

# Making Justice Work

## Part 1

### Improving Access and Outcomes

The Legal Services Society  
BC's Legal Aid Provider

# Advice to the Attorney General

- In February 2012, the Attorney General announced a justice reform initiative.
- The initiative included a request for advice from the Legal Services Society on ways to reduce justice system costs so that savings could be redirected to legal aid.
- LSS prepared a report, *Making Justice Work: Improving Access and Outcomes for British Columbians*, that included a number of recommendations for reform.
- The following pages summarize those recommendations and their potential benefits.

# Legal aid update

- Legal aid is
  - Self-help information through websites and publications.
  - Advice programs that assist people to resolve legal problems on their own (duty counsel in courthouses and telephone advice lines).
  - Representation by a lawyer for serious criminal, immigration, child protection, and family law cases (includes mediation in family and child protection cases).
- Tariffs paid to private lawyers have increased only once since 1991. Half of the lawyers who took legal aid referrals in 2011/12 earned less than \$25,000 for their work. Few lawyers are willing to take legal aid referrals because of the low tariffs.
- A typical family law case that cost \$1,910 in 2007 costs \$2,500 in 2012. One reason is backlogs prevent trials from being scheduled on consecutive days so more preparation time is required.

# How LSS can help justice reform

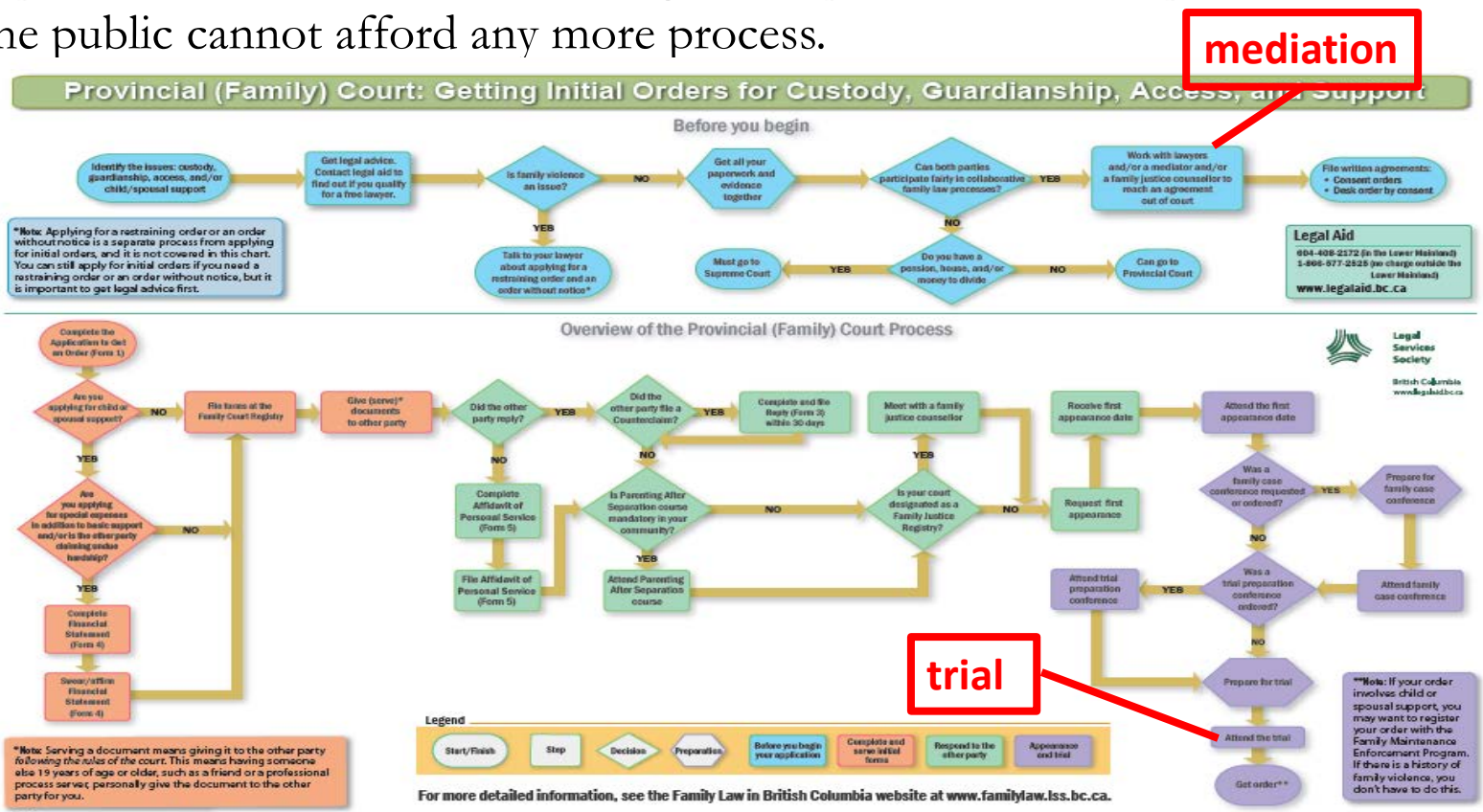
- LSS sees more sides of the justice system than any other stakeholder:
  - Criminal defendant, family litigant, fee payer, trial manager, policy developer, public interest, independent of government.
- LSS is not court-centric or lawyer-centric:
  - We focus on outcomes: self-help websites and publications; legal information workers; telephone advice; education workshops; aboriginal programs; representation for mediation and court.
- LSS is innovative:
  - Medical-legal partnerships; duty counsel; pilot projects; independent evaluations; collaborative projects.

