks made in 2010, however, was to eliminate representation for breach offences, which can in fact result in individuals serving jail time for violating probation and other orders. Numerous submissions were made about the serious consequences of this cut in service:

*“As a result of failing to cover category one breaches—jail is now becoming a common destination for those with problems of addiction, lack of shelter, family dysfunction or mental illness.”*

It is my understanding that legal aid coverage was reinstated for this category of offences in December 2010. Nevertheless, we cannot ignore the very harsh consequences on the untold number of individuals who paid the price of this cost-cutting measure. There is no way to retroactively assist the many who flailed within our courts while this cost-cutting measure was in effect and who are still suffering as a result of our systemic failure. This is an example of an unfortunate and mercifully short-lived, cost-cutting measure and it exemplifies the woeful state of legal aid. It is evidence of the volatility and unsustainability of the British Columbia legal aid system and of LSS efforts to operate under significant financial restraints.

I also heard about many other cuts such as the reduction in the tariff for lawyers, in the rates paid to articulated students, and reimbursement for meal costs while traveling. These are seen as false economies. Many called for simplification of billing and other administrative details. Many lawyers find it uneconomic to act only on legal aid, and therefore in many cases end up working pro bono. Fewer young lawyers are taking on legal aid defense work and many senior lawyers are refusing to take on certificates. While this shift away from legal aid work is based to a large extent on deficiencies in the legal aid system, the broader under-resourcing of the justice system is also to blame. For example, lawyers waste a lot of time showing up for court only to find that the accused is not there because of a shortage in sheriffs and other systemic problems.

*“In my capacity as local duty counsel, I have from time to time filed Charter applications on behalf of those who have been refused legal aid and face likely imprisonment. In each occasion when I have done so, the Ministry of the Attorney General assigns special counsel, to oppose the client’s application for the appointment of counsel. Special counsel are often flown in from Victoria by the AG Ministry to oppose the application. It seems the government is willing to spend far more money on opposing applications for appointment of counsel than it would actually cost to provide counsel in those cases.”*

*“Compared to the cost of operating courts and prisons, compared to the cost of picking up the pieces in the wake of persons who feel unjustly treated and feel that they have been driven to wrongful acts, whether civil or criminal, the cost of broad and comprehensive legal aid coverage is a good investment that will save all of us in the long run, not just financially, but in human resources, in lives not disrupted or thrown away by disputes that have exploded out of control.”*

<sup>6</sup> *British Columbia (Attorney General) v. T.L.*, 2010 BCSC 105.

*“Prison Law Services in Abbotsford does a great job but very small staff and unable to meet the demand. Public scrutiny is unlikely in all but the most extreme situations and of all of the groups in society, prisoners are seen as the least “deserving.”*

*“We have come to feel that the crisis in legal aid is as much about the management of legal aid... But whether by necessity or by choice, the result of this latest round of cuts has had the Legal Service Society going in the exact opposite direction that we feel they need to go. That is, they are retreating to a head office in Vancouver as opposed to moving out into the regions of the province. And whether that provides efficiencies, I don't know, we don't have the numbers, but it provides terrible options to the public and frankly to the lawyers. It says that they are top heavy, whether they are or not, that they're out of touch, and that they're not engaged, involved in providing services on the ground.”*

Several submissions were also received that raised deeper questions surrounding the need to reconsider the incarceration threshold for legal aid coverage. Many noted the serious consequences of a criminal record for future employment and other important interests. Others noted that these criteria are subject to manipulation by those who “reduce sentence proposals in order to ensure that [the] accused does not qualify for legal aid and are more likely to plead guilty and avoid all the fuss and hassle that fair representation causes.” Another important point is that accused persons with mental or cognitive disabilities, including Fetal Alcohol Syndrome Disorder, (of which there are a large number in the North and in remote communities), may require representation in all criminal proceedings. Some went so far as to say that the system is so complex now, “most if not all people need representation.” Unrepresented accused are often overwhelmed by the complexities of criminal procedure and this results in both a burden on the court system and unfairness to the accused.

The criminal justice system cannot work without effective crown and defense counsel — both are equally necessary to a properly functioning system. Submissions made by crown counsel emphasized the impact of inadequate legal aid on the ability to do their jobs. They cannot engage in any of the discussions such as possible admissions, pleas, and joint sentence submissions that make the criminal justice system work. In addition, an unrepresented accused makes it difficult for complainants in sexual assault cases since they will be cross-examined by the individual accused of the sexual assault. One Crown Counsel related how unrepresented accused will often ignore the disclosure package provided by the Crown (containing important information including witness statements and indications about sentencing):

*“Time and time again when individuals stand up to speak to sentence the pages are in pristine condition. These accused usually aren't pristine people. But those reports haven't been flipped so that there's a hole by the staple. These are people who are either so resigned or are so out of their depth when it comes to representing themselves that there's really not a level playing field.”*

### **Other Types of Legal Problems**

I received submissions concerning the inadequacy of legal aid for a range of other types of legal problems including: human rights cases; prison law matters; solicitor's work (particularly for the elderly); a broader range of civil claims; and legal assistance for small non-profit organizations. One common theme was the need to increase the capacity to undertake legal work on a systemic basis, in a manner that addresses legal problems that affect a large number of people and that is aimed at finding system-wide solutions, rather than focusing solely on assisting individual clients with their problems in isolation.

Some of these submissions proposed innovative models for delivering these services through specialized clinics operating on the basis of core funding from public or private sources and a complement of pro bono service providers. There are many good ideas out there and a lot of energy and dedication aimed at increasing access to justice in this province.

## PART 4

# Renewing Legal Aid in British Columbia

## Where We Have Come From

We have long understood that economically disadvantaged people require legal aid in order to ensure equal access to the justice system. In the common law world which includes the Canadian legal system outside of Quebec, this understanding can be dated at least as far back as the late 9<sup>th</sup> century England and was given concrete expression when the British King passed a statute allowing judges to assign counsel to represent indigent people in the court in the 15<sup>th</sup> century. Traditionally, lawyers assisted individuals who could not afford to pay legal fees. It was a form of charity, in recognition of the public interest in ensuring access to justice and as an aspect of their ethical obligation under the legal profession's codes of conduct. This pro bono or volunteer service is comparable to the role that doctors played in the community before the introduction of a public health care service—providing medical services for free or at a markedly reduced rate to individuals who could not afford medical care.

Over the decades, the demand for legal services has grown as society has become more complex and law has been employed as the main mechanism for regulating many aspects of our day-to-day lives. By the 1960s it became eminently clear that the legal aid needs of the less affluent could not be met solely through the volunteer efforts of lawyers. This realization developed in tandem with the public consensus that the government has an important role to play in ensuring social services and, in particular, in working toward a fully inclusive society through measures to combat poverty and to meet the needs of individuals and groups who are marginalized or who are disadvantaged. For a variety of reasons, however, an entitlement to legal aid was never put on the same footing as entitlements to health care, public education, income support measures, and other social benefits. Nor has legal aid ever shared the same profile as these other essential services that are accepted as part of the Canadian social safety net.

The roots of the formal legal aid system in British Columbia were established by the legal profession through the Law Society of British Columbia and the British Columbia Branch of

**Over the decades, the demand for legal services has grown as society has become more complex and law has been employed as the main mechanism for regulating many aspects of our day-to-day lives.**

**There is a recurring trend of downturns in the economy leading to cuts in service, while at the same time contributing to increased demand.**

the Canadian Bar Association. Initially this legal aid program was organized and administered through the efforts of volunteer private lawyers. Despite best efforts, this voluntary program was always wholly inadequate to meet legal aid needs in the province. The Law Foundation was established partially as a measure to increase the funding available for legal aid.

It was not until the early 1970s that the federal and provincial governments began to make contributions to the legal aid program. There was significant government resistance to committing to this program and it remained under the control of the legal profession during this first phase. As time passed, and as the legal aid system became more firmly established and public awareness and support for social programs grew, governments developed an increasing role in funding the legal aid program. The expansion of legal aid was made in large part because of the federal government's contributions. Legal aid was firmly entrenched as a government responsibility by about 1975, and the Law Foundation's role as the primary financial supporter of legal aid shifted to a supplementary role.

Between these initial years and today, the legal aid system in British Columbia has experienced many ups and downs. It has been the subject of numerous government reports<sup>7</sup> and several changes in organizational and administrative structure. LSS was established in 1979, pursuant to a statute that set out a broad mandate that incorporated legal representation and education, and required that legal representation be provided whenever a legal problem threatened an eligible individual's liberty, safety or livelihood.

During the next two decades, legal aid needs and the demand for service continued to grow while government contributions waxed and waned. There is a recurring trend of downturns in the economy leading to cuts in service, while at the same time contributing to increased demand (because loss of employment and financial setbacks tend to cause a set of cascading legal problems). In some cases, cutbacks in services have been successfully challenged through litigation.<sup>8</sup> In the early 1990s, British Columbia boasted one of the most comprehensive legal aid programs in Canada, mainly as a result of increased provincial contributions.

The demand for legal aid services has grown exponentially and in many years demand outstripped budget allocations, giving rise to deficits and other serious concerns. This imbalance was exacerbated dramatically as the federal government began to cut back on its contribution to legal aid systems across Canada. This trend began in the 1980s and reached a head in 1996 when the federal government abandoned its commitment to cost-sharing for civil legal aid through the Canadian Assistance Plan and moved to a general transfer of funds through the Canada Health and Social Transfer (now Canada Social Transfer).

These long-term trends of increased demand and lower government commitment reached a head in 2002 when the provincial government cut LSS's budget by 38.8 percent over three years and changed LSS's statutory mandate. Other changes made at that time included the closing of approximately 45 branch offices, including community law offices, Native community law offices and area directors, which were replaced by seven regional centres and 22 local agents in smaller communities. Poverty law services and most family law services were eliminated and legal representation services were to be made available only for legal aid matters where government has

7 These include: the report of the Justice Development Commission's Legal Services Division (1974-75); the Legal Aid Society's *Priorities in Legal Services* report (1977); Task Force on Public Legal Services (1984); Report of the Justice Reform Committee (1988); Review of Legal Aid Services in British Columbia (1992).

