

Putting justice back on the map



The route to equal and accessible family justice

by Laura Track, in collaboration with
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February 2014



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For a referral to legal services in your area, visit www.westcoastleaf.org for more information.

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EXECUTIVE SUMMARY

British Columbia has veered way off course when it comes to ensuring access to justice in family law. The biggest and most urgent crisis in BC's justice system is the lack of public family law services and the consequent exclusion of women from access to justice. Family law is the most significant unmet legal need in the province. Despite the frequency with which family legal issues arise, access to justice in family law cases is out of reach for the vast majority of British Columbians. It's time to put access to family justice back on the map.

Cost, delay, complexity, the unaffordability of legal representation, and the lack of legal aid make it all but impossible for many British Columbians to assert their legal rights in family law cases. Given the significance of the issues at stake — custody of children, fair division of property and support obligations, and protection from violence, to name just a few — the importance of ensuring that everyone has access to the assistance they need in order to assert their legal rights should be obvious. For women in particular, who for a whole host of reasons face additional disadvantages upon the breakdown of an intimate relationship, the need is especially great.

A justice system that is not equally accessible to everyone is not a justice system at all. Publicly funded legal services, including the advice and support of a lawyer, are essential to our ability to know and assert our legal rights and achieve fair outcomes in the justice system. However, massive funding cuts to legal aid and the exorbitant cost of retaining a lawyer in the private market have contributed to the evolution of a justice system that cannot claim to be equal, accessible, or fair. The crisis of access to justice affects tens of thousands of British Columbians, including middle and even upper-middle income earners, who simply cannot afford the costs of retaining a lawyer to help them assert or defend their legal rights.

For family law cases in particular, a lack of legal aid and affordable representation services means that British Columbians' legal rights are routinely violated and ignored, with

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We know the destination we want to get to: family justice that is accessible to all on a basis of equality. But we need to take an alternate route than the one we're on, and we need a roadmap to help get us there.

devastating impacts on women, children, families and communities. An accessible legal aid system is not just about individuals in need gaining access to a *lawyer*; rather it is about gaining access to *justice*. Family law (and indeed, civil law more generally) is only meaningful insofar as it can be enforced by individuals in a legal dispute. A lack of access to legal advice and representation may quite literally translate into a lack of access to the benefits of the law itself.

The destination we are seeking is family justice that is accessible to all on a basis of equality, that delivers fair outcomes, and is responsive to the unique needs of BC's diverse communities. With this report, we chart a path forwards toward equal and accessible family justice.

Many judges, lawyers, advocates and academics have been deeply immersed in the question of how to improve access to justice for Canadians over the last several years, and many important reports and initiatives are underway. The intention of this report is to contribute to the dialogue about improving access to justice by focussing on one particularly acute problem: access to legal advice and representation services for vulnerable women in family law matters. Access to family justice is a women's equality issue, and there are good reasons to approach the issue of access to justice from a gendered perspective. The economic disadvantage experienced by many women after a divorce; high rates of spousal violence and the danger some women face upon separation; marginalization of women within families and women's disproportionate responsibility for child care and domestic tasks; and discrimination against single mothers are all part of what makes family law a women's equality issue. Current approaches to the delivery of family law legal services are falling far short of ensuring women's equality rights and are failing to meet women's diverse needs.

This report is the product of a year of consultations in 16 BC communities, involving over 200 individuals representing approximately 70 agencies and organizations, including women's shelters and transition houses, family support centres, women's resource centres, victim support services, multicultural service centres, advocacy organizations, and band offices. Starting from the incontrovertible premise that access to family justice in BC is not meeting the needs of BC's diverse communities, we invited participants from urban, rural, and remote communities to help us envision better alternatives to the current approach. During the consultations, we discussed the kinds of community-based alternative service delivery models that would be most effective in facilitating access to justice in family law for vulnerable women, and how the diverse needs of different communities could best be met by a strategic use of resources.

As a result of our consultations with advocates and community-based organizations, our research, and our years of advocacy on the issue of access to justice in family law, we make two broad recommendations for family law service delivery models that will make a real difference in women's lives and improve the health of our communities. The models we suggest are starting points to solving the crisis in access to justice in this province. Our intent is that these two models, begun as pilot projects and ultimately expanded to provide comprehensive services province-wide, would complement the existing tariff system of legal aid service delivery, which relies on the private bar to take on legal aid cases.

Our first recommendation is the strategic placement of staff lawyers "in house" in community-based women-serving agencies. Our second recommendation is the development of a

student-driven women's clinic providing free and low-cost family law services to women-identified clients. Both of these models recognize the diverse and multi-faceted needs of women dealing with family law issues. Integrating the services of lawyers with those of other professionals, including support workers, counsellors, social workers, and interpreters, sets the groundwork for lasting and comprehensive solutions to women's legal problems and the many other issues that often accompany them.

The integration of legal services with the variety of other services and supports women need is the primary advantage of the "in-house counsel" model. By integrating a lawyer into existing organizations, such as transition houses, different professionals can focus on what they do best: lawyers on identifying and responding to legal issues, and advocates and outreach workers on providing emotional support and connecting women with additional resources. Organizations serving multicultural populations bring expertise on cultural considerations relevant to their clients, and can also provide interpreters to help overcome language barriers. Organizations serving predominantly Aboriginal populations also bring expertise on the particular vulnerabilities and needs of their clients, and the exchange of knowledge that would take place between these experts and the lawyers paired with their organizations is one of the key benefits of this model.

A student-driven women's clinic has the advantage of providing a one-stop shop for women with family law problems. While the clinic would focus on family law, it would also deal with other legal problems such as human rights, immigration, and poverty law issues. A student-driven clinic developed in partnership with BC's three law schools would provide important learning opportunities for students, while also helping to address the crisis of access to justice in family law in BC. There would be a strong pedagogical focus in the clinical program, and the benefits for students would include the development of legal skills such as interviewing, research and advocacy; connecting students with the communities they will serve (providing learning opportunities about ethics, rule of law, client relationships, etc.); increasing student engagement with family law; and deepening student understanding of equality and inequality in law and the community. When students learn these skills in a supported environment and in the context of providing direct services to women, the bar will ultimately become more sensitive to the particular issues at stake for women, for marginalized people, and for victims of violence.

Students would have access to supervising lawyers and be partnered with community advocates doing client intake. An advisory committee composed of lawyers and advocates from the community who have expertise serving low-income clients in the areas of law the clinic focuses on, as well as appointees from the universities involved, would also be established. To meet the needs of the greatest number of people, we propose setting up the clinic in the Lower Mainland, with a travel and technology budget to allow service of more remote populations.

These models, developed and refined with the input and expertise of community-based service providers from across the province, provide a path forwards toward equal and accessible family justice. There is no time to lose. We must begin the journey immediately.

We make two broad recommendations for family law service delivery models that will make a real difference in women's lives and improve the health of our communities. The models we suggest are starting points to solving the crisis in access to justice in this province.

INTRODUCTION

***“There is no justice
without access
to justice”***

— Supreme Court of
Canada Chief Justice
Beverley McLachlin

A justice system that is not equally accessible to everyone is not a justice system at all. Publicly funded legal services, including the advice and support of a lawyer, are essential to our ability to know and assert our legal rights and achieve fair outcomes in the justice system. However, massive funding cuts to legal aid and the exorbitant cost of retaining a lawyer in the private market have contributed to the evolution of a justice system that cannot claim to be equal, accessible, or fair. For family law cases in particular, a lack of legal aid and affordable representation services means that British Columbians’ legal rights are routinely violated and ignored, with devastating impacts on women, children, families and communities. An accessible legal aid system is not just about individuals in need gaining access to a *lawyer*; rather it is about gaining access to the benefit of the *law*.

There is perhaps no single area of law that touches the lives of as many people as family law. One couple’s separation can impact a broad range of other family members, friends, employers, and colleagues, meaning that most people will be impacted by a family law issue at some point in their lives. Family law cases often involve complex interpersonal relationships, highly charged emotions, vulnerable family members, and important consequences for the lives of all involved. Justice systems – in Canada and around the world – are struggling to meet the challenges of responding to the complex and growing needs of families.

Separation and the need to address legal issues — including parenting arrangements, child support, and division of property— is occurring on a large scale in Canada. About 38% of Canadian marriages end in divorce, resulting in approximately 70,000 divorce orders annually. Family law cases make up about 35% of all civil cases in BC and across Canada. According to Statistics Canada’s Civil Court Survey, in 2009 to 2010, there were a total of 68,532 active family court cases in BC, including 22,915 divorce cases, 27,307 cases involving custody, access, guardianship, support, and property division, and 7,383 cases involving issues such as adoption, child protection, civil protection, and enforcement of orders.¹

¹ Statistics Canada, Civil Court Survey 2009/10.

Despite the frequency with which family legal issues arise, access to justice in family law cases is out of reach for the vast majority of British Columbians. Research prepared for the Law Foundation of BC found that family law is the most significant unmet legal need in the province.² Cost, delay, complexity, the unaffordability of legal representation, and the lack of legal aid make it all but impossible for many British Columbians to assert their legal rights in family law cases. These are not issues that affect just the very poor; inaccessible justice also impacts middle and even upper-middle income earners, who simply cannot afford the costs of retaining a lawyer to help them assert or defend their legal rights.

Given the significance of the issues at stake — custody of children, fair division of property and support obligations, and protection from violence, to name just a few — the importance of ensuring that everyone has access to the assistance they need in order to assert their legal rights should be obvious. For women in particular, who for a whole host of reasons face additional disadvantages upon the breakdown of an intimate relationship, the need is especially great.

However, the availability of legal aid for family law matters, an essential component of meaningful access to justice, has been dramatically reduced over the past decade. The vast majority of litigants in BC courts must navigate complex rules and complicated procedures unassisted: 90-95% of family litigants in BC Provincial Court are self-represented.³ Pursuing a family law case without access to a lawyer can be daunting for anyone, and for women marginalized by language barriers, literacy challenges, a low level of education, or the presence of violence in their relationships, the challenges may be all but insurmountable. Without a lawyer, complying with complex court procedures and accurately completing required forms can seem impossible, while a failure to do so leads to delays and the denial of rights. For example, failing to complete an affidavit correctly could lead the court to refuse to return children to the custody of their mother; lack of representation at trial could result in an abused woman having to cross-examine her violent ex-husband in court.

The challenges involved in self-representation cause many people to simply give up on the family justice system altogether, forgoing their legal rights and entitlements because they cannot afford to claim them. The rights and protections afforded by BC's *Family Law Act*, which was widely heralded as a great step forward in improving the substantive law that governs family disputes in BC, mean little to people who lack the means to enforce them.

When people are prevented from asserting their legal rights or are forced to walk away from well-founded cases because of the cost of accessing the legal representation they need, can we really claim to have a system of justice in British Columbia? As Supreme Court of Canada Chief Justice Beverley McLachlin has repeatedly stated, there is no justice without access to justice. The knowledge and ability to assert one's legal rights is the starting point for a justice system based on equality and fairness. Without the advice and support of a lawyer, people's ability to know and assert their legal rights is seriously constrained. Without this foundation, the notion of "justice" in family law is practically meaningless.

When people are prevented from asserting their legal rights or are forced to walk away from well-founded cases because of the cost of accessing the legal representation they need, can we really claim to have a system of justice in British Columbia?

2 Carol McEown, *Civil Legal Needs Research Report* (2nd Edition, 2009).

3 Sharon Matthews, "Making the case for the economic value of civil legal aid: Briefing Note" (2011), www.weneedlegalaid.com/wp-content/uploads/2011/10/Economic_Value_of_Legal_Aid_-_Briefing_Note1.pdf.

Not only does inaccessible justice impact individuals and families, but unmet legal needs can lead to broader social problems in our communities, including increased mental and physical health problems, addiction issues, reliance on overstretched social services, and the exacerbation of violence against women. When victims of violence are unable to get assistance when applying for protection orders, when immigrant and refugee women cannot access culturally appropriate services in a format they can understand, and when poor and low-income women are unable to afford the representation they need to fight for adequate child and spousal support and a fair division of family property, entire communities suffer.

In short, access to justice in family law has gone way off course. It's time to stop and seek directions. We know the destination we want to get to: a family justice system that is accessible to all on a basis of equality. But our current path is not going to get us there. It's time to stop and seek directions, and to determine an alternate route. This report charts a path forwards toward equal and accessible family justice.

In this report, we focus on one particularly significant piece of the family justice puzzle: access to legal advice and representation services for vulnerable women.

Improving access to justice in family law cases must involve deep, structural changes to the way family law cases are handled by our justice system. Great work is being done on these issues, notably by the Action Committee on Access to Civil and Family Justice, as well as the Canadian Bar Association, both of which recently issued thoughtful and comprehensive reports recommending broad institutional reforms aimed at improving access to justice.⁴ These and other reports have advocated for important family justice system reforms, including more user-friendly and easily accessible “front-end” court services; simplified rules, procedures and forms; an expanded array of dispute resolution options, including mediation, collaboration, and consensual dispute resolution; and better triage services to channel people towards the services they need. While it is beyond the scope of this report to review all of these recommendations, we agree that reforming our family justice system to better meet the needs of people dealing with family law issues must be an important focus of government attention, and we applaud the efforts of those delineating a path forward.

In this report, we focus on one particularly significant piece of the family justice puzzle: access to legal advice and representation services for vulnerable women. We see access to family justice as a women's equality issue, and we believe there are good reasons to approach the issue of access to justice from a gendered perspective. There are particular challenges to addressing family law cases involving violence, power imbalances, and high levels of conflict. In addition, women experience disproportionate economic disadvantages following marital breakdown due to pay inequities and caregiving and domestic responsibilities. Single mothers face additional challenges of poverty and discrimination.⁵

A roadmap for creating equal and accessible justice that is responsive to the unique needs of women in family law matters — particularly women who are victims of violence, abuse, and unequal power dynamics — must involve timely, affordable access to legal advice and representation.

4 Action Committee on Access to Justice in Civil and Family Matters Family Justice Working Group, *Meaningful Change for Family Justice: Beyond Wise Words* (April 2013) and Canadian Bar Association, *Reaching Equal Justice Report: An Invitation to Envision and Act* (November 2013).

5 Canada Mortgage and Housing Corporation, *Housing discrimination against victims of domestic violence* (July 2006).

The roadmap we have developed is the product of a year of consultations in 16 BC communities, involving over 200 individuals representing approximately 70 agencies and organizations, including women's shelters and transition houses, family support centres, women's resource centres, victim support services, multicultural service centres, advocacy organizations, and band offices. Starting from the incontrovertible premise that access to family justice in BC is not meeting the needs of BC's diverse communities, we invited participants from urban, rural, and remote communities to help us envision better alternatives to the current approach. During the consultations, we discussed the kinds of community-based alternative service delivery models that would be most effective in facilitating access to justice in family law for vulnerable women, and how the diverse needs of different communities could best be met by a strategic use of resources.

