

ROADS TO REVIVAL

An External Review of Legal Aid Service Delivery in British Columbia

Conducted for the Attorney General of BC
by Jamie Maclaren, QC
January 2019

Roads to Revival:
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Service Delivery in British Columbia

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The opinions in this report, and any errors,
are those of Jamie Maclaren.

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— **Jamie Maclaren, QC**

Methodology and Approach

In early October 2018, I was appointed by the Attorney General of British Columbia, the Honourable David Eby, QC, to conduct an external review of legal aid service delivery in BC.

MANDATE

I was given the mandate to review the effectiveness and efficiencies of legal aid service delivery models from the perspective of British Columbians who use legal aid services. The overall aim was to advance the rule of law and access to justice in the province.

My Terms of Reference are included at Appendix A.

CALL FOR SUBMISSIONS

The Ministry of Attorney General posted an open call for submissions on the govTogetherBC public website between October 4, 2018 and November 23, 2018.

The questions posed were:

- What is your or your organization's connection to the topic of legal aid service delivery?
- What do you perceive as the strengths of BC's current system for delivering legal aid services?
- What do you perceive as the weaknesses of BC's current system for delivering legal aid services?
- What are your practical suggestions for making legal aid services in BC more efficient, effective and user-centred?
- Do you perceive any trends and/or challenges that may impact your suggestions for legal aid service enhancement?

I posed the same questions by way of online survey to over 1,000 legal aid lawyers, pro bono lawyers and legal advocates throughout the province.

WRITTEN SUBMISSIONS

My survey and the call for submissions drew a range of very diverse and engaging responses. The list of 130 individuals who provided a written response is included at Appendix C. The list of 12 organizations that provided a written response is included at Appendix D.

PERSONAL CONSULTATIONS

From early October 2018 to mid-December 2018, I met and discussed the subject of my review with a wide variety of legal aid stakeholders from BC and across Canada, including LSS staff, judges, lawyers, legal advocates, articulated students, law students, legal aid plan administrators, non-profit service providers and members of the public.

The total time of my personal consultations exceeded 100 hours. The list of 110 individuals who graciously met with me in person or by telephone is included at Appendix B.

LIMITATIONS

My review was limited by time. I had a limited amount of time in which to meet with legal aid stakeholders. There is no shortage of people in BC and Canada who are vitally interested in the topic of legal aid, and I could have spent several more months learning from their diverse experiences.

My review was also limited by geography. I had a limited ability to travel to see and hear how legal aid is delivered in different communities across BC. Wherever possible, I consulted with people at their workplaces to better understand the context of their experiences. The 240 individuals who engaged with my review work or live in 37 different BC municipalities.

Finally, my review was limited by the study sample. I had a limited ability to contact current and former legal aid clients, and members of the public who have experience with legal aid services. The irony of conducting a user-focused review with limited access to users is not lost on me. I did my best to compensate for this limitation by engaging at length with frontline lawyers and legal advocates, and by reviewing LSS's extensive library of client surveys. I also drew from my own experience of serving about 1,500 low-income clients over thirteen years as a pro bono clinic lawyer in Vancouver's Downtown Eastside.

APPROACH

I approached my mandate with the user experience foremost in mind. I considered "legal aid user" to include legal aid clients, lawyers and other service providers who frequently interact with LSS.

I generally assessed legal aid services and systems by applying Access to Justice BC's Triple Aim Framework, and its three core objectives of better user outcomes, better user experiences and lower system costs.

Executive Summary

Legal aid is not broken in BC. It has simply lost its way. Years of underfunding and shifting political priorities have taken their toll on the range and quality of legal aid services, and especially on the people who need them. Still, the will exists in BC to make legal aid more accessible and effective for all of its many users.

The Legal Services Society (LSS) is a high-functioning organization with some exceptional leaders. It has the knowledge and the space to improve the quality and accessibility of its services at current levels of funding. Meaningful change, however, will only come with more government investment. My report provides 25 recommendations that identify where current legal aid service efficiencies can be found, and where and how effective new investments should be made.

My report focuses on legal aid service delivery from the perspective of the “legal aid user”: a composite entity that includes legal aid clients, lawyers and other service providers who frequently interact with LSS. My recommendations are informed by principles of user-centred design, evidence-based analysis, collaboration and experimentation. They are prioritized according to severity of need, ease of implementation and scalability.

It is time to move beyond speculation and anecdotal information in redesigning legal aid services. System reform should not be a linear process led by experts, but rather an iterative process involving continuous learning and adaptation that leads to improvement from the perspective of users. I have adopted this approach throughout my report, along with Access to Justice BC’s Triple Aim Framework, with its three core pursuits of better user outcomes, better user experiences and lower system costs.

GENERAL RECOMMENDATIONS

RECOMMENDATION 1 (PAGE 4)

Endorse the CBA’s National Benchmarks for Public Legal Assistance Systems in support of a user-centred, evidence-based and collaborative approach to legal aid service delivery.

Inspiration: Australia’s National Partnership Agreement on Legal Assistance Services

Effective system reform requires stakeholders to work across organizational boundaries and extend their accountabilities outward to each other. The Canadian Bar Association’s National Benchmarks for Public Legal Assistance Systems provides an ideal framework for setting aspirational service standards for all Canadian governments and legal aid plans to meet. The underlying principles of user-centred design, open and transparent measurement of system-wide progress, and inter-agency collaboration work particularly well in the BC context.

RECOMMENDATION 2 (PAGE 5)

Develop and implement cross-system methods for contemporaneous user feedback to promote user agency and to continuously assess and refine legal aid service delivery systems.

Until recently, the Canadian justice system paid little attention to how people prefer to engage with legal services, and what they seek from legal service providers. The user-design approach is commonly employed in the technology sector, and stands in contrast to the standard approach to legal service design, which prioritizes the perspectives of legal experts. User design promotes user agency, and can be used to deliver more responsive and effective legal aid services.

RECOMMENDATION 3 (PAGE 6)

Develop and launch an online client portal to accept legal aid applications, to diagnose and treat clients' legal problems, and to empower clients in the active management of their own cases.

Inspiration: MyLawBC; BC Civil Resolution Tribunal's Solution Explorer

 **HIGH PRIORITY**

Many legal aid users would benefit from a well-designed online client portal that could handle application intake, issue triage, problem solving by guided pathways, and active case management. A single entry point for legal aid services would allow applicants, legal advocates or other intermediaries to preload application information for quick and cost-efficient vetting by LSS staff. It would also enhance communication between clients and staff, and provide greater transparency to client service delivery.

RECOMMENDATION 4 (PAGE 7)

Task and support an independent body, like Access to Justice BC, the Access to Justice Center for Excellence or the Office of the Auditor General, to coordinate the collection and analysis of standardized performance data across BC's justice system.

Inspiration: Quebec's *Accès au droit et à la justice*

There is too little being done across Canada to coordinate the collection and analysis of justice system data. This stifles innovation and contributes to duplication of justice reform efforts. BC would benefit from an independent and overarching body that is mandated and resourced to coordinate the collection and analysis of standardized justice system data from across the province. The data could then be used to assess the individual and aggregate performance of justice sector organizations—like LSS, the BC Prosecution Service and the courts—against national benchmarks. This would cultivate greater transparency and accountability in measuring performance.

RECOMMENDATION 5 (PAGE 8)

Promote multidisciplinary and cost-sharing approaches to legal aid client problem resolution that attract a wide array of funds from government and non-government sources.

Isolated legal aid lawyers too often serve as one-person multidisciplinary service centres. They find themselves serving as untrained psychologists, social workers or settlement workers for their clients. When legal aid lawyers work in a team environment with other service professionals, the outsized value of their work is better seen and appreciated. A multidisciplinary service approach also gives service partners the opportunity to share costs and diversify funding. Co-located organizations can share infrastructure costs and find cost efficiencies from operating in a “one-stop shop” environment. They can also attract funds from a wide array of private and public sources, including from different government ministries.

RECOMMENDATION 6 (PAGE 10)

Develop and apply the same performance measures, including user experience and outcome data, across all models and aspects of the legal aid plan to compare model cost-effectiveness, to increase system transparency and accountability, and to better inform continuous system refinement.

My report recommends the experimental and scalable development of new staff and clinic models of legal aid service delivery to address current service gaps. It is important to compare the performance of these new service models against current service models by using common measures of productivity. It is equally important to incorporate user experience and outcome data into common measures of effectiveness.

RECOMMENDATION 7 (PAGE 17)

Introduce strategic, scalable and quasi-experimental iterations of staff and clinic models to fill legal aid service gaps, and to foster assistive competition between models.

Inspiration: Burnaby Public Defender Study; Manitoba Competitive Service Delivery Model

LSS’s current mixed model of service delivery tilts heavily toward the tariff model. A more balanced service delivery mix between the tariff model, the clinic model and the staff model would allow for distribution of legal aid cases among tariff, clinic or staff lawyers according to who is best suited to the task. My report recommends the development of community legal clinics providing family law and poverty law services, specialty clinics, Indigenous Justice Centres, an experimental Criminal Law Office and a Major Case Team of lawyers and paralegals specializing in long and complex criminal cases. Rebalancing the current mixed model to introduce mutually assistive competition between model types should lead to system cost savings and better client service.

RECOMMENDATION 8 (PAGE 25)

Amend the *Legal Services Society Act* to provide for the following framework for eleven director appointments:

- four appointments by the provincial government;
- four appointments by the Law Society of BC; and
- three appointments by frontline community service organizations, including two organizations specifically serving Indigenous people.

Inspiration: *Legal Services Society Act* pre-2002

The LSS board should be seen to be independent from government, and should reflect a balanced representation of the interests of government, the legal profession and the communities it serves. For community interests to be heard—and seen to be heard—the board should include space for the expertise and wisdom of people who represent Indigenous communities, women’s centres, anti-poverty groups, people with disabilities, mental health providers, immigrants and refugees, and other legal aid user groups.

RECOMMENDATION 9 (PAGE 26)

Engage the Office of the Auditor General to perform a value-for-money audit of LSS operations.

Inspiration: Office of the Auditor General of Ontario’s semi-regular audit of Legal Aid Ontario

Several review contributors mentioned LSS’s high administration costs and other cost inefficiencies. I was not equipped to determine whether their fiscal management practices are sound, although I saw no indication otherwise. The Office of the Auditor General of Ontario periodically conducts a value-for-money audit of Legal Aid Ontario. The BC government may wish to engage the Office of the Auditor General for a similar purpose.

AREA-SPECIFIC RECOMMENDATIONS**PLEI SERVICES****RECOMMENDATION 10** (PAGE 28)

Support an external governance review of the provincial PLEI sector to establish clear organizational roles and accountabilities, and to streamline PLEI service delivery options from a legal aid user’s perspective.

RECOMMENDATION 11 (PAGE 30)

Create a Clinic Resource Centre within LSS to communicate with a new network of community legal clinics, to gather and dispense collective knowledge and expertise, to inform responsive development of PLEI materials, and to promote inter-agency awareness and collaboration.

Inspiration: Legal Aid Ontario's Clinic Resource Office

FAMILY SERVICES**RECOMMENDATION 12** (PAGE 36)

Broaden availability of expanded duty counsel and Family LawLINE services to improve access and convenience for working people and their families.

RECOMMENDATION 13 (PAGE 38)

Fund and support an integrated network of independent community legal clinics with modular teams of lawyers and advocates providing family law and poverty law services.

Inspiration: LSS's former Community Law Offices; Legal Aid Ontario's Community Legal Clinics

  **HIGHER PRIORITY**

INDIGENOUS SERVICES**RECOMMENDATION 14** (PAGE 42)

Broaden the scope of Indigenous legal aid services to include more preventative services that are not premised on agreeing to state intervention or correction, which impose stigma.

  **HIGHER PRIORITY**

RECOMMENDATION 15 (PAGE 43)

Create a Child Protection Clinic to help parents before child protection concerns have reached the level of Ministry of Children & Family Development intervention, and to serve as a practice resource centre for lawyers representing parents in contested child protection matters.

   **HIGHEST PRIORITY**

RECOMMENDATION 16 (PAGE 44)

Support the iterative and scalable development of Indigenous Justice Centres as culturally safe sites for holistic legal aid service to Indigenous people.

   **HIGHEST PRIORITY**

IMMIGRATION AND REFUGEE SERVICES**RECOMMENDATION 17** (PAGE 47)

Create and embed a Refugee Legal Clinic in the integrated services hub at the Immigrant Services Society of BC's Welcome Centre in Vancouver or Surrey.

Inspiration: Legal Aid Ontario's Refugee Law Offices

  **HIGHER PRIORITY**

CIVIL (POVERTY) SERVICES**RECOMMENDATION 18** (PAGE 52)

Fund and support an integrated network of independent community legal aid clinics with teams of lawyers and advocates providing poverty law services.

Inspiration: LSS's former Community Law Offices; Legal Aid Ontario's Community Legal Clinics

   **HIGHEST PRIORITY**

RECOMMENDATION 19 (PAGE 52)

Develop and nurture a strategic network of specialty legal aid clinics to serve specific communities of legal need.

CRIMINAL SERVICES**RECOMMENDATION 20** (PAGE 55)

Enhance LSS's current non-trial resolution tariff, or develop a new discretionary tariff for case preparation that results in early resolution and avoids trial, based on a detailed account of the scope of preparation and its impact on settlement.

RECOMMENDATION 21 (PAGE 56)

Develop an LSS telephone complaint service and a quality assurance audit program, including enhanced user feedback and after-case peer review, to better assure the quality of lawyers' services.

RECOMMENDATION 22 (PAGE 59)

Create an experimental Criminal Law Office along a major transit route in Metro Vancouver, with a team of criminal staff lawyers, paralegals, administrators and support workers providing general and specialized legal aid services.

Inspiration: Burnaby Public Defender Study

  **HIGHER PRIORITY**

RECOMMENDATION 23 (PAGE 59)

Create a Criminal Resource Centre at the Criminal Law Office that offers free access to tariff lawyers, pro bono lawyers and other legal aid service providers, and provides space for co-working and training as well as resources for legal research and practice management.

 **HIGH PRIORITY**

RECOMMENDATION 24 (PAGE 62)

Develop a Major Case Team of LSS staff lawyers and paralegals to provide in-house capacity and to support tariff lawyer capacity for long and complex criminal case work.

 **HIGH PRIORITY**

COLLABORATION**RECOMMENDATION 25** (PAGE 65)

Collaborate with other justice system stakeholders, like the Law Foundation of BC, the Law Society of BC, the BC Branch of the Canadian Bar Association and other branches of government, to promote legal aid practice and reduce justice system costs and delay.

1. Introduction

This is a report about legal aid service delivery in BC, in which I consider and recommend different strategies for delivering more cost-effective legal aid services to people throughout the province. It is meant to guide the Attorney General of BC, LSS and other system stakeholders forward as they make important executive and policy decisions about where to invest in legal aid, and how to better serve British Columbians.

My report focuses on legal aid users—people who need legal aid and therefore live with the consequences of important policy decisions. Legal aid users include the Indigenous mother whose newborn baby is taken by a social worker, the young woman who is scared to leave a violent relationship, and the legal aid lawyer who chooses to pay his professional fees instead of rent. They include thousands of disadvantaged British Columbians who rely on government benefits for survival but are denied legal aid when those benefits are reduced or withheld.

The problem of inadequate legal aid has rested on the shoulders of disadvantaged British Columbians and their service providers for too long. It has caused immense human suffering. It has produced downstream social and economic costs that are crippling other government support systems. In time, it has grown to be a “wicked problem” that is resistant to singular solutions and quick fixes. Positive change will only come from a common and sustained commitment to collaboration and experimentation.

In this report, I provide 25 recommendations for positive legal aid reform. The recommendations are informed by principles of user-centred design, evidence-based analysis, collaboration and experimentation. This report follows a path that any disadvantaged person facing legal problems might follow, were those legal problems to go untreated. That path starts with front-end legal education and information needs, proceeds through personal conflict to struggles with the state, and ends with criminal defence needs.

My proposed changes require a bit of sacrifice from everyone. Put another way, they involve everyone. Reviving legal aid will be a collective effort. There are many roads to follow.

2. First Principles

Viewed from the high level of rights and policy, legal aid is an essential element of a fair, humane and efficient justice system based on the rule of law. Most people do not think of legal aid in these terms, if they think of legal aid at all. Most people think of legal aid when they encounter a legal problem that threatens their well-being, and they have no money to retain a lawyer. Some people are more likely to encounter legal problems than others. Poor people, in particular, “are always bumping into sharp legal things”¹ and needing legal services. For most people at ground level, legal aid means a government-funded lawyer when you need one.

As a practical matter, “when you need one” is not solely determined by the potential consequences of your legal problem. It is also determined by the budgetary needs and priorities of funders. In times of economic austerity, the scope of legal aid coverage tightens for poor and disadvantaged people, and excludes some of their legal needs. This can make it difficult to fulfil an ambitious rights-based approach to legal aid, in the practical sense that anything less than a constitutional right to counsel is subject to budget priorities. That is not to say that a rights-based approach to legal aid cannot foster systemic change, or set a floor for what is ethical and right.

Some rights are always worth pursuing. An effective rights-based approach can force positive change upon reluctant governments. It can shift spending priorities, and cause policy makers to rethink when a person needs a lawyer. At the same time, setting evidence-based benchmarks can create interest and space for cooperative advancement on public policy where asserting elevated rights often cannot. Benchmarks assume minimum requirements but set aspirational standards, and may include targets for progressive implementation.

NATIONAL BENCHMARKS

In 2016, the Canadian Bar Association (CBA) endorsed a set of six legal aid benchmarks developed by its Access to Justice Committee in cooperation with the Association of Legal Aid Plans of Canada.² The benchmarks are meant to serve as guiding principles for an integrated national system of public legal assistance services focused on improving access to justice and meeting the needs of disadvantaged people across Canada.

1. A National Public Legal Assistance System

Canadian public legal assistance systems are sustainably funded and provide comprehensive, people-centred legal services tailored to local, regional, provincial and territorial circumstances to meet essential legal needs and contribute to the health and well-being of disadvantaged and low-income Canadians.

2. Scope of Services

Public legal assistance services are provided to individuals, families and communities with essential legal needs who are otherwise unable to afford assistance. Essential legal needs are legal problems

1 Wexler, Stephen, “Practicing Law for Poor People” (1970) *Yale Law Journal* 79:6, at p. 1050.

2 Canadian Bar Association Access to Justice Committee, *Study on Access to the Justice System* (December 2016) <www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a>.

or situations that put into jeopardy a person or a person's family's liberty, personal safety and security, health, equality, employment, housing or ability to meet the basic necessities of life.

3. **Service Priorities**

Public legal assistance services are provided on a priority basis to individuals, families and communities who are financially disadvantaged or are otherwise vulnerable to experiencing unmet essential legal needs.

4. **Spectrum of Services**

Public legal assistance service providers use discrete and systemic legal strategies and work in collaboration with non-legal service providers to offer a broad range of services—from outreach to after-care—targeted and tailored to people's legal needs, circumstances and capabilities.

5. **Quality of Services**

Public legal assistance services in all provinces and territories are fully accessible, timely, high quality, culturally appropriate and cost-effective. Services will lead to evaluated meaningful participation and fair and equitable outcomes, and contribute to the empowerment and resilience of individuals, families and communities.

6. **A Supported, Collaborative, Integrated Service Sector**

Public legal assistance service providers participate in collaborative service planning across this sector and are mandated and supported to innovate and to fulfil their integral role of ensuring access to justice and an effective justice system, working in partnership with all stakeholders.

The CBA uses the term “public legal assistance systems” to describe a broad range of public legal services that extends beyond the common view of legal aid as a government-funded lawyer for poor people. It includes the range of services currently provided by Canadian legal aid plans, and more:

These systems include what is traditionally thought of as legal aid [...], through to services responding to legal needs, health and empowerment more broadly by supporting legal literacy and capabilities and providing legal information, assistance, dispute resolution and representation services, either directly or through referrals to other agencies.³

To move this rich mosaic of public legal services into functional alignment as a national network, the CBA pins its hopes on three principles:

1. user-centred design,
2. open and transparent measurement of system-wide progress, and
3. inter-agency collaboration.

³ Canadian Bar Association Access to Justice Committee, *Study on Access to the Justice System* (December 2016) <www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a>, at p 1.

Those three principles are essentially the same principles that are recommended in this report for effective and efficient delivery of legal aid services in BC.

RECOMMENDATION 1

Endorse the CBA's National Benchmarks for Public Legal Assistance Systems in support of a user-centred, evidence-based and collaborative approach to legal aid service delivery.

USER-CENTRED APPROACH

USER-CENTRED DESIGN

User-centred or UX design is a methodology that begins with a fundamental concern for user experience. It identifies problems that users encounter in a system, clarifies user needs and goals, and then takes an experimental and iterative approach to solving those problems. It is commonly employed in the technology sector where product teams research consumer behaviour, create new technology to suit consumer needs and desires, and continuously test products to see how consumers respond. It prioritizes practical feedback and test results from actual users, rather than the expert evaluation of system professionals.

This user-focused approach stands in contrast to the standard approach to legal service design, which prioritizes the perspectives of legal experts (lawyers and judges) in dispute resolution. In the legal aid context, the standard process for intervention corresponds more or less with the linear elements of courtroom practice. For example, a litigant and their lawyer attend court to apply for an interim order, and later return for trial. This linearity provides a logical structure for tariffs. It also gives rise to process thinking; a legal aid lawyer analyzes what needs to be done to solve the client's problem, lays out a litigation process against the tariff, and gets on with the task at hand.

From my research and consultations, it is clear to me that legal aid clients are not at all concerned about process. Outcomes, however, concern them very much. They do not want a lawyer so much as they want a fair and final resolution to their legal problem. A lawyer is simply a means to this end. If a computer is better able to achieve a fair and final resolution, they will choose a computer over a lawyer. This seems obvious, but it has taken our justice system a long time to consider the user's perspective. There has been little thought given to how clients prefer to engage with legal aid services, and what they seek from their service providers.

LSS contracts an independent research organization to conduct a mostly quantitative client satisfaction survey every two years. They also have plans to monitor client satisfaction by conducting regular exit surveys and recording calls to the LSS call centre. These are helpful user-response tools, but they fall short of the continuous "built-in" feedback needed to properly assess and refine user-centred systems. I was reminded in several consultations that tariff lawyers are legal aid users too. They use systems like LSS Online (a secure online portal for legal aid lawyers) to submit invoices and authorization requests, access practice resources and communicate with system administrators.