8 *Gonzalez-Davi v. British Columbia (Legal Services Society)* (1991), 55 B.C.L.R. (2d) 236; *Re Mountain and Legal Services Society* (1984), 5 D.L.R. (4th) 170.

a legal obligation to provide counsel. Pursuant to the 2002 *Legal Services Society Act*, the Ministry of the Attorney General and LSS negotiate a Memorandum of Understanding every three years, which sets out the types of legal matters for which LSS will provide legal services, the priority of these legal matters, and the funding for these categories of services.

## Where We Are Today

Today, the legal aid system operates in a severely circumscribed environment. Following the 2002 changes, LSS has been compelled to be steadfast in its commitment to a new vision of legal aid which is committed first and foremost to meeting clients' needs. LSS defines its approach in this way:

*"This outcome-focused approach is at the heart of the society's vision for the future of legal aid. Treating a client's legal problems at an early stage, in collaboration with other necessary social services, will result in a better quality of life for the client as well as reduced costs for legal aid, the justice system and those related social services."*

LSS has taken a strategic approach to working within the strictures imposed on it and is generally seen as running a cost-effective and efficient legal aid program. Its operations are highly transparent and made accountable through its annual service plans and performance reports. It has engaged in numerous pilot projects and independent program evaluations all of which are available to the public on its website.

LSS provides the following overview of its services:

*"The society currently offers legal representation for financially eligible people with serious family, child protection, criminal, or immigration problems, as well as information and advice services designed to help people resolve legal problems on their own."*

LSS also highlights its provision of the following services:

- **Information, education and outreach:** Free public legal education and information (PLEI) through legal information outreach workers, the LSS website, the Family Law in BC website, and our publications. Our family law website alone is used 23,000 times a month. In 2009/2010, LSS distributed more than 100,000 publications and our legal information outreach workers responded to more than 5,000 information requests. LSS also trains intermediaries and advocates so they have basic legal information and are able to refer clients to appropriate resources from LSS, government, or other service providers in their communities.
- **Legal advice:** This is provided primarily through duty counsel and our Brydges Line (telephone advice for persons in custody). Last year, these lawyers provided help more than 140,000 times.
- **Representation by a lawyer in court:** In the last fiscal year, more than 26,000 clients received representation assistance.

**While LSS had made it a priority to protect its core services in the context of insufficient and uncertain funding, it is clear to me that the legal aid system is failing to meet the needs of British Columbians.**

LSS identifies its key challenges as being largely driven by external factors such as the economy, the number of people charged with criminal offences, family break up, immigration policies, the number of children placed in government care, and the revenue available to the Society.

While LSS had made it a priority to protect its core services in the context of insufficient and uncertain funding, it is clear to me that the legal aid system is failing to meet the needs of British Columbians. Even services which are accepted by the government as being clearly mandated by the Canadian Constitution — such as where an accused faces imprisonment, in child protection matters, and in mental health proceedings — are wholly inadequate. Furthermore, it is completely inappropriate to exclude poverty law and many family law matters from coverage within a client-focused legal aid system.

In 2009/2010, LSS had to “revisit priorities” because of static government revenues and declining revenues from the Notary Foundation, reducing the scope of the legal aid program by, among other things, eliminating the LawLINE, eliminating coverage for certain criminal offences, and closing five regional offices. I heard a great deal about the negative impact of these latest changes. In any view, they are best seen as yet another layer of cuts on what is a clearly unsustainable and therefore highly volatile legal aid system. As I noted earlier, LSS has already re-introduced coverage for category one offences and is planning on adding new or revised services as finances become available.

I am bound to conclude, however, that even these additional services planned by LSS will be too little, and their longevity or consistency too uncertain, to meet British Columbian’s legal aid needs. Many organizations and individuals have stepped in to try to fill the vacuum of legal aid services, especially in the poverty law and family law areas. Access Pro Bono now has approximately 88 locations across the province and the Law Foundation has funded additional poverty law advocates and lawyers and they are all working overtime to try to meet the demand. Even given this combination of publicly-funded legal services and those provided by others, the level of coverage for every type of legal problem is inadequate. We have fallen from being a leader in legal aid provision to seriously lagging behind other jurisdictions on the legal aid front. We can no longer avoid the fact that we are failing the most disadvantaged members of our community.

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## Where We Must Go

Significant action is required to bridge the ever-widening gap between legal aid needs and legal aid services in British Columbia. The current situation is dire—the gap is much broader and deeper than I had anticipated. LSS does not have sufficient resources to meet even its present highly restricted mandate and much, much less than is required to ensure that the most vulnerable members of our community have access to the justice system and to enable the legal aid system to play its role in supporting the court system.

I was struck by the unexpected degree of unanimity concerning what changes are needed in order to ensure that the legal aid system adequately serves the people of British Columbia. This consensus appears to me to be somewhat unprecedented given the wide range of backgrounds and interests of participants in the Commission hearings and the historic differences in opinion within legal aid policy-making processes. The traditional hostility of the legal profession to change and the tendency to protect its territory was noticeably absent. The usually strident voices that blame lawyers for the system's ills were notably muted. There appears to be a growing awareness of the vital importance of legal aid amongst individuals and organizations not directly involved in the justice system. This extensive common ground is a very positive development and provides a strong basis upon which to undertake the extensive measures required to renew legal aid in this province.

Like the many others who have trod the legal aid reform path before me, I conclude that there is no magic bullet or panacea that will cure the defects within our legal aid system. There is, however, a clear road ahead and a growing awareness that the current situation is untenable. In this section, I set out what I conclude to be the basic foundation for a renewed legal aid system, which is recognition of legal aid as an essential public service. I identify four building blocks that must be laid on this foundation: entitlement, core services and priority-setting, eligibility, and service delivery. Action is required on all four cornerstones simultaneously because they are inextricably interwoven. Renewal cannot succeed if the entitlement to legal aid is statutorily guaranteed but there are ineffective service delivery methods that do not meet the needs of legal aid clients. Similarly, it is useless to set meaningful priorities for core services to meet client needs for a wide range of legal problems but maintain financial eligibility guidelines that are so low that very few people can qualify for the services that they desperately need.

My recommendations set out where we need to go to rebuild a functioning legal aid system in broad terms. They are based on the submissions made to me, and the research and policy reports that were brought to my attention. The recommendations provide what in my view is a comprehensive framework for legal aid renewal. They are not exhaustive, however, and their implementation will require further elaboration, ongoing dialogue and a lot of difficult, collaborative work. In the section that follows, I set out some further recommendations concerning the steps needed to get us to where we need to go on providing legal aid. These five recommendations are in effect a second layer of building blocks to ensure the sustainability of the foundation for legal aid.

**Like the many others who have trod the legal aid reform path before me, I conclude that there is no magic bullet or panacea that will cure the defects within our legal aid system. There is, however, a clear road ahead and a growing awareness that the current situation is untenable.**

## Recognition of Legal Aid as an Essential Public Service

The legal aid system will remain precarious until it is fully recognized as an essential public service on par with healthcare, public education, and social assistance. It is an integral aspect of the justice system and is as necessary as courtrooms, judges, prosecutors, police and so on. The legal aid system can help the courts run smoothly, or it can bring the court system to a virtual standstill.

The demand for legal aid is shaped by the overall context of our legal system. Today, there is a much higher degree of administrative and criminal regulation of our lives. Our statutes and regulations have doubled or tripled in number and length. Procedural complexity has increased significantly. For a while, the legal aid system grew in tandem with these developments but at present it is hopelessly out of step. The nature and volume of required legal aid continues to increase in the face of reduced social investment in this essential service.

The legal system presupposes access and can function only if there is effective access. The adversarial system presupposes legal representation by all parties and can function properly only if there is effective representation.

Most importantly, our sense of fairness and justice presupposes both access and representation.

Throughout this report I have detailed the many ways in which our legal aid system is currently failing us, and the resulting costs at both a human and society-wide level. Examples include:

- The single mother who loses her housing because she is wrongfully denied government benefits and is unable to appeal the decision, with consequent catastrophic results for her, her children, and at greatly increased social and economic cost to the community.
- The parents whose children are in state custody for extended periods because of inadequate early legal assistance, to the detriment of family relationships and extreme stress to all parties.
- The hundreds of patients who are detained against their will in mental health facilities each year because they cannot access legal assistance in presenting their case, with viable options for care at home, resulting in increased cost to our overburdened healthcare budget.
- The individuals who plead guilty because they are overwhelmed by the criminal justice system, without understanding the short and long term consequences of a criminal record for their employment and other prospects.
- The abused woman who stays in a violent home because she cannot readily show that she has no financial resources, exposing herself to further physical harm and/or psychological trauma.

Most of us are unaware of the extent of the damage caused by inadequate legal aid, or we have a tendency to be willfully blind about this because it does not touch our lives directly. Health care affects us all and we can relate to the need for it even when we are healthy. Fewer of us understand the desperate reality of facing complex legal problems without any assistance. We

**Legal aid is an integral aspect of the justice system and is as necessary as courtrooms, judges, prosecutors, police and so on. The legal aid system can help the courts run smoothly, or it can bring the court system to a virtual standstill.**

must stop closing our eyes to the terrible harm caused by inadequate legal aid: a “nation committed to disposition of legal grievances through lawful means cannot turn blindly away from this situation.”<sup>9</sup>

We are still playing catch-up at recognizing legal aid as a full and indispensable part of the justice system. At the same time, we are only beginning to recognize that legal aid actually sits at the cusp of the justice and social service sectors. Not only does legal aid help to ensure that the courts and the legal system work, we now know that the range and mix of legal aid services, particularly where provided early, can help people resolve their problems and provide lasting outcomes while the lack of appropriate legal aid can perpetuate and increase problems and reinforce poverty and social exclusion. Recent studies have shown how lack of access to justice is often a symptom of a larger set of issues (medical, social, or economic) for many people.

