



# A Vision for Publicly Funded Legal Aid in British Columbia

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# Introduction<sup>1</sup>

*It is in Justice that the ordering of society is centred*

*Man perfected by society is the best of all animals; he is the most terrible of all when he lives without law, and without justice*

- Aristotle

1. A democratic society requires law. It therefore also requires the ability of its citizens to access the law to ensure that their rights can be upheld and, where necessary, their responsibilities can be enforced so that justice can be achieved. But justice is not free. There is a cost associated with accessing justice. Because there is no equality of resources within society, some citizens will require aid to be able to enforce their rights or understand their responsibilities. Legal aid is thus an integral part of an ordered society.
2. This report recommends a vision, which forms Appendix 1 to this report, for the Law Society of British Columbia concerning publicly funded legal aid in British Columbia. The report outlines the rationale for the proposed vision, and explains the efforts that the Task Force has undertaken to reach it.
3. The focus of the report differs from other papers, reports and articles on the state of legal aid that have been prepared over the years. It has not been prepared to tell other organizations what they should do. Rather the purpose is to determine what the Law Society's principled policy position – or vision - should be concerning publicly funded legal aid. By adopting a Law Society vision, the Benchers will be better able to engage in discussions and work to promote legal aid in a principled manner. The recommendations in this report aim to establish principles for what legal aid ought to encompass with the view that, should the government adopt similar principles, it will be better able to identify what constitutes an appropriate level of funding to give effect to the objects of legal aid.
4. The report also addresses matters regarding how the vision could be realised, and what role the Law Society might take in leading that discussion.

## A Brief History of Legal Aid in BC

5. The Law Society has a long history of involvement with legal aid. The Law Society and the Canadian Bar Association BC Branch participated in establishing organized legal aid in British

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<sup>1</sup> Prior to being called to the Bench, The Honourable Judge Patricia Stark was a member of the Task Force and contributed to its deliberations. Judge Stark did not participate in drafting the final report. The Task Force wishes to express its gratitude to Judge Stark for her contributions to its work on this important issue.

Columbia in the 1950s.<sup>2</sup> Through to the end of the 1990s, legal aid was a common topic for discussion at Benchers meetings. Historically, the Benchers were more vocal about legal aid, and the culmination of this public advocacy is seen in the report of the Access to Justice Committee published in 2000.<sup>3</sup>

6. In the 1950s and 1960s in British Columbia legal aid operated largely as a volunteer system of lawyers. By the end of the 1960s the limits on volunteerism were tested due to growing demand. In the early 1970s the Legal Aid Society was incorporated. It provided legal representation in civil and criminal matters for people who could not afford a lawyer. The Legal Aid Society received funding from the provincial and federal government for tariffs in criminal and family matters. In 1974 the provincial government formed the Legal Services Commission. The Commission assisted people not covered by the legal aid tariff. In 1979 the Legal Aid Society and the Legal Services Commission were merged by legislation to form the Legal Services Society.
7. In the 1980s legal aid faced several funding cuts and growing demand. Over the decade and into the 1990s costs rose, and in the 1990s government provided unbudgeted funding so the Legal Services Society could meet its financial obligations. In 1997 the government froze funding, requiring the Legal Services Society to eliminate its \$18 million deficit by 2001. By 2001 the deficit was \$6.6 million. In 2002, the unbudgeted funding and open-ended mandate of the Legal Services Society ended.<sup>4</sup> The provincial government reduced funding to the Legal Services Society by nearly 40%. Poverty law services were eliminated. Family law services were curtailed. This led to the Legal Services Society having to reduce its workforce by 74% and replace its 60 branch offices with seven regional centres.<sup>5</sup>
8. The Legal Services Society categorizes the years since 2002 in three distinct periods. From 2002-2006 the Legal Service Society developed a new vision for the society in light of its new mandate and the reduced funding. This period marked a shift of focus to client needs rather than the needs of the justice system or of legal professionals (such as lawyers). From 2007-2012 the Legal Services Society advanced legal aid renewal. During this period the Society worked to develop greater emphasis on outcomes rather than outputs, as well as to develop evaluations of services based on empirical evidence. Since 2012 the focus has been on making justice work,

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<sup>2</sup> See, Leonard T. Doust, QC, *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia* (March 2011) at pp. 39-40.

<sup>3</sup> Vicky Trerise, Final Report of the Access to Justice Committee, “Where the Axe Falls: the real cost of government cutbacks to legal aid” (July 2000).

<sup>4</sup> Summarized from materials provided during consultations with the Legal Services Society.

<sup>5</sup> Information provided in consultations with Legal Services Society. Further regional office closures occurred in the years that followed.

which includes an emphasis on justice reform and innovative new initiatives to improve the justice and legal aid system.<sup>6</sup>

9. Funding has always been, and remains, a critical issue for sustainable legal aid. Since the mid-1990s there has been a reduction in both provincial and federal spending on legal aid. It has been observed that:

*The reduction in federal spending overall, increased complexity in the substantive law and growing demands for criminal legal aid have placed pressure on legal aid providers to ration services – in a way often inconsistent with the general public policy values of the underlying program. In some places, people qualify only if they are living at subsistence levels (social assistance), leaving out the working poor. Eligibility rates do not keep pace with inflation and budgetary targets are often met by offering legal aid for fewer matters, to fewer people, or only partial assistance or repayment requirements.<sup>7</sup>*

10. Over the years, legal aid has in British Columbia evolved from a system that focused on how lawyers and judges perceived legal problems to one that focuses on the perspectives of the people experiencing the problems. This has involved a shift from focusing on litigation to problem solving, where litigation is just a means to an end, and the system moves from focusing on court processes to broader, justice system outcomes.<sup>8</sup> The Task Force uses the term “legal aid” in this modern, more expansive sense.
11. The cuts to legal aid funding in the province required the Legal Services Society to re-envision how it could provide effective legal aid services to the people of the province in the face of financial constraint. The most recent government increases in funding to Legal Services Society came with the requirement to fund new initiatives from the funds provided rather than existing

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<sup>6</sup> *Ibid.*

<sup>7</sup> Canadian Bar Association, *Reaching equal justice: an invitation to envision and act* (August 2013). Note that this report is referring to legal aid at the national level, so not all observations are salient to the British Columbia situation, such as repayment requirements. But the general problem of reduced funding from historical levels and increased demand are relevant to the British Columbian experience.

