

5-1-2012

Report of the Access to Legal Services Working Group

Action Committee on Access to Justice in Civil and Family Matters

Follow this and additional works at: <https://digitalcommons.osgoode.yorku.ca/cfcj>



Part of the [Law Commons](#)

Recommended Citation

Action Committee on Access to Justice in Civil and Family Matters, "Report of the Access to Legal Services Working Group" (2012). *Canadian Forum on Civil Justice*. 64.

<https://digitalcommons.osgoode.yorku.ca/cfcj/64>

This Article is brought to you for free and open access by the Research Centres & Programs at Osgoode Digital Commons. It has been accepted for inclusion in Canadian Forum on Civil Justice by an authorized administrator of Osgoode Digital Commons.



Action Committee on Access to
Justice in Civil and Family Matters

Comité d'action sur l'accès à la
justice en matière civile et familiale

Report of the Access to Legal Services Working Group

Prepared by Alison MacPhail

for

Working Group on Access to Legal Services of the
Action Committee on Access to Justice
In Civil and Family Matters

May 2012

*This Working Group Report was approved for the purposes of consultation by
the Action Committee on Access to Civil and Family Justice on June 13, 2012.*

Submitted by:

Mark Benton (Chair)
Melina Buckley
Jeannette Fedorak
Malcolm Heins
Jeff Hirsch
Mary Ellen Hodgins
Daphne Keevil Harrold
Julie Mathews
Shirley Riopelle-Ouellet
Gaylene Schellenberg
David Scott
Beth Symes
Frederica Wilson
Bonny Wong-Fortin

Table of Contents

Acknowledgements.....	1
1. Introduction.....	1
A. Background.....	2
B. The Elements of Access to Justice	4
2. Information.....	5
3. Web-based and Telephone Response and Referral.....	8
A. Web-based advice.....	8
B. Telephone advice.....	9
C. Referrals, either on-line or by telephone	9
4. Changes to current legal service delivery.....	10
A. Expansion of legal service providers	10
B. Unbundling of legal services	11
C. Legal expense insurance.....	12
D. Alternative payment models/legal brokerage	13
5. Emerging approaches.....	14
A. Innovative ways to deliver legal services.....	14
B. On-line dispute resolution	14
6. Pro bono/Low Bono.....	15
7. Publicly funded legal services.....	16
A. Clients at the centre plus empirical research leads to change	17
8. Access to legal assistance in rural and remote communities	18
9. Research.....	19

10. Legal Training.....	20
11. Conclusion.....	20
Summary of Recommendations.....	22

Acknowledgements

The Working Group wishes to thank Dr. Melina Buckley for her paper that summarized the extensive literature identifying the extent of unmet legal need, as well as the strategies that appear most promising to address it. Her paper provided a helpful framework in identifying approaches to improve access to justice and assisted in shaping the discussion and direction of our Working Group.

In addition, we thank Alberta Justice for its financial support to complete the necessary research and report to the National Action Committee.

The Access to Legal Services Working Group consists of senior representatives of the bar and both levels of government, as well as a member representing the public at large, with the goal of encouraging innovation and action in the delivery of legal services that will improve access to justice for the benefit of the Canadian public. This report is intended as a first step to encourage further discussion, engagement and action, but does not necessarily represent a consensus among working group members, nor reflect a formal position of the various organizations represented.

1. Introduction

“By nearly any standard, our current situation falls far short of providing access to the knowledge, resources and services that allow people to deal effectively with civil and family legal matters. There is a mountain of evidence to support this view.”¹

The National Action Committee on Access to Justice in Civil and Family Matters (Action Committee) was established to increase the public’s accessibility to the civil justice system. Its vision of access to justice is:

A society in which the public has the knowledge, resources and services to effectively deal with civil and family law matters:

- *By prevention of disputes and early management of legal issues;*
- *Through negotiation and informal dispute resolution processes, and*
- *Where necessary, through formal dispute resolution by tribunals and courts.*

In this society:

- *Justice services are accessible, responsive and citizen focused;*

¹ The Honourable Thomas A. Cromwell, the Viscount Bennett Memorial Lecture, October 27th, 2011.



