

Legal Services Society (LSS) Submission

to the Select Standing Committee on Finance and Government Services

Recommendations

1. That the government continue to pursue the development of integrated justice, health and social services by ensuring there is a co-ordinated budgeting process that provides sufficient resources in all ministries to support these innovations.
2. That the provincial government plan for a core funding increase for legal aid by 2010 to sustain successful innovations.

Introduction: What's next for legal aid in BC

The Legal Services Society (LSS) is an independent, but publicly funded and publicly accountable organization established by the *Legal Services Society Act* to provide legal aid in BC.¹

Since 2002, LSS has emphasized providing clients with services that are proportionate to their needs and that are most likely to help them achieve early and lasting resolutions to their legal problems (services range from legal information or advice to legal representation). This emphasis is consistent with the government's agenda for justice reform.

Our work has resulted in innovations such as legal advice services over the telephone (LawLINE) and at family court (Family Duty Counsel). We have learned important lessons from these programs, which began as limited services when reduced funding restricted how we could help clients. Thorough evaluations show that limited services that actively involve clients in resolving their issues can get excellent results and early, enduring, and valued resolutions. For example, last year a survey of family clients, many of whom had used a combination of legal aid services, found the overall resolution rate for matters completed at the time of the interviews was over 80%. It also found that 85% of resolved issues remained resolved and that clients were mostly or entirely satisfied with the outcome for 77% of all resolved issues.

We now plan to build on what we've learned by developing a more holistic approach to resolving our clients' legal problems. This is consistent with the principle in section 9(2) of the *LSS Act* that directs the society, in pursuing its mandate, to "co-ordinate legal aid with other aspects of the justice system and with community services."

Legal Aid Renewal

Legal Aid Renewal means ensuring the society's programs in all areas of law benefit clients. Beyond ensuring the justice system provides fair process, this involves developing concrete steps to ensure legal aid services:

- help clients reach positive, lasting solutions to their legal problems;
- form part of a holistic approach to meeting clients' overall needs in a broad social context;

¹ The society's mandate is to:

- help people resolve their legal problems and facilitate access to justice,
- establish and administer an effective and efficient system for providing legal aid in BC, and
- provide advice to the Attorney General respecting legal aid and access to justice for people in BC.

The guiding principles for the society's work are to:

- give priority to identifying and assessing the legal needs of low income people in BC;
- consider the perspectives of both justice system service providers and the general public;
- coordinate legal aid with other aspects of the justice system and with community services; and
- be flexible and innovative in the manner in which it carries out its objects.

- encourage clients to constructively participate in solving, or avoiding, legal problems; and
- are available where, and when, clients need them.

Our priority in this work is ensuring clients benefit from our services. Over the long term, we believe Legal Aid Renewal will also contribute to stronger, healthier communities as well as savings for the justice system.

Using our reserve funds, LSS plans to implement the following Legal Aid Renewal initiatives over the next three years:

- support the community court in Vancouver (\$600,000),
- develop civil hub pilots (\$3.5 million),
- develop Aboriginal services (\$1.4 million),
- recruit and retain referral lawyers (\$3.5 million),
- build lawyers' capacity for taking a holistic approach to services (\$2.0 million), and
- establish a financial eligibility adjustment formula to maintain client volumes (cost neutral).

This work involves integrating legal aid services with other social services so we can contribute to long term resolutions that benefit clients and communities. It also involves promoting a shift within the legal profession toward preventing disputes or resolving them quickly, with rational decision making and client involvement at every step.

Different approaches to what can be accomplished will be required in different locations. What we do and where we do it will depend upon available resources, the size of the community and the willingness of other agencies to participate in programs that will permit a more integrated approach to offering services to our clients.

We will test various initiatives on a pilot project basis. Once our reserve funds are depleted, however, we will need ongoing core funding to continue providing the services that prove to be successful.

Breadth and demands of justice reform initiatives

Legal Aid Renewal is taking place in the context of widespread justice reform initiatives. For example, the BC Law Society's Unbundling Legal Services Taskforce is looking at how lawyers can offer clients discrete or limited scope legal assistance, instead of full representation in every matter. Limited scope legal services have the potential to increase access to justice for our client group.