# Focus on outcomes not process

- Focus on timely, fair, and lasting resolution of legal problems.
- In civil cases, an outcomes-focused justice system starts with prevention, has timely resolution as its goal, and views quick and inexpensive litigation as a last resort.
- In criminal cases, an outcomes-focused justice system recognizes an accused person's need for and right to representation by a lawyer, but also facilitates resolutions that benefit society as a whole by addressing the underlying problems that led to the criminal behaviour, thereby reducing recidivism.
- Some cases involve complex legal issues while many others involve simple matters – the justice system should be geared for a proportionate response and early resolution.

# Outcomes v. process

This chart shows the process for getting a child custody order. Only two steps relate to outcomes. Everything else is process. Each step costs money. The public cannot afford any more process.



# The economics of reform

- All of our recommendations are designed for pilot projects to ensure proper evaluation before implementation. They are also designed for incremental implementation that can be scaled to meet public demand for the service and available budgets.
- New legal aid initiatives are not possible without additional funding, as the society's current budget is required to provide present services, many of which are constitutionally mandated and cannot be eliminated.
- For six of our proposals, LSS conducted an economic analysis that suggests they will result in savings to the broader justice system through a reduction in court appearances and earlier resolutions. These savings could offset some of the costs of the services. See the full report for our complete analysis.

# Criminal law reforms

## Expanded duty counsel

- Current model: Lawyers take assignments on an ad hoc basis, provide services they are able to complete on the day they are in court, and do not retain conduct of files.
- Expanded model: Specific lawyers are assigned to the same court on a continuing basis. Counsel retains conduct of matters that can be resolved within a reasonable time. Service can be scaled to demand.
- Similar models are in place in Alberta, Manitoba, and Nova Scotia.
- Benefits: early resolutions, fewer appearances, effective response to the growing number of administrative offences, improved lawyer continuity.
- A 27% reduction in the number of court appearances could save the justice system \$158,000 per 1,000 cases; a 70% reduction could save \$420,000 per 1,000 cases.



