The Law Society
of British Columbia

Report of the Delivery of Legal Services Task Force

For: The Benchers

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Purpose of Report: **Discussion and Decision**

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PURPOSE OF REPORT

This report has two main purposes.

First, it sets out the findings of the Delivery of Legal Services Task Force ("Task Force") with respect to its mandate to collect missing information about how people resolve serious legal problems, including whether they use lawyers or non-lawyers and their perception of the assistance received. Second, it recommends a process for the next stage of the Task Force's work. As the Task Force's mandate was limited to collecting missing information, any decision to continue the Task Force for the next stage of analysis will require adopting a new mandate for the task force. This report contains:

1. Background on the issue;
2. An overview of the Task Force's methodology and findings;
3. A suggested methodology for the next stage of work; and
4. A proposed revised mandate for the Task Force.

The Society commissioned Ipsos Reid to conduct a survey to gather missing information on how people solve their legal problems ("LSBC Survey") (**Attachment 1**). The LSBC Survey is a significant tool in the work of the Task Force, but it is only one lens through which to consider the issue, and the issues considered by the Task Force require consideration of the broader range of materials the Task Force discussed. This report flags key considerations from other reports, without attaching the other reports. Determining how best to proceed from this stage of the analysis should not be made solely by reference to the information in the LSBC Survey as it only presents part of a very complex picture.

When it comes time to engage in the substantive analysis, the Benchers may well conclude that the sum of all the material considered is insufficient to support the operating assumption of the Futures Committee that "a complete reservation of the practice of law to lawyers cannot be maintained",[1] because the sort of empirical evidence the Futures Committee acknowledged was absent from its considerations does not exist in sufficient detail to analyze the issue on a *purely* empirical foundation. However, the Task Force believes it is as important that there is not empirical evidence that refutes the Futures Committee's operating assumption. When one considers the many years the Futures Committee spent grappling with issues that led to this topic, in addition to the range of materials the Task Force considered, compelling grounds exist for engaging in the substantive analysis of operating assumption. The absence of empirical evidence that points to an access to legal services *panacea* is not a sufficient justification to preserve the *status quo*. It may be that the collected information merely gets one in the ballpark of the right thing to do, and intuition and experience will be the determining factors in how best to proceed.

[1] Futures Committee, *Towards a New Regulatory Model – Report to the Benchers from the Futures Committee* (January 30, 2008).

1. BACKGROUND

The impetus for the creation of the Task Force was the work of the Futures Committee, that was distilled into a report on the scope of practice of law for consideration by the Benchers at their retreat in May 2008. The substantive issues that ultimately have to be considered by the Benchers include whether to redefine the practice of law to allow non-lawyers to engage in some areas of practice that are currently limited to being provided by lawyers, and if so, determine what that new paradigm would look like (e.g. what areas of practice, education requirements, supervision, regulatory needs, scope of permissible practice, etc.). However, the Benchers recognized that before the substantive issues could be properly analyzed it was essential to ensure they had adequate information on which to base that analysis. The Task Force was constituted at the September 25, 2008 Benchers meeting with the following mandate:

> It was **moved** (Punnett/LeRose) that a task force be formed for the purposes of:
>
> 1. Identifying the existing knowledge base and gaps in information that would be required for the Benchers to discuss the substantive policy issues around the scope of practice;
>
> 2. Developing a plan for acquiring the information that is missing (through consultations, economic studies etc.); and
>
> 3. Developing a timeline for reporting to the Benchers.
>
> The motion was **carried**.

This report synthesizes the Task Force's efforts, and presents a proposed approach for moving the project from the information gathering stage to analysis of the substantive issues.

2. THE TASK FORCE'S METHODOLOGY AND INTERIM FINDINGS

As part of its core material the Task Force considered a number of reports, some of which are summarized in this report. Although the Task Force considered some material from other jurisdictions, it determined early on that the topic required focusing on the situation in British Columbia. The Task Force then constructed a list of key questions and collected information to answer those questions. It soon became apparent that the Task Force required additional information about why people decide to hire (or not hire) a lawyer, when dealing with a serious legal problem, as well as about their perceptions concerning the fairness and cost of the approach they took to solving their problems. This led the Law Society to commission Ipsos Reid to conduct the LSBC survey.

There are a number of guiding principles central to the analysis and approach taken by the Task Force in its work.

First, this topic has the potential to be overwhelming, both at the information gathering stage and at the stage for discussing the substantive issues. Recognizing that both stages are connected, the Task Force sought to identify the core material that was required to perform the substantive analysis, without being exhaustive. This led the Task Force to make some operating assumptions. The core assumption is that if the substantive discussion is to have value it must focus on main areas of need and demand,[2] rather than dissecting all areas of legal services and problems. The Task Force does not believe it is productive to boil the seas or engage in endless discussion. Rather, the Task Force believes it is important to identify achievable steps[3] to work towards a solution, while having a sufficient understanding of the larger issues to ensure decisions are principled. This approach is easy to modify if required.

Second, the Task Force was cognizant that while it is important to consider empirical information from surveys and reports, statistics from various reports can vary widely based on the methodology used.[4] This means that the Task Force has to avoid the temptation of focusing solely on the findings of one report to advance a solution. This bolsters the importance of the first point because cross-comparisons of reports across fields of law and socio-economic boundaries can lead to paralysis by analysis. At some point it is essential to trust the collective insight of the Benchers about these issues, based on experience and informed discussion.