The foundational step in renewing legal aid in British Columbia is to recognize that legal aid is an essential public service and to guarantee this entitlement through law. Statutory recognition would assist in elevating and safeguarding legal aid in a way that is consistent with the important role that it must play within the justice system and as an integral part of our social safety net. I received numerous suggestions concerning the content and phrasing of this entitlement. I have concluded that the following statement reflects the core elements that require recognition at law:

*An entitlement to legal aid arises where an individual has a legal problem that puts into jeopardy their or their family’s security<sup>10</sup>—be it their liberty, health, employment, housing, or ability to meet the basic necessities of life—and he or she has no meaningful ability to pay for legal services.*

My recommendations concerning defining core services and priority-setting, modernizing financial eligibility criteria and innovative service delivery are all aimed at giving practical force to such a general statutory guarantee.

The case for recognizing legal aid as an essential public service is a very strong one, founded on the tripartite basis of sound social and economic policy, a moral commitment to fairness and justice for all of our citizens, and legal and constitutional rights.

I received numerous persuasive submissions that detailed the rights-based arguments underpinning the entitlement to legal aid based on legislative provisions, natural justice, rights guaranteed under the Canadian Constitution and more broadly the *Charter* values of equality and protection of life, liberty and security of the person, as well as Canada’s obligations under numerous international human rights instruments.

It appears clear that the inadequacies in the current legal aid system leaves the provincial and federal governments at risk to legal challenges that they are failing to meet their statutory, common law, constitutional and international obligations. It is incumbent on both levels of government to work proactively to ensure that the legal aid system is in full compliance with these rights guarantees. Formal recognition of the entitlement to legal aid is an important first step toward compliance with access to justice guarantees.

**The case for recognizing legal aid as an essential public service is a very strong one, founded on the tripartite basis of sound social and economic policy, a moral commitment to fairness and justice for all of our citizens, and legal and constitutional rights.**

9 Legal Services Corporation, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, 2<sup>nd</sup> ed. (Washington: Legal Services Corporation, 2007).

10 Following Canadian jurisprudence, “security” is a broad term that includes the parent-child relationship.

## Recommendation 1: Recognize legal aid as an essential public service

**The Legal Services Society Act should be amended to include a statement clearly recognizing legal aid as an essential public service and the entitlement to legal aid where an individual has a legal problem that puts into jeopardy their or their family's security — be it their liberty, health, employment, housing, or ability to meet the basic necessities of life — and he or she has no meaningful ability to pay for legal services.**

### A New Approach to Defining Core Legal Aid Services and Priority-Setting

Most legal aid reform has been driven by the need to control budgets rather than by qualitative objectives such as improving access to justice, lowering criminal recidivism or increasing social inclusion and substantive equality. The general mantra is that the legal aid system has limited control over demand, but can control efficiency and effectiveness. While LSS has recognized and advocated for substantive legal aid reforms,<sup>11</sup> it has not been in a position to carry them out except in fairly limited ways to date. At the same time, broader justice reforms such as the Community Court recognize that investing in the justice system can ultimately reduce public expenditures by addressing the underlying causes that contribute to legal problems.

Investing in legal aid has the same potential when seen from a longer-term, more holistic perspective. Renewing legal aid in British Columbia requires a substantial rebalancing between the fiscal goal of cost-cutting and other important substantive public policy objectives. I have approached this rebalancing from the perspective of developing a new approach to defining core legal aid services and priority-setting.

Traditionally, core legal aid services were determined from the perspective of the court system and replicated the ways that private legal services were provided. As a result, core services have been defined through legal categories such as criminal law, family law and poverty law. For example, the former *Legal Services Society Act* enacted in 1979 mandated the provision of legal aid in an enumerated list of legal proceedings and for specific issues. The elimination of this statutory guarantee has been extremely problematic and many witnesses recommended that it be reinstated in order to ensure a basic level of service. It is very clear that at a minimum coverage must be reinstated for a greater range of family law issues and for poverty law matters.

Submissions also recognized, however, that it was important to prioritize the legal aid needs of members of target groups for whom this service is especially important. Many particularly vulnerable groups were identified during the hearings including: persons who experience economic disadvantage; immigrants and refugees; temporary foreign workers; those who suffer disabilities or health problems or the impact of psychological trauma; Aboriginal persons; people living in remote settings; women leaving abusive relationships; the elderly; and those who are stigmatized by criminal records.

**Renewing legal aid in BC requires a substantial rebalancing between the fiscal goal of cost-cutting and other important substantive public policy objectives.**

<sup>11</sup> In addition to its submission to this Commission (September, 2010), see also its submission to the Select Standing Committee on Finance and Government Services (October 2007). Both are available at the LSS website.

This emphasis on the legal aid needs of particularly vulnerable groups and those facing additional barriers to accessing the justice system is consistent with legal needs research which highlights the ways in which a lack of access to justice correlates to other problems. British research confirms that low income is only one factor affecting social exclusion, while factors such as age, disability, homelessness, and single parenthood often contribute as well.<sup>12</sup>

Taking into account the special circumstances of particularly vulnerable groups results in core services that are defined by the client's needs rather than the system's needs and in setting priorities that are flexible and focused on substantive outcomes rather than legal processes.

The Australian legal aid system has developed an approach that blends both the legal category and target group approach to priority setting.<sup>13</sup> These priorities are published and are accompanied by detailed guidelines for implementing them. In general, the priorities reflect legal categories of family law, criminal law, and other civil matters, but matters not otherwise included in the priorities may be funded if "special circumstances" exist. "Special circumstances" include language or literacy problems, disabilities, geographical remoteness, a likelihood of domestic violence in a family law matter, and so on. This approach is commendable and it emphasizes the importance of consultation in defining legal aid needs and the need to respond to a broad range of needs.

The definition of core services and process for setting priorities involves not only decisions concerning coverage for specific legal issues and the circumstances of individuals requiring legal aid, but also the type of legal aid services that are provided and to what extent. On the other hand, Canadian legal aid systems have always been bifurcated between (1) the criminal law and family law areas where legal aid was synonymous with representation by a lawyer, and (2) other civil matters where a range of legal services has always been provided by community advocates and lawyers. Today, the legal aid system is seen as providing a broad spectrum of services from information, to advice, to assistance, and to representation. While this broadening of services is beneficial in many ways, it gives rise to a heated contest over when each level or type of service is appropriate and sufficient.

I discuss service delivery modalities more fully below, but the threshold issue of when full legal representation is required must be resolved at the outset as one aspect of defining core services and setting priorities. I received a variety of submissions on this point, which converged on the premise that legal aid should only be provided by lawyers when necessary, but equally when it is truly necessary, full legal representation should be provided. One helpful formulation of the standard for when a lawyer is required is the American Bar Association standard which states it in the reverse: "whether it can honestly be said that the litigant can obtain a fair hearing without being represented by a lawyer."<sup>14</sup> This standard is further elaborated in this way:

*With rare exceptions, this will be true only when certain conditions are met: the substantive law and procedures are simple; both parties are unrepresented; both parties are individuals and neither is an institutional party; both parties have the intellectual, English language, and other skills required to participate effectively; and, the proceedings are not adversarial, but rather the judge assumes responsibility for and takes an active role in identifying the applicable legal standards and developing the facts.*

**Emphasis on the legal aid needs of particularly vulnerable groups and those facing additional barriers to accessing the justice system is consistent with legal needs research which highlights the ways in which a lack of access to justice correlates to other problems.**

12 Alexy Buck, Nigel Balmer and Pascoe Pleasance, "Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups" (2005) 39:3 *Social Policy and Administration* 302.

13 See Commonwealth Legal Aid Priorities and Schedule 1: Commonwealth Legal Aid Guidelines.

14 See Commonwealth Legal Aid Priorities and Schedule 1: Commonwealth Legal Aid Guidelines.

Given that I have recommended a broader statutory entitlement to legal aid which arises when the fundamental interests of security, liberty, health, employment, housing, or ability to meet the basic necessities of life are at stake, it will be important to review the application of a merits test for some core services. Several submissions criticized the current standard of what a “reasonable person of modest means would do” as being unnecessarily limited and unfair. Merits tests have been developed in some other Canadian jurisdictions where the legal aid system covers other civil matters.<sup>15</sup> Again the Australian model appears to take a more comprehensive and holistic approach that considers both individual needs and the public interest. The Australian merits test includes three criteria: the “reasonable prospects of success” test, the “prudent self-funding litigant” test, and the “appropriateness of spending limited legal aid funds” test.<sup>16</sup>

In addition, however, an Australian applicant for specific services may be required to meet further category-specific tests. For example, in relation to summary criminal prosecutions, legal aid may be provided if the applicant has a reasonable prospect of acquittal. As well, legal aid may be provided if a conviction would have a significantly detrimental effect on the applicant’s livelihood or employment (current or prospective); if it is unreasonable to expect the applicant to defend himself or herself because of special “circumstances” as defined in the priorities; if conviction would be likely to result in a term of imprisonment (including a suspended term); or if the applicant is a child.

While I am not necessarily advocating direct adoption of the Australian model, it does go a considerable distance in developing a principled approach to defining core services and setting priorities and it offers a useful comparison and departure point for British Columbia.