Part 1 of this report lays the groundwork for this conversation by setting out the current state of access to family justice in BC and making the case for why improvement is so desperately needed. In Part 2, we describe the results of our consultations and explore the themes and trends that emerged. In Part 3, we describe our vision and recommendations for the future based on our consultations and West Coast LEAF's own expertise on access to justice issues.

This report sets out some of the key markers on the path forward. We cannot anticipate every twist or unexpected bump in the road, but the main roadblocks are noted and diversions are advised. The route we are recommending is a path to the equal and accessible family justice British Columbians are entitled to, and will help put justice back on the map. The crisis of access to family justice in BC requires that we set out immediately.

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THE STATE OF ACCESS TO JUSTICE IN FAMILY LAW

ACCESS TO JUSTICE IN FAMILY LAW IS AN ISSUE OF WOMEN'S EQUALITY

Without adequate legal representation, women are losing custody of their children, giving up valid legal rights to support and fair division of property, and being victimized by litigation harassment.

Access to justice in family law cases is, without a doubt, a women's equality issue. Women's need for legal services is overwhelmingly in the areas of family and civil law, not criminal law, and along with poverty law it is family and civil legal aid that has undergone the most substantial cuts and remains most out of reach. Without adequate legal representation, women are losing custody of their children, giving up valid legal rights to support and fair division of property, and being victimized by litigation harassment.⁶

The Legal Services Society (LSS) administers legal aid in BC. One component of the services they provide is to refer low-income applicants to legal aid lawyers – lawyers working in private practice who take legal aid files. These are called “referrals.” At present, LSS will refer a client to a family lawyer for advice and representation only in “serious family situations,” such as when a protection order is needed to address violence or court-related harassment and abuse, when a serious denial of parenting time must be resolved, or when it is necessary to respond to a parent's threat to permanently remove a child from the province.⁷ Property division and divorce cases are not covered, even where there is violence in the relationship.⁸ The applicant's net income must fall below a very low threshold (currently \$2,070/month for a single parent of one child), regardless of the subject matter. This means that even where a woman needs a protection order to protect her from a violent ex-spouse, she must fall within the income requirements to qualify for legal aid.

In situations where legal aid is granted, the amount of time allocated for the lawyer to work on the file is severely limited. On a family law file, lawyers are allocated 25 hours of general

6 Alison Brewin, *Legal Aid Denied: Women and the Cuts to Legal Services in BC* (West Coast LEAF: September 2004).

7 Legal Services Society, “Serious family problems,” www.lss.bc.ca/legal_aid/familyIssues.php.

8 LSS has discretion to provide coverage in other circumstances, subject to available funding and the merits of the case. However, advocates and legal aid lawyers report that due to insufficient funding for the legal aid system, few if any of these discretionary applications are approved.

preparation time, plus an additional 10 hours if the action is in BC Supreme Court. There are additional hours available to participate in collaborative processes such as mediation, though participation in these alternative dispute resolution processes is rarely appropriate in situations of violence and power imbalance. Moreover, abusive spouses bent on using the court process to maintain control over their ex-spouses and continue patterns of abuse can easily use up the bulk of a legal aid lawyer's time with spurious applications, adjournments, and general intransigence. As a result, even a woman who qualifies for legal aid services faces challenges in receiving the help she needs to achieve a fair and lasting outcome in her family law case.

Only 16% of LSS referrals in 2012/13 were for family law cases, while 72% were for criminal matters.⁹ Moreover, only 32% of those who received a referral to a legal aid lawyer on any matter were women. 6,579 women applied for legal aid to assist them with a family law matter in 2012/13, compared with only 2,870 men.¹⁰ Fewer than half of those who applied for family legal aid received a referral to a legal aid lawyer. The lack of resources for family legal aid clearly has a disproportionate impact on women, who also tend to be more vulnerable upon the breakdown of marriage.

Marital breakdown has a profound impact on many women's economic security. Data analyzed by University of Toronto researchers showed that women's median income during the year their marriage dissolved dropped by about 30%, to 71% of its pre-separation level, whereas men's median income decreased by only 6%.¹¹ The data further showed that women's median income recovered slightly during the following two years, and fluctuated around 80% of its pre-separation level during the second, third and fourth years after the end of the marriage. Men's median income, on the other hand, returned to about 95% of its pre-separation level in the second, third and fourth years following the end of the marriage. Four years after separation, women's median income was still only about 85% that of their ex-partners.

A number of societal factors play a role in increasing women's financial loss relative to men and in decreasing their chances of recovering from the initial economic impact of marital dissolution. One obvious reason is that women continue to earn less than men in the paid labour force. One reason for this is the gender-based division of workforce occupations, with jobs filled predominantly by women generally paying less than jobs filled predominantly by men.¹² Additionally, gender-based pay differentials, although prohibited by Canadian human rights legislation, have not yet been eliminated. As a result, average annual earnings for women who work full-time for the full year have been about 70% those of men since 1992.¹³ Further, caregiving responsibilities for children and the elderly — tasks which disproportionately fall to women — often conflict with women's promotion in the paid workforce

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9 Legal Services Society, Annual Service Plan Report 2012/13.

10 Legal Services Society, Client applications & referrals by gender and case type (on file with author).

11 Tahany M. Gadalla, "Impact of marital dissolution on men's and women's incomes: A longitudinal study" (2008) 50(1) *Journal of Divorce and Remarriage* 55.

12 Ibid.

13 René Morissette, Garnett Picot and Yuqian Lu, "The evolution of Canadian wages over the last three decades" (Statistics Canada, 2013) at 12.

and reduce their earning abilities. This unpaid portion of women's work has been steadily increasing due to reductions in state-funded services.¹⁴

Violence against women in relationships is also a significant factor in explaining why access to justice in family law is fundamental to women's equality. The most recent available statistics show that in 2010, there were 16,259 reported cases of intimate partner violence (which includes spousal and dating violence) in British Columbia, and women were more than twice as likely as men to be victims of such violence.¹⁵ Moreover, female victims of spousal violence were more than twice as likely to be injured as male victims, three times more likely to fear for their life, twice as likely to be stalked, and twice as likely to experience more than ten incidents of violence.¹⁶ BC has an average of 16.3 deaths per year related to intimate partner violence, and 72.5% of those who died as a result of intimate partner violence between 2003 and 2011 were women.¹⁷ Women's vulnerability to violence is heightened by other forms of oppression, including poverty, age, race, disability, and immigration status. Aboriginal women are three times more likely to be victims of violence than non-Aboriginal women, and more than twice as likely to be victims of spousal violence.¹⁸ Since domestic and sexual violence remain highly underreported crimes, these statistics provide only a glimpse into a deeply rooted social problem.

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Moreover, the most dangerous time for an abused woman is in the first twelve months after separation, underlining the need for legal support and assistance at this critical time. Statistics Canada has reported that almost half (49%) of women killed by their spouses are killed within two months of separation, and another 32% are killed within 2-12 months after separation.¹⁹ Further, physical abuse, stalking, and harassment continue at significant rates post-separation. National research in Canada suggests that for approximately one-quarter of abuse victims, post-separation violence is more severe than pre-separation violence.²⁰

The lack of legal aid and uncertainty about access to legal support may be additional reasons women do not flee abusive situations. For immigrant women who do not have legal status in Canada, the problem is particularly dire. For women sponsored to Canada by an abusive spouse, fleeing the abuse may result in the cancellation of their sponsorship and complete loss of status in Canada, which can result in deportation. Cases involving abused immigrant, refugee, or non-status women are particularly complex, involving family law issues, immigration and refugee law issues, and language barriers. In such cases, both a family lawyer and an immigration lawyer may be required.²¹

Women facing violence and fighting to protect themselves and their children from an abuser need legal advice and representation. Women facing significant deterioration in their incomes and ability to support themselves as a result of marital breakdown need the

14 Gadalla, *supra* note 11.

15 Statistics Canada, "Family violence in Canada: A statistical profile, 2010" (22 May 2012).

16 Statistics Canada, "Family violence in Canada: A statistical profile, 2005" (14 July 2005).

17 BC Coroner's Service, "Intimate partner violence in British Columbia, 2003-2011."

18 Statistics Canada, "Study: Violent victimization of Aboriginal women" (17 May 2011).

19 Peter Jaffe, Michelle Zerwer & Samantha Poisson, "Access denied: The barriers of violence & poverty for abused women and their children after separation," www.lfcc.on.ca/access_denied_short.pdf.

20 *Ibid.*

21 Ending Violence Association of BC, Submission to the Doust Commission on Legal Aid, www.endingviolence.org/files/uploads/IWP_-_Public_Commission_on_Legal_Aid.pdf.

support of lawyers to fight for fair support arrangements and equitable divisions of family property. Self-help materials and negotiated settlements between spouses in which grave power imbalances exist as a result of violence, language barriers, disability, precarious immigration status or a lack of access to family financial information will simply not guarantee the fair results that all women deserve. Accessible, affordable and culturally appropriate legal help is essential to secure women's equality in family law, and our current approach is falling far short of ensuring women's basic rights.

THE RIGHT TO LEGAL AID

"States parties must ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary" — Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28

West Coast LEAF, along with many other organizations fighting for better access to justice for Canadians, has long argued that legal aid is a vital social service that is necessary for the effective functioning of our justice system and the promotion of equality and fairness in our society. Ultimately, legal aid in BC should be a rights-based system.²² A rights-based system would recognize that there is a human right to access justice and the courts, assisted by adequate representation, in all matters where human dignity is at stake. Human dignity is at stake in legal matters such as access and custody of children, property division in family law, spousal and child support, major and minor criminal offences, immigration and refugee matters, poverty law problems such as debt and access to social assistance, and employment matters, among others. The government has a responsibility to provide access to legal representation in these circumstances when a person cannot afford to pay a lawyer themselves without compromising their ability to cover their other every day expenses. The right to equality (enshrined in section 15 of the *Canadian Charter of Rights and Freedoms*) and the right to security of the person (guaranteed by section 7), as well as the fundamental principle of rule of law require such access, not only as a matter of sound policy in a constitutional democracy, but also as a matter of law.

The rule of law, a fundamental concept underpinning Canada's constitutional democracy, requires that all citizens have access to justice so that laws can be applied fairly and equally to all citizens. The Supreme Court of Canada has affirmed that: "there cannot be a rule of law without access, otherwise the rule of law is replaced by the rule of men and women who decide who shall and who shall not have access to justice...We have no doubt that the right to access to the courts under the rule of law is one of the foundational pillars protecting the rights and freedoms of our citizens."²³ These comments were made in a case that involved the denial of physical access to a courthouse when the entrance was blocked by picketing, rather than the denial of access to justice that results from a lack of legal assistance. The Supreme Court of Canada has declined to find that there is a constitutional right to counsel

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22 See Alison Brewin and Kasari Govender, *Rights-Based Legal Aid: Rebuilding BC's broken system* (West Coast LEAF, November 2010).

23 *British Columbia Government Employees' Union v British Columbia (Attorney General)*, [1988] 2 SCR 214 at paras 25-26.

“It is shameful that in our wealthy province we no longer have resources available which would give real help to parties in this situation. In my view, a case like this demonstrates a failure to improve access to justice.”
— Supreme Court Justice Russell

in civil and family cases.²⁴ The Court has, however, affirmed that low-income parents involved in child protection proceedings have a constitutional right to state-funded legal counsel in child protection hearings when counsel is required to ensure a fair hearing.²⁵ This decision recognized the gendered nature of the issue and the disproportionate impact of child protection proceedings on single mothers, particularly those additionally marginalized by disability, and/or Aboriginal and minority status.²⁶

While the Supreme Court of Canada has so far not ruled in favour of a constitutional right to counsel in family law cases, there are strong arguments to be made that access to counsel in family law is essential to the constitutionally protected rights to equality, life and security of the person. In particular, for example, such an argument may be made in a case involving allegations of physical or sexual abuse against one of the parents, where the assistance of counsel is necessary to ensure a full judicial investigation into the best interests of the child.²⁷ In addition, victims of violence seeking a protection order may also have a constitutional claim for publicly funded representation. While a full legal analysis of these arguments is beyond the scope of this report, there is no doubt that women experiencing domestic violence face a threat to their physical security, and even their lives, and that the emotional and legal complexity of these cases can make representation essential to obtaining an order that will protect victims. As a highly vulnerable and disadvantaged group, the equality rights of abused women are also affected by the state’s refusal to provide adequate legal aid.

A number of lower court judges have lamented the “almost non-existent legal aid available” in family law cases: “It is shameful that in our wealthy province we no longer have resources available which would give real help to parties in this situation. In my view, a case like this demonstrates a failure to improve access to justice,” wrote one judge in a 2011 decision.²⁸ In another case in which civil court hearing fees were ruled unconstitutional because of the barrier they impose to access to justice, the trial judge criticized the provincial legal aid system for failing to meet the needs of British Columbians: “The criteria for legal aid support continues to narrow, and most legal aid schemes do not cover at all the middle classes who can have their lives economically destroyed by a lengthy court battle.”²⁹

International human rights treaties to which Canada is party also mandate improved access to justice and legal aid, particularly for women and other marginalized groups. The provision of legal aid is a critical part of the duty to ensure three fundamental rights guaranteed by all international and regional human rights instruments and jurisprudence: the right to equality before the law, the right to equal protection of the law, and the right to an effective remedy by a competent tribunal for human rights violations.

24 See *British Columbia (Attorney General) v Christie*, 2007 SCC 21.

25 This right is grounded in section 7 of the *Canadian Charter of Rights and Freedoms*, which protects the right to life, liberty, and security of the person, and the right not to be deprived of these rights by an action of the state, except in accordance with the principles of fundamental justice.

26 *New Brunswick v G(J)*, [1999] 3 SCR 46 at paras 113-4.

27 See Nicholas Bala, “The constitutional right to legal representation in family law matters” in *Making the Case: The right to publicly-funded legal representation in Canada* (Canadian Bar Association, February 2002).

28 *DeKova v DeKova*, 2011 BCSC 1271 at para 14.

29 *Vilardell v Dunham*, 2012 BCSC 748. The trial judge’s decision was varied on appeal (2013 BCCA 65), and the case will be heard by the Supreme Court of Canada in 2014.

United Nations Committees monitoring the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) have all raised alarm about access to justice in Canada. In 2008, the CEDAW Committee expressed its concern that “financial support for civil legal aid has diminished and that access to it has become increasingly restricted, in particular in British Columbia, consequently denying low-income women access to legal representation and legal services.”³⁰ The Committee called on governments to ensure access to justice for all women, particularly vulnerable women. The ICCPR Committee has highlighted the particular needs of Aboriginal women for effective access to justice, given their high rates of violent victimization.³¹ A 2010 Resolution of the UN General Assembly describes access to justice as an “essential determinant of effective eradication of poverty”³² and the UN Secretary General describes access to justice as an important link between women’s empowerment and poverty eradication.³³

Cecilia Kell, an Aboriginal woman from the Northwest Territories, took her fight for adequate legal assistance all the way to the United Nations. In 2012, the CEDAW Committee found that she had been discriminated against when she was refused adequate legal aid to protect her from an abusive ex-spouse.³⁴ The Committee asked the government to “review its legal aid system to ensure that Aboriginal women who are victims of domestic violence have effective access to justice” and “recruit and train more Aboriginal women to provide legal aid to women from their communities.” In doing so, it highlighted the ways in which the government’s failure to invest in legal aid has a disproportionate effect on marginalized individuals, especially women in rural and remote communities.