A few lawyers told me that interacting with LSS managers on case management issues became such a chore that they stopped accepting cases altogether (this issue is further explored in Chapter 6: Family Services). I heard that, “For what it paid, it just wasn’t worth the hassle.” Some measure of red tape is inevitable when working with a bureaucracy of LSS’s size and complexity, but improving lawyers’ user experiences is critical to sustaining effective capacity for service delivery.

RECOMMENDATION 2

Develop and implement cross-system methods for contemporaneous user feedback to promote user agency and to continuously assess and refine service delivery systems.

USER AGENCY

It is not enough to announce that a legal aid plan is user-centred, or that legal aid services are designed with the user in mind. To be effective, a user-centred legal aid plan must embed continuous user-feedback methods in all aspects of service delivery. This is achieved by engaging users throughout the service continuum: inserting surveys, engaging focus groups, and performing interviews and qualitative research about client needs and experiences. It is further assisted by conducting controlled experiments to assess the effectiveness of different service delivery models.

Wherever possible, a user-centred legal aid plan should loop clients into the design and implementation cycles of service. Legal aid service providers should work with their clients—not only for them—to achieve their goals. This participatory approach is particularly suited to family and civil areas of legal aid practice (especially poverty law). It involves collaborating with clients and other service providers at each phase of problem identification, strategy formation and solution implementation. It adapts well to an unbundled (and therefore modular or scalable) approach to legal aid service delivery.

“Collaborative lawyering” also promotes user agency by transferring legal knowledge and power from service providers to their clients in a highly contextualized way. It arms clients with legal problem-solving skills to apply to their own personal and cultural circumstances. As Gerald López states in his influential book, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice*,

if people subordinated by political and social life can learn to recognize and value and extend their own problem-solving know-how, they [...] may gain confidence in their ability to handle situations that they would otherwise experience as utterly foreign and unmanageable, with or without a lawyer as representative.⁴

USER CHOICE

One way to promote user empowerment is to give legal aid clients more choice over when and how they use their allocated service hours. Clients can benefit from being able to choose when to seek a lawyer’s help with their case and when to conserve their legal aid allocation by going it alone.

⁴ López, Gerald, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* (Colorado: Westview Press, 1992) at p. 70.

Making an effective choice requires a well-defined range of unbundled service options, and more service continuity and client control over case management than LSS currently offers (though family duty counsel services do present a meaningful degree of user choice). It also requires an online portal—a client version of LSS Online—where clients can manage their client profile, check on their case status and consider the different unbundled service options available to them.

LSS’s MyLawBC and the Civil Resolution Tribunal’s Solution Explorer are two BC-born online systems that offer self-guided pathways to users. They are user-friendly artificial intelligence systems that employ simple question-and-answer tools to equip people with plain-language legal information and free self-help resources tailored to their needs. Both online dispute resolution platforms are internationally acclaimed for their cutting-edge technology.

MyLawBC’s guided pathways serve four distinct legal areas from diagnosis to review by a legal professional: separation and divorce; abuse and family violence; foreclosure; and will drafting. LSS intends to use the MyLawBC platform to pilot the uptake and effectiveness of online dispute resolution in family law. They are also shifting to an open-source technology approach that better aligns with the prevailing non-profit culture of cost-effectiveness, collaboration and continuous improvement.

LSS’s 2018 client satisfaction survey found that 96 percent of their clients have internet access, and 93 percent of their Indigenous clients have a smart phone. Their survey may favour people predisposed to technology use, but it is clear that technology has a growing role to play in helping low-income people overcome their legal problems.

Many British Columbians would benefit from a well-designed online client portal—similar to MyLawBC or Solution Explorer. Such a portal could handle application intake, issue triage, problem solving by guided pathways and active case management. It would provide a single entry point or one-stop resource for people seeking legal aid services—no matter where they are located or when they seek access. At the same time, it is critical to maintain existing channels for access to legal aid, since many British Columbians with disabilities and other vulnerabilities have difficulty accessing and using online services.

RECOMMENDATION 3

Develop and launch an online client portal to accept legal aid applications, to diagnose and treat clients’ legal problems, and to empower clients in the active management of their own cases.

EVIDENCE-BASED ANALYSIS

There is growing recognition across Canada that we need to improve justice sector data collection and analysis. Good policy development depends upon good data for measurement and evaluation. Yet there is little being done on the provincial or the federal level to measure justice system performance. Not much is known, for example, about whether the current court-based model of family dispute resolution serves individual litigants, their children and society better than collaborative and less adversarial alternatives.

Justice stakeholders, including legal aid clients, are too often left to guess about the positive potential of systemic reforms. This stifles innovation and contributes to duplication of reform efforts. In BC, important justice stakeholders, including the Ministry of Attorney General, each of the three courts, Access to Justice BC, LSS and the Law Foundation of BC, have formed a Research Framework Working Group with a goal of creating a “data observatory” to collect high-quality justice data for sector-wide use and analysis. Group leader Jerry McHale, QC, has commented on the limiting effects of a fragmented approach to justice data collection and analysis:

We do not have cross-jurisdiction agreement on a system-wide infrastructure or architecture to guide and coordinate the collection and utilization of data. In fact, many, if not most, provincial jurisdictions lack strategies or agreements guiding the collection and utilization of data. Operationally, the justice system is organized in silos and, as a result, data is typically collected and utilized in silos. The independence of the judiciary and the executive translates into parallel data collection processes, objectives that are not complimentary and challenges in sharing across systems. As a further consequence, data collections are often built on different definitions of justice events, making coordination and comparison almost impossible. It also means that no one part of the system has an overarching vision or understanding of what data exists in the system.⁵

The current situation in BC begs for an independent and overarching body to coordinate the collection and analysis of standardized justice data across the province. In a later phase, such a body could use its data architecture to assess the individual and aggregate performance of justice sector organizations—like LSS, the BC Prosecution Service and the courts—against national benchmarks. This would cultivate greater transparency and accountability for performance.

BC can draw inspiration from Quebec, where several universities and justice stakeholders have travelled a fair distance down the road of justice system evaluation. The *Accès au droit et à la justice* (ADAJ) project creates and collects data to measure justice system performance against national benchmarks. It uses indicators like user satisfaction, judicial process delays and user access to legal services. Eventually, they intend to issue an annual report on justice system performance to foster public accountability. In BC, a similar role could be given to an independent and measurement-driven body like Access to Justice BC, the Access to Justice Center for Excellence or the Office of the Auditor General.

RECOMMENDATION 4

Task and support an independent body, like Access to Justice BC, the Access to Justice Center for Excellence or the Office of the Auditor General, to coordinate the collection and analysis of standardized performance data across BC’s justice system.

5 McHale, Jerry, “*The Justice Metrics Problem*” *Background Paper* (Victoria, March 3, 2017) <<http://static1.squarespace.com/static/5532e526e4b097f30807e54d/t/590a60968419c273fe4dd99c/1493852311174/AC+Background+Paper+March+YVR+FINAL.pdf>> (17 February 2018), at p. 5.

COLLABORATION ACROSS DISCIPLINES

It hardly needs to be said that a multidisciplinary approach to legal aid service offers multiple and exponential benefits to clients and service providers. A multidisciplinary model can respond to the myriad needs of people who are marginalized by their social, medical or psychological circumstances. Offering a suite of legal and non-legal services in one accessible community location—directly “in the path of the client”—allows for greater efficiency and continuity of care for people who would otherwise lack access to resources and support systems.

Clients benefit from not having to travel from one agency to another to receive a full range of user-centred and outcome-oriented services. Also, they are more likely to access services when fewer barriers are placed in their way.

A multidisciplinary approach also provides an effective way to address mental health and addiction issues that so often underlie serious legal problems, and that weigh heavily on the service providers:

- Health, social support and housing providers can use their different skills at early stages of intervention, in order to develop more comprehensive and lasting solutions for clients.
- Lawyers and advocates, in turn, can call upon these service providers to enhance their legal services, or for help with the emotional demands of their challenging line of work.

These early and integrated treatment strategies have been shown to substantially reduce the number of people with mental illness who come into contact with the police. They reduce downstream costs to other ministries. They also reduce the need to engage diversionary strategies in mental health and drug courts at the correctional “back-end” of the multidisciplinary model.

Embedding legal aid services in a multidisciplinary service environment brings their systemic value to the forefront. When isolated tariff lawyers help their clients with non-legal problems—when they serve as untrained psychologists, social workers or settlement workers—the problem-solving and cost-saving impacts of their extra efforts are lost on system analysts. The value they provide is not captured in any metrics. They are providing value for (modest) fees to the Ministry of Attorney General, and value for no fees to other government departments like the Ministry of Health, the Ministry of Children & Family Development, the Ministry of Mental Health & Addictions, and the Ministry of Municipal Affairs & Housing. When legal aid lawyers work in a team environment with other service professionals, the outsized value of their work is better seen and appreciated.

A multidisciplinary service approach also gives service partners the opportunity to share costs and diversify funding. Co-located organizations can share infrastructure costs and find cost efficiencies from operating in a “one-stop shop” environment. They can also draw on their different organizational profiles to attract funds from a wide array of private and public sources, including from government ministries—in amounts that reflect the direct value they provide.

RECOMMENDATION 5

Promote multidisciplinary and cost-sharing approaches to client problem resolution that attract a wide array of funds from government and non-government sources.

3. Service Delivery Models

Canadian legal aid plans have been variously described in different times and locations. Though often labeled differently, they rely on one or more of three main service delivery models:

- The **staff model** (best known for its public defender version in US criminal law), where lawyers are employed directly by the plan to serve clients;
- The **tariff model** (sometimes known as the certificate model or the judicare model), where clients are matched by choice or referral to a private lawyer who represents the client and bills the plan according to a predetermined schedule of fees; and
- The **clinic model**, where the plan contracts with an independent community clinic to serve clients by way of the clinic’s own staff lawyers and a possible tariff complement.

Each of the three models may incorporate the use of duty counsel and expanded duty counsel. They may also include paralegals and lay advocates as alternative legal service providers.

- Duty counsel are staff or tariff lawyers who provide onsite legal assistance services at courthouses on a limited-scope or “unbundled” basis.
- Expanded duty counsel are staff or tariff lawyers assigned to the same court for a prolonged period of time, who may represent a client from intake to resolution before trial.
- Paralegals and lay advocates are often employed by community clinics to provide limited legal aid services under the supervision of staff or tariff lawyers.

CANADIAN MIXED MODELS

In Canada, no provincial or territorial legal aid plan fits entirely into a staff, tariff or clinic model. Each of the thirteen plans operates on a mixed model, although the mix varies significantly from one jurisdiction to another.

At one end of the country, Newfoundland relies on staff lawyers to provide the vast majority of its legal aid services. At the other end of the country, BC makes almost exclusive use of tariff lawyers. Ontario—the largest Canadian plan by a wide margin—uses the tariff model for the bulk of its services, but oversees an established network of community clinics for poverty law services. Alberta and Manitoba are tilted toward the tariff model, while Saskatchewan, the Maritimes and the Territories all favour staff lawyer services. Quebec comes closest to a true balance.

No matter the size or components of a service delivery plan, legal aid service delivery is a complex and multidimensional problem. Clients come to what appears to them to be a byzantine justice system, and they bring their own special tangles of issues that require personalized treatment.

Prominent Canadian access-to-justice researcher Albert Currie popularized the term “complex mixed model” to describe a plan that supplements the main models with a variety of adaptable delivery modes to target specific service needs.⁶ A complex mixed model most often includes expanded duty counsel,

6 Currie, Albert, “Legal Aid Delivery Models in Canada: Past Experience and Future Developments” (2000) *UBC Law Review* 33:2 at p. 305.

but may also include clinical pilot projects, assisted self-representation and block contracting to practice-specific law firms. The overall trend in Canada is toward greater use of the complex mixed model.

COST-EFFECTIVENESS

Much ink has been spilled on the question of which model is most cost-effective. Still, the evidence for accurate cross-evaluation has never been clear. Even when considering simple plans from several decades ago, reviewers struggled to reconcile complicated staff and tariff program variables. The trend toward complex mixed models, and the general lack of data on user experiences and outcomes, means that developing reliable comparisons of such models based on cost-effectiveness is increasingly challenging.

Intra-plan comparisons of model cost-effectiveness tend to focus on average cost per case in the relatively linear criminal case-flow environment. Primary variables for analysis include tariff costs, salary/benefit costs, overhead, productivity and (less often) case outcomes. Assessing the relative cost-effectiveness of staff and tariff models involves measuring the productivity of tariff lawyers and the sum of their tariff costs and related overhead on one side, and the productivity of staff lawyers and the sum of their salary/benefit costs and related overhead on the other.

It is important to use a common measure of productivity, such as measuring staff lawyer service in block tariff terms, so as not to compare apples with oranges. It is also important to incorporate user experience and outcome data into the measures of effectiveness.

Older research on cost-effectiveness should be addressed with caution, because circumstances are continually changing. Little stands still in the legal aid realm, apart from tariff rates. That said, every empirical study that I uncovered from the 1980s and 1990s concluded that the staff model is less expensive than the tariff model. The studies found that staff lawyers are associated with similar conviction rates as compared to their counterparts in the private bar, yet fewer custodial sentences. They also found equal client satisfaction levels.

RECOMMENDATION 6

Develop and apply the same performance measures, including user experience and outcome data, across all models and aspects of the legal aid plan to compare model cost-effectiveness, to increase system transparency and accountability, and to better inform continuous system refinement.

SERVICE QUALITY

Over the course of my consultations, I heard a few off-hand comments about the inferior quality of criminal staff lawyers. These comments are rooted in something other than recent BC experience, since the last LSS criminal staff lawyer office closed in 2002. They perhaps stem from the overworked and hapless public defender meme so widely spread by US movies and TV. They parallel a few comments I heard about criminal tariff lawyers running unnecessary trials to increase their compensation.

During the final stage of my review, the Auditor General of Ontario released her 2018 Annual Report with a chapter on a “value-for-money audit” of Ontario’s legal aid plan.⁷ Among other things, the Annual Report found that Legal Aid Ontario (LAO) is failing to ensure that its tariff lawyers are providing quality services to the public. It recommended that LAO “work with the Law Society of Ontario to create a quality assurance audit program, including after-case peer review, to oversee lawyers or seek changes to legislation that would allow it to develop and implement a quality assurance program by itself.”⁸

LSS has its own quality assurance program, which has more investigative tools than LAO. It appears to be more robust. Still, no legal aid service plan can boast a quality assurance program that is foolproof. There are incompetent and deceitful legal aid lawyers in BC just as there are in every other province. They are more than urban legends. I am confident that they are exceptions to the rule, though LSS’s quality assurance program could benefit from some strategic enhancements. (I discuss these further in Chapter 6: Family Services and Chapter 10: Criminal Services.) For the purpose of comparing cost-effectiveness of models, it is simply worth noting that quality assurance is more easily achieved in the staff model context of direct or indirect employment.

BURNABY PUBLIC DEFENDER STUDY

In 1979, LSS set up an experimental staff lawyer office in Burnaby to answer questions about the impacts and costs of delivering criminal legal aid by way of staff lawyers as compared to tariff lawyers. The office staff included three full-time staff lawyers (selected with different seniority to represent the general pool of lawyers who might be employed in a staff lawyer office), one paralegal and one administrative assistant. The staff lawyers represented clients primarily in Provincial Court, from first appearance through to disposition. They also acted as duty counsel at times. Legal aid cases were distributed evenly and randomly between the staff lawyers and their private bar counterparts in Burnaby and Vancouver.

LSS and the federal Department of Justice published an evaluation of the experimental project in 1981.⁹ The evaluation showed that the staff lawyers handled cases at an average cost of \$235, compared to \$225 for Burnaby private bar lawyers and \$264 for Vancouver private bar lawyers. The staff lawyers spent about 20 percent of their time as duty counsel. Had the staff lawyers dropped this aspect of their practice, they would have increased their caseloads by about 14 percent, and dropped their average cost per case to \$192.

The evaluation revealed that both staff lawyers and tariff lawyers resolved most of their cases on the day of trial. The evaluation also made several important findings related to staff lawyers:

- Staff lawyers provided more continuity of representation than tariff lawyers. They made first contact with their clients sooner than tariff lawyers, and more frequently acted for their clients at all proceedings.
- There were more guilty pleas and fewer trials in cases handled by staff lawyers.

⁷ Office of the Auditor General of Ontario, 2018 Annual Report (Vol 1), pp. 253-295.

⁸ Office of the Auditor General of Ontario, see note 7, at p. 279.

⁹ Brantingham, Patricia, et al., *The Burnaby Experimental Public Defender Project: An Evaluation* (Ottawa: Department of Justice, 1981).

- Staff lawyer clients received fewer prison sentences than tariff lawyer clients, but longer probation periods. Tariff lawyer clients received more absolute discharges.
- Court staff perceived an improvement in the quality of administration of justice with the introduction of staff lawyers.
- Crown counsel entered into more discussions and reached more agreements with staff lawyers than with tariff lawyers.
- Staff lawyer offices could be introduced in modest fashion across BC with limited disruption of private practice.

EMPIRICAL RESEARCH

Canadian studies that followed the Burnaby Public Defender Study consistently concluded that the staff model is less expensive than the tariff model for criminal legal aid. A 1988 Saskatchewan study estimated that moving the provincial plan from a 98 percent staff model to a two-thirds staff model would increase its total costs by 13 percent.¹⁰ It also estimated that moving the plan entirely to a tariff model would increase total costs by 64 percent. The same study found no noticeable difference in the conviction rates for staff lawyer clients and tariff lawyer clients, but striking differences in sentence outcomes. Staff lawyer clients received prison sentences 14 percent of the time, while tariff lawyer clients received prison sentences 32 percent of the time.

A 1987 study of the Manitoba plan calculated an average cost per provincial court criminal case for staff lawyers of \$197, compared with \$307 for tariff lawyers.¹¹ To control for differences in case complexity between models, the study also examined the average cost by quarterly case thresholds. It found that staff lawyers completed the first 25 percent of their caseload for an average cost of \$48 or less, compared with \$201 for tariff lawyers. The average cost of the staff lawyer caseload edged closer to the average cost of the tariff lawyer caseload as it neared the final threshold, but never came close to surpassing its private equivalent.

From 1993 to 1996, the Alberta plan set up two staff lawyer clinics in Calgary and Edmonton to provide legal aid to young offenders. A 1996 study of the clinics assessed the average cost per case for staff lawyers at \$353 compared to \$500 for tariff counterparts.¹² The study estimated that staff duty counsel saved the plan \$2.4 million in tariff costs over three years of early resolution. The study also concluded that staff lawyers resolved matters at an earlier stage than tariff lawyers.

ADAPTING TO AUSTERITY

By the turn of the millennium in Canada, intra-plan cost-effectiveness studies had largely dried up. In several provinces, this ebb of scientific enquiry coincided with a flow of austerity measures to control provincial government deficits tied to federal transfer reductions. Staff lawyer salaries continued to tick upward in line with collective agreements, while tariff rates remained static or were even reduced. This altered the calculus enough to give rise to a competing sense that tariff models are less expensive than staff models. Reality soon caught up to this perception in BC.

¹⁰ DPA Group Inc., *Evaluation of Saskatchewan Legal Aid* (Ottawa: Department of Justice, 1988).

¹¹ R. Sloan and Associates, *Legal Aid in Manitoba: An Evaluation Report* (Ottawa: Department of Justice, 1987).

¹² RPM Planning Associates, *Evaluation of the Staff Lawyer Pilot Project* (Edmonton, 1996).

Under a new mantra of fiscal discipline in the early 2000s, many provincial governments tightened their belts and cut legal aid services. System stakeholders pivoted to defend their preferred model of service delivery with as much reliance on principle and intuition as empirical data.

STAFF MODEL ADVANTAGES

As the dust-gathering research shows, the staff model can cost less than the tariff model under favourable circumstances (i.e. relatively low salary and benefit costs, relatively high tariff rates, and competitive productivity). It can also provide better client outcomes, greater economies of scale and specialization, and more consistent and verifiable quality of service.

The staff model has its own structural advantages to lend to an effective mixed model of service. These include:

- Versatility in use of lawyers and lower-cost paralegals as direct legal service providers.
- Continuity and consistency in service from permanent lawyers and paralegals.
- Capacity to monitor and directly report on court practices and systemic changes.
- Buildable capacity to deliver services in underserved communities.
- Onsite training, resource sharing and collaboration with pro bono lawyers and social service providers.

In my consultations, former LSS staff lawyers and community advocates frequently identified the staff model as better suited to serve “high-need” clients and cases with multi-dimensional challenges. They described serving clients with significant mental health challenges and knotted legal and non-legal issues not easily untangled by a single tariff lawyer mindful of the opportunity cost of extended service.

It was also said to me that staff lawyers operate in a less categorical service context than tariff lawyers. They operate in a team environment where they are able to provide more comprehensive client service within the margins of their employment contracts. By most accounts, this holistic approach enhances user experience and produces better case outcomes. But these days, it comes at a higher cost per case.

TARIFF MODEL ADVANTAGES

On the other side of the debate, I heard from many lawyers about the benefits of a private and decentralized tariff model approach to service. It optimizes freedom of choice of counsel, maximizes lawyer loyalty to client interests, and ensures meaningful independence from state interference or influence (particularly in criminal prosecution, child protection and immigration matters where government is a party to proceedings).

Where the tariff model is included as a component of a mixed model of service, there are structural advantages:

- Flexibility to accommodate sudden shifts in service demand.
- Large network capacity to serve a wide geographic range of communities.
- Quick adaptability to real or perceived conflicts of interest.

No matter where they stood on cost-effectiveness, lawyers and advocates expressed profound concern that BC's tariff-dominant model has been left to decay with stagnant tariff rates. I heard this time and again in my consultations, and I share in the common despair. Low tariff rates have steadily eroded lawyers' capacity to serve British Columbians in need. Low tariff rates have created more reasons for lawyers to group or "stack" client matters for quick handling in court, and fewer reasons for lawyers to provide holistic service. They have weakened the bonds between the legal profession, LSS and government. Most concerning of all, over nearly two decades, they have visited harsh and indelible consequences on the lives of BC's most vulnerable residents.

Purely from the perspective of short-term cost-savings, low tariff rates mitigate the first order costs of tariff services. They tilt the economic balance heavily in favour of the tariff model. Many lawyers expressed admiration at the job LSS has done in administering tariff services on a very tight budget. Several lawyers remarked at the ease of registering for legal aid service, accepting a client file and then billing for service. LSS's efficient online case management system has contributed to far-reaching if not enthusiastic lawyer engagement. Wherever lawyers practise in BC, there is at least the potential for the tariff model to serve people well.

CLINIC MODEL ADVANTAGES

The clinic model is particularly well-liked by community advocates, public interest lawyers and lawyers who worked in the old community law offices. They view legal aid clinics as more accessible to disadvantaged people, more effective in community outreach, and much better suited to advancing collaborative law reform initiatives for systemic change.

