



**Legal
Services
Society**

Providing legal aid
in British Columbia
since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

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

**The Law Society and Legal Aid
David Crossin, QC, Chair, The Legal Services Society
Speech to the Law Society of BC Benchers, December 7, 2012**

Thank you very much for allowing me, on behalf of the Legal Services Society, to take what will really be just be a few moments of your time this morning.

I want to take this opportunity to let you know, just in a very general way, how the Legal Services Society is approaching the difficulties we all know exist in our justice system. But mostly, I want to simply remind you of legal aid and the importance we place on the support of the Law Society.

As you may know, our strategic plan over the last few years has focused on justice reform and not simply paying lawyers to go to court. Funding presents challenges. Fewer and fewer lawyers take legal aid cases. When I did a legal aid case 22 years ago, I was paid 80 dollars an hour. Now that same case pays 84 dollars an hour. Achieving more bang for our buck meant seeking to solve people's legal problems by creating pathways to early resolution and not simply staying on a process track leading directly to conducting a trial. In this regard, in addition to the Attorney General seeking the advice of Mr. Cowper, the Attorney General actually commissioned two reports. The Legal Services Society was asked by the Attorney General, at the same time, to provide the Legal Services Society advice, from our perspective, on ways in which legal aid could be used to make the justice system more effective.

Our report, *Making Justice Work*, is the result of a long-term strategy established by the Legal Services Society board over the past six years. It identified justice reform as the key to ensuring the long-term survival of legal aid.

The Legal Services Society has been invited to meet to discuss our recommendations with a number of elected officials, government staff and law-related organizations. I have attended many of those meetings; [the Legal Services Society's Executive Director Mark Benton] has attended all of those meetings.

Justice reform is crucial because systemic delays and the cost of court appearances make it more expensive for us to deliver the service from year to year to year. We also see how justice system inefficiencies and the lack of advice and representation services prevent people from resolving their legal issues in a timely manner. For instance, our First Nation population make up about five or six per cent in British Columbia. And the relationship of our First Nations with our justice system continues to present, as you well know, vexing problems. That five per cent represents about 25 per cent of our criminal referrals and that percentage is jacked up significantly in child apprehension cases. We spend a good deal of time striving to effectively access those communities in order to deal with potential legal problems before those individuals are simply enveloped in the process fraught with delay and inefficiencies. Delays, as you also know, simply make things more unbearable and lead to demands on

the justice and the social service and health care sectors. Delays in process and delays in resolution often mean, in our world, the sick and the addicted and the disenfranchised and the desperate just wait and get worse. That's why our focus is on access and reform.

I'd like to remind you that the Legal Services Society is uniquely positioned to offer advice on justice reform and access to justice. We are independent of government and we see more facets of our legal institutions than most other organizations. We are involved with criminal defendants, family litigants, new immigrants, we are a legal education provider, an out-of-court problem solver, we are a fee payer, we are a trial manager, and more and more, a justice policy advisor. And while our focus is on providing services for people with low incomes, our broader goal is to improve access to justice for all British Columbians.

The Legal Services Society asks for your help and support, but mostly your voice concerning the strategy. The duty as Benchers, as you know, is set out in s. 3 of the *Legal Profession Act*: "to uphold and protect the public interest in the administration of justice" with reference, as you know, to particular aspects. The Law Society, as an organization, also focuses on s. 15 of the Act which begins with the words: "no person, other than a practising lawyer, is permitted to engage in the practice of law, except...."

We know what [BC's Chief Justice Lance Finch] had to say about the effect of s. 15 in a speech to the Canadian Bar Association:

...members of the Law Society of British Columbia, have a monopoly on the practice of law.... It must be apparent that regardless of the purpose identified for maintaining a monopoly, the effect of the monopoly itself can only be to restrict supply and increase cost.

The public appreciates, in my submission, and I know this table appreciates, that where a profession enjoys a monopoly in providing what is effectively an essential service, the profession has a duty to attempt to ensure that the services are available to all citizens; not just those the profession wants to serve or those that can afford the fees. The Legal Services Society believes that the Law Society can, and should, lead in this area and to challenge itself on the vital issues of justice reform. Make no mistake, the Law Society is seen by the bar and by the judiciary and by the public as an organization that can, and should, lead the profession in this regard.

One of Canada's most senior barristers, David Scott, said in a speech last year at the University of Ottawa:

As a profession, we are a monopoly.... In such circumstances, it would be odd indeed if we were free to say that the needs of the public can only be met by our membership, even if the public cannot afford us.... Obviously, in such circumstances, there is a concomitant obligation to provide access to our services in order to ensure a fair and reasonable application of the rule of law.

As Mr. Scott sees it, and I think he's right, our monopoly carries with it a duty to structure our profession for the benefit of all citizens. And that duty is not simply a professional obligation – it is a fundamental component of the rule of law. And in the view of the Legal Services Society, that is what s. 3 is all about – the duty to uphold the rule of law.

Structuring our profession for the benefit of the public is a grander concept than simply ensuring the “the public will have better access to legal services,” which is quite properly a part of the Law Society's strategic plan. But in the view of the Legal Services Society, the vision ought to be bigger. The Legal Services Society believes that the profession must ensure the justice system is designed around the needs of citizens and not the needs of lawyers and judges. Consequently, the Legal Services Society is of the view that the justice system must focus on outcomes not process. Our report to the Attorney General – *Making Justice Work* – provides a good overview of this issue and makes recommendations. With the greatest of respect, we think those recommendations are worth an endorsement by the Law Society.

The Legal Services Society invited input from the Law Society when it was preparing its report to the Attorney General. We value your insight. You are the leaders of our profession and the guardians of the public interest. The Society received no response, but we realize the Benchers have a full plate. When our report was released, with the report of Mr. Cowper, in fact at the same press conference, the Law Society issued a press release saying it was studying Mr. Cowper's recommendations. We were hopeful mention would be made of *Making Justice Work*.

We ask the Law Society to work with us concerning issues associated with legal aid, to take an official and sustaining stand on the importance of legal aid in the public interest.

My term [as a director and chair of the Legal Services Society's board] is up pretty soon, but I would urge you to collaborate with the Legal Services Society in the years to come. You all know Mark Benton. He has become a key player concerning justice system issues not merely on the national stage, but on the international stage. In my view, he's an important and highly regarded point person on the Justice Access Committee chaired by [Supreme Court of Canada Justice Thomas Cromwell]. He has the support of an excellent staff. He has the support of the board that, like this table, consists of many non-lawyers who bring a first-rate, constructive insight into the issues we face in our justice system. Like our appointed Benchers, the board ensures that those of us immersed in the justice system in our daily lives don't just sit around in our own bathwater when it comes to assessing ourselves and what the public really needs.

You are familiar with the remarks of [the Governor General] His Excellency, the Right Honourable David Johnston at last year's Canadian Bar Association [conference in Halifax]. He said that lawyers have a social contract with society. He said:

We enjoy a monopoly to practise law. In return, we are duty bound to serve our clients competently, to improve justice and to continuously create the good. That's the deal.

The Legal Services Society believes this. They also believe the voice of the Law Society, on the importance of legal aid, must be heard loudly, clearly, and often by the profession and by the public. The Legal Services Society wants you to know that we will work with you to transform that voice into action.

Thank you.