

March 31, 2012

DELIVERED BY EMAIL

Legal Services Society  
400 – 510 Burrard Street  
Vancouver, BC V6C 3A3

Attention: Mark Benton, QC – Executive Director

Re: Shaping the Future of Legal Aid and the Justice System in BC

---

## Introduction

Thank you for the opportunity to provide a response to your letter entitled *Shaping the Future of Legal Aid and the Justice System in BC*. As you know, the Canadian Bar Association BC Branch (“CBABC”) was the founding and operational partner of the Public Commission on Legal Aid, which travelled the province in 2010-2011 and received submissions from a variety of organizations and individuals, including legal aid clients, legal services providers, and those representing the broader public interest. In March of 2011 the Commissioner for the Public Commission, Leonard T. Doust, released his report entitled *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia* (“Doust Report”). The report contained 9 recommendations based on the detailed consideration of the views of those who made presentations to the Commission. The response of the CBABC draws on this body of work.

This response is organized in four main parts. First, we provide a brief summary regarding the background and findings of the recent Public Commission on Legal Aid in British Columbia and the continuing work of the CBABC in regards to the improvement of legal aid in the province

In the second component, we outline the core principles of the CBABC in regards to legal aid delivery in British Columbia. The first of these principles is that legal aid is an essential service and forms the fourth pillar of a steadfast commitment to a just society (along with education, health care and social assistance.) The second principle is that spending on legal aid is an investment in justice that reduces costs in a range of other expenditure categories. The third principle is the necessity for exploring innovative solutions for the effective delivery of legal aid services.

The third component of this response contains an outline of seven recommendations by the CBABC to meet the stated objectives of producing justice system efficiencies; creating measurable cost savings for the justice system; promote positive outcomes for legal aid clients; and improve access to justice.

Finally, the six appendices to this response deal with the questions outlined in your letter in detail, including a summary of suggestions (with jurisdictional comparators where appropriate); a description of the justice system efficiencies that would be created (with accompanying potential for cost savings where available); a description of the benefits/outcomes for legal aid clients and how this would increase access to justice; a brief description of how the idea(s) could be implemented (including rough cost estimates where possible), timeline, and scalability; and contact information for further discussion about the ideas.

## Background

CBABC is committed to improving the legal system in British Columbia and affirming the basic democratic principles upon which it rests, including the independence of the judiciary and the bar, and the rule of law. CBABC believes that a properly functioning legal aid system is also essential to the legal system.

In June of 2010, the CBABC in partnership with the Law Society of BC, the Law Foundation of BC, the BC Crown Counsel Association, and the Vancouver and Victoria Bar Associations launched the Public Commission on Legal Aid. The Public Commission travelled to 11 communities throughout British Columbia and received approximately 73 written responses and more than 80 presentations from legal organizations, community groups and individuals regarding the development of an effective legal aid system in the province. According to the *Doust Report*, “the overwhelming majority of submissions spoke to the general failure of our legal aid system, the negative repercussions for needy individuals and families, and the consequent adverse impact on our communities and justice system.”<sup>1</sup>

In March of 2011, the Commissioner of the Public Commission on Legal Aid released his report. The report contained seven overarching findings, including: the legal aid system is failing needy individuals and families, the justice system, and our communities; legal information is not an adequate substitute for legal assistance and representation; timing of accessing legal aid is key; there is a broad consensus concerning the need for innovative, client-focused legal aid services; steps must be taken to meet legal aid needs in rural communities; more people should be eligible for legal aid; and legal aid should be fully funded as an essential public service.<sup>2</sup>

In addition to the seven overarching findings, the *Doust Report* includes nine recommendations to “address the deficiencies” in the legal aid system<sup>3</sup> and improve the legal system in British Columbia. The recommendations are:<sup>4</sup> to recognize legal aid as an essential service; to develop a new approach to define core services and priorities; to modernize and expand financial eligibility; to establish regional aid centres and innovative service delivery (there are nine features included in this recommendation); to expand public engagement and political dialogue; to increase long-term, stable funding; the legal aid system must be proactive, dynamic, and strategic; there must be greater collaboration between public and private service providers; and to provide more support for legal aid providers.

Since that time the CBABC has continued its efforts to bring attention to the need to improve the legal aid system in British Columbia. These efforts included the launch of the “We Need Legal Aid campaign”,<sup>5</sup> which brought attention to the personal stories of a variety of individuals; including extremely vulnerable citizens who need legal aid the most. This campaign has highlighted the essential nature of legal aid services for women, children and seniors in critical situations who are unable to access legal representation, which exposes them to more danger.<sup>6</sup> As well, this campaign demonstrates that British Columbians support legal representation for people who need legal aid to cope with issues related to their children, their liberty, their ability to put food in their mouths and their personal security. The CBABC continues to work closely with government to engage members from all parties on the economic benefits of a properly funded legal aid system.

---

<sup>1</sup> *Doust Report* at p. 5.

<sup>2</sup> *Doust Report* at p. 7.

<sup>3</sup> *Doust Report* at p. 9.