<sup>8</sup> Legal Services Society, *Making Justice Work: Improving Access and Outcomes for British Columbians* (July 1, 2012) at pp. 10-11.

services<sup>9</sup> In addition to these initiatives, the Legal Services Society has launched MyLawBC, an interactive web tool designed to help people with everyday legal problems.<sup>10</sup>

## The Need for a Principled Vision

12. The statutory object and duty of the Law Society is to uphold and protect the public interest in the administration of justice by, among other things, preserving and protecting the rights and freedoms of all persons. Where “all persons” do not have equal access to the law due to the associated costs, some form of legal aid is required. Equality of access to justice is a necessary condition for a democratic society that is subject to the rule of law. Inequality of power creates impediments to equal access to justice, and risks undermining the rule of law. Legal aid is a means to counter some of the inequalities that exist in society, and ultimately to better uphold the rule of law and the ideals of our society. While the Law Society has been an integral part of the development of legal aid in British Columbia, it currently has no articulated vision for publicly funded legal aid in this province. To properly discharge its statutory object and duty, this must change.
13. In order to develop a vision for the Law Society, it is necessary to consider the proper role of legal aid. Doing so requires the consideration of a range of factors, including understanding the barriers people face to enjoying equal access to justice, the challenges the Legal Services Society faces in fulfilling its mandate, the challenges the government faces regarding prioritizing public interest objectives, and the challenges lawyers face in trying to provide access to justice through the current legal aid system. Any effort to reduce the broad nature of the access to justice challenge to a simple summary will exclude valid issues and perspectives. What follows are *some* of the key concerns that informed the Task Force’s efforts to develop a principled vision for publicly funded legal aid.<sup>11</sup>
14. The laws that govern our lives are numerous and complex. Gaining knowledge of the law and how it applies is the first barrier to access to justice. It takes years for people to learn how to read, understand, and apply the law to everyday life, and even with years of training, understanding the law and its application to particular facts can be difficult. Achieving a measure of capacity takes time, labour and the development of analytical and language skills. The reality

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<sup>9</sup> The government is providing \$2 million a year until 2017 to fund five pilot projects: 1) an expanded family duty counsel role at the Victoria Justice Access Centre; 2) expanded family law telephone advice line; 3) a joint project with Mediate BC to provide mediation services to people with family law problems; 4) The Parents Legal Centre at Robson Square to deal with child protection cases; 5) expanded criminal duty counsel at the Port Coquitlam courthouse (Presentation by Tom Christensen, QC and Suzette Narbonne to the Law Society Benchers, September 25, 2015).

<sup>10</sup> See <http://www.mylawbc.com/>.

<sup>11</sup> This report does not seek to reiterate or comment on the findings of the numerous detailed reports on the topic of legal aid. Readers interested in a broader (including historical) perspective are encouraged to review the materials in the “Selected References” list at the end of this report.

is that the vast majority of people do not have the luxury of dedicating themselves to the study of law to acquire this knowledge, nor does everyone have the interest in doing so. And, for a variety of reasons, some people lack the capacity to develop such competencies despite their best efforts. Assuming that they even recognize the problems they face have a legal aspect, people face two choices: 1) struggle to make sense of the law alone, or 2) seek the assistance of a learned intermediary.

15. The struggle that people have to make sense of the law on their own is becoming better understood, at least in the litigation context. The phenomenon of the self-represented litigant is now a common part of the justice system parlance and not merely an esoteric branch of academic study.<sup>12</sup> Self-representation places strains on the efficient operation of our justice system, but equally importantly it places tremendous strains on the self-represented litigants and their families. It is almost impossible to be dispassionate, analytical and objective when your life is falling apart, and yet that is often the burden placed on those who must navigate the justice system alone. The net effect is a system of justice that works less effectively than it should, adds to the stress and hardship of the self-represented, and leads to results that are less likely to be consistent with the values of a democratic society subject to the rule of law. In addition to leading to inequality of justice, this leads to disillusionment in our system of justice and laws. When these problems become endemic, public faith in our society and the rule of law is eroded. Legal aid is a necessary bulwark against such erosion.
16. Access to justice is about more than access to courts and tribunals though. Justice can be achieved when people have access to knowledge that allows them to manage their affairs in a fashion consistent with their rights and obligations, to allocate risks appropriately, and to resolve those disputes that do arise in a fair and efficient manner, such that those involved can get on with their lives with minimal disruption. The rule of law and the promise of a just society are also supported by helping people live lives in a manner that reduces the need to interact with the formal civil and criminal justice systems. Legal aid can help to accomplish those objectives.
17. When people seek out the assistance of a learned intermediary, they are confronted by the second great barrier to equal access to justice: cost. Money dictates the nature of justice most people will realize in their lives. Governments, corporations and the very wealthy enjoy relatively unimpeded access to justice. These powerful forces in society have access to the full arsenal of means to manage risk and resolve disputes that implicate legal rights and responsibilities. The vast majority of people do not, however, have the economic means to enjoy a similar quality of justice. Our systems of justice cost money to access and the professionals who provide services within the system to the public operate in a free market. Legal aid is a balm that soothes some

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<sup>12</sup> See for example the work of Dr. Julie Macfarlane at the National Self-Represented Litigants Project <https://representingyourselfcanada.com/>, and The Unbundling of Legal Services Task Force, *Limited Retainers: Professionalism and Practice* (Law Society of British Columbia: 2008).

of the hardship caused by the role of money in our justice system, but falls far short of addressing the unmet legal needs in society.

18. The fact that healthcare and education are publicly funded systems masks the true costs of those systems from its users. By contrast, with the exception of legal aid, the provision of *pro bono* legal services, and some funded community and charitable services, the cost of accessing justice is borne by the individual with no assistance from the collective. When one accounts for all the necessary expenses of life, most people will have little money left to afford traditional systems of justice or access to many of the services lawyers provide when addressing a legal issue. If our healthcare system was not publicly funded, most people would not be able to afford the cost of accessing hospitals, walk-in clinics, or the services of doctors. Similarly with education, many people would not be able to send their children to school if the systems of education were governed by free market principles. The distinction is that as a society we have recognized that healthcare and education foster not only the well-being of the individual, they are necessary for the well-being of society. Given the role that law plays in defining all of our daily interactions, our rights and responsibilities, the smooth operation of commerce, and peace, order and good government, it is essential to also recognize that when individuals enjoy equal access to justice, the welfare of society is enriched and its core values are secured. Legal aid can help us better realize these goals, but doing so costs money.
19. Because access to justice costs money, the problem of legal aid requires arriving at a shared understanding of the role of legal aid in society. What services should legal aid entail and why? What are the proper objects of legal aid? Only then can we have a meaningful discussion about how to properly fund legal aid.
20. Developing a principled, sustainable basis for funding legal aid is essential for not merely preserving legal aid, but improving it. It is also essential because it removes linking funding levels from arbitrary benchmarks. Part of that task involves developing a principled articulation of what services legal aid should include and why it is necessary to direct public funds for those purposes. Arriving at consensus requires collaborative, good-faith dialogue among all the stakeholders in our justice system and in the related systems that impact, and are impacted by, the health and effectiveness of our civil and criminal justice systems.
21. Consequently, articulating a Law Society vision of what publicly funded legal aid means in our society is an important element to ensure that it can meaningfully participate, and perhaps lead, the debate surrounding these important elements.