Third, it is important to consider the significance of need, frequency, supply and demand. Just because a legal problem happens with great frequency it does not mean it is an area of great need or that there is great demand for legal services. The best example of this is the area of consumer problems. Legal needs surveys indicate they are the most frequent problems, but also most often resolved without assistance and with a high level of satisfaction in the outcome.[5] Understanding the interplay between need, frequency, supply and demand is important to the approach the Task Force took for its initial work and suggestions for the next stage.

Fourth, there are limitations on the type of information available, and on the information the Task Force sought. The LSBC Survey uses language and methods similar to existing British Columbia, national, and international surveys on legal needs. While this approach allows for easier cross-comparison, one can argue that none of these surveys will answer the substantive question about opening the reservation on the practice of law. While targeting questions more directly to the substantive question has logical appeal, any

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[2] The Task Force distinguishes between *need* and *demand* in part because a great deal of the information considered suggests many people are not aware of what their legal rights are, how to seek help, that there is a potential remedy for their problem, or that it has a legal solution. These people may have legal needs without ever having the knowledge to make a demand.

[3] Achievable need not be synonymous with *easiest* and *quickest* and the Task Force is not advocating a "low-hanging fruit" methodology; the easiest to reach fruit is often rotten and lying on the ground. Rather, it is a process of identifying the fruit that is worth the effort of picking (a cost benefit analysis).

[4] Carol McEown, *Civil Legal Needs Research Report,* (2nd ed.) (Law Foundation of British Columbia: March 2009), at p. 3, citing an unpublished paper by Ab Currie.

[5] This is supported in the various studies by Ab Currie as well as Ipsos Reid's survey for the Legal Services Society of BC.

approach is ultimately constrained by a number of factors, including resources, cost, and the capacity of the surveyed audience to analyze the question.[6] As a result, every survey will leave many questions about "why someone answered the question the way they did?" unanswered. Some understanding of *why* is important when it comes time to model solutions, but as a practical matter people's circumstances, their problems, and the best methods for resolving them are infinitely variable. The Task Force was ultimately constrained by the trite but simple truth that the perfect is the enemy of the good.

Lastly, the Task Force collected some material that is best considered in stage 2 rather than in stage 1. Examples include the material provided by Ken Walker regarding potential rolls for articled students, and material provided by Stanley Lanyon, QC regarding a potential dispute resolution methodology[7]. The Task Force believes material that speaks to solutions is best considered in stage 2; in stage 1 the Task Force focused on material that identified the scope of problem, how people try to resolve their legal problems, and what people's perceptions are regarding those problems and their efforts to solve them.

(a) The LSBC Survey

Note: *Italicized percentages* are used to indicate "interpret with caution" due to sample size.

(i) Overview

From June 5th to 15th, 2009, Ipsos Reid conducted an internet survey of 1,628 British Columbian adults about serious legal problems they had during the past three years. The survey explored methods used to resolve problems (self-help, using lawyers, using non-lawyers) and the perceptions about the approach chosen, including reasonableness of cost and value received. The LSBC Survey provides some insight into the reasons underlying the choices people make in seeking to solve serious problems, and suggests what those people might do when faced with serious problems in the future. The LSBC Survey differs from other material the Task Force considered in two main respects. First, it looks across economic strata, whereas many other surveys and reports focus on people who are eligible for financial aid or who live in poverty. Second, it attempts to get at a deeper understanding of why people choose a particular approach to resolving serious legal problems.

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[6] For example, surveying the public about the current model for delivery of legal services and potential alternate models of delivery would be more complex than a 12 minute survey could accommodate. This is in part because the levels of knowledge people have about existing and theoretical models varies enormously, and a survey that focused on public opinion of existing and potential systems would leave us unable to assign meaningful value to the feedback. Why they held the expressed views and the knowledge based that informed those views would be critical to any analysis of the value to be placed on the feedback, and that level of detail would be missing.

[7] Mr. Lanyon's proposal will be presented as part of the Access to Legal Services Advisory Committee's year-end report.

The LSBC Survey indicates that approximately 70% of people who experienced serious legal problems in the past three years did not seek any help to resolve the problem. Of those who sought help, half sought the assistance of a lawyer and half sought the assistance of a non-lawyer. Like the Ipsos Reid report for the Legal Services Society (and similar to other needs surveys) the most common problem areas were:

1. Consumer (e.g. problems with a purchased product);
2. money/debt;
3. employment;
4. housing/land; and
5. family relationships.

In some reports the rankings vary. The greatest variance is present in reports dealing with poverty law issues (detailed below).

(ii) Seeking assistance from a lawyer

The main reasons the people surveyed sought assistance from a lawyer was the belief that a lawyer is best able to assist, and that the results would be better. The Task Force found it interesting, however, that a relatively low number of respondents indicated lawyers are more knowledgeable about the law (p. 34). The main factors in choosing a lawyer were:

- the lawyer had a good reputation (*35%*);
- through referral (*30%*);
- knew the lawyer personally (*28%*); and
- the lawyer had legal training (*25%*) (p. 36).

The Task Force noted that some people seem to select a lawyer based on qualities particular to an individual lawyer and in some cases qualities that are true of all lawyers (e.g. legal training). Overall, 69% were satisfied with the lawyers' services, 15% were neutral and 13% were dissatisfied (p. 36).

