

Making Justice Work

Improving Access and Outcomes for British Columbians

**Report to the Minister of Justice and Attorney General
The Honourable Shirley Bond
July 1, 2012**



**Legal
Services
Society**

British Columbia
www.legalaid.bc.ca

Contents

- Executive summary 3
- Introduction 7
- 1. Principles for making justice work..... 10
 - 1.1 Shifting the focus to outcomes 10
 - 1.2 Principles of an outcomes-focused justice system 12
 - 1.3 Building an outcomes-focused justice system 13
 - 1.4 Modernizing the justice system 18
- 2. The current state of legal aid in BC 19
 - 2.1 Lawyer supply, compensation, and the 2012 service withdrawal 21
 - 2.2 Legal aid central to an outcomes-focused system..... 22
- 3. Recommendations for reform..... 24
 - 3.1 New criminal law service delivery models and tariff changes 25
 - 3.2 New family law service delivery models and tariff changes 28
 - 3.3 Other new services and tariff changes 34
 - 3.4 Video or telephone bail hearings through the Burnaby Justice Centre..... 38
 - 3.5 Alternative non-government revenue sources..... 39
- Conclusions and next steps..... 42
- Consultations 44
- Bibliography 45
- Technical Notes..... 53

Executive summary

Background

On February 8, 2012, the Province announced an initiative to address challenges facing British Columbia's justice system and to identify actions to give British Columbians more timely and effective justice services.

As part of this initiative, the Minister of Justice and Attorney General, Shirley Bond, asked the Legal Services Society (LSS or the society) for advice on reforms to legal aid and to the larger justice system that could reduce costs so that savings can be reallocated to legal aid.

The Ministry of Justice also released a Green Paper, *Modernizing British Columbia's Justice System*, that highlights a number of issues affecting justice system performance and discusses key areas that need reform.

As BC's legal aid provider, LSS has direct experience with the problems outlined in the Green Paper. Systemic delays and the cost of court appearances make it more expensive for us to deliver the same level of service year over 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. This can compound peoples' original problems and lead to additional demands on the provincial justice, social service, and health care sectors.

For these reasons, LSS is committed to improving the efficiency of our justice system, to reducing system costs, and to improving the system's effectiveness in helping people to resolve their legal issues and get on with their lives.

Request for advice

The Attorney General asked LSS to provide advice on a number of issues, including:

- New legal aid service delivery models that assume no funding increase
- Changes to the LSS tariffs to provide incentives for justice system efficiencies
- The use of telecommunications and the Justice Centre
- Ways that LSS might diversify its revenue stream to expand non-governmental revenue in a manner that will permit funding stability

The Attorney General also requested that, when preparing our advice, we look at experiences in other provinces, consult with justice system stakeholders, and consider the concerns of the bar that resulted in the partial withdrawal of criminal duty counsel services in the first four months of 2012.

An outcomes-focused justice system

The goal of our proposed reforms is to support a justice system that focuses on outcomes. By “outcomes,” we mean timely, fair, and lasting resolution of legal problems.

This approach benefits not just those who are seeking a resolution to their problems, but the broader justice system and society as a whole. This is because a focus on outcomes will result in more enduring resolutions to the legal challenges that bring individuals to the justice system in the first place.

In civil matters, an outcomes-focused justice system starts with prevention, has timely resolution as its goal and views litigation as a last resort. For example, this might include education programs to assist separating couples and mediation services to help them settle matters on their own so they can avoid costly acrimonious court proceedings.

In the criminal context, an outcomes-focused justice system recognizes an accused person’s need for and right to representation, but also facilitates resolutions that benefit society as a whole by addressing the underlying problems that led to the criminal behaviour, thereby reducing recidivism. For example, in a theft case, police, lawyers, the courts, and corrections might work with social services to help the accused find treatment for mental health issues that led to the theft.

As we prepared this report, we consulted with lawyers, community service agencies, police, and other legal aid plans, and we reviewed literature and evaluations from around the world. We have been struck by the similarity of problems across jurisdictions and by the growing consensus that focusing on outcomes will lead to a better justice system for all stakeholders.

Principles for making justice work

To support the development of an outcomes-focused justice system, we outline in Part 1 the fundamental principles and building blocks needed to shift from a lawyer-centric, process-centric culture to one that views outcomes as a fundamental metric of success and service to clients as the fundamental means of achieving that success.

The current state of legal aid in BC

In Part 2, we discuss the current state of legal aid in BC. Legal aid clients are among the province’s most marginalized citizens. They lack the financial means to effectively access the justice system when their families, freedom, or security are at risk. Almost 70% have not graduated from high school, and many struggle with basic literacy. Others face linguistic or cultural barriers. Over 25% are Aboriginal; in some communities, this rises to 80%.

Today, the Legal Services Society has two staff offices and 31 contracted offices throughout the province, and provides services at more than 50 locations including law offices, courthouses, and community agencies. At each of these locations, individuals can get legal information and referrals to

other social service agencies, and apply for legal representation. LSS also works with 24 community partners to bring legal aid information to rural and remote communities. Over 50% of eligible applicants receive a referral for representation on the day they apply; over 75% get a referral within five days.

Government funding recently increased by \$2.1 million but has otherwise not been adjusted for inflation over the past decade or kept pace with some other components of the justice system. As a result, LSS is not able to provide the range of services low-income people need to resolve their legal problems. Nor is LSS able to establish tariffs that will attract and retain lawyers to legal aid work.

Recommendations for reform

There has been a significant investment in the justice system over the past 15 years, primarily for prosecutorial and judicial services. As pressures within the system mount, it is important to identify where any future investments will have the greatest impact. In Part 3, we have identified a number of ways in which investment in legal aid will support an outcomes-focused and more efficient justice system.

Our recommendations for criminal law initiatives are expanded criminal duty counsel, early resolution referrals, disposition court, and increased use of video bail.

For family and child protection matters, we recommend increasing the availability of existing services by providing more duty counsel and more community-based advice services coupled with assistance for related, non-family legal problems; more unbundled services; and support for mediation programs.

Other recommendations include the use of non-lawyer service providers to assist duty counsel and support justice system efficiencies, poverty law services, increased services for Aboriginal peoples, and greater use of specialized, problem-solving courts such as drug courts or domestic violence courts.

For six of our proposed services, we provide an analysis, based on available data, of the potential savings to the broader justice system. Detailed research is required before full implementation of our proposals. This can best be done through pilot projects to test the underlying assumptions of our recommendations and to gather better data on service costs, savings, and outcomes.

Next steps

The first stage in pursuing any of these initiatives will be to review Ministry of Justice data and operating assumptions, along with justice reform priorities and our own data. With that information, LSS would be in a position to develop the requisite project charters, budgets, and work plans to support effective implementation of the pilot projects. The timelines for these initiatives would be determined by the availability of resources to support them.

The criminal law initiatives that our preliminary analysis suggests will provide the greatest benefits in terms of outcomes for clients and quantifiable and unquantifiable savings to the justice system are

expanded duty counsel services in high volume locations. Next are video and telephone bail, and early resolution referrals and tariff initiatives.

Increasing family law services to address public needs and to support recent changes to family legislation in BC should also be a priority. Given the scarcity of resources in the family justice system, it will be especially important to collaborate with agencies such as the Family Justice Services Division of the Ministry of Justice to plan and implement new or expanded service options. As well, to ensure the right resources are aligned with the most appropriate activities, training and skill development will be important considerations.

Another priority should be the addition of non-lawyer service providers to assist criminal and family duty counsel and to support efficiencies elsewhere in the justice system.

To be successful, reform requires the active commitment of all justice system partners to shared goals and measurable targets, and a collaborative approach to meeting them. Real reform as outlined in this paper will also require new investments in legal aid or reallocating funds within the justice system to support reform initiatives. Justice system savings generated by any enhancements to legal aid services can be measured and redirected to LSS to offset some of the costs of these enhancements. As most savings will be in avoided future costs, tracking the inputs, outputs, and outcomes of piloted services or system changes will be critical to quantifying results to ensure any dollars saved can be reallocated to the most effective projects.

Proposals that initiate a shift to an outcomes-focused justice system can also generate a range of savings that are real, significant, and system-wide, but difficult to quantify. For example, our proposals can create ancillary benefits through incremental improvements in working relationships, breaking down of silos, systems thinking, and process improvements that may vary location by location. Further, because the proposed initiatives focus on outcomes, they will create benefits for clients. For example, when clients achieve early and more stable resolution of their legal issues, they are less likely to experience legal problems in the future, and their related issues – such as health or debt – are less likely to escalate. While these benefits avoid future costs to the justice system and to government, they also generate a positive impact on clients, their families, and their communities that is both profound and immeasurable.

Implementing an outcomes-focused justice system will require strong leadership that might best be delivered through a dedicated Reform Secretariat. LSS is prepared to take an active role in ongoing justice reform discussions and to make justice work for all British Columbians.

Introduction

Legal aid and the need for justice reform

On February 8, 2012, the Province announced an initiative¹ to address challenges facing British Columbia's justice system and to identify actions to give British Columbians more timely and effective justice services.

As part of this initiative, the Minister of Justice and Attorney General, Shirley Bond, asked the Legal Services Society for advice on reforms to legal aid and to the larger justice system that could reduce costs so that savings can be reallocated to legal aid.

The Ministry of Justice also released a Green Paper, *Modernizing British Columbia's Justice System*,² that highlights a number of issues affecting justice system performance and discusses key areas that need reform.

As BC's legal aid provider, LSS has direct experience with the problems outlined in the Green Paper. Systemic delays and the cost of court appearances make it more expensive for us to deliver the same level of service year over 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. This can compound peoples' original problems and lead to additional demands on the provincial justice and health care sectors.³

Our service partners, including lawyers, Aboriginal groups, and community agencies, have identified the same concerns. Moreover, in recent years, the Canadian Bar Association (CBA) and the Public Commission on Legal Aid in British Columbia have issued reports describing many of the challenges surrounding access to justice, the legal aid system, and the wider justice system, and have proposed a range of reforms.⁴ The CBA drew on these and other reports in its submissions to LSS for this review.

LSS is uniquely positioned to offer advice on justice reform, access to justice, and the challenges outlined in the Green Paper. This is because we are independent of government and because we see more facets of our legal institutions than most other organizations. We are involved with criminal defendants, family litigants, and new immigrants; we are a legal education provider and an out-of-court problem solver; we

¹ See "Justice Reform," www.ag.gov.bc.ca/justice-reform/index.htm.

² See Minister of Justice and Attorney General, Green Paper.

³ Currie, "Legal Problems of Everyday Life."

⁴ See Buckley, *Moving Forward on Legal Aid* and "Access to Legal Services in Canada;" and Doust, *Foundation for Change*.

are a fee payer, a trial manager, and 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.

Legal aid clients are among the province's most marginalized citizens. They lack the financial means to effectively access the justice system when their families, freedom, or security are at risk. Almost 70% have not graduated from high school, and many struggle with basic literacy. Others face linguistic or cultural barriers. Over 25% are Aboriginal; in some communities, this rises to 80%. A key metric of success for justice reform must be increased access to justice for these vulnerable clients.

LSS also has considerable experience with reform initiatives. Over the years, we have responded to justice system inefficiencies by introducing many innovative services — from family duty counsel to telephone advice lines. The society has also supported many reforms introduced by other stakeholders and articulated its vision for improving access to justice and improving the justice system.⁵

This experience has taught us that reforms will only be successful if they are based on fundamental principles that define and support access to justice; are the product of systems thinking that recognizes institutional interdependencies;⁶ and are subject to rigorous, empirical evaluation that demonstrates their worth. Our experience has also taught us that a small investment in legal aid can result in savings in other areas of the justice system or for other service providers.

Request for advice

The Attorney General has asked LSS to provide advice on a number of issues, including:

- New legal aid service delivery models that assume no funding increase
- Changes to the LSS tariffs to provide incentives for justice system efficiencies
- The use of telecommunications and the Justice Centre
- Ways that LSS might diversify its revenue stream to expand non-governmental revenue in a manner that will permit funding stability

The Attorney General has also requested that, when preparing our advice, we look at experiences in other provinces, consult with justice system stakeholders, and consider the concerns of the bar that resulted in the partial withdrawal of criminal duty counsel services in the first four months of 2012.⁷

⁵ See, for example, the LSS submissions to the Public Commission on Legal Aid in British Columbia and the Select Standing Committee on Finance and Government Services.

⁶ Minister of Justice and Attorney General, Green Paper, 16.

⁷ See BC Ministry of Justice, "Further Action on Justice Reform Launched" and letter from the Honourable Shirley Bond to E. David Crossin, QC.

An outcomes-focused justice system

The goal of our proposed reforms is to support a justice system that focuses on outcomes. By “outcomes,” we mean timely, fair, and lasting resolution of legal problems.

This approach benefits not just those who are seeking a resolution to their problems, but the broader justice system and society as a whole because a focus on outcomes will result in more enduring resolutions to the legal challenges that bring individuals to the justice system in the first place.

In civil matters, an outcomes-focused justice system starts with prevention, has timely resolution as its goal and views litigation as a last resort. For example, this might include education programs to assist separating couples and mediation services to help them settle matters on their own so they can avoid costly and acrimonious court proceedings.

In the criminal context, an outcomes-focused justice system recognizes an accused person’s need for and right to representation, but also facilitates resolutions that benefit society as a whole by addressing the underlying problems that led to the criminal behaviour, thereby reducing recidivism. For example, in a theft case, in addition to prosecuting and defending the accused, police, lawyers, the courts, and corrections might work with social services to help the accused find treatment for issues such as mental health problems or drug addiction that led to the theft.

The advice that follows is divided into three sections. Part 1 outlines the fundamental principles for building truly effective legal institutions that deliver access to justice. These are the principles upon which our advice is based. Part 2 provides background information about the current state of legal aid in BC. Part 3 contains specific suggestions for ways that LSS and other justice system stakeholders can put these principles into practice and contribute to making justice work for all British Columbians.