Access to justice also figured prominently during the second Universal Periodic Review of Canada’s human rights record in 2013, particularly for Indigenous women and members of other minority groups.³⁵ In order to guarantee internationally protected human rights, the government must maintain adequate funding for legal aid. This is their international obligation under international human rights conventions that Canada has ratified.

It is almost certainly costing BC *more* to deny low-income people legal aid than it would to adequately fund it.

30 Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada, at para 21, UN Doc. CEDAW/C/CAN/CO/7 (7 November 2008).

31 Ibid.

32 Legal empowerment of the poor and eradication of poverty, GA Res., UN GAOR, 64th Sess., UN Doc. A/RES/64/215 at 2 (23 March 2010).

33 Report of the Secretary General, Legal empowerment of the poor and eradication of poverty, UN GAOR, 64th Sess., UN Doc. A/64/133 (13 July 2009) at 6.

34 Committee on the Elimination of Discrimination against Women, Communication No. 19/2008, Views adopted by the Committee at its fifty-first session, 13 February – 2 March 2012.

35 Human Rights Council, Report of the Working Group on the Universal Periodic Review UN Doc. A/HRC/24/11 (28 June 2013)

THE BENEFITS OF TIMELY ACCESS TO LEGAL ADVICE AND REPRESENTATION

*96% of BC residents polled said legal aid was essential for fair outcomes in family court.*³⁶

A court case can be incredibly economically damaging to the parties involved, and a lack of legal aid means that many people either incur massive debt in pursuing their legal claims, or they simply walk away from their legal rights and entitlements because they cannot afford to pursue them. Not only does this state of affairs make a mockery of the concept of justice, it is also damaging to our economy, detrimental to the health and well-being of families in conflict, and grossly inefficient.

It is almost certainly costing BC *more* to deny low-income people legal aid than it would to adequately fund it. The costs associated with an underfunded legal aid system include the cost of delays and increased court operation as a result of the huge number of unrepresented litigants, as well as the broader social and health care costs of unresolved legal problems. A lack of legal advice and representation prevents people from resolving their legal issues in a timely manner, which places additional demands on the provincial justice and health care sectors. When clients are able to achieve early and more stable resolution of their legal issues, they are less likely to experience legal problems in the future, and their related issues — such as health problems or debt — are less likely to escalate.³⁷

Unresolved legal problems perpetuate social problems and therefore significantly increase social costs to both the individual and the economy, including stress and related mental and physical illnesses.

Several international studies show that legal aid more than pays for itself when viewed from a more holistic perspective.³⁸ Research has shown that investment in legal aid leads to economic growth by increasing jobs, reducing work days missed due to legal problems, creating more stable housing, resolving debt issues and stimulating business activity. Additionally, unresolved legal problems perpetuate social problems and therefore significantly increase social costs to both the individual and the economy, including stress and related mental and physical illnesses. While unmet legal need is widespread and pervasive, the most vulnerable individuals in society, including people with disabilities, Aboriginal people, and people living in poverty experience more frequent, complex, and inter-related legal problems.³⁹ A UK study found that legal conflicts are more likely to afflict vulnerable people and to “reinforce characteristics of vulnerability (such as unemployment, relationship breakdown and illness).”⁴⁰ For example, 27.7% of respondents had stress-related illnesses as a consequence of their civil legal problems, mostly of which were related to problems with domestic violence, mental health, homelessness, and children, including custody and other legal issues. In addition, 14.2% of respondents reported a physical illness, with the vast majority visiting a health care professional about their illness.

36 Legal Aid in BC Public Opinion Poll (March 2009), www.legalaid.bc.ca/about/evaluations.php.

37 Legal Services Society, “Making Justice Work: Improving access and outcomes for British Columbians” Report to the Minister of Justice and Attorney General (1 July 2012).

38 See Matthews, *supra* note 3 and Leonard T. Doust, QC, Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia (March 2011).

39 Action Committee on Access to Justice in Civil and Family Matters, *supra* note 4.

40 Citizens Advice, *Towards A Business Case For Legal Aid: Paper To The Legal Services Research Centre’s Eighth International Research Conference* (July 2010).

In one particularly significant study conducted by the National Centre for Access to Justice at Cordozo Law School, the researchers found that access to legal aid reduces repeat incidents of domestic violence.⁴¹ Access to legal aid helps victims obtain custody and child support arrangements that make it possible for them to leave their abusers; it also reduces their property losses and helps sustain their ability to work. In addition, investment in legal aid reduces public spending on medical care for injured women, counselling programs for children who witness abuse, and policing and prison resources.

HISTORY OF CUTS TO FAMILY LAW LEGAL AID IN BC

“Do we have adequate access to justice? It seems to me that the answer is no. We have wonderful justice for corporations and for the wealthy. But the middle class and the poor may not be able to access our justice system. ... How can there be public confidence in a system of justice that shuts people out; that does not give them access? That’s a very dangerous road to follow.” — Chief Justice Beverley McLachlin

The dramatic cuts to legal aid in 2002, which saw the Legal Services Society’s budget slashed by almost 40% over three years, resulted in the elimination of all poverty law services (for issues including residential tenancy matters, welfare appeals, and employment standards cases) and dramatic restrictions in family law funding.⁴² The number of family law litigants approved for legal aid decreased from over 15,500 in 2001 to fewer than 4,500 in 2012/13,⁴³ while poverty law referrals for cases involving housing, welfare, or disability benefits dropped from 40,000 to zero.

LSS reduced office and agency staff by 74%, and replaced its province-wide network of 60 branches, community law offices, Aboriginal community law offices, and area directors with a new delivery model using seven regional offices, 22 local agents, and a centralized call centre (the LawLINE).⁴⁴ Further funding cuts in 2009/10 resulted in more extensive reductions to operations and infrastructure, including the closure of the family law clinic (the last remaining LSS legal aid clinic in BC), the replacement of five staffed offices with contract services at seven locations, the elimination of the LawLINE,⁴⁵ and a reduction of staff by 80 full-time equivalent positions. The restructuring represented a marked shift from a mixed staff/private bar model of service delivery to one that is almost entirely private bar.⁴⁶

The cuts to legal aid occurred in a context of staggering cuts to other social services related to human rights, women’s services and programs, and social services generally; in addition to the cuts to legal aid, the government eliminated the Ministry of Women’s Equality, the Human Rights Commission and the beginnings of a universal daycare program that the

Cuts to legal aid occurred in a context of staggering cuts to other social services related to human rights, women’s services and programs, and social services generally.

41 Laura K. Abel, Economic benefits of civil legal aid (National Centre for Access to Justice, Cordozo Law School, September 2012), online: <ncforaj.files.wordpress.com/2012/09/final-economic-benefits-of-legal-aid-9-5-2012.pdf>.

42 Making Justice Work, supra note 37 at 19.

43 Legal Services Society, Annual Service Plan Report 2012/13.

44 Legal Services Society, LSS Service Plan 2003/4 – 2005/6.

45 A Family LawLINE was subsequently created.

46 Legal Services Society, Making Justice Work, supra note 37 at 19.

previous government had begun to implement. They cut funding to women's centres; lowered welfare rates, eliminated earnings exemptions and lowered the "employability" status for single parents from when their child turns seven to when they turn three; relaxed employment standards for part-time, low-paying positions; and privatized public sector jobs filled predominantly by women. Like the cuts to legal aid, these cuts and related restructuring had devastating impacts on low-income women, the effects of which are still being felt today.⁴⁷ Further, the cuts meant that low and middle income earners (particularly single mothers) had even less ability to pay for counsel or finance a legal case and less support from service providers (such as women's centres) when going through a divorce or a family law dispute.

Since the dramatic cuts in 2002, government funding for legal aid has remained relatively stable, but has not been adjusted for inflation. Nor has it kept pace with other components of the justice system: from 1994/5 to 2008/9, the Provincial Court's budget increased by 114% and funding for prosecution services went up 132%, while legal aid funding dropped by 22%.⁴⁸ LSS received an additional \$2.1 million for family law and child protection matters in 2012/13,⁴⁹ which allowed it to maintain, but not increase, its service levels.⁵⁰

BC is now the third lowest province or territory in Canada in per capita spending on legal aid, and our legal aid system does not cover representation for as many family law issues as other provinces. LSS continues to operate with funds that are drastically inadequate to allow it to meet the needs of British Columbians. In a 2012 report to government, LSS bluntly stated that, at current funding levels, "LSS is not able to provide the range of services that low-income people need to resolve their legal problems," nor is it able to establish tariffs that will attract and retain lawyers to do legal work.⁵¹ In its most recent Service Plan, LSS states that in addition to its core funding being inadequate to support its mandated services, LSS also has insufficient revenue to introduce legal aid initiatives that promote lasting client outcomes, including justice reform.⁵² In short, LSS does not have adequate funds to effect positive, long-term improvements in the legal services for which it is responsible. In fact, in the autumn of 2013, LSS was facing a \$2.5 million deficit and feared that without additional government investment, it would have to significantly reduce some important client services in the first quarter of 2014.⁵³ As of December 2013, the LSS board was satisfied that they would be able to finish the fiscal year without service reductions;⁵⁴ however, it is clear that insufficient budget allocations to legal aid on the part of government will continue to constrain LSS in its delivery of essential legal aid services.

In sum, BC's legal aid system is in crisis, and has been for over a decade. The latest budget shortfall is not an isolated incident, but part of a systemic pattern of chronic underfunding and the most recent example of the government's failure to invest in fair and equal access to a functioning justice system for all British Columbians.

47 See Marjorie Griffin Cohen, "BC disadvantage for women: Earnings compared with other women in Canada" (Canadian Centre for Policy Alternatives, December 2012).

48 Legal Services Society, *Making Justice Work*, supra note 37 at 20.

49 Ibid.

50 Personal communication with the author.

51 Legal Services Society, *Making Justice Work*, supra note 37 at 5.

52 Legal Services Society, *Revised Service Plan: 2013/14 - 2014/15* (June 2013).

53 Legal Services Society, "Update on funding of legal aid cases" (7 October 2013), <http://elan.lss.bc.ca/2013/10/07/update-on-funding-on-legal-aid-cases/>.

54 Legal Services Society, *Legal Aid Brief* (December 2013), www.lss.bc.ca/lab/2013_december.php.

WHAT'S CURRENTLY AVAILABLE TO FACILITATE ACCESS TO JUSTICE IN FAMILY LAW

Though drastically underfunded, government and the Legal Services Society are providing several programs and resources that offer assistance to clients with family law issues.

Government Services

Family Justice Counsellors (FJCs) are located at Family Justice Centres and courthouses in 23 communities across the province, and provide free information about the law and Provincial Court processes. They are unable to assist with Supreme Court matters. Justice Access Centres exist in Vancouver, Nanaimo and, as of 2013, Victoria. Like Family Justice Centres, they provide legal information and assistance with filling out court forms, as well as referrals to other services. At the Vancouver office there is also a Self-Help and Information Services Centre to assist with Supreme Court matters. About 75% of the work done in the JACs relates to family cases.⁵⁵

Other family law related services provided by the provincial government include the Family Maintenance and Enforcement Program, which enforces registered child and spousal support orders and agreements, and the Child Protection Mediation Program.

Legal Services Society Services

Representation by a legal aid lawyer is available to very low-income individuals with serious family law matters. Family Duty Counsel, contracted by LSS, can provide advice and assistance to unrepresented litigants in both provincial and Supreme Court courthouses across BC. Family Duty Counsel may help draft or review documents and negotiate issues, but they do not take on entire cases or represent clients at trial. In addition to Family Duty Counsel, LSS also funds Family Advice Lawyers in eight locations across BC. Low-income individuals⁵⁶ going through separation or divorce may receive up to three hours of advice from a lawyer on issues involving parenting arrangements, child support, tentative settlement agreements, court procedures, and limited advice regarding property division. This is a joint service with the Ministry of Justice's Family Justice Services Division.

The Family LawLINE provides qualifying low-income callers with legal advice from a lawyer. Lawyers provide brief "next step" advice on issues involving parenting arrangements, child and spousal support, property division, settlement agreements, adoption, and court procedures. LSS also provides information outreach services, including Legal Information Outreach Workers (LIOWs) and Aboriginal Community Legal Workers (ACLWs). Their role is to identify and access appropriate LSS services for clients, including legal information and referrals.

Family Duty Counsel may help draft or review documents and negotiate issues, but they do not take on entire cases or represent clients at trial.

⁵⁵ Law Foundation of British Columbia, "Family Law Committee Working Paper" (November 2012).

⁵⁶ The financial cut-offs for legal advice are higher than for referrals to lawyers; a family of between one and four people must earn less than \$3,265/month in order to qualify. See: legalaid.bc.ca/legal_aid/doIQualifyAdvice.php.

Other LSS services include the Community Partner Initiative, which involves service providers located throughout BC, and particularly in remote, rural, and Aboriginal communities. They provide legal information and connect clients with printed and online public legal information materials; assist clients to find and contact Legal Aid either in person or by phone; and raise awareness of legal aid services. LSS also maintains a comprehensive family law website with plain language information and access to court forms.

Other Services

There are a number of other organizations and funding bodies providing services aimed at improving access to justice in family law cases. Access Pro Bono's legal clinics and lawyer referral service can offer legal advice, and, on rare occasions, legal representation in family law cases. Access Pro Bono staff report that referrals to pro bono lawyers in family law cases are infrequent, due largely to the complexity and length of time it takes to resolve many family law cases.⁵⁷ The BC Branch of the Canadian Bar Association operates the Lawyer Referral Service, funded by the Law Foundation of BC, which allows individuals to consult with a lawyer for up to 30 minutes at a cost of \$25. After the consultation, some lawyers and clients will enter into a retainer agreement.

There are many providers of legal information materials, including the CBA's Dial-a-Law service, the People's Law School, the Justice Education Society, and BC Courthouse Libraries. Advocates, who are trained in legal issues and provide legal information and other supports, are also important sources of assistance in family law cases, particularly for women who have experienced violence and who may be marginalized in other ways, including by immigration status, poverty, addiction, disability, age, and/or Aboriginal status. The YWCA, Battered Women's Support Services, Sources BC, and Atira Women's Resource Society are among the advocacy organizations in the Lower Mainland working to fill the gap in access to justice in family law created by the cuts to legal aid over the past decade. Legal advocates across the province are also working to meet these critical needs.