<sup>4</sup> The recommendations are summarized at pp. 9-11 of the *Doust Report*.

<sup>5</sup> <http://www.weneedlegalaid.com/>

<sup>6</sup> <http://www.weneedlegalaid.com/>

## Core Principles

### Legal Aid is an Essential Service

The CBABC endorses the statement by Commissioner Doust, in his March 2011 report, that legal aid is the fourth pillar of “our steadfast commitment to a just society”, alongside health care, education, and social assistance.<sup>7</sup> These pillars are interconnected and each is essential to our social system. The role of legal aid as an effective mechanism for reducing the strain on social assistance and health care systems has been demonstrated in a number of jurisdictions,<sup>8</sup> and is acknowledged by the *Doust Report* and others.<sup>9</sup>

The availability of legal aid is essential to the resolution of serious crises for society’s most vulnerable persons and the prevention of future problems arising from unresolved crises. The legal aid system is fundamental to those facing a loss of liberty in criminal law contexts. Legal aid is similarly essential to the exercise of a right to (specified) detention reviews for individuals who are subject to involuntary commitment. Likewise, in the context of potential state apprehension of children, the fundamental importance of legal aid, for the well-being of both parents and children, cannot be emphasized enough.<sup>10</sup> Further, legal aid is crucial for those seeking refuge in British Columbia, as the complex process and adversarial nature of the state provide formidable obstacles.<sup>11</sup> Self-representation in these circumstances is next to impossible.

The potential of the legal aid system to relieve strain in other areas is clearly visible in the family law context. In this area issues often involve child custody and access, child and spousal support, and division of assets, all of which relate to the most fundamental aspects of life, including a person’s relationship with their children, and the ability to provide their families with adequate housing and necessities.

Poverty law provides another example of the central importance of legal aid, where problems relate to debt, accessing social assistance and housing, worker’s compensation claims, access to pension benefits, and other social welfare benefits to which individuals are legally entitled. Individual debt, which might otherwise be resolved by recourse to poverty law assistance, can be a source of other problems such as the loss of housing, an inability to meet basic needs and the breakdown of relationships, giving rise to a range of new legal aid and social assistance requirements.<sup>12</sup>

As Commissioner Doust noted “the social costs of the lack of legal aid in essential matters are difficult to measure precisely, a clogged inaccessible system of justice necessarily results in unfair and arbitrary outcomes, often accompanied by human tragedy, and breeds contempt for the justice system and the rule of law.”<sup>13</sup>

---

<sup>7</sup> *Doust Report* at p. 17.

<sup>8</sup> See for instance: Price Waterhouse Coopers, *Economic Value Of Legal Aid: Analysis In Relation To Commonwealth Funded Matters With A Focus On Family Law* (2009), online: National Legal Aid [Australia] [http://www.legalaidact.org.au/pdf/economic\\_value\\_of\\_legalaid.pdf](http://www.legalaidact.org.au/pdf/economic_value_of_legalaid.pdf)

<sup>9</sup> *Doust Report* at p. 8.

<sup>10</sup> *Ibid.*

<sup>11</sup> “Formidable obstacles” in the refugee or asylum seeker context can refer to: serious threats of death or torture; loss of family; and continued persecution if returned to the country of origin.

<sup>12</sup> *Doust Report* at p. 8.

<sup>13</sup> *Doust Report* at p. 28.

## Legal Aid is an Investment in Justice

The CBABC asserts that the provision of timely and adequate legal aid results in substantial economic benefits. This position is evidenced by submissions presented to the Public Commission and dealt with by Commissioner Doust in his report:<sup>14</sup>

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

In the criminal context, it is easily demonstrated that timely and appropriate criminal legal aid results in significant cost savings to the system. The *Doust Report* noted that more than 80 percent of all criminal trials in the province are resolved before trial.

However, when a litigant in a criminal trial is unrepresented it is extremely difficult, if not impossible, to either resolve the matter without a trial or to even expedite the trial process.<sup>15</sup> The inability to resolve or expedite in criminal cases without representation can be linked to a number of cost pressures, including: more court appearances before the case is ready for trial; fewer agreements on admissions and the admissibility of evidence, and therefore more time at trial and more witnesses; more adjournments of trials due to the accused not being in a position to put on a defence when the Crown is ready to proceed; fewer plea bargains and therefore more trials; and longer trials due to the accused not understanding the system during the course of the trial. Furthermore, timely legal aid may prevent additional healthcare costs, the commission of criminal offences as a response to the failure to properly access legal benefits, and further burden on the social welfare system.<sup>16</sup>

In the civil context, including family and poverty issues, the presence of unrepresented parties leads to greater consumption of public resources. Reasons for this include: the delays and costs to the system are exacerbated, especially where both parties are unrepresented; civil legal aid acts as a screening device such that people who receive legal advice early realize they do not have a problem that can be solved through the legal system and do not go all the way to a hearing before making that discovery; people who do have a legal problem do not access the system at all, because they are too intimidated or they have language and literacy barriers – their problems do not go away, they get worse, and they often create expenditures in social benefits and in the health care system.