1. Principles for making justice work

The rule of law – a fundamental principle in a free and democratic society – requires that we are all given the protection of the law and its process. The justice system upholds the rule of law and is the “foundation of a just and prosperous province.”⁸ Yet, as Chief Justice Beverley McLachlin has observed, “there is no justice without access to justice”:

We can draft the best rules in the world and we can render the best decisions, but if people can’t have access to our body of law to resolve their own legal difficulties, then it is for naught.⁹

Thus, a fundamental goal for any justice reform must be to improve access to justice. To this end, the province’s justice system must provide citizens with four basic tools:

- Awareness of rights, entitlements, obligations, and responsibilities
- Awareness of ways to avoid or resolve legal problems
- The ability to effectively use court and non-court dispute resolution systems and procedures
- The ability to effectively participate in the resolution process to achieve just outcomes

Providing these tools is not straightforward. To be truly effective, access to justice must be linked to outcomes and not just court process. The framework that follows explains the rationale for an outcomes-focused justice system, then sets out the foundational principles for this new model, and outlines the strategies needed to build a justice system that achieves identified outcomes. Finally, it links this framework to the observations and proposals set out in the Green Paper.

1.1 Shifting the focus to outcomes

Legal aid has gone through a radical transformation over the past 40 years, not just in BC, but around the world. Faced with declining resources, increasing demand, and changing societal expectations, legal aid programs have relied on the work of social science researchers to become more effective and efficient — to better serve their clients, the justice system, and their funders.

This research took a new approach and looked at legal problems from the perspective of the people who experience them, not from the traditional perspective of judges or lawyers.¹⁰ It found “that when

⁸ Ministry of Attorney General, *2010/2011 Annual Service Plan Report*, 12; and Ministry of Justice, *2012/2013-2014/2015 Service Plan*.

⁹ McLachlin, keynote address, and Makin, “Access to justice becoming a privilege of the rich, judge warns.”

¹⁰ For example, the 1994 American Bar Association Consortium on Legal Services and the Public research in the United States, and Genn’s 1999 *Paths to Justice* research in the United Kingdom focused attention on a broad framework for understanding how people experience a legal problem and looked at unmet legal needs. In Canada, research findings have been consistent with those in the US and the UK; see, for example, Currie’s “Legal Problems of Everyday Life” and *The Unmet Need for Criminal Legal Aid*.

faced with legal problems what people want is to have an end to the dispute and to get on with their lives.”¹¹

With this in mind, legal aid programs have been progressively shifting their focus away from litigating problems to solving problems. Litigation is no longer seen as an end itself, but as a means to an end. This is a fundamental conceptual shift — one that moves the focus from court process to client and justice system outcomes.

In 1970, when the Legal Aid Society (the predecessor of LSS) was established, the conventional wisdom was that a person’s legal needs flowed exclusively from the immediate criminal charges or lawsuit and that those needs were best met by appointing a lawyer to represent the person in court.

Forty-two years later, the conventional wisdom has changed and legal aid plans believe they must take an outcomes-focused approach and concentrate on helping people find timely and lasting solutions to their legal problems.

The *Legal Services Society Act*, which governs the provision of legal aid in BC, reflects this approach. Section 9 of the Act states that one of the society’s objects is “to assist individuals to resolve their legal problems and facilitate their access to justice.”¹² This client-outcome mandate is further supported in the legislation by the definition of “legal aid” as “legal and other services,” and by additional provisions that authorize LSS to provide legal aid through public legal education and information programs.¹³ LSS has also made the delivery of integrated services to improve client outcomes a key part of its strategic planning and performance measurement for several years.¹⁴

Today, legal aid is no longer just about lawyers in courtrooms. It now encompasses a full spectrum of services ranging from education programs and self-help information aimed at the general public, through outreach services to assist vulnerable communities, to legal advice and representation for individual clients. Modern legal aid programs also endeavour to integrate their work with other social service agencies to address a client’s underlying issues (such as poverty, mental health, or addiction) that have an impact on the individual’s legal problems and the justice system.

The larger justice system, however, remains primarily court-focused. Research tells us that most civil legal problems are resolved outside the formal justice system, and of those that do become legal actions, few go to court. Fewer than 15% of all criminal cases funded by the Legal Services Society go to

¹¹ Genn, *Judging Civil Justice*, 72.

¹² *Legal Services Society Act*, s. 9(1)(a).

¹³ *Legal Services Society Act*, s. 1 and s. 11.

¹⁴ LSS service plans and annual reports are available at <http://www.lss.bc.ca/about/annualReports.php>.

trial. And while alternative measures in criminal cases or mediation in civil cases often achieve better outcomes, the justice system continues to operate as though every case will be resolved through trial.¹⁵

While there have been many attempts to develop more outcomes-focused services, most justice system reforms have concentrated on court process rather than what people using the justice system want and need.

The result is that despite decades of well-intentioned reforms, many British Columbians still regard the justice system as out-of-touch and out-of-reach.¹⁶ As the Green Paper notes, it is time for a new approach:

... we are now at a point where the positive changes under way may not be sufficiently bold. We may need to look harder at the way the justice system does business.¹⁷

A new way of doing business is needed, and if the justice system is to work for all British Columbians, stakeholders must begin to focus on outcomes.

1.2 Principles of an outcomes-focused justice system

An outcomes-focused justice system should be based on the following principles:

- **Effective:** It must be user-centred and focus on what people want and need to resolve their legal problems.
- **Integrated:** It must work with other government and community agencies to facilitate users' access to services that address the underlying issues, such as poverty, or mental or physical health, that triggered or resulted from their legal problems.
- **Accessible:** It must provide user-focused services and procedures that are easy to find and use for all people including those with low incomes, Aboriginal peoples, people with limited education, or those facing physical or mental health challenges.
- **Fair:** It must be grounded in the rule of law, protect rights, and respect independence.
- **Appropriate and proportionate:** It must help individuals find the most appropriate route for dealing with their legal problems at each stage of the process. Services must be proportionate to the problem and be provided by the right person at the right time.
- **Timely:** It must support access to early resolution without undue delay and encourage people to take early action to resolve their legal problems.

¹⁵ The 2006 report of the Civil Justice Reform Working Group, *Effective and Affordable Civil Justice*, estimates that fewer than 3% of civil filings go to trial. See also footnote 25.

¹⁶ According to the Ministry of Attorney General's *2010/11 Annual Service Plan Report* (p. 18), only 53% of British Columbians have a great deal or quite a lot of confidence in the justice system.

¹⁷ Green Paper, 9.

- **Efficient:** It must make the best possible use of all available resources. Its processes must be designed to ensure fairness while taking the least possible amount of time, effort, and money to produce fair outcomes.
- **Affordable:** The use and complexity of the court process should match the problem. It must ensure the public understand the range and cost of different pathways to resolution.
- **Accountable:** It must set goals and collect, analyze, and report publicly on the costs and outcomes of programs, as well as the effectiveness of agencies in carrying out their work. This information must be clear and understandable to the public. The justice system must acknowledge that data is necessary for agencies to identify and act on issues, and to inform future analysis of overall justice system performance.

1.3 Building an outcomes-focused justice system

The necessary steps for building an outcomes-focused justice system are:

1. Develop preventative justice services

A person's ability to recognize, avoid, or address a potential legal problem can stop the problem from arising. A person's ability to take early action can stop the legal problem from escalating.

A preventative model starts with helping citizens address issues that trigger legal problems before the problems arise, and it enables citizens to make the best possible use of legal resources when necessary. Too often, our justice system treats symptoms with court processes and fails to address the underlying causes.

Key strategies include:

- Enhancing public legal education and information services
- Supporting prevention and early intervention programs, particularly with community agencies that are often the first point of contact for people facing legal problems
- Building system-wide capacity to direct people to the most appropriate pathway for resolution, irrespective of their first point of contact with the justice system
- Ensuring timely access to representation services when necessary to obtain fair outcomes
- Identifying the issues that trigger clients' legal problems and providing the legal, medical, and social service supports to address these issues

2. Focus on collaboration and integration of service providers

As noted in the recent audit of the provincial justice system,¹⁸ funding and mandate silos currently create unnecessary boundaries between the different levels, branches, and agencies of government, the courts, social service agencies, and legal professionals. A concerted effort is required to break down these barriers to collaborative services.

¹⁸ Ministry of Finance, *Review of the Provincial Justice System in British Columbia*.

An outcomes-focused justice system deals with clients in ways that take into account the related non-legal issues that affect the clients' legal problems so that they can find lasting solutions. This can only be achieved if service providers are committed to working together.

Therapeutic or problem-solving courts that focus on drug treatment, First Nations, domestic violence, or mental health issues, or co-located services such as Justice Access Centres or advice clinics in hospitals, are excellent examples of integrated services where an individual's legal problems are addressed more holistically than through conventional processes.¹⁹

3. Foster culture change

There is a need for a larger discussion among the public, legal professionals, para-professionals such as paralegals and non-lawyer information providers, social service providers, and government about the importance of an affordable, accessible justice system, and what it might look like in a changing society.

The justice system must shift from a lawyer-centric, process-centric culture to one that views outcomes as a fundamental metric of success and service to clients as the fundamental means of achieving that success.

This discussion will require strong leaders who promote an open exchange of ideas, share knowledge of current research and successes, and keep the conversations focused on opportunities to effect change.

Implementing an outcomes-focused justice system will also require strong leadership from within the Ministry of Justice. A dedicated body, such as a Reform Secretariat, will be necessary to lead the initiative, to establish cross-sectoral goals and strategies, and to be accountable for implementation, monitoring, data collection, and ongoing evaluation of outcomes. Coordination is also needed to establish best practices among all partners and, where possible, to minimize the variations in standard practice to support consistent levels of service and outcomes across jurisdictions. At the same time, solutions must be tailored to local community needs and resources.

Finally, it is important to emphasize the need for innovation and, by extension, experimentation to identify what works, accepting that not every pilot project is guaranteed to succeed. Ontario's Justice on Target initiative, which began in 2008 and which seeks to address systemic delays in the Ontario courts, offers an instructive example of how a centrally coordinated reform process can foster local efforts to improve the justice system.²⁰

¹⁹ LSS currently provides family duty counsel services at two Vancouver medical clinics for pregnant women and young mothers who face alcohol and drug dependency issues.

²⁰ For more information, see "Justice on Target," www.attorneygeneral.jus.gov.on.ca/english/jot/default.asp. Though modest justice system efficiencies have been achieved province wide, some individual projects are demonstrating justice efficiencies.

4. Undertake ongoing research and evaluation of outcome-based services

BC is fortunate in having an extensive background in justice system research.²¹ For its part, LSS regularly funds research on issues such as clients' legal needs as well as client satisfaction with legal aid services.²² LSS also conducts evaluations of its programs and pilot projects to inform policy and program development and to guide decision-making.²³ More is needed, however, particularly in the area of assessing client outcomes. How can we best measure and demonstrate the success of services? What benefits result from prevention and from intervention at different points in the service continuum?

There is also a need to determine which legal services should be provided as a matter of law, which are desirable on social justice and other policy grounds, and which services, if not provided, end up costing citizens and taxpayers more.

Justice research can be highly relevant and valuable by focusing on practices that help resolve the most urgent and frequent problems. Research can also give us insight into the performance and fairness of the justice system. To this end, LSS urges the Ministry of Justice to develop empirical metrics to facilitate research. LSS also urges the ministry to continue the work it is doing with Simon Fraser University's Complex Systems Modelling Group on justice system capacity and resource allocation.²⁴

5. Support early action and out-of-court resolution

A justice system focused on outcomes shifts resources from court process to services that support clients to take action to resolve their problems early and without going to court. Simple, cost-effective court procedures should be a last resort.

Research demonstrates that information, brief advice, or alternative dispute resolution such as mediation can divert family clients from court and promote better outcomes.²⁵ Research also indicates

²¹ This research includes studies of unrepresented litigants (see for example, Malcolmson and Reid's *BC Supreme Court Self-Help Information Centre Final Evaluation Report*; Reid et al's *Developing Models for Coordinated Services for Self-representing Litigants*), legal needs mapping studies such as McEown's *Civil Legal Needs Research Report*, and criminal justice reform initiatives [www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/index.html]; see also the reports at www.lawfoundationbc.org/reports-papers/.

²² See www.legalaid.bc.ca/assets/aboutUs/reports/legalAid/lssClientSurveyResults.pdf and www.legalaid.bc.ca/assets/aboutUs/reports/legalAid/lssClientSurveyResults04_11.pdf.

²³ LSS evaluations are available at www.legalaid.bc.ca/about/evaluations.php.

²⁴ See csmg.irmacs.sfu.ca/current-projects.

²⁵ See the Ministry of Justice family law program evaluations under "Evaluation Reports" at www.ag.gov.bc.ca/dro/publications/ and under "Comprehensive Child Support Services Pilot Project," "Family Justice Dispute Resolution Program," and "Family Justice Registry (Rule 5) Pilot Project" at www.ag.gov.bc.ca/justice-services/publications. Numerous reports and evaluations identify the benefits of mediation to include improved communication and working relationship between the parties, development of

that expanding the use of alternative measures, early disclosure, and early disposition courts, accompanied by other significant reforms, can create justice efficiencies and improve justice system outcomes.²⁶

Triage services (particularly those provided by non-lawyers and para-professionals) should be used to direct unrepresented accused and family litigants to early resolution services, advice programs, or to apply for legal aid, thereby ensuring clients facing legal proceedings can effectively access services proportionate to the complexity of their issues and appropriate to their needs.

6. Enhance criminal case management

The largest criminal cases, which are growing in number, complexity, and expense, consume a disproportionate share of justice system resources and are a key source of rising costs and delays. Efficient management of these cases by all parties is necessary to streamline administration, reduce expenses, and ensure a strong foundation for an outcomes-focused justice system.

LSS has a case management program that monitors and manages the costs of large criminal cases that are funded by LSS. LSS also provides case management services to the provincial and federal justice ministries for large criminal cases where the defence is funded directly by the ministry. This program has met with praise in a number of key reports, including the Ministry of Finance's *Review of the Provincial Justice System*,²⁷ the LeSage-Code report²⁸ in Ontario, and Professor Stephen Toope's report on BC's public service indemnity policy²⁹. Our case management program, however, only applies to the defence. LSS continues to look for ways to improve its management of large cases, but trial costs are driven by all parties. All stakeholders must work together on an integrated management solution.

problem-solving skills to avert future disputes, and participant satisfaction with the dispute resolution process. See for example, Family Justice Reform Working Group, *A New Justice System for Families and Children*, p. 43; McHale et al, "Building a Child Protection Mediation Program in British Columbia." Also, results from the 2005 Ministry of Attorney General *Evaluation of the Family Mediation Practicum Project* suggest that fast-tracked and session-limited mediation cases may enjoy a settlement rate of as high as 71%, while the child protection mediation program in BC has demonstrated a settlement rate of between 70% and 77% (see McHale, above).