## **The Legal Aid Task Force**

22. In December 2014, the Access to Legal Services Advisory Committee recommended to the Benchers that the Law Society create a task force to explore what the Law Society can do to improve the delivery of legal aid in British Columbia. After considering the issue of legal aid,

the Committee was of the view that the Law Society needs to take a more proactive role in championing legal aid, but this first required developing the Law Society's vision for publicly funded legal aid.

23. The Benchers established the Legal Aid Task Force ("Task Force") in September 2015 with the following mandate:
  - a. Develop a principled vision for the Law Society concerning publicly funded legal aid;
  - b. Identify ways the Law Society could promote and improve lawyer involvement in delivering legal services through legal aid plans;
  - c. Identify ways to enhance Law Society leadership concerning legal aid; and
  - d. Develop the best methods for engagement with other organizations to coordinate the efficient use of resources in improving publicly funded legal aid.
24. Although not part of the core mandate, the Task Force was also authorized to "identify what sources of funding for legal aid programs might exist apart from government." This item was part of the original draft mandate but was made optional out of a concern that it might be seen as relieving government from its duty to properly fund legal aid.
25. The Task Force held 12 meetings, a half-day retreat and a full day colloquium. It reviewed an extensive amount of material on legal aid in British Columbia, including reports of the Canadian Bar Association, information generated by the government, the Legal Services Society and academic papers as well as policy opinions from staff lawyers. The Task Force supplemented this review by holding several meetings at which guests were invited to provide information and perspectives on legal aid. To that end, it met with representatives of the Courts, Legal Services Society, the Law Foundation and government.
26. The Task Force analyzed the materials it read and discussed the input it received from guest speakers. In addition, Task Force members shared their own perspectives on the topic. The Task Force then distilled its consideration into a draft vision addressing the mandate items it was asked to consider.
27. On the recommendation of the Task Force, the Law Society retained Sentis Research to survey practising and insured lawyers regarding their views on legal aid. A summary of the survey findings forms **Appendix 2**. One key message from the survey is that most lawyers who take on legal aid work do so at a financial loss. They do the work primarily to advance social justice. The necessity of adequately funding legal aid is addressed in greater detail later in this report.
28. The information gathered allowed the Task Force to prepare a draft vision and a draft report on its activities. The Task Force wanted to "test" its vision and to that end organised a Colloquium on Legal Aid, which was held on November 26, 2016 at the Wosk Centre in Vancouver. The

Task Force invited over 40 justice system stakeholders, ranging from the Attorney General and Deputy Attorney General, the Chief Justice of British Columbia, the Chief Judge of the Provincial Court, justices of the British Columbia Supreme Court, CEOs and counsel for numerous social justice organizations, representatives of the Legal Services Society, the Law Foundation, legal aid lawyers and a representative of Native Court Workers, to name a few.

## **The Colloquium on Legal Aid**

29. While no single event can purport to be inclusive of all voices in British Columbia, the Colloquium was conceived to bring together a range of stakeholders and to ensure that representatives of many organizations that provide advocacy services were present as a proxy for the numerous people who are without a voice to affect change in government policy, and who face systemic barriers to enjoying equal access to justice. The Task Force took some comfort in the fact that it had access to the report of the Public Commission on Legal Aid, which travelled the province hearing from stakeholder groups and members of the public, as well as access to resources such as the work of Dr. Julie Macfarlane, which has helped profile the voices of self-represented litigants in our justice system. The Task Force determined it was not necessary to duplicate those efforts.
30. Taken collectively, the feedback from the Colloquium, combined with the other materials the Task Force considered together with knowledge drawn from its members' experiences, provides some comfort that the vision contained in this report touches on the key issues. The Task Force observes, however, that in the hard work that lies ahead the Law Society will need to be receptive to the voices that may have gone unheard and to ensure that its processes are flexible enough to also accommodate unidentified and emerging needs.
31. The Colloquium was moderated by the Honourable Bruce Cohen, QC and involved three panel sessions at which participants discussed the draft work of the Task Force, providing insights as to what the Task Force "got right" and where opportunities for improvement exist. The Colloquium operated under a "no attribution" framework, so concepts summarized in this report are not linked back to any individual or individuals who advocated for them. Also, while the Task Force considered all of the input it received at the Colloquium, not every observation is reflected in this report or in the revisions it made to its draft work.
32. The feedback received on the draft vision that the Task Force presented to the Colloquium participants was positive. In fact, the majority of the feedback was not so much on the vision as presented, but on the other mandate items the Task Force was tasked with addressing. To that end, there was a general consensus that much of the feedback received was better suited for commentary in the body of this report or in the commentary to the vision, rather than altering the language of the vision itself. This approach allows the vision to be a concise, principled policy statement for the Law Society regarding legal aid. The feedback received concerning how legal aid should be funded, what the eligibility levels should be, and what types of services

should be included (to name a few examples) identifying some of the work that lies ahead for the Law Society after it adopts the vision is better suited to be included in specific recommendations rather than to be included in a general policy statement. Instead, the Task Force chose to focus on the vision that it believes is immutable, and highlight areas of need that are likely to require a robust legal aid system for years to come.