Data from other jurisdictions indicate that legal aid spending, in addition to having a positive impact on the economy generally, reduces public spending in other areas.<sup>17</sup> The extent of savings in other western jurisdictions is such that the savings exceed the legal aid expenditures. Commissioner Doust found that

---

<sup>14</sup> *Doust Report* at p. 28.

<sup>15</sup> *Doust Report* at p. 8.

<sup>16</sup> *Doust Report* at p. 8

<sup>17</sup> For instance, a UK Study found that:

- For every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34.
- For every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98.
- For every £1 of legal aid expenditure on benefits advice, the state potentially saves £8.80.
- For every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.

See Citizens Advice, *Towards A Business Case For Legal Aid: Paper To The Legal Services Research Centre's Eighth International Research Conference* (July 2010), online: The National Association of Citizens Advice Bureaux [www.citizensadvice.org.uk/towards\\_a\\_business\\_case\\_for\\_legal\\_aid.pdf](http://www.citizensadvice.org.uk/towards_a_business_case_for_legal_aid.pdf) at page 2.

studies from other jurisdictions suggest that “legal aid more than pays for itself when viewed from this more holistic perspective.”<sup>18</sup> These savings are primarily realized in the health care and social safety net spending portfolios. The 2009-2010 Provincial Court savings estimate is in the range of \$50 million.<sup>19</sup> This estimate represents savings from criminal and family cases where one or more parties were unrepresented.<sup>20</sup> Savings in poverty law areas is estimated at another \$50 million.

### Innovative Service Delivery

The CBABC recognizes the need for the innovative delivery of legal aid services. This position is supported by the *Doust Report*, which states that “in order to ensure the best use of increased public funds, the legal aid system must be more proactive through ongoing monitoring and experimentation in defining priorities and in designing delivery systems for legal aid.”

There are a variety of useful models for innovative service delivery that can be replicated or expanded upon to ensure coverage across the province. For instance, the re-establishment of Regional Legal Aid Centres outside of the lower mainland would increase access to justice across the province. As well, the provision of mobile outreach services by these Regional Centres would act to combat cultural, vulnerability and accessibility barriers faced by clients.<sup>21</sup> In addition to these delivery mechanisms, the use of family law clinics and family law duty counsel would ameliorate the rate of unrepresented litigants in the family law context to some extent.

Commissioner Doust points to some key areas for coordination and integration of legal aid services, which will “work toward broader access to justice solutions.”<sup>22</sup> These coordination and integration measures would serve to “integrate legal aid services and pro bono services by all providers; facilitate networking amongst the providers, such as sharing information to discourage abuse of services and establishing best practice protocols; monitor the impact of justice system changes on vulnerable and disadvantaged communities; identify additional reforms to increase access to justice; avoid duplication of effort, minimize costs, including initiatives to share costs; map unmet legal aid needs across the province, taking into account the geographical, social, cultural and economic factors that can contribute to or exacerbate legal needs; and map service providers across regions to highlight gaps and overlaps, identify and remedy impending service gaps, and inform future service delivery.”<sup>23</sup> However, as noted by Commissioner Doust, all of these innovations need a “renewed broader legal aid service” in order to be sustainable.<sup>24</sup> In turn, a renewed broader service requires ongoing and stable funding.

## **Recommendations**

### **1. Focus on Regional Service Delivery**

In recognition of the fact that rural areas and small communities are currently underserved, CBABC recommends the re-establishment of Regional Legal Aid Centres across the province to serve as the point of entry hub of legal aid service delivery for all core services. The presence of Regional Centres would facilitate early intervention in resolving legal problems. In conjunction with the establishment of regional centres, the provision of regular mobile outreach services would reduce access to justice barriers for individuals who cannot access the Centres due to geographic, cultural and/or other barriers.

---

<sup>18</sup> *Doust Report* at p. 56.

<sup>19</sup> This estimate is based on the conservative assumption that unrepresented litigants will take, on average, 20% more time than represented litigants.

<sup>20</sup> Data show that the rate of unrepresented litigants is 90-95% in family matters; 40% in criminal proceedings; and 90% in civil cases. See BC Judges Compensation Commission at p. 19.

<sup>21</sup> See, for instance, *Doust Report* at p. 51-52.

<sup>22</sup> *Doust Report* at p. 59.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Doust Report* at p. 52.

## **2. Integration of Services**

CBABC acknowledges the interconnectedness of legal, social and healthcare problems for many vulnerable individuals. In order to address these concerns in a holistic manner CBABC recommends greater integration of legal aid services with other essential services. Such integration will reduce the strain on resources and prevent the cascade of associated social, legal and healthcare issues that often arise from unresolved legal problems. As well, the provision of legal aid services in appropriate community settings will assist in reducing access barriers that prevent vulnerable individuals from seeking legal advice.

## **3. Funding Pilot Projects**

CBABC supports the establishment of pilot projects in partnership with community funding organizations, particularly where it is possible to negotiate concrete agreements to institute government funding if successful outcomes can be demonstrated. Community-based pilot projects provide a potential for innovative service delivery mechanisms that are designed to best serve the legal aid needs of vulnerable communities in ways that best ameliorate the particular barriers faced by individuals in those communities.