- *Services are integrated across justice, health, social and education sectors;*
- *The justice system supports the health, economic and social well-being of all participants;*
- *The public is active and engaged with, understands and has confidence in the justice system and has the knowledge and attitudes needed to enable citizens to proactively prevent and resolve their legal disputes; and*
- *There is respect for justice and the rule of law.*

The Action Committee established Working Groups in four key areas: Court Processes Simplification; Access to Legal Services; Family Law; and Prevention, Triage and Referral. The Working Groups were tasked with identifying in each area: 1) how the vision can be achieved; 2) tools that can assist citizens in dealing with their civil legal needs effectively and expeditiously; and 3) system changes that will increase the public's access to justice.

This report provides an overview of the conclusions and recommendations of the Access to Legal Services Working Group (ALSWG). For the purposes of this report, the ALSWG defined legal services as: *“services to assist people to deal with their legal problems”*.

A. Background

Justice is a fundamental attribute of a functioning society. It structures relationships, provides fairness, resolves problems and prevents disorder.² The Australian Access to Justice Task Force suggests that:

“A good justice system should provide a pathway to fair and equitable outcomes. Where possible, the justice system should focus on resolving disputes without going to court. Where court is necessary the Framework can ensure the courts are accessible, fair, affordable and simple. The traditional adversarial system is no longer relevant or sustainable for most disputes³.”

Societies around the world are grappling with the recognition that people face significant challenges in resolving their legal problems fairly. Civil legal needs arise frequently in the lives of citizens and cause difficulties ranging from minor inconvenience to great personal and financial hardship. Yet only a very small percentage of legal problems are ever brought

² HiiL Trend report – Part 1 2012 (draft) p.13

³ A Strategic Framework for Access to Justice in the Federal Civil Justice System, A guide for future action, Access to Justice Taskforce Attorney-General's Department, Commonwealth of Australia, September 2009.



to the justice system. Most problems are dealt with through informal resolution between the parties. But often, people don't recognize that they have a problem for which there may be a remedy, they don't think they can do anything about it, they don't know how to approach solving it or where to go for assistance, they can't afford or don't think they can afford a lawyer, or they don't think that the legal system will assist them to resolve their dispute.

Even when a problem gets to the justice system, it is often not a court – with the exception of family law. Instead, the matter is often resolved through an adjudication process by one of a variety of administrative tribunals dealing with landlord/tenant, social services, employment, workers compensation, human rights issues, etc. These specialized courts or tribunals can be more responsive to the real situations people face, and seem more able to innovate.

Changes have recently occurred however in these tribunals, as well as in courts which were designed for citizens to participate without counsel – such as small claims court. Citizens are increasingly appearing with counsel. And in a diametrically opposite trend, the courts that were designed for representation by lawyers are seeing an enormous rise in self-representation.

A critical barrier to the public's access to the justice system is the cost of legal services, which can be prohibitive not only for the poor but also for the middle class. In addition, there is a view that the legal system has not changed over time, and that both laws and the system itself are designed for judges and lawyers rather than those the system is meant to serve - the public.

While technological innovations are transforming much of modern life, they appear to be bypassing the justice system. But there are opportunities for justice reform to capitalize on these developments. For example, the widespread access to the internet means that even in remote communities (with few and decreasing exceptions), people can access exactly the same information that is available in large centres.

To find solutions, access to justice needs to be understood from the perspective of the people who experience legal problems. Problems cross the broad spectrum of everyday life – disputes with neighbours or landlords, problems related to employment, consumer issues or debt, family disputes including separation, divorce, custody of children, and division of assets. Other legal problems may involve disputes with government, including access to or termination of benefits, or matters relating to status, such as immigration or refugee status. The first step is to understand how problems are most frequently resolved. Based on that understanding, opportunities can be sought to strengthen people's abilities to find a fair and reasonable solution.