Finally, the legal aid system should make room for and prioritize systemic work — that is to say, legal aid services which potentially benefit a large number of economically disadvantaged people, society, and the public interest more generally. While I received relatively fewer submissions on this point, I was persuaded that systemic work should be seen as a core legal aid service. The focus of legal aid work is on assisting individuals to deal with their legal problems. However, legal aid providers are uniquely placed to identify the widespread and recurring legal problems and to use legal strategies to address them on a system-wide basis, thereby solving the problem for a greater number of people and reducing the demands on legal aid and on other legal proceedings. For example, duty counsel may identify recurring problems with bail hearings and suggest practical reforms. Similarly, community advocates and supervising lawyers can identify patterns of wrongful denials of services or benefits to members of a vulnerable group and address this situation either through law reform advocacy or test-case litigation. The Community Legal Clinics in Ontario are widely touted as operating in a manner that facilitates both individual and systemic work. In British Columbia, systemic work is carried out by agencies such as the Community Legal Assistance Society and the BC Public Interest Advocacy Centre, but there is also a potential role for LSS in a renewed legal aid system.

I recommend that the legal aid system take a new approach to defining core services and setting priorities. Core services and priorities should be established through a consultative process at regular intervals in order to ensure that the system is stable enough so that people can easily ascertain when legal aid is available, but also flexible enough to respond to new or changing needs for legal aid.

**Core services and priorities should be established through a consultative process at regular intervals in order to ensure that the system is stable enough so that people can easily ascertain when legal aid is available, but also flexible enough to respond to new or changing needs for legal aid.**

<sup>15</sup> See for example, the practices of Legal Aid Manitoba and Legal Aid Alberta.

<sup>16</sup> See Commonwealth Legal Aid Priorities and Schedule 1: Commonwealth Legal Aid Guidelines.

I have outlined a number of elements that should form the part of this innovative approach:

- Core services and priorities should be linked to the substantive policy objectives of legal aid, including for example lowering recidivism and prevention of crime and achieving greater social inclusion;
- The definition of core services and priorities should take into account legal categories, legal issues, and legal proceedings and the special circumstances of individual clients;
- Priority should be given to the legal aid needs of particularly vulnerable groups;
- Core services must include extended family law services and poverty law services;
- Principles and guidelines should be developed to determine when legal representation by a lawyer is required;
- Consideration should be given to developing more sophisticated and tailored merits tests that take into account both individual needs and the public interest; and
- Core services should include systemic legal aid work that has the potential to assist groups of individuals and contribute to legal and justice system reform for the benefit of society.

## **Recommendation 2: Develop a new approach to define core services and priorities**

**A new approach to defining core public legal aid services and priorities should be developed which merges the traditional legal categories approach (e.g., criminal law, family law, and poverty law) with an approach based on the fundamental interests of the most disadvantaged clients, where the need is most pressing and the benefit is likely to be greatest. At a minimum, this will require reinstating coverage for many family law and poverty law matters.**

## **Modernizing Financial Eligibility Criteria**

Renewing the legal aid system in British Columbia also requires modernizing the eligibility regime so that it is fair, transparent, simple to administer, and more flexible than at present. Almost every submission made to me remarked on the low threshold and how it bears no reasonable relationship to the actual ability to pay for legal services where fundamental interests are at stake. Legal aid administrators across Canada and beyond use financial eligibility criteria in an unprincipled manner to artificially reduce demand and balance budgets. This situation cannot be tolerated any longer.

I make three cascading recommendations with respect to financial eligibility criteria. My primary recommendation is that financial eligibility rates should be modified so that more needy individuals qualify for legal aid and they should be linked to an established and accepted measure of poverty such as the Statistics Canada Low Income Cut Off or the Market Basket Measure. I am aware that there is no official measure of poverty in British Columbia or Canada, but it is incumbent on the government to establish one at least for the limited purpose of determining access to core legal aid services. Linking eligibility to an external standard will make the criteria

**Renewing the legal aid system in BC requires modernizing the eligibility regime so that it is fair, transparent, simple to administer, and more flexible than at present.**

fairer and more transparent and eliminate the possibility of using it as a gatekeeper to services in order to meet short-term budgetary goals. While it is important that eligibility criteria are simple to administer, some flexibility should also be built into this determination to take into account special circumstances related to the client, the nature of the case, and the impact of the issue on the client. For example, many submissions recommended that women leaving abusive relationships be provided with legal aid without proof of financial circumstances, at least at the critical early phase.

Priority must remain on ensuring legal aid for the impoverished and most disadvantaged individuals to cover the range of core services they require. It is also true, however, that the next socioeconomic tier, usually referred to as the “working poor” or “lower middle class,” often cannot afford to access legal services in any meaningful way. I define this group as those earning up to 200 percent of the poverty level discussed above. My secondary recommendation is, therefore, that once the legal aid needs of the indigent are assured, steps should be taken to broaden access to legal aid for the “working poor” through a sliding scale contribution system. One aspect of this contribution system would be contingency agreements in matrimonial property disputes wherein the spouse who is able to gain a proper distribution of marital assets through legal aid repays a reasonable percentage of the value of the settlement as a fee for service. Another approach is to levy a monthly fee to assist in defraying the cost of the legal aid service. This approach has been employed in other jurisdictions (and in a limited way in British Columbia before 2002) to broaden access to justice.

My tertiary recommendation is that some level of legal aid service should be available to all. There is no question that there is an important public good in providing legal information and assistance to all British Columbia residents. This direction of less targeted assistance characterized many of the post-2002 legal aid reforms. These legal aid services tend to be cost-effective because more, but certainly not all people, can be served by the same resource. Moreover, they can also generate great strides in increasing access to justice because relatively more affluent and educated individuals with settled lives are likely to be able to use self-help materials to greater effect. Some commentators have speculated that providing legal aid to the middle class will have the added strategic benefit of building public support for legal aid by making it relevant to more people. At the same time it is wholly unacceptable to divert resources from the economically disadvantaged and most vulnerable communities to provide legal information and advice to the middle class. These developments should therefore only be pursued in the context of sufficient legal aid resources to meet the needs of the indigent and the “working poor”.

**There is no question that there is an important public good in providing legal information and assistance to all BC residents.**

### **Recommendation 3: Modernize and expand financial eligibility**

- (a) Financial eligibility criteria should be modified so that more needy individuals qualify for legal aid and the criteria should be linked to a generally accepted measure of poverty such as Statistics Canada’s Low-Income Cut-Off or Market Basket Measure.**
- (b) Legal aid should be made available to the “working poor,” defined as those earning up to 200 percent of the poverty rate through a sliding scale contribution system.**
- (c) Basic legal aid services such as legal information and limited legal advice should be available to all residents of British Columbia, but only to the extent that the entitlements under (a) and (b) to comprehensive legal aid is fully met.**

## Ensuring Access through Regional Legal Aid Centres and Innovative Service Delivery

Legal aid service delivery models are continually evolving as our knowledge of legal aid needs increases and as legal aid providers become more adept at monitoring and evaluating the provision of services. LSS, the Law Foundation of British Columbia, the Canadian Bar Association, and the Department of Justice Canada have all carried out extensive work in this area. There is also a growing international network of legal aid researchers and policy analysts, which facilitates the sharing of knowledge across jurisdictions and legal systems. Inconsistent commitment of public resources, however, means that successful pilot projects that are proven to be effective and cost-efficient are often discontinued because of inadequate funds.

Based on what I have heard, I recommend that legal aid service delivery should be modeled on evidence-based best practices, which take into account the needs of impoverished clients for lasting outcomes and the geographic and cultural barriers they face in accessing public services. I further recommend that this model should include nine features that attempt to address the main weaknesses identified in the Commission's hearings.

One of the main themes that emerged in the submissions was that the legal aid system is wholly inadequate outside the Lower Mainland. One priority of the renewal process must be to increase the presence and accessibility of legal aid across the province. For this reason, I recommend the establishment of Regional Legal Aid Centres across the province to serve as the point of entry hub of legal aid service for all core services.

The high visibility of the Centres will facilitate early intervention in resolving legal problems, another key component of legal aid reform. There is strong evidence on the value of early, effective legal assistance. Intervention before problems escalate and cascade into additional problems increases the likelihood of lasting beneficial outcomes and ensures cost efficient services. Early intervention depends upon having a stable, well-publicized legal aid system that connects effectively with other service providers, is easily accessible, and takes steps to overcome geographic, cultural and other barriers. High visibility and community connection are essential; a one-stop shop approach is ideal.

I recommend the establishment of a sufficient number of regional legal aid centres to ensure accessibility to all regions of British Columbia. The Centres would operate in some ways like the former Community Law Offices and the Clinic system in Ontario except that I propose that the Centres will also provide access to family law and criminal law matters in addition to poverty law matters. LSS would remain responsible for system-wide management but there would be a greater decentralization of services and greater local control over priority-setting and service delivery modes. Decisions over the number of Centres and their location should be made on the basis of a consultative process with justice system stakeholders across the province so that the unique circumstances and needs of each community can be fully taken into account.

While I believe that the establishment of Regional Legal Aid Centres will go some way to ameliorating the lack of access to justice outside the Lower Mainland, it will be insufficient on its own. It is essential that the Regional Centres also provide mobile outreach services, which bring legal aid to individuals who cannot access the Centres due to geographic or cultural barriers. Mobile outreach should be tailored to client needs but could include monthly mobile clinics in smaller

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locations and clinics held at women's centres, health clinics, or other settings that are comfortable for members of vulnerable groups with unmet legal aid needs. I was impressed by initiatives, such as travelling poverty advocates that take to the streets or go from town to town to assist clients, and specialized legal clinics that spring up to meet a localized need. These innovations will only be sustainable, however, within the context of renewed broader legal aid service.

The Regional Legal Aid Centres and mobile outreach services should be staffed through an enhanced team approach with greater emphasis on the role of community advocates and legal advocates who receive training to enable them to deliver more specialized legal aid services including representation in administrative hearings. This recommendation is analogous to developments in healthcare delivery where nurses are now providing higher levels of care, including performing services that were formerly within the purview of doctors alone. The team approach can only work where community and legal advocates are acting with adequate resources, support, training and supervision by lawyers. As noted above, principled consideration must be given to the circumstances in which legal representation by a lawyer is truly required.