## **4. Expand Duty Counsel**

It is clear that many inefficiencies and added economic costs result from the rising number of self-represented litigants in the justice system; who do not qualify for legal aid at current funding levels and who are ill-equipped to effectively and efficiently represent themselves in court. In order to ameliorate these effects, CBABC recommends the gradual expansion of the role of duty counsel and staff lawyers where monitoring and evaluation demonstrate the effectiveness of these modes of service delivery in meeting client needs.

## **5. Expand LawLINE**

CBABC applauds the reestablishment of a family LawLINE by the Legal Services Society and recommends its expansion to serve a wider range of needs. Needs assessments such as the 2005 Law Foundation *Poverty Law Needs Assessment and Gap/Overlap Analysis Report*<sup>25</sup> and others can be used to determine the most urgently needed areas for expansion.

## **6. Support for Legal Aid Lawyers**

While CBABC's view is that the highest priority for increased resources for legal aid is for wider coverage of people in need, especially in family law and poverty law, CBABC believes that the lack of support for legal aid lawyers and low remuneration poses a threat to the continued viability of legal aid. As noted by the Doust report, the pool of lawyers willing to take on legal aid work is growing smaller and is reaching a critical point in some areas of the province. Where clients – even those financially eligible under current LSS guidelines – are unable to access legal aid services, justice system inefficiencies, including court adjournments for lack of representation, will only escalate.

One way to support legal aid lawyers, reduce their isolation and lessen the financial impact of a legal aid practice is to provide low cost or no-cost professional development for legal aid lawyers. The CBABC recommends that the LSS explore legal aid professional development for legal aid lawyers. This could be through partnership with existing professional development providers such as CBABC, CLEBC and TLABC.

## **7. Tariff Reform**

CBABC notes that Attorney General and Minister of Justice Bond has requested advice on changes to the LSS tariff to promote justice system efficiencies. Reforms to the LSS tariff may provide incentives for early

---

<sup>25</sup> The Law Foundation of BC, *Poverty Law Needs Assessment and Gap/Overlap Analysis* (2005). Online: The Law Foundation [http://www.lawfoundationbc.org/wp-content/uploads/PovertyLawNeedsAssessment\\_NOV05.pdf](http://www.lawfoundationbc.org/wp-content/uploads/PovertyLawNeedsAssessment_NOV05.pdf)

resolution of disputes. CBABC recommends that before any tariff reforms are embarked upon, there must take place full conversations amongst relevant stakeholders in respect of the ethical and practical considerations which come to bear.

The lawyers who do legal aid work will have the best insight as to what sort of changes will promote efficiencies. The LSS will have a very good sense of the administrative impacts of many changes.

The Law Society must be involved in reviewing the ethical considerations of providing early resolution incentives for the legal aid lawyer, and how that interacts with the duty to the client.

In the family law area, there is a belief among some legal aid clients that the party on the other side (who is paying for a lawyer) will instruct counsel to take steps which exhaust the legal aid before the merits of the case are addressed, leaving the party largely unrepresented. On the other hand, parties who are paying for lawyers express concerns that the party who has legal aid does not have the same financial incentive to compromise the claim.

Whether these anecdotes are true, and if they are, whether these behaviors are widespread, must be understood in order to effectively redesign the tariff to address them. In order to understand that, the views of legal aid lawyers and clients, as well as opposing counsel and their clients, must be canvassed.

The CBABC recommends that tariff review and reform be considered within a full study of and understanding of the ethical and practice considerations of the current model and proposals for reform. The CBABC has not set out this recommendation in an appendix, given further study and consultation is required before assessments of potential justice system efficiencies can be completed.

Yours Truly,

**CANADIAN BAR ASSOCIATION BC BRANCH**

Per:



**Sharon D. Matthews**

SDM/mbl

encls.



## Appendix A

### Recommendation - Integration of Services

#### 1. Summary of idea

The CBABC recommends an enhanced, team-based approach to the delivery of legal aid services through local community, advocacy or service agencies. There should be greater emphasis on the role of community legal advocates, acting with adequate support, training and supervision by lawyers. The CBABC also recommends greater integration of legal aid services with other social and economic support services in order to meet vulnerable client needs in a more holistic manner. Integrated service delivery provides an opportunity to better meet the needs of under-served communities, including Aboriginal communities, women leaving abusive relationships, individuals with mental or cognitive disabilities, and the elderly.

Integration of services helps to avoid inefficiencies and redundancies. The integration of legal aid services through networks of multi-faceted support service providers recognizes the failure of fragmented service delivery in dealing with complex legal, social and economic challenges faced by individuals. As a recent study notes, “governments, nonprofits, and the private sector are all increasingly using collaborative networks across organizational and political boundaries to do business because they have found the network model dramatically improves their effectiveness.”<sup>1</sup> Similarly, the 2008 Trebilcock Report found that a lack of integration is particularly important because “individuals’ problems often come in clusters, where one problem triggers a cascade of other problems.”<sup>2</sup>

This recommendation calls for the provision of legal aid services in community settings. CBABC recognizes the diverse range of legal needs of low-income individuals and disadvantaged communities. Provision of regular legal aid services at appropriate community level venues, such as women’s shelters, immigrant and refugee centres, youth centres, seniors centres and cultural organizations, is one way to acknowledge and respond to this diversity.