Research shows most conflicts are resolved by direct negotiation between the parties⁴, so improving these interactions is key. The HiiL Trend report suggests that in the vast majority of cases, improving access to justice is a matter of increasing opportunities for the parties to interact, to listen to each other and explore good solutions, to address a third party for a decision if necessary, and to comply with the outcome. Adjudication by third parties is an exceptional, but very important part of the process since the existence of access to third-party adjudication encourages the parties to negotiate to resolve their dispute, and to be fair and realistic.⁵

Not all problems can be resolved without assistance, particularly those situations where there may be a significant power imbalance or where the individuals involved are socially and economically marginalized. It is critical that people have access to a range of inexpensive resources to assist them to resolve their problem or to pursue a remedy in the formal justice system.

B. The Elements of Access to Justice

ALSWG identified four fundamental elements of access to justice:

1. Awareness of rights, entitlements, obligations and responsibilities;
2. Awareness of ways to avoid or prevent legal problems;
3. Ability to effectively participate in negotiations to achieve a just outcome; and
4. Ability to effectively utilize non-court and court dispute resolution systems and procedures.

This report identifies key strategies to improve public awareness and the ability of individuals to participate effectively in the resolution of their legal problems.

Awareness of rights and entitlements allows people to appreciate that their problem may be one for which they may be entitled to a favourable resolution. An understanding of obligations and responsibilities, and of the legal rules that govern, provides a clear and transparent framework within which people can more readily negotiate a fair solution.

Public funding of civil legal aid in Canada is limited. This report contains recommendations to enhance access to information, assistance and services to help people to deal effectively

⁴ HiiL, Trend Report – Part 1 (draft) 2012.

⁵ HiiL Trend Report – Part 1 (draft) 2012, p.5.



with their legal problems by broadening the base of information, service providers and dispute resolution processes made available to the public. It suggests a range of low cost delivery models, and stresses the importance of collaborating with other social services agencies providing services in areas such as health, housing and education to maximize the chance of achieving positive outcomes for clients. These strategies alone cannot address all the challenges but this report does not address the important question of additional funding of civil legal aid.

The recommendations describe a range of options that seem promising, although further analysis is required. Each initiative is recommended because the ALSWG was of the view that it would:

- contribute to increased access to justice for at least a segment of the underserved population; and
- be financially and politically feasible, and provide a significant benefit at little or no cost.

We have not identified which organization or organizations might take the lead to implement the recommendations. The next step is to determine which of these options should be proceeded with and then to develop implementation plans and identify organizations to lead them. Success will require all of the organizations to approach their responsibilities from the perspective of the client, and to work collaboratively with both traditional partners in the justice system, as well as non-traditional partners from the community and health and social service sectors.

2. Information

All four fundamental elements of access to justice identified above require citizens to have accurate, comprehensive information about the law and how to resolve legal problems. Information is essential for people to understand their legal rights and entitlements, and to decide whether to pursue those rights. Information about obligations and responsibilities can assist in preventing disputes based on misunderstandings, while information about what the law provides and applicable legal norms and standards, for example child support guidelines or guidelines for compensation for the termination of employment, assists parties to determine what is fair.

Information can and should go further to explain the steps that can be taken to resolve a problem. It needs to be understandable, focused on common problems, and easy to act upon.



Across Canada there is a multitude of sources of legal information. Law societies, legal aid plans, public legal education and information organizations, law foundations, governments, community agencies and others produce a wide variety of useful justice-related information in a variety of formats.

However, there is little or no coordination of either the content or the way in which the public can access this information. There is considerable duplication, an overwhelming amount of information, and no way for people to know whether they are accessing the best source of information for the problem they are trying to deal with. Coordination at the point at which people first start to look for information about how to address their legal problem is critical. They need information targeted to their particular legal problems, and the related issues that often need to be addressed at the same time. Our strategy should be that whatever the entry point, there is “no wrong number, no wrong door”.

A single portal that serves as a guide or directory linked to the substantive websites in each province or territory could be used by people with legal problems, their friends and family, advocates, volunteers, community organizations, paralegals and lawyers. A central access point would make it much more likely that people who need legal information, and who are not already connected to an organization that can assist with legal information, would be able to find it in a timely way.