Despite these initiatives, the services available to assist women with family law problems, particularly through the provision of legal advice and representation, are falling far short of ensuring women's equality rights and are failing to meet women's diverse needs. Inadequate funding for legal aid means that many women are unable to assert their legal rights to fair parenting arrangements, appropriate financial support, or even to keep themselves safe from abuse. This was the most frequent feedback we heard in our consultation sessions.

The services available to assist women with family law problems are falling far short of ensuring women's equality rights and are failing to meet women's diverse needs.

⁵⁷ Personal communication with the author.

WHAT WE HEARD

THE PARTICIPANTS

Between June 2011 and June 2012, West Coast LEAF conducted consultations on access to justice and alternative family law legal service delivery models in 16 communities, involving over 200 individuals representing approximately 70 agencies and organizations, including women's shelters and transition houses, family support centres, women's resource centres, victim support services, multicultural service centres, advocacy organizations, and band offices. Legal aid intake workers, family law lawyers, family justice counsellors, and social workers also participated in several of the consultations.

By "alternative family law legal service delivery models," we mean alternatives to the way publicly funded legal representation is currently provided in family law cases. Legal aid funded representation by a lawyer operates on a tariff model. Under the tariff model, the Legal Services Society (LSS) pays lawyers a set hourly rate for a maximum number of hours of work on a limited range of family law issues. According to LSS, lawyer supply is a critical issue, as fewer than 1,000 of BC's 10,000 practicing lawyers take referrals from legal aid, a number that has been decreasing steadily over the past 15 years.⁵⁸ Low tariff rates are the primary reason lawyers refuse to take legal aid referrals.⁵⁹ Current hourly rates range from \$84/hour for lawyers with less than 4 years of experience to \$93 for lawyers with more than 10 years. The \$84 rate is equal to just \$58 in 1991 dollars, a decline in real terms of 27%.⁶⁰ The gap between legal aid rates and what lawyers charge private clients is growing steadily, which makes taking legal aid cases a major sacrifice or risk for many lawyers.

While the focus of our consultations was on envisioning solutions to the access to justice crisis through alternative family legal service delivery models, our conversations invariably returned to the current challenges communities are experiencing in accessing timely and effective justice in family law. Issues highlighted in nearly all of the communities we consulted

While the focus of our consultations was on envisioning solutions to the access to justice crisis through alternative family legal service delivery models, our conversations invariably returned to the current challenges communities are experiencing in accessing timely and effective justice in family law.

58 Legal Services Society, *Making Justice Work*, supra note 37 at 21.

59 Legal Services Society, 2010 Tariff Lawyer Satisfaction Survey.

60 Legal Services Society, *Making Justice Work*, supra note 37 at 21.

included the lack of lawyers taking legal aid files, restrictive legal aid eligibility requirements, a lack of interpreters and materials in languages other than English, overworked and under-resourced advocates and duty counsel, and a lack of affordable transportation and childcare. In addition to the need for services that help women resolve their legal problems, advocates also emphasized the need for services for women’s issues associated with their legal problems, such as trauma counselling, financial advice, affordable housing, and other issues related to the breakdown of a marriage.

The table below sets out the cities and towns in the order in which we visited, their populations,⁶¹ and the top three challenges that were raised in the discussion. Because insufficient legal aid funding for advice and representation in family law cases was an issue raised in every community, we have not included it in the table.

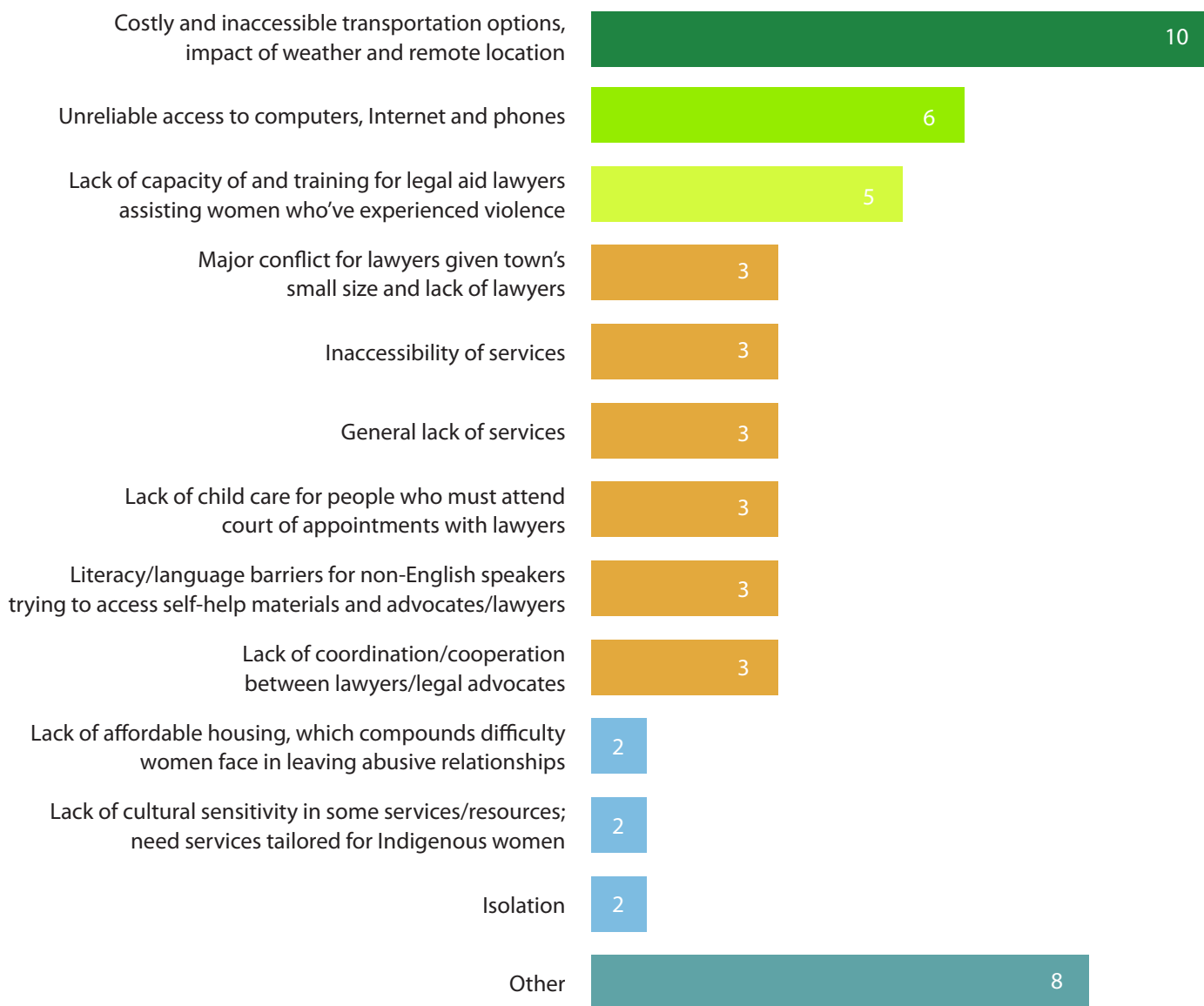
City/Town	Population	Nearest courthouse	Top Three Issues Raised in Discussion
Bella Coola	1919	Local (Circuit Court)	<ul style="list-style-type: none"> Major conflicts issues for lawyers given town's small size and lack of lawyers Unreliable access to computers and Internet Lack of trust and respect between legal services and community in a colonial context
Anahim Lake	360	Williams Lake (304km)	<ul style="list-style-type: none"> Isolation Costly and inaccessible transportation options; impact of weather and remote location Unreliable access to computers and Internet
Golden	3,691	Cranbrook (246km)	<ul style="list-style-type: none"> Conflicts issues for lawyers given town's small size and lack of lawyers Costly and inaccessible transportation options; impact of weather and remote location Lack of capacity of legal aid lawyers to respond to issues of domestic violence
Revelstoke	7,241	Vernon (147km)	<ul style="list-style-type: none"> Costly and inaccessible transportation options; impact of weather and remote location Inaccessibility of services offered in larger centres in the region Difficulty attracting lawyers to work in a small town
Smithers	5,219	Local	<ul style="list-style-type: none"> Costly and inaccessible transportation options; impact of weather and remote location Lack of child care for people who must attend court or appointments with a lawyer Unreliable access to computers and Internet
Kitimat	8,363	Terrace (62km)	<ul style="list-style-type: none"> Unreliable access to computers, Internet and telephones Costly and inaccessible transportation options; impact of weather and remote location General lack of services
Prince Rupert	12,342	Local	<ul style="list-style-type: none"> Barriers to asserting the mobility rights of women who want to leave small towns with their children after a relationship ends in order to find work Unreliable access to computers and Internet Isolation
Vancouver	640,915	Local	<ul style="list-style-type: none"> Literacy and language barriers for non-English speakers trying to access self-help materials Lack of coordination and collaboration between lawyers and legal advocates Lack of training for lawyers assisting women who have experienced violence

⁶¹ Accessed from BC Stats, Population Estimates 2011-13, www.bcstats.gov.bc.ca/StatisticsBySubject/Demography/PopulationEstimates.aspx.

table continued

City/Town	Population	Nearest courthouse	Top Three Issues Raised in Discussion
Penticton	33,160	Local	<ul style="list-style-type: none"> • Costly and inaccessible transportation options for rural communities • Challenges in coordinating services across wide area; accessibility of services for people in remote communities • Burnout among service providers
Burnaby	234,559	Vancouver (10km)	<ul style="list-style-type: none"> • Literacy and language barriers for non-English speakers trying to access self-help materials and advocates/lawyers • Safety concerns for service providers • Intersections of family law with immigration and refugee law
Vernon	38,135	Local	<ul style="list-style-type: none"> • Costly and inaccessible transportation options • Lack of child care for people who must attend court or appointments with a lawyer • Conflicts issues for lawyers given town's small size and lack of lawyers
Salmon Arm	17,133	Local	<ul style="list-style-type: none"> • Lack of training for lawyers assisting women who have experienced violence • Costly and inaccessible transportation options • Unreliable access to computers and Internet
Kamloops	87,705	Local	<ul style="list-style-type: none"> • Lack of affordable housing, which compounds women's difficulty in leaving abusive relationships • Lack of coordination and collaboration between lawyers and legal advocates • City sprawl means accessing services can be particularly difficult and costly
Nanaimo	86,057	Local	<ul style="list-style-type: none"> • Conflicts issues for lawyers • Literacy and language barriers for non-English speakers trying to access self-help materials • Lack of cultural sensitivity in some services and resources; need for services specifically tailored to Indigenous women
Victoria	82,959	Local	<ul style="list-style-type: none"> • Women's poverty • Lack of training for lawyers on assisting women who have experienced violence • Generally insufficient services leading to massive unmet demands
Nelson	9,877	Local	<ul style="list-style-type: none"> • Lack of affordable housing, which compounds difficulty women face in leaving abusive relationships • Costly and inaccessible transportation options • Lack of child care for people who must attend court or appointments with a lawyer
Prince George	74,133	Local	<ul style="list-style-type: none"> • Barrier to accessing legal services created by mental health issues • Lack of cultural sensitivity in some services and resources; need for services specifically tailored for Indigenous women • Lack of information and advice on financial issues: debt counselling, family maintenance enforcement, property division
Creston	5,169	Cranbrook (105km)	<ul style="list-style-type: none"> • Costly and inaccessible transportation options • Lack of training for lawyers assisting women who have experienced violence • General lack of services

ISSUES



OTHER

- Lack of trust & respect between legal services & community in a colonial context
- Difficulty attracting lawyers in small town
- Barriers to mobility rights of women who want to leave small town with their children after a relationship ends to find work
- Burnout among service providers
- Safety concerns for service providers
- Intersections of family law with immigration/refugee law
- Barriers to accessing legal services created by mental health issues
- Lack of information & advice on financial issues: debt, counselling, family maintenance enforcement, property division

THE CONSULTATIONS

West Coast LEAF provided consultation participants with a document setting out a range of possible options for alternative legal service delivery models in family law. We briefly described the advantages and disadvantages we saw in each of the models, then opened the conversation up for discussion, asking participants for their opinions about the relative merits of each of the models and their perspective on how each model would work in their community. We also made time at the end for discussion of participants' other ideas for improving access to justice in family law.

IN-HOUSE COUNSEL MODELS

West Coast LEAF proposed two options for making a lawyer available "in-house" to community-based service providers such as women's shelters, transition houses and family support centres. One option would be to have a staff lawyer dedicated to one agency; another would be to have one lawyer shared between two or more agencies in the same geographic region.

The primary advantage of these models is the support the lawyer would provide to the *existing* community service providers that women are already accessing. Ensuring that women feel safe, supported and comfortable must be an important component of legal service delivery in family law. Consultation participants said that providing legal services to women in an environment that is already familiar to them would support this goal. Moreover, the counselling, advocacy and support staff already working at the agency would be able to assist women with other needs, including safety planning, dealing with abuse-related trauma, and securing housing.

The integration of a variety of services for women was seen as a key benefit of the "in-house" model. While they offer countless crucial services, many community organizations struggle to provide the legal information and support women require, and they are unable to provide legal advice and representation to women who need it. Participants told us that their referrals to duty counsel (in communities where it exists), the Family LawLINE, and legal aid often prove to be ineffective and frustrating for women and advocates alike. Advocates and agency workers recognize that women fleeing abuse, separating from their spouses, or fighting for custody of their children also have significant *non*-legal needs, including the need for compassion, empathy, and support. By integrating a lawyer into existing organizations, such as transition houses, different professionals can focus on what they do best. Lawyers can focus on identifying and responding to legal issues, and advocates and outreach workers can focus on providing emotional support and connecting women with additional resources.

Moreover, existing agency staff can act in a triage capacity, identifying the intersecting needs of women seeking services and directing them to the most appropriate resource. Participants noted that it would make little sense for a lawyer working in a community-based

Ensuring that women feel safe, supported and comfortable must be an important component of legal service delivery in family law.

agency to do client intake, and it would be better to reserve the lawyer's time for preparing applications and arguments, attending court, and meeting with clients after advocates or other intake workers with legal training have begun to identify the client's legal issues. Advocates currently provide a wide range of important services and supports for women, and would continue to do so under this model. Lawyers we consulted identified helpful ways for lawyers and advocates to work together efficiently to resolve women's family law problems. These included assisting clients in preparing a timeline of important events, focusing them on the legal issues involved, and perhaps assisting the lawyer with research or drafting affidavits. This is a mutually beneficial approach and an efficient use of resources: advocates relieve some of the pressure on lawyers' time; lawyers provide support and learning opportunities for advocates; and advocates help educate lawyers about the complexity of women's lives beyond their legal problems. Most importantly, women receive the legal help and non-legal support they need.