33. Legal aid is about more than systems and services, funding and programs – it is a public good. This point was made forcefully at the Colloquium and the Task Force reiterates it as a statement of policy that informs its thinking. The presence of a strong legal aid system can transform lives and communities for the better. The success of legal aid cannot be assessed solely on a utilitarian measure of outputs, but should instead be measured by our core values inherent in the rule of law and in developing systems that create enduring outcomes that allow people to enjoy the equal benefit of the law in a free and democratic society.
34. In order to better realize legal aid as a public good, society needs to understand its economic, social, and philosophical value. Some of its values will not be easy to quantify, and many of our most cherished values cannot be reduced to a line item in a provincial budget. At the same time, we must recognize the limited resources society has to direct to a wide range of public goods, and strive not to treat the justice system or legal aid as black-boxes that are immune from scrutiny. Efficiency and cost-savings must therefore be balanced with essential hallmarks of justice such as fairness and due process. Calls for greater funding will be ignored until the case for such funding can be made– so we have to learn from the past and find new and more effective forms of advocacy.
35. The participants at the Colloquium reiterated what is well known – our legal aid system needs more funding. Exactly how much funding is required, and for what types of programs, will form part of the difficult work that lies ahead. It is essential for the Law Society to undertake that work with government, the Legal Services Society and other justice system participants in the spirit of constructive dialogue. It is the Task Force’s contention that adopting the vision it proposes for legal aid will better enable the Law Society to engage in such work. If the Law Society is able to articulate clearly the essential services that are comprised in legal aid to government, one should be able to better identify the quantum of funding necessary to provide those services to the public.
36. The continued under-funding of legal aid creates a situation where the tariff rates are inadequate. The majority of defense counsel who take on legal aid work do so at an economic loss. No-one is getting rich doing legal aid work. The court, the Crown, and defence counsel form three equally important legs of the access to justice platform. Our present system of funding has created a platform that is listing perilously close to the tipping point. The increased cost to the system by rising self-representation before the courts, accused persons making inappropriate guilty pleas, delay – to name but a few factors – is apparent, if not yet measured in dollars. The greater cost to the public good is manifested in an erosion in public confidence in our system of

justice, in those who have been elected to govern in the public interest, and in fractured lives that cannot be made whole by a system that fails to adequately serve their needs.

37. The feedback from the Colloquium suggested it was very important that as stewards of our system of justice – of which a strong legal aid system forms an essential part – those in the justice system must ensure legal aid is adequately funded to meet our present needs, and that it can also endure for future generations. It was expressed at the Colloquium that this will require a considerable amount of education and explanation concerning the value (not simply the cost) and importance that legal aid plays in the larger society in order that those who have access to the necessary capital will more eagerly prioritise spending on it. This difficult work is not the responsibility of one political party, or one organization or profession; it is a collective responsibility. This difficult work must be done, and the Task Force heard the calls from those at the Colloquium that there is a considerable role that can be undertaken by the Law Society to assist or lead that work.

## Task Force Findings

38. In the course of its discussions, the Task Force addressed each of the mandate items. Its conclusions or findings on each item are set out below. These conclusions or findings have been informed by the research, discussions, meetings and, importantly, the Colloquium that the Task Force has undertaken.

**Mandate Item 1:** *Develop a principled vision for the Law Society concerning publicly funded legal aid.*

39. The vision the Task Force has developed is set out in **Appendix 1** to this Report.

40. This vision is founded on the premise that the rule of law is a fundamental precept of a democratic society, and that legal aid is an essential service needed to ensure all members of society enjoy the benefits of, and are subject to, the rule of law.<sup>13</sup> The Task Force uses the rule of law in a manner that contemplates the flexibility of evolving to meet the current and emerging needs of society. To the extent segments of our society experience barriers when seeking to access justice, the rule of law by definition must evolve to ensure their inclusion in our democratic society.

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<sup>13</sup> The Task Force did not attempt to define “the rule of law” but was guided by the definitions contained in Bingham, *The Rule of Law* Penguin Group (Canada) (2011) as well as the concept that the rule of law – much like our concept of justice – evolves. In this respect, the essential elements of legal aid that are highlighted in the draft vision can be seen to support a necessary evolution of our understanding of the rule of law.

41. The Task Force did not start its inquiry by asking questions such as *how much will it cost?* or *is there political will to give effect to the vision?* Instead, it proceeded from the question, *what is the purpose of publicly funded legal aid?* And from that, *what should legal aid entail and why?* The resulting vision is thus one created for ***the Law Society*** concerning publicly funded legal aid. The Task Force grounded the vision in the public interest mandate of the Law Society, as stated in s. 3 of the *Legal Profession Act*<sup>14</sup>. The Task Force recognizes that the vision it proposes is perhaps somewhat different than the current vision and scope of legal aid in British Columbia. The vision is not meant to prescribe to government, the Legal Services Society, or any other bodies as to what their vision of legal aid needs to be. Rather, the purpose is to arrive at a vision that is consistent with the Law Society's mandate and that is defensible on the basis of public policy. If the Benchers ultimately adopt the vision proposed by the Task Force, it will serve the purpose of allowing the Law Society to speak publicly on matters relating to legal aid from a position of stated principles. This will assist the Law Society both when seeking to applaud efforts to improve legal aid and when it is incumbent on the Law Society to express concerns about matters involving the state of legal aid in British Columbia.
42. The Task Force was also alive to the central importance adequate funding plays to the justice system in general, and legal aid in particular. The Task Force is of the view that before the proper quantum of funding for legal aid can be quantified, there must first be some agreement on what aspects of legal aid constitute essential services and what scope of coverage those services must entail. How the services are to be delivered will require collaborative work of all stakeholders who must remain open to innovation where appropriate, but must also recognize the value our traditional systems of justice play in upholding the rule of law. In short, calls for innovation must be linked to principles that can be clearly identified.
43. The Task Force observes that while the government is to be commended for providing funding for innovative new legal aid initiatives, the success or failure of those initiatives does not obviate the need to properly fund legal aid's core functions.

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<sup>14</sup> S.B.C. 1998 c. 9. The section follows:

**Object and duty of society**

- 3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
- (a) preserving and protecting the rights and freedoms of all persons,
  - (b) ensuring the independence, integrity, honour and competence of lawyers,
  - (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
  - (d) regulating the practice of law, and
  - (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

44. In crafting a vision the Task Force also grappled with the question of how the vision ought to reflect the need for improving access to justice for Indigenous peoples. In early iterations of the vision the Task Force included access to justice for Indigenous peoples along with areas of coverage such as family law, and legal aid for children. The Task Force decided that the more appropriate location within the vision was in the Articles of the vision and its over-arching statement of principles. The main reason for this decision is that Indigenous peoples in Canada face – and throughout the history of colonization by Europeans, and to Confederation and beyond have faced – systemic barriers to enjoying equal benefit of the rule of law and access to justice.
45. This report cannot catalogue the extensive history of injustice Indigenous peoples have faced and continue to face in their daily lives and when they come into contact with our systems of justice – from policing, to the courts, to corrections. Indigenous peoples have disproportionate interactions with the law in our society, and with legal aid. Our systems were built without consultation or understanding of Indigenous traditions, laws, and socio-economic realities. If we are to develop a justice system and system of legal aid founded on the principles articulated in the appended vision for legal aid, then that must change. This belief led the Task Force to conclude that the vision must first acknowledge the systemic injustice that Indigenous peoples face and recognize the need for consultation and collaboration in developing new systems of legal aid to better ensure Indigenous peoples, as with all British Columbians, enjoy the equal benefits of the rule of law and access to justice. The Task Force recognizes that the Law Society of British Columbia’s Truth and Reconciliation Advisory Committee will better situate the Society to ensure that these principles are more than mere words or invocations that are spoken once, then fade into silence.