There are several examples of integrated service delivery models:

#### i. Citizen’s Advice Bureaus (UK)

Citizen’s Advice Bureaus (CABs) have existed in the UK since 1939 for the purpose of providing advice on social and legal problems. Under the CAB’s integrated service delivery model, an individual can access, at a single location, information, advice or assistance on a variety of financial and legal issues, including:<sup>3</sup> advice on benefit claims to unfair dismissal, debt and housing rights; writing letters and making phone calls to companies and services providers on behalf of the client; assisting with prioritizing debt and negotiating with creditors; and referrals to specialist case workers and specialist advisers who can represent people at courts and tribunals. CABs services are “free, independent, confidential and impartial” and are “provided in person, over the

---

<sup>1</sup> *Ibid.* at page 12.

<sup>2</sup> Trebilcock, Michael. 2008. *Report of the Legal Aid Review 2008 at page vi.* Available at: [http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/legal\\_aid\\_report\\_2008\\_EN.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/legal_aid_report_2008_EN.pdf)

<sup>3</sup> See <http://www.citizensadvice.org.uk/>



telephone, by email, online, at interactive kiosks, on DigiTV, as well as through home visits.”<sup>4</sup> CABs also provide advice in public places, such as health centres and hospitals, legal settings, prisons, courts, and community venues. CABs constitute the largest advice provision network in the UK, with 41% of the population having accessed it at some time.<sup>5</sup>

## **ii. Disability Strategy<sup>6</sup> (BC)**

British Columbia’s Disability Strategy explicitly “recognizes that government alone cannot meet all of the needs of persons with disabilities.” The Strategy focuses on collaboration among partners – other governments, community agencies, and private sector organizations – in order to provide the appropriate supports for persons with disabilities.

## **2. Justice system efficiencies created**

This proposal leads to efficiencies in that legal needs are considered in light of the appropriate contextual factors, so that vulnerable individuals have their legal needs considered in light of other needs. This holistic assessment of individual needs provides an opportunity for inter-agency collaboration for service delivery resulting in an elimination of redundancies and reduction in overall resource use by the individual. As Trebilcock notes “the initial problem may be a legal problem, but without early intervention this problem may trigger subsequent problems, legal or otherwise, such as greater demands on other social welfare programs, social housing programs, physical or mental health programs, etc.”<sup>7</sup> Cost savings are realized through early intervention and prevention of subsequent problems through resolution of the initial legal issue.

## **3. Benefits/outcomes for legal aid clients**

This recommendation would improve access to justice by recognizing and addressing barriers to accessing legal advice, such as culture, language, age, education, mental and cognitive disabilities, as well as geographic distances and lack of access to, or facility with, technology. The removal of a variety of access barriers through the provision of legal aid services at the community level in familiar, convenient and appropriate contexts will provide a more realistic opportunity for the most vulnerable individuals to access justice. As well, models of integrated service delivery call “for a more holistic or integrated institutional response where individuals with clusters of interrelated problems are not subject to endless referral processes that are tied to particular institutions (a silo approach) rather than particular individuals’ needs and leading to “referral fatigue”, which leaves many problems unresolved.”<sup>8</sup>

## **4. How the initiative could be implemented**

It is difficult to estimate costs for this recommendation, as there are many potential avenues for implementation. Some implementation options could be very cost-effective as they may simply involve the temporary relocation of existing advocacy efforts to better serve particularly vulnerable populations by reducing barriers to access. The integration of services, in terms of the number of sites and types of services, is scalable as it can be expanded as budget allows.

---

<sup>4</sup> <http://www.citizensadvice.org.uk/>

<sup>5</sup> The income of Citizens Advice Bureaux totaled £179 million in 2009/10. This funding comes from a variety of sources, including local authorities, the Legal Services Commission, Lottery funds, primary care trusts, charitable trusts, companies and individuals, and government grants. See <http://www.citizensadvice.org.uk/>

<sup>6</sup> see [http://www.hsd.gov.bc.ca/disability\\_strategy.htm](http://www.hsd.gov.bc.ca/disability_strategy.htm)

<sup>7</sup> Trebilcock at vi.

<sup>8</sup> *Ibid.*

## **5. Contact person for further discussion**

Sharon D. Matthews, President  
Canadian Bar Association BC Branch

Camp Fiorante Matthews Mogerman  
400-856 Homer St.  
Vancouver, BC V6B 2W5  
T: 604.331.9522  
F: 604.689.7554  
E: [president@bccba.org](mailto:president@bccba.org)

HBdocs - 12353992v1



## Appendix B

### Recommendation –Funding Pilot Projects

#### 1. Summary of idea

CBABC endorses the establishment of pilot projects in partnership with community funding organizations. In order to effect long term change, these pilot projects should be accompanied by commitments of government funding, on a project-by-project basis, if successful outcomes can be demonstrated.

