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Future Directions for Legal Aid Delivery

Envisioning Equal Justice

An Initiative of the Canadian Bar Association

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Standing Committee on Access to Justice

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Note: *This discussion paper has been produced by the Canadian Bar Association’s Standing Committee on Access to Justice for consultation only. It has not been approved by the CBA, and does not represent an official statement of CBA policy. It is intended to foster discussion. That discussion will be considered by the Committee in making its Final Report and recommendations to the CBA at the Canadian Legal Conference in August 2013.*

Future Directions for Legal Aid Delivery - Discussion Paper

1. Foreword

The Canadian Bar Association's Access to Justice Committee is preparing a series of Discussion Papers as part of its *Envisioning Equal Justice* initiative. The initiative aims to tackle four barriers that impede sustainable and sustained improvement to access to justice: lack of political profile; inadequate strategy and coordination of access initiatives; absence of mechanisms to measure change; and identifiable gaps in our knowledge as to what actually works to improve access.

This Discussion Paper is designed to address the second and fourth barriers to progress: the inadequate strategy and coordination of access to justice initiatives and the gaps in our knowledge as to what will work best to improve access to justice. It provides some context for legal aid in Canada, and considers the particular characteristics and needs of the population that most requires publicly funded legal assistance. It outlines current trends to innovate legal aid delivery, asking how well those trends are tailored to the needs of the targeted population. It identifies some recent examples of particular innovations. It concludes with several questions that we hope will elicit feedback and further discussion of the issues and options canvassed. Your input will assist the CBA Committee to develop its report and recommendations to be tabled at the Canadian Legal Conference in August 2013.

The CBA Committee invites your responses to any or all of the consultation questions, or the content of this Discussion Paper, and asks that all input be sent to the attention of Gaylene Schellenberg, Project Director, by May 15 2013.

2. Introduction – Future Directions for Legal Aid Delivery

In this Discussion Paper dealing with *Future Directions for Legal Aid Delivery*, we consider innovations and trends for legal aid delivery, and raise questions for further consideration and debate. This work picks up on the important work done by Committee Chair, Dr. Melina Buckley, in her 2010 report prepared for the CBA called *Moving Forward on Legal Aid*.

Cuts to public funding and support for legal aid have resulted in continually decreasing financial eligibility levels and increasingly limited opportunities for legal advice and representation through the services offered by legal aid plans.¹ At present, many low income people and people living in

¹ See, for example, two news items about provincial cuts during the week of April 1 2013: www.thestar.com/news/immigration/2013/04/04/legal_aid_ontario_cutbacks_could_leave_desperate_refugees_without_lawyers_at_hearings.html
www.thetelegram.com/News/Local/2013-04-05/article-3214476/Legal-Aid-assesses-impact-of-cuts/1

poverty are unable to access the services they need from legal aid. The problem is not one that is widely recognized by the general public, and has been called a “silent crisis.”² Those who suffer when they do not receive the help they need are invisible in many ways, as “those most deeply affected, low-income and disadvantaged persons, have little political clout.”³

Another of the Committee’s Building Blocks – *Toward National Standards for Publicly-Funded Legal Services*, addresses issues around determining which legal matters should be provided through legal aid and to whom legal aid services should be available. It also addresses questions about the quality of legal aid services available, within a framework of the concept of national standards.

This paper is complementary to that one on national standards for legal aid, and deals with an equally important issue, how legal aid services should be delivered. Over recent years, those responsible for legal aid delivery and policy have embraced the challenge of being more innovative in providing legal aid services. This has been a much deeper change than simply “doing more with less.” For example, “since 2009, Legal Aid Alberta has embarked on a journey which has resulted in major changes in philosophy, approaches and services.”⁴ However, there is a general sense that legal aid innovations in recent years are driven primarily by pressures to meet increasingly strained “bottom lines.”⁵

How to best deliver legal aid is an issue receiving significant attention within the legal community these days, but it is not a new consideration. For example, in 1985, the CBA published *Provision of Legal Aid Services in Canada* and in 1988, *Legal Aid Delivery Models: A Discussion Paper*. In addition, some of the particular approaches now gaining attention and traction as innovations are not entirely new. Certainly, the current focus has shifted to how clients receive legal services and the outcomes they achieve, rather than on legal aid delivery models that work best for lawyers or the court system. Several recent “innovations” though have been tried in the past, perhaps as pilot projects or without sufficient resources to take hold nationally. For example, holistic models of service delivery, where different services are offered under the same roof, or increased inter-agency cooperation, now have widespread support to improve legal aid delivery to needy clients. But, Toronto’s Parkdale Community Legal Services was established in 1972, and has been delivering a wide range of community-based legal services, in close cooperation with other social and health service agencies ever since.

² Melina Buckley, *Moving Forward on Legal Aid* (Ottawa: Canadian Bar Association, 2010) at 31.

³ *Ibid.*

⁴ Input provided to *Envisioning Equal Justice* from Jacqueline Schaffter, Chief Executive Officer, Legal Aid Alberta.

⁵ For example, input provided to *Envisioning Equal Justice* from Legal Aid Ontario, *Modernization Strategy and Innovations, April 2013*, states that “cost savings in administration and changes in service delivery through LAO’s Modernization Strategy” is credited for addressing an 2009/10 operating deficit and turning it into a small surplus by 2012/13. See also, www.thestar.com/news/immigration/2013/04/04/legal_aid_ontario_cutbacks_could_leave_desperate_refugees_without_lawyers_at_hearings.html

What may be different now is the level of pressure to find innovations for legal aid delivery to adapt to increasing demands and budgetary pressures. According to Dr. Buckley's 2010 report, "over the last two decades, Canadian legal aid policy has been largely dictated by purely fiscal policy, rather than substantive policy objectives."⁶ "We have become "adept at adaptation, but perhaps at the expense of regeneration.... [L]ike any public service, the legal aid system must always aim to serve the public better – that is why regeneration or renewal is continually required."⁷

Regeneration and renewal requires more thought than just meeting budgetary targets. Legal aid must be based on a solid understanding of the legal needs and daily realities of people living in poverty, so services address the real constraints that marginalized and disadvantaged people live with. A comprehensive policy approach to regenerating and renewing legal aid is required, to ensure that every innovation is directed to attaining a more principled vision of equal justice. Even small steps are important if they are consistently directed toward that common vision.

3. The Road to Here

Lawyers have always offered some services without charge, often to people within their immediate communities. In the mid 20th century, law societies in different parts of Canada began to organize ways to link people in need of legal assistance with lawyers willing to help.⁸ This was then characterized as "legal aid", but more closely resembled what we now consider a *pro bono* referral organization. These informal networks were quickly overwhelmed by client demands for help,⁹ and over the next few decades, publicly funded legal aid plans were established in every Canadian province and territory.¹⁰

Each legal aid plan determines how to provide legal aid services, which legal services are provided, who is eligible for legal aid services, and how to compensate legal aid personnel, including lawyers. Accordingly, there is significant variation across the country. Some plans operate as government departments, but most operate as boards or commissions with varying degrees of independence from government. Some regions use a staff model, others community clinics and many provide the public with certificates to take to members of the private bar. The Association of Legal Aid Plans of Canada (ALAP) is an umbrella group representing each of the provincial and territorial legal aid plans. The annual general meeting of ALAP provides an opportunity to share best practices in the delivery of legal aid services. Recently, the emphasis of ALAP has been evolving toward becoming a national voice on broader access to justice issues, in addition to legal aid related matters. This role

⁶ *Supra*, note 2 at 35.

⁷ *Ibid.* at 33.

⁸ See, Ron Perozzo, Q.C. (Chair), *A Review of Legal Aid in Manitoba* (Winnipeg: 2004) at 8. www.gov.mb.ca/justice/publications/pdf/le.galaidreviewfinal.pdf

⁹ Lorne Sossin, "The Public Interest, Professionalism, and the Pro Bono Publico" (2008) 46 *Osgoode Hall L.J.* 131 at 135.

¹⁰ *Supra*, note 2 at 31.

is a necessary evolution to advance understanding of the essential role carried out by legal aid plans in the access to justice dialogue.