**Mandate Item 2:** *Identify ways the Law Society could promote and improve lawyer involvement in delivering legal services through legal aid plans.*

46. To a certain extent, the answers to each of mandate items 2 through 4 are contingent on how mandate item 1 is answered. Once the Law Society has adopted a principled vision, it will be better situated to explore what it can do to foster lawyer engagement in legal aid, enhance Law Society leadership regarding legal aid, and collaborate with other stakeholders. In light of this, the Task Force has focused most of its attention on mandate item 1.
47. The Law Society has regulatory authority over lawyers practising law in British Columbia, which could be used to encourage, or even require, improvements to lawyer involvement in delivering legal services through legal aid plans. Such powers must however be used responsibly, carefully and sparingly. Short of using its regulatory powers, the Law Society may be able to engage lawyers through exhorting them about their professional responsibilities, and the Task Force gave some thought to how that might happen.
48. The following ideas were specifically considered by the Task Force during its meetings:

- Reducing insurance costs and practice fees for young lawyers and for criminal and immigration legal aid lawyers.

The Task Force consulted with staff at the Lawyers Insurance Fund to explore the idea of providing reduced insurance fees to lawyers who engaged in a threshold level of criminal and immigration legal aid work, as well as to newly called lawyers who undertake legal aid work. The Task Force's preliminary conclusion is that this concept was not worth pursuing for several reasons. Lawyer insurance is not risk-rated by category. The concept of graded insurance premiums has been explored by the Benchers in the past and rejected. In reducing the premiums in one area would require increasing the premiums for other lawyers to cover the missing premiums. The Task Force was concerned that doing so could have harmful and unintended consequences to lawyers who have economically marginal practices. In addition, in a firm model, cost saving might accrue to the firm but not to the lawyer who is performing the legal aid work. Lastly, the insurance premiums in British Columbia are low and quite stable and relative to the other operating expenses lawyers face are not particularly onerous. The Task Force does believe the Benchers may wish to explore the possibility of establishing additional payment schemes for insurance however, such as quarterly payments and/or monthly payments. Such options would require policy analyses to determine the pros and cons of such changes, and whether the potential benefit outweighs the administrative costs associated with the changes.

- Offer free training for lawyers in how to navigate LSS systems, tariff and billing. Whether this is something the Law Society is best suited to achieve is, however, debatable. The Law Society may have some ability to encourage other organisations to do so.
- Survey lawyers to ask what would get them to engage in undertaking legal aid retainers. To this end, the Task Force conducted a survey between October 31 and November 15, 2016 to obtain information from the profession in connection with the delivery of legal aid services. The survey included questions about what the Law Society might do to improve lawyer participation in legal aid. The survey is summarized in **Appendix 2**.
- Recognising that legal aid must be economically feasible for the lawyers who engage in it, the Law Society could examine ways to reduce the cost of practice. The Task Force considered, in a preliminary manner, whether technology could be leveraged to reduce cost of practice. This is an area where the Law Society would benefit from input from practising lawyers, particularly sole practitioners and lawyers in smaller firms that might lack IT support and bear a disproportionate cost for staying current with technological advances. Realistically the Task Force recognised that it was underqualified to make a definitive conclusion on this subject and that it would require input from the profession and people with knowledge of business systems.

- Reach out to the bar to encourage more lawyers to practise criminal law. The Task Force discussed this concept in a preliminary way, including how the Law Society might encourage more articling in the criminal bar. As part of this discussion the Task Force considered the demographic imbalance between men and women practising criminal law. The general decline in lawyers practising criminal law is a concern, as is the demographic imbalance in that area of practice. The Law Society would benefit from input from practitioners, particularly in the criminal bar, as to how to turn the tide.
- Consider legal aid as a vehicle for CPD credit. This is something that the Task Force understands is on a list for review by the Law Society's Lawyer Education Advisory Committee. There is no guarantee it will be accepted, however.
- Consider recommendations to add education modules to PLTC to reflect the findings of the Task Force and to teach students entering the profession directly about the value of legal aid both to the development of their practices and to society generally. The Task Force favours adding modules and training in PLTC to help young lawyers undertake legal aid work and to encourage their participation in legal aid.
- Promote greater use of limited scope retainers. This could allow targeted services to be provided through legal aid plans. The Task Force understands that this is something the Access to Legal Services Advisory Committee is considering at present.
- The Law Society could create legal aid participation awards to encourage and acknowledge those who provide legal aid service. The Task Force discussed this concept in a very preliminary manner, concluding it was worth discussion.

49. The considerations listed above are only some examples of what the Law Society might do.

50. The primary feedback from the Colloquium on this item related to the need for lawyers who undertake legal aid to receive sufficient remuneration and that, absent achieving that end, the Law Society has limited capacity to increase lawyer participation. The other key theme that emerged from the discussion related to impressions concerning a diminishment of the quality of advocacy skills of the junior Bar. A number of participants observed that the next generation of lawyers are getting fewer opportunities to appear in court with senior counsel who they can learn from. While legal aid does allow junior lawyers to take retainers, there is a considerable danger that inexperienced junior lawyers acting on their own do not benefit from the opportunity to learn good advocacy skills from experienced barristers. Mentorship is very important to developing good barristers. While the lack of good mentoring opportunities is not solely related to legal aid, it has links to the extent legal aid will not cover the costs of having a junior lawyer attend at many proceedings. If this trend continues it presents two threats to the public interest in the administration of justice. First, those lawyers who are currently representing clients ineffectively reduce the quality of justice the client can achieve and also make the court process slower and

more costly. Second, when the experienced legal aid bar starts to retire there will be a dearth of skilled counsel to take their place.