Internet based information portals such as *Foolkit* in Australia provide a single starting point to search for legal information. A similarly designed Canadian portal could build on the excellent information sources already available, would have a common name and entry point, but would permit each province and territory to provide their legal and justice information in different ways. Within each jurisdiction there would need to be better coordination of existing legal information as well as the identification of gaps. This could be achieved through coordination by key stakeholders such as government, law foundations, law societies and legal aid plans. Such a coordinated site could build on the excellent models that exist in many Canadian jurisdictions.

The breadth of information available through such a site would be comprehensive, including not only information about the law, but also about how the law is applied in a variety of commonly occurring situations. It would include information on resolving disputes, and what resources are available to assist.

To support clients actually using the information, a variety of interactive tools need to be available. A number of tools are already available to support people through the litigation process. These include interactive forms that help people to gather the information necessary to pursue a claim or an action, on-line document production to permit those who want to litigate to file the necessary court documents, and self help programs that guide someone through all of the necessary steps to bring a matter to court and litigate it. A



similar approach could be taken to support and guide people through the steps necessary for informal resolution.

It is important to recognize that a number of individuals may not be able to benefit from web-based information. People may have low literacy skills, mental health disabilities, or low cognitive functioning such as is associated with FASD, may not speak or read English or French, or may live in remote communities without consistent access to internet or even telephone service. However, innovative work has been done to reduce barriers, including using videos to assist people with low literacy skills, and making information available in multiple languages and in specialized formats for people with disabilities. While these strategies will not be effective for everyone, we know from the legal needs research that people turn to friends, neighbours and others for assistance who, in turn, will use such an information site. Different solutions would be required depending on the nature of the challenge, and some challenges would be more difficult and expensive to address than others. For example, addressing the barriers faced by those in rural and isolated communities may be particularly difficult. However that is changing quickly. Currently 93% of Canadian households with 3 or more people have internet access.

Recommendation 1:

Create a national justice internet portal to simplify and coordinate access to justice information.

A national justice website should be the responsibility of the key stakeholders - government, legal aid plans, law societies, law foundations and public legal education organizations, but should be run and managed independently of all of them. This approach would be flexible enough to permit each province or territory to make its own determination of the most appropriate organization to take the lead. To make it work, the site would need:

- To be easy to use (navigate);
- To include interactive tools to assist users in completing forms, documents, and addressing questions;
- To be properly resourced particularly to keep the site current;
- Expert content;
- Coordinated levels of information;
- Cooperation among all service providers;
- Buy in from all stakeholders;
- Training for those who will use it.



For people to make use of public legal education and information (PLEI), it needs to be accessible to them where and when they need it. While some legal aid plans have been innovative and provided leadership in the provision of PLEI, more needs to be done to reach the target audiences. Legal aid plans, public legal education organizations and other legal information providers require greater capacity to keep pace with current information technologies and to build and sustain their network of diverse community links. In particular, they need to be able to reach communities that face specific barriers in accessing the justice system, such as Aboriginal and immigrant communities.

Recommendation 2:

Publicly funded legal services including public legal education and information services should be integrated to better meet the legal needs of the public and of low income people in particular.

3. Web-based and Telephone Response and Referral

One of the most efficient and effective means of supplementing basic legal information to the public is through telephone and internet-based services. Legal aid plans in BC, Alberta and Ontario all have extensive experience operating telephone information and advice services, supplemented by web-based information delivery. Telephone and internet information services work best when linked with trained intermediaries who can assist users and who can develop links to hard-to-reach communities (for example, Aboriginal communities). These programs are often used to assist in the delivery of poverty law services. They are also a cost-effective way of helping people who do not qualify for legal aid but who cannot afford a lawyer to resolve legal problems. Legal Aid plans with their core funding, high client contact and national networks are well situated to provide this coordination.

A. Web-based advice

Web-based assistance programs offer the public an opportunity to ask a question on-line about their specific legal problem.⁶ Service can be provided in real time, where lawyers or others are on-line and ready to provide immediate assistance. Other programs provide a response within a reasonable period of time, which allows more flexibility for the person providing the service. Assistance can range from the provision of information specific to

⁶ For example, LegalLine is a federal not for profit organization which provides telephone and internet advice by volunteer lawyers. www.legalline.ca.



the legal problem and an appropriate strategy for resolution, to advice tailored to the particular circumstance raised, to a referral to someone for in-person assistance.