The clinic model shares many of the structural advantages of the staff model when used within a mixed model, but it also has these distinct advantages:

- Flexible capacity to serve client needs in unprofitable and underserved areas of law.
- Ability to embed services in holistic and locally trusted social service sites.
- Concentrated expertise and knowledge development in niche areas of poverty law.

Many frontline advocates told me that decentralized legal clinics are psychologically and physically more accessible to their low-income clients than law firms or legal aid plan offices. Clinics are more often accepted as low-barrier, culturally safe environments. They are places where people feel emotionally and physically safe from any challenge to their identity and needs. Clinic services are perceived as more broadly available to the community, as opposed to private bar services that are only available under special circumstances.

Lawyers and advocates told me about the collaborative service potential of legal clinics. In the clinical context, collaborative service involves lawyers or advocates working with clients and coaching the clients to be able to identify and solve their own problems. This service approach is premised on the user-centred notion that clients fare better when they are given agency in their legal issues, so they can become more empowered in their self-advocacy.

Many people reminded me that clinics tend to carry much lower infrastructure costs than conventional staff lawyer offices, because they attract more mission-guided legal service providers who are willing to do "impact work" for lower remuneration.

MIXED MODEL ASCENDANCY

By now, most if not all Canadian plans have come around to regarding the most efficient and cost-effective service delivery model as “all of the above.” In research and in practice, the general consensus is that the mixed model—more specifically the complex mixed model—is best able to respond to the multi-dimensional legal problems of modern legal aid clients.

A mixed model allows for the distribution of cases to service delivery modes best suited to the task. Where choice of counsel is a non-issue, case managers may match clients to staff, clinic or tariff lawyers based on their capacity, experience, special expertise and relevant client skills. Case managers must always strike a balance between profile matching and equitable distribution, but the main factors in assigning cases should be quality of service and cost-effectiveness. On these measures, some healthy competition between models should lead to overall cost savings and better client service.

HEALTHY COMPETITION

Setting up legal aid service delivery models for productive competition is easier said than done. Great care and attention must be given to balancing lawyer compensation and caseload levels. When setting staff lawyer compensation and caseloads, a mixed model must be sensitive to the opportunity costs of staff lawyers forgoing private work (including tariff work) and work across the aisle as Crown counsel. If salaries are set too low and caseloads are set so high as to negate the typical lifestyle benefits of a secure public service job, staff lawyer positions will only attract inexperienced and unsuccessful lawyers with low opportunity costs. Needless to say, this will have a diminishing effect on quality of service.

Likewise, in setting tariff rates, a mixed model plan must be sensitive to the opportunity costs of lawyers taking on tariff work and forgoing full-rate work or more steady work as a staff lawyer, Crown counsel or a different type of lawyer altogether. If the tariff rate sits well below the level of the opportunity costs (as it currently does in BC), then mostly inexperienced lawyers or older and unsuccessful lawyers with low opportunity costs will be drawn to regular tariff work. Again, quality of service will suffer.

Introducing competition is particularly challenging in a monopoly or near-monopoly situation. Whether it is a union representing staff lawyers or an association of tariff lawyers, a self-interested group of legal aid lawyers can wield considerable political leverage where no service alternative exists. Confronted with change, they can coordinate withdrawals of service with devastating impacts on the court system and the lives of legal aid clients. The effectiveness of these withdrawals tends to be inversely related to the percentage of legal aid work done by their staff or tariff counterparts. It is therefore critical that model change is introduced in an iterative and empirically defensible manner. A well-timed lift in remuneration helps as well.

MANITOBA’S COMPETITIVE SERVICE DELIVERY MODEL

Legal Aid Manitoba (LAM) operates a “competitive service delivery model” with tariff lawyers providing about 70 percent of services across the plan. Under this mixed model, LAM requires its staff lawyers to enter time and activity details for each legal matter, and to bill completed legal matters using the private bar tariff of fees. They refer to this performance measurement tool as the “Complexity Weighted Caseload” measure. Each matter completed by staff lawyers is assessed credit under the tariff.

LAM also sets an annual billing target of \$130,000 (equivalent to 1,625 billable hours at \$80 per hour) for each staff lawyer. Although no tariff money is paid out to staff lawyers, their productivity is assessed, to some degree, in terms of whether they meet the billing target. According to LAM, the Complexity Weighted Caseload measure fosters demonstrable competition between staff and tariff lawyers for the same work. Last fiscal year, LAM's top 25 staff lawyer billings averaged about \$153,000 (equivalent to about 1,900 billable hours), while their top 25 tariff lawyer billings averaged about \$223,000 (equivalent to about 2,800 billable hours).

Finally, LAM measures the number of tariff lawyers accepting legal aid matters, and assesses whether the supply of tariff lawyers is meeting the demand for services in all areas of coverage. They use these measures to determine whether vacant staff lawyer positions should be filled to cover any tariff service gaps around the province. Any unused salary funds are returned to the plan's operating budget, to ensure the efficient and cost-effective provision of services in other areas.

Using the Complexity Weighted Caseload measure, LAM has concluded that an average staff lawyer completes a basic tariff case at 1.4 times the cost of an average tariff lawyer. It should be noted that their staff lawyer costing includes a staff lawyer's salary, benefits and share of administrative overhead, while their tariff lawyer costing only includes straight billings.

USER EXPERIENCE AND TRIPLE AIM FRAMEWORK

LAM's competitive service delivery model is remarkable in its ability to compare apples with apples. It applies tariff metrics to staff and tariff lawyers, and this helps to isolate costs for direct comparison. On the other hand, it appears to chain staff lawyers to the structural constraints of the tariff system, and restrict the holistic service advantage of the staff model. This surface judgment may be unfair to LAM's model, but the measure does seem to overlook user experience as a vital aspect of user-centred analysis.

Access to Justice BC's Triple Aim Framework offers a more comprehensive if less precise approach to evaluating legal aid models. It hinges on three core pursuits of better user outcomes, better user experiences and lower system costs. In the context of legal aid services, it takes a broad view of user experience by considering qualitative dimensions like the client's trust in the service provider, the extent to which the client felt respected by the service provider, and the client's level of satisfaction with the substantive outcome of their case. Though somewhat imprecise in nature, this type of evaluative measure is indispensable to serving vulnerable client groups like victims of domestic abuse, refugees and mental health patients.

MENTAL HEALTH LAW PROGRAM

BC's Community Legal Assistance Society (CLAS) receives funding from the Ministry of Attorney General via LSS to operate its venerable Mental Health Law Program (MHLP). The MHLP was established in 1977, and currently provides two major services:

- Representation at Criminal Code Review Board hearings in BC's Lower Mainland to people found unfit to stand trial or not criminally responsible on account of a mental disorder.
- Representation at Mental Health Review Board hearings throughout BC to people detained under the province's *Mental Health Act*.

The MHLP uses a mixed model of four staff advocates, a 0.4 FTE staff lawyer, two administrative support staff and a roster of 68 tariff lawyers to provide client services. In 2017, the program embarked on a new funding and monitoring arrangement with LSS, and expanded staff capacity for service. Over the first year of the new arrangement, MHLP staff handled 503 of 910 representation files at an average cost per case of \$1,011. They predominantly served a high concentration of client need in the Lower Mainland. Tariff lawyers, meanwhile, handled 407 files throughout BC at an average cost per case of \$722. The MHLP anticipates that its staff cost per case will stabilize at \$834 in a non-transition year.

In early 2018, LSS conducted a file review of MHLP staff files, and also conducted interviews with tariff lawyers, Mental Health Review Board members and Access Pro Bono staff lawyers. MHLP staff received very positive reviews for the quality of service and care they devoted to client interests. The cost per case disparity between staff and tariff lawyers was ascribed to the extra time and attention that staff dedicated to their files to enhance client experiences and outcomes.

The MHLP is a good example of a mixed model clinic that is scalable and adaptable to changing circumstances. It uses tariff lawyers to extend service reach to all areas of BC, but relies heavily on a core of lower-cost advocates to serve the legal needs of vulnerable clients—with no apparent harm to quality of service. The MHLP acts as a hub for resources, training and mentoring for less experienced tariff lawyers. And it serves the Mental Health Review Board by offering a single point of contact for individual and systemic case management issues.

RECOMMENDATION 7

Introduce strategic, scalable and quasi-experimental iterations of staff and clinic models to fill legal aid service gaps, and to foster assistive competition between models.

4. Legal Aid in BC

Legal aid has travelled a long and arduous road in BC; a road with many ups and downs and roundabouts. You would be forgiven for thinking it has almost led legal aid right back to where it began in the middle of the twentieth century, as a service built on the benevolence of lawyers. Legal aid in BC started as a loosely coordinated approach to pro bono service, and its evolution is worth tracing from there, if only to show how much of the discourse around legal aid is cyclical. Most of what can be imagined as potential reform has been tried once or twice before.

EARLY YEARS

In BC after the Great Depression, volunteer lawyers worked together to serve the province’s growing number of poor people. The informal pro bono networks focused on civil legal needs until 1952 when the Law Society of BC began covering administrative expenses for a system of criminal representation. For the next 18 years, the Law Society operated a voluntary legal aid plan via local bar association clinics. The province began paying a small honorarium to the plan’s volunteer lawyers in 1964.

Legal aid in BC first took corporate shape in 1970 as the Legal Aid Society. Established by the Law Society and supported by a nascent Law Foundation, the new society provided criminal legal aid using a tariff model financed by the province. In 1972, the province and the federal government entered into a cost-sharing agreement for criminal legal aid. A family tariff followed a year later under the Canada Assistance Plan. The Legal Aid Society operated six branch offices to manage its criminal and family tariff services, each staffed by two lawyers and a secretary. Civil legal needs were still left to pro bono service.

The Attorney General created the Justice Development Commission in 1973 to plan the funding and development of legal services in BC. The Commission, in turn, created the Delivery of Legal Services Project and appointed Peter Leask as its leader. Leask issued a report on legal service delivery models a year later, in which he criticized the Legal Aid Society’s tariff model and praised the concept of community law offices. He proposed a more decentralized and community-based approach to legal service delivery.

FORMATIVE YEARS

In late 1975, an NDP government enacted the *Legal Services Commission Act*. The *Act* established a Legal Services Commission with the mandate to ensure that “legal services are effectively provided to, and readily obtainable by, the people of British Columbia, with special emphasis on those people to whom those services are not presently available for financial and other reasons.”¹³

The *Act* was roundly criticized a year later in a study of the community law offices for being “insufficiently well thought out, having been written with a view to political expediency and in such a way as to try and avoid offending the Bar, rather than any real understanding of the needs of the

¹³ *Legal Services Commission Act*, 1975, S.B.C. 1975, c. 36.

community it was designed to serve.”¹⁴ The legal profession disapproved of the use of paralegals in community law offices for what they saw as the unauthorized practice of law. For their part, community legal workers perceived the legal profession as self-interested, insensitive to poor people’s realities, and unwilling to share the stage.

In 1979, a Social Credit government decided to merge the Legal Aid Society and the Legal Services Commission into the Legal Services Society. Under the *Legal Services Society Act*, LSS was given a broad mandate to ensure that “services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons; and education, advice and information about law are provided for the people of British Columbia.”¹⁵ To pursue its mandate, LSS was given control of the Legal Aid Society’s criminal and family tariff services, as well as the Commission’s PLEI programs and agency funding responsibilities.

In the 1980s, as the provincial economy slid into recession, LSS faced a steady increase in service demand. Government funding failed to keep pace, and by 1982, LSS was forced to close offices, restrict eligibility criteria, constrain service coverage and cut tariffs by 13 percent. A resulting crisis in professional confidence spurred two legal aid reviews by Ted Hughes: the 1984 Task Force on Public Legal Services and the 1988 Report of the Justice Reform Committee. Although the reports were well-received by the legal profession, Hughes’s recommendations failed to register with government.

AGG REPORT

By 1992, it was Timothy Agg’s turn to review legal aid services in BC. Amid rapidly escalating legal aid costs and mounting deficits, Agg conducted a review of—among other issues—the suitability of different service delivery models, the adequacy of LSS’s leadership, and ways to reduce costs.¹⁶ He issued no less than 108 recommendations to the Attorney General. The more impactful recommendations included:

- Capping LSS’s annual budget allocation, and legislatively prohibiting future deficits.
- Adopting a more flexible mix of tariff and staff model services, with increased use of paralegals and increased support of community advocates.
- Reducing the criminal tariff by about 10 percent, with savings allocated to the family and human rights tariffs.
- Moving to a 50-50 division between tariff and staff lawyer delivery.
- Placing local legal aid services under the control of community boards, with authority for local budget, staff and service planning.

The provincial government followed up on many of Agg’s recommendations. LSS announced plans to move toward an even split between tariff and staff lawyer services. In response to the proposal, the Association of Legal Aid Lawyers organized a withdrawal of tariff lawyer services. LSS soon relented and retained the dominant tariff model.

¹⁴ Morris, P. and Stern, R., *Cui Bono: A Study of Community Law Offices and Legal Aid Society Offices in British Columbia*. (Vancouver, Queen’s Printer, 1976) at p. 74.

¹⁵ *Legal Services Society Act*, 1979, R.S.B.C. 1979, c. 227.

¹⁶ Agg, Timothy. *Review of Legal Aid Services in British Columbia*. (Victoria: Queen’s Printer, 1992) (the “Agg Report”).

AUSTERITY MEASURES

In 1997, an NDP government froze funding to LSS, and required it to eliminate its \$18 million deficit within four years. New austerity measures almost worked to plan, as the deficit was reduced to \$6.6 million. However, a new BC Liberal government was not content with that outcome, and slashed LSS's budget by almost 40 percent in 2002. This resulted in the elimination of all poverty law services and dramatic restrictions in family law services. LSS's family law caseload dropped precipitously, and its annual number of poverty law cases plummeted from 40,000 to zero.

By 2005, LSS had reduced its office and agency staff by 74 percent. It replaced its province-wide network of 60 branches, community law offices, Indigenous community law offices and area directors with a more tariff-dominant model using seven regional offices, 22 local agents and a telephone legal advice service called the LawLINE. The transition away from a clinic model had devastating impacts on BC's most marginalized communities, as advocacy organizations retooled with Law Foundation funding to cover massive gaps in poverty law service.

LSS suffered further funding cuts in 2009 that caused the organization to close its last family law clinic, replace five staff lawyer offices with contract lawyer services, eliminate the LawLINE and further reduce staff by 80 full-time positions. By 2010, LSS had moved away from being a true mixed model to becoming an almost entirely tariff model.

DOUST REPORT

In the summer and fall of 2010, prominent Vancouver lawyer Leonard Doust, QC, led his Public Commission on Legal Aid on a provincial tour to discuss the future of legal aid. Backed by large justice institutions like the Canadian Bar Association's BC Branch, the Law Society and the Law Foundation, the Public Commission heard from individuals and organizations about the legal aid system's general failure to meet the basic legal needs of disadvantaged British Columbians.

In his subsequent report published in March 2011, Doust issued nine recommendations designed to overcome the system's perceived deficiencies:

1. Recognize legal aid as an essential public service.
2. Develop a new approach to define core services and priorities.
3. Modernize and expand financial eligibility.
4. Establish regional legal aid centres and innovative services.
5. Expand public engagement and political dialogue.
6. Increase long-term stable funding.
7. The legal aid system must be proactive, dynamic and strategic.
8. There must be greater collaboration between public and private legal aid service providers.
9. Provide more support to legal aid providers.

Once again, the recommendations for reform were well-received by the profession and the public at large. But few of them were implemented. Among the unheeded recommendations were Doust's call for legal aid to be treated as an essential public service, and his calls for increased legal aid scope, coverage and funding.

RECENT YEARS

Since the Doust Report, LSS has concentrated its efforts on driving justice reform and innovating services within a narrow funding envelope. Its long list of service innovations since 2011 is a testament to the unrelenting will and expertise of its leadership. None of the innovations can be characterized as game-changing, but they demonstrate as a whole that LSS is committed to moving forward with a user-centred and outcome-oriented approach to service delivery within its budget.

Among others, the innovations include:

- MyLawBC website
- Expanded criminal duty counsel in Port Coquitlam
- Parents Legal Centres
- Expanded Family LawLINE
- Expanded family duty counsel at the Victoria Justice Access Centre
- Domestic violence courts in Nanaimo and Surrey
- Community partner program

LSS has also made impressive progress in developing services specifically for Indigenous people¹⁷ by Indigenous people. It has created a policy that representation of Indigenous people within LSS should be proportional to the numbers of Indigenous clients that the organization serves. It intends to accomplish this through an Indigenous equity policy in hiring, and by increasing Indigenous representation on its board of directors (including the current Chair). Legal aid clients who self-identify as Indigenous comprise 41 percent of child protection clients, 33 percent of criminal law clients and 23 percent of family law clients.

Despite this progress, serious legal aid service gaps have persisted and even widened in communities across BC, especially in the areas of family law and poverty law. In many ways, the access to justice crisis for low-income British Columbians has worsened. These unfortunate truths are explored in subsequent chapters of this report.

CURRENT STATE

It is important to remember that legal aid in BC is more than the sum of LSS's services. Since the 2002 legal aid cuts, the Law Foundation has developed a network of over 70 community advocates serving poverty law needs in over 40 locations around the province. It also funds a number of public interest law organizations (like the Community Legal Assistance Society and Pivot Legal Society), several PLEI organizations, an elder law clinic, a children's legal clinic and law student clinics at each of BC's three law schools. BC is also home to Canada's largest network of pro bono services; Access Pro Bono operates 116 advice clinics throughout the province that serve as entry points to further pro bono legal services.

17 References to "Indigenous people" in this report include status and non-status Indians (as defined by the Indian Act, R.S.C. 1985, c. I-5) First Nations, Inuit and Metis, living on and off-reserve in BC.

Still, LSS provides almost all of the publicly funded legal services in BC. It has two staff offices (one in Vancouver and another in Terrace) and 26 contracted community partners providing access to LSS services in 33 locations. It has 20 contracted local agents providing in-person legal aid services (including intake of legal aid applications) in 35 communities. Local agents also provide outreach services to 16 Indigenous communities. Client intake is available province-wide through LSS's call centre. An online application process that protects solicitor-client privilege is apparently in development.

Since 2002, LSS's PLEI services are no longer statutorily mandated. They are funded by the Law Foundation, and delivered in person by intake workers, legal information outreach workers, an Indigenous community legal worker, local agents and community partners. LSS also offers information through a number of publications and websites, including the MyLawBC website that alone had 41,271 users in 2017/18.

Criminal and family duty counsel provide legal advice in and out of courthouses across the province. Immigration duty counsel provide legal advice to detainees at the Canada Border Services Agency's enforcement centre in Vancouver. The Family LawLINE and the Brydges Line offer legal advice by telephone (the latter for people who may or have been arrested). In 2017/18, LSS lawyers assisted clients 128,091 times through these channels.

Finally, LSS offers legal representation services to financially eligible people with serious family, child protection, or criminal law problems. Legal representation is also available for people who face a refugee or deportation hearing, a Mental Health Review Panel or a BC Review Board hearing, or who have a prison issue for which the *Charter of Rights and Freedoms* establishes a right to counsel.

In 2017/18—across its criminal, family, immigration and child protection areas of service—LSS issued 26,061 legal representation contracts (down from 28,286 the year before) with 930 lawyers.

LSS GOVERNANCE

LSS is governed by a nine-member board of directors. Under the society's bylaws, the board's role is to “ensure the effective governance of the society through setting direction, monitoring performance, and hiring and supporting the executive director.”¹⁸ Of LSS's nine directors, five are appointed by the Lieutenant-Governor in Council on the recommendation of the Attorney General, and four are appointed by the Law Society after consultation with the BC Branch of the Canadian Bar Association. The directors view themselves as duty-bound fiduciaries to LSS.

Strictly speaking, the issue of LSS governance is not within the scope of this review. I mention it here only because it is connected to the issue of LSS's independence from the Ministry of Attorney General. It has some bearing on the choice of service delivery model in the criminal, immigration and child protection contexts.

18 LSS webpage, <<http://lss.bc.ca/about/ourGovernance.php>>.

In the past, legal aid independence from government typically meant governance by the legal profession. Law societies managed most of the provincial legal aid plans through the 1980s and 1990s, until external reviewers began recommending a move away from total law society control over legal aid. The Agg Report noted that a model where the Law Society appoints all of the members of the board “works to the extent that legal aid services are deemed to be the preserve of the legal profession. However, for 20 years, other interests have staked out ‘ownership’ claims. They should not be excluded.”¹⁹

Similarly, Professor John McCamus made the case for changing the legal aid governance model in Ontario (where the Law Society of Upper Canada had administered legal aid for the previous fifty years) in his 1997 review of the Ontario Legal Aid Plan. McCamus observed that law societies themselves are not necessarily “independent” and may be more apt to protect the interests of legal aid service providers than those of legal aid clients. He noted that “it is difficult for the Law Society to insulate itself from the interests of the legal profession. The Law Society would thus face special challenges in implementing reforms to the *judicare* [tariff] system.”²⁰

From 1979 to 1996, the *Legal Services Society Act* provided for 14 LSS directors; seven directors appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General, and seven directors appointed by the Law Society. The Agg Report recommended that the *Act* be amended to create a board structure with equal representation from government, the Law Society and community law offices. In Agg’s view, this solution respected the importance of the two traditional appointing authorities (government and the Law Society) while ensuring that community interests also had a voice at the board table.

The Agg Report led to changes in the 1996 version of the *Act* whereby government appointed five directors, the Law Society appointed five directors, and community organizations appointed five directors (two Native Community Law Association appointments, two Association of Community Law Office appointments and one joint appointment).

In 2002, the government amended the *Act* to its current allocation of five government appointments and four Law Society appointments.

LSS INDEPENDENCE

In consultations with criminal tariff lawyers, I heard some pointed concern that the current LSS governance structure does not provide legal aid lawyers—particularly staff and clinic lawyers if they are re-introduced—with enough protection from government influence in matters where government is the other party to litigation (i.e. criminal prosecution, immigration and child protection matters). Critics argue that without a higher degree of political insulation, legal aid lawyers may pull back on their client advocacy efforts for reasonable fear of government interference or retribution (like withdrawal of billing number or cancellation of agency funding). As Allan Fineblit once stated from experience, such a fear seems far-fetched:

¹⁹ The Agg Report, see note 16, at p. 27.

²⁰ Trebilcock, Michael, *Report of the Legal Aid Review, 2008*, <http://www.legalaid.on.ca/en/publications/downloads/advisorygroups/transform-poverty_trebilcock.pdf> at p. 13.