Canada's federal government established a cost sharing program for criminal legal aid matters in 1972.¹¹ It continues to recognize some responsibility for criminal legal aid, though it has contributed proportionately less over the years. At the same time, demands and the cost of providing criminal legal aid have grown,¹² and provinces and territories are calling for change.¹³ Beginning in the late 1970s, the federal government made a contribution for civil legal aid through the *Canada Assistance Plan*, matching its funding to what was spent by the province. A shift to a global transfer in 1996 (*Canada Health and Social Transfer*, now the *Canada Social Transfer*) provided the provinces with greater discretion as to where to spend federal funds, but both lacked transparency and meant civil legal aid had to compete for funds with education, health and other social services. Provinces now dispute that the federal government contributes anything at all for

¹¹ Current contribution agreements also include some funding for immigration and refugee matters. See, www.justice.gc.ca/eng/pi/pb-dgp/arr-ente/lap-paj.html

¹² See Robert Todd, "Legal Aid: a System in Peril" *Canadian Lawyer* (October 2010) at 28. NDP Justice Critic, Joe Comartin, urged the federal government to "increase legal aid funding due to its tough-on-crime agenda", and the increased pressures on legal aid plans as a result, at 31.

¹³ Legal aid in the Territories is funded differently, through Access to Justice Service Agreements for both criminal and civil legal aid. See, Justice Canada, www.justice.gc.ca/eng/pi/pb-dgp/arr-ente/acces.html.

Federal/Provincial/Territorial Ministers of Justice and Public Safety meet annually, and legal aid is often a priority issue. For example, in 2006, the Press Release following the meeting said,

Legal Aid

Provincial and territorial ministers again stressed, through unanimous resolution, the need for continued, increased and long-term federal funding for criminal legal aid and new funding for civil legal aid. They also requested a return to the former 50/50 federal/provincial-territorial funding formula.

In 2010, the Press Release read:

Criminal Legal Aid

Provincial and Territorial Ministers asked the Federal Government to fund a greater proportion of the costs of criminal legal aid. Ministers agreed to extend existing agreements to March 31, 2012, and endorsed a joint statement on criminal legal aid. It was recognized that all jurisdictions are currently facing fiscal challenges.

Civil Legal Aid

Provincial and Territorial Ministers asked the federal Minister to consider the strategic importance of civil legal aid. The Federal Minister of Justice noted that there is funding for civil legal aid under the Canada Social Transfer and agreed to take their concerns back to his federal colleagues.

The 2012 Press Release said,

Provincial and territorial ministers raised concerns relating to federal legal aid funding, and supported a five year agreement to extend federal funding for criminal legal aid. Provincial and territorial ministers asked the federal Minister of Justice for continued and enhanced federal funding support for legal aid... Provincial/Territorial ministers again tabled the request for federal consideration of funding for civil legal aid.

civil legal aid.¹⁴ There have been repeated calls for enhanced federal leadership and responsibility for legal aid from many quarters, over many years.¹⁵

4. Situating the Legal Needs of People Living in Poverty

A comprehensive strategy for renewing legal aid delivery to ensure it meets the needs of, and is tailored for use by people living in poverty must begin by considering who comprises that population, what distinguishes their legal needs from others and what available resources are at their disposal for solving their “justiciable issues.” “Justiciable issues” is a term proposed to replace “legal problem”, as it includes matters that raise legal issues, regardless of whether the individual realizes there is a legal component to a problem, or takes any action involving the justice system.¹⁶

A. Who are we talking about?

Given the current very low financial thresholds for eligibility for legal aid – only those on incomes at the social assistance level or lower are eligible – the populations served by legal aid in Canada are really the poorest of the poor. For example, the financial eligibility cut off for an individual in Ontario is \$10,800 (annually/gross), in Saskatchewan is \$11,820 (annually/net), and in BC, is \$1480 (monthly/net).¹⁷

People living in poverty may be the most vulnerable population, often having low levels of education and literacy. They disproportionately experience physical and mental health and addiction issues, or have experienced significant trauma in their lives by comparison with people living at higher income levels.¹⁸ According to BC’s Legal Services Society in “Making Justice Work”,

Legal aid clients are among the most marginalized citizens. They lack the financial means to effectively access the justice system when their families, freedom, or security are at risk. Almost 70% have not graduated from high school, and many struggle with

¹⁴ *Ibid.*

¹⁵ For a few examples, see, Nick Avis, Chair of Newfoundland and Labrador Legal Aid, comments about federal funding: www.thetelegram.com/News/Local/2013-04-05/article-3214476/Legal-Aid-assesses-impact-of-cuts/1. See comments about the lack of federal support for legal aid in Manitoba Legal Aid Commission’s 2012 *Annual Report* “Message from the Chair” www.legalaid.mb.ca/pdf/2012_annual_report.pdf See too, CBA advocacy on legal aid at www.cba.org/CBA/Advocacy/Additional_Information/Legal_Aid_in_Canada.aspx

¹⁶ Hazel Genn, *Paths to Justice: What People Do and Think about Going to Law* (Oxford: Hart Publishing, 1999).

¹⁷ www.legalaid.on.ca/en/getting/certificateservices.asp;

69.27.116.234/legal_help/eligible.php

www.lss.bc.ca/legal_aid/dolQualifyRepresentation.php

¹⁸ Leonard Doust, Q.C., *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia* (Vancouver: March 2011) at 29.

*basic literacy. Others face linguistic or cultural barriers. Over 25% are Aboriginal; in some communities, this rises to 80%.*¹⁹

Similarly, the Legal Australia-Wide Survey (LAW Survey), “the most comprehensive quantitative assessment of legal needs ever conducted in Australia”,²⁰ found that already disadvantaged groups are particularly vulnerable to legal problems. It showed that “65% of legal problems were experienced by just 9% of the respondents, and 85% of problems were experienced by 22% of respondents.”²¹ Specifically, people with disabilities and single parents were twice as likely as other respondents to experience legal problems. Unemployed people and people in poor housing also were especially impacted. And, Aboriginal people were more likely to experience compounded problems, involving government, health issues and rights related problems.²²

The Ontario Civil Legal Needs Project looked at the legal needs of people earning less than \$20,000 per year, and found a disproportionate number of women (62%), most often single, divorced or widowed. They also found disproportionate representation from equality-seeking communities, particularly people with disabilities. The population was more likely to be unemployed or retired or to be receiving disability benefits – and almost half were receiving income assistance.²³ The conclusion was that “the poorest and most vulnerable Ontarians experience more frequent and more complex and interrelated civil legal problems.”²⁴

B. Legal needs of people living in poverty

The CBA *Envisioning Equal Justice* Discussion Paper, *Underexplored Alternatives for the Middle Class* noted that,

*People living in poverty tend to experience more and different kinds of legal problems with more serious consequences than those with higher incomes.*²⁵ *The poor are not just the middle class without money; they tend to be exposed to the “sharp edges of the law in a way the middle class generally are not.”*²⁶ *Studies of civil legal needs have*

¹⁹ Legal Services Society, *Making Justice Work* (Vancouver: LSS, 2012) at 8.

²⁰ C. Coumarelos, D. Macourt, J. People, H.M. MacDonald, Z. Wei, R. Iriana, & S. Ramsey, *Legal Australia-Wide Survey: Legal Need in Australia* (Sydney, Australia: Law and Justice Foundation of NSW, 2012).

²¹ *Ibid.*

²² *Ibid.*

²³ R. Roy McMurtry, Chair, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto: The Ontario Civil Legal Needs Project Steering Committee, 2010) at 33.

²⁴ *Ibid.* at 45.

²⁵ Buckley, *supra*, note 2 at 13.

²⁶ Stephen Wexler, “Practicing Law for Poor People” (1970) 79 Yale Law Journal 1049.

found that poverty has a profound impact on legal needs, and that people living in poverty tend to be “enveloped by the law.”²⁷

People living in poverty are also likely to confront legal issues that threaten very basic needs, for example, fighting eviction from public housing that might result in homelessness, trying to resolve bureaucratic problems with government benefits that represent the sole source of household income, and defending themselves against state action, by police, immigration officials or child protection agencies. These problems are often compounding, one worsens another.²⁸

The Ontario Civil Needs report also found that:

lower income earning individuals tended to have more contact with the legal system and government organizations, specifically in the income support context, and they tended to experience more civil legal issues in their lives than higher income groups. They also tended to feel their daily lives were disrupted by their civil legal issue, increasing their vulnerability and making them prone to experiencing negative physical and psychological impacts as a result of their civil legal problems.²⁹

The study noted that a quarter of the people in that group did not seek legal assistance, but more than in other groups believed they would have benefited from such assistance. Instead, they were more likely to go to friends and family for help. They were more likely to report that their legal problem disrupted their daily lives than people in more affluent groups, and were two to three times more likely to report that a legal problem had an impact on a different aspect of their personal lives than Ontarians in higher income brackets.”³⁰

To summarize, the research on civil legal needs and characteristics of people living in poverty suggests that they:

- are disproportionately women, people with disabilities, Aboriginal people, racialized people, and single parents³¹
- are more likely than more affluent populations to experience complex problems involving homelessness, destitution, domestic violence and separation of families, that increase individual enmeshment in poverty and fiscal costs on other government social service,

²⁷ *Listening to Ontarians, supra*, note 23 at 41.