Examples of the successful implementation of such an initiative include:

##### i. Aboriginal Child Welfare Fund Initiative (BC)

Over a period of four years the Ministry of Children and Family Development provided grant funding (totaling \$3,124,000) to the Law Foundation of BC. These funds were used by the Law Foundation to fund projects that would expand the use of alternative dispute resolution processes in the area of child protection law, particularly for Aboriginal children. The Law Foundation has funded 19 projects under the Child Welfare Initiative. Eleven are service delivery projects and the rest are to train child protection mediators.<sup>1</sup> Service delivery for these Law Foundation-funded projects has occurred via Aboriginal community agencies using collaborative decision-making models.

#### 2. Justice system efficiencies created

By providing opportunities for community-funded projects and community-based service delivery, pilot projects can be developed to best serve the needs of particular vulnerable communities, including: economically disadvantaged individuals and families; immigrants and refugees; temporary foreign workers; people with disabilities or health problems; Aboriginal persons; the elderly; geographically remote populations; and individuals leaving abusive situations. Serving the particular community defined needs of vulnerable groups will help to prevent the cascades of social, legal and health problems that can result from unresolved legal issues. Cost savings are realized through the prevention of subsequent problems through earlier resolution of the initial legal issue.

#### 3. Benefits/outcomes for legal aid clients

This recommendation would improve access to justice by reducing cultural, psychological, geographic and other barriers to accessing legal advice. The tailoring of legal aid services at the community level in familiar, convenient and appropriate contexts will provide a more realistic opportunity for the most vulnerable individuals to access justice.

#### 4. How the initiative could be implemented

The costs associated with the development of a pilot project may vary widely depending on the nature and scope of each project. However, direct costs at the start are lower as community funding will

---

<sup>1</sup> Leanne Harder. 2009. *Report of Aboriginal Child Welfare Collaborative Decision-Making Models*, (Olive Branch Consulting). Available at: <http://www.lawfoundationbc.org/wp-content/uploads/Report-of-Collaborative-Decision-Making-Models.pdf>

initially support the pilot projects. If demonstrably successful, such programs can be expanded and fully funded by government. The recommendation is scalable as increased numbers of pilot projects can be expanded as funding budgets allow.

**5. Contact person for further discussion**

Sharon D. Matthews, President  
Canadian Bar Association BC Branch

Camp Fiorante Matthews Mogerman  
400-856 Homer St.  
Vancouver, BC V6B 2W5  
T: 604.331.9522  
F: 604.689.7554  
E: [president@bccba.org](mailto:president@bccba.org)

HBdocs - 12354011v1



## Appendix C

### Recommendation –Focus on Regional Service Delivery

#### 1. Summary of idea

CBABC supports the establishment of several Regional Legal Aid Centres across the province to ensure accessibility and serve as the point of entry hub of legal aid service delivery for all core services. Establishment of these centres, in turn, will facilitate early intervention in resolving legal problems. The concurrent establishment of mobile outreach services would provide access to those who cannot access regional centres due to geographical, cultural and/or other barriers. As the *Doust Report* notes, mobile outreach “should be tailored to client needs” and could include periodic mobile clinics in very small communities and at women’s centres, health clinics, or other settings that are more comfortable and accessible for members of vulnerable groups with unmet legal aid needs.<sup>1</sup> The *Doust Report* further recommends “an enhanced team approach” to staffing for regional centres and mobile clinics, with emphasis on a greater role for advocates.<sup>2</sup>

##### i. Ontario

Ontario has 77 independent community legal clinics and 17 specialty clinics being operated across the province by Legal Aid Ontario. These clinics provide legal services to low income individuals in a wide variety of areas, including: tenant rights; Ontario Works and Welfare; Ontario Disability Support Program; government pensions; immigration; employment insurance; workplace safety and insurance; Workers' Compensation; employment rights; criminal injuries compensation; and human rights.

#### 2. Justice system efficiencies created

Justice system efficiencies and cost savings would be realized through expansion of the role of properly trained and resourced community and legal advocates who are supervised by lawyers. This arrangement would allow for greater expansions of service at lower cost while ensuring that quality advice is given. Greater expenditures of funds can be reserved for situations in which legal representation by a lawyer is truly required.<sup>3</sup> Further efficiencies would be realized through the reduction of unrepresented parties in the justice system.

#### 3. Benefits/outcomes for legal aid clients

Regional legal aid centres and mobile clinics will provide access to legal services for individuals in underserved smaller and more rural communities across the province. The presence of regional centres and mobile clinics will expedite access to legal services, reducing the prevalence of interconnected health and social problems that often result from unresolved legal issues. As well, mobile clinics will serve to reduce geographic and other access barriers for vulnerable individuals and groups.

---

<sup>1</sup>*Doust Report* at page 51-52.

<sup>2</sup>*Doust Report* page 52.

<sup>3</sup> The *Doust Report* notes that this recommendation would mirror trends in healthcare delivery where appropriately trained and supervised nurses are providing a broader scope of patient care, including services that were previously only performed by doctors.