The point is that the governance of legal aid by an independent board or commission does not ensure independence when the board membership, mandate, tariff, eligibility, staffing or funding is controlled by government. It is worth noting, however, that when most people think about the independence issue what immediately comes to mind is a telephone call from the Attorney General, to his political crony chairing the Legal Aid Board, asking her not to fund the defence of an accused in a high profile case. It never happens. In twenty years at Legal Aid Manitoba, ten of them as Executive Director, working under four different administrations and seven different Attorneys General, not once was such a call ever made, nor have I ever heard of such a call in any other Canadian jurisdiction.²¹

It may comfort the critics to know that, by percentage measure of government appointments, LSS is more independent than most Canadian legal aid plans, including plans in Saskatchewan, Manitoba, Nova Scotia and Newfoundland and Labrador that all rely heavily on staff lawyers. To my knowledge, there has been no widely reported issue of government interference in any Canadian legal aid plan. LSS considers itself to operate at arm's length from government by virtue of its statutory mandate and a transparent accountability framework that includes a regular three-year memorandum of understanding with the Attorney General. In all, the independence concern appears to be rooted in ideology more than evidence.

Still, perception can be as important as reality. A majority of board appointments does not give government any greater control over LSS operations (this is evident from the often frayed relationship between the LSS board and the Ministry of Attorney General), but it does come at a cost to perceived independence. It opens LSS and government to unnecessary criticism. This can be avoided.

At the same time, my engagements with community advocates and legal aid clients revealed a common perception that LSS leadership lacks real understanding of the complex needs of BC's low-income communities—particularly many Indigenous communities. This may not be fair to the current LSS board given that it includes several community-minded people, including some of Indigenous ancestry. But it remains a problem of at least perception for an organization that aims to be user-centred and outcome-oriented. This also can be avoided.

The LSS board should reflect a balanced representation of the interests of government, the legal profession and the communities it serves. For community interests to be heard—and seen to be heard—the board should include space for the expertise and wisdom of people who represent Indigenous communities; women's centres; anti-poverty groups; people with disabilities; immigrants and refugees; mental health providers and so forth. This is particularly the case if LSS is to help resurrect a network of community legal clinics as this report recommends.

LSS expressed to me its satisfaction with a board of nine directors. Nine was viewed as an appropriate number for purposes of management and diversity. I recognize that an odd number of directors helps to avoid deadlocked votes, but I do not view nine directors as sufficient to encompass the wide diversity of legal aid interests across BC. I recommend that government amend the *Legal Services Society Act* to provide for eleven director appointments that include:

21 Perozzo, Ron, *A Review of Legal Aid Manitoba* (Winnipeg: Manitoba Justice, 2004) <www.gov.mb.ca/justice/publications/pubs/legalaidreviewfinal.pdf>, at p. 69.

- four appointments by the Lieutenant Governor in Council, on the recommendation of the Attorney General;
- four appointments by the Law Society, after consultation with the BC Branch of the Canadian Bar Association; and
- three appointments by frontline community service organizations with province-wide reach, including two organizations specifically serving Indigenous people.

I point to the Native Courtworker and Counselling Association of BC, the BC Aboriginal Justice Council and PovNet as examples of community organizations that could be called upon to serve as appointment bodies in the latter category.

RECOMMENDATION 8

Amend the *Legal Services Society Act* to provide for the following framework for eleven director appointments:

- four appointments by the provincial government;
- four appointments by the Law Society of BC; and
- three appointments by frontline community service organizations, including two organizations specifically serving Indigenous people.

LSS ADMINISTRATION

At the end of its 2017/18 fiscal year, LSS had 163 employees (full-time equivalents). It had annual revenues totaling \$84.6 million and annual expenses totaling \$86 million. The provincial government provided \$80.7 million in annual funding to LSS, with the remaining \$3.9 million coming from the Law Foundation, the Notary Foundation and a few other sources. The \$86 million in annual expenses included \$59.2 million in tariff costs, \$12.9 million for salaries and benefits, \$2.8 million for building and amortization, and \$11.1 million in other costs. The tariff expenses include payments to the private bar, direct service contracts (e.g. community partners, legal information and outreach workers), and an allocation for both public services and tariff administration costs.

The issue of LSS's administration costs came up more than a few times in my consultations and submissions. Several contributors shared the view that LSS carries heavy administration costs out of proportion to the services it provides. I was unable to substantiate these views. LSS management is very adept at budgeting to the dime, and there is no outward indication of wasteful spending. The organization's 2017/18 financial statements show "Total administration" costs of \$9.3 million, including \$1.4 million in "Executive Office" costs and \$3.4 million in "IT Services" costs.

LSS was occasionally described as "top-heavy" in its staff structure, and there was some speculation that its Information Technology service costs are too high for the value they provide to the organization's mission. Again, I could not substantiate these views. Each year, the total of LSS's categorized administration costs are roughly in line with the 10% budgeting threshold that the Law Foundation and other funders demand of legal non-profit organizations.

That said, LSS also lists “Tariff administration” costs under its financial Summary Tables for most of its service areas: roughly \$2 million for Criminal Services; \$756,863 for Family Services; \$361,201 for Child Protection Services; and \$122,757 for Immigration and Refugee Services. These amounts are above and beyond the costs allocated to lawyer fees and disbursements, which are separately budgeted. If the roughly \$3.3 million total of “Tariff administration” costs was added to the organization’s “Total administration” costs of \$9.3 million, the sum would be \$12.6 million or about 15 percent of its overall budget.

LSS was made aware of these concerns, and responded to this review as follows:

The BC government mandates that government organizations such as LSS follow Public Sector Accounting Board (PSAB) reporting standards for their audited financial statements.

In compliance with PSAB reporting standards, and as approved by LSS’s independent auditors, LSS’s administrative expenses are those costs not directly related to the delivery of specific legal aid services. These costs include: the executive office and board, strategic planning, policy development, financial management, office administration, information technology, human resources and amortization.

Consistent with PSAB reporting standards, costs related to the delivery of services provided by lawyers in criminal, family, child protection and family cases (referred to as “tariff services”), including “public services” (client intake) and “tariff administration” (invoicing and payment) are included in the cost of the specific service.

LSS appears to be abiding by the applicable reporting standard. I am not equipped to comment on whether administrative expenses ought to be calculated in a different way, so I simply leave this as an issue for possible investigation.

In the summer of 2014, the professional services firm of Ernst & Young conducted a study on how BC’s “Service Delivery Crown Corporations” might share services in order to reduce costs. The study compared the operational costs of several BC Crown agencies like LSS, PavCo, BC Housing, BC Transit and Knowledge Network. In almost every cost category, LSS compared favourably to its peers. The notable exception was the category of real estate leasing costs, where LSS was a distinct outlier on account of its relatively expensive office space in the heart of Vancouver’s central business district.

It is difficult for me to determine where LSS expenses are justified or unjustified. Overall, the organization has a good reputation for skilled and efficient management of its resources. To some degree, this is a matter of perspective. For someone accustomed to the costs and circumstances of a downtown Vancouver law firm, LSS’s operational costs likely seem very modest. For someone (like me) more accustomed to the costs and circumstances of a frontline legal non-profit organization, the same operational costs seem somewhat extravagant. This speaks to the severe under-resourcing of BC’s frontline legal service sector more than anything. But it does go to show that LSS can find greater operational cost-efficiencies.

RECOMMENDATION 9

Engage the Office of the Auditor General to perform a value-for-money audit of LSS operations.

5. PLEI Services

Public legal education and information (PLEI) services help people to understand their legal rights and responsibilities, take early steps to address their legal problems, and find their way through the legal system. PLEI services improve legal literacy and capability within communities.

By most measures, BC is the national leader in PLEI services. As a review contributor from outside the province put it, “BC has an embarrassment of PLEI riches.” This bittersweet description is apt because the provincial PLEI situation is vibrant and robust in terms of accessibility and range of service. But it is not so positive in terms of cost.

PLEI IN BC

There are no less than four major PLEI organizations in BC:

- Courthouse Libraries BC
- People’s Law School
- Justice Education Society
- Legal Services Society (LSS)

They are each venerable organizations with somewhat different missions, and they each produce high-quality PLEI materials.

COURTHOUSE LIBRARIES BC

Formed in 1975 as the BC Law Library Foundation, Courthouse Libraries BC operates 28 law library branches in courthouses around the province. It serves as a lead curator of legal information in BC, and as a physical and online hub for legal and library communities. Its signature PLEI offering is Clicklaw—an online portal that helps British Columbians find relevant legal information, educational resources and services from over 40 contributor organizations.

PEOPLE’S LAW SCHOOL

People’s Law School was established in 1972. It produces a range of free legal education resources in print and online formats to help British Columbians solve “everyday legal problems.” It also offers live legal education classes in communities around the province. The classes are led by lawyers, notaries and other experts.

JUSTICE EDUCATION SOCIETY

The Justice Education Society was established in 1989 as the Law Courts Education Society. It offers live and online legal education programs to improve legal capability and to increase access to justice in BC and around the world. It also offers a wide array of digital legal information resources for people facing legal problems. Its signature PLEI offering is Ask JES—an online chat, email or telephone portal with legal information and advice in several areas of law.

LEGAL SERVICES SOCIETY

LSS has provided PLEI services since its incorporation in 1979. Its suite of PLEI services includes a family law website, an Indigenous legal aid website, a large catalogue of online and print publications, and information and referrals from contracted outreach workers and partner agencies. Its signature PLEI offering is MyLawBC (briefly described in Chapter 2: First Principles). MyLawBC is an online portal with guided pathways for resolving specific legal problems.

For many years, the four organizations developed projects in relative isolation from one another. This resulted in some expensive duplication of effort. Around 2014, the Law Foundation attempted to broker a merger of the People’s Law School and the Justice Education Society. Although the merger attempt failed, it appears to have provoked better service coordination.

That said, over the course of my review, several advocates and lawyers expressed confusion about where to send clients who have legal information needs. In LSS’s 2016/17 tariff lawyer satisfaction survey, 68 percent of respondents supported LSS taking an “integrated or holistic approach to providing legal aid services.” But only 25 percent of respondents agreed with the statement, “I am satisfied with the level of support LSS gives me so I can help clients address their related legal issues.”

In the PLEI context, it is challenging to make effective client referrals, but not for the lack of options. The sheer diversity of BC’s PLEI services can overwhelm users. Work must be done to integrate and communicate PLEI service options so they are more coherent and approachable as a whole. The PLEI sector requires more user-centred analysis and further rationalization—even if the task is daunting.

RECOMMENDATION 10

Support an external governance review of the provincial PLEI sector to establish clear organizational roles and accountabilities, and to streamline PLEI service delivery options from a legal aid user’s perspective.

LSS BEFORE 2002

LSS’s engagement in PLEI service provision stems from the original *Legal Services Society Act*, which included the mandate to “provide education, advice, and information about the law for the people of British Columbia.”²² In the 1980s and 1990s, LSS viewed PLEI as an essential component of province-wide service delivery. Its wide-ranging PLEI developments included:

- a Legal Resource Centre that provided legal information services to community partners, and to the public via a telephone hotline (the now defunct LawLINE);
- a Native Programs Department that delivered customized PLEI services to Indigenous people in partnership with Indigenous community law offices; and
- a Public Legal Education Program that supported community-based, law-related initiatives through a small grants program, and fostered working relationships with frontline community organizations to serve their legal information needs.

22 *Legal Services Society Act*, R.S.B.C. 1979, c. 227, s. 3(1)(b).

LSS's PLEI services relied heavily on collaboration and a two-way community engagement strategy. For example, the Legal Resource Centre created an institutional partnership with BC's public library system to provide province-wide public access to appropriate legal information and referral services. In 1997, LSS helped to create PovNet—an effective online communications network for BC anti-poverty advocates—in collaboration with anti-poverty advocates and publicly funded poverty-law practitioners. Twenty-two years later, PovNet serves as the communications backbone for frontline advocates throughout BC.

LSS AFTER 2002

After the 2002 funding cuts and *Legal Services Society Act* changes—when several dozen LSS branches, community law offices and Indigenous community offices were closed—LSS lost vital community connections around the province. At the same time, PLEI became the primary way to serve legal needs in areas of law that had been previously served by legal representation (e.g. poverty law and most aspects of family law and immigration law). LSS shifted its main PLEI service approach from community-based in-person service to centralized technology-based service (e.g. LawLINE hotline service, LawLINK online portal). With the loss of its community law offices and poverty-law representation services, LSS soon became invisible to many community organizations and people dealing with non-criminal matters. Seeking to re-establish these community connections and refer more people to its centralized legal information resources, LSS created these new community-based roles for staff and contract service providers:

- legal information outreach workers (LHOWs) and Aboriginal community legal workers (ACLWs) who provide information and outreach services from a limited number of community offices (currently Vancouver, Terrace and Prince Rupert for LHOWs, and Nanaimo and Duncan for ACLWs);
- community partners (currently 26 contract service agencies in 33 locations) who provide legal information and referrals in smaller BC communities; and
- local agents (currently 20 contract lawyers serving 35 communities previously served by regional centres) who process legal aid applications, provide legal information and referrals, assign legal aid cases to local tariff lawyers, and schedule local duty counsel.

Today, LSS also provides legal education and information to community agencies via its Community and Publishing Services department. This department develops print and online public legal education resources, and holds legal education workshops and conferences around the province for its LHOWs, ACLWs, community partners and other frontline workers.

RESOURCING CLINICS

This report recommends (in Chapter 8: Civil (Poverty) Services) the development of an integrated network of independent community legal clinics. These clinics would provide services covering poverty law and family law, as well as more specialized needs, such as legal issues arising in refugee claims, child protection, and mental health.

This report also recommends (in Chapter 7: Indigenous Services) the development of integrated Indigenous Justice Centres by Indigenous-led organizations. The advent of such a wide-ranging community legal clinic system will bring many opportunities for agency integration and collaboration,

along with many challenges to sharing legal education and information. By virtue of its past and current PLEI structures, LSS is ideally positioned to foster effective service and knowledge integration across the clinic network.

In some ways, supporting a new network of community legal clinics will only require LSS to restore its pre-2002 community engagement programs to work alongside its current programs. Updated versions of its former Legal Resource Centre and former Native Programs Department (essentially its current Indigenous Services Department) can be combined with its current Community and Publishing Services department to serve community legal clinics quite well.

For added value, a new two-way community engagement strategy should incorporate a much lighter version of Legal Aid Ontario's Clinic Resource Office. There, staff lawyers prepare legal research memoranda, maintain a clinic legal information portal, annotate crucial legislation with important poverty law cases, and generally assist Ontario's 74 community legal clinics to serve client needs and pursue law reform.

In the early stages of clinic redevelopment across BC, LSS should resurrect the Legal Resource Centre as an online repository of curated pleadings, letter templates, research memoranda and other practice aids for use and refinement by clinic lawyers and advocates.

LSS should develop and support a new Clinic Resource Centre by redistributing current resources. LSS budgeted \$1,820,500 for 20 local agent contracts in 2017/18 (\$91,025 per contract). Once community agencies begin to add family and poverty lawyers to their staff components, community partner and local agent service roles should be given to agencies to manage at much less cost. Embedding LSS information service roles in community legal clinics should increase service visibility and promote inter-agency collaboration.

RECOMMENDATION 11

Create a Clinic Resource Centre within LSS to communicate with a new network of community legal clinics, to gather and dispense collective knowledge and expertise, to inform responsive development of PLEI materials, and to promote inter-agency awareness and collaboration.

6. Family Services

Family law has long been the area of greatest unmet need for legal services in BC and throughout Canada. According to Statistics Canada's Civil Court Survey, there were 57,407 active family law proceedings in BC's trial courts in 2016/17.²³ Despite the frequency of their contact with the justice system, most families in relationship breakdown are unable to access legal representation. The federal Department of Justice estimates that between 50 and 80 percent of litigants are self-represented when they appear in court for family law matters.²⁴ At the BC Court of Appeal, 46 percent of family law appeals filed in 2016 involved at least one self-represented litigant.²⁵

AN ISSUE OF EQUALITY

Women suffer disproportionately from inadequate access to family legal services. In January 2018, LSS confirmed that approximately 70 percent of family legal aid applications are made by women;²⁶ however, 55 percent of all family legal aid applications are refused.²⁷ Access to family legal aid is clearly an equality issue.

Women are more likely to have sacrificed education and employment opportunities to take on larger portions of the parenting responsibilities at home, and they are more likely to continue to be primary caregivers to children after relationship breakdown. Without access to legal advice and representation, women are less able to pursue support claims that may be critical to keep them and their children out of poverty.²⁸ The situation is worse for women living in rural and remote communities who often experience greater physical abuse and greater frequency of violence, yet remain trapped in abusive relationships longer than their urban counterparts. They face the additional obstacles of isolation from in-person legal aid services, lack of available family lawyers, and professional conflict-of-interest issues in small communities.²⁹

23 Statistics Canada, "Civil court cases, by level of court and type of case, Canada and selected provinces and territories 2016/17" (April 18, 2018) online: Statistics Canada <<http://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510011201&pickMembers%5B0%5D=1.6&pickMembers%5B1%5D=2.1&pickMembers%5B2%5D=3.3>>.

24 Department of Justice, Research and Facts Division, "Self-Represented Litigants in Family Law: Fact Sheet" (June 2016) online: Department of Justice <<http://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/srl-pnr.html>>.

25 "Court of Appeal Annual Report 2016" (2016) online: BC Court of Appeal <http://www.courts.gov.bc.ca/Court_of_Appeal/about_the_court_of_appeal/annual_report/2016_CA_Annual_Report.pdf> at 14.

26 Mulgrew, Ian, "Stretched legal aid living on hope in B.C." *Vancouver Sun* (January 7, 2018) online: Vancouver Sun <<http://vancouversun.com/news/national/ian-mulgrew-stretched-legalaid-living-on-hope-in-b-c>>.

27 *Legal Services Society 2017/18 Annual Service Plan Report*. July 2018. http://lss.bc.ca/assets/aboutUs/reports/annualReports/annualServicePlanReport_2017.pdf

28 Track, Laura, Shahnaz Rahman, and Kasari Govender "Putting Justice Back on the Map: The route to equal and accessible family justice" (Vancouver: West Coast LEAF, February 2014) online: West Coast LEAF <<http://www.westcoastleaf.org/wp-content/uploads/2014/10/2014-REPORT-Putting-Justice-Back-on-the-Map.pdf>> at 13.

29 Eileen Skinnider and Ruth Montgomery, "Enhancing Access to Justice for Women Living in Rural and Remote Areas of British Columbia: Reviewing Practices from Canada and Abroad to Improve Our Response" (Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy, 2018) online: ICCLR <<http://icclr.law.ubc.ca/wp-content/uploads/2018/09/BCLF-WA2J-Report-Final.pdf>> at 9.

SHIFT TO NON-ADVERSARIAL VALUES

In its 2013 report, *Meaningful Change for Family Justice – Beyond Wise Words*, the Family Justice Working Group (the “FJWG”) of the Action Committee on Access to Justice in Civil and Family Matters presented its vision of a more accessible and effective family justice system for all Canadians, and particularly for women. It outlined nine guiding principles for change that mesh well with the underlying principles of this report, and are worth presenting here in full:

- **Minimize conflict** - Programs, services and procedures are designed to minimize conflict and its negative impact on children.
- **Collaboration** - Programs, services and procedures encourage collaboration and CDR is at the centre of the family justice system, provided that judicial determination is readily available when needed.
- **Client Centred** - The family justice system is designed for, and around, the needs of the families that use it.
- **Empowered families** - Families are, to the greatest extent possible, empowered to assume responsibility for their own outcomes.
- **Integrated multidisciplinary services** - Services to families going through separation and divorce are coordinated, integrated and multidisciplinary.
- **Early resolution** - Information and services are available early so people can resolve their problems as quickly as possible.
- **Voice, fairness and safety** - People with family justice problems have the opportunity to be heard, and the services and processes offered to them are respectful, fair and safe.
- **Accessible** - The family justice system is affordable, understandable and timely.
- **Proportional** - Processes and services are proportional to the interests of any child affected, the importance of the issue, and the complexity of the case.³⁰

Informed by these principles, the FJWG made several recommendations for changing how and when legal services are delivered to families dealing with relationship breakdown. They identified collaboration and early resolution as service approaches that particularly help to minimize the cost and duration of a dispute, and mitigate the possibility of protracted conflict. The FJWG encouraged a fundamental shift of resources and services to the “front-end” of the family justice system, so that legal service providers spend less time and resources on supporting litigation, and more on services and non-adversarial processes to help families resolve their legal problems quickly and affordably.

LSS FAMILY SERVICES

The systemic shift toward more collaboration and early resolution services occurred as LSS was reimagining its family services (and other services) to support an increasingly outcomes-focused justice system in BC. In 2012, the Attorney General of BC asked LSS to provide advice on a number of issues, including new legal aid service delivery models that assume no funding increase. This led to the development and/or expansion of more cost-effective family service models beginning in 2013, including enhanced family and child protection duty counsel services, unbundled family services, and

³⁰ *Meaningful Change for Family Justice – Beyond Wise Words*, the Family Justice Working Group, April 2013.

telephone advice services (i.e. Family LawLINE). Along with PLEI services and the family tariff for legal representation in “serious family situations,” these services essentially comprise the range of family services that LSS provides today.

FAMILY REPRESENTATION SERVICES

LSS issues family representation contracts to tariff lawyers in cases where low-income applicants’ safety or the safety of their children is at risk, when they have been denied access to their children on an ongoing basis, or where there is a risk that their children will be permanently removed from the province. Tariff lawyers are allocated 35 hours of general preparation time (increased from 25 hours with new funding in early 2018), and an additional ten hours for preparing for a Supreme Court matter, out-of-court dispute resolution, or issues related to matrimonial real property on reserve.

Extended family services are available for clients whose primary legal issues require more time than was given in the initial representation contract. The extended family services are contingent upon assessed merit, available budget, and whether the clients or their children would be left at significant risk if coverage were ended.

In late 2018, LSS made limited family representation (i.e. unbundled service) contracts available to legal aid applicants who have financial security issues and do not meet the coverage guidelines for a full representation contract. To qualify for unbundled family service, clients must need legal assistance to effectively negotiate a settlement or represent themselves in a matter.

In 2017/18, LSS received a total of 7,261 applications (now called “service requests”) for family representation, and issued 3,276 contracts (i.e. 45 percent of the time). The family contract issue rate is considerably less than for criminal (79 percent), immigration (76 percent) and child protection contracts (73 percent) in the same year.³¹ It is also down from 50 percent in 2016/17. Among other factors, the relatively low family contract issue rate is a result of an inconsistent supply of tariff lawyers and the rationing of LSS resources by more restrictive application of client-eligibility criteria.