Many women will not need to go to court to resolve their legal issues, and many would in fact prefer not to engage in the adversarial family law system. We heard from service providers that a lawyer trained in mediation — one with an informed understanding of the dynamics of family violence and its impact on the safety and fairness of negotiations — would be an asset to many community-based organizations. Indeed, many participants identified a solid understanding of male violence against women in relationships and a commitment to ensuring women's safety as the primary qualifications a lawyer needs in order to provide effective legal services for women dealing with family law issues.

A few participants also told us that with the right information and support, some women would prefer to advocate for themselves in court. Having a lawyer on staff in a community organization could assist these women by swearing documents, providing the legal advice advocates cannot provide, and ensuring the client's legal arguments are sound.

SHARED VERSUS ONE-TO-ONE

We asked participants whether the legal needs of the women their organization serves would justify having a full-time lawyer on staff. Most felt strongly that a full-time lawyer would be required given the needs of their clients; some even felt that the lawyer would almost certainly be immediately flooded with work. Having a lawyer be a consistent presence in the office was also cited as an advantage of the one-lawyer-one-agency approach; we were told that this is how the lawyer would build trust and connection with the community.

A few smaller communities suggested that they would consider sharing a lawyer with another agency located nearby. However, in some smaller communities, a "nearby" agency is still several hours' drive away, taking significant time away from the lawyer's ability to provide legal services. In winter months, such a commute could be dangerous and at times simply impossible.

Another challenge for the shared model is the issue of inter-agency conflicts. Different service providers may have different visions for how and to whom services should be provided,

and may have conflicting mandates and/or politics. Could a lawyer provide services at both an agency with a harm reduction focus and one with an abstinence focus (for example, in regard to drug use or sex work)? Or at an agency with a religiously based approach and a strongly secular one? Few participants raised these issues and no one thought they were insurmountable, but they are important to bear in mind.

More pressing is the issue of conflicts of interest for the lawyer. Lawyers are prohibited in most cases from acting for both parties in a case, and they are also prevented from acting when someone in their firm is representing or has represented the opposing party in a family law matter.⁶² These rules can make it very difficult for lawyers to provide services to those who need them, particularly in small communities. We heard from numerous participants that sometimes an abusive spouse will meet with every family lawyer in the community (which is often a very small number) and describe their family law issue. Even if the abuser does not end up retaining the lawyer's services, that lawyer, and every lawyer in the firm, is "conflicted out" of providing services to the other spouse. This can leave a woman with no options for legal advice or representation in her community. In rural and remote communities, a referral to a lawyer in another community is of little use if clients cannot afford the transportation expense or cannot secure child care or the time off to travel.

While pairing lawyers with women-serving organizations (i.e., organizations that are only accessed by women) would help alleviate part of the conflicts problem, it is not a complete solution, even for opposite sex couples. For example, the lawyer might have represented the woman's spouse at some time in the past on another matter. We heard that in small communities, this is a very real possibility. For example, in Bella Coola, there are many tight-knit Aboriginal families comprised of cousins, aunts, uncles, children, and grandparents, often living in cramped quarters due to inadequate housing on reserve. Violence and family breakdown tend to impact not just the parties directly involved, but also the entire community. The lawyers who work in this community simply cannot adhere to the strict dictates of the conflicts rules without seriously compromising their ability to provide service to those who need it.

Participants also reminded us that many fathers are very involved, caring parents, and they also need and deserve legal representation. Family support centres provide information and support to parents of all genders, and because they do not provide advice or representation services, these agencies are generally able to assist both parents. However, in situations where both parents seek the services of the lawyer, only one of them can be served due to conflicts rules. Would clients be assisted on a first-come, first-served basis? Could advocates and other support staff employed by the agency still offer information and resources to the spouse not receiving help from the lawyer? Would it be safe to have both spouses access the same facility? How would client confidentiality be maintained?

These are difficult questions that deserve further consideration and study. However, a dedicated intake worker who is not a lawyer and who acts as a triage person providing information, resources and, where warranted, an appointment with the staff lawyer, would be an important first step towards addressing these conflict issues. A well-trained intake worker could provide both parties with legal information, copies of appropriate forms, and

In rural and remote communities, a referral to a lawyer in another community is of little use if clients cannot afford the transportation expense or cannot secure child care or the time off to travel.

62 See the BC Law Society's Code of Professional Conduct for British Columbia, section 3.4.

even general assistance with filling out and filing them. They could also provide referrals and support for other needs the person has, such as counselling or financial advice. They would strive to address the non-legal needs of all those accessing the organization, supported by other staff within the organization, and reserve the lawyer's time for providing legal advice to those who need it.

Some participants suggested a “vulnerability test” in the event of potential conflicts, meaning that the party who is more vulnerable (due to violence, poverty, power imbalance, etc.) should always receive priority in accessing legal services.

LEGAL CLINICS

We encouraged the participants to dream – to imagine that the Province was truly committed to implementing and financing services that would ensure equal access to justice for all British Columbians – and to envision solutions that would work for their communities.

The next model category West Coast LEAF raised in our consultation discussions was the clinic model. We proposed a number of possible approaches, including a specialized clinic focused on family law (but providing assistance with concurrent legal issues such as immigration, debt, tenancy, and poverty law); a specialized clinic for victims of domestic violence; or a clinic that provides legal services to women only. Clinics would be located in central, accessible locations and staffed by lawyers, paralegals, students, trauma counselors, and other supports. Clinics could be based in a number of regional centres, or one clinic could be set up in the Lower Mainland, where need is greatest, and a budget for frequent travel could be set aside. The use of technology, such as Skype, to facilitate communication between clinic staff and clients would also be essential. Legal services would be free for those earning under a certain income, and could be offered on a sliding scale to those with greater means.

For many consultation participants, the idea of a free or low-cost legal clinic operating in their community was almost impossible to imagine. Community advocates, women's centres, and other service providers have been operating with so little for so long that a full-service legal clinic set up specifically for women or for victims of violence was practically unfathomable. We encouraged the participants to dream — to imagine that the Province was truly committed to implementing and financing services that would ensure equal access to justice for all British Columbians — and to envision solutions that would work for their communities. From that vantage point, the clinic model was a clear favourite among consultation participants.

Participants liked the idea of a “one-stop shop” to meet the needs of women requiring legal information, advice and representation. Many emphasized that a legal clinic should be located near other service centres women are accessing, including government service offices, community centres, and community-based agencies, particularly those offering multicultural support services. This would increase collaboration between the clinic and other agencies, and could facilitate provision of additional services to clinic clients, such as interpretation for clients who do not speak English.

Many favoured the women-only model as an acknowledgment of women's particular disadvantage in situations of family breakdown, and as a way of addressing conflict of interest issues. With the exception of cases involving the breakdown of lesbian relationships, a clinic

that only accepted clients who identify as women would be unlikely to run into conflicts of interest, and would not risk the problem of a spouse purposely meeting with every lawyer in a community in order to prevent their ex-spouse from accessing advice or assistance. A women-only clinic was also seen as safer for women to access.

While the value of a specialized clinic for victims of domestic violence was acknowledged by most participants, major concerns were expressed for the safety of the women and staff inside. Some participants foresaw such a clinic becoming a target for abusers, who they suggested could vandalize the property and terrorize the staff and clients. Many of the advocates and service providers we spoke with have supported women through very challenging and emotional court battles with their ex-spouses, and have seen first-hand the lengths to which some abusers go to maintain control over their ex-spouses, and the way they manipulate the legal system and continue patterns of abuse. Some participants also identified the stigma associated with visiting a clinic for victims of domestic violence. Many abused women seek information and advice before they are ready to leave their abusers, and would be unable to do so at a domestic violence clinic in a small town where word would likely spread quickly and get back to their abusers.

Most small communities accepted that a full-service legal clinic was probably not warranted in their town. Most participants thought it made the most sense to establish a few clinics in regional centres and fund lawyers to do outreach to smaller centres several times a month. For example, a clinic in Cranbrook could send a lawyer to the Golden Family Centre twice a month to see clients there. Support workers at the Family Centre could identify individuals requiring the lawyer's services and help them prepare for the meeting by making a list of questions or creating a timeline of important events. They could also assist with follow-up and provide support to the client, and could facilitate email exchanges or meetings with the lawyer via Skype to address issues that arise between the lawyer's visits.

Many participants cautioned against overreliance on technological mediums, such as Skype or web chats, as a way of providing legal advice and assistance. For one thing, in many communities the technology is simply unreliable; Bella Coola, for example, struggles to maintain its Internet connection in poor weather. Further, many clients are simply not comfortable with the technology; they do not feel "computer literate" and do not have experience using the Internet. For those whose first language is not English or who do not read or write proficiently, the challenges are particularly great.

While some of these barriers could be overcome in a clinic environment where clients' interactions with technology could be facilitated by an advocate or other support person, we also heard concerns about the depersonalizing experience of discussing intimate and potentially difficult issues with someone over the phone or via Skype, rather than in person. We heard that it simply feels too "disconnected." Building relationships was described as essential, and it may be difficult to build the rapport and trust necessary to discuss a serious family law problem with someone over the phone or via Skype. Disclosing abuse or concerns about the well-being of children would be especially difficult. Further, we heard that there is no substitute for a lawyer who lives in a community and is familiar with its culture and people.

Most participants thought it made the most sense to establish a few clinics in regional centres and fund lawyers to do outreach to smaller centres.

E-CLINICS

We had an in-depth conversation about the use of technology and the model of an “e-clinic,” in which comprehensive family law information is provided online, and women can access advice for their particular problems from lawyers via email or web chats. This is the type of assistance provided by LSS’s LiveHelp option on its Family Law Website, which allows the public to ask family law questions of a law student. This could be supplemented with conversations via Skype. We even touched on the possibility of people appearing in court via webcam (as in many first appearances in criminal court when the accused is being held on remand) to avoid the time and cost barriers of traveling to court appearances.

Obvious concerns about clients’ computer literacy, their comfort and familiarity using the Internet, their capacity to interact in English due to literacy or language barriers, and the reliability of the technology were all raised by consultation participants. We heard that the women who make effective use of these kinds of services are the women who are able to take action on their own behalf with very little support; they can be directed to resources and can make effective use of them, they know what questions to ask, and they have the educational, cognitive and emotional resources to advocate for themselves. While this may describe many women, a significant proportion of women will simply not be served by a model that leaves them on their own to grapple with unfamiliar technology.

Most participants felt that some forms of technology, including Skype and Internet-based resources, could be effectively used by women within community organizations, provided that the women were assisted by an advocate or support person to use them effectively. This might mean an advocate sitting with women and helping them navigate through relevant and important resources, reading information aloud and/or translating it into the client’s preferred language, and assisting clients with filling out online forms. Confidentiality was raised as an issue that would have to be addressed, however, as most community organizations have centrally-located computers where conversations would not be private and would disturb other clients. Separate office space would be needed.

Certainly though, Skype and other technology-based models can provide women with very low-cost access to information and advice. Lawyers do not have to leave their offices, spend time traveling or incur travel expenses, and women can access advice from a lawyer who specializes in the area of law they need help with. A few communities reported that Access Pro Bono has begun offering Skype-based services in their communities, and said that this model was working reasonably well, though in some communities, it was quite a new service and had not yet taken off.

Skype and other technology-based models can provide women with very low-cost access to information and advice. Lawyers do not have to leave their offices, spend time traveling or incur travel expenses, and women can access advice from a lawyer who specializes in the area of law they need help with.

MOBILE SERVICES

Another model suggested to participants was a “law bus,” a mobile resource centre that would travel between a number of communities in a region. It would be filled with legal information resources and staffed by a lawyer who could provide legal information and advice (but not representation).

While consultation participants were initially skeptical of how trustworthy and reliable legal advice provided from a bus would seem to their community, many saw merit in this model. A bus could travel to remote and rural communities and be a predictable presence in places where there is no duty counsel or other free legal services. A number of participants mentioned that mammograms are provided across the province in mobile units, so legal services could be offered in the same way.

The lack of representation services offered by this model was the primary drawback participants identified. They also raised the challenge of accessing very remote communities, particularly in winter, and suggested that it would not be efficient to have so much time spent travelling when technology-based solutions could provide similar kinds of services. It might also be a challenge to ensure that the information and advice were accessible to women who do not speak English, or who have mobility challenges that preclude them from accessing a bus that lacks a wheelchair lift.

What made more sense to some participants was to combine this mobile outreach idea with the clinic models described above. Regional clinics should send lawyers and advocates to more remote communities on set dates to offer information, advice, and representation services. They should be paired with existing community organizations to provide services at venues women are already familiar with and are accessing, and where advocates and other service providers could assist women in preparing for meetings with lawyers, and also provide translation if needed.

PART 3

A VISION FOR THE FUTURE

Integrating the services of lawyers with those of other professionals, including support workers, counsellors, social workers, and interpreters, sets the groundwork for lasting and comprehensive solutions to women's legal problems and the many other issues that often accompany them.

The biggest and most urgent crisis in BC's justice system is the lack of public family law services and the consequent disproportionate exclusion of women from access to justice. West Coast LEAF's consultations with advocates and community-based organizations, our research, and our years of advocacy on the issue of access to justice in family law lead us to two broad visions for family law service delivery models that will make a real difference in women's lives and improve the health of our communities.

One option supported by our consultation participants and many others working on access to justice issues is the strategic placement of staff lawyers in community-based women-serving agencies. A second option is the development of a student-driven women's clinic providing free and low-cost family law services to women-identified clients. These two options are in no way mutually exclusive, and given the current lack of legal advice and representation services in family law and the massive need for this type of assistance, the concurrent pursuit of both options is warranted. Both options can and should co-exist with the existing tariff model, and we reiterate our past calls for a mixed model of service delivery.⁶³ A mixed model of delivery includes public legal services delivered through legal aid clinics, private lawyers paid through the tariff system, and staff lawyers in community organizations. A mixed model of delivery can meet the diverse needs of a diverse population, foster co-operation with a range of professionals both in and outside the justice system, create accessible public legal services through storefront clinics and interdisciplinary community organizations, and free up resources for test case litigation. We develop our vision for our two recommended service delivery models in the sections below.

Both of these models recognize the diverse and multi-faceted needs of women dealing with family law issues. Integrating the services of lawyers with those of other professionals, including support workers, counsellors, social workers, and interpreters, sets the groundwork for lasting and comprehensive solutions to women's legal problems and the many other

⁶³ See "Rights-Based Legal Aid," supra note 22 at 23.

issues that often accompany them. A report prepared by the Social Planning and Research Council noted many advantages of inter-professional collaboration in one agency, including increased effectiveness; a “one-stop shop” for clients seeking assistance; more time- and cost-effective legal services that relieve legal staff from lengthy counselling sessions they may be ill-equipped to handle; and in-house education for legal staff through regular meetings and ad hoc consultations with other staff professionals. The presence of other professionals can also give legal staff a different and useful perspective on clients’ circumstances. In the authors’ view, “a well planned inter-professional collaboration that leads to seamless holistic client services has no downside.”⁶⁴

FUNDING THE MODELS

Access to meaningful justice in family law is a public good, and ensuring it is a public responsibility. West Coast LEAF has always advocated for publicly funded legal services, and in this report, we reiterate our calls for adequate government investment in ensuring equal access to legal services and a return to pre-2002 funding levels for legal aid.