51. Without identifying particular solutions, the participants invoked the need for the Law Society to find ways to improve the advocacy opportunities, training and mentoring for young lawyers.

**Mandate Item 3:** *Identify ways to enhance Law Society leadership concerning legal aid.*

**Mandate item 4:** *Develop the best methods for engagement with other organizations to coordinate the efficient use of resources in improving publicly funded legal aid.*

52. Due to their similar nature, the Task Force has decided to link Mandate Items 3 and 4 under one discussion. Mandate Item 4 speaks more to efficient collaboration and recognizes that all of the justice system stakeholders need to make difficult decisions regarding the allocation of scarce resources.

53. There are arguably two ways to look at Mandate Item 3, and each might inform how the Law Society wishes ultimately to address the concepts under this item. The first is to focus on actions the Law Society ought to undertake. This might include setting up regular meetings with the government, Legal Services Society and the Courts (for example) to work toward developing a shared understanding of what legal aid needs to be in order to best serve the public. The second would be to develop some action points that the Law Society ought to profile, both through its own work and in working with others.

54. The question asked by Mandate Item 4 is about identifying ways for the Law Society to engage with others to improve legal aid. This is an important aspect of the work of the Task Force, because the Law Society is simply one of a number of organizations that have a role to play. Continued participation in the BC Access to Justice Committee is highly important, as it is acting largely as a coordinating body. Participation in the Justice Summits is also important as it also coordinates discussion on issues. The Law Society already is involved in both groups. What is missing, however, is a centralized process for getting information to justice system stakeholders on relevant topics, and for receiving feedback from such stakeholders. Knowing what the Law Society can contribute to the discussion will help. Where are the limits of what the Law Society can do? Are they merely regulatory, or is there a broader policy base that can be brought to our participation?

55. As discussed elsewhere, the main way for the Law Society to enhance its leadership concerning legal aid derives from establishing its principled vision for legal aid and then standing behind those principles. This requires the vision to become part of the Law Society's "DNA". The Task Force believes that the Law Society has not taken a leadership role in the debate over legal aid for the last number of years and that as a consequence the voice of an important part of the justice system in the province has been lost. It considers that a recommendation to the Benchers to change that reality is important. Development of a principled vision (Mandate item 1) will

assist. The Task Force also believes that a recommendation to inculcate new Benchers in the vision and what it represents, such that as they carry out their governance duties they have the policy in the forefront of their decision making, is paramount. Beyond that, it is important to carry on the tradition of maintaining an open dialogue with the Legal Services Society about the state of legal aid in British Columbia, and to receive input generally as to what the Law Society can do to champion legal aid.

56. Moving forward, the Task Force recommends that the Law Society should:

- work with government, the courts and the profession about ways to reduce the time and cost associated with mega-trials.
- work with the courts to determine how active case management might be used to support a more efficient and cost effective litigation system, thereby making legal aid more sustainable.

57. The Task Force also identified the prospect of “creating legal aid champions among the profession.” The idea developed from the theme that because currently so few MLAs are lawyers, it is essential that the Law Society and the profession educate MLAs about the justice system and the vital importance of legal aid. The Task Force discussed recommending that the Law Society engage in meetings with government and the civil service, while bolstering that effort by having lawyers in each riding reach out to their local MLA to discuss legal aid and the justice system, and why it is vital to the well-being of the local community and the MLA’s constituents. Are there other ways for the Law Society to enhance its leadership role in the legal aid debate?

58. With respect to Mandate Item #4 participants at the colloquium noted a range of concepts that the Task Force flags for further consideration by the Law Society as it moves forward on its work with legal aid. It was suggested that the Law Society needs to be a vocal advocate for a more client-centred model of legal aid, which recognizes that legal aid is a public good. Collaboration with other stakeholders is critical, and in particular there is a need to collaborate with Indigenous peoples to explore culturally sensitive systems of justice and legal aid delivery models. Participants also suggested that the Law Society lead efforts to develop methods to measure the outcomes of legal aid more effectively. Lastly, the need to educate the public and politicians about the value of legal aid was stressed. Many of these concepts echoed the preliminary findings the Task Force brought to the colloquium, or refined them in subtle yet important ways. The colloquium highlighted the important role collaboration and open dialogue will play as we work towards realizing a sustainable legal aid system for British Columbians.

59. The Task Force is of the view that education must form a critical part of the Law Society’s strategy moving forward. A long-term education strategy must be developed, but its three key outcomes ought to be: 1) educating MLAs about the importance of legal aid to not only the smooth operation of the justice system, but society more broadly (e.g. families, health care, Indigenous Peoples, economic prosperity, etc.); 2) educating the public about the role of legal

aid in society and the Law Society's vision for legal aid; and 3) educating the profession about the importance of legal aid and the need for all lawyers to be champions for proper legal aid funding.

60. An adjunct to education is research. The Task Force heard on more than one occasion that the business case has to be made for legal aid, and that what gets measured gets done. Leaving aside the numerous principled arguments against requiring a business case to justify the need for fostering access to justice in a democratic society, if such materials are what is required to convert politicians into champions for legal aid then the Law Society should reach out to the Law Foundation of British Columbia and the Legal Services Society to explore research opportunities to better demonstrate the economic and social benefits that accrue to society from legal aid. The Task Force is aware of studies in other jurisdictions to that effect, but caution is required with such studies to ensure the assumptions contained in the models are defensible. A made-in-BC model is what is required if such research is to be persuasive.
61. The Task Force also recognized that in order to transform principles into action, the Law Society needs to establish a structure to keep the vision alive as well as the remaining work. There are several ways this can be accomplished, but the Task Force favours the creation of a Legal Aid Advisory Committee within the Law Society that would be tasked with the ongoing work that flows from this report. In addition to this, the Benchers will need to be educated on the vision statement and its underlying rationale, and this will need to be reinforced from time to time so it becomes "part of the Society's DNA."
62. In order to properly discharge its mandate, the Society must set up systems to ensure it does not remain silent when legal aid is under assault and needs the Society to champion its cause. This requires systems that survive changes at the Bencher table, and changes amongst staff and management. The vision cannot be part of a culture of shifting values and priorities, such that it loses prominence. Until the problem is solved, it must remain a concern for the Law Society.