Research reports, studies, and evaluations have also been clear on the benefits of legal aid provision through duty counsel and staff lawyers as a complement to the work carried out by the private bar. Enhanced duty counsel services appear to be the most effective and cost-efficient mode of delivering legal assistance and there is room to increase the scope of these services. At the same time attention has to be paid to ensure that duty counsel are properly resourced, that they have enough time to carry out their functions and that space is allotted so that they can meet clients in private. Consideration should be given to providing paralegal assistance to work alongside duty counsel to assist clients with filling out forms and so on. Staff lawyers are an important component of the legal aid service delivery team and have an important role to fill in another priority—a more holistic and integrated approach to meeting the needs of clients. Although somewhat counter-intuitive, staff lawyers do not necessarily provide a more cost-efficient service compared to private bar tariff services.<sup>17</sup> It is clear however, that staff lawyers provide a qualitatively different type of representation and one that more easily supports the greater integration of legal aid services with other support services.<sup>18</sup>

**One of the other very clear themes that emerged in the hearings was the view that legal information is not a substitute for legal assistance and representation.**

One of the other very clear themes that emerged in the hearings was the view that legal information is not a substitute for legal assistance and representation. In particular, the most vulnerable and disadvantaged members of our community are the least likely to be able to access, utilize, and benefit from these self-help resources.<sup>19</sup> This was powerfully summed up in one submission: "For some people and some problems self-help suggests abandonment, not empowerment." I therefore recommend that we should be very cautious in expanding the use of information technology in delivering legal aid services bearing in mind the proven barriers to accessing and using legal information, particularly by the most disadvantaged population.

Three other more specific recommendations should be integrated into the legal aid service delivery model in British Columbia. First, the LawLINE should be re-established and expanded because it provided such an effective and cost-efficient service that is sorely missed.

17 See for example, Robert Hann, Fred Zemans and Joan Nuffield, *Evaluation of Criminal Law Offices, Third Report* (Toronto: Legal Aid Ontario, 2008).

18 See discussion in Professor Michael Trebilcock, *Report of the Ontario Legal Aid Review 2008* (Report to the Honourable Chris Bentley, Attorney General of Ontario) (Toronto: AG Ontario, 2008).

19 See for example, Julia Gordon, Project for the Future of Equal Justice, *Equal Justice and the Digital Revolution: Using Technology to Meet the Needs for Low-Income People* (CLASP and NLADA, 2002).

Second, legal aid service delivery must include targeted strategies to meet the needs of underserved communities, including Aboriginal communities, women leaving abusive relationships, individuals with mental or cognitive disabilities, migrant workers, and the elderly. LSS has developed a strategy to address the legal aid needs of the Aboriginal community, but this may have been thwarted to some degree by recent cutbacks in available funds. It appears clear to me that a special protocol or additional guidelines are required to address the barriers to legal aid reported by women who are leaving abusive relationships.

Finally, LSS should enhance the use of case management techniques in large criminal cases and should introduce it in other situations where warranted. For example, several submissions recommended that case management may be useful in addressing “court harassment” strategies employed by abusive litigants in the family law context.

I feel compelled to address the relationship between legal aid services and pro bono services. Quite a few of the submissions I received suggested that pro bono contribution by lawyers be made mandatory. I am not prepared to make this recommendation. As a whole, the legal profession is very active in providing pro bono services to a degree unmatched by any other profession. It does not seem appropriate to impose an obligation on lawyers to provide services for free because there are insufficient funds. We do not require other professions to provide their services for free even where they are providing essential public services. It would be unfair and inappropriate to single out the legal profession in this manner.

I am of the view that pro bono services are important and play a complementary function to legal aid, but it is important to recognize that the primary responsibility for ensuring access to justice remains with the government. There are very real limits to the types of legal services that can be provided on a pro bono basis and there are very real risks associated with relying too heavily on volunteers. At the same time, I encourage the profession to continue to take steps to make it easier for lawyers to volunteer their services.

**I am of the view that pro bono services are important and play a complementary function to legal aid, but it is important to recognize that the primary responsibility for ensuring access to justice remains with the government.**

#### **Recommendation 4:**

#### **Establish regional legal aid centres and innovative service delivery**

**Legal aid service delivery should be modeled on evidence-based best practices, which take into account the needs of economically indigent clients for lasting outcomes and the geographic and cultural barriers they face in accessing public services. This model should include the following nine features:**

- 1. Establishment of Regional Legal Aid Centres across the province to serve as the point of entry hub of legal aid service delivery for all core services to facilitate early intervention in resolving legal problems;**
- 2. Mobile outreach services to individuals who cannot access the Centres due to geographic, cultural and/or other barriers;**
- 3. Enhanced team approach to the delivery of legal aid services with greater emphasis on the role of community advocates and legal advocates acting with adequate support, training and supervision by lawyers;**

4. **Gradual expansion of the role of duty counsel and staff lawyers where monitoring and evaluation demonstrate the effectiveness of these modes of service delivery in meeting client needs;**
5. **Greater integration of legal aid services with other support services to meet client needs in a more holistic manner;**
6. **Enhanced case management of large criminal cases and in other situations, where warranted;**
7. **Targeted strategies to meet the needs of under-served communities including Aboriginal communities, women leaving abusive relationships, individuals with mental or cognitive disabilities, migrant workers and the elderly;**
8. **Re-establishment and expansion of LawLINE; and**
9. **Cautious expansion of information technology in delivering legal aid services bearing in mind the proven barriers to accessing and using legal information, particularly by the most disadvantaged.**

## How to Get There

**Public opinion polls conducted in British Columbia have demonstrated that there is very strong support for publicly funded legal services largely based on the view that legal aid for low-income and disadvantaged people is required to ensure fairness in the justice system.**

One of the messages that I heard loud and clear throughout the hearings was the very real fear that my report would join the stack of legal aid reviews and studies gathering dust in the report graveyard. All of the submissions spoke to the problem of historic and ongoing lack of political will. We all recognize that resistance is a common response to calls for fundamental change and that justice system stakeholders tend to be averse to change. There is relatively low public awareness about the importance of legal aid for our society and how legal aid actually works. Furthermore, we are all keenly aware of the current economic climate and the budget constraints within which governments must operate.

All is not doom and gloom, however. Signs abound that the desperate state of legal aid is beginning to tug at the edges of the public conscience. There has been an increase in media coverage about the social and economic costs that are caused by failures in the legal aid system. Public opinion polls conducted in British Columbia have demonstrated that there is very strong support for publicly funded legal services largely based on the view that legal aid for low-income and disadvantaged people is required to ensure fairness in the justice system. It appears that most British Columbians recognize and accept the responsibility to provide legal services to disadvantaged individuals when they require it.

In the latest LSS poll published in 2010, 88 percent of British Columbians say that they support legal aid, with 49 percent saying they strongly support it.<sup>20</sup> Residents place the most importance on providing legal aid in family court (95 percent), followed by other civil legal proceedings

<sup>20</sup> LSS 2010 Public Opinion Poll prepared by Synovate. This figure was slightly higher in 2008 (93%) and in 2009 (95%) and with a greater percentage (61%) strongly supporting legal aid.

(91 percent), criminal court (89 percent) and in immigration/refugee hearings (82 percent). The vast majority of people polled agreed with the following statements:

- Everyone should have the right to access the justice system. (Total agreeing 97 percent.)
- Government should give funding for legal aid the same priority as they give funding for other social services such as health care, education, welfare and child protection.” (Total agreeing 71 percent in 2010; 79 percent in 2009.)

These results demonstrate a growing understanding that if the justice system breaks down for some, it breaks down to some degree for all.

Legal aid is a non-partisan issue — both growth in and cuts to legal aid budgets have taken place when politicians of different stripes were in power in Victoria and in Ottawa. While launched and funded by legal organizations, I have served as a Public Commissioner and have taken on this responsibility to report to the people of British Columbia as a whole. We must all work together to renew legal aid.

In this final section, I make five more recommendations concerning how we can work together to get where we need to go on legal aid, to achieve the consensus vision that I have outlined above. These recommendations address the issues of public engagement, ensuring an adequate funding base, a proactive approach to legal aid reform, greater collaboration between stakeholders and service providers on access to justice issues, and enhanced support for legal aid service providers.

**Legal aid is a non-partisan issue — both growth in and cuts to legal aid budgets have taken place when politicians of different stripes were in power in Victoria and in Ottawa.**

## Building Public Support for the Renewal of the Legal Aid System

Over the past few years, LSS, the Canadian Bar Association (both the British Columbia Branch and the national organization), and a broad range of social justice organizations working together as the Coalition for Public Legal Services<sup>21</sup> have made concerted efforts to increase awareness about the inadequacies of the legal aid system and the importance of renewing our commitment to legal aid. Activities have included town hall meetings and other public forums, Law Week activities, various types of advocacy, and the development and distribution of written materials and videos about the legal aid system. Effective public education regarding the value of legal aid and our justice system is essential. I thank these organizations for their hard work and encourage them to continue to work to expand public awareness and engagement and political dialogue on legal aid in order to build and sustain momentum for renewing legal aid.

### Recommendation 5: Expand public engagement and political dialogue

**Justice system stakeholders, including those that established this Commission and members of the Coalition for Public Legal Services, should continue to take steps to expand public engagement and political dialogue on the urgent need to renew the legal aid system in British Columbia.**

21 For a list of member organizations and more information about the Coalition for Public Legal Services see: <http://www.cplsbc.ca>.