While funding for the alternative legal service delivery models we are recommending must come from government, we recommend that this funding be administered by an agency that is independent of government. The funder should be provided by government with the necessary additional resources to create a “community-based family legal services fund.” For the in-house counsel model, organizations could apply to the funder—either on their own or jointly with one or more other organizations—to fund a lawyer to staff their organization(s).⁶⁵ The independent body would then allocate the funding based on its knowledge of the gaps in legal service delivery and the places where additional resources could be deployed most effectively.

The Law Foundation or the Legal Services Society could be ideal organizations to administer funding for these alternative family law service delivery models. Both have considerable expertise in funding access to justice initiatives, and in measuring deliverables and outcomes to ensure the most effective use of resources. However, LSS lost its independence from government in 2003 when government fired the entire LSS board, rewrote the Legal Services Society Act, and legislated control over LSS budgets. Currently, the majority of the LSS board is appointed by government.⁶⁶ In our view, the funding agency must be independent of government to ensure that government influence does not impact its funding decisions. To be an appropriate agency for this role, LSS must regain its independence from government.

These models are not complete solutions on their own, but rely in part for their success on collaboration with other agencies and advocates currently working to meet women’s legal and non-legal needs.

64 Andrea Long and Anne Beveridge, *Delivering poverty law services: Lessons from BC and abroad* (Vancouver: Social Planning and Research Council, 2004).

65 As discussed in Part 2, the “shared in-house counsel” model—one lawyer shared between two or more organizations—would work well in smaller centres where the demand for legal services is lower, provided that sufficient funds are allocated for travel between one or more centres and, perhaps, if technology such as Skype is used to facilitate communication between lawyers and clients when travel is not possible. For larger centres serving greater needs, the presence of one lawyer working full-time at a community agency may be warranted.

66 Legal Aid Denied, *supra* note 6.

The provincial government must restructure the LSS Board by revising LSS's governing statute to ensure that the board is not dominated by government appointees.⁶⁷

Funding arrangements will need to take account of the support and administrative costs of delivering these services, as well as the costs of the lawyer and legal practice. For the in-house counsel model, additional support will be required for agency staff doing client intake and triage to ensure proper conflicts checking and record keeping, as required by Law Society Rules. For the Women's Clinic, support for advocates offering mentorship and training to law students will also be necessary. It is important to conceive of these models as offering *additional* support to the capacity of community-based organizations to assist women with family law problems, and as supplementing existing services and resources. These models are not complete solutions on their own, but rely in part for their success on collaboration with other agencies and advocates currently working to meet women's legal and non-legal needs.

⁶⁷ *Legal Services Society Act*, SBC 2002 c. 30, s. 4(2) and (3).

MODEL 1: “IN-HOUSE COUNSEL” PUTTING LEGAL SERVICES IN THE PATH OF THE CLIENT

“Imagine what could be achieved if legal aid worked in concert with all the various social service providers to address all facets of a person’s problems — including legal problems — at an early stage before those problems festered and became even more costly. We would have a much greater chance of achieving that ideal outcome — a speedy resolution that stands the test of time so the parties can get on with their lives.” — Legal Services Society’s Submission to the Public Commission on Legal Aid

In an “in-house counsel” model of legal service delivery, family lawyers are paired with community-based agencies including transition houses, women’s centres, and family support centres to supplement the services offered by those agencies with legal advice and representation services for women who need them. In smaller centres, a lawyer might be paired with two (or more) agencies and travel regularly between them; in larger centres with greater demand, a lawyer would work full-time at a given agency.

THE RATIONALE

The primary advantage of the “in-house counsel” model is the integration of legal services with a variety of other services and supports women need. By integrating a lawyer into existing organizations, such as transition houses, different professionals can focus on what they do best: lawyers on identifying and responding to legal issues, and advocates and outreach workers on providing emotional support and connecting women with additional resources. Organizations serving multicultural populations bring expertise on cultural considerations relevant to their clients, and can also provide interpreters to help overcome language barriers. Organizations serving predominantly Aboriginal populations bring expertise on the particular vulnerabilities and needs of their clients, and the exchange of knowledge that would take place between these experts and the lawyers paired with their organizations is one of the key benefits of this model.

The importance of putting legal services “in the path of the client,” rather than restricting the availability of legal services to centralized entry points, has gained considerable currency among access to justice advocates in Canada.⁶⁸ This approach to the delivery of legal services is client-centred and outcome-oriented, and involves looking beyond the particular legal problem a person is dealing with and taking into account the myriad other issues that may be at play. A client-centred perspective means that “we try to look at the problems and the conflicts experienced by families, as well as the laws, services and procedures that our

The primary advantage of the “in-house counsel” model is the integration of legal services with a variety of other services and supports women need.

⁶⁸ See CBA, *Envisioning Equal Justice*, supra note 4.

ESSENTIAL ELEMENTS OF THE “IN-HOUSE COUNSEL” MODEL

- Staff lawyers are funded to provide legal advice and representation services either
 - Exclusively in one women-serving community-based agency (transition house, women’s centre, etc.), or
 - In two (or more) women-serving community-based agencies, with dedicated client intake days at each.
- The positions are publicly funded by money designated for funding family law counsel in community-based organizations. The funding is administered by an agency that is independent of government.
- Organizations are selected from across the province, including both rural locations and urban centres
- Lawyers supplement the services already offered by the organization (support, counselling, interpretation, etc.).
- Clients obtain needed legal services within facilities they are already accessing.
- Advocates already providing services continue to do so, with mutual benefits for lawyers, advocates and clients. Advocates assist clients in preparing for their meetings with the lawyer, including in drafting a timeline of important events.
- A full-time legal assistant has responsibility for for scheduling, conflicts checks and record keeping (files opened, type of service provided, files closed, etc.).
- Agency staff and lawyers together determine how to allocate and prioritize the lawyer’s time, whether there should be financial criteria for service, and what services should be available for free.
- Law student support roles are encouraged through expansion of the CBA-BC and BC Law Society’s REAL initiative.
- Lawyers develop and deliver regular public legal information sessions to the community on family law issues.
- Support structures for lawyers, particularly those in remote communities, are created, including a Senior Mentor, annual conferences, and subsidies for workshops and seminars.

justice institutions offer them, primarily from the family's perspective, not from the perspective of the professionals who work in the system."⁶⁹

Integrating legal services into existing community-based organizations is a key component of a legal service delivery model that puts clients at the centre by taking account of their diverse needs and prioritizing sustainable outcomes. As LSS describes in their submission to the Doust Commission on Legal Aid: "In a fully client-centred approach, the focus is on integrating legal aid services with other social services to contribute to long-term resolutions that benefit clients and communities. This approach promotes a shift toward preventing disputes or resolving them quickly."⁷⁰

Clients who are unlikely to come into contact with established legal service access points because of their geographic or social situations would benefit from the presence of lawyers able to provide legal advice in a variety of settings that they *are* already accessing, including community centres, doctors' offices, hospitals, and even churches, mosques, temples, and synagogues. These trusted service providers already offer essential services to countless individuals. However, many of their clients also have legal problems that simply cannot be addressed by existing staff. Supplementing these community-based organizations with a lawyer would be an enormous boon to their capacity to serve clients.

For vulnerable women, particularly those who have experienced family violence, the need to ensure that legal advice and the possibility of representation are as accessible as possible is particularly acute. Many abused women are additionally marginalized by poverty, language barriers, precarious immigration status, and a lack of autonomy. Their abusers may deny them the freedom to access services independently, and they may lack knowledge of the rights guaranteed to them by Canadian law. The presence of a lawyer in service centres already accessed by these vulnerable women would decrease the stigma and risk involved in seeking out legal advice and assistance, and increase the likelihood that women will become aware of their rights and feel empowered to assert them.

Transition houses and family support centres would be excellent facilities in which to develop this model. As described in Part 2 of this report, these organizations struggle to provide the legal information and support women require, and they are unable to provide legal advice and representation to women who need it. Referrals to duty counsel (where it exists) or the Family LawLINE can help some women access the advice they require, but many women's needs remain unmet.

Even advocates with legal training cannot meet all of the needs of the women who access them. In submissions to the Doust Commission on Legal Aid, Amber Prince, a community legal advocate with the Atira Women's Resource Society, described how overburdened legal advocates have become in the wake of the cuts to legal aid, and how their role as non-lawyers constrains them from being able to offer the kinds of legal supports that vulnerable women require. "Advocates can play a great role in augmenting legal services and providing a supportive role, but we're not a substitute for lawyers and providing legal representation,"

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69 Action Committee of Access to Civil and Family Justice, *Beyond Wise Words*, supra note 4 at 10.

70 LSS Submission to the Public Commission on Legal Aid (1 September 2010) at 17.

she says.⁷¹ Her solution, based on expertise gained over many years spent working as a legal advocate in Vancouver's Downtown Eastside, is to connect salaried lawyers to community-based advocacy services in order to "augment the services of the advocates so that we've got the support and the legal representation, so we're providing all the services that are needed."⁷² She emphasizes the importance of offering legal advice and representation services in places that women trust: women's organizations where women feel safe visiting, and where staff have expertise on issues of violence against women.

Advocates from Battered Women's Support Services (BWSS) also spoke in favour of the "in-house counsel" model in their submissions to the Doust Commission.⁷³ While many of BWSS's clients do access legal aid lawyers, the advocates described some of the challenges abused women face in dealing with a lawyer who lacks understanding of the dynamics of male violence against women. This lack of understanding results in unresolved issues in court, which puts women and children at risk and uses up all the legal aid hours available without addressing all of the issues. They concluded that having a full-time lawyer at organizations that understand the dynamics of domestic violence and can provide a web of interrelated services would be an effective and highly efficient way to meet the needs of vulnerable women.

The Legal Services Society is already funding initiatives that exemplify this client-centred approach to legal service delivery, and that place legal services in the path of clients who might be unlikely to access them otherwise. Sheway and the Fir Square Combined Care Unit at BC Women's Hospital provide services for women dealing with alcohol and drug dependency issues who are also pregnant or caring for infants.⁷⁴ Sheway provides access to drug and alcohol counsellors, community health nurses, pediatricians, a First Nations support worker, and other professionals, as well as a hot food program, advocacy services, and parenting support. Fir Square provides care for substance-using mothers and substance-exposed infants, and is staffed by a multidisciplinary team of doctors, social workers, life skills/parenting counsellors, and addictions counsellors. The program helps women and their babies stabilize and withdraw from substances, and keeps mothers and babies together wherever possible by providing prenatal and post-partum care in the hospital and community. LSS funds a lawyer (who is an Aboriginal woman) to attend these facilities once a week, providing legal advice to vulnerable women on various legal matters, and child protection in particular. The lawyer also has a private practice and accepts legal aid referrals for child protection and family law matters.

Another example of the in-house counsel model is the West Coast Domestic Workers Association. Its objective is to provide legal information, summary advice, and full representation to live-in caregivers, primarily in the areas of immigration, employment law, and family law. The Association also offers workshops to educate live-in caregivers about their rights; provides assistance, support, and counselling to live-in caregivers in need; and advocates for progressive reform of laws and policies related to live-in caregivers.

71 Transcript online: www.publiccommission.org/transcripts/PDF/pc_vancouver_10_07_10.pdf.

72 Ibid.

73 Ibid.

74 See sheway.vcn.bc.ca.

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THE PATH FORWARD

We urge the immediate planning and implementation of a pilot project designed to assess the merits and challenges of placing staff lawyers in community-based agencies across the province. The pilot project must be broad-based and representative of the diversity of BC's communities. For the results to be meaningful, the locations chosen for the pilot must include both major and smaller centres, urban and rural locations, communities with a large proportion of Aboriginal clients, and communities with large immigrant and refugee populations. Agencies serving predominantly (or only) women should be chosen, as it is women's access to justice in family law that is most in crisis in BC. At the end of the pilot project, a comprehensive assessment of its successes and challenges should be taken, necessary adaptations made, and then, provided that the project was successful in meeting its goal of extending family legal services to vulnerable women, the number of communities and agencies served should be expanded.

Under this model, we suggest that the community agency makes the determination of how to prioritize the lawyer's time and how to allocate the lawyer's services amongst its clientele. Staff of community-based organizations know their communities and have the expertise to determine whether there should be financial criteria for service, what services should be available for free, and how many clients can reasonably be managed. Other logistical details such as how often intake is conducted and how responsibilities are divided between existing support staff, advocates, and the lawyer, should also be up to the agency and lawyer to decide.

Collaboration is key to the success of this model. We envision an approach in which an organization's existing advocates and support workers assist with intake and triage, and help women identify their legal issues. The lawyer would also require a full-time legal assistant who would be responsible for scheduling, running conflicts checks and keeping records of the number of files opened, type of service provided, number of files closed, etc. Advocates and support workers will continue to provide invaluable supports for women with family law problems. As they do now (when women are fortunate enough to have a legal aid or private lawyer), advocates and support workers can help women prepare for meetings with their lawyer by assisting them to develop a list of questions and a timeline of important events. Advocates can assist with filling out forms and preparing affidavits, and can also be very helpful during the client's meeting with the lawyer by taking notes and asking clarifying questions. Moreover, they can provide knowledge and insight to the lawyer about the dynamics of family violence and issues of power imbalance present in the family's relationships. We envision a mutually supportive and beneficial relationship between staff lawyers and other support workers at each agency, one in which everyone involved prioritizes the needs of clients and works together to help them achieve just and sustainable outcomes. It is essential that funding for community-based advocates across the province remains sustainable and supports them in this expanded role.

Staff of community-based organizations know their communities and have the expertise to determine whether there should be financial criteria for service, what services should be available for free, and how many clients can reasonably be managed.

Our consultations suggest that there will be no difficulty attracting clients and keeping lawyers busy; representatives from nearly every organization told us about the massive unmet demand for family law services in their community. Nevertheless, we also recommend that in-house staff lawyers develop and deliver regular public legal information sessions to the community, both as a means of raising awareness of their availability and services, and as a way to empower communities with the information they need in order to avoid legal problems, assert their rights, and advocate on their own behalf.

POTENTIAL ROADBLOCKS

The primary disadvantage of the in-house counsel model is likely to be the challenge of ensuring that sufficient legal supports are in place for the staff lawyer. A lawyer working in this context will need administrative support, a system for conflicts checks, and access to legal libraries and online research services. In the shared model, the lawyer will also require a “home base” where files and documents can be safely stored.