²⁶ Dandurand, *Addressing Inefficiencies in the Criminal Justice Process*.

²⁷ The review noted that "LSS has strong controls in place to manage the costs of all types of litigation, for example, LSS has senior members of the criminal bar assess the reasonableness of budget proposals and review the billings for the defence in larger criminal cases." Ministry of Finance, *Review of the Provincial Justice System in British Columbia*, 24 – 25.

²⁸ LeSage and Code, *Report of the Review of Large and Complex Criminal Case Procedures*.

²⁹ Toope, *British Columbia Public Service Indemnity Policy Review*.

7. Support justice system professionals to provide integrated, outcomes-focused services

The justice system is growing in complexity, and legal professionals require an increasingly broad skill-set to fulfill their obligations. Many of these skills are not traditional litigation skills, but rather those needed to deliver integrated, outcomes-focused services to clients. They include the ability to identify clients' related non-legal issues such as fetal alcohol spectrum disorder, addiction, or mental health issues; to work in cross-sector teams; to engage in systems thinking; to design appropriate procedures; and to use alternative dispute resolution to reach early settlement.

Justice reform should emphasize the need for professional education in these areas and should include vigorous promotion of a problem-solving culture. Reforms must draw on the expertise of justice system professionals already working in innovative ways to identify best practices and new opportunities in service delivery and system design. The justice system should also recognize those who are making a difference, provide opportunities for innovation, and determine practical ways to support changes while maintaining core principles and just outcomes.

8. Simple, affordable court procedures

An outcomes-focused justice system that concentrates on helping people find timely and lasting resolution of their legal problems recognizes the need for formal adjudication. Courts and other tribunals are still required to settle intractable disputes and to interpret the law. As one commentator has noted:

Adjudication provides the framework for settlements — the shadow in which settlements can be reached. That is underpinned by coercive power [that] provides the background threat that brings unwilling litigants to the negotiating table. While the reality is that most cases settle, a flow of adjudicated cases is necessary to provide guidance on the law, and most importantly, to create a credible threat of litigation if settlement is not achieved. Of course, the cases that are litigated ... are the cases that could not be settled either because the facts were not clear or because they raised original problems or because one side was too intransigent to settle or, perhaps, because the costs were too high to settle.³⁰

To ensure fair outcomes, formal adjudicative processes must, however, mirror the other parts of an outcomes-focused justice system and be affordable, easily accessible, procedurally simple, and timely. If a dispute requires formal adjudication, delays due to the cost of access, procedural complexity, or backlogs will only preserve the status quo between the parties and exacerbate their legal problems. Along with simple, affordable court procedures, legal aid advice and representation services should be

³⁰ Genn, *Judging Civil Justice*, 21.

available to more individuals to improve access to justice and reduce the number of unrepresented litigants and accused in courts.

1.4 Modernizing the justice system

Many of the proposed solutions to justice reform identified in the Green Paper are aligned with an outcomes-focused justice system. LSS has echoed some of these in this paper, such as providing meaningful justice system data to the public; setting standards and evaluating programs; more efficient handling of the largest, most expensive, and complex cases; making use of alternative measures; and minimizing variations in standard practice. LSS also supports many of the specific strategies, including:

- Setting performance measures and goals across the justice system
- Tracking the total cost and other metrics of cases both routine and major
- Reducing delays and decreasing the remand population and the length of time persons are on bail awaiting trial³¹
- Reducing the number of charges for breaches of court-ordered release conditions³²
- Addressing the significant increase in public order criminal cases where the underlying issues have more to do with mental health than crime
- Streamlining charge approval
- Introducing more efficient scheduling of court cases, scheduling fewer administrative appearances before judges, providing more direct routes to early resolution,³³ and making better use of judges' time
- Improving Crown case management and ensuring continuity of Crown counsel on files³⁴
- Addressing judicial case management to reduce the number of purely administrative appearances

³¹ Meaningful early discussions between Crown and defence are often recommended as a way to reduce delays — see, for example, Steering Committee on Justice Efficiencies and Access to the Justice System, *The Final Report on Early Case Consideration of the Steering Committee on Justice Efficiencies and Access to the Justice System*. The problem of the growing remand population in Canada is discussed in Doob's "Bail and Remand: One Problem or Two?"

³² This may be achieved by using bail supervision programs and by setting conditions of release that are related to the justification for bail.

³³ Some provinces have introduced electronic court scheduling and the use of early resolution disposition Crowns or courts.

³⁴ Ontario's Justice on Target Kitchener Courthouse is piloting a dedicated prosecution model.

2. The current state of legal aid in BC

The Legal Services Society's core services are:

- **Legal information, education, and outreach:** Free public legal education and information through legal information outreach workers, the LSS website, the Family Law in BC website, and our publications. Our family law website alone is used 31,000 times a month. In 2011/2012, LSS distributed more than 135,000 publications and our legal information outreach workers responded to more than 8,500 information requests. LSS also provides training to intermediaries and advocates so they can deliver basic legal information and are able to refer clients to appropriate resources from LSS, government, or other service providers in their communities.
- **Legal advice** is provided primarily through duty counsel and our family and criminal law telephone advice services. Last year, these lawyers provided help more than 130,000 times.
- **Representation by a lawyer** is available for financially eligible people with serious family, child protection, criminal, or immigration problems. In the last fiscal year, more than 27,000 clients received representation assistance.

Most LSS services, with the exception of family law services, are constitutionally mandated and cannot be reduced or eliminated to free up funding for other services.

These services represent a continuum that aligns with the outcomes-focused approach to legal aid outlined in Part 1. They also represent a form of triage that allows the society to provide the broadest range of services to the largest number of people within the available budget.

Legal aid in BC went through a dramatic transformation in 2002 when legislative changes and funding reductions led to a restructuring of LSS and the services provided. The changes eliminated poverty law representation, restricted family law to child protection and emergency services in cases involving domestic violence, and decreased the society's budget by nearly 40% over three years. LSS reduced office and agency staff by 74%, and replaced its province-wide network of 60 branches, community law offices, Aboriginal community law offices, and area directors with a new delivery model using 7 regional centres, 22 local agents, and a centralized call centre.³⁵ The restructuring represented a marked shift from a mixed staff/private bar model of service delivery to one that is almost exclusively private bar.

In 2009/2010 and 2010/2011, LSS faced significant budget pressures due to rising case costs and decreased non-government revenue and was again forced to make extensive reductions to its operations and infrastructure. The reductions included the replacement of five staffed offices with contract services at seven locations, closure of the poverty law telephone advice program, and a reduction in the staff complement by 80 FTEs. There were also small reductions to tariffs and client services (most of which have since been restored).

³⁵ Legal Services Society, *LSS Service Plan, 2003/2004 – 2005/2006*.

LSS used approximately \$7 million of the savings from the reductions to balance its budget and redirected more than \$8 million to client services.

Despite these budget challenges, LSS did not change its financial eligibility guidelines and, in fact, has continued to increase them annually to compensate for inflation.

Today, the Legal Services Society has two staff offices and 31 contracted offices throughout the province and provides services at more than 50 locations including law offices, courthouses, and community agencies. At each of these locations, individuals can get legal information and referrals to other social service agencies, and apply for legal representation. LSS also works with 24 community partners to bring legal aid information to rural and remote communities. Over 50% of eligible applicants receive a referral for representation on the day they apply; over 75% get a referral within five days.³⁶

LSS receives 93% of its funding from the provincial Ministry of Justice. The remaining 7% comes primarily from the Law Foundation and the Notary Foundation, both of which depend on interest rates for their own income.

Government funding has remained stable in recent years but has not been adjusted for inflation. Nor has funding kept pace with other components of the justice system. From 1994/1995 to 2008/2009, the Provincial Court's budget increased by 114% and funding for prosecution services went up 132% while legal aid funding dropped 22%. Core LSS funding was increased in 2012/2013 with an additional \$2.1 million for family law and child protection matters.

Law Foundation funding remains unchanged over the past six years, while Notary Foundation funding has dropped by almost 90%.

While the number of cases referred to lawyers has remained relatively stable for several years, average case costs in family and child protection matters have risen considerably even though LSS's coverage policy has not changed. For family cases, the average cost was \$1,910 in 2007/2008 and is estimated to be more than \$2,500 in the current fiscal year. One of the reasons for the increase is court backlogs that

³⁶ The Green Paper, highlighting representation of accused as a challenge, states that delays in approval of legal aid referrals can lead to "redundant representation," where duty counsel and defence lawyers are retained on the same matter at different stages (pp. 18, 24). While LSS's proposed expanded duty counsel model helps address this inefficiency (see pp. 24-26 of this report), the time it takes for an applicant to receive a referral depends in part on the availability of a lawyer. LSS sets targets and closely monitors how long it takes to place referrals. The number of days to refer varies significantly by area of law and region. In most areas of the province, more than 80% of eligible clients facing criminal charges receive a referral within five days; in the Northwest, however, this drops to 66%. Family cases take longer to place than criminal cases in all regions. Another factor is the time it takes an applicant to provide LSS with the information needed to assess financial eligibility. This process could be expedited for many applicants if LSS had direct, electronic access to social services records to confirm an applicant is receiving welfare. LSS is also examining internal intake policy and processes to help minimize delays.

prevent counsel from scheduling trials on consecutive days. As a result, hearings are fragmented over several months and require additional preparation time for each hearing day.

2.1 Lawyer supply, compensation, and the 2012 service withdrawal

One critical issue facing LSS is lawyer supply. Fewer than 1,000 of BC's 10,000 practising lawyers take legal aid referrals. That number has been declining steadily for the past 15 years — from a high of nearly 1,800 in 1997/98 to a low of 976 in 2009/10. In some rural locations, LSS is unable to place cases with local lawyers and must fly lawyers in from other communities at considerable expense.³⁷

Surveys conducted by LSS show that low tariffs are the primary reason lawyers refuse to take legal aid referrals. Our *2010 Tariff Lawyer Satisfaction Survey* reported the following conclusion:

Those who feel undervalued or who are unsure whether LSS values their services tend to be focused on compensation; specifically, they feel the tariff is too low or think the number of hours and range of services covered by the tariff does not reflect the time required to deliver quality service. These are the same top suggestions lawyers give when asked what LSS can do to improve its support to tariff lawyers and by the 19% who plan on taking fewer or no referrals in the coming year.³⁸

Inadequate compensation reduces lawyers' willingness to do legal aid work and is one of the primary reasons for the withdrawal of criminal duty counsel services earlier this year.³⁹

Although LSS, not government, sets tariffs, the rates are subject to available funding and to the society's mandate to provide services that, with the exception of family law, are often constitutionally mandated and cannot be eliminated to free up money for increased tariffs.⁴⁰

In 1991, the typical hourly rate was \$80. Tariffs have increased only once since then, in 2006.⁴¹ Current hourly rates range from \$84 for lawyers with less than 4 years' experience to \$93 for lawyers with more

³⁷ Traditional legal aid practice areas such as criminal and family law are no longer popular career choices among law students. See Suleman's *Not with a Ten-foot Pole*.

³⁸ See Survey conducted by Synovate, www.legalaid.bc.ca/assets/aboutUs/reports/lawyers/tariffLawyerSatisfactionSurvey2010.pdf.

³⁹ Tariff lawyers have expressed concerns not only about compensation, but also about legal aid funding and access to justice more generally. The Trial Lawyers Association of BC, which coordinated the withdrawal of services, has outlined its concerns in a news release, "Trial Lawyers Association of British Columbia: Second Phase of Service Withdrawals Set to Take Effect Across BC."

⁴⁰ In 2004/2005, LSS undertook a comprehensive review of the tariff system that documented the long-term deterioration of tariff remuneration and proposed a principled approach to tariff compensation linked to a broader framework of results-based management and system efficiency. See Legal Services Society, *Managing for Results*.

than 10 years. The \$84 rate is equal to just \$58 in 1991 dollars, a decline in real terms of 27%. Half of the lawyers who took legal aid referrals in 2011/2012 earned less than \$25,000 for their LSS work.

In 2010, LSS introduced simplified tariffs to reduce the administrative burden on counsel and LSS staff, but these were designed to maintain, rather than improve, existing compensation levels.

By any reasonable measure, LSS tariff compensation remains low. The gap between legal aid rates and what lawyers can charge private clients is growing steadily, which makes taking legal aid cases a major sacrifice or risk. Block fees and capped hours require lawyers to perform work that is not directly compensated and do not reflect the growing complexity of cases. In addition, many legal aid clients face multiple social and mental health issues that make their cases more challenging and time-consuming than those of the average private client.

LSS tariffs now appear to lag well behind those in Alberta and Ontario, which have the most comparable legal aid plans. With respect to block fees, for example, an Alberta lawyer assisting a legal aid client with a guilty plea and sentencing in Provincial Court for a trafficking charge would be paid, at a minimum, nearly 40% more than a lawyer doing the same work in BC.⁴² Similarly, Ontario's hourly rate for a junior lawyer exceeds BC's rate for a senior lawyer with 10 or more years of experience, and its hourly rate for a senior lawyer is 28% to 40% more than in BC.

And while legal aid tariffs are available to the public and rigorously applied, the Ministry of Justice does not have standard rates for defence counsel in cases it funds directly and in some cases has negotiated fees in excess of legal aid rates. This results in serious inequities among defence counsel.⁴³

2.2 Legal aid central to an outcomes-focused system

Access to legal aid services is widely recognized by the justice community as an integral component of access to justice. The vast majority of British Columbians share this view.⁴⁴ In a recent Ipsos Reid survey conducted for LSS, 96% of BC residents polled said legal aid was essential for fair outcomes in family

⁴¹ LSS implemented the increase in two stages, including the introduction of tiered rates to reflect lawyer experience, so the overall increases were 5% to 15%.

⁴² Alberta's hourly rate is lower than BC's, but in general, block fees in criminal matters appear substantially higher. In the above example of a trafficking charge, the Alberta lawyer can charge \$722 (plea and sentencing on same day) or \$1,058 (plea and sentencing on different dates) and may often get additional fees for required waiting time and extra court appearances. A lawyer in BC can charge \$525 for a similar case.

⁴³ See comments in *R. v. Bacon*.