## Ensuring an Adequate Funding Base for the Legal Aid System

The Public Commission's mandate specifically included asking British Columbians how legal aid should be funded. As discussed above, two dramatic shifts in funding arrangements have had a drastic impact on the legal aid system in British Columbia. First, the federal government lowered its contribution to criminal legal aid below the original 50 percent cost-sharing formula and moved away from a cost-sharing approach to funding under the *Canadian Assistance Plan* to transfers without any specific designation of funds for civil legal aid. These funds now go into the provinces general revenue and are no longer earmarked for legal aid.<sup>22</sup> Second, the provincial government capped LSS's annual budget and moved from open-ended funding for statutorily-guaranteed services to a starkly reduced budget. In addition, the recent downturn in the economy has put further budgetary pressure on the legal aid system because the Law Foundation and Notary Foundation, which had increased their contribution to try to offset the cutbacks in government contributions, have far less revenue to contribute to legal aid as a result of lower interest rates.

One cannot ignore the fiscal realities. At the same time, it is very clear that there are very real economic costs to inadequate legal aid. While I am not in a position to quantify these costs in hard numbers, costs borne by society at large include: costs associated with delays in court and administrative proceedings; increased court operation costs attributable to unrepresented litigants and accused; and, more broadly, costs associated with legal problems that are not resolved in an acceptable manner (including increased health care costs, increased social assistance costs and so on).

Studies in several other jurisdictions support my findings about the economic costs of inadequate legal aid and suggest that legal aid more than pays for itself when viewed from this more holistic perspective.<sup>23</sup>

While the social costs of the lack of legal aid in essential matters are difficult to measure precisely, a clogged inaccessible system of justice necessarily results in unfair and arbitrary outcomes, often accompanied by human tragedy, and breeds contempt for the justice system and the rule of law. Furthermore, no other province or territory in Canada, other than British Columbia, has made such drastic reductions to its legal aid budget while coping with the same fiscal environment. In fact, Ontario has managed to increase its contribution to legal aid during the same lean economic years. Yet even in Ontario, where per capita spending on legal aid is the highest in Canada, legal aid has lost out substantially relative to spending on health and education. Between 1996 and 2006, legal aid funding in Ontario declined by 9 percent in inflation-adjusted terms while funding for health care increased by 30 percent and for education by 20 percent.<sup>24</sup> I have been unable to find comparable statistics for British Columbia.

The submissions to the Commission were unanimous in the view that funding for legal aid is a government responsibility and that both the federal and provincial governments have to increase

**One cannot ignore the fiscal realities. At the same time, it is very clear that there are very real economic costs to inadequate legal aid.**

22 The federal government maintains that it continues to support civil legal aid while the province says that it does not. The federal government is not in a position, however, to report on the amount of its financial contribution to civil legal aid anywhere in Canada.

23 See for example, Report of the Task Force to Expand Access to Civil Legal Services in New York (November, 2010); PricewaterhouseCoopers, *Economic Value of Legal Aid* (Prepared for National Legal Aid Australia, 2009); The Perryman Group, "The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential," (February 2009).

24 Professor Michael Trebilcock, *Report of the Ontario Legal Aid Review 2008* (Report to the Honourable Chris Bentley, Attorney General of Ontario) (Toronto: AG Ontario, 2008).

their contributions. Legal aid was clearly seen as an essential public service on par with health care. In addition to a call for a substantial increase in public funding, another priority identified in the submissions was that funding had to be stable and commitments had to be made over the longer term in order to ensure that the legal aid system could properly plan, maintain service levels, and foster innovative, effective, and cost-efficient service delivery.

Many submissions also suggested that the tax on legal services should become the dedicated funding base for the legal aid system. Others pointed out, however, that there was no rational connection between the tax on legal services and the determination of how much funding was required to ensure adequate legal aid. This specific tax revenue could be either too little or too much. Various positions were taken on how to decide on budget requirements. A common starting point was that the minimum funding level should be back to the funding level before 2002. LSS estimated that an additional \$47 million per year was required to accomplish that.

Many recommendations were aimed at insulating the legal aid budget-setting process from the political process, given that legal aid continually loses out against other spending priorities. Suggestions toward this end include:

- an independent audit to rationally determine legal aid requirements;
- consultation with stakeholders to determine legal aid requirements;
- a process whereby the Attorney General would certify the amount necessary for legal aid (similar to the process under the *Crown Proceedings Act*);
- funding legal aid from several Ministry budgets in addition to the Ministry of the Attorney General given the impact of adequate legal aid in reducing health care costs and social services spending; and
- the establishment of a degree of parity or balance between funding on legal aid and other aspects of the justice system.

On the federal side, there was a consensus that funding should be restored to pre-1996 levels and that federal funding should be specifically dedicated to legal aid so that provincial governments cannot use it for other programs. Some submissions went further to recommend that the federal government play an even larger role in ensuring the provision of essential public legal services through the establishment of national standards by statute.

The submissions contained numerous suggestions concerning approaches that the provincial government could take to raising funds for legal aid, including a new social investment tax and an additional tax on alcohol.

A large number of submissions also suggested additional funding from non-governmental sources including mandatory funding from the Law Foundation and mandatory contributions from the legal profession (either in terms of mandatory provision of unpaid services or a per lawyer financial contribution). Other innovative approaches outside of public funding were recommended including the use of *cy près* awards in class actions for this purpose.<sup>25</sup> I fully recognize

**While the social costs of the lack of legal aid in essential matters are difficult to measure precisely, a clogged inaccessible system of justice necessarily results in unfair and arbitrary outcomes, often accompanied by human tragedy, and breeds contempt for the justice system and the rule of law.**

25 A *cy près* award is used in the class action context as a mechanism that allows the court to distribute any settlement monies remaining after the claims of class members have been paid for a charitable or other purpose rather than returning it to the defendant(s). Generally-speaking the money is used to promote the interest of class members, for example in a case dealing with defective blood sugar monitors the award was given to the Canadian Diabetes Foundation. A large *cy près* award was made to the Law Foundation of Ontario to establish an Access to Justice Fund in 2009 as a result of *Cassano v. TD Bank*, 2007 ONCA 781.

the important contributions from the Law Foundation, charitable organizations, community groups, and the legal profession and their critical role in broadening access to justice. We have come to count on these organizations and individuals to try to fill the huge gaps created by the withdrawal of government funding.

Nevertheless, I conclude that these non-governmental sources of funding should not be counted on for the provision of core legal aid services because, among other things, they are by definition uncertain. These private sources of funding should be used for *additional* access to justice initiatives that support and complement the core public legal aid services. I find that there is a consensus in British Columbia that legal aid is an essential public service and adequate government funding must be provided on that basis.

The requirement of increased, stable, long-term public funding for legal aid is non-negotiable — without it there will be no movement forward. Without this additional, assured public funding the social and economic costs will continue to mount and public confidence in the justice system will continue to deteriorate. The suffering of innumerable people will not stop; if anything, it will continue to escalate. Our society cannot afford to let our legal aid system fail our fellow citizens and thereby fail us all.

**The requirement of increased, stable, long-term public funding for legal aid is non-negotiable — without it there will be no movement forward.**

### **Recommendation 6: Increase long-term, stable funding**

**The provincial and federal governments must increase funding for legal aid and provide this funding through a stable, multi-year granting process. The provision of essential public legal services is a governmental responsibility and the delivery of core services should not depend upon charitable contributions from the Law Foundation, the Notary Foundation, community groups and pro bono efforts of the legal profession, paralegals, and others.**

## **The Legal Aid System as a Proactive Player in the Justice System**

During the course of the hearings, I received numerous submissions concerning LSS administration, operations, and its relationship with other legal service providers and justice system actors and institutions. I do not see my mandate as extending to a detailed consideration of the way the present legal aid system operates. There were two overarching points made that relate to the question of how to ensure legal aid renewal in British Columbia that should form part of the path to reform.

First, the legal aid system should be more dynamic and strategic in its approach, which requires enhanced research, policy development, monitoring and evaluation capacities. LSS has taken steps to increase these capacities over the past decade even in the context of funding cutbacks. The Law Foundation of British Columbia has also commissioned and funded an array of research studies and other initiatives that support these important functions. More can and should be done to foster innovation and responsiveness to communities across British Columbia. In order to ensure the best use of increased public funds, the legal aid system must be more proactive through ongoing monitoring and experimentation in defining priorities and in designing delivery systems for legal aid. This function could be integrated into LSS operations or it could be

carried out by an independent agency to ensure that this function is not lost to, nor superseded by, the pressures of day-to-day operations.<sup>26</sup>

This period of renewal is a significant opportunity to ensure that LSS has the necessary resources to adequately meet the need for legal aid in British Columbia. With sufficient resources and mandate, LSS or a sister agency could also play a proactive role in designing legal processes and integrating with other social services. This step could increase social inclusion of disadvantaged individuals and communities and eventually reduce the need for legal aid. Legal aid providers have a special vantage point given that they see a large volume and wide diversity of clients and legal problems. This position provides a unique opportunity to observe recurring problems in the functioning and systemic dysfunctions of both the legal system and the legal aid system, and to become a proactive change agent within justice reform.

At the same time, legal aid is an integral part of the overall justice system and legal aid priority-setting necessarily occurs in the context of legislative reform and other progressive justice sector reform, such as the Community Court. Many submissions connected legal aid renewal to broader reforms, such as simplification of court procedures and criminal law reform.

More particularly, there is an increased need for legal aid to coordinate with non-governmental providers, including Access Pro Bono and other pro bono initiatives, such as community legal clinics and law student clinics to work toward broader access to justice solutions. Interagency collaboration could serve many functions, including meeting the needs to:

- integrate legal aid services and pro bono services by all providers;
- facilitate networking amongst the providers, such as sharing information to discourage abuse of services and establishing best practice protocols;
- monitor the impact of justice system changes on vulnerable and disadvantaged communities;
- identify additional reforms to increase access to justice;
- avoid duplication of effort, minimize costs, including initiatives to share costs;
- map unmet legal aid needs across the province, taking into account the geographical, social, cultural and economic factors that can contribute to or exacerbate legal needs; and
- map service providers across regions to highlight gaps and overlaps, identify and remedy impending service gaps, and inform future service delivery.