A community-based agency’s existing administrative support staff would continue to receive calls and walk-in clients under this model, but would need additional support to ensure that conflicts issues are dealt with. There is excellent guidance online for developing a robust conflicts checking system,⁷⁵ and the Law Society of BC has developed a model conflicts of interest checklist.⁷⁶ As described above, one of the advantages of basing a family law lawyer in a women-serving community-based organization, such as a transition house, is that certain conflicts situations (like the possibility of an abusive ex-spouse seeking advice or representation from the agency) are less likely to arise. However, the Law Society’s rules do not only apply to the conflicts that arise in the context of separating spouses; potential conflicts may also involve clients’ family members or the lawyers’ former clients. An effective conflicts-checking system is essential for any lawyer, no matter where they are based.

Many lawyers also find great benefit in having colleagues present for asking questions, brainstorming strategies, and seeking advice. While listservs facilitated by the Trial Lawyers Association, for example, can help overcome some of this isolation and provide networks for family lawyers working in community-based agencies to tap into, a lack of legal colleagues who are just down the hall could be a challenge for some lawyers, particularly those with less experience and those working in smaller communities.

We expect the position of staff lawyer in a community-based organization — a public service job that will pay substantially less than a lawyer can earn in a private firm — may attract junior lawyers with only moderate experience. It will be essential to build mentorship opportunities and support structures into this model. The Law Foundation currently funds a Community Advocate Support Line staffed by a lawyer who provides legal advice and support to community-based advocates in BC who assist clients with poverty law and family law problems. We recommend expansion of this model and the creation of a Senior Mentor

Representatives from nearly every organization told us about the massive unmet demand for family law services in their community.

75 See CBA Practice Link, Developing a conflict checking system for your law firm, online: www.cba.org/cba/practicelink/cs/conflicts.aspx#using_send; LSUC: www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491184.

76 Online: www.lawsociety.bc.ca/docs/practice/resources/checklist-conflicts.pdf.

SAMPLE JOB DESCRIPTION FOR A STAFF LAWYER AT A COMMUNITY-BASED WOMEN-SERVING ORGANIZATION

[Name of Community-Based Organization] is seeking a full-time staff lawyer to supplement our existing services by providing legal advice, information, and representation services to vulnerable women who access our agency. The focus of your work will be family law, but child protection, immigration, human rights and poverty law issues will also arise from time to time.

ABOUT YOU: You are a passionate feminist lawyer with a deep understanding of the legal issues faced by women experiencing relationship breakdown, women who have experienced violence, and other marginalized groups. You have a strong sense of justice and an understanding of women's inequality in law and the community. You are qualified to practice law in BC and have been called to the bar for at least three years. You have experience providing clients with summary advice, representing clients in court and/or tribunals, and managing a busy caseload. You have excellent leadership and interpersonal skills and work well in a collaborative team environment. You are also self-motivated and capable of working well independently, with minimal supervision. You are sensitive to cultural considerations and comfortable working with diverse populations.

ABOUT THE POSITION: As a staff lawyer in [Name of Community-Based Organization], you will supplement our existing counselling, advocacy and support services with the legal advice and representation services our clients require.

DETAILED BREAKDOWN OF RESPONSIBILITIES:

- Meet with clients to assess their legal needs
- Offer legal information and summary advice to clients
- Provide full representation services to clients on family law matters at the BC Provincial Court, Supreme Court, and Court of Appeal, and potentially other matters in Small Claims Court, the Human Rights Tribunal, Employment and Assistance Appeal Tribunal, and the Immigration and Refugee Board
- Develop and deliver monthly legal education workshops for clients and the broader community on various aspects of family law
- Liaise with existing staff, including advocates and other support staff, to ensure holistic and comprehensive services for vulnerable women with multiple and complex needs
- Supervise law students and volunteers

We are an equal opportunity employer. We encourage applicants from traditionally underrepresented groups including women of colour, Indigenous women, women with disabilities, and queer women to self-identify.

position to provide advice, support and resources to family lawyers working in community-based organizations. We also recommend an annual conference for family lawyers based in community organizations as an opportunity for networking, collaboration, and mutual support, similar to the annual Advocates Conference for legal advocates funded by the Law Foundation. Other family lawyers working in small communities and/or primarily with low-income clients could also be invited to attend.

Involving law students is also an excellent way to promote access to justice in family law, with the added benefit that students could gain exposure to family law and a deeper understanding of women's equality issues in this context. In research conducted by West Coast LEAF in 2009, lack of exposure to family law and a lack of mentoring opportunities were cited by many students as reasons they chose not to consider a career in family law practice.⁷⁷ Opportunities to work alongside knowledgeable family law counsel in community-based organizations would offer students an opportunity to challenge some of their (mis)conceptions about family law practice and find mentorship and support for a future career in this field. When students learn from experienced lawyers and advocates in a supported environment and in the context of providing direct services to women, the bar will ultimately become more sensitive to the particular issues at stake for women, for marginalized people, and for victims of violence.

Involving law students is also an excellent way to promote access to justice in family law, with the added benefit that students could gain exposure to family law and a deeper understanding of women's equality issues in this context.

The Law Society of BC's Rural Education and Access to Lawyers (REAL) initiative, which is designed to attract new lawyers to small, rural BC communities, many of which have a shortage of lawyers or are projected to in the coming years, is an initiative that could be tapped into in this regard. The focus of the REAL program is to place law students in rural law firms for summer work experience and to facilitate the placement of articled students in communities with less than 100,000 people and a greater than 500 person-to-lawyer ratio. Broadened to include community-based agencies in addition to law firms, there is great potential for this program to support greater access to justice for women in family law.

Funding should include providing lawyers with access to legal libraries and online research services. Funds should also be specifically allocated to lawyers for professional development purposes such as attending conferences and seminars. There may also be opportunities to work with the Continuing Legal Education Society, Courthouse Libraries BC, and others to provide lawyers working in community-based agencies with discounted rates on publications and seminars. The Law Society should also consider offering reduced annual practice fees for lawyers working in-house in community-based organizations.

⁷⁷ Zara Suleman, Not with a ten-foot pole: Law students' perceptions of family law practice (West Coast LEAF: January 2009).

MODEL 2: A WOMEN'S FAMILY LAW CLINIC A "ONE-STOP SHOP" FOR WOMEN WITH FAMILY LAW PROBLEMS

A second model supported by our consultation participants is the establishment of a storefront legal clinic serving women with family law problems. This "one-stop shop" would be student-driven and involve BC's three law schools, as well as legal advocates and other supports. While the focus would be the provision of family law services, other areas of law including poverty, immigration and human rights law services would also be available.

THE RATIONALE

The importance of "citizen friendly, accessible places to seek assistance, places that are the point of entry and the hub for referrals to a seamless network of access to justice services and related social and health care services" has been emphasized by numerous access to justice and civil justice reform initiatives over the years.⁷⁸ BC's three Justice Access Centres (JACs), located in Vancouver, Victoria and Nanaimo, are examples of centres where qualifying individuals can access legal advice and assistance with forms, as well as the services of mediators, debt counsellors, and Family Maintenance Enforcement Program workers.⁷⁹

The JACs provide crucial services to many low-income clients, but their reach is limited by strict financial cut-offs for providing legal advice; their location in courthouses (which have limited hours and may be intimidating to approach); and the fact that they are unable to serve the needs of people in rural and remote communities. They may also lack the resources and capacity to provide safe spaces for women who are fleeing abuse, and who need assistance with safety planning and crisis counselling.

While our proposal cannot address all of these gaps, we believe that the establishment of a storefront legal clinic to serve women, with a focus on family law, is a promising model for addressing the crisis of access to justice in family law in British Columbia.

We propose that the Women's Clinic be student-driven, similar to the Law Centre at the University of Victoria and the Indigenous Community Legal Clinic at UBC, and staffed by law students from each of the three law schools in BC. A student-driven clinic, supported by all three of BC's law schools, would be an efficient model that would benefit students, communities, and the justice system as a whole. During our community consultations, we asked participants about their experiences having students assist them in their work, including summer students, co-op students, and other volunteers. While issues of training and capacity were occasionally raised, the vast majority of participants reported positive experiences working with students and saw them as a valuable asset. Following our formal

We believe that the establishment of a storefront legal clinic to serve women, with a focus on family law, is a promising model for addressing the crisis of access to justice in family law in BC.

⁷⁸ Ab Currie, "Legal problems of everyday life" in Rebecca Sanderfur (ed.), *Access to justice, the sociology of crime, law and deviance* (Bingley UK: Emerald Group Publishing, 2009).

⁷⁹ See www.ag.gov.bc.ca/justice-access-centre/vancouver/agencies/index.htm.

round of community consultations, we explored the proposal of a student-driven clinic with a number of key individuals including legal educators and faculty administrators, potential funders, the head of UVic's law student clinic, a former supervising lawyer for UBC's student-run clinics, and numerous advocates and staff at community organizations. We have received widespread support for the idea.

Law students are an incredibly important component of improving access to justice, and the success of clinical programs across the country demonstrates that students who are well-supported and supervised by lawyers can provide timely, efficient and effective assistance to people with legal problems. For example, the UBC clinical program offered family law services for a two-and-a-half year period between 2006–9, with funding from the Law Foundation that allowed them to hire a full-time supervising lawyer and legal assistant with experience in family law. During that time, students opened over 2,000 family law files and represented clients in family court on approximately 200 occasions.⁸⁰ In addition, the program successfully obtained nearly 200 uncontested divorce orders on behalf of clients. While family law can be a complex and difficult area of the law, the supervising family law lawyer felt that students handled their cases skillfully and conscientiously.⁸¹

Outside of BC, Pro Bono Students Canada (PBSC) runs a very successful Family Law Project (FLP) in five provinces, with law students providing information and assistance to hundreds of clients every year.⁸² In Ontario, the first province to develop the program, student volunteers are placed in family law courts and Family Law Information Centres, where they work with Legal Aid Ontario (LAO) duty counsel lawyers and support staff to provide legal information and assist in the preparation of documents. The volunteers improve efficiency in the courtroom by assisting their clients to focus on the relevant legal issues. They also improve the efficiency of their supervising lawyers, who are able to manage a larger volume of clients in need thanks to the support of PBSC volunteers.

One particularly innovative student-driven FLP was established in Fredericton in 2009 after drastic cuts to New Brunswick's Domestic Legal Aid program forced significant reductions in the services provided by mediators and duty counsel lawyers in family courts. PBSC observed a gap in support services and increased waiting periods, creating an especially problematic situation for at-risk women in need of assistance. In response, students from the University of New Brunswick created and launched the project. In partnership with local shelters, PBSC students connect with women who have experienced domestic violence to provide free legal information and assistance navigating the family law system. When a referral form from a shelter comes in, it is assigned to a PBSC student volunteer, who then researches legal information specific to the client's situation. After a supervising lawyer checks the work, the student meets with the client to go over the information. The student who designed the program was honoured with the prestigious Lexpert Zenith Award for her efforts.⁸³

A student-driven clinic, supported by all three of BC's law schools, would be an efficient model that would benefit students, communities, and the justice system as a whole.

80 Doust transcripts, *supra* note 70.

81 Personal communication with the author.

82 See: www.probonostudents.ca/programs/court-and-tribunal/flp-by-province.

83 See www.probonostudents.ca/about-pbosc/alumni-and-volunteer-profiles/kathy-moulton.

ESSENTIAL ELEMENTS OF THE WOMEN'S FAMILY LAW CLINIC MODEL

- The clinic is
 - A “one-stop shop” for women with family law problems, located in a convenient and accessible location in the lower mainland.
 - “Women-focused” to create a safe space for women experiencing violence and other vulnerable women.
 - Student-driven, relying on well-trained and supervised upper year law students from each of BC’s three law schools to deliver legal services. Students would work for the clinic full-time for one semester.
 - Initially centered in the Lower Mainland, with a built in budget for travel and technology to allow for the provision of services in more remote communities.
- There are two supervising lawyers for every 8-10 students, who are charged with reviewing all student work. The supervising lawyers are faculty members at the participating university law school and well-versed in family law and the family justice system, as well as issues of violence against women, unequal power dynamics, and the other areas of law that frequently intersect with family law issues. One of the supervising lawyers is the clinic supervisor; the other will take files that cannot be managed by students, including cases that require appearance in BC Supreme Court.
- A paralegal is employed to assist with the preparation of documents and draft correspondence and other materials, relieving some of the burden from the supervising lawyers.
- Students take two pre-requisite courses: family law and a clinical training course covering effective advocacy, client care, practice management, policy concerns regarding violence against women, and issues in access to justice.
- Students are assigned an advocate mentor, and conduct client intake and triage of legal issues alongside the mentor. The mentor also provides training and practical advice on front-line service delivery and key issues such as the dynamics of family violence.
- Part of the intake process involves an assessment of the client’s ability to contribute financially to the cost of legal services. Everyone has access to up to three hours of free legal services, regardless of income. Beyond this, a sliding scale is used. The test is the extent to which the client is able to pay for services without compromising their ability to pay for other everyday expenses.
- The clinic supervisors facilitate debriefing sessions with students to address the stresses of family practice.
- An advisory committee is established, composed of lawyers and advocates from across the province who have expertise in serving low income clients and expertise in the areas of law the clinic is focused on, as well as appointees from the universities involved.
- The clinic builds partnerships with one or more systemic legal advocacy organizations to inform potential test cases flowing from the clinic.

A clinic model for the delivery of family law services is nothing new; in fact, LSS ran a successful family law clinic in Vancouver until it was closed in 2009 due to funding cuts.

A clinic model for the delivery of family law services is nothing new; in fact, LSS ran a successful family law clinic in Vancouver until it was closed in 2009 due to funding cuts. As LSS notes in its 2012 submissions to government on justice system reform, “community-based advice clinics can increase the number of early resolutions, divert cases from court, and can help people be better prepared for hearings, all of which can translate into time and cost savings for the justice system.”⁸⁴ A preliminary analysis conducted by the Society suggests that legal advice provided to unrepresented litigants through community-based clinics could save about \$220,000 per 1,000 clients, if 20% of them were diverted from court, and the time spent in court by the remainder was reduced by 10%. These savings would offset a significant portion of the cost of implementing the clinic.⁸⁵

Reviews of pilot projects in Ontario also support the proposition that staffed clinics can provide cost-effective access to justice for family law clients, without compromising services. Given the extremely low tariff paid to private lawyers taking legal aid referrals, it is significant that some Ontario family law clinics incurred service costs well below those of the private tariff bar.⁸⁶ Moreover, given the difficulties family law litigants face in finding lawyers to accept legal aid referrals, particularly in rural communities, a clinical model would help meet a significant need. Reliance on students, who would receive education and career development opportunities rather than pay, further improves the potential cost-effectiveness of this clinical model.

Community-based legal clinics are well-positioned to identify laws and policies that are breaking down on the ground and causing harm to vulnerable women, and to advocate for systemic reforms. The Women’s Clinic would build partnerships with one or more systemic legal advocacy organizations that could inform potential test cases flowing from the clinic.