The LSBC Survey revealed some interesting information regarding cost. Of those using a lawyer, *73%* had a monetary loss/gain at stake, the average of which was *$121,062*. The average cost of services was *$9,524*. The percentage of the lawyers' fees relative to the amount in dispute averages to *7.8%*. *77%* felt that the fees charged by their lawyer were reasonable. While this is a small sample size, the statistics nevertheless are at odds with the general public perception about the cost of legal services, and the perception that drove some people to self-help or seek non-lawyer assistance in the first instance. The perception of costs at the front end (i.e. how it influences choices) appears to differ from the perception of costs at the back end. In other words, there is evidence that people's

perception of the reasonableness of the cost of hiring a lawyer is better after the fact than the perception of the actual or potential cost as considered at the moment of deciding whether to seek assistance. The Task Force found that the responses challenged some of the traditional assumptions about the affordability of legal services, but note that for households with incomes $50,000 or less cost is a real barrier, and for some matters cost will continue to be a barrier even for those households with higher incomes.

In the Task Force's view, the fact that 78% of people are likely to use a lawyer in the future (p. 70) suggests, in part, that the perception of costs also varies with experience. This raises questions about whether there are opportunities to better educate the public about the cost of legal services, and the scope of services that are available. It also raises the possibility that lawyers could also be better educated about these perceptions.

The Task Force cautions against assuming that the present legal landscape is operating efficiently and transparently; such an assumption might dictate an approach for stage 2 that is flawed. In other words, inefficiencies and barriers that prevent matching people who have serious legal problems with the appropriate, available resources to solve those problems need to be removed. Removal of such barriers may create a better baseline against which to test the sufficiency of legal services.

The LSBC Survey indicates there is a very positive public perception regarding the quality and reasonableness of the costs of services received, yet the initial instances of people seeking out those services is relatively low. When coupled with statistics on the number of people who indicate they would seek the assistance of a lawyer in the future, this information suggested to the Task Force that knowledge-building is required.[8] It is essential to improve public knowledge of legal services, legal information, and the costs of accessing that information and services. In addition, lawyers' knowledge of public perception must be improved in order to better align supply of legal services with need and demand.

(iii) Seeking assistance from a non-lawyer

The LSBC Survey suggests that the main reasons people sought assistance from a non-lawyer were because they believed the non-lawyer would provide options other than suing or going to court (31%), and believed they could get the *same* service but at a much lower cost (19%). 15% contacted a lawyer but it was too expensive. These statistics might suggest two main points:

- First, a large number of people are seeking a less adversarial solution to their problems, and they perceive lawyers will not provide them that

[8] The importance of public education on access to justice and legal services issues surfaces in diverse publications, including: Canadian Forum on Civil Justice, *Action Committee on Access to Justice in Civil & Family Matters,* (September 22, 2008); Canadian Judicial Council, *Access to Justice: Report on Selected Reform Initiatives in Canada* (June 2008); Law and Justice Foundation of New South Wales, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas* (March 2006); the BC Ministry of the Attorney General *Service Plan*, Goal 1, Objective 1.5 is that the "public has knowledge of an understand the justice system". What these various resources tacitly recognize is that knowledge affects perception.

option. The Task Force found this to be significant as it suggests a disconnect exists between some lawyers and clients with regard to the type of services the clients are seeking, and perhaps on the part of the public as to what options a lawyer will provide. The Task Force believes most people are looking to have their problems resolved quickly and effectively so they can get on with their lives; they are not looking for every possible contingency to be explored and debated.

- Second, the fact that 19% felt they could get the same service from a non-lawyer as from a lawyer, but for a much lower cost, suggests that a relatively large number of people believe lawyers and non-lawyers possess the same knowledge and skills, but merely provide them at a different cost. This perception might also suggest why 70% of people with legal problems self-help, and explain the relatively low percentage who noted that they sought the assistance of the lawyer because lawyers are more knowledgeable about the law. The perception of cost is interesting because while it costs less to hire a non-lawyer than a lawyer, the amount in dispute in those cases was less. As a percentage of overall cost, lawyers cost *7.8%* of the amount in dispute and non-lawyers cost *6.4%*. Interestingly, over 70% of people felt the cost of the lawyer and the non-lawyer was reasonable. This suggested to the Task Force that the perceptions of cost, at the end of the day, might bear a greater correlation to the amount in dispute than the total cost.[9] This conclusion would be in keeping with the efforts to move towards more proportionate costs in the justice system. But it might also suggest that at the front end of problems people are thinking of costs in terms of overall cost, rather than proportionate cost, and perhaps out of uncertainty of what the ultimate costs might be. The table at page 39 of the LSBC Survey demonstrates there is a gap in perception of cost and actual cost (see lines 1 & 4).

In addition, 62% of respondents were satisfied with the services received from non-lawyers, and only 17% were dissatisfied (p. 58). The Task Force believes this level of satisfaction speaks to the potential of alternate service providers.

(iv) Self-help

As noted, 70% of people surveyed did not seek help for dealing with their serious problem. The main reasons to choose self-help were: they wanted to do it alone (38%); no help was required (37%); they did not want to pay (20%); and they had no idea where to seek assistance (17%). While self-help is the dominant approach, the finding that 78% of those who dealt with their legal problems on their own are likely to use a lawyer in the

[9] In fact, a greater percentage found the lawyers costs to be reasonable than did the non-lawyers' costs, despite the average cost being greater.

future suggests that people might approach problem solving differently if they possessed more relevant information.

The self-help phenomenon is not unique to law, but it presents additional complications in legal matters. The law is incredibly complex, and though a small percentage of untrained people will be able to competently self-diagnose legal problems and resolve them effectively and efficiently, it would be naïve to suggest most people can navigate difficult legal problems without professional assistance. There are two main challenges associated with self-help. The first is improving the quality and availability of information. By doing so, some people who otherwise would self-help will seek assistance, and those who still wish to self-help will be better educated as to how to proceed. The second is improving the supply of services to meet need and demand. Unbundling of legal services is one example of how lawyers can provide focused legal assistance to lessen the burden self-help places on the justice system.