# Criminal law reforms

## Video and tele-bail

- The Burnaby Justice Centre provides 24/7 access to judicial justices for bail hearings via video link or telephone. LSS provides duty counsel or referrals for these hearings.
- In 2008/2009, LSS participated in a video bail pilot project sponsored by the Provincial Court and Ministry of Justice. An independent evaluation found reductions in the number of appearances, the time to resolution, and prisoner escort costs.
- The use of video and tele-bail has the potential to create justice system savings of as much as \$260,000 per 1,000 clients in rural and remote locations where transportation costs for LSS, Crown counsel, and sheriffs are high and where economies of scale can be realized.

# Family law reforms

## Integrated services to resolve related problems

- Increase availability of existing services by providing more duty counsel and more community-based advice services.
  - More early resolutions, divert cases from court, prepare people for hearings. Community-based advice clinics increase access to justice for vulnerable and marginalized clients.
- Provide assistance for related problems through a poverty law telephone advice program and paralegals.
  - Resolve related problems and address issues that might otherwise require support from welfare and social services.
- Expand mediation referrals.
  - LSS currently covers mediation only in emergency cases. Expansion of coverage to non-emergency cases will result in more resolutions.

# Family law reforms

## Duty counsel and telephone advice are effective

- An independent evaluation of LSS's family law services found that 75% of duty counsel clients resolved their legal issues, while the resolution rates for telephone advice clients and advice lawyer clients were 71% and 70% respectively.
- An independent review of the Justice Services Branch's family mediation services found a savings of \$7.8 million of avoided court costs (time period for the savings not indicated in the report).
- If 20% of family cases are diverted from court and the time spent on the remainder is reduced by 10%, the savings would be \$220,000 per 1,000 cases.
- Cases involving high conflict or power imbalances do, however, require the assistance of a lawyer. Funding for increased representation is needed.

# Family law reforms

## An example – low cost, scalable, and adaptable

- LSS only assigns a lawyer to family cases involving domestic violence or where parents face losing contact with their children.
- To help more people resolve their legal problems, LSS launched a telephone program called Family LawLINE in November 2010 that provides advice on the full range of family law issues.
- Lawyers work from their own offices through a computerized call centre so the service is scalable to demand and has almost no overhead costs.
- Annual operating cost = \$265,000.
- This model would work well for delivering poverty law advice to support integrated family law services.

# Non-lawyer service providers

## Services and benefits

- Legal Information Outreach Workers:
  - Help people find the right room, understand the process, provide referrals to social services.
  - Reduces need for lawyers, judges, and registry staff to provide support services.
  - Currently used in Community Court.
- Aboriginal Community Legal Workers:
  - Provide legal information and advice, explain legal process, attend court with clients. LSS employs two ACLWs on Vancouver Island.
- Paralegals
  - Can provide limited legal advice under the supervision of a lawyer. The Law Society of BC is developing a pilot project to improve access to legal services by expanding the role of paralegals.

# Other important reforms

## **Problem solving courts:**

- Drug courts, mental health courts, domestic violence courts, and First Nations courts can achieve better outcomes for offenders and victims.
- Six provinces and Yukon Territory have domestic violence courts.
  - An evaluation of the YT court found fewer collapsed trials, cases were dealt with faster, and better protection against repeat assaults. LSS issues referrals for about 3,000 domestic violence cases a year.

## **Aboriginal services:**

- 25% of legal aid clients are aboriginal. Aboriginal people are over-represented in criminal and child protection matters.
- Aboriginal people need services that are culturally sensitive. Delivering services is often difficult because many live in small, isolated communities.

# Steps to a better justice system

- Focus on outcomes, not process.
- Focus on pilot projects to ensure proper testing and evaluation before full implementation.
- Focus on reforms that are scalable to public needs and available budget.
- Focus on shared goals, measurable targets, and a collaborative approach to reform among all justice system stakeholders.
- Focus on strong leadership perhaps through a dedicated Justice Reform Secretariat.
- Focus on new investments in legal aid to ensure LSS has the capacity to work on reforms while maintaining ongoing operations.
- LSS is prepared to take an active role in making justice work for all British Columbians.