THE PATH FORWARD

The Women’s Clinic would be the only one of its kind in BC, both in its exclusive service for women, and in providing free and low-cost family law representation. While the space would not be “women-only,” it would be “women-focussed,” and would strive to create a safe space for anyone who self-identifies as a woman. This would allow men to work at the clinic and serve women where appropriate. Transgender women would be welcomed. While the clinic would focus on family law, it could also deal with other legal problems such as human rights, immigration, and poverty law issues.

Initially, the clinical program would take 8-10 students per term. The clinical term for students would be full-time for one semester, and students would receive credit for a full semester of work (e.g., 15 credits at UBC). There would be a strong pedagogical focus in the clinical program, and the benefits for students would include the development of legal skills such as interviewing, research and advocacy; connections with the communities they

⁸⁴ Making Justice Work, supra note 37 at 30.

⁸⁵ Ibid at 31.

⁸⁶ Colin Meredith and Peggy Malpass, Evaluation of the Legal Aid Ontario Pilot Staff Family Law Offices – Final Report (Toronto: Legal Aid Ontario, 2002).

will serve (providing learning opportunities about ethics, rule of law, client relationships, etc.); increased engagement with family law; and a deepened understanding of equality and inequality in law and the community. The students would also have access to an assigned advocate mentor and ongoing access to an advisory committee of advocates who would provide practical advice on front-line service delivery as well as key issues such as the dynamics of family violence.

The students would be second or third year law students, and would be required to take two prerequisite courses before their clinical term: family law and a clinical training course covering effective advocacy, client care, practice management, policy concerns regarding violence against women, and issues in access to justice. The course would include access to respected counsel, judges and mediators; training on working with clients with mental health needs; advocacy training; and educational seminars with advocates and service providers on poverty and violence issues faced by women. Building this course into the clinical model as a prerequisite would ensure that the clinic remains functional all year long, without long gaps in service to accommodate an initial training period for students (as is the case at the UVic Law Centre). Moreover, because it is a full-time, full-semester commitment, students can continue to provide services during the exam period, as they will not be sitting any exams themselves.

Depending on the number of students, the clinic would require at least two supervising lawyers; in the case of the pilot project recommended here, this would be the starting point for the initial 8-10 students. All of the advice students provide, as well as any correspondence, forms, or other documents they prepare, would be reviewed and approved by the supervising lawyer. We propose that one of the lawyers act as the managing lawyer, overseeing the program and students' work and providing advice and assistance to students on an ongoing basis. The second supervising lawyer would also provide assistance and advice to students, and would step in on files that cannot be managed by a student, including files that require appearance in BC Supreme Court. Both supervising lawyers would have to be very familiar with family law and the family justice system, as well as issues of violence against women, unequal power dynamics, and the other areas of law that frequently intersect with family law issues. The supervising lawyers would be faculty members at the participating university law schools, and could participate in drafting the curriculum and lecturing in the prerequisite course for students.

In addition to work by law students, the clinic could also benefit from the support of a paralegal, who could assist with the preparation of documents and draft correspondence and other materials. A paralegal would greatly reduce the burden on the supervising lawyers. In June 2012, the Benchers approved rule changes that allow BC paralegals to perform additional duties, as well as new definitions to clarify what they can do. "Designated paralegals," under a lawyer's supervision, may now provide legal advice to clients, and a two-year pilot project begun in January 2013 allows paralegals to appear in family law proceedings at both the provincial and BC Supreme Court level.⁸⁷ In addition, the Amici Curiae Pro Bono Paralegal Program, along with the Ministry of Justice and Access Pro Bono BC, agreed to a pilot pleadings project in January 2014 that will allow volunteer paralegals to assist the

While the clinic would focus on family law, it could also deal with other legal problems such as human rights, immigration, and poverty law issues.

87 Law Society Benchers' Bulletin, 2012 No. 4 Winter.

public in drafting pleadings and petitions without having first received legal advice.⁸⁸ The drafts will still be reviewed by duty counsel before being given to the client. These initiatives should help expand the public's access to competent and affordable legal services, and a paralegal would be a great asset to a women's family law clinic.

To meet the needs of the greatest number of clients, setting up the Women's Clinic in the Lower Mainland seems to make the most sense. However, our consultations identified a huge need for family law legal services in remote communities, and steps would have to be taken to meet this demand. Partnering with BC's three law schools would allow a broader reach than just the Lower Mainland, particularly throughout Vancouver Island and the region around Kamloops. A travel budget allowing students to do outreach to more remote communities, as well as the use of technology (including Skype) to facilitate interviews and provide advice, would be key aspects of the clinic's success.

To meet the needs of the greatest number of clients, setting up the Women's Clinic in the Lower Mainland seems to make the most sense.

It is also essential to build partnerships between law students and existing community-based supports. To this end, students would be matched with a legal advocate from the community, and dedicated intake days would be established when the law student would assist the advocate with intake of files, perhaps once every one to two weeks.

To meet the needs of the greatest number of clients, setting up the Women's Clinic in the Lower Mainland makes the most sense. However, our consultations identified a huge need for family law legal services in remote communities, and steps would have to be taken to meet this demand. Partnering with BC's three law schools would allow a broader reach than just the Lower Mainland, particularly throughout Vancouver Island and the region around Kamloops. To this end, the clinic would also need to facilitate intake from afar by connecting with advocates in Kamloops and Victoria and sending students periodically to these communities to deal with files. A travel budget allowing students to do outreach to more remote communities, as well as the use of technology (including Skype) to facilitate interviews and provide advice, would be key aspects of the clinic's success.

Part of the intake process would involve an assessment of the client's ability to contribute financially to the cost of legal services. Everyone should have access to up to three hours of free legal services from the clinic, regardless of income. Beyond this, we propose the use of a sliding scale to determine whether and to what extent a client will pay for additional services. Each client's ability to pay will be determined on a case-by-case basis in light of their unique circumstances. The test to be applied will be the extent to which the client is able to pay for services without compromising their ability to pay for other everyday expenses.

On intake day, the student and advocate would triage the files together, streaming those files needing legal representation into the clinic. This would reduce duplicate services in the community, support advocates and community organizations who have already built relationships with women needing legal services, use spaces that women feel safe and supported in, create access points for the clinic, and educate students on the reality of women's experiences with the justice system and family law.

⁸⁸ See Canadian Paralegal Institute, Three steps forward for access to legal services (6 December 2013), online: <http://canadianparalegalinstitute.wildapricot.org/Default.aspx?pagelD=135225&mode=PostView&bmi=1453374>.

We also propose setting up an advisory committee composed of lawyers and advocates from the community who have expertise serving low-income clients in the areas of law the clinic focuses on, as well as appointees from the universities involved. These advocates would provide advice and assistance to students, and would be helpful in identifying potential test cases and systemic issues for students to work on. Advocate organizations in the Lower Mainland may include: Atira Women's Resource Centre, Sources Women's Place, YWCA, Vancouver Lower Mainland Multicultural Family Support Services, Battered Women's Support Services, and the Downtown Eastside Women's Centre. Advocates from these and other organizations meet regularly through the Jane Doe advocates network, currently organized by Pivot Legal Society, which would be a good group to liaise with on setting up the advisory and clinic. Advocacy organizations outside the Lower Mainland would also be identified and included in the advisory committee, drawing on relationships that West Coast LEAF has forged with advocates and service providers around the province during our consultations. It is particularly important to ensure representation from Indigenous, rural, and remote communities, as well as service providers working with immigrant and refugee women.

POTENTIAL ROADBLOCKS

Family law cases can be extremely complex, and involve frequent intersections with other areas of law, including wills and estates, trusts, pensions, and property law. The complicated nature of some family law files underlines the need for effective supervision and supervising lawyers well versed in the complexities of family law. Supervising lawyers must be capable of spotting these intersecting issues and areas of law as they arise and recognizing when a case is simply too complicated for a law student to handle.

Family law cases can also take a long time to resolve—much longer than a three month semester. Meticulous record-keeping and seamless file transfers between students will be essential components of a successful student-driven clinic. As with the in-house counsel model, funding for an administrative support person will be necessary. This person will take calls from clients, distribute files to students, and maintain a centralized database of files for the purpose of record-keeping and conflicts checking.

One potential drawback of a student-driven clinic is the restriction on law students from appearing in BC Supreme Court. Law students working in clinical programs may enrol for temporary articling student status,⁸⁹ which gives them a limited right to appear in the Family Division of the BC Provincial Court, and to act on uncontested matters in Chambers at BC Supreme Court.⁹⁰ They may also represent clients in administrative tribunals, such as the Employment and Assistance Appeal Tribunal and the BC Human Rights Tribunal. However, a student enrolled in temporary articles cannot represent clients on contested matters at the BC Supreme Court, which is the only court with the jurisdiction to hear cases under the *Divorce Act* and to make determinations about the division of family property between

The complicated nature of some family law files underlines the need for effective supervision and supervising lawyers well versed in the complexities of family law.

⁸⁹ This is the approach used by the UBC Indigenous Community Legal Clinic.

⁹⁰ Law Society Rule 2-43.

ex-spouses. The second staff lawyer will be charged with those files outside the students' legal capacity.

While it will provide essential and much-needed services, one small clinic located in the Lower Mainland will not be able to meet the scale and depth of need that exists for family legal services across the province, even with a budget for travel and the use of technology to reach other regions. It is essential to conceive of the Women's Clinic as only the beginning, and to look for opportunities to expand the model. A logical next step would be to open Women's Clinics in Victoria and Kamloops, where the UVic and Thompson Rivers law schools are located. It will also be important for clinic staff and administrators to build collaborative relationships with the private bar, particularly the family law bar, also well as private lawyers working in some of the other areas of law that frequently arise in family law cases (wills and estates, pension law, etc.). The greater the collaboration and opportunities for partnership between the clinic and legal aid lawyers, the better. Moreover, students working at the clinic and their supervising lawyer may be able to call on these private bar lawyers for additional advice and support. Private bar lawyers might also be interested in becoming involved in test case litigation identified by the clinic by acting as counsel in cases worked up by students.

If they knew they would be supported by a clinic student and were only required to assist on one or two discrete issues, perhaps more lawyers would be willing to pick up these files.

Many lawyers now offer "unbundled" legal services, meaning that a client does not have to retain the lawyer to deal with every aspect of the client's case, but may seek the lawyer's assistance with just one discrete issue. Private bar lawyers might be willing to take on a particularly complex aspect of a clinic client's case that was beyond the capacity of even the supervising lawyers. Some private bar lawyers would be willing to provide this support for free, although Access Pro Bono, which maintains a roster of lawyers willing to take cases on a pro bono basis, reports great difficulty finding lawyers to take on family files. In 2013, only about a third of the family law cases the organization circulated to its roster were matched with counsel.⁹¹ Reasons reported for these difficulties include the time-consuming and often complex nature of family files, and the fact that many family law lawyers are already doing significant amounts of pro bono work on legal aid files because legal aid does not cover the number of hours needed to prepare cases properly. However, if they knew they would be supported by a clinic student and were only required to assist on one or two discrete issues, perhaps more lawyers would be willing to pick up these files.

However, relying on pro bono lawyers to fill these gaps is not a sustainable solution. For these reasons, we have proposed the creation of the second supervising lawyer position, staffed by an experienced family lawyer, who can step in on particularly difficult files and could also be called on to provide representation for clients in BC Supreme Court, given the restrictions on students doing so. While students would not be able to take BC Supreme Court cases all the way to trial, they can assist with filling out forms, drafting pleadings, providing research support, and crafting legal arguments. The second supervising lawyer can step in to act as counsel at trial, if required.

91 Personal correspondence with the author.

Finally, it is important to acknowledge the fraught and emotionally charged nature of some family law cases, and the existence of lawyers in the family law bar with a reputation for bullying and sharp practice. Many separating spouses are going through one of the most difficult and emotional times of their lives. Some use the court process to maintain power and control over their ex or to continue abusive patterns, while others are simply uncooperative. There is no shortage of horror stories about family litigation: unwarranted applications brought on little or no notice, parties avoiding service, failing to disclose relevant materials, and making unfounded allegations against the opposing party that have nothing to do with the issues the court is called on to decide. This is, unfortunately, the world that students enter into when practicing family law, and it is essential that they come prepared.

The Law Society of BC has written a foundational document for family law practice, which must feature prominently in the training materials for students participating in the Women's Clinic. The Best Practice Guidelines for Lawyers Practising Family Law cautions lawyers not to over-identify with their clients or become unduly influenced by the emotions of the moment, and directs lawyers to avoid actions aimed at hindering, delaying, or bullying an opposing party and to conduct themselves in a manner that is constructive and respectful, and also seeks to minimize conflict.⁹² Moreover, they should encourage their clients to do the same. Students should be familiar with these guidelines, as well as the Law Society's Code of Professional Conduct and its procedures for reporting unethical practice. The second supervising lawyer can also take over files involving particularly difficult opposing counsel or self-represented litigants. The clinic supervisor should provide debriefing sessions with students in order to support them in dealing with the emotional stresses of family law practice.

92 Online: www.lawsociety.bc.ca/docs/practice/resources/guidelines_family.pdf.

CONCLUSION

We know the destination we want to get to: family justice that is accessible to all on a basis of equality, that delivers fair outcomes and is responsive to the unique needs of BC's diverse communities.

British Columbia is way off course when it comes to access to justice in family law. It's time to put family justice back on the map. Family law is the most significant unmet legal need in the province, and access to justice in family law cases is out of reach for the vast majority of British Columbians. Inaccessible and unaffordable legal representation and the lack of legal aid make it all but impossible for many British Columbians to assert their legal rights in family law matters. The rights and protections afforded by law — including those contained in BC's *Family Law Act*, widely heralded as a great improvement to the substantive law that governs family disputes in BC — mean little to people who lack the means to enforce them. Our rights are only meaningful insofar as they can be enforced by individuals in a legal dispute. A lack of access to legal advice and representation may quite literally translate into a lack of access to the benefits of the law itself.

We know the destination we want to get to: family justice that is accessible to all on a basis of equality, that delivers fair outcomes, and is responsive to the unique needs of BC's diverse communities. But our current path is not going to get us there. It's time to stop and seek directions, and to determine an alternate route. This report charts a path forwards toward equal and accessible family justice.

Our two recommendations: the strategic placement of staff lawyers "in house" in community-based women-serving agencies, and the development of a student-driven women's clinic providing free and low-cost family law services to women-identified clients, offer broad visions for family law service delivery models that will make a real difference in women's lives and improve the health of our communities. This report sets out some of the key markers along the way that we believe will result in success on the path forward. There is no time to lose. We must begin the journey immediately.



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West Coast LEAF works to advance women's equality and human rights through legal interventions, law and policy reform, and public legal education in British Columbia.

West Coast LEAF is an incorporated BC non-profit society and federally registered charity. It is governed by an elected Board of Directors and supported by active members, committed volunteers, and a dedicated staff.

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