The BC Justice Review Task Force (established in March 2002 on the initiative of the Law Society to identify reforms that will make the justice system more responsive, accessible and cost-effective) included representatives from the judiciary, the Law Society, the Canadian Bar Association and the Ministry of Attorney General. The Vancouver Community Court, Nanaimo Family Justice Services Centre and civil hubs initiatives are outcomes engendered by Task Force reports (as is the rewriting of the

Supreme Court rules to make the court easier to use). LSS is involved in these and related initiatives because they have direct and positive outcomes for our clients.

As you know, the Ministry of Attorney General, along with other justice, health and social service ministries, has embarked on a three-year plan built around the concept of early solutions and faster justice. This plan, as the Ministry of Attorney General notes, includes public institutions such as the courts, Corrections, police, administrative tribunals and LSS. In a practical sense, this means the ministry and agencies including LSS are – to quote the ministry’s website – “working to bring together integrated teams of justice, health and social service providers to deliver supports in a holistic way, build partnerships for joint solutions, update legislation and practices and take other necessary steps to improve justice services.

“The changes aim to help people find new ways of resolving disputes and doing so earlier in the process. They aim to help chronic offenders deal with the issues that push them into a life of crime. The changes will lead to a justice system that is easier to understand and use and where the time and cost needed to obtain an outcome are proportionate to the value of the problem. And they will seek to reduce and prevent crime.” (<http://www.ag.gov.bc.ca/justice-reform-initiatives/index2.htm>)

To achieve this, it is necessary to allocate funds to ensure integrated approaches to services that are currently being developed by various agencies/ministries have the necessary support to succeed and provide the anticipated benefits, such as stronger and healthier communities and systemic savings to the justice system. In short, an integrated approach to services ultimately requires an integrated approach to funding support.

Integrated approaches deliver holistic services

The society’s commitment to integrated approaches that deliver holistic services involves cooperation with government and non-government organizations (NGOs) in efforts to ensure the justice system meets the needs of individuals, families, businesses and communities in a more cost effective, timely and meaningful way.

We are committed to integrated, holistic legal services, first, because we realize from our own experience that there is a need to address underlying causes and not just symptoms. We know that many, perhaps most, of our clients have multiple legal problems or related non-legal problems that contribute to their legal issues. A recent study in Canada, in fact, found that: “Extreme stress or emotional problems were the most frequently cited impact of experiencing justiciable problems, with 36.6% indicating they had experienced a problem of this nature. This was followed by physical health problems, 23.5%, feelings of threats to one’s security and safety, 12.9%, increased consumption of alcohol or drugs, 6.4%, threatened or actual violence, 5.7% and, finally, problems with children, 5.3%.”²

²Currie, Ab, *The Legal Problems of Everyday Life*, July 2007 (p. 27):
<http://www.ua.ac.be/main.aspx?c=.ILAG2007&n=39311>

Second, a growing body of social research indicates that if these problems are approached as a whole rather than in isolated components, the person is less likely to have recurring issues and reappear within the legal system.

One demonstrated success we have had with this approach has been the partnership between the Ministry of Child and Family Development (MCFD) and LSS on the child protection mediation project. In 2003 the MCFD gave the Society a \$600,000 grant to provide leadership in alternate dispute resolution programs in the area of child protection. The outcomes have been positive and the MCFD has provided new funding to support improvements such as increasing lawyers' capacity to work effectively in the mediation process and increasing the availability of mediators, particularly in regions such as northern BC that face shortages of people who can take on this work.

Examples of other current integrated service delivery partnerships between the Ministry of Attorney General and the society include the Family Justice Services Centre in Nanaimo and the BC Supreme Court Self-Help Information Centre in Vancouver. These integrated services are a result of the alignment of government and LSS goals and strategies: both aim to provide more holistic services and to do so, we must work to break down the "silos" in which legal services have formerly been provided.

Looking ahead

Two Legal Aid Renewal projects—community court and civil hubs—involve partnerships with the Ministry of Attorney General.