## **Conclusion**

63. The Law Society was instrumental in the creation of legal aid, but has largely been silent on key matters for almost 15 years. The public interest mandate set out in s. 3 of the *Legal Profession Act* requires that the Society take a leadership role once again. In order to do so in a principled manner, it is essential that the Law Society adopt a vision for legal aid. That is only the first step, however. The Law Society must also establish internal systems to ensure its commitment to legal aid does not waver, and that it can be an effective advocate for legal aid in the future.

## Recommendations

64. The Task Force makes the following recommendations

**Recommendation #1:** The Legal Aid Task Force recommends that the Benchers adopt the vision for legal aid set out in **Appendix 1** to this report.

**Recommendation #2:** The Legal Aid Task Force recommends that the Benchers establish a Legal Aid Advisory Committee within the Society, informed by the findings in this report, with a mandate to:

- a. Assist and advise the Benchers in helping the Law Society realize the vision set out in **Appendix 1**;
- b. Assist and advise the Benchers concerning how best to advance mandate Items 2-4, with particular consideration of, *inter alia*, the following:
  - i. Developing and/or promoting research into the benefits of legal aid to society and the justice system;
  - ii. Developing and/or promoting the creation of proper data analytics systems within the justice system and legal aid in order to better support analysis of the importance of legal aid in society and the justice system. Such systems should help support not only a business case for properly funded legal aid, but the social justice case as well;
  - iii. Developing and/or promoting the creation of education materials and resources to help lawyers, politicians and the public better understand the importance of a strong legal aid system;
  - iv. Advocating with government and the public for improvements to legal aid in British Columbia;
  - v. Meeting with other stakeholder groups, including lawyers and law firms, to ensure that the Law Society's efforts to champion legal aid occur collaboratively. Consideration should be given to hosting future colloquia to ensure efforts to advance legal aid revitalization continue to progress;
  - vi. Working with government, the courts and the profession about ways to reduce the time and cost associated with mega-trials;

- vii. Working with the courts to determine how active case management might be used to support a more efficient and cost effective litigation system, thereby making legal aid more sustainable;
- viii. Developing proposals for how to improve the advocacy skills of junior lawyers and facilitate their involvement in undertaking legal aid work to better ensure the current quality of advocacy as well as the future of the legal aid defense Bar;
- ix. Liaising with the Law Society's Truth and Reconciliation Advisory Committee and the Access to Legal Services Advisory Committee to ensure the Law Society has a consistent approach to improving access to justice for Indigenous Peoples;
- x. Working with the Law Society's Communications Department and, if necessary, external experts, to ensure social media as well as traditional methods of communication are used to maximize the reach of the Law Society's efforts to educate, inspire and lead on legal aid reform in British Columbia.

## **Appendix 1:**

# **The Law Society's Vision for Public Legal Aid in British Columbia**

### **WHEREAS**

*The rule of law is the foundation of our democratic society. Every person must have the opportunity to understand how the rule of law affects their daily lives. Legal Aid is an essential service necessary to ensure all persons have that opportunity and understand its effect and to access our justice system.*

### **RECOGNIZING**

Access to justice is a fundamental human right, and:

- (a) Our democratic society cannot exist without the rule of law, and the rule of law depends on all people having meaningful and effective access to justice,
- (b) not all people in society have the ability or means to access justice,
- (c) Indigenous people are uniquely and historically disadvantaged in their access to the legal system and legal aid, and
- (d) publicly funded legal aid plays an essential role in achieving the goal of access to justice,

the Law Society of British Columbia's vision for publicly funded legal aid is as follows:

The purpose of legal aid should be to:

- a) support the ability of all people to access justice and specifically to protect the rights of the most disadvantaged and vulnerable members of society;
- b) assist people in the exercise of those rights, to obtain appropriate remedies, and to enjoy the benefits of professional legal advice concerning those remedies,
- c) advise people about the obligations and responsibilities imposed on them as members of a democratic society, subject to the rule of law. [Commentary 1 below]

All people, regardless of their means and without discrimination, should have access to legal information and publicly funded professional legal advice to assist them in understanding whether their situation attracts rights and remedies or subjects them to obligations or responsibilities.

In particular, the most disadvantaged and vulnerable people in our society are entitled to additional publicly funded legal services, up to and including legal representation before courts, tribunals, and alternative dispute resolution methods inclusive of the legal advice necessary for proper access to justice. Provision of these services may also need to take into consideration the financial means of the individual and the nature of the matter. [Commentary 2 below]

The access to these additional services should seek to balance the ability of the person to access similar services in the free market with due consideration of the potential impact of the situation on the person's life, liberty or security. [Commentary 3 below]

It is essential that consultation with Indigenous Communities develop culturally appropriate systems for the delivery of professional legal services and legal aid. Consultation and collaboration with Indigenous Communities, the courts, social and other government services is necessary. The Federal Government has a heightened responsibility to ensure such services are adequately supported with both policies and funding.

Legal Aid should provide professional legal services that cover the following:

- (a) Matters that involve the state against the individual where the liberty or security of the individual is at risk; [Commentary 4 below]
- (b) Children whose security of the person is at risk; [Commentary 5 below]
- (c) People with mental or intellectual disabilities that impair their liberty, safety, or access to government or community services; [Commentary 6 below]
- (d) Family law in circumstances where the physical, economic, or emotional security of a family member is at risk; [Commentary 7 below]
- (e) Persons disadvantaged due to circumstances of poverty; [Commentary 8 below]
- (f) Immigrants and refugees. [Commentary 9 below]

Legal aid is an essential public service and, as such, governments bear the responsibility to fund legal aid to the degree necessary to achieve these purposes and objectives.

## **2. Commentary**

### **Commentary 1: DIAGNOSIS / ISSUE IDENTIFICATION**

These publicly funded professional legal services should enable the individual to be aware of the relevant services, whether within the formal institutional justice system or within the alternative dispute resolution systems. These services should include information about both in-person

assistance and technological platforms for in-person or remote access. This diagnostic service should be universal.

**Commentary 2: REPRESENTATION AND ADVICE**

For the enumerated categories of subject matter, individuals who qualify based on a financial means test should have access to the services of a lawyer or a non-lawyer legal service provider who is able to provide legal advice and/or representation as may be appropriate.

**Commentary 3: ELIGIBILITY**

The public must have confidence in the legal system and delivery of legal aid. The limits of funding will, of necessity, limit the scope of the services that can be provided. Any financial means test or limit on the provision of legal services must balance principles and pragmatism. The principles that guide eligibility must not be governed solely by budgetary considerations. This may require consideration of sliding scales of eligibility based on the nature of the issue.