Where advice is to be provided on-line, forms can be designed to elicit the key information necessary to get advice on a range of commonly experienced problems. Requiring the seeker to organize their information in advance and by way of a form is very efficient for both the seeker and the advice giver and ensures more accurate legal advice. Moreover, seekers can request email advice 24/7. The advice can be given during the hours that are funded, or the hours that a volunteer is available.

There are some significant advantages to providing advice in writing. Those seeking legal advice are often highly stressed. They may not hear or may mishear the advice given. Written advice can be read and reread. If language is a problem, the written advice can be given to a friend, neighbour, advocate, etc, for further assistance.

B. Telephone advice

A telephone information and referral service should be staffed by people who will understand the problem being described, ideally give summary practical advice about next steps, refer matters to non-legal services, including self-help services, where that seems appropriate, and refer matters to a lawyer for an initial consultation where appropriate.

C. Referrals, either on-line or by telephone

Referral to the appropriate level of service is critical and a key concern is that lack of available legal services will limit access. At the same time, the majority of legal issues people face are everyday problems that require accessible and affordable solutions. Improved access to legal services can be achieved in part by broadening the base of information, service providers and dispute resolution processes available. There are a variety of individuals who are not lawyers or paralegals who can provide sound advice.

While there is a surprising array of both traditional and innovative services available in communities across the country, they may be uncoordinated or duplicative, and the people who could most benefit from them, or the people who are charged with making referrals, may not know they exist and so not access them. The effectiveness of referral services depends on having accurate information about what services are in fact available in communities.

Every jurisdiction in Canada offers one or more forms of free or inexpensive summary advice and in some cases representation. These range from court-based duty counsel programs and lawyer referral services, to programs in hospitals, telephone hotlines and free-standing clinics.



However the Law Society of Upper Canada (LSUC) has found that even a low fee acts as a significant deterrent to seeking legal advice. The law society recently eliminated a very low fee for calling its lawyer referral service and experienced a big increase in calls as a result. Strategies worth exploring include the elimination of charges for lawyer referral services, as well as the possible expansion of the usual 30 minute consultation to 60 minutes, both of which could go some way to increasing access.

Recommendation 3:

Web-based legal information should be supported and supplemented by a variety of interactive services to provide additional information, referral and assistance.

Recommendation 4:

Priority should be given to increasing the availability of telephone and internet-based legal information and advice systems.

4. Changes to current legal service delivery

There is growing recognition of the need to review traditional forms of legal practice, where a single lawyer provides all or most of the service to the client and approaches their work one client at a time. As in every field, clients are looking for more cost effective services. In response, lawyers have identified a variety of ways to make legal services more affordable.

A. Expansion of legal service providers

Assistance with legal problems can come from a variety of sources. Paralegals, law students and articling students, as well as a variety of non-lawyers, particularly those who have specialized expertise, can provide effective assistance with a range of legal matters. There is a vast array of organizations and individuals who provide legal assistance and advice although they are not licensed or regulated by any law society.

Some law societies specifically exempt from regulation a variety of non-lawyer organizations and individuals who provide legal advice. For example, in Ontario, the *Law Society Act* exempts a number of legal service providers, including persons working in other regulated professions and employees or volunteers with trade unions who represent a member before a tribunal. The law society's bylaws exempt a further number of groups including Aboriginal Court Workers, legal clinic or student legal clinic staff and volunteers,



employees of not for profit organizations and persons who act for friends or family, among others. The law society also has broadened the role of paralegals and law students, especially articling students.

The activities and initiatives of the LSUC demonstrate how law societies are increasingly recognizing that non-lawyers have a role to play in assisting people with their legal problems.

B. Unbundling of legal services

Unbundling of legal services is also known as discrete task representation or limited service representation. This approach recognizes that a lawyer's services may not be necessary for every element of a legal matter, and permits clients to retain a lawyer for only the portion of the task that requires specialized legal training. It has always existed in an informal way in the private bar, and while the ALSWG believes that it is not precluded by current rules, rule changes could bring some additional clarity and certainty.