⁴⁴ See Doust, *Foundation for Change*, p. 5, for a discussion of the public support for legal aid demonstrated in the many individual and organizational submissions to the commission. This was also emphasized in the submissions of the Canadian Bar Association and the Coalition for Public Legal Services to LSS for this report.

court and 89% agreed it played a similar role in criminal cases. Seventy-four percent said legal aid should be given the same funding priority as other social services.⁴⁵

Access to legal aid services means, in part, providing simple pathways for people to apply and get approval for legal aid without unnecessary delays that prevent early resolution or extend court processes. Access also means ensuring needed legal aid services are available in remote and rural communities as well as urban centres.

Research shows that unrepresented litigants create a burden on the court system and tend to be less satisfied with the outcomes of their cases.⁴⁶ Access to legal aid ensures that people who might otherwise appear unrepresented in court or without legal advice receive the services they require to get fair outcomes. It also results in a more efficient process by assisting people to understand court procedure and to focus on key issues.

As noted above, significant additional funding has been allocated to the justice system over the past 15 years, particularly for prosecutorial and judicial services. As pressures within the system mount, however, it is important to identify where any future investments will have the greatest impact. In the next section, we demonstrate how investment in legal aid can lead to an outcomes-focused and more efficient justice system.

⁴⁵ See public opinion polls at www.legalaid.bc.ca/about/evaluations.php.

⁴⁶ University of Toronto Faculty of Law, *Middle Income Access to Civil Justice Initiative: Background Paper*, 20 - 21.

3. Recommendations for reform

In this part, we outline ways that legal aid can be used to support an outcomes-focused justice system that aligns with the fundamental principles in Part 1. New legal aid initiatives are not possible at this time 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) and necessary operations. Nor are significant internal savings available. LSS has for many years focused on ensuring internal efficiency through evaluation of our services and refining our work to ensure we do the most for our clients with every dollar we spend. In addition, as noted in Part 2, LSS has reduced its operating budget significantly over the past four years so that more money could be put into client services. As a result, there are only limited opportunities for additional internal savings that could be used for new initiatives.

For six of our proposals, however, LSS conducted analysis that suggests they will result in savings to the broader justice system through a reduction in court appearances, earlier resolutions, reduced court filings, and other efficiencies. These savings, if quantified and redirected to the Legal Services Society, could offset some of the cost of the new initiatives. LSS calculated savings on a "per 1,000 cases" basis to facilitate analysis and allow comparability across services. The number of clients each proposed service could reach if implemented depends on the final service design, how widely it is rolled out, eligibility rules, and the availability of other legal aid or justice services.

It is important to note that the estimated dollar savings provided in this section reflect only those that are readily quantifiable using reasonable assumptions and available data, not the total anticipated savings. (For details of our savings calculations, see Technical Notes, p. 53.) Proposals that initiate a shift to an outcomes-focused justice system can generate a range of savings that are real, significant, and system-wide, but difficult to quantify. For example, these proposals can create ancillary benefits through incremental improvements in working relationships, breaking down of silos, systems thinking, and process improvements that may vary location by location. These benefits, where noted, have not been estimated in monetary terms.

Further, because the proposed initiatives focus on outcomes, they will create benefits for clients. For example, when clients achieve early and more stable resolution of their legal issues, they are less likely to experience legal problems in the future, and their related issues – such as health or debt – are less likely to escalate. These benefits also avoid future costs to the justice system and to government. Although these avoided costs are problematic to quantify, researchers in a number of jurisdictions have calculated the overall savings that accrue from providing legal aid services. These studies are difficult to

replicate but demonstrate a reduction in public spending overall as a result of expenditures on legal aid services, and suggest that the savings exceed the legal aid costs.⁴⁷

The time available for preparing our response to the request for advice has not allowed us to develop concrete plans for new service delivery models or other innovations. What follows are proposals that we believe warrant further exploration through full cost analysis, policy analysis, pilot projects, and evaluation before proceeding with full-scale implementation. These steps are necessary to ensure the projects are indeed feasible, that they do not have unintended consequences, and that the assumptions made in our analysis hold true.

Many of our proposals require permanent office space in courthouses to be successful. This is particularly true of the duty counsel recommendations. We make special mention of this point because LSS has had difficulty securing office space in courthouses. This is a matter within the control of government and an example of a problem that can be remedied through better collaboration among justice system stakeholders.

Further, each of our proposals requires the involvement of several parties, most notably the judiciary, the Ministry of Justice, Crown counsel, and court services. Without their direct participation, their willingness to change, and their contribution of necessary resources, innovation and reform are not possible.

3.1 New criminal law service delivery models and tariff changes

1. Expanded criminal duty counsel

Current duty counsel services

Duty counsel provide advice to accused persons in and out of custody, and represent detainees at bail hearings, guilty pleas, or sentencing. In the traditional duty counsel 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.

Potential new service delivery model

In an expanded model, specific lawyers are assigned to the same court on a continuing basis. In addition to traditional services, the lawyer retains conduct of non-complex files for a set time unless there are special circumstances (e.g., a client who is living with mental health problems or has an ongoing case with a lawyer). During the set time, the lawyer receives the client's instructions, obtains disclosure and

⁴⁷ Research calculating the public savings from investment in legal aid services comes from the United Kingdom, Australia, and the United States, among other nations. Key reports include Citizens Advice, "Towards A Business Case For Legal Aid" and PriceWaterhouseCoopers, *Economic Value Of Legal Aid*.

where appropriate takes steps to resolve the matter. If the case cannot be resolved within that time, and the client qualifies for legal aid, he or she is referred to a lawyer to take the case under the tariff. Where volumes warrant, expanded duty counsel is supported by a non-lawyer who provides administrative and client support.⁴⁸ This type of duty counsel service can provide the greatest benefits in locations with higher volumes of clients.

The Public Commission on Legal Aid in British Columbia, without endorsing a specific delivery model, recommended enhanced duty counsel services as “the most effective and cost-efficient mode of delivering legal assistance.”⁴⁹ The report also noted that “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 also be given to providing paralegal assistance to work alongside duty counsel to assist clients with filling out forms and so on.”⁵⁰ The Canadian Bar Association (BC Branch) endorsed this recommendation in its submissions to LSS for this report and in its submissions to Geoffrey Cowper, QC. The CBA also emphasized in its submission to LSS that expansion of duty counsel should take place where monitoring and evaluation demonstrate that these services meet client needs.

Anticipated benefits

Expanded criminal duty counsel can help achieve more early resolutions generally and can help manage the growing volume of administrative cases such as breach of probation and failure to appear. The lawyer continuity provided by this model allows duty counsel to assist clients to access services to address the root causes of their problems and efficiently manage appropriate cases to resolution, and creates opportunities for duty counsel to work closely with Crown and court services to improve disclosure, scheduling, and other processes. This should result in savings to the justice system and to clients through early resolution and reduced appearances — benefits that will only be fully realized if Crown provides similar continuity. For clients seeking resolution, there is the additional benefit of seeing the same lawyer throughout the case and obtaining assistance with accessing community resources to address underlying problems.⁵¹ Expanded criminal duty counsel can also address the concern raised in the Green Paper that duty counsel and defence counsel are often retained on the same matter at

⁴⁸ In Nova Scotia, court support workers (CSWs) are seen as key partners with duty counsel. CSWs assemble background information, arrange sureties, and identify non-legal needs such as housing and treatment in connection with bail or sentencing processes. See Currie and Hudson, *Not Just a Substitute for Full Service: Expanded Duty Counsel in Nova Scotia*.

⁴⁹ Doust, *Foundation for Change*, 52.

⁵⁰ *Ibid.*

⁵¹ For a discussion of the benefits of expanded duty counsel models for both criminal and family law, see Buckley, *Moving Forward on Legal Aid*, 8, 90 – 92.

different stages.⁵² If funds were available, expanded duty counsel could provide services to unrepresented accused who do not qualify for legal aid by expanding financial and coverage eligibility for the service.

Our preliminary assessment is that expanded duty counsel should reduce the number of court appearances and shorten the time to case conclusion for their clients. Our analysis suggests that a 70% reduction in the number of appearances — and a proportionate reduction in time to resolution — will save the justice system \$420,000 per 1,000 cases.⁵³ These quantifiable savings, if returned to LSS, would offset part of the cost of delivering the service. Additional funding would be required to introduce and maintain an expanded duty counsel program.

Note that these figures include only a portion of the savings anticipated from this model, as explained earlier. More indirect savings will take further research to quantify, and some important benefits to the system and to clients may not be quantifiable.

Other legal aid plans

Legal aid plans in Alberta, Manitoba, and Nova Scotia currently operate expanded criminal duty counsel programs. Assessments of these programs demonstrate their effectiveness in promoting early resolution; they also show that expanded duty counsel can be a less expensive delivery model, depending on the tariff rates paid to lawyers to take these types of cases.⁵⁴ Given LSS's current block tariff rates, however, LSS does not expect expanded duty counsel to generate any savings in service delivery costs.

2. Early resolution referrals

Potential new service model

In locations where volumes do not warrant the expanded duty counsel model, changes could be made to LSS tariffs and policies that would allow ad hoc duty counsel to retain conduct of non-complex matters similar to those covered under the proposed expanded model.

⁵² Green Paper, 24.

⁵³ LSS's analysis included a range for reduction in appearances and time to resolution, informed by results from an assessment of an expanded duty counsel program in Nova Scotia (Currie and Hudson, *Not a Substitute for Full Service: Expanded Duty Counsel in Nova Scotia*). At the lower end of the range, a 27% reduction in appearances and time to resolution as a result of this proposed service could yield \$158,000 in savings per 1,000 cases.

⁵⁴ A 2011 assessment of Legal Aid Alberta's pilot expanded duty counsel program found that the cost per case for expanded duty counsel was about 33% lower than for similar cases under their block tariff (Legal Aid Alberta, *LAA Criminal Expanded Duty Counsel Report*). As noted in section 2.1, Alberta's block tariff fees are considerably higher than BC's.

Under current policies, ad hoc duty counsel do not typically take referrals for client matters that cannot be resolved in court that day. This is due, in part, to LSS policies that restrict counsel from doing so in order to avoid the appearance of conflict of interest.

With the proposed early resolution referral, LSS would permit duty counsel to obtain a short-term tariff referral to represent clients they meet while acting as duty counsel in cases where the client seeks early resolution and counsel believes it is feasible. The purpose of these referrals is to create in smaller centres a service delivery model similar to that provided by expanded duty counsel in larger locations.

Anticipated benefits

This proposal will help clients access appropriate community resources, promote early resolution, support negotiation of alternative measures, and speed up the legal aid application process. Like expanded duty counsel, it will also address the concern raised in the Green Paper about duplication of duty and defence counsel services.⁵⁵ In our assessment, the introduction of early resolution referrals could result in justice system savings per 1,000 clients similar to those outlined above for expanded duty counsel. Additional funding will, however, be needed to support a new tariff item for early resolution referrals.

3. Disposition court and early resolution tariff

Potential new service and benefits

Currently the justice system provides few incentives for accused persons who are inclined to seek early resolution. If incentives were available, such as appropriate resolution proposals or access to treatment for underlying mental health or medical problems that affect the legal problem, stakeholders could work together to develop a “disposition conference” or “disposition court” devoted to early resolution. If either of these programs were put in place, LSS could add an item to its tariff authorizing lawyers to prepare for and attend a disposition conference with Crown counsel or at disposition court to resolve a matter without a trial.

3.2 New family law service delivery models and tariff changes

The number of unrepresented litigants in family cases in BC courts is estimated to be as high as 80%.⁵⁶ Without advice or representation, many unrepresented litigants are unprepared for court or do not know which issues to address, which increases the time required to resolve their disputes.

⁵⁵ Green Paper, 24.

⁵⁶ Nursall and Hall, “‘Lay litigants’ add to delays in BC courts.”

1. Increasing family and child protection duty counsel services

Current services

Referrals for representation by a lawyer in family law matters are limited to situations where the client's safety or his or her children's safety is at risk, the client has been denied access to the children, or there is a risk that a child will be permanently removed from the province. LSS provides limited discretionary coverage for other matters such as child and spousal support. There is no separate coverage for division of family assets, divorce proceedings, or separation agreements.

Because representation is so restricted, duty counsel play a crucial role in assisting people who cannot afford a lawyer to navigate the justice system. In most courthouses around the province, lawyers take family duty counsel assignments on an ad hoc basis and provide advice to people on a broad range of family law topics. They also provide same-day representation in court on simple, uncontested matters if time is available.

In eight high-volume locations, LSS has an enhanced duty counsel program in place. In these locations, LSS contracts with individual lawyers (known as "lead duty counsel") who appear in specific courtrooms on a regular basis, and who are also available on days when the court is not sitting to provide up to three hours of advice to individual clients. This ensures continuity in court and for repeat clients.

LSS also offers a number of related family law services, including advice to people who are consulting family justice counsellors, a telephone advice program, advice services at two healthcare centres that treat women with substance abuse problems, enhanced duty counsel in Aboriginal communities, and referrals for family case conferences.

Potential expansion of services

There is a considerable unmet demand for family duty counsel services. There is also a significant unmet demand for legal services to assist family law clients with related issues that have an impact on, or are the root cause of, the family law problem. Social science research, as well as LSS's own experience, shows that family clients often present with more than one family law issue along with additional related legal or non-legal issues.⁵⁷ For example, a child custody problem may also involve financial support and may have, as its root cause, housing issues. Resolving the presenting issue (child custody) often requires resolving the related issues. This requires an integrated approach to problem solving that

⁵⁷ In a 2011 family law services evaluation, 35% of respondents reported having a socio-economic issue that had an impact on the main family legal issue(s) for which they sought legal assistance, the largest contributors being financial and health issues (Focus Consultants, *An Evaluation of Family Legal Services of the Legal Services Society*, 53). See also Currie, "The Legal Problems of Everyday Life," which discusses how justiciable problems are not contained within legal silos and how individuals often experience a cluster of interrelated problems.

coordinates assistance for the client from a number of different services, professionals, and para-professionals.

This is the approach that is being applied at the Justice Access Centres and Downtown Community Court. In the family law context, the child custody problem may require an experienced lawyer's assistance, while the housing problem is better dealt with by a specialized, non-lawyer advocate. Because of this, any expansion of services should take into account the spectrum of problems presented by family law clients and the range of services needed to resolve those problems.

For this reason, expanding family law services requires a three-part strategy. The first element is increasing the availability of existing services by providing more duty counsel and more community-based advice services. An outcomes-focused justice system looks to, and supports, community initiatives that create, or take advantage of, non-legal pathways and venues for promoting access to justice.