INTAKE AND CASE MANAGEMENT

Many review contributors expressed dissatisfaction with how LSS staff exercise their discretion to accept or deny applications for service. Some frontline advocates who assist clients to make legal aid applications voiced concern that LSS intake decisions are often inconsistent and arbitrary. They encouraged LSS to post its Intake Policies and Procedure Manual on its website for easy public reference. They also encouraged LSS to relax its document requirements, which they perceived to create unnecessary barriers to service for more marginalized clients.

Many of these concerns would be satisfied or at least mitigated by the development of an online client portal (as recommended in Chapter 2: First Principles) where applicants, advocates or other intermediaries could preload application information for quick and cost-efficient vetting by LSS intake staff. A client portal could also provide real-time feedback on the status of an application, and brief

31 Legal Services Society 2017/18 Annual Service Plan Report. July 2018. <http://lss.bc.ca/assets/aboutUs/reports/annualReports/annualServicePlanReport_2017.pdf>.

hyper-linked reasons for confidential intake decisions. Overall, it would provide greater transparency to client intake processes.

As supply-side legal aid users, some tariff lawyers were critical of the quality and speed of LSS staff response to their case management requests. Several lawyers commented on the rigidity of the LSS Online system, the extensive time and effort required to pursue basic authorizations (particularly for lawyers without administrative support), the lack of legal knowledge applied to their case management issues, and a less than cooperative staff approach to fielding time-sensitive queries. One lawyer described the approach as “punitive.” Another lawyer reflected on the relationship with LSS as follows:

I think there needs to be a better relationship of trusting each other—both ways between LSS and the lawyers who take the files. Because there isn't much trust. It always seems like a battle. It would really help to build goodwill if we all acted like we're in this together.

Any external review of a large bureaucracy will attract a generous amount of constructive criticism. People are more likely to provide complaints than accolades. The complaints that I received about LSS were almost always qualified with praise for their wider accomplishments. For example, tariff lawyers generally viewed LSS Online as a positive development, despite some commonly perceived weaknesses; this is reflected in its increased satisfaction ratings in LSS's 2016 Tariff Lawyer Survey.³² Still, the same survey showed growing dissatisfaction with the “Case Management – Authorizations” aspect of LSS Online, with the top concern relating to “poor or no explanations about decisions.”

FAMILY DUTY COUNSEL

LSS's Family Duty Counsel (FDC) provide brief in-person legal advice to clients with family law issues in courthouses throughout the province. FDC can provide advice about parenting issues, guardianship/custody, child support, tentative settlement agreements, court procedures, and property issues (to a limited extent). FDC can also speak on a client's behalf in court for simple matters. They provide a maximum of three hours of service per client, and they cannot represent clients at trial.

Provincial Court FDC attend courthouses on list days (sometimes called first appearance or remand days). They give priority to financially eligible people who are in court that day, either on the court list or to make emergency court applications. Once court ends, they can provide advice on a drop-in basis to people who are not appearing in court that day. Supreme Court FDC can assist people in Supreme Court Chambers if the matter is simple, unopposed or by consent. They can also attend a case conference.

Expanded FDC were introduced to the Victoria courthouse in 2014 as a pilot project. They have since been introduced to courthouses in seven other BC cities. Expanded FDC make efforts to schedule one-hour appointments (with the help of two dedicated administrators) so that clients may work with the same lawyer over their maximum six hours of service, thereby providing greater service continuity. Expanded FDC are also able to instruct or “coach” clients on aspects of the court process, such as how to address the judge and present the case.

32 2016 LSS Tariff Lawyer Survey <<http://lss.bc.ca/assets/aboutUs/reports/lawyers/tariffLawyerSatisfactionSurvey2016.pdf>>.

The FDC service model is widely valued. Justice system users—including judges, lawyers, advocates and litigants—have particularly high regard for the contributions of Expanded FDC. A formal evaluation of the Victoria pilot reported very high levels of client satisfaction:

Clients ... expressed a high level of satisfaction, with 83% of respondents saying that they were either very satisfied (51%) or satisfied (32%) with the help and support they received from the FDC. As well, 91% of respondents said that they felt treated with respect by the duty counsel and 85% said they felt the duty counsel listened to them and took the time to understand their legal issues.³³

The same evaluation found that litigants were coming to the court registry and court with better-prepared documents, and that assistance from Expanded FDC resulted in a noticeable decrease in unnecessary court appearances.³⁴ It also found that the pilot had the potential to save \$50,000 to \$250,000 in annual court costs, depending on whether it could effect a 10% to 50% reduction in court time by diverting cases and reducing appearances. The Victoria pilot cost \$277,039 in 2015/16, and served 1,290 clients (a \$215 cost per client). From a system-wide perspective, Expanded FDC almost has the potential to pay for itself.

The FDC service model also has its critics. I heard from a few FDC and other tariff lawyers who reported seeing FDC use their interactions with FDC clients to generate regular tariff work or private retainer work. They also perceived cronyism and repeated favouritism in how FDC contracts are assigned, including local agents repeatedly assigning “cold referrals” (i.e. clients who do not exercise their choice of counsel) to friends and associates over other available lawyers. They suggested that all cold referrals be assigned to FDC and regular tariff lawyers on a purely rotational basis.

I could not find any evidence of favouritism in LSS contract assignment, despite receiving multiple reports. Some local agents and LSS staff did explain to me that it is occasionally helpful to match client needs to the skills and attributes of specific lawyers. This makes sense. However, for the sake of greater transparency and lawyer trust in LSS systems, I encourage the adoption of a rotating roster system of client referral where exceptions to the rotation can be made and clearly documented for purely user-centred reasons.

FAMILY LAWLINE

Family LawLINE is a service that provides brief family law advice over the telephone for eligible clients during business hours. Tariff lawyers give clients up to six hours of “next step” advice about family law issues like parenting time, spousal and child support, family violence or protection orders, child protection, and court procedures. Clients access the province-wide service through LSS’s call centre, and tariff lawyers connect to provide advice from a VoIP telephone in their private office. The service team includes a lead lawyer, two or three administrators, and a roster of 13 to 15 roster lawyers who provide client service for a typical minimum of six to eight hours (split between two shifts) per week.

³³ Evaluation of the Expanded Family Duty Counsel Summative Evaluation Report, p. 38. July 2016 <<http://lss.bc.ca/assets/aboutUs/reports/EXPFDCCsummativeFinal.pdf>>.

³⁴ Evaluation of the Expanded Family Duty Counsel Summative Evaluation Report, see note 33, at p. 30.

In a 2016 evaluation of the service, 85 percent of Family LawLINE clients reported being satisfied with the help and support they received, and 55 percent reported being very satisfied. Family LawLINE clients were considerably more likely to have resolved all or some of their issues out of court without a trial than through an order from a judge after a trial. On the downside, the service suffered slightly from lack of public awareness and under-utilization. It also lacked meaningful integration with other free or low-cost family legal service providers in the province.

To the extent that they were aware of the service, review contributors were quite positive about Family LawLINE. They encouraged greater publicity for the service, and expansion of its availability into evenings and weekends when working people are better able to find time to address and resolve their legal problems.

RECOMMENDATION 12

Broaden availability of expanded duty counsel and Family LawLINE services to improve access and convenience for working people and their families.

SERVICE QUALITY

In *Meaningful Change for Family Justice – Beyond Wise Words*, the FJWG described the field of family justice as the “poor cousin” in the justice system—one that is “regarded as an undesirable area of practice by some lawyers and law students.”³⁵ The FJWG further observed that family law has been “de-emphasized by law schools, in favour of subjects more attractive to large law firms and global practice.” The cultural devaluation of family law has contributed to fewer lawyers practising in the area, and tighter budgeting for family legal aid.

The Honourable Donna Martinson commented on this troubling phenomenon in her submission to this review:

This devaluing of family law is difficult to understand. It deals with issues that profoundly affect Canadian families. It is perhaps the area of the justice system with which people come into contact the most and by which they form their views about whether the justice system is in fact fair and just. Though family law proceedings are private, in the sense that “the state” is not a party to the proceedings, as in criminal proceedings or child protection proceedings, there is a significant public interest in having both processes and outcomes that are fair and just and that effectively address the pressing issue of family violence and its impact.

In serving the public interest, legal aid plans are forced to contend with a growing demand for family legal aid services while the supply of family lawyers diminishes. These market dynamics make it difficult to entice family lawyers to provide legal aid on any basis other than benevolence. Most experienced family lawyers are reluctant to do tariff work at \$92 per hour when they could be collecting several times that amount in regular practice. The pay gap is immense, and even wider than for criminal lawyers. Many review contributors remarked on how the growing opportunity costs of family tariff work have contributed to declining quality of service. A few lawyers speculated that some of their colleagues only

³⁵ *Meaningful Change for Family Justice – Beyond Wise Words*, the Family Justice Working Group, April 2013 at 13.

engage in tariff work because they struggle to find private clients. They told stories of tariff lawyers who “pump and dump” legal aid files, i.e. they serve legal aid clients up to the maximum paid time under contract and then abruptly move on to the next file. These stories were invariably qualified by a statement that the vast majority of family tariff lawyers are very dedicated and professional. Overall, I was left with the impression that most family tariff lawyers view legal aid as a form of community service; they are motivated less by money and more by professionalism and the desire to help others.

SERVICE CAPACITY

Outside of the Metro Vancouver area, the changing demographics of the BC bar present significant challenges to sustaining capacity for family legal aid service, much less building capacity. The rural bar is aging out of practice, and many young lawyers are servicing large student debts that limit their ability to take on low-paying work. That said, LSS statistics show that in 2006/07, the median years of call for family tariff lawyers was 14.1 years. In 2016/17, it was 9.6 years. Over those ten years, the number of issued contracts dropped from 5,270 to 4,710.

LSS staff were candid in reporting their struggles to fill FDC shifts at sixteen courthouse locations, including urban centres like Kamloops, Kelowna, Nanaimo and Prince George. They provided a list of reasons for these struggles: low tariff rates, well-paying private work, lack of local family lawyers, retirements, illnesses and deaths. They also noted an emerging issue as hiring by new Parents Legal Centres is drawing down talent in local FDC pools. This is interesting because it suggests that at least some local family lawyers are willing to move from private practice—with all of its potential to pay them very well—to a more secure but generally lower-paying staff lawyer position.

To fill FDC shifts at some locations, LSS pays a travel fee to out-of-town lawyers. Vancouver and Prince George lawyers, for instance, are flown into Dawson Creek and Fort St. John. Williams Lake and 100 Mile House lawyers are brought over to Quesnel. Victoria lawyers travel to Duncan. Some communities like Hazelton and Houston simply do without FDC altogether.

To build new capacity for service, LSS engages in ongoing FDC recruitment and training. Despite these efforts, LSS staff believe they are losing the battle against FDC attrition. They view their current strategy of transporting FDC to underserved communities and recruiting new FDC as expensive and unsustainable.

COMMUNITY LEGAL CLINICS

It is clear to me that BC’s legal aid sector must exert greater control over the market forces that determine capacity for family legal aid service. This should be done using a mixed model of service delivery. It should involve clinical teams of staff lawyers and advocates supported by regional tariff lawyers (much like the Mental Health Law Program profiled in Chapter 3: Service Delivery Models). And it should be built up and rolled out on an iterative and scalable basis—community by community, as opportunities and needs demand.

The prototypical community legal clinic would have independent governance and provide a mix of family and poverty law services. It would have a modular structure with a full- or part-time family lawyer

and one or two family law advocates on one team, and a full- or part-time poverty lawyer and one or two poverty law advocates on the other. The service teams would share client information and administrative support. The separation of service teams along areas of law is critical, since Ontario’s experience was that community legal clinics that combined the two areas of service were soon overwhelmed by family law matters to the detriment of their poverty law services.

The family law team would receive funding from the Ministry of Attorney General via LSS (with all of the same accountability structures as the Mental Health Law Program). It would be fully integrated with LSS services, and refer clients to a roster of regional tariff lawyers as needed. The family lawyer could take on local agent and FDC roles. Its advocate roles could evolve as the Law Society’s licensing structure allows.

The poverty law team would also receive funding from the Ministry of Attorney General but via the Law Foundation (with all of the same accountability structures as current Law Foundation-funded agencies – see Chapter 9: Civil (Poverty) Services). It would receive PLEI support from LSS’s Community Resource Centre (as recommended in Chapter 5: PLEI Services).

The exact staffing and service priorities for each community legal clinic would be guided by local needs and circumstances. They would be encouraged to adopt multidisciplinary and collaborative approaches to service delivery. At present, there are several Law Foundation-funded agencies—in areas underserved by family legal aid services—that have the necessary infrastructure, expertise and community trust to operate this mixed model of service delivery. Examples are Fort St. John Women’s Centre, Ki-Low-Na Friendship Centre in Kelowna, and Active Support Against Poverty in Prince George. The model could also be operated by an Indigenous Justice Centre (see Chapter 7: Indigenous Services).

My consultations with law students and lawyers give me confidence that many skilled family lawyers would be enticed by a stable and varied public interest legal position with a forward-thinking community legal clinic—even at a relatively modest salary. I am also encouraged by the fact that West Coast LEAF recommended a similar “in-house counsel” model for holistic service delivery in its 2014 report, *Putting Justice Back on the Map*.³⁶

RECOMMENDATION 13

Fund and support an integrated network of independent community legal clinics with modular teams of lawyers and advocates providing family law and poverty law services.

³⁶ Track, Laura, Shahnaz Rahman, and Kasari Govender “Putting Justice Back on the Map: The route to equal and accessible family justice”, see note 28.

7. Indigenous Services

The crisis in overrepresentation of Indigenous people in state custody is perpetual and ongoing across Canada. The first of the Truth and Reconciliation Commission's 94 Calls to Action calls upon federal, provincial, territorial and Indigenous governments to commit to policy and justice reforms that will reduce the number of Indigenous children in care. It is followed by calls to eliminate the overrepresentation of Indigenous youth and adults in the criminal justice system by 2025.³⁷

In his 2016 report, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions*, Grand Chief Ed John called for more collaborative efforts to increase access to justice for Indigenous families in BC:

What I heard resoundingly through my engagement with Indigenous people and communities was that the justice system in Canada, and in particular court proceedings in BC, are not serving the best interests of Indigenous children and youth, and that improving access to justice for Indigenous people must be something we all work together to collectively address in order to see meaningful improvements in the child welfare system.³⁸

Canada's federal, provincial and territorial governments have all pledged to implement the TRC's Calls to Action. The BC government has also committed to implement all 85 recommendations from Grand Chief Ed John's report. But time is ticking down to 2025, and I was told by numerous Indigenous service providers and lawyers who serve Indigenous clients that—despite all of the government-level commitments to positive change—there has been no discernible change in outcomes for most Indigenous individuals and families at the ground level.

DISADVANTAGE AND TRAUMA

Last year, Canada's Correctional Investigator reported that between 2007 and 2016, as the federal prison population increased by less than five percent, the Indigenous prison population increased by 39 percent.³⁹ Also, while Indigenous people made up less than five percent of the Canadian population in 2017, they comprised 26 percent of the total federal inmate population, and 38 percent of the federal female inmate population. Many of these incarcerated women have young children, so the cycle of disadvantage continues.

Indigenous service providers told me that the most common route to incarceration passes through the provincial child welfare system. There are now more Indigenous children in care in BC (56 percent of all children in care) than there were at the height of the residential schools era. In northern BC, Indigenous children count for more than 80 percent of all children in care.

37 Truth and Reconciliation Commission of Canada, "Calls to Action" <www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf>

38 John, Grand Chief Edward, "*Indigenous Resilience, Connectedness and Reunification*," <<http://fns.bc.ca/wp-content/uploads/2017/01/Final-Report-of-Grand-Chief-Ed-John-re-Indig-Child-Welfare-in-BC-November-2016.pdf>>, p. 87.

39 Annual Report of the Office of the Correctional Investigator 2016-2017 <www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20162017-eng.aspx#s5>.

Indigenous people in BC are much more likely than non-Indigenous people to be criminalized and imprisoned for offences related to personal histories that include poverty, mental health issues, substance abuse, and trauma from physical and sexual abuse. At the same time, Indigenous people in BC are much more likely than non-Indigenous people to be victims of crime, to suffer systemic discrimination and to have traumatic interactions with the provincial child welfare system.

BC's sorrowful legacy of colonialism, residential schools, the Sixties' Scoop, and a culturally biased child welfare system continues to inflict intergenerational trauma on Indigenous communities across the province. This cultural context presents many challenges in delivering effective legal aid services to Indigenous people.

CONCEPTIONS OF JUSTICE

In Canada, Indigenous people and people of predominantly European ancestry often have very different conceptions of justice. The mainstream “Euro-Canadian” approach to justice can be frightening, alienating and discriminatory to Indigenous people. The BC First Nations Justice Plan, written in 2007, explained the conceptual difference this way:

There are key differences in the way that First Nations and Canadian society view justice. Primarily, society as a whole tries to control actions it considers potentially harmful, and the key focus of justice policies is on punishment of the person to protect society and to prevent re-occurrence of the behaviour. However, First Nations view justice as a way to restore the peace and balance within the community; there is a sense that the entire community has been affected and that reconciliation needs to occur with everyone involved: the accused, the victim, and the community. This difference in perspective challenges the appropriateness of the present legal and justice system for First Nations.⁴⁰

To bridge this cultural divide, legal aid plans must work with Indigenous communities and organizations to ensure the cultural safety, acceptance and credibility of their services. Cultural safety refers to a safe environment where there is no assault on, challenge to, or denial of a person's Indigenous identity. The people best able or equipped to provide a culturally safe environment are people from the same culture as those they serve. This means that legal aid for Indigenous people must be Indigenized; it must be provided in a way that reflects Indigenous cultural values, and actively involves Indigenous peoples and organizations in service design and delivery.

LSS INDIGENOUS SERVICES

As previously mentioned in this report, LSS has made impressive progress in Indigenizing relevant aspects of its operations. It established an Indigenous Legal Services department that is led primarily (if not exclusively) by Indigenous people. It created a Reconciliation Action Plan that sets out the Society's strategy for Indigenous services. It has a hiring policy requiring its number of Indigenous staff to be proportional to the number of Indigenous clients that it serves. LSS clients who self-identify as Indigenous comprise 41 percent of its child-protection clients, 33 percent of its criminal law clients and 23 percent of its family law clients.

40 <<http://nccabc.ca/wp-content/uploads/2016/06/BC-First-Nations-Justice-Plan-2007.pdf>>.

In 2017/18, LSS served its Indigenous clients in the following ways:

- Funded 131 Gladue reports for Indigenous clients for sentencing hearings;
- Developed new publications about Gladue submissions and Gladue reports;
- Assisted clients 1,338 times through its Aboriginal Community Legal Worker in the Nanaimo area;
- Supported existing First Nations Courts by providing honoraria for Elders, providing dedicated duty counsel, and hosting an Elders Conference; and
- Opened a new Parents Legal Centre (PLC) in Surrey (LSS currently operates six PLCs in the province).

Review contributors generally applauded the expansion of LSS’s Indigenous services, and the overall trend of increased funding and focus on serving Indigenous people by way of Gladue reports, First Nations Courts (sometimes called Gladue courts) and PLCs. However, several lawyers who serve Indigenous clients had less regard for the same services, as they perceived them to do little to address the root causes for state intervention in Indigenous people’s lives. Some lawyers also held the view that because Gladue reports, First Nations Court and most PLC services are premised on state sanction or an Indigenous person’s agreement to state intervention (guilty pleas and guilt findings for Gladue reports and First Nations Courts; parental consent to Ministry of Children and Family Development action for PLC services), they actually serve to perpetuate colonial injustices.

GLADUE REPORTS AND FIRST NATIONS COURTS

Gladue reports and First Nations Courts are restorative justice measures meant to repair criminal harm and reduce overrepresentation of Indigenous people in the criminal justice system. Counsel for Indigenous offenders have a duty to bring individualized information about a client’s life circumstances, history of trauma, and experiences of systemic racism before the court in the form of a Gladue report. Sentencing (and bail and parole) judges must consider whether alternatives to a prison sentence are appropriate to restore balance and harmony to the Indigenous offender, the victim or victims, and their community.⁴¹

First Nations Courts currently operate in six BC communities. They are sentencing courts that provide an Indigenous perspective, based on a holistic and restorative approach, to sentencing Indigenous persons who have acknowledged responsibility for their criminal offence. Local Indigenous Elders and Knowledge Keepers give advice on a healing plan. The judge may then incorporate the healing plan as part of the appropriate sentence for the Indigenous person who has pled guilty.

While noting the positive impacts of Gladue reports and First Nations Courts on Indigenous offenders who are truly guilty of a crime, a few review contributors cited examples of Indigenous clients who entered a guilty plea for the explicit purpose of accessing the restorative justice measures—without giving due consideration to the full range of defences and other options presented to them. The service providers expressed concern that, by increasing access to these restorative justice measures without similarly increasing early access to legal representation and diversion possibilities, LSS and BC’s criminal justice system are inadvertently contributing to the criminalization of Indigenous people.

41 *R. v. Gladue*, [1999] 1 S.C.R. 688, at para 65.

As one lawyer put it to me, if we are to truly heed the call to eliminate the overrepresentation of Indigenous people in Canadian prisons, we must take a closer look at the processes that create more criminals and criminal records (like processes that accused persons cannot access unless they are convicted), and find ways to divert Indigenous people away from the criminal justice system at an earlier stage.

RECOMMENDATION 14

Broaden the scope of Indigenous legal aid services to include more preventative services that are not premised on agreeing to state intervention or correction, which impose stigma.

PARENTS LEGAL CENTRES

The first PLC opened as a pilot project in Vancouver in 2015. There are now six locations across BC, each operating a staff model of service with one or more lawyers, an advocate/paralegal, and an administrator. PLCs help eligible parents to achieve early and collaborative resolutions of their child-protection issues. PLC services include legal information and advice, as well as support, advocacy, referrals to other services, and representation in collaborative processes and uncontested hearings. Parents may only access PLC services in cases where they agree with or consent to Ministry of Children and Family Development (MCFD) orders.

I heard from many frontline legal service providers about the individual and community impacts of PLCs. Most of them praised the PLC staff model for the holistic range of services it is able to arrange in developing customized support for parents in crisis. At the same time, most of them disapproved of the PLC policy of only serving parents in uncontested child-protection matters. In cases where parents wish to challenge an MCFD order, they must make a standard application to LSS for a lawyer funded by legal aid. Some review contributors viewed this policy as giving tacit encouragement to parents and guardians to consent to MCFD orders even when they fundamentally oppose them. Giving consent may, in some cases, result in a child being placed in foster care. This creates an unfair choice for parents who may not appreciate that other options are available to them.