Mechanisms to facilitate collaboration between public legal aid providers and private service providers, such as an “Access to Justice Committee”, should be established on both a province-wide and regional basis. These committees could also play an important function in providing input to broader court reform and access to justice initiatives. The smooth functioning of these committees would be greatly assisted by the establishment of a small secretariat. This investment is warranted, given the potential benefits of heightened collaboration between service providers. Local committees will have the additional benefit of increased community involvement in addressing access to justice problems in their region.

**The legal aid system should be more dynamic and strategic in its approach, which requires enhanced research, policy development, monitoring and evaluation capacities.**

<sup>26</sup> For example in England, the research and policy-development function is carried out by the Legal Services Research Commission.

## **Recommendation 7: The legal aid system must be proactive, dynamic, and strategic**

**The legal aid system should be more proactive, dynamic and strategic in its approach, which requires enhanced research, policy development, monitoring, and evaluation capacities.**

## **Recommendation 8: There must be greater collaboration between public and private legal aid service providers**

**Mechanisms to facilitate collaboration between public legal aid providers and private service providers, such as an “Access to Justice Committee”, should be established on both a province-wide and regional basis. These committees could also play an important function in providing input to broader court reform and access to justice initiatives.**

## **Ensuring Adequate Training and Support for Legal Aid Providers**

**The renewed legal aid system proposed here will require diverse, well-trained, and seasoned legal aid providers with specialized knowledge to assist economically disadvantaged people in the priority areas of need.**

Like the justice system overall, legal aid is predominantly a people-based system. Unlike in the health care sector, little in the way of expensive machines is needed. Legal aid providers, however, must be adequately trained and supported to enable them to carry out their important functions. The renewed legal aid system proposed here will require diverse, well-trained, and seasoned legal aid providers with specialized knowledge to assist economically disadvantaged people in the priority areas of need. They must also have the ability to provide comprehensive services to clients with multiple, inter-related legal problems. I was very impressed by the present work of community advocates and recommend a larger role for advocates in a renewed system. Community advocates require adequate resources, ongoing training, mentoring, and supervision by lawyers in order for them to serve the important function that I envision for them.

Legal aid lawyers also need to be developed and supported through training, mentoring, and adequate recognition of their contribution. Ensuring that the tariff and hours allotted to carry out legal aid work makes it economically feasible for the profession to participate in the legal aid system is of fundamental importance. LSS has recognized that there are serious concerns in this regard, noting among other things that the pool of lawyers willing to take on legal aid work is growing smaller and is reaching a critical point in some areas of the province. The pool has shrunk, in part because the drastic reduction in family law legal aid has had a severe impact on the family law bar, especially outside of the Lower Mainland—there are simply fewer lawyers working in this field. In other areas, lawyers are withdrawing from legal aid practice because of low remuneration; constraints on hours that make it difficult if not impossible to provide quality service; administrative hassles in dealing with LSS; and systemic problems arising from deficient court resources. Renewing the relationship between the private bar and LSS and ensuring that there is an adequate, workable tariff are essential steps in the road ahead in order to safeguard the sustainability of the legal aid system.

In addition, quality assurance mechanisms must be refined and enforced for all providers of essential public legal services to ensure that the people of British Columbia receive the high level of professional service that they so richly deserve. The justice system is changing rapidly and lawyers must have an increasingly broad skill set to fulfill their obligations. In addition to

keeping abreast of ever more complex areas of substantive law, lawyers require many additional untraditional lawyers' skills, such as project management skills for complex litigation, information technology skills, cultural competency to assist British Columbia's increasingly diverse society, and social service skills for assisting marginalized clients. The legal aid system has an important role to play in supporting the professional development of legal aid lawyers so that they can provide quality services to their clientele.

### **Recommendation 9: Provide more support to legal aid providers**

**Steps should be taken to develop, support, and recognize community advocates, legal advocates, paralegals, and lawyers who provide both public and private legal aid services in order to ensure the quality of these services. These steps should include: increased training and professional development opportunities, increased informational resources and other forms of support, quality assurance mechanisms, and ensuring that remuneration is sufficient to make it economically feasible for lawyers and others to perform these essential services.**

## Co-Commissioners at the Public Commission on Legal Aid Hearings

### Williams Lake

1. Bob Simpson, MLA Cariboo-North
2. Natalie Hebert, Williams Lake City Councillor

### Prince George

1. Garth Frizzell, Prince George City Councillor

### Terrace

1. Gary Coons, MLA North Coast
2. David Pernarowski, Terrace City Councillor

### Kamloops

1. Tina Lange, Kamloops City Councillor

### Kelowna

1. None

### Cranbrook

1. None

### Nanaimo

1. Leonard Krog, MLA Nanaimo
2. Ron Cantelon, MLA Parksville – Qualicum

### Victoria

1. Dean Fortin, Mayor of Victoria
2. Rob Fleming, MLA Victoria – Swan Lake
3. Maurine Karagianis, MLA Esquimalt – Royal Roads

### Vancouver

1. Don Davies, MP Vancouver Kingsway
2. Libby Davies, MP Vancouver – East
3. Ujjal Dosanjh, MP Vancouver – South
4. Kathy Corrigan, MLA Burnaby – Deer Lake
5. Mable Elmore, MLA Vancouver – Kensington
6. Kash Heed, MLA Vancouver – Fraserview
7. Spencer Herbert, MLA Vancouver – Burrard
8. Jenny Kwan, MLA Vancouver – Mt. Pleasant
9. Ralph Sultan, MLA West Vancouver – Capilano
10. Richard T. Lee, MLA Burnaby – North
11. Shane Simpson, MLA Vancouver – Hastings
12. Linda Barnes, Richmond City Councillor

### Surrey

1. Russ Hiebert, MP South Surrey
2. Jagrup Brar, MLA Surrey – Fleetwood
3. Mary Martin, Surrey City Councillor
4. Andrea Hepner, Surrey City Councillor
5. Vicki Huntington, MLA Delta South
6. Diane Thorne, Mayor of Surrey

### Chilliwack

1. Sharon Gaetz, Mayor of Chilliwack

## In-person Submissions to the Public Commission on Legal Aid

### Williams Lake

1. Cariboo Friendship Centre: Rosanna McGregor
2. Access Pro Bono: Bruce Fraser
3. Native Courtworkers & Counselling Association of BC: Pamela Scolah
4. Canadian Bar Association BC Branch Section: Constance Sauter
5. Women's Contact Society: Irene Willsie
6. Paul & Company: David Dundee
7. Individual (former Managing Lawyer of Kamloops LSS): Kathleen Kendall
8. Canadian Mental Health Association: Wayne Lucier
9. Individual: James Lucier
10. John McAlpine and Associates: John McAlpine

### Prince George

1. Individual (Sole Practitioner): Jeff Ollis
2. BC Crown Counsel Association: Margaret Cissel
3. Immigrant Services Society: Brenda Langlois
4. Fatt & Elson: Frederick F. Fatt
5. Individual (Sole Practitioner): Jon Duncan
6. Phoenix Transition Society: Sharon Hurd
7. Native Courtworkers & Counselling Association of BC: Pamela Scolah
8. Prince George and District Elizabeth Fry Society: Bally Bassi
9. Third Avenue Law, Barristers & Solicitors: George Leven
10. Individual (Sole Practitioner): Darlene Kavka
11. Individual (Sole Practitioner): Susan Grattan
12. Individual (Prince George Free Press): Arthur Williams

### Terrace

1. Legal Services Society: Judith Kenacan, Managing Lawyer
2. Crown Counsel Office Prince Rupert: Jenny Reid, Administrative Crown
3. Individual (sole practitioner): Suzette Narbonne
4. Native Court workers and Counseling Association of BC: Frances Stanley
5. Native Courtworkers & Counselling Association of BC: Pamela Scolah
6. Martin Griffith-Zahner, Barrister & Solicitor (Prince Rupert): Martin Griffith-Zahner
7. Individual (Poverty Law Advocate, Terrace and District Community Services): Stacey Tyers
8. Individual (staff lawyer at Terrace LSS): Karen Whonnock
9. Individual (associated with BC Corrections): Faith Kate

### Kamloops

1. Kamloops Cariboo Regional Immigrant Society: Paul M. Lagace,
2. Paul & Company: David C. Dundee
3. Individual (sole practitioner): Raymond D. Phillips
4. Wozniak & Walker: Ken Walker
5. BC Crown Counsel Association: Adrienne Murphy
6. Native Courtworker & Counselling Association of BC: Gordon Edwards
7. SOLL & Company: Chris Soll
8. Individual (sole practitioner): Michelle Stanford
9. Webber, McKinley & Kay: Graham Kay
10. Individual (sole practitioner): Balwinder ("Bill") Sundhu
11. Legal Services Society: Mark Benton, QC

## Kelowna

1. Central Okanagan Elizabeth Fry Society:  
Marie Lowen
2. Penticton & Area Women's Centre: David Desautels
3. Kelowna Women's Resource Centre: Micki Smith
4. Okanagan Advocacy and Resource Society (OARS):  
Tish Lakes
5. Individual (Sole Practitioner): Walley Lightbody, Q.C.
6. Johnson Law Office: Glen J. Johnson,
7. Vernon & District Women's Centre Society:  
Emily Mayne – Advocate
8. Local Legal Aid Agent for Vernon & Salmon Arm:  
Sandra Sinclair