(b) Ipsos Reid's Legal Services Society Survey[10] ("LSS Survey")

The Legal Services Society of BC commissioned Ipsos Reid to survey the incidence and types of legal problems faced by British Columbians. The economic profile was on households with incomes under $50,000 a year.

The survey showed that 83% of British Columbians experienced serious legal problems over a three year period. This incidence is higher than that in Ab Currie's national studies, but as noted, different studies often obtain different results.

The main reasons people took no action were: (1) a belief nothing could be done; (2) it was too stressful; (3) they did not know what to do; (4) they were uncertain of their rights; and (5) it cost too much. The main reasons for not seeking legal assistance were: (1) knew what to do; (2) it cost too much; (3) nothing could be done; (4) it was too stressful; and (5) they were uncertain of their rights (LSS survey, p. 7). The LSS Survey, much like the LSBC Survey, highlights the importance of accurate knowledge, as lack of information appears (not surprisingly) to influence how people choose to resolve their problems.

Only Immigration Problems and Legal Action Problems (e.g. being sued, or having received correspondence threatening suit, etc.) have over 30% of people asserting that legal assistance would make a positive difference to the outcome. These statistics are at odds with the statistics in the LSBC Survey that 78% of people would use a lawyer in the future. The Task Force discussed how to reconcile this perception with the findings in the LSBC Survey that 78% would use a lawyer in the future. Reconciling these tensions requires a degree of speculation that ultimately might not be useful. It may be that until people are faced with a serious problem they don't truly know how they would deal with it, and it is only in the crucible where such predictions can be tested with precision.

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[10] Legal Services Society of British Columbia, *Legal Problems Faces in Every Day Lives of British Columbians,* (Ipsos Reid: December 2, 2008).

A key finding in the LSS Survey is that legal problems are disruptive, especially when self-help is the chosen option.[11] The harm to the individual can cascade into harm to the family and to the larger social unit of the community. When hundreds of thousands of people experience this disruption, it logically follows that society does not operate as effectively as it might otherwise. It is therefore in the public interest, on both the individual and societal level, to facilitate the effective and efficient resolution of serious legal problems. In an optimal scenario one would model approaches that provide people with both proactive tools to avoid problems, as well as reactive tools to solve those problems that could not be avoided.

(c) Law Foundation of British Columbia: Poverty Law Needs Assessment and Gap / Overlap Analysis (November 2005) ("*Needs Assessment*")

British Columbia has a diverse population and legal needs differ amongst demographic categories. The LSBC Survey reveals that families with incomes under $50,000 are more likely to have experienced serious legal problems in many categories. These findings are echoed in other studies, and Ab Currie's work demonstrates that the financially disadvantaged are more likely to experience multiple problems. The *Needs Assessment* indicates the top five areas of poverty law as: (1) welfare; (2) housing; (3) debt; (4) workers' compensation; and (5) CPP/OAP. The stage 2 analysis needs to account for the unique access to justice challenges certain British Columbians face, particularly the economically disadvantaged.

The *Needs Assessment* indicates the biggest gap in poverty law is the lack of lawyers doing that work. The *Needs Assessment* also indicates there is a significant need for lawyers to work on contested hearings and Supreme Court work, as well as providing oversight for the work of advocates (p. 2). It is important to read such observations in the context they arose. In other words, if only lawyers are entitled to provide most legal services it would be unlikely the report would identify a significant need for non-lawyers to provide legal services. At the end of the day, even if the scope of practice is opened up to non-lawyers, it may be that there remains a significant need for lawyers, but there may be alternatives that were not contemplated at the time of the *Needs Assessment* because they were not on the table. Family law is identified as often connected to poverty law issues and is flagged as an area of significant need. In addition, most self-represented litigants have family law problems (p. 3).

The *Needs Assessment*, and similar work, is important for the stage 2 analysis of the Task Force because it provides a reminder that policies can be put in place for a specific purpose, but that without adequate analysis there is no guarantee the purpose will be achieved. The LSBC might expand the types of legal service providers with the intention of improving the ability of the poor and middle class to access legal services, but service providers might use that expanded license to provide services to corporate clients while continuing to neglect the areas of public need. We know, for example, from the statistics

[11] Note that Ab Currie's work breaks down different categories of problems by level of disruptiveness. Interestingly, consumer problems (which are most frequent) and not generally noted to be disruptive, whereas family problem are.

reviewed that last year *100%*[12] of people appearing before a tribunal to deal with old age pension matters were self-represented. Ideally, any solutions posited in stage 2 should facilitate seniors receiving competent assistance when dealing with an OAP problem, as well as addressing the needs of similarly disadvantaged groups. As Carol McEown notes in the Law Foundation of British Columbia, *Civil Legal Needs Research Report* (2nd ed.: March 2009), "The experience of the respondents indicates that many are not finding the services they require" (p. 25).

(d) Ab Currie, The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians[13]

Mr. Currie's studies surface in much of the analysis performed in other studies, and formed part of the materials provided to the Benchers at the 2008 Retreat that spawned the work that eventually became the foundation for the Task Force. Mr. Currie's most recent report synthesizes much of the earlier work, and includes some information that the Task Force believes is worth considering.