The second element involves securing a permanent presence for duty counsel, and lead duty counsel in particular, in courthouses. For example, the Vancouver Justice Access Centre (JAC) provides an effective venue for a lead duty counsel and administrative assistant to meet with clients when court is not sitting, ensuring the continuity of advice that increases efficiency. The JAC also provides space for maintaining files, which is essential to both effective case management and to the data collection needed to evaluate outcomes. A physical presence for lead duty counsel also provides important continuity for other justice system partners such as court registry staff and judges.⁵⁸

The third element is to make these services more outcomes-focused by providing assistance for related problems (usually poverty law problems), perhaps through a telephone advice program and paralegals.

As noted earlier, the Public Commission on Legal Aid and the CBA support the expansion of duty counsel services where monitoring and evaluation demonstrate the effectiveness of the model.

Anticipated benefits

Providing more duty counsel services and community-based advice clinics can increase the number of early resolutions, divert cases from court, and can help people be better prepared for hearings, all of which can translate into time and cost savings for the justice system. In addition, providing more family duty counsel services can support the new *Family Law Act* and government mediation initiatives.

Establishing advice clinics in community-based locations such as social service agencies can increase access to justice for vulnerable and marginalized clients who are reluctant or unable to use services in courthouses due to cultural barriers or lack of availability. This type of service is of particular benefit for

⁵⁸ Prairie Research Associates' evaluation of Legal Aid Ontario's expanded duty counsel pilot project notes the efficiencies that result from file and lawyer continuity. The evaluation found that file continuity (i.e., opening and maintaining files) enabled a more standardized approach that saves time, improves the consistency of advice that duty counsel give to clients, and results in fewer delays in the court process.

Aboriginal peoples, who are over-represented in child protection matters and who often live in remote locations without access to legal advice prior to and between court appearances.

An independent evaluation of LSS's family law services conducted in 2011 supports the effectiveness of legal aid advice services in helping clients reach resolution. The evaluation found that 75% of clients who received duty counsel services resolved their legal issues, while the resolution rates for telephone advice clients and advice lawyer clients were 71% and 70% respectively. As clients use on average 2.4 services each, the resolution rates also reflect the contributions of other services.⁵⁹ In addition, independent assessments of the family law services provided by the Ministry of Justice, many of which are analogous to legal aid advice services, found that such services can divert cases and narrow issues.⁶⁰ One example is the family mediation services offered by the Justice Services Branch (JSB). The JSB estimates that these services have resulted in \$7.8 million of avoided court costs through the diversion of cases away from the courts and/or by reducing the amount of time these cases spend in court.⁶¹ LSS's approach to estimating the possible savings created by all our proposed family law services is informed by the assumptions used by the JSB in their estimate. Our valuation is also based on Provincial Court costs and case volumes. Where Supreme Court costs are avoided, savings could be higher.

Our preliminary analysis suggests that legal advice provided through community-based advice clinics could save about \$220,000 per 1,000 clients, if 20% were diverted from court, and the time spent in court by the remainder was reduced by 10%. These savings could offset some of the anticipated cost of expanding these services. Expanding services will, however, require additional funding. Other direct and indirect savings created by this service will take further research to quantify, and some important benefits to the system and to clients may not be quantifiable.

2. Unbundled family law services

Proposed new services

LSS could introduce a new referral for a limited number of hours that would allow a lawyer to assist unrepresented litigants with non-emergency, but significant, family matters. Priority could be given to matters involving custody, access, and property issues that are too complex for duty counsel services and too complex for — or outside the scope of — family justice counsellors. Unbundled services typically cover advocacy and advice relating to mediation and collaborative services, review and assistance with

⁵⁹ Focus Consultants, *An Evaluation of Family Legal Services of the Legal Services Society*, 2012.

⁶⁰ See the Ministry of Justice family law program evaluations under "Evaluation Reports" at www.ag.gov.bc.ca/dro/publications/ and under "Comprehensive Child Support Services Pilot Project," "Family Justice Dispute Resolution Program," and "Family Justice Registry (Rule 5) Pilot Project" at www.ag.gov.bc.ca/justice-services/publications.

⁶¹ Ministry of Finance, *Review of the Provincial Justice System in British Columbia*, 25.

document preparation, and advice and coaching for unrepresented litigants, but not court attendance. Given that lawyers providing this service do not need to see the client in person, they could use technology to provide advice to clients in remote and isolated communities. This would be of particular benefit to Aboriginal peoples.

LSS has, in the past, provided limited scope referrals, but discontinued the service due to lack of funding. Any new service model will require additional funding.

Anticipated benefits

The provision of advice through unbundled services early in the proceedings will help parties resolve their disputes, often without having to go to court. This will free up court time for more complex cases and may reduce hearing fragmentation. Research indicates that clients who receive early advice and who have to go to court tend to be better informed and to be more focused on the children's interests and on the key issues requiring resolution.⁶²

LSS estimates unbundled referrals could save up to \$345,000 annually for every 1,000 clients, if 30% were diverted from court and the time spent in court by the remainder was reduced by 20%. Savings would have to be offset against the cost of providing the service. The higher level of service accounts for the higher rates of diversion and reduction in time spent in court, and therefore greater savings, compared to that from the advice clinics described earlier. Other direct and indirect savings created by this service will take further research to quantify, and some important benefits to the system and to clients may not be quantifiable. Unquantifiable potential benefits include a reduction in the time spent by court staff assisting unrepresented litigants.⁶³

Other legal aid plans

Legal Aid Alberta recently introduced a limited scope representation services pilot project in which services are tailored to meet specific client needs. Referrals are for up to 7.5 hours of a lawyer's time for advice and coaching, settlement advocacy, and review of documents. According to Legal Aid Alberta's 2011 annual report, 48% of files referred for these services were fully resolved and another 11% had a partial resolution.⁶⁴

⁶² For example, see Ministry of Attorney General, *Evaluation of the Family Justice Registry (Rule 5) Pilot Project, Summary*, 8 – 9.

⁶³ In some communities, the Provincial Court is "designated" under Provincial Court (Family) Rule 5 to promote settling issues outside the courtroom. In non-Rule 5 locations, court registry staff consider themselves an information resource. They estimated that from 50% to 99% of parties approaching the court registry about family matters were unaware of their options. Malatest, *Evaluation of the Family Justice Registry (Rule 5) Pilot Project – Final Report*, 20.

⁶⁴ Legal Aid Alberta, *2011 Annual Report: A New Approach to Service Delivery*, 21.

3. Support for mediation services

Current services

LSS's Family Tariff contains billing items for collaborative processes and mediation on emergency service referrals. The Ministry of Justice also provides free mediation services by family justice counsellors to families with lower incomes on some family law issues.

Proposed LSS mediation referral

Subject to funding, LSS could develop a new mediation referral payable to qualified mediators for a set number of hours of their services. The referral could include independent legal advice from either a tariff lawyer or family duty counsel before and after mediation.

This referral could serve people with non-emergency, non-high-conflict cases involving custody, access, and property division that are out of scope of family justice counsellors or where family justice counsellors are not available. This would expand LSS's current client base.

Legal Aid Alberta and Legal Aid Ontario provide mediation services. Both provinces also have broader family law coverage.

Proposed Ministry of Justice subsidized mediations with LSS independent legal advice

The Ministry of Justice could expand its mediation services by making government-subsidized mediation available throughout the province for both Provincial Court and Supreme Court matters. Mediation services would be free of charge for clients with low incomes, and available on a sliding fee scale to clients in low- to middle-income brackets. LSS's role would be to provide duty counsel for independent legal advice pre- and post-mediation.

Anticipated benefits

Both of these proposals promote early resolution of disputes and could save judicial resources by diverting cases from court and narrowing cases that go to court. Mediation can also provide better and more lasting outcomes. Further, it develops participants' dispute resolution skills, which will assist them to resolve future disputes outside court, and increases client satisfaction with the resolution process and outcomes.⁶⁵

These proposals will also support the Ministry of Justice's initiative to require mediation in Supreme Court matters where requested by one of the parties.

⁶⁵ Seventy-four percent of clients who attended a triage session with a Provincial Court family justice counsellor and completed the client survey indicated that they would prefer to resolve their disputes without going to court (Ministry of Attorney General, *Evaluation of the Family Justice Registry (Rule 5) Pilot Project: summary*, 25).

LSS estimates that issuing 1,000 mediation referrals could result in up to \$550,000 in savings, if 70% of these clients were diverted from court and time spent in court was reduced by 10% for the remainder.

Other direct and indirect savings generated by this model will take further research to quantify, and some important benefits to the system and to clients may not be quantifiable.

3.3 Other new services and tariff changes

1. Use of non-lawyer service providers

Legal information outreach workers

Legal Information Outreach Workers (LIOWs) are non-lawyers who help people find information and self-help resources on the Internet, distribute LSS publications, assist with referrals to social service agencies, and provide other support to court users.

LSS provides legal information outreach workers at Vancouver's Downtown Community Court and the First Nations Court in New Westminster. LIOWs also provide assistance at LSS offices and directly to community organizations.

The need for more LIOWs

The justice system is an overwhelming, confusing place for just about everyone. Many court users, particularly in the criminal system, have substance abuse and mental health issues that prevent them from getting to court on time, let alone understanding the proceedings. LIOWs can help these users navigate the justice system (and the courthouse). They can also provide information that will help people get to their next court appearance, which may reduce court delays and the number of people charged with failing to appear.

In the family law context, LIOWs could provide court users with information, assist them to navigate the court process, and refer them to the appropriate person for assistance, whether that be family duty counsel or a family justice counsellor. This should reduce demands on court staff for this information and assistance.

LIOWs could also provide information or direct clients to resources and assistance for the underlying issues that impact their family or criminal law problems.

Paralegals

Expanded use of paralegals is another means of increasing access to justice for individuals with low incomes.

Currently, LSS employs two Aboriginal community legal workers (ACLWs) in central and north Vancouver Island who perform a paralegal function. ACLWs provide legal information and advice about family and child protection issues, explain legal processes, attend court with clients, assist with form completion,

participate in negotiations, and liaise with Ministry of Children and Family Development staff, referral lawyers, duty counsel, and bands.⁶⁶ In the past, LSS used paralegals to provide assistance to clients of LawLINE (a telephone service providing advice in all areas of law that was discontinued due to lack of funding) and at legal clinics and regional centres.

In addition, as noted in the section on family duty counsel, paralegals could be used to provide legal information, advice, and other services under a lawyer's supervision to family law clients on related poverty law issues in person or through a telephone service. Paralegals could also support and complement criminal and family duty counsel where volumes warrant (for example, interviewing clients, appearing in court for adjournments, and helping clients complete court forms and documents).

Anticipated benefits of non-lawyer service providers

LSS estimates that if LIOWs were involved in 30% of Provincial Court family law cases, there would be a potential for savings of more than \$380,000 through diversion and narrowing of issues that need to be decided by the courts. The potential savings would offset the cost of providing LIOW services.

Other direct and indirect savings will take further research to quantify, and some important benefits to the system and to clients may not be quantifiable. Unquantifiable potential benefits include a reduction in the time spent by court staff assisting unrepresented litigants⁶⁷ and a reduction in the number of unrepresented litigants by helping individuals apply for legal aid representation services earlier in the process. Paralegal services will provide similar benefits, in addition to helping clients resolve or narrow their disputes.

2. Proposals that support an outcomes-focused justice system

Expansion of family telephone advice services

LSS operates an innovative, cost-effective telephone service called Family LawLINE that helps people with low incomes resolve family law problems. The service started operating weekday mornings in November 2010 and was quickly over capacity. LSS has recently expanded the program to full time.

To best meet the needs of British Columbians with low incomes, the Family LawLINE should be expanded to evening and weekends. Potential callers, particularly vulnerable women, often prefer calling outside regular office hours when there is greater privacy from co-workers and family.

⁶⁶ In LSS's 2012 family services evaluation, ACLW clients reported a high rate of resolution for their issues, gave ACLW services high helpfulness ratings for moving their cases toward resolution, and indicated high levels of satisfaction with outcomes (Focus Consultants, *An Evaluation of Family Legal Services of the Legal Services Society*).

⁶⁷ See footnote 61.

Poverty law advice services

People with low incomes are more likely than others in society to be dealing with multiple legal problems in areas such as welfare, disability benefits, housing, pension income, debt, and unemployment insurance. Legal advice and representation is needed to help people resolve these issues. Poverty law advice is also an important adjunct to family, criminal, and immigration law services.

Services could be provided through cost-effective telephone advice programs staffed by lawyers, paralegals, advocates, and LIOWs. Other potential delivery models are online chat services, social media, video conferencing, and in person at self-help centres, Justice Access Centres, Aboriginal centres, and social service agencies.

Services such as these will help people with low incomes resolve legal problems and address issues that might otherwise require them to draw on other government resources such as welfare, healthcare, and the justice system.

Providing these services will require additional funding and will not result in savings to LSS.

Aboriginal services

Aboriginal peoples account for 25% of legal aid clients; in some parts of the province, the percentage is much higher. Aboriginal peoples are over-represented in the criminal justice system and in child protection matters.

Aboriginal peoples need legal aid services that are culturally sensitive and attuned to their particular justice system needs. Delivering these services is often difficult because many Aboriginal peoples live in small, isolated communities.

In 2007, LSS commissioned a report, *Building Bridges: Improving Legal Services for Aboriginal Peoples*, to assist the society in improving legal services for Aboriginal peoples.⁶⁸ LSS has implemented many of the report's recommendations and continues to work on others.

LSS delivers a number of services designed for Aboriginal peoples, including ACLWs, funding for Gladue reports, Aboriginal services Web pages, special publications for the Aboriginal community, and professional development for staff, lawyers, and the Aboriginal community. These services and programs are overseen by LSS's Aboriginal Services manager.

Expanding these services requires a collaborative approach that involves communities, elders, different levels of government, and other social service agencies. With additional funding, LSS could:

- Hire more ACLWs to provide legal services in select regions of the province

⁶⁸ Walkem, *Building Bridges*.

- Provide enhanced duty counsel services in remote locations to improve services in family, child protection, and criminal law (available on scheduled days between court sittings as well as on court days)
- Collaborate in the development and support of problem-solving and restorative justice criminal courts and provide trained and culturally sensitive expanded duty counsel at these court locations
- Engage in developing and supporting Aboriginal mediated settlements in child protection matters
- Partner with Aboriginal service providers to provide legal advice services
- Pilot an Aboriginal helpline to provide poverty law services, provide referrals to other agencies, and facilitate applications for legal aid for Aboriginal persons
- Continue to fund and expand Gladue report-writing services.