²⁸ CBA Standing Committee on Access to Justice (Melina Buckley, Chair), *Underexplored Alternatives for the Middle Class* (Ottawa: CBA, 2013).

²⁹ *Listening to Ontarians, supra*, note 23 at 34.

³⁰ *Ibid.* at 35.

³¹ *Ibid.*, at 34.

health and justice sectors, if unaddressed³²

- often have education, health, literacy, language, addiction and other challenges to overcome³³
- have more justiciable problems than less vulnerable populations³⁴
- may confront or perceive many barriers to finding help to resolve their problems³⁵
- may not identify their everyday problems as being “legal problems” or potentially having legal solutions³⁶
- are more likely than others not to seek or ask for legal help, either because they believe it is unavailable or unaffordable for them³⁷
- instead go to friends and family for help, although outcomes involving legal professionals are generally better than those resolved in other ways³⁸
- have justiciable problems that are more likely to disrupt their daily lives than those in more affluent populations³⁹
- have justiciable problems that tend to lead to other health and social problems, in what has been characterized as “clusters” of problems,⁴⁰ and that
- neglected or unresolved problems tend to worsen, and have harmful repercussions on other parts of the individual’s life.⁴¹

The LAW Survey emphasized that while some people are more resilient and know the steps to address legal problems, others require considerable guidance and assistance. The survey

³² Commission of Inquiry into Legal Aid (Evan Harris, Diana Holland, Reverend Professor Nicholas Sagovsky), *Unequal before the Law? The future of Legal Aid* (London: Jures and Solicitors’ Journal, 2011) www.jures.co.uk/whitepapers/jzqXCQ6W_SJ_Justice%20Gap%20June%202011_Unequal%20before%20the%20law.pdf

³³ Doust, *supra*, note 18 at 29.

³⁴ *Listening to Ontarians, supra*, note 23 at 34.

³⁵ See, Buckley, *supra*, note 2 at 39, summarizing international research on legal needs.

³⁶ Carol McEown, *Civil Legal Needs Research* (Vancouver: Law Foundation of British Columbia, 2009).

³⁷ *Ibid.*

³⁸ Dr. Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Justice Canada, 2009) at 88.

³⁹ *Ibid.* at 88-90.

⁴⁰ *Ibid.*

⁴¹ Buckley, *supra*, note 2 at 39.

concluded that access to justice for disadvantaged people must remain a priority, and no single strategy will be appropriate in all cases.⁴²

Legal aid innovations that account for these realities will be most successful at helping people living in poverty. Innovations that fail to do so may be less than useful for the very populations they are intended to help. For example, providing written self-help materials to people with literacy challenges might be more likely to frustrate than to assist, unless perhaps accompanied by in-person assistance to explain the materials in light of the individual's particular situation.⁴³

C. Costs of failing to provide

Providing an appropriate level of legal aid service at the right time can alleviate and prevent justiciable problems, as well as a range of social and health problems.

There is a causal relationship between experiencing justiciable problems and health and social problems. Experiencing multiple problems, not achieving a satisfactory outcome to problems and having unresolved problems grow worse and all predict a greater likelihood of health and social problems. What we do as a society to deal with justiciable problems has a direct effect on the well-being of many people experiencing them and, more generally, on the kind of society we are constructing for ourselves and for our children.⁴⁴

In addition to advancing goals of fairness, equality and inclusivity, adequate public funds to ensure legal aid plans can provide quality and timely services geared to achieving the best long term results for clients makes good economic and social sense. In *Foundation for Change*, Commissioner Doust warned that,

the social and economic costs of an inadequate legal aid system are simply too high to allow us to postpone fundamental change any longer. The damage and deprivation to individuals, and in particular those on the margins of our society, the resultant mental and health problems, and the impact on our sense of justice are all matters of obvious social concern. These matters result in significant down-stream economic costs to society.⁴⁵

Assisting people to pursue interpersonal civil remedies can reduce reliance on the public purse – a parent who gets adequate child support from the other parent, or an adequate distribution of property, is more able to withdraw from government assistance programs. Children in those situations where support is paid may also be less likely to need other government support. Laura Abel, from the National Center for Access to Justice at Cardozo Law School, said that “civil legal aid,

⁴² *Supra*, note 20.

⁴³ Gayla Reid and John Malcolmson, *Civil Hub Research Project: Needs Mapping* (Vancouver: LSS, 2007) at 3.

⁴⁴ Dr. Ab Currie, *supra*, note 38 at 89.

⁴⁵ Doust, *supra*, note 18 at 12.

an essential promise of equal justice for all, also yields substantial economic benefits.”⁴⁶ She provides five concrete examples:

- Civil legal aid saves public money by reducing domestic violence.
- Civil legal aid save public money by helping children leave foster care quickly.
- Civil legal aid saves public money by reducing evictions.
- Civil legal aid saves public money by protecting patients’ health.
- Civil legal aid helps low-income people participate in federal safety-net programs.⁴⁷

A sampling of other significant work on the economic benefits of providing adequate legal aid includes:

- A PricewaterhouseCooper study in Australia that found that every dollar spent on family law legal aid provided a \$1.60 to \$2.25 benefit to the overall justice system. “Legal aid demonstrably benefits those receiving legal aid support, those people and businesses they have contact with, the community more broadly and the efficiency of the legal system as a whole. Therefore there is a strong economic case for appropriately and adequately funded legal aid services, based on the magnitude of the quantitative and qualitative benefits that this funding can return to individuals, society and the government.”⁴⁸
- A 2009 Texas study that found that “investment in legal aid services led to economic growth in the community by increasing jobs, reducing work days missed due to legal problems, creating more stable housing, resolving debt issues and stimulating business activity.” In fact, “for every direct dollar expended in the state for indigent civil legal aid services, the overall annual gains to the economy are found to be \$7.42 in total spending, \$3.52 in output (gross product), and \$2.20 in personal income. Reductions in legal aid spending, therefore, have a negative impact on spending and create an economic burden on the community.”⁴⁹
- A 2011 report for the Law Society of England & Wales, where Dr. Graham Cookson of the School of Social Science and Public Policy of King’s College London was asked to consider any “knock off” costs (unintended costs) because of significant cuts to legal aid, and to consider the overall impact of those cuts on the public purse. Cookson refers to Canada, where a recent public commission said that cutting legal aid was a false economy because it shifted the cost of unresolved problems to other government departments. His advice was that the cuts would involve such significant “knock off” costs that the promise of cost savings should be reevaluated. And, he noted significant areas where additional longer term

⁴⁶ Laura K. Abel, *Economic Benefits of Civil Legal Aid*, National Centre for Access to Justice at Cardoza Law School (4 September 2012).

⁴⁷ *Ibid.*

⁴⁸ PricewaterhouseCoopers, *Economic Value of Legal Aid* (prepared for National Legal Aid Australia, 2009).

⁴⁹ The Perryman Group, “The Impact of Legal Aid Services on Economic Activity in Texas: An Analysis of Current Efforts and Expansion Potential” (February 2009).

costs were likely, but were difficult to precisely evaluate.⁵⁰

- A British study on the effectiveness of legal aid provisions in the asylum (refugee) context, that found that restrictions on the quality of legal aid as a cost savings measure resulted in higher costs overall: “poor quality work costs much more in the longer term to the public purse and in human terms to individual asylum seeker applicants,”⁵¹ and,
- A UK Citizens’ Advice Bureau Report, “Towards a business case for Legal Aid,” found that for every pound of legal aid expenditures on housing advice, debt advice, employment benefits and benefits advice, the state potentially saves between 2.34 and 8.80 pounds.⁵²

Plans are underway to develop made-in-Canada data on the costs of inadequate access. For example, the Canadian Forum on Civil Justice is currently engaged in a project called *Cost of Justice*.⁵³ It is a five year study with the “goal of defining the economic and social costs of justice. The study will develop methods to measure what our civil justice system costs, who it serves, whether it is meeting the needs of its users and the price of failing to do so.”⁵⁴

D. Conclusion

Successful legal aid innovations need to account for the realities of the people the innovations are intended to benefit. In its submission, *Making Justice Work*, to the BC Minister of Justice and Attorney General, the BC Legal Services Society (LSS) recommended reforms requiring new investments in legal aid or reallocating funds with the justice system to support legal aid reform, saying that savings would result that can then be measured and redirected back to LSS.