Of particular interest is Currie's finding that those who took no action to resolve their problems are most likely to find the outcome unfair, while those who dealt with the problem (including seeking legal or non-legal assistance) were much less likely to consider the outcome unfair. From this Currie concludes that taking no action is a poor strategy (p. 69). Currie notes an interesting anomaly that seeking legal assistance makes the least amount of difference with respect to whether the situation improved, but notes there might be a correlation with the complexity of problems people take to lawyers and the delay associated in the formal legal process (p. 72). But the observation that is perhaps most interesting is that people's perception of law and the justice system are affected by their legal problems even if the people never have recourse to the formal system. Experiencing multiple justiciable problems seems to foster negative perceptions about the justice system. Currie observes:

> The formal justice system is the lightning rod of discontent when the fundamental values that the laws and the justice system embody are offended, even though the justice system has not actually been engaged. The discontent may be focus on the justice system but it is the quality of justice writ large that characterizes the quality and integrity of the society that is the issue. The implication is that failing to provide assistance to deal with justiciable problems has the potential to erode the fibers that bind the social fabric. (p. 83)

This conclusion suggested to the Task Force that, just as it is a poor strategy for people with serious legal problems to do nothing, it would be a poor strategy for the Society to do nothing to improve the capacity of people to resolve serious legal problems. A proactive approach that aims to ensure people are better able to resolve their serious legal

[12] Note that this was from an extremely small sample size.
[13] Prepared for the Department of Justice Canada, Government of Canada, 2009-05-20.

problems can mitigate the risk that politically expedient but potentially misguided solutions will be crafted for society's access to justice problems.

Currie notes that people who had to appear in court or before a tribunal believed the laws and systems of justice in Canada were less fair than did those who did not appear (p. 85). Currie identifies an anomaly in this statistic, however, in that people who had only one problem and appeared in court were more likely to judge the system and laws as fair than those who did not engage the formal process. It is only when multiple problems exist, and the system is engaged that the perception deteriorates (p. 86). This is not surprising as the more problems one faces, the more complex the law and processes will often be to resolve them, which carries attendant delay, cost and frustration (if for no other reason than it becomes increasingly difficult to obtain the resolution one would perceive at the beginning of the process as "fair").

One of Currie's conclusions is that:

> Overall, these results suggest that it would pay dividends in social terms to put in place mechanisms to assist people in resolving justiciable problems. This applies not only to assistance for self-representing litigants appearing in court. It suggests the potential value of a continuum of service approach that would assist a wider range of people with a much broader range of problems. (p. 90)

This conclusion is in keeping with findings in other studies.

(e) Reid and Malcomsom: Voices from the Field – Needs Mapping Self-help services in Rural and Remote Communities (May 2008) ("*Voices from the Field*")

Voices from the Field focused on the impact of distance, challenges unique to Aboriginals, and use of technology in rural and remote areas (p. 6). Like the *Needs Assessment,* it sheds light on communities that face additional barriers to accessing justice, and in some cases unique barriers to accessing justice. The authors note family law is the area of greatest need, but civil law and poverty law also figure prominently, and tenancy and small claims are also areas of need (p. 8). Many people face layered challenges, including some matters such as EI requiring online applications (p. 8).

Voices from the Field also suggests the following with regard to Aboriginal services:

> In terms of service, the research underlined the widespread preference of Aboriginal clients to receive assistance from an Aboriginal service provider. The provision of assistance in-person is an essential service component of this – without it, people may not be able to begin to address their legal problems. Many reported that telephone and computer-based services by themselves are largely ineffective as a means of communicating. The strongly preferred location for in-person service was within the communities themselves. Identifying a service as an Aboriginal

> service is for many First Nations people an essential pre-requisite for its widespread use at the community level. (p. 9)

Although the LSBC Survey notes that people in the Lower Mainland travel greater distance than those in remote communities to seek assistance, that statistic should be regarded cautiously in light of the observation in *Voices from the Field* that:

> The sheer level of demand for assistance, the distance and travel costs, and the uneven availability of legal advice and assistance – all make for major challenges for legal service providers in rural and remote areas. In discussing the service environment, the impact of regionalization was a common theme, cited by a third of those interviewed. This was seen to be the product of both legal aid cutbacks and the centralization of court-based resources to a limited number of regional settings. (p. 9)

Some of the key findings are that it is important to interact with a "live person" and an emphasis needs to be placed on improving service in family law – from increasing the number of duty counsel and family justice counselors to improved community and clinic support (p. 9). The geographical and socio-economic barriers are exacerbated by the lack of lawyers taking legal aid referrals, particularly in the north (p. 51). Approximately 60% of those interviewed identified the need to have community-level services that could support the non-legal needs of those who have legal problems (p. 75). With respect to supply the authors observe, "In northern BC there are not enough private bar lawyers, and in all rural and remote areas there are not enough Aboriginal lawyers" (p. 79).

(f) Summary and Synthesis of all Reports: Preliminary Thoughts

British Columbians have a high incidence of legal problems, and a growing body of literature suggests legal problems appear in clusters. This phenomenon is not unique to British Columbia. Rather, it is echoed in legal needs studies elsewhere in Canada and around the world. For a variety of reasons the vast majority of people try to resolve legal problems by themselves. Of those who sought help, there are a roughly even percentage of people seeking the assistance of a lawyer and that of a non-lawyer.[14] The information gathered suggests that a large number of these people would take a different approach when facing a subsequent legal problem, with a high percentage indicating they would seek the assistance of a lawyer. Whether people used a lawyer or a non-lawyer, satisfaction levels with the services received were high. In light of the material considered to date the Task Force observes:

1. Despite the difficult nature of this topic, it is essential that the Society consider the substantive issues. The Task Force believes tidal forces are at play in the access to justice and legal services environment, and change in this regard is inevitable. As such it is imperative that the Society take a leadership role in articulating a way forward. At present, the Law Society of Alberta is also

[14] According to the LSBC Survey, but in Ab Currie's national studies the ratio is roughly 2:1 in favour of seeking non-lawyer assistance.

exploring this issue, and the Task Force expects the concerns that gave rise to this inquiry will see other Law Societies soon following suit. Inaction by Law Societies will invite government intervention.