Specialized courts

Specialized problem-solving courts, such as drug courts, mental health courts, domestic violence courts and First Nations Courts, can provide opportunities for justice system efficiencies and result in better outcomes for both accused and victims.

LSS currently issues criminal legal aid referrals for about 3,000 domestic violence cases per year. Many of these cases could be better resolved by the use of a specialized Domestic Violence Court with a designated Crown and specialized duty counsel. It is anticipated that processing cases through a specialized Domestic Violence Court can result in fewer breach charges, fewer collapsed trials, and better overall outcomes.

Currently, six provinces and the Yukon Territory have specialized courts for domestic violence cases.⁶⁹ An example is the Yukon Domestic Violence Treatment Option Court (DVTO), created in 2000 to provide a therapeutic alternative to the formal justice system in response to high rates of domestic violence and a significant Aboriginal population that felt victimized by the formal justice system. An evaluation of the DVTO court found that there are fewer collapsed trials, cases are dealt with more quickly, and the justice system is better meeting the needs of victims by providing them with protection against re-assaults.⁷⁰

First Nations Courts, Gladue Sentencing Courts, and Circle Sentencing Hearings provide opportunities to address the unique circumstances and needs of Aboriginal accused and the over-representation of Aboriginal peoples in the justice system. These Aboriginal courts all take a restorative justice approach that involves balancing the needs of victims, offenders, and communities, while using the most

⁶⁹ There are 54 domestic violence courts in Ontario as well as an integrated Family Court. In the Integrated Family Court, all family matters including custody, access, safety, and offender accountability are handled by one judge.

⁷⁰ Hornick et al, *The Domestic Violence Treatment Option (DVTO), Whitehorse, Yukon*. See also Quan, *Offender Profile and Recidivism among Domestic Violence Offenders in Ontario*.

appropriate form of intervention at the most appropriate time.⁷¹ The goal is to “restore” the relationship, fix the damage that has been done, and prevent further crimes from occurring. If more problem-solving courts were established in BC, LSS could provide specialized duty counsel services under our current or expanded model to support those courts. These services may require new funding as they would be an addition to current services.

3.4 Video or telephone bail hearings through the Burnaby Justice Centre

1. Video and telephone bail

Current services

The Burnaby Justice Centre provides 24-hour 7-day-a-week access to judicial justices. It is used for evening and weekend bail hearings and applications when judges are not sitting. LSS provides duty counsel or referrals for these hearings. Hearings are conducted by video link or phone with a judicial justice at the Justice Centre.

Video bail hearings are also occasionally used during regular court sittings with the accused or counsel appearing via video link. This is done primarily when there are scheduling difficulties (for example, out-of-town counsel), or to avoid the cost of transporting the accused. LSS services for these hearings are the same as those for in-person hearings.

During the recent duty counsel service withdrawal, LSS provided duty counsel services for bail hearings via telephone in courthouses where in-person services were not available.

Potential service delivery models

There are a number of different ways that telephone or video technology can be used for bail hearings. All, or some, of the parties could be in different locations with a judge presiding in a courtroom, or the service could be centralized with a decision maker in a single location (e.g., the Burnaby Justice Centre) presiding over all bail hearings from specified locations. A further variation could have defence, Crown, and the decision maker centralized in a single location. Regardless of the variation used, LSS can provide duty counsel under our current model or any expanded model.

Anticipated benefits

In 2008/2009, LSS participated in two video bail pilot projects sponsored by the Provincial Court and the Ministry of Justice. One pilot used three low-volume remote locations in the Peace region where few lawyers are available and transportation costs are high. An independent evaluation of this pilot found

⁷¹ Native Women’s Association of Canada, “Aboriginal Women and the Legal Justice System in Canada.”

reductions in the number of appearances, the time to resolution, and the use of sheriff resources, including a reduction in “escort kilometres.”⁷² The second pilot provided after-hours Crown and defence services in Surrey, a high-volume location. This pilot had a different focus not relevant to our analysis.

Based on a preliminary analysis informed by the evaluation of the Peace region pilot, LSS estimates that the use of technology 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. These savings could offset LSS and ministry costs to provide the service.

These figures include only a portion of the savings anticipated from a video bail model. For example, LSS was unable to get the data needed to estimate the possible savings from a reduction in transport costs and sheriff custody staffing, which are anticipated to be significant. Other indirect savings would take further research to quantify, and some important benefits to the system and to clients may not be quantifiable.

Increasing the use of video bail will not eliminate the need for in-person hearings. Live hearings are better when dealing with clients who have mental health issues, are culturally or emotionally vulnerable, or have language barriers. Live hearings are also better for dealing with unexpected issues.

There also must be systemic awareness that this model downloads work onto other agencies. For example, a reduction in the number of prisoner transports by sheriffs means a concomitant increase in the number of prisoner escorts to and from the video room by police. We reduced our estimate of savings from reduced incarceration time by 25% to take into account a potential increase in police costs, as found in the evaluation of the Peace region pilot. This number was used for estimate purposes only and further analysis is required.

3.5 Alternative non-government revenue sources

Current funding sources

In 2011/2012, LSS received 93% of its revenue from the Ministry of Justice. The remaining 7% came from non-government sources including the Law Foundation and the Notary Foundation. As noted in Part 2, both foundations depend on interest rates for their own revenues and have seen significant decline in their own incomes. The Law Foundation provides LSS with a discretionary grant each year. The Notary Foundation is required by statute to give LSS 55% of its revenue.

⁷² Malatest, *Evaluation of the Bail Reform Pilot Project*.

Alternative funding sources

The table below describes various alternative funding sources. It is LSS’s opinion that none of these options provide a predictable, stable income of sufficient amount to warrant pursuing. Most options require another organization or the government to give up an existing revenue stream.

LSS has, however, identified one source of new revenue that may warrant further investigation – a small surcharge on fines collected by the Ministry of Justice. This could provide a stable source of revenue within the control of the Ministry of Justice and, unlike a surcharge on court filing fees (as noted below), would not create an additional barrier to access to justice. Further research is required to determine the number and type of fines to which a surcharge could be applied and the level of revenue a surcharge might generate.

In addition, the Ministry of Justice should encourage other ministries and levels of government to fund legal aid programs where the services would have an impact on their mandate. For example, the Ministry of Children and Family Development could support mediation programs in child protection cases or the Ministry of Health could contribute to LSS services for mental health patients.

Revenue source	Comments
Increased foundation funding	<ul style="list-style-type: none"> • Subject to interest rate fluctuation. • Less money would be available for other foundation grant recipients who provide legal aid-related services.
Client contributions	<ul style="list-style-type: none"> • In 2007, LSS retained Deloitte to determine the feasibility of a client contribution program. The report concluded “it is unlikely that a client contribution program for LSS will cover all of its financial costs.”
Fundraising	<ul style="list-style-type: none"> • Common in the United States. • Revenue potential and stability unknown. • Considerable competition for scarce donations. • LSS has charitable status, but has received few donations. • Requires considerable infrastructure or consultant fees to operate. • Passive solicitation of donations on the family law website may generate a small revenue stream.
Law Society fee	<ul style="list-style-type: none"> • The Law Society currently allocates 1% (\$140,000) of its general revenue for pro bono funding. Assuming the society would agree to allocate a similar amount to legal aid, the revenue would not have a significant impact on legal aid funding.
Unclaimed lawyer trust funds	<ul style="list-style-type: none"> • Law Society rules provide that a lawyer who holds unclaimed trust funds for two years may pay the money to the Law Society. After another five years, the Law Society pays the money to the Law Foundation. • According to its annual reports, the Law Foundation receives about \$120,000 a year in unclaimed trust funds. This amount would not have a significant impact on legal aid revenues and would reduce the amount

Revenue source	Comments
	available for other foundation grant recipients.
Unclaimed class action awards	<ul style="list-style-type: none"> • Irregular and unpredictable revenue stream. • No way of determining when unclaimed funds are available. • Would require legislative amendments.
Provincial tax on legal services	<ul style="list-style-type: none"> • The previous government originally said the tax was to fund legal aid. The total amount collected is unknown, but is estimated to be approximately \$100 million. The tax is now rolled into the HST. The money has always gone into general revenue.
Court filing fees	<ul style="list-style-type: none"> • Surcharges on court filing fees have been used in some US jurisdictions to fund legal aid. • Any increase in filing fees will be a barrier to access to justice.
Proceeds of crime	<ul style="list-style-type: none"> • Revenues are already earmarked for specific purposes. Any changes would require those who currently receive the money to forgo the revenue stream.
Ad sales on the LSS and family law websites	<ul style="list-style-type: none"> • Legal aid clients are unlikely to have disposable income that would attract advertisers. • Would require significant infrastructure or expense to generate sales. • The public and the legal profession may view advertising as antithetical to the purposes of legal aid.

Conclusions and next steps

In preparing this report, we have consulted with lawyers, community service agencies, police, and other legal aid plans, and we have reviewed literature and evaluations from around the world. We have been struck by the similarity of problems across jurisdictions and by the growing consensus that focusing on outcomes will lead to a better justice system for all stakeholders.

LSS has been committed to an outcomes-focused justice system for several years and that commitment remains unchanged. In this report, we have set out a framework for effective justice reform rooted in fundamental principles and we have recommended a number of specific innovations that support a necessary system-wide shift in focus from court process to individual and system outcomes. We have also provided our analysis, based on available data, of the potential savings to the broader justice system for six of our recommendations.

The real and substantial reforms called for in the Green Paper are necessary and LSS is fully prepared to contribute to building a better justice system. In addition to our operational and management expertise, we have valuable experience with pilot projects, outcomes-focused evaluations, and implementation of new services. We also have access to community and lawyer networks that are essential to the success of any reforms.

More detailed research is essential before full implementation of our proposals. This can best be done through pilot projects and evaluations to test the underlying assumptions of our recommendations and to gather better data on service costs and savings, and impact on client outcomes.

The criminal law initiatives that our preliminary analysis suggests will provide the greatest benefits in terms of outcomes for clients and quantifiable and unquantifiable savings to the justice system are expanded duty counsel services in high volume locations. Next are video and telephone bail, and early resolution referrals and tariff initiatives.

Increasing family law services to address public needs and to support recent legislative changes to family relations laws should also be a priority. Given the scarcity of resources in the family justice system it will be especially important to collaborate with agencies such as the Family Justice Services Division of the Ministry of Justice to plan and implement new or expanded service options. As well, to ensure the right resources are aligned with the most appropriate activities, training and skill development will be important considerations.

Another priority should be the addition of non-lawyer service providers to assist criminal and family duty counsel and to support efficiencies elsewhere in the justice system.

The first stage in pursuing any of these initiatives will be to review Ministry of Justice data and operating assumptions along with the ministry's justice reform priorities and our own data. With that information, LSS would be in a position to develop the requisite project charters, budgets, and work plans to support

effective implementation of the pilot projects. The timelines for these initiatives would be determined by the availability of resources to support them.

Successful reform requires the active commitment of all justice system partners to shared goals and measurable targets, and a collaborative approach to meeting them. Real reform as outlined in this paper will also require new investments in legal aid or reallocating funds within the justice system to support reform initiatives. This will ensure LSS has the capacity to work on new initiatives while maintaining its ongoing operations. Justice system savings generated by any enhancements to legal aid services can be measured and redirected to LSS to offset some of the costs of service enhancements. As most savings will be in avoided future costs, tracking the inputs, outputs, and outcomes of piloted services or system changes will be critical to quantifying results to ensure any dollars saved can be reallocated to the most effective projects.

Reform initiatives need start-up investment. Many approaches that support better outcomes may cost more upfront than current services and will require ongoing funding increases. Anticipated savings from services that help people achieve early resolutions and avoid future problems may be measured in reduced public spending on services outside the justice system, such as healthcare, or may be unquantifiable. These savings will always be difficult to link directly with the services provided, but provide an overall public benefit.

As noted, however, implementing an outcomes-focused justice system will require strong leadership that might best be delivered through a dedicated Reform Secretariat. LSS is prepared to take an active role in ongoing justice reform discussions and to make justice work for all British Columbians.

Consultations

1. Formal consultations

- LSS local agents, Vancouver, February 24, 2012
- Lead family duty counsel and Family LawLINE lawyers, Vancouver, March 30, 2012
- LSS Criminal Tariff Advisory Committee, Vancouver, April 12, 2012
- LSS Family Tariff Advisory Committee, Vancouver, April 25, 2012
- Public consultation with Geoffrey Cowper, QC, Kelowna, May 3, 2012

2. Informal consultations

- Members of the legal aid bar
- Legal Aid Alberta
- Legal Aid Ontario
- LSS staff
- Geoffrey Cowper, QC

3. Written submissions

LSS solicited input from its staff, local agents and community partners, legal aid lawyers, The Trial Lawyers Association of BC, The Canadian Bar Association (BC Branch), The Law Society of BC; BC Crown Counsel Association, the Chief Judge of the Provincial Court, The Coalition for Public Legal Services, and Access Pro Bono.

We received submissions from:

- The Canadian Bar Association (BC Branch)
- The Coalition for Public Legal Services
- Alan M. Gaudette, lawyer, Coldstream
- Alexandra Haines, legal secretary, LSS, Vancouver
- David Dickinson, LSS community partner, Gitanmaax
- Donald J. McKay, lawyer, Victoria
- Fred Nudel, lawyer, Abbotsford
- Glen Ewan, QC, lawyer, Golden
- Jeanette Cohen, lawyer, Surrey
- Natasha Del Bianco, lawyer, Surrey
- Samiran P. Lakshman, lawyer (Crown counsel), Vancouver

Bibliography

Legislation

Legal Services Society Act, S.B.C. 2002, c.30.

www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02030_01.

Case law

R. v. Bacon, 2011 BCSC 135. www.courts.gov.bc.ca/jdb-txt/SC/11/01/2011BCSC0135.htm.

Reports, evaluations, academic articles

American Bar Association Consortium on Legal Services and the Public. *Legal Needs and Civil Justice: A Survey of Americans: Major Findings from the Comprehensive Legal Needs Study*. Chicago: American Bar Association, 1994.

www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf.