Legal aid plans have been engaged in delivering unbundled services for some time, through the use of duty counsel. Evaluations show that duty counsel services are not only a cost effective way to provide service, but also lead to excellent outcomes for clients.⁷

The ALSWG acknowledges the potential pitfalls associated with unbundling of legal services, in particular the possibility for misunderstandings with the client about the scope of the retainer and the implications of a limited retainer. There is a need for clear communication with the client, with the details of the arrangements and completed work put in writing.

A further complication may arise if the lawyer's retainer includes appearing in court at any point in the process, but the judge does not appreciate or feel bound by the limits of the retainer, and may require counsel to expand their role beyond the agreed on retainer with the client.

Recommendation 5:

Provincial and Territorial Rules of Professional Conduct, Rules of Civil Procedure and related practices should be reviewed to ensure that wherever appropriate they promote the availability of legal services to those of modest means; promote the use of unbundling of legal services as an acceptable and appropriate part of any lawyer's practice; and ensure that the court process supports this form of discrete legal service and that lawyers are not required to act beyond the scope of their retainer.

⁷ <http://www.lss.bc.ca/assets/aboutUs/reports/familyServices/evaluationofFamilyServicesReport.pdf>.



The Federation of Law Societies of Canada is considering amendments to its Model Code of Professional Conduct to address unbundling and at least two law societies have already made changes to the relevant rules in their jurisdictions. Individual jurisdictions will need to determine the scope of any required amendments to their rules of civil procedure. The Action Committee may wish to consider how best to engage the judiciary on the third element of the recommendation.

C. Legal expense insurance

Legal expense insurance may provide a significant benefit to clients, not only by reducing the risk of financially crippling litigation, but perhaps more importantly, by encouraging policy holders to seek advice early enough to find an early and positive resolution to a problem, rather than waiting until it becomes an emergency.

Legal expense insurance is common in many European countries. In the United States, there are a variety of relatively inexpensive plans that provide a range of advisory and summary legal services, including review of documents and letter writing, as well as coverage of a variety of litigation expenses. In Canada, however, individual Canadians do not appear to see legal expense insurance as a worthwhile investment. The exception is Quebec where it is estimated that 10% of the population have some form of legal expense insurance.

There is some limited access to legal expense insurance across Canada. A number of unions and professional associations provide legal insurance to their members for a small annual premium for problems arising out of their profession. Others provide legal service plans that offer a range of benefits. The Canadian Auto Workers union, for example, manages a program of legal assistance for its members for a variety of the most common legal problems, such as family matters, wills, and real estate transactions.

As well, it has been reported that many people may have some legal insurance as part of another larger policy (such as group insurance provided through employment), although they may not be aware of it, and rarely utilize it.

We understand that at one point, as a marketing technique, a number of insurance companies offered a very low or no cost rider to their standard policies covering legal services. However this was viewed by regulators as a form of negative option billing and was disallowed.

While legal expense insurance has the potential to increase access to legal services, plans that restrict the insured's ability to choose their counsel or restrict legal strategies have been criticized by members of the legal community. Some concern has also been expressed about plans that do not cover such high need areas as family law.



Although legal expense insurance is now being offered in Canada for about \$500 a year, it appears that this is still considered too expensive to be useful for more than a narrow segment of middle income Canadians. Innovative approaches could potentially expand its acceptance.

Although some have recommended establishing a publicly funded legal insurance plan given the lack of public interest in legal expense insurance, the ALSWG is not recommending a publicly supported program.

Recommendation 6:

Insurance industry organizations and insurance regulators should be encouraged to promote the distribution and sale of legal expense insurance as part of more routine insurance products.

A communication strategy should be developed to ensure that people who are covered by legal expense insurance are aware of their benefits and take advantage of them.

D. Alternative payment models/legal brokerage

There are a number of factors contributing to the perceived unaffordability of legal assistance. Limited legal aid coverage means that a growing group of people do not meet the financial eligibility limits, yet cannot pay legal fees, especially for major cases. The problem is most severe in the family law area where the issues are often significant and complex and where self representation is often a poor option.