2. It is important to recognize the tensions that exist between different sources of information, and guard against the assumption that a cure is readily available. One example is looking at the high incidence of self-help. If roughly 70% of people self-help in the first instance, one can argue that adding to the supply side (without doing more) will not logically alter that behaviour. The data does not, for example, indicate that a massive number of people sought help but none was available. The public does not seem to have adequately tested the limits of the supply side of the equation. This is not to suggest that if people sought help there would be enough to go around, merely that we have not likely optimized delivery of the type of help that is currently available. Ms. McEown observes that the needs mapping initiatives in BC suggest there are not enough services to go around based on present need (p. 32). It may be that this is particularly true for people who require legal aid services and poverty law services, as well as people in certain communities. Subject to the observations below, the supply side is more likely to make a difference with regard to what people do to solve subsequent problems, and for the limited number who seek help in the first instance. The statistics suggest that many people would take a different approach the next time they faced a legal problem, and the majority would seek the assistance of a lawyer. Caution is required in drawing concrete conclusions, however, as we have insufficient information to parse out particular case histories and what type of future problems people believe they might use a lawyer for. That having been said, the experience of dealing with the problem seems to alter how people would approach their next problem. It should not be assumed that by merely adding to the supply of legal services people will approach their problems differently. This is not to argue against increasing supply, merely to caution that we would be proceeding on a false assumption if we concluded that step alone was sufficient to satisfy unmet need. This is because, in part, there is a difference between unmet need and unmet demand. Despite the interpretation tensions that exist in various sources of information, the Task Force believes that increasing affordable, competent services will have a beneficial impact if people are made aware of the availability, cost, and benefit of such services.

3. Meeting the needs of the poor and low income British Columbians requires more complex solutions than mere consideration of who provides legal services. Studies suggest the poor are more likely to experience serious legal problems, and that they are more likely to experience multiple problems. The poor will have the least economic resources to direct towards solving their problems, and in many cases will face additional barriers to solving their problems in an equitable manner. Creating new categories of legal service providers will not, as a stand-alone proposition, meet the needs of the poor and low income British Columbians, unless those services are provided through social programs designed to address their particular needs or there is a concentrated effort by service providers to

reach out to these people. The median net economic worth of the lowest 20% of the Canadian population is $1,000, and that of the next quintile is $37,000.[15] The amount of that wealth that is liquid enough to exchange for legal services is obviously less. Absent accessing social justice safety nets like legal aid and *pro bono*, there is a large percentage of the public who have very little money to spend on legal assistance from any source. Even if someone in such circumstances understood they have a serious legal problem and were aware of the available resources, they would still be required to rate the value of those services against the necessities of life. For a great many of these people it will be irrelevant that there is a legal service provider charging $50 an hour as opposed to $250 an hour if it means selling the car they require for work, or not buying clothes and food for their children. Their needs require nuanced solutions, and the stage 2 analysis must be alive to these concerns.

4. Not all problems require the assistance of a lawyer, yet people may benefit from some form of legal assistance. Some types of legal services might not require the level of legal training lawyers possess in order to meet the required standards of competency, and market conditions might also make it inefficient for lawyers to provide such services. As such, lawyers may increasingly abandon those areas of practice leaving representational *lacunae*. It is important to bear in mind that the restrictions on the practice of law were drawn in an era where lawyers were providing those services. The public interest requires us to consider which restrictions on the practice of law remain defensible. A potential framework for how this topic can be considered in Stage 2 is set out in the Futures Committee report (see, in particular, pages 10-11). The Task Force is of the view that in Stage 2 it could explore concepts of exclusive and concurrent jurisdiction. As a matter of public policy it is optimal to have the legal profession involved in all aspects of legal matters, but we know as a practical matter this does not and will not happen. Exclusive jurisdiction might be reserved for matters on the basis of constitutional roles, the independence of counsel, duties as officers of the court, professional values, etc. Other matters might fall into concurrent jurisdiction in which lawyers would either compete or work with other service providers to bring legal services to the public. The key issue for concurrent jurisdiction is governance, which includes issues of education, insurance and regulatory standards. Like the Futures Committee, the Task Force is of the view that whatever the future looks like, distinguishing whether someone is engaged in the practice of law based on whether they charge for their services is not defensible. The issue should be competent delivery of such services and adequate safeguards to protect the public.

5. Save for defined exemptions, people who provide legal services should meet certain educational requirements, be subject to regulation, and carry professional liability insurance.

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[15] Statistics Canada, Pension and Wealth Research Paper Series, *The Wealth of Canadians: An Overview of the Results of the Survey of Financial Security 2005*, at Table 1.

6. In considering the substantive issue in Stage 2 it is critical that the Task Force be guided by the public interest and not merely consumer interest. The Task Force believes that consumer interest is a subset of the public interest, and not the converse. The public interest, particularly when engaged by matters of constitutional importance, liberty of the person, and matters that demand confidentiality and privilege must not be cast aside to meet consumer needs.

7. It is important to remember that access to justice and legal service problems exist around the world, including jurisdictions where there are many more types of legal service providers. In the UK, for example, there are many more types of service providers, legal expense insurance is widely available, the legal aid system (while facing cuts) receives considerably greater funding *per capita* than in BC or elsewhere in Canada, and yet the crisis persists. It is also important to recall that the move in Ontario to license paralegals was not done to enhance access to legal services or improve access to justice; it was a result of a desire on the part of government that paralegals be regulated and insured. There is no evidence this has improved access to legal services or justice. To be clear, these observations are not made to deter much needed action, but to caution against transposing extra-jurisdictional "fixes" into British Columbia without careful analysis of whether those steps are in the public interest.