*Proposals that initiate a shift to an outcomes –focused justice system can also generate a range of savings that are real, significant and system-wide, but difficult to quantify. For example, when clients achieve early and more stable resolution of their legal issues, they are less likely to experience legal problems in the future, and their related issues – such as health or debt- are less likely to escalate. While these benefits avoid future costs to the justice system and to government, they also generate a positive impact on clients, their families and their communities that is both profound and immeasurable.*⁵⁵

⁵⁰ Dr. Graham Cookson, *Unintended Consequences: the cost of the Government’s Legal Aid Reforms* (London: King’s College, November 2011).

⁵¹ A. Trude and J. Gibbs, “Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work” (City University, London: Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, March 2010) at 8.

⁵² (London: Citizens’ Advice Bureau, July 2010) at 2.

⁵³ www.cfcj-fcjc.org/cost-of-justice

⁵⁴ *Ibid.*

⁵⁵ *Making Justice Work*, *supra*, note 19 at 6.

LSS recommended moving from a system based on what is best for lawyers and court processes, and toward one focused on client outcomes, defined as “timely, fair, and lasting resolution of legal problems.”⁵⁶ After years of experience introducing various innovations to legal aid, and supporting those proposed by others, the LSS found that

... reforms will only be successful if they are based on fundamental principles that define and support access to justice; are the product of systems thinking that recognizes institutional interdependencies, and are subject to rigorous, empirical evaluation that demonstrates their worth. Our experience has also taught us that a small investment in legal aid can result in savings in other areas of the justice system or for other service providers.⁵⁷

The LSS suggests the principles for developing and evaluating innovations that are geared to successful client outcomes are: effective, integrated, accessible, fair, appropriate and proportionate, timely, efficient, affordable and accountable.⁵⁸ It proposed the following steps:

- develop preventative justice services
- to focus on collaboration and integration of service providers
- foster culture change
- undertake ongoing research and evaluation of outcome based services,
- support early action and out-of-court resolution,
- enhance criminal case management,
- support justice system professionals to provide integrated, outcome focused services, and
- simple affordable court procedures.⁵⁹

This approach goes far beyond piecemeal reforms, based on what is achievable under diminishing budgets, to focus instead on what research and experience has shown is required for more comprehensive change, and perhaps a renewal of legal aid. A focus on client outcomes can also provide a principled way of measuring the effectiveness of legal aid innovations.

5. Innovations in Legal Aid Delivery

Legal aid is just one part – a very important, central, foundational part – of the overall access to justice picture in Canada. But this foundation for access to justice is in serious trouble. Across the country, people need publicly funded legal assistance for critical issues and cannot get the help they

⁵⁶ *Ibid.*

⁵⁷ *Ibid.* at 8.

⁵⁸ *Ibid.* at 13.

⁵⁹ *Ibid.*

need. The lack of public or political attention or support for adequate legal aid, compared to other services that can be considered an essential part of Canada’s social “safety net” has often been the subject of comment.⁶⁰

*Legal aid is designed for those who simply cannot afford to pay for legal services, those with the lower and lowest income levels of our society. The large majority of the public is not aware of these needs, nor are they aware of the deprivation and damage that result from a failure to address them. They are unaware because they have no contact with these individuals or their needs. Furthermore, the large majority of the public do not rely on these services... if the full impact of their absence was in the face of the public, I have no doubt they would endorse the satisfaction of the needs of these people. They would do so out of a sense of fairness and equality to ensure provision of the essentials of life — food, clothing, shelter, subsistence, adequate parenting and the assertion of basic guaranteed rights, all of which the majority of our society already have and indeed, to some extent, take for granted.*⁶¹

Legal aid plans shoulder the main burden of ensuring access to justice for people living in poverty. This must be done within limited budgets, while simultaneously encouraging and exploring new options to accomplish their mandate more creatively and effectively, and also being accountable to taxpayers for how money is spent.

A 2007 UK study identified legal aid as traditionally being a “low innovation” sector, driven by cost concerns and efforts to improve access, but inhibited by conservatism and lack of incentives that fail to reward more imaginative thinking. “The challenge for all legal aid providers is how to foster ongoing change by moving from a tradition-bound system to one that values and rewards problem-solving and innovation.”⁶² Social science research from the UK also indicates that while ongoing research is important, it must be translated into improved service to truly represent innovation. And innovations must be tracked and monitored to ensure that they are achieving what they were intended to achieve.⁶³

Significant progress has been made;

... in increasing the Canadian capacity for evidence-based legal aid research and our knowledge base about legal needs. Some strategic funding has been made available to foster new approaches to legal aid delivery, and many of these innovations again have been evaluated further adding to our understanding of how best to meet the needs of

⁶⁰ Buckley, *supra*, note 2 at 31-32.

⁶¹ Doust, *supra*, note 18 at 13.

⁶² NESTA, Hidden Innovation: How Innovation Happens in Six “Low-innovation” Sectors (2007), www.nesta.org.uk/publications/reports/assets/features/hidden_innovation, referred to in Buckley, *supra*, note 2 at 72.

⁶³ Buckley, *ibid*.

low-income people. However, the research remains diffuse and is not linked to a broader sector-wide strategy to foster innovation (emphasis added).⁶⁴

Ways to most effectively deliver legal aid have long been a focus of attention for some researchers and policy makers in Canada.⁶⁵ Central to recent innovations in Canada and elsewhere is the recognition that providing legal aid services does not always require or even benefit from a lawyer's involvement from beginning to end of a case. The 2008 Ontario Legal Aid Review identified, as one of several principles to guide its new legal aid system, that a greater mix of legal services was required to reduce the divide between full legal representation and no representation.⁶⁶

According to Dr. Ab Currie, "it makes sense to look at need as a continuous, rather than as an "either/or" concept."⁶⁷ In addition to legal representation for cases where a lawyer's specialized skills and knowledge remain essential, legal aid can mean preventing ordinary problems from becoming legal problems, diverting situations from the legal system to dispute resolution or mediation to achieve a solution created by the involved parties, providing people with appropriate legal information so they can assess their own best next steps, instituting an effective triage system to get people to the most appropriate legal, social or health related services as soon as possible and before the situation worsens, or ensuring that a solution is sustainable. Information and materials are often provided through the internet, touch screen kiosks in public places or through telephone hotlines or 1 800 numbers. Legal aid can involve a strategic partnership between several service providers, including lawyers, paralegals, social workers, community legal workers and court administrators. Legal aid delivery can be enhanced by developing partnerships between different organizations and agencies, to ensure more seamless delivery, so clients do not fall through the cracks between those agencies.

Another important priority underlying current innovations is an awareness that vulnerable and marginalized populations, more than other populations, need a broad range of services and support to address often intertwined and "clustered" problems that span different types of services, including health, social services and legal help. While we move increasingly toward partial services to avoid the all-or-nothing approach to legal aid, at the same time we are directing attention to a more comprehensive, holistic approach. Finally, there is a trend to direct services toward particular underserved and disadvantaged communities, to meet their distinct needs.⁶⁸

⁶⁴ *Ibid.* at 75.

⁶⁵ For example, see Legal Aid Liaison Standing Committee, *The Provision of Legal Aid Services in Canada* (Ottawa: CBA, 1985) and *Legal Aid Delivery Models: A Discussion Paper* (Ottawa: CBA, 1988).

⁶⁶ Michael Trebilcock, *Report of the Legal Aid Review, 2008* (report prepared for Ontario Attorney General, Chris Bentley) (Toronto: AG ON, 2008) at 12.

⁶⁷ Dr. Ab Currie, *supra*, note 38.

⁶⁸ Buckley, *supra*, note 2 at 78.

Given the current ideal of a spectrum or continuum of delivery options, the challenge is to match clients' needs at the earliest possible stage with the most appropriate service option, and in that way tailor the services to the individual client. As lawyers remain essential for a just result in some cases, the spectrum of available delivery offerings must include legal representation when necessary and to the extent necessary. Legal aid is also influenced by and reactive to larger justice system decisions. For example, if there is no possibility of adult diversion and criminal charges once laid must proceed, demands on legal aid will increase, especially with recent additional ramifications of having a criminal record. If there are limited alternatives for separating families other than the door to the judge, families will look for more legal aid to enable them to access lawyers. Legal aid plans must guard against the fallacy that information and advice is THE answer, and policy and legislative changes should be made with consideration of any corresponding impact on demands for legal aid. The danger to be avoided is that less costly innovations be put in place at the expense of providing access to lawyers, regardless of the circumstances.