A pilot project run by the Law Society of Manitoba (“LSM”) is tackling the problem of affordability by negotiating lower rates with the family bar for certain middle income clients (those assessed as likely to repay the law society) on the basis that the law society accepts the risk and pays the bill on behalf of the client. The clients then repay the law society over time. The arrangement is attractive to the lawyers involved because it enables them to provide service to clients who have serious legal problems, but who could not pay retainers.

Recommendation 7:

Those institutions involved in the regulation and delivery of legal services, such as legal aid plans, law societies and bar associations, should be encouraged to



collaborate and explore innovative, collaborative approaches to making legal services more affordable, including looking at a variety of payment methods.

5. Emerging approaches

A. Innovative ways to deliver legal services

There is a growing belief that one of the ways to reduce the cost of legal services is to share the cost of services among multiple clients by providing standardized and often computerized assistance. This builds on the recognition that most legal problems are relatively common, and the legal expertise necessary to resolve them could be made widely available on the web.

There is currently some experimentation with innovative ways to deliver routine legal services cost-effectively through web-based programs. The BC website *FiredWithoutCause*,⁸ for example, provides clients with free information about their basic legal rights in a relation to dismissal from employment, as well as information about productive negotiation strategies. For a \$40 fee, clients can get a severance package calculator, and for a further \$20, they can receive customized counter offer letters. Similar information packages could be made available for common civil legal problems, such as drafting a simple will or dealing with a debt problem.

This type of information can be of benefit for those who can afford a modest fee for legal assistance. The development of such on line services could also be funded by government and made generally available, without the need for income testing.

The same approach can be taken by lawyers as they consider how to provide their services more cost effectively to individual clients. Less reliance on face to face contact with clients and more reliance on interactive forms and questionnaires to support legal advice and strategies may assist in reducing the cost of legal services.

B. On-line dispute resolution

While still in its infancy, on-line dispute resolution may provide significant opportunities for easily accessible and inexpensive dispute resolution. The most widely known example is the dispute resolution system offered to users of eBay where unhappy users of the on-line trading system can use an on-line negotiation process where participants can attempt to resolve the dispute. If unhappy with the outcome, an on-line mediation process with a

⁸ www.FiredWithoutCause.com.



human mediator. The process is both quick and inexpensive, and seems to be generally well received by users.

In other jurisdictions there are innovative services such as *themediationroom*⁹ that provide on-line mediators for disputes and *Cybersettle*¹⁰ which is designed to create speedy resolutions to a variety of claims. A variety of on-line dispute resolution systems are under development and being implemented in many jurisdictions and across a variety of subject areas, and offer great promise for increasing accessibility to dispute resolution.

British Columbia recently introduced legislation¹¹ to create a *Civil Resolution Tribunal* to hear some strata property claims and where the parties agree, some small claims court matters. The tribunal will employ a variety of dispute resolution options, including on-line, telephone and mail, with in-person adjudication available only as a last resort and in limited circumstances.

Recommendation 8:

The key justice system stakeholders in each Province and Territory should collaborate to explore and realize the access to justice benefits of web-based legal services and on-line dispute resolution models.

6. Pro bono/Low Bono

Lawyers providing pro bono services are a small but important part of access to justice. A significant amount of pro bono and low bono work is done on an informal basis and there is no way of quantifying the extent of this contribution. However to maximize the benefits of pro bono work to clients, a structured framework is necessary. Appropriate services range from immediate advice through to test case litigation.

While there is a clear role for pro bono work, the ALSWG recognized the limits of the profession's ability to address all needs.

Pro bono programs have found that there is no shortage of lawyers (principally young or entry-level), paralegals and law students willing (and indeed, in some cases, anxious) to provide pro bono service. Similarly, there is no shortage of people who need pro bono

⁹ www.themediationroom.com.

¹⁰ www.cybersettle.com.

¹¹ [Home](#) > [Documents and Proceedings](#) > [4th Session, 39th Parliament](#) > [Bills](#) > [Bill 44](#) — 2012: Civil Resolution Tribunal Act.



help. An effective pro bono service delivery model will enable a person acting for herself to secure advice on what to do and how to do it, and link her with a pro bono lawyer, paralegal or student to provide appropriate help as necessary.