8. Lack of adequate information hinders people in their efforts to deal effectively with serious legal problems. There are many initial perceptions that do not appear to be borne out once people experience and try and solve a serious legal problem:

    a. As noted, many people would seek legal assistance for subsequent problems. This suggests that the decision in the first instance is based, in part, on inadequate information;

    b. The proportionate cost of hiring a lawyer versus a non-lawyer relative to the amount at stake is slight. A high percentage of respondents viewed the amount it cost to use a lawyer, and the amount it cost to use a non-lawyer, to be reasonable. However, cost is a serious concern that drives decision making. It is possible that several factors contribute to this problem including: restrictions on advertising; use of billable hours; the uncertainty at the beginning of many retainers of what the ultimate cost will be (the imprecision of estimates); conflating all legal experiences with the supreme court litigation experience; etc. The Task Force believes that some combination of improving cost certainty and educating the public as to the range of costs and services would go a long way to improving this;

    c. The less relevant information people possess, the more likely they are to arrive at a bad resolution to a legal problem. If people choose to self-help, the information deficiency can create a burden on the self-helper but also on the justice system and other parties to the dispute. The Task Force believes it is important to recognize we live in an information age, and the trend towards self-help is not likely to abate. Improving the quality of the

information that is available, and making the public better aware of resources that are available, should improve the situation for those who self-help as well as those who are dealing with self-helpers;

d. Legal services are important for more than just litigation and dispute resolution. People who improperly structure legal relationships because they did not seek proper help in the first instance might save cost at the front end but create significant problems down the road, including potential exposure to greater costs than the costs of the forgone services (e.g. the initial decision might create a situation fraught with litigation risk, whereas front-end help might eliminate or reduce that risk);

e. If lawyers were better educated about the public's concerns and perspectives they may be better able to meet the needs of their clients. For people who sought non-lawyer assistance their main reason was to be given options other than suing or going to court. While litigation is an important tool for resolving disputes, it need not be the default tool, and there is value in both lawyers and the public understanding this;[16]

f. A very small percentage of people with legal problems make use of available resources like LawLINE,[17] *pro bono* clinics, etc.[18] Some of this might stem from the self-help phenomenon, but some of it will stem from ignorance of available resources. The numbers might also reflect a high number of people who determine they don't need help, or the help of a

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[16] The Hughes Report, *Access to Justice: The Report of the Justice Reform Committee, 1988,* contained the following relevant recommendations:
Recommendation 141 *The Law Foundation should give careful consideration to funding any proposals for the communication of information about mediation of personal injury claims to the public. If more people are aware of that as an option, more people will insist that their lawyers at least explore the possibility of mediation with them before proceeding with litigation.*

Recommendation 143 *It is the responsibility of every lawyer to consider, at every stage of a lawsuit, those alternate dispute resolution techniques that offer the best prospect of settling the claim and to take advantage of them wherever appropriate. Law schools, Professional Legal Training Course and Continuing Legal Education should emphasize the importance of that responsibility in their courses.*

[17] Due to funding constraints the Legal Services Society has announced LawLINE will be discontinued. This highlights the precariousness of important services in the present economic climate.

[18] Consider the following statistics of the CBA BC Branch lawyer referral services. In 2006/7 there were 53,672 calls with 37,161 referrals; 2007/8 there were 54,273 calls with 37,015 referrals; in 2008/9 there were 55,161 calls with 37,927 referrals (see CBA BC Branch *Annual Reports* for those three periods). The three year totals were 163,106 calls with 112,110 referrals. Based on projections from Ab Currie's studies, Carol McEown estimates 1.5 million adult British Columbians will experience a legal problem over a three year period (McEown, p. 24). Comparing these statistics we can see that only 10.8% of adult British Columbians with legal problems contact lawyer referral services, and only 7.4 percent are connected to a lawyer through this service. The number of incoming calls has varied little. These low percentages might reflect, in part, the general trend to self-help, although the percentages have been slowly climbing, but the cost of lawyer referral is so nominal it might also reflect a lack of awareness of the service. The large number of self-helpers who do not to incur the nominal expense of a lawyer referral consultation in order to get a sounding board at the beginning of their journey of self-help suggests they may be lacking important information for resolving their problems effectively.

lawyer. In some instances they might suggest people want to deal with someone face-to-face than over the phone (see (i) below). Some of these service providers are running at full capacity, so there are risks associated with increasing volume of usage. The main risks include delay and having to turn away those in need. However, greater public awareness of those services might direct much needed attention to them;

g. The lack of trust in the profession is troubling, and the Task Force believes the profession must take positive steps to engage the public trust. When so few people believe a lawyer will act in their best interest, and a sizeable number distrust lawyers, the profession has failed to communicate to clients and the public at large the fiduciary nature of the lawyer/client relationship. The Task Force believes that inaction in this regard would be harmful to the health of the profession, and poses a threat to its continued independence and self-governing status. The profession needs to do more to model its good behaviour and be seen to be correcting the bad;

h. As noted, not all legal problems require a lawyer, and better information can help people make informed decisions about their needs. Similarly, lawyers have a role to play in directing potential clients to alternative solutions to their legal problems.

i. Poverty law studies demonstrate a need and demand for face-to-face legal services from lawyers and properly trained advocates, in particular in northern communities. Similarly, the various studies on Aboriginal legal need point to a desire for help within the community and from (ideally) members of the community, and at the very least people with appropriate cultural training. The needs of the poor, recent immigrants and many Aboriginals appear to require not only an increase in supply, but supply tailored to specific needs. The Task Force believes a risk in promulgating a simplistic solution is that it would insult the various groups that are most disadvantaged, and more importantly fail to address their legitimate needs. The Society needs to be mindful that the public interest is diverse. It would be a mistake not to account for the findings of these various studies in any initiative the Society endorses.