The predominant trend is toward providing information and limited legal assistance, which puts an increased onus on the individual litigant (or accused) to “self-help”, perhaps with some support.

Budgetary pressures, along with pressures for greater efficiencies and innovations to improve service delivery, have led to changes in Canada and internationally. A significant trend has been to shift the onus onto individuals to navigate the justice system on their own, equipped with enhanced public legal information and a variety of self help materials.⁶⁹

Some of these legal aid services are now available without means testing, so they are available to anyone. This includes public legal education materials, self-help assistance, and some duty counsel or summary advice services. This approach can provide help for people just slightly above the cut off to be eligible for legal aid, for example, those working at minimum wage, often called the “working poor.” Some provinces also allow or require clients to make some financial contribution, or repay the legal aid plan over time. Offering a broad range of affordable or free services to those in the middle class makes sense from a public policy perspective, given that the middle class funds legal aid plans through their tax dollars and will be more supportive of continuing to do so if they themselves have access to legal help.⁷⁰

A focus on providing the *most* services possible to the *most* people seems unobjectionable, and potentially a significant step in bridging the gap between full legal representation and no help at all. It may represent progress to better meeting the legal needs of the working poor and middle class, as well as the poor. Informational materials, telephone hotlines or expanded duty counsel for all who ask for help, are examples currently taking hold in most parts of Canada.

The problem though is that, “while most of the innovative strategies have proven beneficial, they have had a tendency to shift the energy and focus away from the need for actual legal

⁶⁹ Buckley, *supra*, note 2 at 77.

⁷⁰ Michael Trebilcock, *Middle Class Access to Justice* (Toronto: University of Toronto, 2011).

representation as part of the legal aid spectrum.”⁷¹ Commissioner Doust made some of the same observations in his recent report. While one of his seven overarching findings is to “Establish regional legal aid centres and innovative service delivery”, another is that “Legal Information is not an adequate substitute for legal assistance and representation.”⁷² He notes the limits of “self-help” materials, including that they are not helpful for many people, notably those with language and literacy barriers, or limited access to computers, that they may inform about legal rights but without legal advice and representation, those rights may be hollow, and that regardless of how complete materials are, they cannot teach a person how to effectively represent themselves in legal proceedings.⁷³

When legal aid innovations come from finite legal aid budgets, the emphasis on vehicles for legal information and “self-help” materials has a serious risk of taking away services from the most marginalized and vulnerable people, who may well need an actual person to assist or a lawyer to manage their cases. This population may not benefit fully, if at all, from even a full buffet of “self-help” offerings. Those offerings have often been shown to be more helpful when accompanied by people available to assist.⁷⁴

Marginalized and vulnerable populations must remain the primary focus and responsibility of legal aid programs. It is important to provide an honest assessment of any proposed innovations, to identify which populations are more likely to benefit, and which would have difficulty taking advantage of them. An overall renewal or regeneration of legal aid in Canada should be rooted in the knowledge we now have about the legal needs of people living in poverty, and occur in consultation with community members and advocates for marginalized communities.

6. Example of Current Innovations

The following section highlights some innovations listed on the websites of Canada’s legal aid plans at present, as well as those that some legal aid plans have offered as highlights. It is not intended to be a comprehensive list, and many innovations could easily fit in multiple categories. It does illustrate that legal aid plans are embracing the challenge of offering a continuum of services to populations in need.

This continuum ranges from services intended to divert people and problems from involvement with the formal legal system at an early stage, to those intended to provide people with tools or information to be better equipped to navigate the formal system or make determinations as to how to proceed, to those that offer mediation or dispute resolution options, to some that offer partial legal representation rather than the full involvement of a lawyer, to those that bring together many

⁷¹ Buckley, *supra*, note 2 at 77, citing McEown, *supra*, note 36.

⁷² Doust, *supra*, note 18 at 23.

⁷³ *Ibid.*

⁷⁴ See, Reid and Malcolmson, *supra*, note 43.

different professionals to help address people's legal problems, to those that aim at linking organizations to provide a seamless network of services, and finally to those that ensure that solutions once achieved are durable.

A. Information and Advice

The array of offerings of legal information and advice, mainly using the internet and other technology, is intended to provide people with basic information that may allow them to avoid everyday problems from escalating to become legal problems at all, or at least lead to earlier resolutions of legal problems. These services generally clarify that they are not intended to provide legal advice, and that a person with a serious problem should consult with a lawyer. Some examples include:

Prevention

- ◆ In Ontario, LawFacts, a new LAO public legal education site for criminal law matters has been widely used. Traffic on the LAO website has increased by 15% in the past year.⁷⁵ The Family Law Information program is another online resource for family clients in Ontario.
- ◆ The Courthouse Libraries BC created Clicklaw, an online legal information website. The Legal Services Society also provides information through social media and a website designed for mobile phones. It now provides a separate website exclusively for family law topics. Resources are available in 13 languages.
- ◆ BC's Dial a Law program offers legal information, either on line or over the phone. The People's Law School is a non profit BC charity that provides legal information and education. The BC Ministry of Justice also provides Justice Access Centres, for legal information and self-help materials.
- ◆ Ontario's Family Law Information Program began in 2011, describing the practical and legal issues associated with family breakdown to encourage more informed decision making. A Call Centre offers summary advice on criminal law issues, and a toll free number provides family law advice in 120 languages.
- ◆ Educaloi provides online public legal information, and the Chambres des Notaires du Quebec provides a free Legal Info Line in Quebec. The Commission des Services Juridiques has engaged in public information campaigns, to increase offerings of legal information and education.
- ◆ Public Legal Education and Information Service of New Brunswick offer legal information in several formats, as well as a Family Law Information Line (a toll free service to promote access to family law information). Family Law Information Centres also provide information, and Family Advice Lawyers are available at the centre in St.

⁷⁵ *Supra*, note 5 at 26.

- John. They provide up to one hour consultations on court rules and process, and help with completing forms.
- ◆ PEI's Community Legal Information Association is a non-profit charity that provides information, referrals and support over the phone or through its website.
 - ◆ The Family Justice Service Division in Newfoundland and Labrador offers a few, 3 hour group information sessions for separating parents. The Public Legal Information Association of Newfoundland and Labrador also provides legal information and referrals to other services.
 - ◆ NSfamilylaw.ca was launched in 2012, a collaboration between Nova Scotia Departments of Justice and Community Services, Nova Scotia Legal Aid, Legal Information Society of Nova Scotia, the Nova Scotia Barristers' Society and the CBA-NS. It provides family law information and referral supports for people experiencing family breakdown.
 - ◆ The Law Line in the Yukon is an initiative of the Yukon Public Legal Education Association initiative, and provides callers with legal information, but not advice.
 - ◆ The Legal Services Board of Nunavut provides public legal education and information in written form, through town halls, radio and news print. Toll free lines allow for summary advice from staff lawyers on civil and family matters at no cost.

Triage and early Referral

- ◆ Nova Scotia Legal Aid began an Early Referral Pilot Project for child welfare matters, offering early involvement of lawyers to work with parent using a case conferencing model with agency lawyers and social workers. The goal is to prevent matters from escalating into full scale litigation by putting them on track as early as possible, where possible.
- ◆ Through the Edmonton Family Law Office, child protection matters can be referred to staff lawyers, who work with the parties, including the client, social workers and child welfare workers to provide early resolution. The program is called the Enhanced Child Welfare project.
- ◆ From 2010 to 2012, Legal Aid Alberta created Legal Service Centres, staffed by non-lawyers with staff lawyers. Clients can access help by phone or in person, and the centres identify legal needs, plus triggers for and clusters of the client's legal problems. A legal services officer assesses the client at the outset, and directs them to the most appropriate help, based on financial eligibility and needs.

Dispute Resolution

- ◆ Family Settlement Offices in three Alberta cities offer eligible clients up to five hours of dispute resolution services, provided by lawyers experienced in both family law and dispute resolution. In 2011-12, full or partial resolution was achieved in 88% of completed files. The service is supplemented by legal advice provided by Legal Services

Centres, and staff or private bar lawyers to turn an agreement into a court order or minutes of settlement.

- ◆ “Brief Services” in Alberta offer help in contacting a third party for information or clarification about a problem, which can lead to early resolution, advocacy on procedural issues or to settle the matter. The services also include help with document preparation and filing and coaching for unrepresented litigants.
- ◆ In house mediation services on family law matters are offered through the Legal Services Board of Nunavut, for suitable cases.