Community court

Scheduled to open in Spring 2008, this is a pilot project of the ministry and the Provincial Court. It will take a problem-solving approach to crimes committed in the downtown community by integrating justice, health, and social services. LSS participation focuses on providing defence counsel services at this court.

There is a growing awareness shared by Crown counsel, defence counsel, police agencies and the judiciary that there is a common interest in helping clients resolve the issues which bring them into conflict with the law beyond the traditional emphasis on trial and sentencing.

“Benefits of the Community Court include

- **Integration:** There will be better integration among agencies who deliver services to these offenders. This will result in more effective and efficient use of justice, health and social services.
- **Efficiency:** Through efficient case management, street crime prosecutions will proceed swiftly, with fewer court appearances. This will ensure earlier case resolution, with offenders being held accountable more quickly.
- **Sentences to Address Causes of Criminal Behaviour:** Court decisions will be based on the most current information about the accused's background, criminal history and health and social service needs. Sentences will address both the crime and the underlying causes of the crime, which will have a

positive impact on changing criminal behaviour.”
(<http://www.ag.gov.bc.ca/community-court/index.htm>)

Civil hubs

These are similar to the Family Justice Services Centre recently launched in Nanaimo. In fact, the civil hub in Nanaimo, due for launch in 2008, will be co-housed with the Family Justice Services Centre (the “family hub”). We are working with the ministry to develop an implementation plan for launch of at least one other family and civil hub in the next calendar year.

A civil hub addresses people’s civil legal needs by taking the following approaches:

- Focus on meeting client needs and promoting early intervention.
- Provide a well known, easily located front door to both the civil and family justice systems.
- Support the resolution of disputes, rather than adjudication, as a priority (i.e., manage conflicts and potential disputes to resolution, not trial).
- Encourage problem-solving while reserving litigation for only the most intractable cases.

What’s especially exciting about this project is our commitment to considering clients’ overall needs—to seeing clients as whole people, whose legal problems exist in a larger context and are often linked to other issues.

The benefit to clients is that they can reach positive, lasting resolutions to their legal problems.

The benefits to the system as a whole include:

- Early identification of cases that can be resolved leaves more room in the system for the cases that need the courts.
- Enhanced communication and coordination with other justice system participants, including ministries and NGOs, result in more effective and efficient service to justice system clients.
- The end result will be fewer disputes, faster resolution and—ultimately—lower legal costs.

Services to Aboriginal people

Legal Aid Renewal includes a commitment to develop Aboriginal services. Consultations with Aboriginal stakeholders about client needs and culturally appropriate service delivery approaches for their communities were held early in 2007. Developing pilot projects drawing on recommendations from the consultations report is a high priority for the society, particularly since about 24% of our referrals are for Aboriginal people.

Solving legal problems in a less adversarial way

We are committed to ongoing “culture change” within the justice system, including the legal profession. There is an established culture, particularly in the criminal defence bar, that the role of defence counsel is to protect clients from intrusions upon their liberty by

the actions of the state. This rights-based perspective is fundamental to the criminal law and most of criminal trial procedures.

Most criminal defence lawyers, however, recognize that clients who have addictions problems, mental health problems, housing problems, limited education or other barriers need to be able to demonstrate what they are doing to resolve these issues as part of bail applications or sentencing submissions. There are many local and informal mechanisms for clients to become connected to different services which can assist clients. We know that these methods are often disconnected and routinely miss significant issues which affect the outcomes for our clients.

With the Legal Aid Renewal initiatives that focus on lawyer support and lawyer education there are opportunities: (a) to raise lawyers' awareness of the importance of an integrated approach to holistic service, and (b) to provide assistance to lawyers to enable them to identify relevant issues, provide alternate services, make appropriate referrals, and/or identify gaps in resources which would help clients resolve significant issues related to their case.

“Thinking outside the silo”

We are operating in an environment where there are numerous efforts to provide integrated approaches to holistic services. And we are seeing more collaboration and more coordination across ministries and between government and NGOs.

There are many examples of current initiatives that demonstrate “thinking outside the silo.” By way of illustration, here are a few media headlines from September 2007.