#### **4. How the initiative could be implemented**

Legal Aid Ontario spent \$274 million in 2011 for delivery of all major programs. British Columbia's Legal Aid requirement is far smaller due to population differences between the two provinces. The recommendation is scalable as the number and size of regional centres and mobile services can be expanded as needs are identified and funding budgets permit.

#### **5. Contact person for further discussion**

Sharon D. Matthews, President  
Canadian Bar Association BC Branch

Camp Fiorante Matthews Mogerman  
400-856 Homer St.  
Vancouver, BC V6B 2W5  
T: 604.331.9522  
F: 604.689.7554  
E: [president@bccba.org](mailto:president@bccba.org)

HBdocs - 12354012v1



## Appendix D

### Recommendation –Expand Duty Counsel Services

#### 1. Summary of idea

CBABC endorses the *Doust Report's* recommendation for expansion of duty counsel services as an “effective and cost-efficient mode of delivering legal assistance”.<sup>1</sup> As this report notes, there is plenty of room to increase the scope of duty counsel services.<sup>2</sup> This recommendation calls for appropriate resourcing to ensure that there is adequate time, space and support available to duty counsel so they are able to properly serve their clients.

Examples of such an initiative include:

##### i. Legal Aid Ontario

Legal Aid Ontario has expanded the role of duty counsel in both criminal and family law contexts. The expanded duty counsel offices use both private and staff lawyers, as well as support staff. Full-time supervisory duty counsel provide representation in court, file maintenance, document drafting, and strategy development to resolve cases early without court hearings. Expanded duty counsel offices allow duty counsel to focus on client cases while support staff provide extensive assistance with client documents and files. Success of pilot offices in several locations resulted in the expansion to 65 locations (family and criminal law sites). This initiative has led to the development of a more organized and efficient duty counsel infrastructure, utilizing both staff and contract lawyers, and has enhanced the quality of services provided to clients.

#### 2. Justice system efficiencies created

As the *Doust Report* notes, duty counsel is not regularly available in most communities outside of the lower mainland. Submissions to the Public Commission reported an inability of family law duty counsel to meet the current demands for service. Expansion of duty counsel services would provide unrepresented litigants with access to legal advice within their own communities, which will result in justice system efficiencies through earlier dispute resolution, diversion of cases from court, and reduction of court time and appearances required to resolve disputes. An evaluation of Legal Aid in Ontario notes that efficiencies result from file and lawyer continuity; improved organization, accountability, and consistency of advice.<sup>3</sup>

#### 3. Benefits/outcomes for legal aid clients

Increased access to legal advice would hasten resolution of legal disputes. As well, unrepresented individuals would benefit from the reduction of psychological stresses and other barriers associated with navigating the legal system unassisted. In addition, the provision of duty counsel in more rural and remote communities across the province will reduce geographic barriers to legal advice for many

---

<sup>1</sup>*Doust Report* at page 52.

<sup>2</sup>*Ibid.*

<sup>3</sup>Prairie Research Associates, *Evaluation of the Family Law Extended Duty Counsel Pilot Projects – Final Report* (Toronto: Legal Aid Ontario, 2002). <http://cfj-cfcj.org/inventory/reform.php?id=59>

vulnerable individuals and communities.

**4. How the initiative could be implemented**

Duty counsel are a cost effective way to deliver legal advice to underserved populations, particularly in family law and criminal law contexts. The provision of support for duty counsel, such as assistance (paralegals) and space for client meetings, will bring associated costs. However, the gradual expansion of duty counsel services is scalable as services can be expanded as budgets allows. Legal Aid Ontario quadrupled its staff duty counsel over an eight-year period.

**5. Contact person for further discussion**

Sharon D. Matthews, President  
Canadian Bar Association BC Branch

Camp Fiorante Matthews Mogerman  
400-856 Homer St.  
Vancouver, BC V6B 2W5  
T: 604.331.9522  
F: 604.689.7554  
E: [president@bccba.org](mailto:president@bccba.org)

HBdocs - 12354013v1





## Appendix E

### Recommendation –Expand LawLINE

#### 1. Summary of idea

CBABC endorses expansion of a law line service and acknowledges that LSS currently provides a family law line service where private bar lawyers provide information and advice on family law issues to clients over the telephone. The law line service had previously been halted in 2009-2010 due to budgetary considerations and a revisiting of priorities. The service was reestablished following the release of the *Doust Report*, which acknowledged the effective and cost efficient nature of the service and recommended its reestablishment and expansion. As the *Doust Report* noted “the elimination of the LawLINE [was] felt particularly harshly in non-urban centres because there are so few other accessible legal advice resources.”<sup>1</sup> The service currently runs on weekday mornings. LSS could expand the family law line to a full day service. Additionally, this service could be expanded to include service for other areas of law such as criminal law, employment, housing and benefits. The law line service could also be expanded to better serve the needs of particular groups, such as the provision of advice by speakers of languages other than English.