3. SUGGESTED METHODOLOGY FOR THE NEXT STAGE OF WORK

In sections 3 and 4 the Task Force sets out methodologies for the next stage of work, together with a proposed mandate. It is important to note that while the ideas represented in the proposed mandate are important, it will be impossible to implement all of them in the short term. The topic is too complex and the resources too limited, and no one organization can likely solve all the problems. However, there is much that the Society can do to make meaningful, incremental change. The

Task Force therefore seeks guidance from the Benchers on how to prioritize the proposed mandate and methodology for the next stage of work in order to move the project forward and achieve tangible results. The Task Force believes that it is important for the Society to move forward with Stage 2 of this project.

1. **Improving supply of legal services:** How do we increase delivery of competent legal services? The focus here should include a substantive analysis of the following:

    a. In what circumstances, beyond those presently permitted, should non-lawyers be allowed to provide legal services?

    b. Are there ways to increase the number of lawyers available to the general public? (e.g. increasing the number of foreign-trained lawyers; establishing categories of limited licensing for lawyers that require less education, but are streamed to narrow areas of practice; working with the Provincial Court to set up a *pro bono* duty counsel program for young lawyers to act as counsel in small claims cases; establishing processes for legal assistants to obtain standing as a lawyer based on education and experience (a variation of the apprenticeship model); improving opportunities for Aboriginals to go to law school, etc.);

    c. Should we expand the permitted roles of articled students? If yes, how?

    d. Should we expand the permitted roles of legal assistants? If yes, how?

    e. Are there ways to improve training and resources for community advocates (e.g. such as the Chief Executive Officer's idea of using off-sessions of PLTC to train community advocates)?

    f. Should solutions be tailored to particular areas of law where there is the greatest need and unmet demand? How can the work be focused to do the most good with the lowest risk of causing harm?

    g. Does the framework proposed by the Futures Committee in the Futures Committee report and the concept of exclusive and concurrent jurisdiction raised by the Task Force, provide an adequate model for any changes? If not, how should it be modified?

    h. What should the regulatory and insurance framework look like for the recommended changes?

2. **Knowledge building:** Information outreach, communication, education:

    a. How do we improve public knowledge about the types of legal services that are available (e.g. unbundling, full retainer, legal aid, etc.), their relative affordability, and utility, etc.?

    b. How do we improve public knowledge of legal issues and dispute resolution, both to assist the public in general, and to facilitate better results for those who choose to go it alone, and those who are dealing with self-helpers (e.g. getting lawyers to contribute to content of sites like ClickLaw, encourage government to improve public education of civic rights and responsibilities, etc)?

    c. How do we increase the profession's understanding of the access to legal services challenges and some of the root causes of the public's perception of the justice system and lawyers?

    d. How do we bring more certainty to the cost of legal services?

    e. How do we improve public trust in the legal profession?

In order to make stage 2 manageable and productive it is important to recognize that some of this work is best handled by groups other than the Task Force, and in some cases may involve organizations other than the Law Society developing programs. For example, some of the knowledge building might best be accomplished by the government, particularly as it concerns public education, in other cases the CBA or CLE might be the logical group to spearhead particular knowledge building initiatives. While the Society would have a role to play in sharing information, it is not a given that the Society is the proper body to shepherd these developments.

The Task Force is cognizant that British Columbia has a diverse population and discrete groups might require tailored solutions. This is perhaps most evident in the needs of Aboriginal Communities. In recognition of this the Benchers may wish to have the Task Force liaise with the Equity and Diversity Advisory Committee early in stage 2 to determine what analysis can properly be transferred to that Committee for development. The Task Force and the Committee could then share information as their work developed, ultimately integrating the work of the Committee into the final report of the Task Force. It may be that a reconstitution of the Task Force is appropriate for stage 2 and this would provide an opportunity to ensure that at least one Task Force member is also on the Equity and Diversity Advisory Committee in order to facilitate information sharing. It may be that each Advisory Committee should have membership in the Task Force for this purpose.

4. DRAFT REVISED MANADATE

The mandate of the Delivery of Legal Services Task Force is:

1. To recommend whether and how delivery of competent legal services might be improved by:
    a. Increasing the availability of effective and affordable legal services and dispute resolution options in areas the Task Force identifies as being of greatest public need, including determining under what circumstances people other than lawyers should be allowed to provide legal services in circumstances that are not presently permitted;
    b. Increasing public awareness of available legal resources and information, and making recommendations to improve public legal education, including recommending organizations that should be approached to develop such resources;
    c. Increasing lawyers' awareness of the public's legal services needs and perspectives;
    d. Suggesting ways to provide greater certainty regarding the cost of legal services;
    e. Suggesting ways to improve the public's trust and confidence in lawyers.
2. To engage in additional consultation (including determining when to consult the public) and research, as required, to fulfill its mandate.

5. DECISIONS

The Task Force suggests that the Benchers potentially have three decisions to make.

First: should the Task Force be continued in order to consider the substantive issues?

Second: do the Benchers approve the methodology set out in section 3 of this Report? If not, how should the approach be modified?

Third: do the Benchers approve the draft mandate set out in section 4 of this Report? If not, how should the draft mandate be modified?