1. New legal resource for families

Nanaimo families going through divorce or separation have new resources available to help negotiate the legal system. "People come in and they're relieved once they know how the system works," said Tony Francis, manager of the Nanaimo Family Justice Services Centre. A family interviewer, two family justice counsellors, a child support officer and a legal service agent provide free information, advice and mediation. The centre also partners with the Legal Services Society to offer free legal advice. ...Attorney General Wally Oppal and Mayland McKimm of the Legal Services Society officially opened the centre Thursday. *Nanaimo News Bulletin*, Sept. 22, 2007

In practical terms, a “one-stop” front door makes sense for client access. And, as the Attorney said during the opening, how a separation is handled in the early stages will have a lasting impact on peoples' lives, especially children. As well, to quote McKimm, the project takes a client-centred approach, as opposed to the court system, which focuses on the letter of the law and confrontational cross-examination. “It's a system that focuses on finding lasting solutions. ... It's the clients that have the fundamental keys to solve their own problems.”

An added benefit to the centre is that it makes optimal use of space, with the Family Justice Division and LSS sharing the same premises.

2. Surrey unit to take on domestic violence; Police investigate while counsellors assist the victims

The Surrey RCMP and Surrey Women's Centre have established a two-member unit aimed at reducing domestic violence in the municipality, which has experienced a series of high-profile abuse cases in recent years.—*The Province* Tuesday, September 4, 2007

This new unit in Surrey is similar to successful ones in Vancouver and New Westminster, which pair an investigating officer with a counsellor from an NGO (Family Services of Greater Vancouver) to offer support, information, advocacy, referral and investigation services for victims of high-risk domestic violence cases.

Such partnerships demonstrate how organizations with different mandates and philosophies can work effectively together to offer a holistic, client-centred service.

3. Schools to be social services 'hubs'

Turning schools in low-income neighbourhoods into social services "hubs" is one of the key goals of a \$34.3-million fundraising effort kicked off Friday by the United Way. Twelve elementary and secondary schools in north Whalley, Guildford and Newton will still teach students during school hours under the initiative, but after school, kids and adults will be able to get access to libraries, health care, family counselling and immigration services. . .

"People feel more comfortable in schools," said Coventry, the assistant superintendent of the Surrey school district. "We can use those facilities and provide all these opportunities right in the community, rather than going all the way to government buildings." —*The Vancouver Sun*, Saturday, September 15, 2007

This innovation demonstrates the approach of "placing services in the path of the client" —in other words, having an easily accessible "front door." It is another demonstration of how "thinking outside the silo" could create potential economies—financial and environmental—in terms of use of space.

Budgeting when the silos are breaking down

Taking an integrated approach to legal aid services that focuses not only on immediate, but on long-term benefits to clients could help them avoid future issues, thereby reducing the burden on the justice and health/social services systems. There is, however, a risk that other health and social service agencies (for example, drug addiction recovery facilities) could have insufficient resources to provide services to LSS clients where and when needed.

In many cases, success with an integrated approach will depend upon not only our participation but that of other agencies, and on the availability of funding for ancillary services. We need, then, a budgeting process that looks beyond the walls of each ministry when allocating funding envelopes.

We need, in short, a non-siloed approach that encourages the integration of services and innovations in one area with those in another.

Future legal aid funding

To the extent that Legal Aid Renewal initiatives are supported through reserve funds, ongoing funding will have to be secured once the reserve is depleted. If the projects that flow from Legal Aid Renewal can clearly demonstrate effective outcomes for clients and real efficiencies for service provision, the next step would be to develop them into ongoing programs.

Reliance on year-to-year funding could impede strategic planning and generate uncertainty among clients, intermediaries, and staff and thus reduce program effectiveness.

LSS seeks ongoing funding to sustain successfully piloted programs that support justice reform and fill critical service gaps. To date, we have succeeded in obtaining permanent funding for a number of family law initiatives, such as family duty counsel. In future years, once the reserve fund is depleted, increased revenues will be required to sustain programs that begin as innovative pilots and provide leading-edge services that reflect current best practices of integrated approaches to holistic legal services.