In reference to the PLC policy, one lawyer said:

If the premise you're starting with is that you have to agree to a state intervention, particularly where that state intervention is not legal or right, then you've created a deeply flawed model right from the beginning that just replicates the colonial injustice of the past and puts a new face on it.

CHILD PROTECTION PRACTICE

I also had the opportunity to consult with a number of lawyers who represent parents in child-protection cases against MCFD. They observed that relatively few lawyers choose to serve as parents' counsel, since the contracts for representing MCFD are more stable and lucrative. This mirrors the situation in criminal law where tariff lawyers are compensated at a much lower rate than Crown counsel, despite an adversarial system premised on the state and the individual having equal opportunity to influence the course and outcome of a trial.

Parents' lawyers also reported that they practise in complete isolation from one another. There is little to no opportunity to share knowledge and effective advocacy strategies with their colleagues around the province. This fragmented approach to client advocacy impedes system reform and stands in contrast to the centralized body of knowledge and practice resources available to MCFD lawyers. It is particularly problematic in light of MCFD's authority to remove children from their parents without prior judicial authorization. Parents must wait up to seven days for the first chance to advocate for the return of their child at a presentation hearing. The next judicial opportunity to seek the return of their child is at a protection hearing up to 45 days later. There is immense pressure for parents to agree to MCFD orders in the lengthy interim.

Since 56 percent of all children in care in BC are Indigenous, many lawyers view this situation as ongoing evidence of systemic discrimination. Despite governments agreeing to reduce the overrepresentation of Indigenous children in care, little has been done to correct the power imbalance that Indigenous parents confront when the state intervenes to remove their children. As a vital step toward correcting this imbalance, parents' lawyers proposed the creation of a child-protection clinic. It would be similar in its holistic approach to a PLC, but not premised on parental consent to MCFD orders. Such a clinic would provide parents with sufficient supports—including representation by staff or tariff lawyers—to challenge MCFD decisions, if they so desire. The clinic would also serve as a centre for shared knowledge, strategy and practice resources for tariff lawyers across the province. It should be located in the Metro Vancouver area, and include Indigenous and non-Indigenous staff lawyers and advocates who are sufficiently resourced to travel to different BC communities, as needed. The creation of this clinic is the highest priority of all of my recommendations.

RECOMMENDATION 15

Create a Child Protection Clinic to help parents before child protection concerns have reached the level of Ministry of Children & Family Development intervention, and to serve as a practice resource centre for lawyers representing parents in contested child protection matters.

INDIGENOUS JUSTICE CENTRES

By virtue of the TRC Calls to Action and other Indigenous-led calls for change, there is much greater appreciation of the need to decolonize and Indigenize the legal institutions that serve Indigenous people. The need extends to legal aid service delivery in BC—it is time for a new approach.

In my consultations and research for this review, I learned of a new clinic concept for Indigenous legal service delivery called the Indigenous Justice Centre. It is being developed by Indigenous community leaders for Indigenous communities throughout BC. It aims to create culturally safe spaces across the province, where Indigenous people can access services and participate in designing their own paths to wellness:

- By accessing a range of services and supports that promote prevention, early identification and resolution of issues that—when left untreated—can contribute to more serious problems (like criminal behaviour, domestic violence and child neglect) that engage the mainstream justice system; and

- By developing proven Indigenous pathways to justice and wellness that solve problems in collaborative engagement with locally developed networks of Indigenous and non-Indigenous service providers.

A key component of the Indigenous Justice Centre model is the engagement of local Indigenous leaders and organizations in the design of services and problem-solving mechanisms that divert people away from the mainstream justice system and into alternate dispute resolution processes. This approach normalizes “alternative” dispute resolution as the preferred path. It also draws on two general advantages of the clinic model: greater acceptance by clients due to the culturally safe environment, and greater potential for locally tailored and holistic treatment of complex client needs.

Cultural safety is critical in the community service context, as explained by Ardith Walkem, QC, in a 2007 report she wrote for LSS:

Aboriginal people prefer to speak with an Aboriginal person and may not seek the legal help they need if they are unable to do so. This preference reflects the complex and difficult history of Aboriginal peoples’ involvement within the justice system and inter-generational experience of institutional racism.⁴²

The importance of cultural safety was underlined in several review submissions from Indigenous legal service providers. They advised that no single and centrally administered service approach will be appropriate for all Indigenous communities. Each community possesses a unique framework of Indigenous laws, legal systems and norms to which local services must adapt. They also advised that Indigenous people in more remote areas of the province can be very skeptical of lawyers who fly in and out of their communities without seeking to understand their local customs or build lasting relationships on the ground.

While the Indigenous Justice Centre concept holds great potential for holistic service and cultural safety, it is not obvious which Indigenous organization has the current capacity to coordinate the development of a far-reaching clinic network—even on an iterative and scalable basis. Nor is it clear that sufficient service capacity exists among BC’s Indigenous lawyers to staff more than a handful of such clinics.

In any case, capacity building for future clinical service should start now. It is important for BC’s law schools and clinical programs like the Indigenous Community Legal Clinic to develop and promote clear pathways for Indigenous law students to follow to future service in their own communities.

LSS has done well to Indigenize its operations serving Indigenous people. The integration of its Indigenous services will be critical to the success of Indigenous Justice Centres. Its Reconciliation Action Plan should make space for the creation of Indigenous Justice Centres on a community-by-community basis as local capacity permits.

RECOMMENDATION 16

Support the iterative and scalable development of Indigenous Justice Centres as culturally safe sites for holistic service to Indigenous people.

42 Walkem, Ardith, *Building Bridges: Improving Legal Services for Aboriginal Peoples*, (Vancouver: LSS, 2007) <https://lss.bc.ca/assets/aboutUs/reports/legalAid/buildingBridges_en.pdf> at p. 8.

8. Immigration and Refugee Services

As a signatory to the 1951 *United Nations Convention Relating to the Status of Refugees* along with the 1967 *Protocol Relating to the Status of Refugees*, Canada has committed to protecting refugees on its territory. Refugee claimants are further entitled to all of the constitutional guarantees under the *Charter of Rights and Freedoms*.

Despite these protections, refugee claimants are among the most vulnerable people in Canada. They face many challenges as newcomers to the country, including language barriers, education barriers, limited support networks, and limited knowledge of Canadian laws. Asylum seekers may be fleeing situations where they were exposed to violence and trauma, leaving them with deep psychological scars. No one wants the legal process refugees face for determining their status in Canada to create additional unnecessary barriers. Further, no one wants legitimate claimants to be turned away because they were unable to navigate the system, and had no advocate to help them.

Legal representation plays a critical and necessary role throughout the refugee determination process. Numerous studies of refugee claims in Canada have shown that claimants who are represented by lawyers have a significantly higher chance of success. A study of over 70,000 refugee claim decisions from 2005 to 2009 found that represented claimants were 75 percent more likely to succeed with their claim than unrepresented claimants.⁴³

SERVICE CAPACITY

Tariff lawyers provide all of the immigration and refugee legal aid services in BC. The immigration tariff covers the range of immigration proceedings that could lead to a person being removed from Canada to a country where that person risks persecution. The immigration tariff budget also funds duty counsel to represent persons detained pursuant to the *Immigration and Refugee Protection Act* (IRPA) at detention review hearings, and a telephone advice line for detained persons making refugee claims.

In late 2012, two new pieces of federal legislation—the *Balanced Refugee Reform Act* and the *Protecting Canada's Immigration System Act*—significantly compressed the timelines of all stages of the refugee claim process. Many refugee lawyers adapted to these changes by being more selective in taking cases, and by reducing their legal aid caseload. As Vancouver lawyers Peter Edelmann and Lobat Sadrehashemi explained in their 2015 report, *Refugee Reform and Access to Counsel in British Columbia*, many refugee lawyers became less inclined to take on legal aid cases in general:

The work in the new system happens over a shorter period of time. Where in the old system a case from the beginning (filing the claim) to the end (decision at the Refugee Protection Division) may have run 18 months, in the new system this timeline would be two to three months. This means that the work to be done by counsel has to be done over a very intensive period of time... The work on a case is so intensive that once a lawyer takes it on, it has to take primary importance, making the lawyer less able to take other cases that are financially more viable for their practice.⁴⁴

43 Rehaag, Sean, "The Role of Counsel in Canada's Refugee Determination System: An Empirical Assessment" (2011) 49 *Osgoode Hall Law Journal* 71 <<http://digitalcommons.osgoode.yorku.ca/ohlj/vol49/iss1/3/>>.

44 Sadrehashemi, Lobat, et al. at p. 40 <<http://bcpiac.com/wp-content/uploads/2015/09/LFBC-Refugee-Reform-Paper-Final-July-30-2015-2.pdf>>.

Furthermore, refugee lawyers became less inclined to take on cases with high levels of complexity, given the high opportunity costs to their practices.

SERVICE QUALITY

In my consultations, some refugee lawyers expressed concern about the quality of service provided by inexperienced colleagues. They saw short timelines of the refugee process and low tariff rates combining to make immigration tariff work unprofitable to all but the newest lawyers. As one lawyer put it, to serve a refugee claimant well on the tariff, lawyers were required to “subsidize the system by doing double and getting paid half.” Many refugee lawyers shared the view that competent advocacy required them to work against their financial interests. They also observed that LSS has no qualification standards for tariff lawyers (unlike other legal aid plans), and that most refugee lawyers work in relative isolation from others, with few opportunities for mentorship and collaboration within the short timelines.

Some refugee lawyers also commented on the negative impacts of disruptions in LSS funding. LSS funding for immigration tariff work has become uncertain and changeable, so that experienced lawyers become reluctant to integrate such work into their practices. The LSS annual immigration tariff budget is set according to the previous year’s service demand. Immigration and refugee service demand is highly susceptible to external factors like political turmoil, war and famine in foreign countries. One year’s service demand is not always a good indicator of the next year’s service demand. In 2016/17, the volume of refugee (non-appeal) service requests in BC increased by 70 percent over 2015/16.⁴⁵ In 2017/18, it increased by another 32 percent.⁴⁶ Refugee lawyers spoke of the disruption and uncertainty they experienced when, in the middle of that fiscal year, LSS announced that it would suspend immigration and refugee services for lack of funding. After the federal and provincial governments reached a new funding agreement, LSS was able to avoid suspending services and was able to continue services to the next fiscal year. Still, refugee lawyers pointed out that the perennial funding uncertainty makes it difficult to plan a practice around regular tariff work, and results in more “dabbling” by inexperienced lawyers.

ONTARIO’S REFUGEE LAW OFFICES

Legal Aid Ontario (LAO) operates a truly mixed model for immigration and refugee legal aid services. Tariff lawyers serve the vast majority of Ontario’s refugee claimants, but claimants may also request service from staff lawyers at one of LAO’s Refugee Law Offices (RLOs) in Toronto, Hamilton or Ottawa.

The Toronto RLO opened in 1994, and has since established itself as a centre of excellence for immigration and refugee law in Canada. It has an annual operating budget of \$2.4 million and is led by eight experienced staff lawyers who provide legal representation and advice services to clients in several different languages. They also develop materials, precedents and arguments for refugee claims, appellate cases and test cases. All of these resources are shared freely with tariff lawyers and community organizations that serve refugee populations. Sharing practice resources increases the overall quality of refugee legal aid services, and reduces the time and cost of preparing individual cases. Three licensed paralegals support the staff lawyers in hearings and appeals, and represent clients in expedited cases. Seven legal aid workers and

⁴⁵ LSS of BC Annual Report 2016/17.

⁴⁶ LSS of BC Annual Report 2017/18.

two legal support staff provide further client support and administrative services.

The Hamilton and Ottawa RLOs are significantly smaller than the Toronto RLO. Each office has an operating budget of \$250,000. Each office employs two staff lawyers and one person as support staff. The staff lawyers provide legal representation to clients both through the RLO staff program and through its duty counsel service. Like the Toronto RLO, the Hamilton and Ottawa RLOs each play a significant role in educating the local tariff bar and community organizations in their region.

LAO has developed a stringent qualification process. To serve on the “panel” (i.e. roster) of refugee lawyers eligible for legal aid referrals, lawyers must demonstrate relevant experience in immigration and refugee law. They also must submit copies of recently completed documents relevant to the practice, and keep up-to-date with professional development requirements.⁴⁷ Further, LAO has a robust refugee-panel mentorship program that assists junior lawyers to meet panel standards and maintain high-quality service.

REFUGEE LEGAL CLINIC FOR BC

The stellar reputation of the Toronto RLO extends far enough west that it was repeatedly mentioned by review contributors as a suitable model for replication in BC. Several refugee lawyers were enthusiastic about the idea of developing a new refugee legal clinic in Metro Vancouver where refugee claimants could access a wide range of legal and non-legal services. The clinic would operate in parallel with and in support of the tariff system. It would employ a small team of experienced lawyers and paralegals who could take on urgent and complex cases that are increasingly prevalent under the current refugee determination system. It would be closer in size and service volume to the Ottawa and Hamilton RLOs than the Toronto RLO, and would similarly serve as a centre of practice knowledge and expertise for access and use by tariff lawyers and community organizations.

The Immigrant Services Society of BC (ISSBC) operates two Welcome Centres in Metro Vancouver—one in Vancouver and another in Surrey. At these Welcome Centres, newcomers to Canada have streamlined access to a holistic range of services delivered by ISSBC and many co-located community partners. The Vancouver Welcome Centre offers 18 housing units, multilingual settlement services, an employment resource centre, and the services of community partners. These community partners include Settlement Orientation Services, the Mount Pleasant Family Centre Society, and the Vancouver Association for Survivors of Torture (an organization providing trauma counselling and support to refugee claimants).⁴⁸

ISSBC leadership is eager to explore the integration of refugee legal aid services at either of its Welcome Centre locations. The circumstances appear ideal for the development of a new Refugee Legal Clinic using the same mixed model as the Community Legal Assistance Society’s Mental Health Law Program (see Chapter 3: Service Delivery Models).

RECOMMENDATION 17

Create and embed a Refugee Legal Clinic in the integrated services hub at the Immigrant Services Society of BC’s Welcome Centre in Vancouver or Surrey.

47 LAO Refugee Panel Standards <www.legalaid.on.ca/en/publications/downloads/refugeepanelstandards/panel-standard--general-05-2015.pdf>.

48 ISS of BC Welcome Centre Brochure: <<http://issbc.org/wp-content/uploads/2018/03/iss-welcome-centre-2016-brochure-general-web.pdf>>.

9. Civil (Poverty) Services

Civil legal aid (also known as “poverty law” to those who work in the sector) is generally understood to cover matters concerning a person’s liberty, livelihood, health, safety, sustenance or shelter. It relates, in other words, to a person’s basic needs. These needs can include access to government benefits, such as Canada Pension Plan, Old Age Security, Income Assistance, Disability Assistance and workers’ compensation. People may also require legal representation for housing issues (like tenants’ rights violations, unlawful evictions and foreclosures) or debt-related issues (like bankruptcy and unfair lending practices).

EVERYDAY LEGAL PROBLEMS

We live in a “law-thick world,”⁴⁹ and people who rely on government to provide their basic needs are often said to be “living within the law.” As fish are said to not see water, people living “within the law” may not see their problems as legal problems. They are even less likely to see, or to look for, legal solutions. It is therefore critical that low-income people have easy access to public legal education and summary legal advice services to identify and address their everyday legal problems.

For people surviving on low incomes, their legal problems are rarely discrete or separable from their non-legal problems. Their problems are intertwined or clustered in ways that are best addressed by a less adversarial and more holistic approach to legal service. One poverty law lawyer explained it this way:

Often the legal resolution to their problem is not a zero-sum game as in a lot of litigation. They will have to continue to depend on their caseworker, their housing provider, their landlord, their employer, on into the future for the necessities of their lives. There will likely be other ‘sharp legal objects’ into the future of these relationships. This can take a different kind of approach to resolving their legal problems, often alternative dispute resolution, rather than resorting to the adversarial system. Low-income people don’t get to just vanquish their foe in the courtroom and then triumphantly stride away.

In Canada, people surviving on low incomes, as well as Indigenous people and disabled people, are all more likely than the average person to experience multiple legal problems, and are less likely to take action to resolve them.⁵⁰ They are generally less capable of overcoming their legal problems without the benefit of legal advice or representation. And they are more likely to suffer adverse consequences that serve to perpetuate the cycle of poverty and entrench their social exclusion.⁵¹

In 2011, the Doust Report underlined the harsh consequences of denying effective civil legal aid to BC’s most marginalized communities. In some cases, it can be the difference between life and death:

49 Hadfield, Gillian, “The Cost of Law: Promoting Access to Justice Through the (Un)Corporate Practice of Law” (2014) 38 *International Review of Law and Economics*, at p. 43, online: <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.680.5745&rep=rep1&type=pdf>>.

50 Currie, Ab, “The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians” (Ottawa: Department of Justice, 2009), online: <www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf> at p. 23.

51 CBA Access to Justice Committee, *Reaching Equal Justice: An Invitation to Envision and Act* (November 2013), online: <www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf> at p. 36.

For a person of minimal income today in British Columbia, access to these legal entitlements and protections can mean the difference between having a safe place to live or living on the streets, between having food, or going hungry. Inadequate legal aid jeopardizes the survival of our most vulnerable citizens, including people with mental or physical disabilities, the elderly, and single mothers with young children.⁵²

Despite the high stakes and the crying need for help, the provincial government has not provided any funding for civil (poverty) legal aid services for 17 years.

POVERTY LAW SERVICES IN BC

From 1979 to 2002, the provincial government funded LSS to deliver poverty law services throughout the province. By 2001, LSS employed 85 lawyers and 62 full-time equivalent paralegals and legal information counsellors to work in 45 offices across BC.⁵³ A year later, the provincial government slashed LSS's budget by almost 40 percent. This resulted in the elimination of all of LSS's poverty law services. Within another year, LSS's annual number of poverty law cases plummeted from about 40,000 to zero.

To its immense credit, the Law Foundation quickly entered the void left by the 2002 legal aid cuts, and organized a province-wide array of legal advocates into a highly functional poverty law service network. Serving in independent community service agencies throughout the province, the Law Foundation-funded legal advocates help local low-income people with their poverty law issues. The legal advocates attend a yearly training course organized by the Law Foundation, and their organizations provide regular operational and financial reports to the Law Foundation in return for continued funding.

Many legal advocates represent clients in administrative tribunal hearings, and work under the supervision of volunteer lawyers. All legal advocates and other community workers have access to telephone legal information and advice support from a former LSS poverty law lawyer now employed by the Community Legal Assistance Society (CLAS).

There are very few former LSS poverty law lawyers still practising any amount of poverty law in BC. They have almost all moved to other areas of practice, retired or passed away. A handful of lawyers provide poverty law services through organizations like CLAS, Access Pro Bono, Atira Women's Resource Society, Rise Women's Clinic, Seniors First BC and Together Against Poverty Society. But there are very limited employment opportunities in BC for the growing number of law school graduates who seek public-interest law jobs.

As the provincial supply of poverty law lawyers has diminished, the demand for their services has expanded. More civil (non-family) dispute resolution has been pushed to administrative tribunals, and the jurisdiction of Small Claims Court has expanded to cover claims from \$5,001 to \$35,000.

52 Leonard Doust, *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia* (Vancouver: Public Commission on Legal Aid, 2011) at p. 16.

53 McEown, Carol, *Civil Legal Needs Research Report* (2nd ed.), (Vancouver: Law Foundation of British Columbia, March 2009) online: <www.lawfoundationbc.org/wp-content/uploads/Civil-Legal-Needs-Research-FINAL.pdf> at p. 39.

As expected, the number of self-represented litigants in civil matters has dramatically increased in BC. In Small Claims Court, individuals appear without legal representation in 90 percent of cases.⁵⁴

THE ONTARIO EXPERIENCE

It is widely acknowledged that community legal clinics are best suited for civil (poverty) legal aid services. They once served BC well, and they continue to serve Ontario well. Legal Aid Ontario funds 74 specialized community legal clinics that assist individuals and communities with a wide range of legal and non-legal issues.

Ontario clinic lawyers and administrators place a great deal of emphasis on serving communities, and not simply the people in them. Local community governance is viewed as a critical aspect of Ontario's clinics. Community development and law reform are treated as key elements of poverty law service delivery. A former Ontario clinic lawyer described the positive potential of community development:

An example is a tenant with disrepair problems in their high-rise tower. While a legal service provider may take that landlord to a court or housing tribunal for a remedy, there may be repercussions for that tenant, they may be evicted on other grounds, they may have their rent increased, they may of course lose at the tribunal in the first place. They may be dragged through a judicial review or appeal. However if the tenants in that building are organized into a tenants association, they can speak more safely and effectively with one voice. There is not just safety but also power in numbers, not to mention cost efficiency. They are likely to get their landlord to take notice and do the repairs. A rent strike, which may or may not be legal in the circumstances, can be a considerable bargaining chip.

Ontario's experience supports the general view of many review contributors I spoke to who said that, as compared to centrally administered legal aid offices, independent legal aid clinics are more accessible to disadvantaged people, more accepted as culturally safe sites of service, more effective in community outreach, and much better suited to advancing collaborative law reform initiatives for systemic change.

Review contributors reminded me again that clinics tend to carry much lower infrastructure costs than conventional staff lawyer offices, because they attract more mission-guided lawyers and advocates who are willing to do "impact work" for lower remuneration.

COMMUNITY LEGAL CLINICS

Setting up civil (poverty) legal aid clinics in BC is a relatively simple matter of building on the current landscape of Law Foundation-funded poverty law services, resurrecting many of the lawyer-driven services that existed before 2002, and applying lessons from Ontario's experience. Thankfully, BC's network of independent poverty law service agencies provides the ideal foundation for re-introducing clinic staff lawyers. The recommended model is essentially the complementary half of the community legal clinic model recommended in Chapter 6: Family Services. It should also be built up and rolled out on an iterative and scalable basis—community by community, as opportunities and needs demand.

54 Rowles, Anne, and Connor Bidfell, "The Case for Replacing the 2002 Legal Services Society Act Part II: A Call to Action" (2016) 74 Advocate 529 at 534. Online: <www.lrwc.org/ws/wp-content/uploads/2016/07/The-Case-for-Replacing-LSA.-Part-II.-Rowles-Bidfell.pdf>.

The prototypical community legal clinic would have independent governance and provide a highly defined mix of poverty and family law services. Some community legal clinics, however, would only provide poverty law services. Each community legal clinic would include a full- or part-time poverty lawyer and one or two poverty law advocates. The separation of the poverty law service team from any family law service team is critical, since Ontario’s experience was that clinics that combined the two areas of service were soon overwhelmed by family law matters to the detriment of their poverty law services.