Increasing assistance from Non-lawyers

- ◆ Family Law Service Centres, one of the initiatives through LAO’s Modernization program, rely on a combination of staff lawyers and legal aid workers, supervised by lawyers.
- ◆ Manitoba and Newfoundland and Labrador have recently modified their services to expand the use of paralegals. In 2020-11, Legal Aid Manitoba modified its poverty law delivery to take advantage of paralegals trained in specific areas, such as social assistance and workers’ compensation, to provide services. Manitoba also uses paralegals and law students to provide information and assistance for drop in clients at the application centre in Winnipeg and referrals to lawyers when appropriate. Newfoundland and Labrador’s Legal Aid Commission has staff that include paralegals, administrative staff, social workers, a family counsellor and community workers, in addition to staff lawyers. In addition, in 2013, Nova Scotia Legal Aid will employ paralegals in three urban offices to assist with effective and efficient delivery of family law services.
- ◆ Aboriginal community legal workers are used in BC to provide legal information and limited advice in certain areas. They can also accompany clients to court, assist in preparing documents and letters, and explain options and court processes. Non-lawyer outreach workers provide some of the same functions, and are available in some parts of the province. They also liaise with community groups to ensure those groups are aware of available services.
- ◆ In NWT, the Legal Services Board runs a court worker program to serve communities outside of Yellowknife. Court workers provide information and referrals, coordination between clients and lawyers, courts and other agencies, and some representation.
- ◆ Nunavut also runs an Inuit court worker program, with representatives in 16 of 26 communities. The court workers perform the same role as those in the NWT.

Outreach

- ◆ To ensure that people entering courthouses are met by someone who can direct them appropriately, the Legal Services Society in BC uses Legal Information Outreach Workers. Workers can help people with forms, explain proceedings and generally make

- the justice system run more efficiently. In addition, LSS provides funding to external community organizations and LSS Agent Services to create partnerships to improve outreach to rural, remote or Aboriginal communities.
- ◆ Legal Aid Alberta also has expanded services to targeted groups, such as through a partnership with Alberta Council of Women’s Shelters. Staff from Legal Services Centres travel to over 60 surrounding communities to provide services from information, triage and referral, to full representation.
 - ◆ Legal Aid Manitoba has proactively recruited articling students and junior lawyers to address underserved areas in northern Manitoba.
 - ◆ Legal Aid in the Courthouse is a Legal Aid Ontario program to bring legal aid offices into courthouses.
 - ◆ In Quebec, Commission des Services Juridiques is seeking better ways to bring legal aid services to seniors.
 - ◆ Nova Scotia Legal Aid provides legal education to new immigrants through a partnership with Immigrant Settlement and Integrative Services in Halifax. It also provides poverty law outreach to two vulnerable urban areas by partnering with community based health services.

Enhanced points of entry

- ◆ Anyone seeking legal advance can attend a Free Legal Walk-In Clinic in central Alberta. Counsel will review court documents, provide legal information, and options for resolving any legal problem. In addition, Legal Services Centres can quickly direct clients to needed services. The Family Law Office also offers limited scope representation, where a lawyer’s retainer is for 7.5 hours, and the lawyer will consult with the client to identify and provide partial services achievable within that time.
- ◆ Newfoundland and Labrador has established a legal aid intake office at the Provincial courthouse in St. John’s.
- ◆ The Client Service Centre is a telephone hotline established in Ontario in 2008, accepting applications for certificates, providing summary legal advice, referring clients to appropriate services and offering help with lawyer billing inquiries. Services are available in more than 200 languages, and priority is given to victims of domestic violence. Legal Aid Ontario has 56 front line offices inside courthouses, offering information, referrals, a site to apply for legal aid and legal advice. These offices are located in the courts that hear almost all of the criminal matters in the province.
- ◆ LAO has also expanded points of entry specifically for family law services. Clients receive assistance through a family duty counsel program, Family Law Service Centres, in person and phone summary advice, mediation services, a Family Law Information Program and through its certificate program.

- ◆ BC is increasing points of entry through the Vancouver Justice Access Centre's Self-Help and Information Services, and through the local agent model.
- ◆ Legal Aid Manitoba created a Winnipeg Application/Duty Counsel Centre, separate from its community offices.
- ◆ Nova Scotia provides Summary Advice Counsel to give on site advice to unrepresented family law litigants ineligible for full representation, without consideration of financial eligibility.
- ◆ The Young Bar Association of Montreal provides legal assistance for clients at small claims court, and the rental or labour boards. Volunteers offer 20 minutes of advice about preparing a file and the court process. Individuals starting a business are eligible for a free one hour consultation.

B. Developments in Delivery Models

Where legal advice and representation are required, legal aid plans have attempted to provide those services in new ways that can tailor the amount of time required to the client and the nature of the problem, allow plans to provide services to more clients (sometimes without means testing), or provide partial or unbundled services. Other options include legal clinics for low income populations in particular regions or for certain areas of law, taking advantage of pro bono lawyers and law students, and using duty counsel. Some examples include:

Expanded Duty Counsel

- ◆ LAO is expanding duty counsel services by creating "baseline" services, improving training, putting greater reliance on resolution services, and relying to a greater extent on non-lawyers and junior counsel.
- ◆ Saskatchewan provides in-house duty counsel services in Saskatoon, Regina and Prince Albert, primarily for criminal matters. The programs have developed independently, and efforts are being made to harmonize their operations and encourage new approaches.
- ◆ BC provides duty counsel at facilities for women with substance abuse problems and for individuals detained by Canada Border Services Agency. In provincial courts, duty counsel may assist clients unable to access a legal aid lawyer. First Nations duty counsel may also be available to provide specialized services to Aboriginal people. Duty counsel in provincial family courts can assist with services short of representation. In Supreme Court, up to three hours of free advice from duty counsel may be available.
- ◆ Legal Aid Alberta provides duty counsel for criminal court matters, drug treatment court, disciplinary hearings at correctional facilities, applications around emergency protection orders, mental health review panel hearings, at provincial court for family and child welfare dockets, and for Court of Queen's Bench family matters. Alberta has expanded duty counsel services to Wetaskiwin, and launched the Criminal Resolution Unit, which provides duty counsel to different regions and courts within Alberta. In

addition, specialized services include Family Duty Counsel, YCDO Duty Counsel, Brydges Duty Counsel and Duty counsel for detained youth.

- ◆ Legal Aid Manitoba started a domestic violence duty counsel project, providing certificates for financially eligible clients charged with domestic violence. Duty counsel also operates at 50 provincial courts, mainly for criminal, family and child welfare courts.
- ◆ Nova Scotia Legal Aid provides solely focused Enhanced Duty Counsel in its two urban areas. Court Support Workers assist duty counsel lawyers in a triage function, such as obtaining disclosure or calling sureties, to address the root causes of intersection with the criminal law by navigating accused toward community supports. Staff lawyers provide Duty Counsel in rural areas, in addition to their full service caseloads, without consideration of financial eligibility.⁷⁶
- ◆ In the Yukon, duty counsel lawyers are available for first appearances on criminal matters for adults and youth, and for child protection, without regard to financial eligibility.
- ◆ Newfoundland and Labrador provides duty counsel at the Family Division of the Supreme Court.
- ◆ Duty counsel is provided without means testing in New Brunswick. It is provided for first appearances in some family law situations and to enter a plea on some criminal matters. Duty counsel also advise unrepresented parties and help with completing court documents, and can attend court with clients for certain matters. Specialized duty counsel are available for case conferences related to the Mental Health Court in St John and to provide representation where accused are found unfit to stand trial and appear before the Mental Health Review Boards. Specialized duty counsel also assist in Domestic Violence Court in Moncton.

Staff Offices

- ◆ NWT opened the Somba K'e Law Office in 2010 in Yellowknife, to provide mainly poverty and family law services either on a drop in basis, or by phone. Two other clinics in Yellowknife, and one in Inuvik offer services for family and criminal matters.
- ◆ The Yukon Legal Services Society has four law offices staffed by nine lawyers.
- ◆ Nunavut has three clinics and twenty staff lawyers. Most provide criminal and family law services, and two provide poverty law services. The clinics are located in Iqaluit, Cambridge Bay and Rankin Inlet.
- ◆ Staff lawyers in Alberta provide services through eleven regional offices, and regional staff also travel to surrounding communities. Staff lawyers also provide services

⁷⁶ Karen Hudson and Ab Currie, Not a Substitute for Full Service: Expanded Duty Counsel In Nova Scotia (unpublished).

through specialized clinics, for eg., the Youth Criminal Defense Office, the Family Law Office and through Legal Aid Alberta at Siksika Nation.