Examples of the implementation of such an initiative include:

#### i. UK

In 2001 Avon and Bristol Law Centre set up their telephone helpline to enable people to make direct contact with specialist advisers. There are help lines for each of their specialist areas of work and they provide a first point of contact for individuals needing legal advice. This service ensures that an ever-increasing number of people are able to receive assistance from advisers, something that would not have happened if only drop-in or appointment sessions were offered. It has proved to be a very effective use of the Law Centres' resources.<sup>2</sup>

The UK's Community Legal Service Direct (CLS Direct) is a free, publicly-funded confidential advice service that provides help and advice, through a national helpline, website and information leaflets, on a range of common legal problems in areas such as debt, benefits, housing and employment. The helpline receives around 450,000 calls per year and resolves many legal problems before they escalate into far more costly procedures.<sup>3</sup>

#### ii. US

Information hotlines are in operation across most of the United States. There are 54 statewide hotlines in 38 states, 14 regional hotlines, and 10 local hotlines.

---

<sup>1</sup>*Doust Report* at page 26.

<sup>2</sup>NESTA, *Hidden Innovation: How Innovation Happens in Six 'Low-innovation' Sectors* (2007) at p. 50.  
[www.nesta.org.uk/library/documents/Nesta%20Report%20HiD%20Innov%20final.pdf](http://www.nesta.org.uk/library/documents/Nesta%20Report%20HiD%20Innov%20final.pdf)

<sup>3</sup>*Ibid.* at 48.

## **2. Justice system efficiencies created**

By providing advice to clients early on, justice system efficiencies would be created through early dispute resolution, diversion of cases from court, and reduction of court time and appearances required to resolve disputes. Expected cost savings could be calculated using LSS data on the number of clients served through the service, along with data from LSS and the Ministry on case costs.

## **3. Benefits/outcomes for legal aid clients**

Early resolution of disputes assists clients in a variety of ways and can produce positive health and economic outcomes. Telephone services increase access to advice for people who would otherwise be effectively excluded because of age, poor health, poverty or lack of transport.

## **4. How the initiative could be implemented**

Since most of the infrastructure is already in place, the expansion could be implemented relatively quickly and at a reasonably low cost. The expansion of a LawLINE, in terms of both hours and services, is scalable as it can be expanded as budget allows.

## **5. Contact person for further discussion**

Sharon D. Matthews, President  
Canadian Bar Association BC Branch

Camp Fiorante Matthews Mogerman  
400-856 Homer St.  
Vancouver, BC V6B 2W5  
T: 604.331.9522  
F: 604.689.7554  
E: [president@bccba.org](mailto:president@bccba.org)

HBdocs - 12354014v1



## Appendix F

### Recommendation – Training and Support for Legal Aid Providers

#### 1. Summary of idea

Recommendation nine from the Public Commission on Legal Aid sets out the need for adequate training and support for legal aid providers, including lawyers and community advocates. The pool of lawyers willing to take on legal aid work is growing smaller and is reaching a critical point in some areas of the province.

One way to both support legal aid lawyers, reduce their isolation and lessen the financial impact of a legal aid practice is to provide low cost or no-cost professional development for legal aid lawyers. At present, while some legal aid lawyers receive low cost or no-cost professional development on substantive law in their field, there is little professional development specifically designed for the legal aid practitioner, and very few, if any, opportunities for legal aid lawyers to gather for professional development. Such professional development could include substantive law, practice issues and technology issues specifically tailored for those serving legal aid clients.

Low cost or no-cost professional development will, in a small way, ease the financial stresses of having a significant legal aid component of work in a practice, as well as enhance the sense of a cohesive “legal aid bar” which supports its members.

#### 2. Justice system efficiencies created

Professional development, which encourages best practices in areas such as early resolution, client communications (many legal aid lawyers face challenges of dealing with clients who frequently make telephone contact with them, impinging on the legal aid lawyer’s ability to make the best use of the allotted resources to solve the client’s problem) and the best use of precedents in the legal aid field will create a culture of efficiency and create actual efficiency.

#### 3. Benefits/outcomes for legal aid clients

Professional development tailored specifically to legal aid lawyers will enable those lawyers to make use of best practices in delivering legal aid services to clients. Communications between the lawyer and client, which often take place in a stressed environment given the subject matter of the advice, may be enhanced through professional development in the area of client communications.

#### 4. How the initiative could be implemented

The CBABC recommends that the LSS explore legal aid professional development for legal aid lawyers. Implementation may be accomplished through partnership with existing professional development providers such as CBABC, CLEBC and TLABC. Funding to make such professional development low cost or no-cost would need to be addressed. Possibilities include pilot project funding (see Appendix B), as well as community sponsorships. If professional development is successful in achieving efficiencies and support of legal aid lawyers, then it should be considered for increased funding by government to LSS programs.

**5. Contact person for further discussion**

Sharon D. Matthews, President  
Canadian Bar Association BC Branch

Camp Fiorante Matthews Mogeran  
400-856 Homer St.  
Vancouver, BC V6B 2W5  
T: 604.331.9522  
F: 604.689.7554  
E: [president@bccba.org](mailto:president@bccba.org)

HBdocs - 12354006v1