## Cranbrook

1. Cranbrook Women's Resource Centre: Karin Moorish
2. The Advocacy Centre (Nelson): Becky Quirk
3. Legal Services Society: Deanna Ludowicz
4. Kootenay Bar Association: Ken Wyllie
5. Individual (sole practitioner): Rick Strahl
6. Native Courtworker & Counselling  
Association of BC and Member of the  
Ktunaxa Nation: Troy Sebastian
7. Native Courtworker & Counselling  
Association of BC: Pamela Scolah
8. Individual (sole practitioner): Greg Sawchuk
9. Legal Services Society: Deanna Ludowicz
10. BC Crown Attorney's Association and  
Representative of the Kootenay Bar  
Association: Lynal Doreksen
11. Kootenai Community Centre Society:  
Lendina Bambrick

## Nanaimo

1. BC Crown Counsel Association: Stephen Fudge
2. Haven Society: Anne Spilker and Marilyn Chapman
3. Denice Barry Law Corporation: Denice Barry
4. Individual: Darrel Viney
5. Canadian Bar Association BC Branch Section:  
Frank Dubensky
6. Access Pro Bono Society of BC: Clodagh O'Connell
7. Canadian Mental Health Association: Patty Edwards
8. Individual: Diane Brennan
9. Native Courtworker & Counselling  
Association of BC: Gordon Edwards
10. Island J.A.D.E. Society: Sian Thomson, Exec Director
11. Individual (The Beat of the Street Society):  
Catherine Davis
12. Central Vancouver Island Multicultural Society:  
Hilde Schlosar
13. Nanaimo Men's Resource Centre:  
Theo J. Boere and Jonathan Vandergoes
14. Individual (sole practitioner): Dominique Roelants
15. Nanaimo Citizen Advocacy Association:  
George McGladrey

## Victoria

1. BC Crown Counsel Association: Stephen Fudge
2. Greater Victoria BC Old Age Pensioners  
Organization: Carol Pickup
3. Pro Bono Law Alberta and Canadian Bar  
Association Alberta: Gillian D Marriott
4. Canadian Bar Association BC Branch Section:  
Michael Mulligan
5. Native Courtworker & Counselling  
Association of BC: Gordon Edwards
6. Together Against Poverty Society: Kelly Newhook
7. BC Families in Transition: Pam Rudy
8. Action Committee of People with Disabilities:  
Joanne Neubauer and Carol Romanow
9. Community Legal Assistance Society:  
Aleem Bharmal and Lisa Fong

## Vancouver

1. BC Crown Counsel Association: Kevin Marks
2. Artist's Legal Outreach: Martha Rans
3. UBC Law Students' Legal Advice Program: Pat Deutscher
4. Access Pro Bono Society of BC: Jamie Maclaren
5. Vancouver Rape Relief and Women's Shelter: Hilla Kerner, and Arlana Green
6. Atira Women's Resource Society: Amber Prince
7. Red Latina Legal: Angela Contreras-Chavez
8. BC Coalition of People with Disabilities: Robin Loxton
9. TRAC Tenant Resource & Advisory Centre: Andrew Sakamoto
10. Refugee Lawyer's Group: Peter Edelmann, and Lobat Sadrehashemi
11. Lawyers' Rights Watch (Legal Research) Canada: Catherine Morris
12. BSS Battered Women's Support Services: Regiane Garcia
13. Individual: Stephen Owen
14. Pro Bono Students Canada – UBC Chapter: Sara Hopkins and Alison Hamer
15. BC Council for Families: Glen Hope
16. Civil Rights Now: Paul Caune, Executive Director
17. Trial Lawyers' Association of BC: Robert Holmes

## Surrey

1. Access Pro Bono: Allan Parker
2. Ending Violence Association of BC: Kamaljit Lehal
3. BC Crown Counsel Association: Jennifer Lopes
4. Newton Advocacy Group Society: Susan Sellick
5. West Coast LEAF: Alison Brewin
6. BC Public Interest Advocacy Centre: Sarah Khan
7. First United Church Mission: Susan Henry
8. LSS Agent for the North Shore/Sunshine Coast/Squamish-Whistler-Pemberton: Dan Sudeyko
9. South Fraser Legal Resource Centre: Mandy Sidhu
10. Individual (sole practitioner): Robert Bellows

11. North Shore Community Resource Society: Amita Vulimiri
12. BC Public Advocacy Centre – Vancouver: Jodie Gauthier
13. PICS Society, Surrey: Gurpreet Pabla
14. Native Courtworker & Counselling Association of BC: Arthur Paul
15. Mychael and Company: Dr. Mychael Gleeson
16. Community Legal Assistance Society: Aleem Bharmal

## Chilliwack

1. BC Crown Counsel Association: Samiran Lakshman, and Henry Waldock
2. Abbotsford Community Services: Kathy Doerksen
3. Christopher D.R. Maddock, QC, Barrister & Solicitor: Christopher D.R. Maddock, QC
4. Community Legal Advocacy Office (Abbotsford): Ellen Boyes
5. Ann Davis Transition Society: Anouk Crawford, Family Law Advocate
6. Individual (Ann Davis Society): Deborah Abma
7. Access Pro Bono: Bruce Fraser
8. Native Courtworker & Counselling Association of BC: Arthur Paul
9. Conroy & Company: John Conroy, Q.C.
10. Legal Services Society: Mayland McKimm

**Total individual in-person submissions: 136**

## Written Submissions to the Public Commission on Legal Aid

1. Quesnel Tillicum Society: (Mr) Sandy Brunton
2. Quesnel Bar Association: Jennifer Johnston
3. Local Agent providing Legal Aid Services in Quesnel: Gary Lillienwiess
4. Women's Outreach Program North Peace Community Resources Society (Fort St John): Melody Carleton
5. Upper Skeena Counselling & Legal Assistance Society (Hazelton): Linda Locke, Q.C.
6. Individual (Smithers): Harvey Gansner
7. BC Schizophrenia Society (Terrace): Dolly Hall
8. Prince Rupert Unemployed Centre Society: Terry Intermela
9. Fred Kaatz, Barrister and Solicitor: Fred Kaatz
10. Individual: Corinna-Lee King
11. John D. Stowell, Barrister and Solicitor: John D. Stowell
12. Individual: Sharon Schnurr
13. Individual: Robert McCarthy
14. Individual (Penticton): Scott W. Robinson
15. Bastion Law Group: Debbie Baker
16. Individual (Campbell River): Lorraine Flynn
17. Individual (Nanaimo): Sara Short
18. Individual (Victoria): Douglas Christie
19. Individual: Daddyk (E-mail "identity")
20. Geoffrey D. Simair Law Corporation: Geoffrey D. Simair
21. Individual: Devin Farmer
22. Individual: Nina Wolanski
23. Legal Services Society (Richmond Agent): Robert Parsonage
24. St. Paul's Advocacy Office: Ellen Silvergieter
25. Wilson Heights United Church: Rosemary Collins
26. The Howe Sound Women's Centre: Wendy Faris
27. Individual: Anne Beveridge on behalf of an ex-client in hiding
28. Individual: Linda Bonnefoy
29. BC Persons With AIDS Society: Suzan Krieger
30. Miller Thomson LLP: Jennifer Spencer
31. Individual: Moonhee Han
32. BC Forum: Alice West
33. Individual: Carellin Brooks
34. Tri-City Women's Resource Society (Port Coquitlam): Carol Metz Murray, MPA
35. Mental Health Review Board (Coquitlam): Margaret Ostrowski Q.C.
36. Chrysalis Society: Andi Wiseman
37. Sandra M. Sarsfield, Barrister & Solicitor: Sandra Sarsfield
38. MS Society of Canada, BC & Yukon Division: Janet Palm
39. Affiliation of Multicultural Societies and Service Agencies of BC (AMSSA): Timothy Welsh
40. Individual (Cultus Lake): Christina M. Blackburn
41. Individual (Vancouver): Ronald Patrick Docherty
42. Brenda Muliner, Barrister & Solicitor (Kamloops): Brenda Muliner
43. Ishtar Transition Housing Society: Judy Fleming
44. Canadian Federation of University Women: Susan Murphy
45. Sunshine Coast Community Services Society: Vicki Dobbyn

46. Human Rights in Action Collective:  
Christine Lamont
47. Boundary Family & Individual  
Services Society: Natasha Knox
48. Nelson Community Services Centre:  
Alice Temesvary
49. BC Centre for Elder Advocacy and Support:  
Kevin R. Smith
50. Kamloops and District Elizabeth Fry Society:  
Louise M. Richards
51. Greater Vancouver Law Students' Legal  
Advice Society: Pat Deutscher
52. Canadian Bar Association – National:  
Gaylene Schellenberg
53. Canadian Paralegal Institute: Dom C. Bautista
54. CBA Social Justice Section: Jessie K. Hadley
55. Pro Bono Students Canada:  
Sara Hopkins & Alison Hamer
56. Courthouse Libraries BC: Drew Jackson
57. Community Legal Assistance Society  
(supplementary submission): Aleem Bharmal
58. Individual: Dom Bautista
59. Individual: Michael Kerr
60. Individual: Donna S. Woodruff
61. Individual: Pearl McKenzie
62. Nicola Valley Advocacy Centre: Andree Harley
63. Individual: Margaret Laura Milen
64. The Law Centre, Victoria, BC:  
Glenn Gallins Q.C. and Cara Hunt
65. Individual: Forrest L. Nelson
66. Catalyst Enterprises BC: Tracey Young
67. BC Government Employees Union (BCGEU):  
Darryl Walker; Brenton Walters
68. Individual: Heather Clarry
69. Individual: Patricia Yaremovitch
70. Refugee Lawyer's Group – CBA-BC: Peter Edelmann
71. Battered Women Support Services (BWSS):  
Heidi Baghaian
72. Ian Lawson, Barrister & Solicitor: Barbara Barker
73. Public Guardian and Trustee of BC: Jay Chalke, Q.C.
74. British Columbia Ministry of the Attorney General

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The Law Society of BC, The Law Foundation of BC, The BC Crown Counsel Association,  
The Vancouver Bar Association, and The Victoria Bar Association.**