- ◆ In Manitoba, the Public Interest Law Centre does test case litigation and Charter challenges. Its Poverty Law Unit accepts cases.
- ◆ In 2010, Nova Scotia's Legal Aid Offices began providing summary legal advice in areas of Poverty Law. Some full service representation is also available, dependent on resources.

Community Legal Clinics

- ◆ In the past three years in Nova Scotia, Legal Aid Community offices have expanded coverage to poverty law, including income assistance, Canada Pension Plan Disability, Landlord/Tenant and Employment Insurance matters. Information, advice, representation and judicial review can be provided.
- ◆ In Ontario, interpretation and translation services are now available in community legal clinics in more than 200 languages. A Poverty Law Innovation Fund is also providing assistance to modernize the offering of clinics. Consultations are underway to look at new ways of delivering refugee legal aid services.
- ◆ CLAS in BC provides legal services for disability rights, poverty law, workers' compensation, employment insurance, mental health, human right and equality law. It is staffed by lawyers and non-lawyers, and engages in test case litigation, PLE and providing advice and information.

Law School programs

Student legal services are available from many of Canada's 22 law schools, and several also offer courses related to access to justice and poverty law. Some examples follow.

- ◆ The University of Alberta has piloted a "Low Income Individual and the Law" course, involving a clinical placement. Student Legal Services also partners with Edmonton's Family Law Office, which supervises students' work in various areas for low income individuals whose matter would not be covered by legal aid. Student Legal Assistance Society in Canada also provides representation in the provincial court, as well as information and outreach clinics.
- ◆ The University of BC Law School has a First Nations Legal Clinic and a Law Students' Legal Advice Program.
- ◆ The University of Saskatchewan College of Law clinic in downtown Saskatoon is called CLASSIC Legal Assistance – Community Legal Services.
- ◆ Dalhousie legal aid is a community clinic operated out of the law school, providing information, advice, representation and test case counsel in some situations. A Criminal Law Clinic is also available. Nova Scotia Legal Aid also participates with the Schulich School of Law. In addition to full service caseloads, lawyers teach courses, provide

- placements for the criminal law clinic and the new public law placement program, and work with the Indigenous Black and Mi'kmaq Initiative to provide articling positions.
- ◆ Osgoode Hall Law School has several student run services – Community and Legal Aid Services Program (CLASP), Parkdale Community Legal Services, Osgoode Mediation Centre, Osgoode Business Clinic, Intellectual Property Law Clinic, Innocence Project and an Innovation Clinic.
 - ◆ Queen's University provides a Legal Aid clinic, Correctional Law Program, an Elder Law Clinic, a Family Law Project and a Business Law Project.
 - ◆ The Community Unemployed Help Centre has also worked with the University of Winnipeg to develop a poverty law course, and a community based advocacy specialty. The University of Manitoba Faculty of Law has a Legal Aid Clinic and a Business Law Clinic.
 - ◆ McGill Law School has a Legal Information Clinic and a High School Outreach program, and the Université de Montréal has a Legal Aid Clinic.
 - ◆ Law Students' Legal Advice Program operates in Vancouver, and student volunteers are supervised by lawyers from CLAS. It offers free legal advice and representation to people in need.
 - ◆ A University Law Centre in Winnipeg is staffed by 50-100 students supervised by a law professor and staff lawyer from University of Manitoba. The centre provides services to financially eligible clients, and services include minor criminal matters, welfare appeals, residential tenancy cases, disputes with Manitoba Public Insurance and small claims issues.

C. Integrated Service Delivery

Many legal aid plans now attempt to work with other service providers and agencies to treat clients as whole entities, rather than only having a discrete legal problem. This holistic approach addresses the research pointing to legal, health and social problems occurring in clusters for people living in poverty. Some examples include:

Multidisciplinary approaches

- ◆ From 2010 to 2012, Legal Aid Alberta created Legal Service Centres, staffed by non-lawyers with staff lawyers. Clients can access help by phone or in person, and the centres identify legal needs, plus triggers for and problems apart from legal problems. Services are designed to address existing problems, and give clients the tools to reduce the need for help in the future. Services are also geared to the needs and capacities of each client, and provide a full continuum of services within a centre, through to brief legal services and early resolution services. Finally, where needed, the centres can

- provide certificate coverage for full representation.⁷⁷ In addition, the Family Law Offices provide a range of services under one roof, including the Emergency Protection Order Program, Family Resource Facilitators and legal representation.
- ◆ Family Law Service Centres in Ontario offer holistic, in-court services to eligible clients for family law matters. The centres provide help with preparing documents, referrals to counsel, full representation by a staff lawyer or referral to a private lawyer who accepts certificates, mediation and settlement conferences and referrals to social service agencies. The Centres also accept applications for legal aid, for serious or complex family matters. Staff at the Centres includes staff lawyers and legal aid workers supervised by lawyers.
 - ◆ As noted above, the Legal Aid Commission in Newfoundland and Labrador employs social workers, family counsellors, community workers, paralegals and administrative staff, in addition to staff lawyers.

Increased inter-agency coordination

- 1000 Voices at Genesis Centre Legal Project, a collaboration between Legal Aid Alberta, pro bono clinics and the Centre itself, is a pilot project in Alberta, providing access to civil law services and information through a common assessment-intake process. In 2009, Legal Aid Alberta also partnered with the Alberta Council of Women’s Shelters, to improve the advice and representation services available for women in eight participating shelters.
- Legal Services Society in BC is involved in two collaborative programs. Both are medical – legal partnerships, and are geared to pregnant women or mothers with drug and alcohol problems. A lawyer is available for ½ day per week at the BC Women’s Hospital and at a drop in centre in Vancouver’s downtown eastside. The lawyer helps with family law, child protection and other issues, and collaborates with other social services agencies. The objective is to find stable and early resolutions that can prevent problems from worsening.
- Public Legal Education New Brunswick partnered with the Family Violence Outreach Coordinator and the Mirimichi Family Violence Prevention Network to launch a campaign to increase awareness about domestic violence.
- In PEI, the Honourable C.R. McQuaid Family Law Centre coordinates services and programs for separating and divorcing families, including providing mediation services, maintenance enforcement, support recalculation and other services.
- The Commission des Services Juridique 2010-11 *Annual Report* reports that legal aid lawyers are collaborating with associations and organizations that work with the elderly to offer legal aid services.

⁷⁷ *Supra*, note 4.

- Legal Aid Ontario and the Ministry of Community and Social Services have an information sharing partnership, which has expedited the application process for legal aid applicants on social assistance, while also saving the Plan two million dollars annually.
- Nova Scotia Legal Aid works with non-profit community organizations, to improve service to legal aid clients, including Elizabeth Fry Societies, Veith House, Immigrant Settlement and Integration Services.
- Family and Child Legal Aid Services in Newfoundland and Labrador help parents with children who have been taken into care of the Department of the Child, Youth and Family Services, and facilitate communications between parents and the department. The province's Mental Health Office provides medical and community based support, in addition to legal aid, to accused people, as a joint project supported by the Legal Aid Commission, the Provincial Court, the Department of Justice and the Eastern Health and Corrections and Community Services.

Holistic approach to Criminal Legal Aid

- Calgary and Edmonton have Youth Criminal Defence Offices, which have operated since 1993, designed to deliver holistic, tailored services to meet the needs of a particular clients. Staff includes lawyers, social workers, youth workers and administrative assistants. Support is provided beyond just for the legal matter at hand, including “advocating for resources and fostering relationships with stakeholder groups to overcome the barriers to justice that poverty, trauma, abuse, homelessness and poor mental health create.”⁷⁸
- In Alberta, lower level criminal offences can be addressed through a Criminal Resolution Unit, where counsel in 2011-12 achieved full resolution of 70% of their files. The remainder were referred for full representation, as inappropriate for early resolution.
- Through an enhanced Duty Counsel program for criminal legal aid, Nova Scotia advances goals of achieving early and final resolution where appropriate, facilitating quicker connections to full legal services where necessary, and helping accused access community resources for the underlying issues of addictions, poverty and mental health. Using experienced lawyers and emphasizing case and court continuity, early and final resolutions have been achieved in 20-40% of charges. Cells Duty Counsel and Non-Cells Duty Counsel are available without financial eligibility requirements. Court support workers provide triage to duty counsel lawyers and also assist accused by navigating to supportive community resources.
- Client Service Officers in Newfoundland and Labrador facilitate and coordinate communication between the Legal Aid Commission and people incarcerated, meeting with officials, inmate and collecting information to better serve that population.