**Commentary 4: GOVERNMENT ACTION AGAINST THE INDIVIDUAL**

It is fundamental to the rule of law that government and its agents are subject to laws. To ensure this, it is necessary that individuals whose life, liberty or security of the person is at stake as a result of state action have access to a certified, regulated and independent legal professional in order to defend any action brought by the state. In order for the justice system to work, it is necessary for those facing a criminal charge to have access to a full answer and defence and that requires that the professionals who provide the defence receive fair compensation for their services.

**Commentary 5: CHILDREN AT RISK**

Children are among the most vulnerable members of our society and in circumstances where children’s safety, survival or development is at risk it is essential that adequate legal and social services be available. Canada has ratified the United Nations Convention on the Rights of the Child, which requires that “State Parties shall ensure to the maximum extent possible the survival and development of the child.”<sup>15</sup> The provision of professional legal services is critical when a child requires access to the services directly and not through the intermediation of a parent or guardian.

**Commentary 6: MENTAL OR INTELLECTUAL DISABILITIES**

People with mental or intellectual disabilities are among the most neglected and vulnerable members of the community in need of the provision of professional legal services when they face matters dealing with their liberty, safety, or access to government or community services. It is essential such services operate in an appropriate mental health network that treats the underlying cause and not

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<sup>15</sup> Article 6.2.  
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merely the particular symptom or manifestation of the illness or disability. As with other areas that merit coverage, this is first and foremost a social problem. Where legal issues intersect with social problems it is essential that there be cooperation between the legal and social work communities and also between the Ministry of Justice and the various other government ministries that have oversight of health and social portfolios.

### **Commentary 7: FAMILY LAW**

Matrimonial discord and separation can trigger family violence, emotional and financial crises. Family members have a right to be protected from physical and emotional harm. Vulnerable family members have a right to financial support. Family members in need must be able to access legal assistance in order to obtain such protection and financial support. Without legal assistance there may be no meaningful access to justice, with the consequence that vulnerable family members, particularly children, are at risk of physical harm, emotional trauma and economic insecurity. This in turn can lead to additional draws on already scarce community resources such as police, healthcare, mental health services, social assistance, women's shelters, housing subsidies and homeless shelters. As well, the slide into poverty that often accompanies family separation is difficult to overcome.

Legal aid coverage for family law services should provide the necessary assistance for vulnerable family members in obtaining protection for them from family violence, obtaining basic necessities of life through enforceable support orders and agreements, and in achieving some degree of stability in housing, schooling and employment.

### **Commentary 8: FINANCIALLY DISADVANTAGED PERSONS**

Poverty law services should be included in legal aid and developed to address current needs in society. The purpose of the services should be to facilitate access to essential legal and social services for people who are living in poverty and are unable to access such services. This should include coverage for matters that will reduce the likelihood of the individual becoming, or remaining, trapped in a cycle of poverty.

### **Commentary 9: IMMIGRANTS AND REFUGEES**

Legal aid services should be available for immigrants and refugees in need. It is particularly important to provide legal assistance for immigrants and refugees at risk of deportation or involuntary return to a country where such a return places the individual's life or security of the person at risk.

## Appendix 2: Summary of Lawyer Survey

The Law Society retained Sentis Research to survey practising and insured lawyers regarding their views on legal aid. The purpose of the survey was to learn more about lawyers who are undertaking legal aid work, as well as lawyers who no longer do so or who have never undertaken such work. The survey asked questions to determine what motivates lawyers to do, or not do, legal aid work. The survey also asked questions about the economics of practising legal aid and the areas of law legal aid ought to cover. In addition, the survey asked questions about what the Law Society, the Legal Services Society, and government might do to encourage greater lawyer engagement, as well as asking general policy questions about what legal aid should entail.

The online survey ran from October 31<sup>st</sup> to November 15<sup>th</sup>. In total, 845 lawyers answered the survey. Respondents identified as follows: male 58%, female 41% and other 1%. There was a fairly even distribution in the age categories of  $\leq 34$ , 35-44, 45-54, 55-64,  $\geq 65$ . Location questions revealed that 46% of respondents were from Vancouver, 19% in the Lower Mainland outside Vancouver, 10% Victoria, 9% Vancouver Island outside Victoria, 13% Okanagan/Interior, and 4% Northern BC. Breakdown of respondents by firm size was: sole practitioner 36%, 2-5 lawyers 29%, 6-10 lawyers 11%, 11-25 lawyers 12%, and  $\geq 25$  lawyers 11%.

Overall, 32% of respondents had taken at least one legal aid referral in the past 12 months, 26% of lawyers did so prior to the past 12 months, and 42% have never taken legal aid referrals. The survey results indicated that the primary motivation of the respondents for doing legal aid work is a commitment to social justice, although the responses also indicate that the professional responsibility to do the work and the interesting nature of the work are also motivating factors. The primary reason not to do legal aid work was the tariff rate. Respondents also noted the administrative challenges with the legal aid billing system as a deterrent.

The survey sought to obtain a better understanding of the economics of practising legal aid. 40% of lawyers indicated that they operate at a loss by providing legal aid, 46% break even, and 12% manage to make a profit. On average lawyers reported that they would need to make \$150 an hour to break even on a legal aid retainer. Sole practitioners were more likely to be able to break even or turn a profit than lawyers who operate in firms with other lawyers. The average hourly rate that would be required for new lawyers to take on legal aid referrals is \$175.

The survey indicated that the low tariff rate is the main reason lawyers who currently take on legal aid matters may take on fewer matters in the future. The main reason given by those who have never taken on legal aid retainers from doing so in the future is that legal aid does not cover

their area of practice. Of those lawyers who had never done legal aid, 46% would consider taking such retainers if legal aid covered areas of law they practise.<sup>16</sup>

The survey asked what areas of coverage lawyers would like legal aid to include. The highest response rates were: custody/guardianship 49%, mental health reviews 47%, child support 46%, access/parenting time 46% and child abuse 45%.

Virtually all lawyers surveyed thought the government should provide increased, stable funding for legal aid and the government ought to view legal aid as an essential public service.

The main concept lawyers identified for the Law Society to encourage greater participation by lawyers was to establish continuing professional education credits to lawyers who do legal aid. Lawyers also think that the Legal Services Society should establish systems to reduce administrative time spent dealing with legal aid and provide free training and continued professional development to encourage greater lawyer participation.

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<sup>16</sup> This needs to be considered in concert with the observation of what the required hourly rate would need to be to take on legal aid.

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