Boland, K. *Domestic Violence Courts in British Columbia: What Are They and Are They Needed?* Vancouver: Domestic Violence and Criminal Harassment Unit of the Vancouver Police Department, 2002. www.domesticpeace.ca/documents/DomesticViolenceCourtsinBC.doc.

Buckley, Melina. "Access to Legal Services in Canada: A Discussion Paper." (unpublished, April 2011).

———. *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches*. Ottawa: Canadian Bar Association, 2010. www.cba.org/cba/Advocacy/PDF/CBA_Legal_Aid_Renewal_Paper.pdf.

Citizens Advice. "Towards a Business Case for Legal Aid." Paper to the Legal Services Research Centre's Eighth International Research Conference, London, UK, July 2010.

www.citizensadvice.org.uk/towards_a_business_case_for_legal_aid.pdf.

Civil Justice Reform Working Group. *Effective and Affordable Civil Justice: Report of the Civil Justice Reform Working Group to the Justice Review Task Force*. Victoria: BC Justice Review Task Force, 2006.

www.bcjusticereview.org/working_groups/civil_justice/cjrwg_report_11_06.pdf.

Currie, Ab. "Legal Problems of Everyday Life." In *Access to Justice, The Sociology of Crime, Law and Deviance*, edited by Rebecca Sanderfur. Bingley, UK: Emerald Group Publishing, 2009.

———. *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians*. Ottawa: Department of Justice Canada, 2009.

www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07_la1-rr07_aj1/index.html.

———. *Riding the Third Wave: Rethinking Criminal Legal Aid Within an Access to Justice Framework*. Ottawa: Department of Justice Canada, 2004. www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_5/p1.html.

———. *The Unmet Need for Criminal Legal Aid: A Summary of Research Results*. Ottawa: Department of Justice Canada, 2003. www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la9-rr03_a9/rr03_la9.pdf.

Currie, Ab and Karen Hudson. *Not Just a Substitute for Full Service: Expanded Duty Counsel in Nova Scotia*. (unpublished, no date).

Dandurand, Yvon. *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review*. Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy, 2009. www.icclr.law.ubc.ca/files/2009/InefficienciesPreliminaryReport.pdf.

Diamond, Shari Seidman, Locke Bowman, Manyee Wong, and Matthew Patton. "Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions." *Journal of Criminal Law & Criminology* 100:3 (Summer 2010): 869 – 902. www.law.northwestern.edu/jclc/backissues/v100/n3/1003_869.Diamond.pdf.

Doob, Anthony. "Bail and Remand: One Problem or Two?" Toronto: University of Toronto, Centre for Criminology and Sociolegal Studies, Discussion Paper, January 4, 2012.

Doust, Leonard T., QC. *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia*. Vancouver: BC Public Commission on Legal Aid, 2011. www.publiccommission.org/media/PDF/pcla_report_03_08_11.pdf.

Family Justice Reform Working Group. *A New Justice System for Families and Children*. Victoria: BC Justice Review Task Force, 2005. www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf.

Focus Consultants. *An Evaluation of Family Legal Services of the Legal Services Society: Final Report*. Vancouver: Legal Services Society, 2012. www.legalaid.bc.ca/assets/aboutUs/reports/familyServices/familyLegalServicesEvaluation.pdf.

———. *An Evaluation of Family Services of the Legal Services Society: Final Report*. Vancouver: Legal Services Society, 2006. www.legalaid.bc.ca/assets/aboutUs/reports/familyServices/evaluationofFamilyServicesReport.pdf.

———. *Evaluation of the Expanded Family Duty Counsel Project (Robson Street Court House): Final Report*. Vancouver: Legal Services Society, 2004. www.legalaid.bc.ca/assets/aboutUs/reports/familyServices/evaluationFDCProject.pdf.

———. *Evaluation of the Family Duty Counsel Project in Six Provincial Sites: Final Report*. Vancouver: Legal Services Society, 2004. www.legalaid.bc.ca/assets/aboutUs/reports/familyServices/evaluationFDCSixProvSites.pdf.

- . *Dispute Resolution Longitudinal Study, Phase 3: Final Report*. Victoria: BC Ministry of Attorney General, 2008. www.ag.gov.bc.ca/justice-services/publications/fjsd/dispute-resolution/LongitudinalFinalReport.pdf
- Genn, Hazel. *Judging Civil Justice*. Cambridge: Cambridge University Press, 2010.
- . *Paths to Justice: What People Do and Think About Going to Law*. Oxford: Hart Publishing, 1999.
- Hornick, Joseph, Michael Boyes, Leslie Tutty, and Leah White. *The Domestic Violence Treatment Option (DVTO), Whitehorse, Yukon: Final Evaluation Report*. Calgary: Canadian Research Institute for Law and the Family, 2005. people.ucalgary.ca/~criif/publications/Final_Outcome_Analysis_Report.pdf.
- Kemp, Dr. Vicky. *Transforming Legal Aid: Access to Criminal Defence Services*. London, UK: Legal Services Commission, 2010. www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2010/TransformingCrimDefenceServices_29092010.pdf.
- KPMG. *Family Dispute Resolution Services in Legal Aid Commissions: Evaluation Report*. Australia: Attorney-General's Department, 2008. www.legalaid.nsw.gov.au/_data/assets/pdf_file/0016/5434/FDR-Evaluation-Report.pdf.
- Landau, Dr. Barbara, Tom Dart, Heather Swartz, and Joyce Young. *Submission to Attorney General Chris Bentley: Creating a Family Law Process That Works: Final Report and Recommendations from the Home Court Advantage Summit*. Ontario, November 2009. www.oba.org/en/pdf/011-0022_Family%20Law%20Process%20Reform%20Report_final_web.pdf.
- Lawrence, Austin, Jennifer Nugent, and Cara Scarfone. *The Effectiveness of Using Mediation in Selected Civil Law Disputes: A Meta-Analysis*. Ottawa: Department of Justice Canada, 2008. www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07_3/index.html.
- Legal Aid Alberta. *LAA Criminal Expanded Duty Counsel Report*. (unpublished internal evaluation, September 24, 2011).
- Legal Aid Alberta. *2009 Legal Aid Alberta Review*. Edmonton: Legal Aid Alberta, 2009. www.legalaid.ab.ca/about/Documents/LAA%20Review-Final%20Report%20November%2020.pdf.
- . *2011 Annual Report: A New Approach to Service Delivery*. Edmonton: Legal Aid Alberta, 2011. www.legalaid.ab.ca/media/Documents/AR.2011-%20FINAL%20VERSION%20w%20Cover.pdf.
- . *Telebail Pilot Project Report*. (unpublished, April 22, 2008).
- Legal Services Society. *Legal Services Society Service Plan 2003/2004 – 2005/2006*. Vancouver: Legal Services Society, 2002. www.legalaid.bc.ca/assets/aboutUs/reports/servicePlans/servicePlan2003.pdf.
- . *Managing for Results: LSS Tariff Renewal — Report*. Vancouver: Legal Services Society, 2005. www.legalaid.bc.ca/assets/aboutUs/reports/lawyers/managingResultsTariffReviewReport2005.pdf.

LeSage, the Honourable Patrick J. and Professor Michael Code. *Report of the Review of Large and Complex Criminal Case Procedures*. Ontario: Ontario Ministry of the Attorney General, 2008. www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/lesage_code_report_en.pdf.

Malatest & Associates Ltd. *Comprehensive Child Support Services Pilot Project: Formative Evaluation (Final Report)*. Victoria: BC Ministry of Attorney General, 2002. www.ag.gov.bc.ca/justice-services/publications/fjsd/ccss/FinalReport.pdf.

———. *Evaluation of the Bail Reform Pilot Project: Peace Region and Surrey: Final Evaluation Report*. Victoria: BC Criminal Justice Reform Secretariat, 2010. www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/bail_reform/docs/brp_evaluation.pdf.

———. *Evaluation of the Family Justice Registry (Rule 5) Pilot Project: Final Report*. Victoria: BC Ministry of Attorney General, 2002. www.ag.gov.bc.ca/justice-services/publications/fjsd/registry/FinalReport.pdf.

———. *Evaluation of the Family Justice Registry (Rule 5) Pilot Project: Final Report (Addenda)*. Victoria: BC Ministry of Attorney General, 2002. www.ag.gov.bc.ca/justice-services/publications/fjsd/registry/Addenda.pdf.

Malcolmson, John and Gayla Reid. *BC Supreme Court Self-Help Information Centre Final Evaluation Report*. Vancouver: BC Supreme Court Self-Help Information Centre, 2006. justiceeducation.ca/themes/framework/documents/SHC_Final_Evaluation_Sept2006.pdf.

McBurney, Meredith. *Innovative Fundraising Ideas for Legal Services — 2004 Edition*. Chicago: American Bar Association, 2004. www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/innovatefund2004.athcheckdam.pdf.

McEown, Carol. *Civil Legal Needs Research Report*. Vancouver: Law Foundation of BC, 2009. www.lawfoundationbc.org/wp-content/uploads/Civil-Legal-Needs-Research-FINAL.pdf.

McHale, Jerry M., Irene Robertson, and Andrea Clarke. “Building a Child Protection Mediation Program in British Columbia.” *Family Court Review* 47:1 (January 2009): 86 – 97. www.ag.gov.bc.ca/child-protection-mediation/documents/build-cpm.pdf.

McLachlin, Chief Justice Beverley, keynote address presented at the Access to Civil Justice for Middle Income Canadians Colloquium, Toronto, ON, February 11, 2011. Recording available at www.law.utoronto.ca/news/there-no-justice-without-access-justice-chief-justice-beverley-mclachlin.

Ministry of Attorney General. *2010/11 Annual Service Plan Report*. Victoria: BC Ministry of Attorney General, 2011. www.bcbudget.gov.bc.ca/Annual_Reports/2010_2011/pdf/ag.pdf.

———. *Comprehensive Child Support Services Pilot Project: Formative Evaluation Summary*. Victoria: BC Ministry of Attorney General, 2002. www.ag.gov.bc.ca/justice-services/publications/fjsd/ccss/Summary.pdf.

———. *Evaluation of the Family Justice Registry (Rule 5) Pilot Project: Summary*. Victoria: BC Ministry of Attorney General, 2002. www.ag.gov.bc.ca/justice-services/publications/fjsd/registry/Summary.pdf.

———. *Evaluation of the Family Mediation Practicum Project*. Victoria: BC Ministry of Attorney General, 2005. www.ag.gov.bc.ca/dro/publications/reports/EvaluationFMPP.pdf.

———. *Mandatory Parenting after Separation Pilot: Final Evaluation Report*. Victoria: BC Ministry of Attorney General, 2000. www.ag.gov.bc.ca/dro/publications/reports/parenting-after-separation.pdf.

Ministry of Attorney General and Ministry of Public Safety and Solicitor General. *Downtown Community Court in Vancouver: Interim Evaluation Report*. Victoria: BC Ministry of Attorney General and Ministry of Public Safety and Solicitor General, 2010.

www.criminaljusticereform.gov.bc.ca/en/reports/pdf/interimevaluation.pdf.

Ministry of Finance. *Review of the Provincial Justice System in British Columbia*. Victoria: BC Ministry of Finance, 2011. www.ag.gov.bc.ca/public/JusticeSystemReview.pdf.

Ministry of Justice. *2012/2013 – 2014/2015 Service Plan*. Victoria: BC Ministry of Justice, 2012.

www.bcbudget.gov.bc.ca/2012/sp/pdf/ministry/jag.pdf.

Minister of Justice and Attorney General. *Modernizing British Columbia's Justice System: Green Paper*. Victoria: BC Ministry of Justice, 2012. www.ag.gov.bc.ca/public/JusticeSystemReviewGreenPaper.pdf.

Mossman, Mary Jane, Karen Schucher, and Claudia Schmeing. "Comparing and Understanding Legal Aid Priorities." A paper prepared for Legal Aid Ontario, April 2009.

www.aclco.org/public_docs/legalaidpriorities.pdf.

National Legal Aid. *A New National Policy for Legal Aid in Australia*. Hobart, TAS: National Legal Aid, 2007. www.lsc.sa.gov.au/cb_pages/images/A%20New%20National%20Legal%20Aid%20Policy.pdf.

Native Women's Association of Canada. "Aboriginal Women and the Legal Justice System in Canada: An Issue Paper." Prepared for the National Aboriginal Women's Summit, Corner Brook, NL, June 2007.

www.laa.gov.nl.ca/laa/naws/pdf/nwac-legal.pdf.

Prairie Research Associates Inc. *Evaluation of the Family Law Extended Duty Counsel Pilot Projects: Final Report*. Toronto: Legal Aid Ontario, 2002.

http://www.legalaid.on.ca/en/publications/downloads/report_EDCevaluation_02oct.pdf.

PriceWaterhouseCoopers. *Economic Value of Legal Aid: Analysis in Relation to Commonwealth Funded Matters with a Focus on Family Law*. Australia: National Legal Aid, 2009.

www.legalaidact.org.au/pdf/economic_value_of_legalaid.pdf.

Provincial Court of British Columbia. *Justice Delayed: A Report of the Provincial Court of British Columbia Concerning Judicial Resources*. Vancouver: Provincial Court of BC, 2010.

www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_

[A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf](http://www.provincialcourt.bc.ca/downloads/pdf/Justice_Delayed_-_A_Report_of_the_Provincial_Court_of_British_Columbia_Concerning_Judicial_Resource.pdf).

Quann, Nathalie. *Offender Profile and Recidivism among Domestic Violence Offenders in Ontario*. Ottawa: Department of Justice Canada, 2006. www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_fv3-rr06_vf3/rr06_fv3.pdf.

Reid, Chief Judge M.R., et al. *Report of the Task Force on Criminal Justice Efficiencies*. St John's, NL: Newfoundland & Labrador Department of Justice, 2008. www.justice.gov.nl.ca/just/publications/report_on_criminal_justice_efficiencies.pdf.

Reid, Gayla, Donna Sennix, and John Malcolmson. *Developing Models for Coordinated Services for Self-Representing Litigants: Mapping Services, Gaps, Issues and Needs*. Vancouver: Law Courts Education Society, 2004. justiceeducation.ca/themes/framework/documents/srl_mapping_repo.pdf.

Steering Committee on Justice Efficiencies and Access to the Justice System. *The Final Report on Early Case Consideration of the Steering Committee on Justice Efficiencies and Access to the Justice System*. Ottawa: Department of Justice Canada, 2006. www.justice.gc.ca/eng/esc-cde/ecc-epd/toc-tdm.html.