⁷⁸ *Supra*, note 4.

Serving underserved communities

- Legal Services Centres in Alberta provide immigration and refugee services, including translation and psychological assessments and help with preparing documents. Some representation services are provided, but clients can be streamed to private bar lawyers where more comprehensive services are required.
- Through Legal Aid Alberta, and its Family Law Office, with United Cultures of Canada and other social service agencies in Edmonton, a pilot Cultural Liaison project in family law has been launched. Its focus is on providing culturally sensitive services for family law matters.
- Nova Scotia Legal Aid has expanded outreach services to seven Mi'kmaq communities for intake and appointments. It provides legal information specifically geared to Aboriginal clients, and Cultural Competency training for staff lawyers, as well as best practices and substantive law educations on Gladue and Ipeelee.
- Legal Aid Ontario has an Aboriginal Justice Strategy, and as of March 2011, “only lawyers who meet a Gladue panel standard can acknowledge criminal certificates for Aboriginal clients.”⁷⁹ Over 200 LAO and clinic staff have received special cultural competency training, and an extension on all criminal certificates is available for Gladue information for Aboriginal clients. Clients receiving a certificate are asked if they identify as Metis, First Nations or Inuit, and a brochure called, “Why it is important to tell your Lawyer you are Aboriginal” is in broad circulation.
- LAO is now also developing a multi-faceted strategy to improve service to clients with mental health problems, in a way that aims to support those clients in a more efficient, effective and holistic manner.
- Newfoundland and Labrador’s Legal Aid Commission has special purpose offices that include The Aboriginal Project, through which Community Liaison Workers provide services to some rural locations, The French Speaking Project, and The Mental Health Office.

In spite of this impressive list of innovations, it would be a mistake to believe that legal aid in Canada is thriving. Many of the innovations mentioned are far from robust, but an attempt by legal aid plans to meet the needs of the most disadvantaged populations without adequate resources. The innovations do not address the pressing issue of financial eligibility for full service, and even people working at minimum wage employment will generally not qualify for legal aid. The innovations also do not fully address limited coverage for full service across Canada.

Recognizing that current innovations are aimed at and often succeed at helping with individual pieces of the overall legal aid problem should not distract from efforts toward more comprehensive

⁷⁹ *Supra*, note 5 at 30.

reform and renewal. They do though begin to illustrate the potential that legal aid plans could offer to Canadians, including governments and justice systems, should they be properly resourced.

7. Supporting Legal Aid Lawyers and Providers

Several regions face problems with recruitment and retention of legal aid lawyers. Maintaining an adequate roster of private bar legal aid lawyers, and levels of satisfaction among lawyers in staff offices is an ongoing problem. Some regions have confronted organized withdrawals of service by lawyers to protest low tariffs or inadequate hours allotted to deliver legal services.⁸⁰ For those regions with staff offices, complaints about workload, burnout and remuneration are common. Pilot projects to address these problems are often discontinued because of funding or shifting priorities, even when proven successful.

To improve their understanding of these problems, many legal aid plans have used a variety of means to obtain feedback from legal aid lawyers. Legal Aid Alberta commissioned surveys to understand problems with the certificate system from the perspective of lawyers, and found a general decline in lawyers willing to do legal aid work.⁸¹ BC conducted a tariff renewal project in 2005, and ultimately recommended a principled approach to tariff compensation and improved compensation, among other things.⁸² Legal Aid Manitoba has engaged lawyers and other stakeholders to find ways to increase the number of lawyers willing to take on legal aid work, saying that “the exodus of private bar and staff lawyers has made it very difficult for LAM to meet existing client demands. This has been shown to be a systemic problem within Manitoba’s justice system.”⁸³ The legal aid plan is looking broadly at ways to encourage practicing lawyers and new lawyers to work for legal aid, particularly in regions outside of Winnipeg. Since 2010, LAO has modernized its criminal law services by improving tariff compensation, updating payment programs, improving case management and accountability, and improving the business relationship between the Plan and lawyers.

As part of the *Envisioning Equal Justice* initiative, the CBA Committee prepared a survey for legal aid lawyers, community legal workers and paralegals, and asked legal aid plans to distribute the survey through their email networks, in addition to CBA networks. Responses were received from 722 people, from every province and territory. The input is summarized in an appendix to this paper found at www.cba.org/CBA/Access/main/project.aspx.

In her *Moving Forward* report, Melina Buckley suggests that in addition to focusing on encouraging the practicing bar to accept legal aid work, a longer term strategy is to look for ways to develop and

⁸⁰ For example, criminal lawyers in Ontario organized a withdrawal of service in Ontario in 2010, and in Manitoba in 2007-2008.

⁸¹ Prairie Research Associates Inc., *Survey of Roster and Non-Roster Lawyers* (Edmonton: LAA, 2008).

⁸² *Supra*, note 1 at 69, referring to Prospect Management Inc., *Tariff Lawyer Satisfaction Survey Final Report* (Vancouver: LSS, 2007).

⁸³ *Ibid.* citing Legal Aid Manitoba’s *Annual Report 2007-08* (Winnipeg: LAM, 2008).

support young lawyers interested in doing that work. She points to the Young Legal Aid Lawyers group from the UK, which identified some issues that, if addressed, would encourage more young lawyers to engage in legal aid. These include dealing with disparities in remuneration between publicly paid criminal lawyers acting for the Crown versus those employed by legal aid, a shortage of training opportunities, and difficulties in repaying law school debt when working for legal aid.⁸⁴ She also recommends that the CBA undertake research and consultation toward recommendations that would assist in the development, promotion and support of legal aid lawyers working both within both staff and judicare settings.⁸⁵ In his 2008 review of Ontario's legal aid system, Professor Michael Trebilcock also urged debt relief programs sufficient to ensure that working for legal aid or in areas of poverty law are feasible options for young lawyers.⁸⁶

8. Discussion Questions

The innovations described above demonstrate that the delivery of legal aid in Canada is in a period of transition. What is less apparent is whether the changes are taking place within a principled framework, with a clear path to enhancing service delivery to address the legal needs of the most vulnerable populations. This remains the population that legal aid plans must prioritize and serve. The alternative is that the current driving force is primarily pressure to bring spending within limited budgetary targets, without a comprehensive vision.

Once innovations are in place, are they being monitored and evaluated effectively, and if so, against what criteria or framework? Are they leading to better outcomes for legally aided clients? How we move forward on these issues will determine to a large extent our ability to achieve equal access to justice in Canada, which has important implications for public confidence in the justice system. Commissioner Doust drew attention to this connection in his report⁸⁷ and it is underscored by broader findings from social science research that fairness in our justice system is key to a vibrant social fabric:

The sense of being treated fairly, of being given a fair chance, does much to determine the degree of attachment to the institutions, the communities, and the society in which people live their lives. Fair treatment nourishes loyalty to the society and makes people more willing to contribute to its functioning. In contrast, unfairness is socially destructive.⁸⁸

⁸⁴ *Supra*, note 2 at 71.

⁸⁵ *Ibid.* at 128.

⁸⁶ Cited *ibid.* at 71.

⁸⁷ Doust, *supra*, note 18 at 7.

⁸⁸ Breton et al, *A Fragile Social Fabric? Fairness, trust and commitment in Canada* (Kingston: McGill- Queen's University Press, 2004).

The CBA Committee invites your responses to the consultation questions below, or the content of this Discussion Paper, and asks that all input be sent to the attention of Gaylene Schellenberg, Project Director, by May 15, 2013 (gaylenes@cba.org; 1 800 267 8860 ext.139).

- 1. What principles should guide innovations in legal aid delivery?**
- 2. How are innovations in legal aid working?**
- 3. What are the most promising innovations in legal aid delivery? Why?**
- 4. Who is benefiting from those innovations, and who is not benefitting? Are there identifiable trends where needs are being prioritized?**
- 5. How can the CBA assist legal aid plans to share successful strategies and implement them in diverse populations?**
- 6. Are there remaining gaps in legal aid service – if so, what are they?**
- 7. What is needed to foster more innovation to better meet client needs?**
- 8. What are the practical challenges for legal aid providers?**
- 9. What support do legal aid providers need to fulfill their role in ensuring equal justice?**
- 10. What is next? What are the priorities going forward?**