A clinic’s poverty law team would receive funding from the Ministry of Attorney General via the Law Foundation. In most cases, this would simply involve supplementing the current amount of Law Foundation funding for the host agency, and updating its accountability structures as necessary. The poverty law team would receive PLEI support from LSS’s Community Resource Centre (as recommended in Chapter 5: PLEI Services) and collaborate with other poverty law teams through existing channels like PovNet and CLAS.

The exact staffing and service priorities for each community legal clinic would be guided by local needs and circumstances. They would be encouraged to maintain or adopt multidisciplinary and collaborative approaches to service delivery. At present, there are several Law Foundation-funded agencies that have the necessary infrastructure, expertise and community trust to supplement their advocate-driven services with poverty law lawyers. Examples are MOSAIC in Burnaby, Sources Community Resources in Surrey, Abbotsford Community Services, Chimo Community Services in Richmond, Wachiy Friendship Centre in Courtenay, the Port Alberni Friendship Centre, and Community Connections Society in Cranbrook. The model could also be operated by an Indigenous Justice Centre (see Chapter 7: Indigenous Services).

Poverty law lawyers could also be introduced to add value and impact to BC’s law school clinical programs, including the University of Victoria Law Centre, Rise Women’s Legal Centre, the Thompson Rivers University Community Legal Clinic, and the Law Students Legal Advice Program and the Indigenous Community Legal Clinic at the University of British Columbia.

My consultations with law students and lawyers give me confidence that many skilled lawyers would be enticed by a stable and varied public-interest legal position with a forward-thinking community legal clinic—even at a relatively modest salary.

Finally, I was reminded by one review contributor that a new community legal clinic system must be built to last. Another round of introducing and then removing critical community legal services will only amplify the common distrust in BC’s civil justice system:

[W]hen a service which provides valuable service to a community is closed, the impact is far ranging. Way beyond just the impact upon those who work to provide the service. The user community usually has no other options, and the trust which has been built up by the service with that user community and then is lost, contributes to a despair and a disillusionment which is pretty deep. Therefore, if there is a new service set up, it is important that it be one which will last, that will have reliable basic or core funding. No more “here today, gone tomorrow.”

RECOMMENDATION 18

Fund and support an integrated network of independent community legal clinics with teams of lawyers and advocates providing poverty law services.

The community legal clinic model is also well-suited to serve specific groups within the regional population that have legal needs in common. Following Ontario's experience, BC should develop specialty legal clinics that focus on specific marginalized groups or particular areas of law that affect large numbers of low-income people. This should be done on the same iterative and scalable basis as other community legal clinics, including the Child Protection Clinic and the Refugee Legal Clinic recommended in this report. It should follow the model used by CLAS for its Mental Health Law Program and used by West Coast Prison Justice Society for its Prisoners' Legal Services clinic.

Community legal clinics are more often accepted by the people who need them and who perceive them as being more accessible, low-barrier, culturally safe environments than government or Crown agency services. Community legal clinics offer the unique potential to embed targeted legal aid services in holistic and locally trusted social service environments. As specialty legal clinics, they can offer additional, substantive guidance on specific legal issues facing individuals and communities, going far beyond the intake and referral of clients to private lawyers or other information resources.

Specialty legal clinics should be set up or supplemented by lawyers to serve the specific and expanding legal needs of BC's seniors, people with disabilities, tenants, injured workers, and linguistic and cultural communities. Disability Alliance BC, as one example, supports the concept of a specialty clinic for British Columbians with disabilities:

Disability Alliance BC supports the idea of a legal aid clinic that is dedicated to supporting British Columbians with disabilities. We note that the ARCH disability law centre in Ontario uses a similar model and we believe it should be used as a starting point to determine how to implement an impactful and high-functioning legal aid clinic for people with disabilities in BC.

As specialty clinics are set up in BC, it is important to maintain multiple channels for access to legal aid services. A specialty clinic should be one significant alternative rather than a substitute for other legal aid services.

RECOMMENDATION 19

Develop and nurture a strategic network of specialty legal clinics to serve specific communities of legal need.

10. Criminal Services

Earlier in this report, I observed that for most people, legal aid simply means a government-funded lawyer when you need one. Typically, that means a government-funded criminal lawyer when you need one, since the public tends to view legal aid through a criminal justice lens. This common association of legal aid with criminal law is fed by heightened media attention to real-life stories of law and order, and the intense human dramas that regularly play out in BC’s courtrooms. Legal aid lawyers are often the public face of these media reports, and the political matters that concern them can gain considerable public profile.

My consultations with criminal legal aid lawyers confirmed the obvious—no matter concerns them more than tariffs. No matter has higher profile. The anger at what they see as grossly inadequate compensation was palpable and direct. Every conversation began on the subject of tariffs, and many ended there as well. Eliciting other creative and constructive ideas for service delivery change was challenging, as the focus always returned to diverting taxes and increasing tariff rates. I eventually succeeded in drawing out other ideas—which I proudly present below—but these alternatives may not find favour or gain traction among criminal legal aid lawyers without a complement of higher tariffs.

Passionate advocacy for higher tariffs extends to the tariff model as well. Many lawyers cling tightly to the tariff model as a cost-effective way to deliver criminal legal aid. They believe it to be inherently superior to the staff model or any mixed model. In the few places where they see the current model failing to serve British Columbians well, they see the solution as more funding. They generally perceive criminal tariff services to be accessible, cost-efficient and of good quality.

CRIMINAL TARIFF STRUCTURE

LSS’s criminal tariff structure is simple in that it pays lawyers for defined units of work. A tariff lawyer completes a task (or a “block” of tasks) to serve the client’s interests, and then bills the system. The tariff structure is also complex in that the system architecture promotes modular compensable tasks, which can be delivered cost-effectively, and discourages services that are less susceptible to being modularized. As with most highly engineered systems, the tariff structure has many unintended consequences. Some of them are explored later in this chapter.

From the clients’ perspective, the system is fairly simple. Accused persons can retain lawyers on legal aid contracts if there is a reasonable prospect that, upon pleading guilty or receiving a conviction, the accused persons would face specific consequences:

- going to jail;
- receiving a conditional sentence that would severely limit their liberty;
- losing their means of earning a living; or
- becoming subject to an immigration proceeding that could lead to deportation from Canada.

Once an accused person’s legal aid application is approved by LSS, that legal aid client can take that referral to a lawyer the client chooses. Or LSS can find that client a lawyer. Once a lawyer accepts the

legal aid referral, the lawyer provides services and bills against the tariff. Some services are paid on an hourly rate, but most services are paid according to a block tariff. For example, the block tariff for a bail hearing of a summary conviction offence is \$125. The block tariff for resolving an indictable matter without a preliminary hearing or a trial is \$325.

Complex and lengthy criminal trials are paid according to LSS's hourly tariff rate rather than a block tariff. These cases are subject to oversight by LSS's Criminal Case Management (CCM) program, which promotes prudent and cost-effective measures to limit expenditures. LSS offers an enhanced tariff rate of \$125 an hour to attract senior, experienced counsel to CCM cases.

LSS also offers an "exceptional responsibility" premium in CCM cases that are unusually complex and lengthy. To qualify for the premium, senior counsel must satisfy the requirements for enhanced fees, and must demonstrate that they have executive case management skills. The premium rate is a 15 percent increase on any tiered rates or enhanced rates. It applies to very few cases and caps out at \$143 an hour.

TARIFF EFFECTS

LSS treads a fine line between incentivizing early resolution of criminal matters by way of guilty plea and incentivizing a full and vigorous defence of criminal charges by way of trial. The overriding goal is to serve legal aid clients in the best way possible, but LSS's financial concerns and tariff lawyers' livelihood concerns are influential factors. One lawyer described the resulting tension this way:

On one hand, there's almost too much of an incentive to resolve a simple charge without looking at it carefully. You have no time to look at the file, and you're only paid \$225 to do a guilty plea. It's peanuts. So you have the perverse incentive to settle early because there's no time or money to look at the information. Then on the other hand, if you do put in the prep time and look at everything like you should, there's an incentive to bring matters to trial. Because that's the only way you're going to get paid for preparing properly.

Another lawyer outlined the personal cost of preparing a comprehensive defence in advance of trial, and then settling the matter in the client's best interests:

I was involved in a case where we pushed and pushed, and we worked out a resolution before a murder trial. We knocked it down to manslaughter from second-degree murder. And we did it through tons of work and tons of *Charter* applications and notices—what I think of as real substantive litigation strategies. And when it resolved, we didn't get any benefit from that. You set aside several weeks of time to do a trial, you push Crown into a favourable resolution, and then you're left with weeks of unpaid vacation. There are lots of lawyers out there who'll run the trial anyway. They'll just call it in.

Early resolutions are a boon to the justice system. Each settlement saves the individual and institutional costs of convening judges, prosecutors, sheriffs, clerks and witnesses to administer justice. And yet, as I frequently heard in my consultations, they can be very costly to lawyers who have prepared a thorough defence and booked days (or weeks) for trial. For many lawyers who practise alone and live paycheque-to-paycheque, the resulting loss of income can wreak havoc in their lives.

To encourage tariff lawyers to fully explore early resolution of criminal matters and also to prepare thoroughly for trial, I recommend that LSS augment its criminal tariff structure—specifically, its non-trial resolution fee. I recommend that LSS allow discretionary payment of legal fees on a case-by-case basis according to lawyers’ detailed written accounts of how their preparation and advocacy efforts contributed to early case resolution and avoided trial. The lawyer’s written account may be supported by comments from the client or Crown counsel, to the extent it is available or required.

RECOMMENDATION 20

Enhance LSS’s current non-trial resolution tariff, or develop a new discretionary tariff for case preparation that results in early resolution and avoids trial, based on a detailed account of the scope of preparation and its impact on settlement.

COST SHIFTING

Review contributors told me about a few cost-shifting issues and their (perhaps) unintended consequences that are worth noting here.

- The first issue arises in northern BC, where some tariff lawyers are unwilling to take on CCM cases for what they view as low pay and administrative aggravation. To cover the occasional CCM case in the north, LSS flies in Vancouver tariff lawyers and pays them an extra \$360 in daily travel fees under the tariff. The northern lawyers dislike the intrusion of the Vancouver lawyers, and apparently refer to the extra travel fees as a “backdoor tariff”. They say it would be more cost-effective to increase the CCM tariff for local lawyers in the first place.
- The second cost-shifting issue relates to criminal appeals. To obtain a government-funded lawyer for their appeal, appellants must follow a two-step process. The first step is an application to LSS for a tariff lawyer. If LSS denies the application, the second step is an application to the court under section 684 of the *Criminal Code*, which authorizes the court to appoint a lawyer if it serves the interests of justice. This two-step process often takes several months.

Many of LSS’s first-step assessments are made without the benefit of the transcript from the lower court. LSS rarely orders a transcript as part of its assessment, so the court is often left to order a transcript before hearing a section-684 application. The court orders it because it can be difficult to assess the merit of an appeal without reviewing the transcript. Whether or not LSS or the court ultimately appoints a lawyer, the cost of that transcript is covered by government.

These are relatively minor issues in the grand scope of BC’s justice system, but they serve to illustrate that shifting public costs from one budget or budget-line item to another does not make them disappear. Effective service delivery reform must consider consequences for all system stakeholders.

SERVICE QUALITY

A legal aid model's quality of service obviously depends on who delivers the services. In conducting consultations for this review, I was repeatedly reminded that a proficient lawyer can make a second-class model look good, and an incompetent lawyer can make a first-class model look bad. Regrettably, under the current tariff model it is difficult to determine who is doing a good job and who is not. The only qualification or entry standard for tariff lawyers is that they have practising status with the Law Society of British Columbia. Unlike staff and clinic models that incorporate various means and measures for monitoring service delivery, there are few formal checks on service quality.

LSS has a robust quality assurance program as far as billing practices are concerned, but its monitoring of lawyers' services is mostly complaint-driven. LSS relies on clients to submit written complaints to their Audit and Investigation Department or to the Law Society. On the whole, legal aid clients are more vulnerable than paying clients, and may not know if the level of service they receive is adequate. Even if they have sufficient literacy and procedural knowledge to file a complaint about a lawyer, they are unlikely to submit it in writing to institutions of authority. Criminal legal aid clients are particularly disinclined to engage in formal discipline processes.

In addition to receiving written complaints, LSS reviews lawyers' billing patterns to identify quality concerns. It has allocated new funding to provide more professional development opportunities, expand its mentoring program, and create new competency requirements for tariff lawyers. These are helpful measures, but they fall short of what is required to assure stakeholders and clients that the services are of a high quality.

To ensure such service, I recommend that LSS develop a telephone system for fielding initial complaints about lawyers, and partner with the Law Society to develop a quality assurance audit program that is informed by enhanced user feedback and after-case peer review.

RECOMMENDATION 21

Develop an LSS telephone complaint service and a quality assurance audit program, including enhanced user feedback and after-case peer review, to better assure the quality of lawyers' services.

SERVICE CAPACITY

I met two basic types of criminal tariff lawyer in my consultations. First, there is the type that does a small amount of legal aid as part of their regular practice, but does not rely on it for steady income. They often view legal aid service as a professional responsibility, and a way to give back to their community. They tend to be older, more experienced, male, and practising in small urban firms or alone in small urban or rural communities.

Second, there is the type that does a lot of legal aid, or does exclusively legal aid, and relies on a steady stream of referrals to keep their practice afloat. They tend to be younger, less experienced, male or female (although still predominantly male), and practising alone in large urban communities. Perhaps

because they are less likely to have practised when tariff rates were higher (relatively speaking), or perhaps because they are too busy serving their legal aid clients, they tend to be less vocal about the current state of legal aid in BC.

These are very broad generalizations drawn from my personal observations. I met and heard from many criminal tariff lawyers who fall outside of these rough categories. LSS's five-year lawyer supply statistics appear to support my observations on the whole. The criminal tariff bar is slowly improving its gender balance (18.3 percent female in 2006/07 to 24.6 percent female in 2016/17). The criminal tariff bar is also becoming slightly more experienced (the median year of call was 15.3 in 2006/07 and 17.1 in 2016/17). The other statistics do not show any notable demographical shifts.

Some of the stories I heard from criminal tariff lawyers are much more dramatic, particularly from the lawyers who rely on legal aid to earn a basic living. One lawyer spoke of suffering from crippling trauma after working on sexual assault files for several years. Another lawyer talked about repeatedly missing rent payments from being unable to bill for casework as planned. Several lawyers from the Metro Vancouver area spoke of driving to five or six courthouses in an average day, and working from their cars with a laptop and a portable printer. One lawyer expressed concern for a few colleagues who practice in isolation and appear to struggle with mental health issues.

The criminal tariff bar appears to be very collegial and supportive, but it is clearly under significant stress. Some lawyers talked about running on adrenaline. Others talked about giving up practice altogether. The bar is aging, and succession is a serious issue in many small urban and rural communities. Service capacity is precarious, and many lawyers need support.

MOVING TO A MIXED MODEL

Notwithstanding these strains on capacity, many tariff lawyers are confident that the tariff model continues to serve British Columbians well—or at least better than any mixed model could fare. I am not so sure. There is no basis for model comparison beyond fading memories of offices that operated on a staff lawyer model decades ago. We are forced to rely on speculation rather than evidence-based analysis. Meanwhile, other provinces like Saskatchewan, Manitoba, Quebec, Nova Scotia and Newfoundland have embraced a more mixed model to very positive effect.

A leader of a provincial legal aid plan that operates a predominantly staff model said this to me:

I am a huge believer in the staff lawyer model. I think it gives you way better control over your services, better control over your costs, quality control over the services being provided, who's representing clients. Staff lawyers have no interest whatsoever in artificially inflating or delaying matters before the court. In fact, it's quite the opposite. To me, it's the better way across the board to provide service to people.

One young lawyer reflected on experiences working in an American public defender office:

I was conscious of the best way to spend my limited time on files. I had to be careful about issue triage. But I never had to worry about chasing after clients, or what a file might pay. I managed my caseload and

made case management decisions based on the degree of risk to people's liberty, on the legitimacy of the issues, on the client's best interests, and then I went to work. I was evaluated based on whether or not I was working hard and well. If my caseload got out of hand, my supervisors would redistribute some of it and look for systemic causes.

Other lawyers and advocates frequently identified the staff model as better suited to serving “high-need” clients and cases with multi-dimensional challenges. They described serving clients with significant mental health challenges in ways that are not covered under the tariff.

As previously described in this report, the staff model has several structural advantages it would bring to an effective mixed model of service:

- Versatility in using lawyers and lower-cost paralegals as direct legal service providers.
- Continuity and consistency in service from permanently employed lawyers and paralegals.
- Capacity to monitor and directly report on court practices and systemic changes.
- Scalable capacity to deliver services in underserved communities.
- Onsite training, resource sharing and collaboration with pro bono lawyers and other social service providers.

CRIMINAL LAW OFFICE

It is time to introduce some healthy competition to the criminal tariff model, and benefit from the structural advantages of a mixed model with staff lawyer services. This should be done on an experimental and iterative basis, and in a way that supports sole practitioners and small firm lawyers who are struggling to maintain their livelihoods.

To those ends, I recommend the creation of an experimental Criminal Law Office in the Metro Vancouver area. It should be located at a site along a major transit corridor (perhaps along the Skytrain's Expo line) that provides reasonably quick access to each of the Vancouver, New Westminster and Surrey courthouses. It should provide ample parking, office space that is large enough to accommodate a new Criminal Resource Centre (see below), and shared meeting space for free and open use by tariff lawyers, pro bono lawyers, articulated students and different social service providers.

The new Criminal Law Office should have a core staff component of five-to-ten lawyers, and an equally large (or larger) component of paralegals and administrative staff. It should function as a general criminal defence firm along the same lines as the former Burnaby Public Defender Office (described in Chapter 3: Service Delivery Models), with staff lawyers handling all types of criminal cases, and also serving as duty counsel from time to time. It should engage some staff lawyers, paralegals and contracted social service providers in serving the intensive needs of clients with mental health and/or addiction issues. Staff lawyers should travel to cover tariff service gaps around the province as needed. The general criminal defence aspect of the Criminal Law Office should be evaluated against the tariff model, according to the following measures:

- The cost of delivering legal aid services (this may be assessed using a version of Legal Aid Manitoba's Complexity Weighted Caseload measure, as described in Chapter 3: Service Delivery Models);

- The effectiveness of legal aid services as assessed by case outcomes and client feedback;
- Client satisfaction with legal aid services; and
- Feedback from other justice system users like Crown counsel, judges, judicial case managers and court administrators.

Evaluating the Criminal Law Office should include developing a projection of the costs and benefits of expanding the concept to other locations around the province.

RECOMMENDATION 22

Create an experimental Criminal Law Office along a major transit route in Metro Vancouver, with a team of criminal staff lawyers, paralegals, administrators and support workers providing general and specialized legal aid services.

CRIMINAL RESOURCE CENTRE

The Criminal Law Office should double as a centre of knowledge and collaborative practice offering free access to all legal aid service providers. Modelled on co-working spaces in other industries, the Criminal Resource Centre should offer shared administration and amenities. It should offer services like reception and mail service, private and shared offices and workspaces, conference and meeting rooms, secure printing and copying, and free high-speed internet with supported connections to LSS Online.

It should also offer mentorship opportunities, in-house professional development training opportunities, and a library of legal research materials. The legal research materials would include submissions and precedents for use by staff lawyers, tariff lawyers, articulated students, paralegals and other legal aid providers.

The Criminal Resource Centre should be evaluated for how it assists tariff lawyers to build their practices and incomes. It should also be evaluated from the client perspective, measuring how it increases the quality of service they receive.

RECOMMENDATION 23

Create a Criminal Resource Centre at the Criminal Law Office that offers free access to tariff lawyers, pro bono lawyers and other legal aid service providers, and provides space for co-working and training as well as resources for legal research and practice management.

CHOICE OF COUNSEL

The staff model is often criticized for restricting the freedom of clients to choose their own lawyer. Choice of counsel is necessary, the critics say, because trust is an essential element of the solicitor-client relationship, and people are more likely to trust lawyers they choose themselves. They also argue that legal aid clients who cannot choose their lawyer may perceive that they are receiving second-class service as compared to paying clients who have complete freedom of choice.

In reality, under any service delivery model, legal aid clients' freedom of choice is already restricted. Client choice is limited to the pool of lawyers who they already know or have heard about, and it is also limited by the capacity of those lawyers to serve them. Also, most Canadian studies have shown that legal aid clients tend to be at least as satisfied with staff lawyers as they are with tariff lawyers of choice. Professor Alan Young commented on the issue of choice of counsel in a 1997 review of Legal Aid Ontario:

The Canadian Bar Association reports that the majority of clients are “unable or unwilling to exercise choice when given the opportunity.” Unlike clients seeking legal service in the corporate and commercial fields, most accused persons (especially first offenders) have insufficient information upon which to base a decision as to counsel of choice. The accused person may know the names of high-profile lawyers from media reports, but it is unlikely he/she would be able to retain the services of this lawyer on a legal aid certificate.

In a very general sense, the presence of choice may enhance client satisfaction; however, it appears that the importance of choice of counsel is magnified in the eyes of the private lawyers. This may be why choice of counsel has not been recognized as a constitutional imperative. It is a luxury, not a necessity.⁵⁵

Since it is not a constitutional requirement, most Canadian legal aid plans do not offer choice of counsel for major aspects of criminal legal aid service delivery.

The BC Supreme Court decision of *R. v Bacon*, 2011 BCSC 135, provides a summary of the right to counsel of choice in the context of state-funded counsel and complex criminal trials. In that case, counsel for Mr. Bacon argued that LSS's tariff rates were so inadequate as to deprive Mr. Bacon of his right to counsel of choice (a team of defence lawyers in this case), and therefore of his right to a fair trial. His counsel further argued from anecdotal evidence that LSS had previously negotiated much higher tariff rates for counsel in high-profile criminal matters, so the client was being unfairly treated. Counsel sought a court order requiring LSS to approve higher rates of pay to Mr. Bacon's counsel of choice.

Justice Stromberg-Stein reviewed the jurisprudence and noted the following principles (among others) regarding the right to counsel in state-funded cases:

- The obligation for setting legal aid rates and policies relating to counsel lies with the legal aid plan, not the court;
- Where legal aid is refused, and a court makes a Rowbotham order, it is not reviewing the decisions of the legal aid plan, but is inquiring whether the accused person can afford counsel;
- There is no positive obligation on the state to fund counsel of choice, with a few “unique” and “unusual” exceptions;
- Legal aid counsel must be sufficiently qualified to deal with the issues with a reasonable degree of skill; and
- An accused person does not have a constitutional right to “the most brilliant counsel” or “the best around”.