———. *Guiding Principles for Effective Case Management*. Ottawa: Department of Justice Canada, 2005. canada.justice.gc.ca/eng/esc-cde/eff.pdf.

———. *Report on the Self-represented Accused*. Ottawa: Department of Justice Canada, 2010. canada.justice.gc.ca/eng/esc-cde/accuse.pdf.

Street Crime Working Group. *Beyond the Revolving Door: A New Response to Chronic Offenders*. Victoria: BC Justice Review Task Force, 2005. www.bcjusticereview.org/working_groups/street_crime/scwg_report_09_29_05.pdf.

Suleman, Zara. *Not with a Ten-Foot Pole: Law Students' Perceptions of Family Law Practice*. Vancouver: West Coast LEAF, 2009. www.westcoastleaf.org/userfiles/file/Not%20with%20a%20ten%20foot%20pole.pdf.

Synovate. *LSS 2010 Tariff Lawyer Satisfaction Survey*. Vancouver: Legal Services Society, 2010. www.legalaid.bc.ca/assets/aboutUs/reports/lawyers/tariffLawyerSatisfactionSurvey2010.pdf.

Tata, Cyrus. "In the Interests of Clients or Commerce? Legal Aid, Supply, Demand and 'Ethical Indeterminacy' in Criminal Defence Work." *Journal of Law and Society* 34:4 (December 2007): 489 – 519.

Tata, Cyrus and Frank Stephen. "'Swings and Roundabouts': Do Changes to the Structure of Legal Aid Remuneration Make a Real Difference to Criminal Case Management and Case Outcomes?" *Criminal Law Review* (August 2006): 722 – 741.

Toope, Professor Stephen J. *British Columbia Public Service Indemnity Policy Review*. Vancouver: BC Ministry of Attorney General, 2011. www.ag.gov.bc.ca/public/Toope_Report_10_19_11.pdf.

Trebilcock, Michael. *Report of the Legal Aid Review 2008*. Ontario: Ontario Ministry of the Attorney General, 2008. www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/legal_aid_report_2008_EN.pdf.

University of Toronto Faculty of Law. *Middle Income Access to Civil Justice Initiative: Background Paper*. Toronto: University of Toronto Faculty of Law, 2011.

www.law.utoronto.ca/documents/conferences2/AccessToJustice_LiteratureReview.pdf.

Walkem, Ardith. *Building Bridges: Improving Legal Services for Aboriginal Peoples*. Vancouver: Legal Services Society, 2007. www.legalaid.bc.ca/assets/aboutUs/reports/legalAid/buildingBridges_en.pdf.

Webster, Cheryl Marie. "Out of sight, out of mind: A case study of bail efficiency in an Ontario video remand court." *Current Issues in Criminal Justice* 21:1 (July 2009): 103 – 126.

Webster, Cheryl Marie, Anthony Doob, and Nicole Myers. "The Parable of Ms Baker: Understanding Pre-Trial Detention in Canada." *Current Issues in Criminal Justice* 21:1 (July 2009): 79 – 102.

Zorza, Richard. "Access to Justice: The Emerging Consensus and Some Questions and Implications." *Judicature* 94:4 (January/February 2011): 156 – 167. www.zorza.net/Judicature-Consensus.pdf.

News releases, newspaper and newsletter articles, letters, websites

"Annual Reports," Law Foundation of British Columbia website. www.lawfoundationbc.org/annual-report-index/.

"Annual Reports and Service Plans," Legal Services Society website. www.legalaid.bc.ca/about/annualReports.php.

British Columbia Ministry of Justice and Attorney General, "Further Action on Justice Reform Launched — Backgrounder 4: Legal Aid Services Review," news release, February 8, 2012. www.newsroom.gov.bc.ca/2012/02/further-action-on-justice-reform-launched.html.

"Court Case Management Program," Alberta Courts Provincial Court website. www.albertacourts.ab.ca/ProvincialCourt/CourtCaseManagement/tabid/331/Default.aspx

"Criminal Justice Reform," BC Ministry of Justice and BC Ministry of Children and Family Development. www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/index.html.

"Current Projects: Modelling in Criminology: The Criminal Justice System," Simon Fraser University Complex Systems Modelling Group. csmg.irmacs.sfu.ca/current-projects.

"Fact Sheets: How is Legal Aid Ontario Funded?" Legal Aid Ontario website. www.legalaid.on.ca/en/about/fact_funding.asp.

The Honourable Shirley Bond to E. David Crossin, QC, no date, and E. David Crossin, QC, to the Honourable Shirley Bond, February 10, 2012. www.legalaid.bc.ca/assets/media/newsReleases/letterFromAGFeb2012.pdf.

"Justice BC Dashboards - BETA," Justice BC website (BC Ministry of Justice and BC Ministry of Children and Family Development), <https://justicebcdashboard.bimeapp.com/players/beta/jbc>, and data sets downloaded from "Data BC" website (Government of BC), www.data.gov.bc.ca/dbc/index.page (accessed May 2012).

“Justice on Target,” Ontario Ministry of the Attorney General website.
www.attorneygeneral.jus.gov.on.ca/english/jot/default.asp.

“Justice Reform,” BC Ministry of Justice website. www.ag.gov.bc.ca/justice-reform/index.htm.

Legal Aid Alberta website. www.legalaid.ab.ca/Pages/default.aspx.

Legal Aid Manitoba website. www.legalaid.mb.ca/.

Legal Aid Nova Scotia website. nslegalaid.ca/.

Legal Aid Ontario website. www.legalaid.on.ca/en/.

Lowe, Diane. “What Does the Public Really Want from Their Lawyers and from the Justice System?” *BarTalk* 17, no. 5 (October 2005). www.cba.org/bc/bartalk_01_05/10_05/guest_lowe.aspx.

Makin, Kirk. “Access to justice becoming a privilege of the rich, judge warns.” *Globe and Mail*, February 11, 2011. www.theglobeandmail.com/news/national/access-to-justice-becoming-a-privilege-of-the-rich-judge-warns/article1903108.

Nursall, Kim and Neal Hall. “‘Lay litigants’ add to delays in B.C. courts. Study finds as many as 80 per cent of people going solo in the legal system”, *Vancouver Sun*, June 5, 2012.
www.vancouversun.com/litigants+delays+courts/6731227/story.html.

“Publications,” Law Foundation of British Columbia website. www.lawfoundationbc.org/reports-papers.

“Representing Yourself in a Legal Process,” Dr. Julie Macfarlane’s research project website.
<http://representing-yourself.com/>.

“Research and Publications,” BC Ministry of Justice website. www.ag.gov.bc.ca/dro/publications.

“Service and Program Evaluations,” Legal Services Society website.
www.legalaid.bc.ca/about/evaluations.php.

“Submissions,” Legal Services Society website. www.legalaid.bc.ca/about/submissions.php.

“Tariff & Billing,” Legal Aid Ontario website. www.legalaid.on.ca/en/info/tariff_billing.asp.

Trial Lawyers Association of British Columbia. “Trial Lawyers Association of British Columbia: Second Phase of Service Withdrawals Set to Take Effect Across BC,” news release, January 31, 2012.
www.marketwire.com/press-release/-1613516.htm.

Technical Notes

The following two tables outline the calculation of the potential savings from LSS’s proposed initiatives for justice reform provided in part 3.

TABLE 1 – PROPOSED CRIMINAL SERVICES: Expanded criminal duty counsel and Video/telephone bail				
Category of benefits	Assumptions/Data inputs	Derived values	Source of data	Calculation
Appearances avoided –Expanded criminal duty counsel	Total appearances Provincial Criminal Court—5-year average: 619,531 Total new cases BC Provincial Criminal Court—5-year average: 103,527	Average # appearances in Provincial Court: 5.98 per case (619,531 appearances/103,527 cases)	Justice BC Dashboards	Reduced # appearances in appearances x average time per appearance x cost per hour x 1000 cases †
	Total BC Provincial Court hours—5 year average: 74,088 hours	Average time per appearance: 7.2 minutes (74,088 hours/619,531 appearances)	Justice BC Dashboards	
	Estimated a possible range of reduction in appearances by comparing BC average appearances to results from assessment of Nova Scotia expanded duty counsel.	High reduction: 4.2 Medium reduction: 1.59 Low reduction: 0.60	Currie and Hudson, <i>Not Just a Substitute for Full Service: Expanded Duty Counsel in Nova Scotia.</i>	
		Court costs per hour—staffing: \$638	Criminal Justice Branch (CSB)*	
Reduced time to resolution-- Expanded criminal duty counsel	BC Provincial Court average time to conclusion Criminal Adult: 78 days Assumed average time incarcerated is 1% of time to conclusion.	Average time incarcerated: 0.78 days	Justice BC Dashboards	Reduced time incarcerated x cost per day x 1000 cases
	Assumed reduction in incarceration time proportionate to range of reductions in appearances	High reduction: 70.2% Medium reduction: 26.26 % Low reduction: 10%		
	470 inmates cost \$31 million per year	Cost of incarceration per day	Ministry of Finance.	

TABLE 1 – PROPOSED CRIMINAL SERVICES: Expanded criminal duty counsel and Video/telephone bail

Category of benefits	Assumptions/Data inputs	Derived values	Source of data	Calculation
	at per diem rate	per inmate: \$181 (cost per year/365/ # inmates)	<i>Review of the Provincial Justice System in British Columbia, 22</i>	
Appearances avoided— Video/telephone bail	Average # bail appearances per case pre-Peace Region bail reform pilot: 1.59 Average # bail appearances per case during Peace Region bail reform pilot: 1.36	Average reduction in bail appearances per case: 0.2	Malatest & Associates Ltd., <i>Evaluation of the Bail Reform Project</i>	Average reduction in appearances x average time per appearance x court costs per hour x 1000 cases
		Average time per appearance: 7.2 minutes (see above)	Justice BC Dashboards	
	Assumed decrease in number of cases that do not proceed to bail hearings due to increase in release decisions made by police (based on Peace Region bail reform evaluation results).	Decrease in # cases proceeding to bail hearings: 4.0%	Malatest & Associates Ltd., <i>Evaluation of the Bail Reform Project.</i>	
		Court costs per hour—staffing: \$638	Criminal Justice Branch (CSB)*	
Substitution of Justice of Peace/Justice Services Centre for judges/JJPs and court rooms— Video/telephone bail	Estimated change in proportion of hearings by JJPs and JPs vs. judges (based on Peace Region bail reform evaluation results).		Malatest & Associates Ltd., <i>Evaluation of the Bail Reform Project.</i>	% increase in JJPs and JPs vs. Judges x difference in cost
		Court costs per hour for JJP, JP, Judge	CSB	
Reduced incarceration time—	Average time to bail decision pre-Peace Region bail reform pilot: 3.97	Reduced days incarcerated per case: 1.716 days	Malatest & Associates Ltd.,	Reduced days incarcerated x cost

TABLE 1 – PROPOSED CRIMINAL SERVICES: Expanded criminal duty counsel and Video/telephone bail

Category of benefits	Assumptions/Data inputs	Derived values	Source of data	Calculation
Video/telephone bail	days Reduction in average time to bail decision during Peace Region bail reform pilot: 44%		<i>Evaluation of the Bail Reform Project</i>	per day x 1000 cases (offset by police costs—see below)
		Cost of incarceration per day: \$181 (see above)	Ministry of Finance. <i>Review of the Provincial Justice System in British Columbia, 22</i>	
	Assumed increased costs to police due to prisoners spending more time in detachments (based on Peace Region bail reform evaluation results)		Malatest & Associates Ltd., <i>Evaluation of the Bail Reform Project</i>	Incarceration savings lowered by 25% to account for increased police expenditures
Offsets to savings— Video/telephone bail	Increase in videoconferencing hours = 163 hours	Videoconferencing costs per hour: \$65	CSB	hourly cost x # hours
†1000 cases used for comparison purposes only				
*Internal cost estimates of judicial, administrative and prosecutorial services provided by Court Services Branch (CSB) of the Ministry of Justice to LSS for consistency with and comparability to CSB assessments of Ministry of Justice structure, program and initiative alternatives.				

TABLE 2 – PROPOSED FAMILY SERVICES—Community-based advice clinics, unbundled referrals, mediation referrals, LIOWs

Category of benefits	Assumptions/Data inputs	Derived values	Source of data	Calculation
Avoided court hours through diversion—all services	Estimated proportion of cases diverted for each service based on the methodology used by Justice Services Branch in estimating the savings yielded by their family mediation services and LSS’s assessment of the impact of our proposed service.		Ministry of Finance. <i>Review of the Provincial Justice System in British Columbia, 25</i> ; discussions with Ministry of Justice; review of ministry evaluations of family justice services	1000 cases x % diverted x hours avoided x cost per hour
	Total Provincial Court Hours—5-year average: 18,850 Total new Provincial Court Family cases/year—5-year average: 11,650	Average court hours per Provincial Court family case: 1.62 (18,950 hours/11,650 cases)	Justice BC Dashboards	
	Provincial Court costs per hour: \$463		Criminal Justice Branch (CSB)*	
Shortened case length through narrowing of issues—all services	Estimated the percent reduction in court time on cases not diverted based on the methodology used by Justice Services Branch in estimating the savings yielded by their family mediation services and LSS’s assessment of the impact of our proposed service.	See average court hours and costs above	Ministry of Finance. <i>Review of the Provincial Justice System in British Columbia, 25</i> ; discussions with Ministry of Justice; review of ministry evaluations of family justice services	# cases remaining x % narrowed x hours avoided x cost per hour

†1000 cases used for comparison purposes only

*Internal cost estimates of judicial, administrative and prosecutorial services provided by Court Services Branch (CSB) of the Ministry of Justice to LSS for consistency with and comparability to CSB assessments of Ministry of Justice structure, program and initiative alternatives.

Acknowledgements

Project owner:

- Mark Benton, QC, Legal Services Society, Executive Director

Project managers and report authors:

- Brad Daisley, Legal Services Society, Manager, Communications and General Counsel
- Kathryn Spracklin, Legal Services Society, Manager, Strategic Planning and Policy

Researchers:

- Tami Friesen, lead researcher
- Michael Smith, researcher
- Rochelle Appleby, researcher
- Gayla Reid, researcher
- Carol McEown, researcher
- Graham Spencer, financial analyst
- George Macauley, financial analyst

Editor:

- Winnifred Assmann, Legal Services Society, Senior Technical Writer/Editor