55 Young, Alan. “Legal Aid and Criminal Justice in Ontario,” *Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services* (Toronto: Ontario Ministry of Attorney General, 1997), Vol. 2: 629 at 663.

Justice Stromberg-Stein found no evidence that the tariff rates offered by LSS were so inadequate that they would deny Mr. Bacon adequate representation at trial. She held there was no justiciable issue regarding the legal aid retainer, and she invited counsel for Mr. Bacon to either accept the retainer offered by LSS or seek to withdraw.

MAJOR CASES

The *Bacon* decision has significant implications for LSS’s management of major cases, since it confirms that LSS must ensure that tariff lawyers are “sufficiently qualified” to defend the interests of their clients “with a reasonable degree of skill.”⁵⁶

LSS has developed considerable expertise in the management of long and complex criminal cases. Its CCM program is widely respected for the skill of its practitioners. CCM also serves to promote prudent and cost-effective expenditures, but for the reasons discussed below, costs become difficult to contain when government policy, prosecution decisions and police actions all influence the demand for legal aid.

Major cases typically require three or more Crown counsel to be assigned for great lengths of time, usually for at least two years. On the largest major case prosecutions, which tend to involve multiple accused persons connected to organized crime, cases can take several years to reach a conclusion. Police use increasingly complex and exhaustive investigative techniques, which often require prior judicial authorization because of their intrusive nature or because of the use of confidential informants.

The process of organizing, reviewing and vetting disclosure of police investigation materials and providing them to defence lawyers can take multiple years. The significant amount of disclosure normally requires a very lengthy pre-trial motion phase to determine the admissibility of evidence and deal with other preliminary issues. The trial phase, which can take longer than a year, is often the shortest phase of the prosecution process. So it is often said that LSS and its tariff lawyers are “at the end of the line” when it comes to influencing the duration and costs of major cases.

Under a special funding agreement, the Ministry of Attorney General funds “Category C” cases that cost over \$175,000 or pay an hourly rate above LSS’s standard enhanced fee. LSS and the contracted tariff lawyer negotiate the budget and fees for each Category C case. The Ministry provides LSS an annual budget of \$2.855 million for defending Category C cases, but costs have historically exceeded the budget and have been covered by access to contingencies.

For major cases, LSS assists the contracted tariff lawyer in setting up an effective defence team. LSS retains external review lawyers who provide advice to case management lawyers. As a condition of receiving legal aid, clients must consent to their lawyers sharing information with LSS. This permits an ongoing analysis about the resources required to mount an effective defence as the case unfolds. In setting its tariff fees and negotiating major-case budgets, LSS has generally taken the approach espoused in the 2008 Code-Lesage Report⁵⁷ that retaining highly experienced counsel to argue major

56 *R. v Bacon*, 2011 BCSC 135 at para. 26.

57 LeSage, Patrick J. and Michael Code, *Report of the Review of Large and Complex Criminal Case Procedures* (Toronto: Ontario Ministry of Attorney General, November 2008), online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code>.

cases will result in major cost efficiencies and save the wider justice system time and money in the end. Contributors I canvassed for this report generally supported this approach, and often pointed to the Air India and Robert Pickton trials as examples of cases that were managed efficiently and well by highly skilled counsel. I also heard concern that LSS's premium tariff rates and privately negotiated fees—as much as they drive major-case costs over budget—are not nearly high enough to attract the most skilled counsel to take on major cases.

MAJOR CASE TEAM

To rein in major-case costs and expand its own choice of counsel, LSS should develop some in-house capacity for defending large and complex cases. Such new capacity would offer the ability to compare staff lawyer costs against the current tariff model. It would also make it easier for LSS to negotiate fees for exceptional services on the basis of what is reasonable and appropriate.

Where staff lawyers are sufficiently qualified to represent clients well, and have no conflicts, there is no constitutional impediment to marshalling staff lawyers and paralegals to assist lead tariff counsel. Similarly, staff and tariff service providers could be combined as an entire defence team in some major cases.

LSS should develop a Major Case Team in gradual and scalable fashion. An initial team of two or three experienced lawyers and several experienced paralegals should operate from the new Criminal Law Office, where they can work on smaller legal aid files when not assigned to major cases. They should be made individually available to defence teams led by tariff lawyers. Major Case Team paralegals should be frequently deployed to organize and review Crown disclosure materials. Several lawyers told me that, at present, tariff lawyers are often being tasked with organizing and reviewing volumes of disclosure materials, which is clearly an avoidable cost to the system.

In the short term, the Major Case Team should develop training materials and practice resources for sharing with the tariff bar at the Criminal Resource Centre. These resources should be used to build more tariff-lawyer capacity for long and complex criminal case work. LSS should expand the Major Case Team as needs demand, and create new and compartmentalized iterations of the Major Case Team at other LSS offices to serve clients without causing conflicts of interest.

RECOMMENDATION 24

Develop a Major Case Team of LSS staff lawyers and paralegals to provide in-house capacity and to support tariff lawyer capacity for long and complex criminal case work.

11. Collaboration

There are many roads to legal aid revival. But it is not very clear how they arrive there. The problem of inadequate legal aid service delivery is a “wicked problem.” Wicked problems are characterized by conflicting values and perspectives, uncertainties about complex causal relationships, and debate about the effectiveness of policy options. The debate around legal aid policy options has been occurring for decades in BC. My report is simply the latest to take a turn at mapping the way to a more effective and efficient delivery system.

If there is one difference in this latest round of system exploration, it is perhaps a much broader acceptance and understanding, among most legal aid stakeholders, that there are no quick fixes (not even higher tariff rates). I saw widespread recognition that organizations must work together in new and innovative ways that involve trials, prototypes and multiple iterations.

In so many organizations, the policy perspective has shifted from the expert to the user. That puts more emphasis on adaptable learning:

The style is not so much of a traveller who knows the route, but more of an explorer who has a sense of direction but no clear route. Search and exploration, watching out for possibilities and inter-relationships, however unlikely they may seem, are part of the approach. There are ideas as to the way ahead, but some may prove abortive. What is required is a readiness to see and accept this, rather than to proceed regardless on a path which is found to be leading nowhere or in the wrong direction.⁵⁸

FAMILY JUSTICE PATHFINDER PROJECT

Walking down an unknown path can be disorienting. I was reminded of this when I went to profile the Family Justice Pathfinder Project for this chapter. It is a collaborative project supported by Access to Justice BC, the Ministry of Attorney General and local service providers in Kamloops. Its vision is that all BC families can connect to the services they need early in the transitions of separation and divorce. The focus is on the well-being of family members, particularly children.

The project strategy is to start small, focusing first on the Kamloops population. Work is currently underway to test and learn from smaller components of a larger pathfinder design. Once the smaller components have been tested and modified so that they work for families, they will be integrated into a larger design that again is tested and modified until it demonstrably serves the larger Kamloops population. Then, the design will be expanded province-wide and adapted to local conditions.

By listening to local service providers and family members with lived experience, the project has highlighted an overarching need to maintain the focus of everyone’s attention on the needs of the children involved. It has also identified opportunities to improve online access to information and tools, and early triage and referral to online and local in-person resources and services.

⁵⁸ Clarke, Michael, and J. Stewart, *Handling the Wicked Issues—A Challenge for Government*, (Birmingham UK: University of Birmingham, 1997) at p. 15.

The project is very challenging to describe in terms of outcomes and deliverables. Because its service delivery mechanics are not yet obvious, it is difficult to package and present as a concept to funders. It is even difficult to describe. For all that, it is proving to be a rich learning experience for the project collaborators. It has given them unique knowledge and experiences that they are applying iteratively to develop increasingly responsive service design.

Review contributors gave me a wealth of inspiring ideas for collaboration and experimentation that could increase the effectiveness of BC's legal aid system. Many of their ideas involve organizations other than LSS and the Ministry of Attorney General, so I present them here as encouragements more than recommendations, or some final concepts to ponder.

LAW SOCIETY OF BC

Many lawyers expressed admiration for the Law Society's efforts to develop its own vision for publicly funded legal aid,⁵⁹ but an equal number of lawyers thought that the Law Society could do more to support legal aid engagement. Some lawyers promoted the idea of reductions in practice fees or insurance fees for Law Society members who surpassed a minimum amount of legal aid work in the previous year. They pointed to Ontario as a jurisdiction where professional insurance premiums are reduced for lawyers who restrict their practices to criminal law or immigration law.

Some sole practitioners discussed their challenges in paying fees and complying with regulations that they saw as designed for large law firm practice. A few tariff lawyers wished that the Law Society would permit them to act as a principal to more than two articulated students at a time as a rule, so they could serve more legal aid clients.

Several family lawyers warned against licensing paralegals to provide family law services, on the argument that it would diminish professional standards of service. On the other hand, many lawyers supported the idea of licensed family paralegals as a way to extend family legal services to the middle class, and create a new type of legal aid service provider.

CANADIAN BAR ASSOCIATION – BC BRANCH

A few rural practitioners hoped that the CBA would continue its REAL (Rural Education and Access to Lawyers) initiative to encourage second-year law students to article and practice in rural and small urban communities where legal aid capacity is suffering. I see potential for REAL placements to align with the staffing needs of new community legal clinics and Indigenous Justice Centres.

LAW FOUNDATION OF BC

One organization encouraged the Law Foundation to partner with the Ministry of Attorney General in experimenting with John-Paul Boyd's concept of an "administrative model of family law dispute resolution."⁶⁰

59 A Vision for Publicly Funded Legal Aid in British Columbia, <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LegalAidVision2017.pdf>

60 John-Paul Boyd, "An Administrative Model of Family Law Dispute Resolution" (March 9, 2018) *Slaw: Canada's online legal magazine*, online:

Boyd’s model agency would consist of three departments: a decision-making tribunal; an investigative commission; and a family support centre. The centre would provide counselling and legal advice services to family members. The commission would play an investigative and information-gathering role, and recommend post-separation parenting arrangements. The tribunal would provide mediation services, as well as dispute resolution by arbitration in the event that mediation fails or proves to be inappropriate.

LAW SCHOOLS

Several review contributors thought that BC’s law schools could do more to promote family law as a core subject area that is critical to legal aid. One contributor observed that family law has lost its way in most Canadian law schools, and has been de-emphasized in favour of subjects more attractive to large law firms. Another contributor suggested that the Law Foundation collaborate with BC’s law schools to administer a loan forgiveness program for graduates who practise with public interest law organizations or in underserved rural and remote communities for a reasonable length of time.

Many lawyers commended the services provided by law school clinical programs. One lawyer held out the University of Victoria’s Law Centre clinic as a good multidisciplinary service model for future community legal clinics in the province. Another lawyer saw Rise Women’s Legal Centre as a suitable prototype for new legal aid clinics serving only women.

I encourage each of the law school clinical programs to explore future arrangements with community legal services, including the services that I am proposing in this report. My proposed community legal clinics, Indigenous Justice Centres and Criminal Law Office could develop relationships with the law school clinical programs such that their articling students are hired each year from a pool of dedicated student clinicians. This should promote law student engagement in the clinical programs, and provide clear pathways for law students to follow to future legal aid service.

RECOMMENDATION 25

Collaborate with other justice system stakeholders, like the Law Foundation of BC, the Law Society of BC, the BC Branch of the Canadian Bar Association and other branches of government, to promote legal aid practice and reduce justice system costs and delay.

Appendix A: Terms of Reference

Terms of Reference of the External Review of Legal Aid Service Delivery in British Columbia

Mandate

- A comprehensive review of legal aid service delivery models will be undertaken and a report with recommendations submitted to the Attorney General by December 31, 2018.
- The review will examine the effectiveness and efficiencies of current and potentially new models with a user-focus to help ensure optimal access to justice for British Columbians.

Scope

- The review should consider analysis of the current service delivery models used by Legal Service Society, including the following elements and issues:
 - Workflow and caseload demand;
 - Certificate/private bar models;
 - Mixed models;
 - Duty Counsel;
 - Choice of Counsel;
 - Clinics;
 - Major cases;
 - Paralegals;
 - Trends and challenges: geographical; cultural/demographic; technological; priorities; flexibility; resourcing; capacity;
 - Models used in other jurisdictions, including staff lawyers; and
 - Other topics the reviewer considers relevant.
- The final report should include prioritized recommendations for potential improvements in legal aid service delivery on the basis of demand, resource-efficiencies and positive outcomes for citizens dealing with their legal matters.

Consultations

- The reviewer should engage in consultations with any individuals or organizations you think would assist in developing your recommendations, as necessary.

Appendix B: Personal Consultations

A

Emily Adams – law student
Kenneth Armstrong –
 Canadian Bar Association
 BC Branch
Haran Aruliah – lawyer

B

Brett Bagnall – Legal Services
 Society of BC
Rhaea Bailey – Legal Services
 Society of BC
Robin Bajer – lawyer
Patricia Barkaskas – UBC
 Indigenous Community
 Legal Clinic
Denice Barrie – lawyer
Dom Bautista – Amici Curiae
 Friendship Society
Robert Bellows – lawyer
Mark Benton QC – Legal
 Services Society of BC
Aleem Bharmal – Community
 Legal Assistance Society
Johanne Blenkin – retired
 lawyer
Les Blond – retired lawyer
Andrew Bonfield – lawyer
John-Paul Boyd – lawyer
Kari Boyle – retired lawyer
Michael Bryant – lawyer
Kelly Broom – member
 of the public
Andrea Bryson – Rise
 Women’s Legal Centre

C

Jeffrey Campbell QC – lawyer
Roy Chan – Legal Services
 Society of BC
Gilbert Clifford – Legal Aid
 Manitoba
Randall Cohn – articulated
 student
Janice Conick – Legal Services
 Society of BC

D

Tracey Downey – BC
 Aboriginal Justice Council

E

Peter Edelmann – lawyer

F

Anne Fletcher – advocate
Richard Fowler QC – lawyer
Chris Friesen – Immigrant
 Services Society of BC

G

Carlos Garcia – lawyer
Chief Judge Melissa Gillespie
 – BC Provincial Court
Drew Gilmour – lawyer
Brian Gilson QC – lawyer
Maegen Giltrow – lawyer
Craig Goebel – Legal Aid
 Saskatchewan
Kasari Govender – West
 Coast LEAF
David Griffiths – Legal Services
 Society of BC

H

Rita Hatina – Community
 Legal Assistance Society
Brett Haughian – Community
 Legal Assistance Society
Todd Hauptman – Trial
 Lawyers Association of BC
Kim Hawkins – Rise Women’s
 Legal Centre
Lisa Helps – lawyer
**Chief Justice Christopher
 Hinkson** – BC Supreme Court
Claire Hunter – Access Pro
 Bono BC

J

Zahra Jimale – Canadian Bar
 Association BC Branch
Paul Jon – law student

K

Thomas Kampioni – member
 of the public
Doug King – Together Against
 Poverty Society

L

Tish Lakes – advocate
Terry Laliberte QC – lawyer
Vicky Law – Rise Women’s
 Legal Centre
Peter Leask QC – lawyer
Kyla Lee – lawyer
Casey Leggett – lawyer
Karen Leung – BC Provincial
 Court
Linda Locke QC – lawyer

Megan Longley – Nova Scotia
Legal Aid

Kevin Love – Community
Legal Assistance Society

M

Dr. Julie Macfarlane –
National Self-Represented
Litigants Project

Sherry MacLennan – Legal
Services Society of BC

Jamala MacRae – lawyer

Talia Magder – lawyer

Frances Mahon – lawyer

Sandra Mandanici – lawyer

Kevin Marks – Crown Counsel
Association of BC

Heidi Mason – Legal Services
Society of BC

Branka Matijasic – Legal
Services Society of BC

Geoffrey McDonald – lawyer

Jerry McHale QC – law
professor

David McKillop – Legal Aid
Ontario

Margaret Mereigh – Canadian
Bar Association BC Branch

Jennifer Metcalfe – West
Coast Prison Justice Society

Shawn Mitchell – Trial
Lawyers Association of BC

Jennifer Muller – member of
the public

Michael Mulligan – lawyer

N

Forrest Nelson – lawyer

Lisa Nevens – Canadian Bar
Association BC Branch

Caroline Nevin – Canadian Bar
Association BC Branch

Carrie Ng – lawyer

Diane Nielsen – Community
Legal Assistance Society

O

Tim Outerbridge – BC Court
of Appeal

P

Katrina Pacey – lawyer

Richard Peck QC – lawyer

Geoff Plant QC – lawyer

Blake Price – UBC Law
Students' Legal Advice Program

R

Micah Rankin – lawyer

Martha Rans – lawyer

Sarah Rauch – lawyer

Sam Reposo – Legal Aid
Manitoba

Wayne Robertson QC – Law
Foundation of BC

S

Lobat Sadrehashemi – lawyer

Shannon Salter – BC Civil
Resolution Tribunal

Marilyn Sandford QC – lawyer

Hardeep Sangha -- lawyer

Allan Seckel QC – lawyer

Elton Simoes – ADR Institute
of Canada

John Simpson – Legal Services
Society of BC

Kathryn Spracklin – Legal
Services Society of BC

Nick Summers –
Newfoundland and Labrador
Legal Aid Commission

T

Laura Track – lawyer

Donna Turko QC – lawyer

V

Bill Veenstra – Canadian Bar
Association BC Branch

Olga Volpe – Legal Services
Society of BC

W

Ardith Walkem QC – lawyer

Leslie Anne Wall – Canadian
Bar Association BC Branch

Alison Ward – Community
Legal Assistance Society

Doug White – BC Aboriginal
Justice Council

Rosalie Wilson – BC
Aboriginal Justice Council

Patricia Woroch – Immigrant
Services Society of BC

**Total of 110 personal
consultations**

Appendix C: Personal Written Submissions

A

Thomas (Yong-il) Ahn – member of the public
Katy Allen – lawyer
Brent Anderson – lawyer
Debra Apperley – advocate
Janice Ascroft – member of the public

B

Michelle Beda – lawyer
Yolonda Beaudry – lawyer
Mark Berry – lawyer
John Bilawich – lawyer
Paul Bosco – lawyer
Tannis Boxer – lawyer
Heather Brownhill – advocate
Crystal Buchan – lawyer
Chris Budgell – member of the public
Karen L. Bunner – advocate
 Peter Burton – lawyer

C

Alex Chang – lawyer
Jeanette Cohen – lawyer
Shane Colclough – advocate
Bill Collier – lawyer
Rosemary Collins – advocate
Chandra L. Corriveau – lawyer
Elizabete Costa – lawyer
Jeremy Crowhurst – lawyer

D

Anne Davis – advocate
Erika Decker – lawyer
Janet Delgatty – lawyer
Lisa Demidoff – member of the public
David Desautels – advocate
Samantha de Wit – lawyer
Kim Donaldson – advocate
Katie Duke – lawyer

F

E. Murphy Fries – lawyer

G

Angela Gallant – member of the public
Paul Gandall – lawyer
Ian Gartshore – member of the public
Doreen Gee – member of the public
Sarbjit Gill – lawyer
Drew Gilmour – lawyer
Marla Gilsig – lawyer
Kate Gower – lawyer
Matthew Granlund – lawyer
Emily Gray – lawyer
Claire Griffiths – member of the public
David Grunder – lawyer

H

Claire Haaf – lawyer
Jean-Michel Hanssens – lawyer
Greg Heywood – lawyer
Kyle Hyndman – lawyer

J

Miriam Jurigova – lawyer
Dave Juteau – lawyer

K

Betty Keding – advocate
Sarah Khan – lawyer
Shelagh Kinney – lawyer
Ian Knapp – lawyer
Naomi Kovak – lawyer
Elaine M. Kurek – lawyer

L

Michelle Lalonde – lawyer
Joshua Lam – lawyer
Stan Lanyon QC – lawyer
Adena Lee – lawyer
Ryan Lee – lawyer
James Legh – lawyer
Caroline Lennox – member of the public
Sarah Levine – lawyer
Margot Liechti – lawyer
Luke Lin – lawyer
Julie Loerke – lawyer

M

Harriet Manson – advocate
Sonia Marino – advocate
Donna Martinson – retired judge
Brock Martland – lawyer
Heather Mathison – lawyer
Don McConnell – advocate
Michael McCubbin – lawyer
Steve McKoen – lawyer
Hugh McLellan – lawyer
Donald McLeod – lawyer
Peter Mennie – lawyer
Brandon Mewhort – lawyer
Dave Miles – lawyer
Roy Millen – lawyer
Murray K. Morrison – lawyer

N

Lisa Nevens – lawyer
Craig Neville – lawyer
Hilary Nyte – lawyer

O

Erica Olmstead – lawyer
Jeanette M. Oostlander – lawyer

P

Adam Pawlovich – lawyer
Joyce Percey – lawyer
Inga Phillips – lawyer
Michael Prestwich – lawyer
Andrew Prior – lawyer
Amber Prince – lawyer

R

Louise Richards – lawyer
Virginia Richards – lawyer
Glen Ridgway – lawyer
Will Roberts – lawyer
Erin C. Roth – lawyer

S

Kimberly Santerre – lawyer
Sandra Sarsfield – retired lawyer
Catharine Schlenker – lawyer
Tim Schober – lawyer
Miranda Seymour – lawyer
Jeremy Shragge – lawyer
Peter Shrimpton – lawyer
Ram Sidhu – lawyer
Rodney W. Sieg – lawyer
Susan Sinnott – lawyer
Angela Sketchley – lawyer
Adrienne Smith – lawyer
Kevin R. Smith – lawyer
Paul Smith – lawyer
Stephanie Smith – advocate
Claudia Stoehr – lawyer
Ashley Syer – lawyer

T

Kathleen Tanner – lawyer
Heidi Taylor – lawyer
Ryan Teraverst – advocate

W

Trudy Wale – advocate
Kevin Walker – lawyer
Leslie-Anne Wall – lawyer
Katherine Wellburn – lawyer
Laura Wilson – lawyer
Oliver Wilson – lawyer
Nina Wolanski – member of the public
David Wu – lawyer

Y

Jimmy Yan – member of the public
Michelle Yardley – advocate
Patricia Yaremovich – lawyer

Z

Robert Zeunert – lawyer

Total of 130 personal written submissions

Appendix D: Organizational Written Submissions

A

Access to Justice BC Steering Committee

B

BC Government and Service Employees' Union (BCGEU)

C

Canadian Bar Association BC Branch Access to Justice Committee

Canadian Bar Association BC Branch SOGIC Section

Community Legal Assistance Society

D

Disability Alliance BC

E

Environmental Law Centre, University of Victoria

Equifax Canada

I

Ishtar Transition Housing Society

L

Law Society of BC

Lawyers' Rights Watch Canada (LRWC)

W

West Coast Prison Justice Society

Total of 12 organizational written submissions