A number of provinces have organized pro bono programs. The Law Help model in Ontario¹² is a good example of an effective program that enables people to find pro bono help while at the same time enabling lawyers, paralegals and law students to identify pro bono opportunities. The model includes a triage process, provides clients with self-help process information and legal advice, and provides access to a pro bono lawyer to represent them on some accepted and appropriate basis (i.e. full service or limited service, viz. unbundling).

The model is adaptable to any type of civil dispute. It is also adaptable to provide service at low cost to clients who can pay a modest fee through the use of unbundled services by maintaining a register of lawyers willing to serve on this basis.

The Legal Help Centre in Manitoba¹³ is a not for profit organization set up by community volunteers working with law faculty and students. The Centre provides public legal education and information through its website, workshops on representing yourself that are open to all, and a drop-in clinic staffed with volunteers for those with a family income of less than \$50,000.

Recommendation 9:

Services that provide low cost or free dispute resolution services should be developed in each Canadian province and territory.

7. Publicly funded legal services

Within their current funding, legal aid plans across Canada continue to focus on delivering maximum benefit to clients. However there is not adequate funding to deliver the full range of necessary legal aid services. Criminal legal aid takes priority and as a result, civil and family legal aid is disadvantaged.

¹² www.pblo.org.

¹³ <http://legalhelpcentre.ca>.



As the Canadian Bar Association notes in its June 2010 report, *Moving Forward on Legal Aid*,¹⁴ “most Canadian legal aid organizations provide a full spectrum of services on a continuum from providing legal information to advice, assistance and representation.”

Public education programs, self-help information and engagement with community advocates are now as fundamental to legal aid as representation by a lawyer.¹⁵ Legal advice and representation have been and will remain the backbone of any legal aid program, but it is now recognized that they are not the sole method of assisting clients.

More importantly, however, legal aid programs no longer look at a client’s legal problem in isolation and are beginning to work closely with other social service agencies to address underlying issues, such as poverty, homelessness or addiction, that have an impact on a client’s legal problems and on the justice system. The Legal Aid Ontario Clinic program is one example of this approach. Another is the Fir Square Combined Care Unit at BC Women’s Hospital that includes legal aid in its services. Most legal aid plans pursue this approach to a greater or lesser extent depending on resources and some like Alberta, Ontario and BC have developed strategic plans that target client outcomes as a key strategy.

This shift from court-centred legal aid to client-centred legal aid is a fundamental one and it is reshaping the notion of access to justice to one that is about the resolution of people’s legal problems rather than access to formal dispute resolution processes.

A. Clients at the centre plus empirical research leads to change

From the 1970s through to the 1990s, legal needs empirical research began to examine legal problems from the point of view of the people who experience them. *Moving Forward on Legal Aid* provides an excellent summary of that research. In Canada, research findings have been consistent with those in the US and the UK.¹⁶

These findings are leading many legal aid funders and administrators to the conclusion that legal aid can be more efficient and more effective, and can make better use of scarce fiscal resources, by focusing on outcomes for clients and not just court process.

¹⁴ The Canadian Bar Association. (2010). *Moving Forward on Legal Aid*. Retrieved from <http://www.cba.org/CBA/Advocacy/legalAid/>.

¹⁵ For a discussion of LSS’s experience with public legal education up to 2007, see: Legal Services Society. (2007). *PLE Review*. Retrieved from http://www.lss.bc.ca/assets/aboutUs/reports/PLEI/pleReview_en.pdf. For a discussion of public legal education in the UK see: *Developing Capable Citizens: The Role of Public Legal Education*. (2007). <http://www.pleas.org.uk/uploads/PLEAS%20Task%20Force%20Report.pdf>.

¹⁶ Currie, A. (2009). *Legal Problems of Everyday Life*. In Rebecca Sanderfur, (Ed.), *Access to Justice, The Sociology of Crime, Law and Deviance*. Bingley, UK: Emerald Group Publishing.



Many problems people experience have both a legal and a non-legal dimension, each of which needs to be addressed. A number of innovative legal aid services provide comprehensive, integrated, holistic, multidisciplinary services. These approaches often involve collaboration with health and social service agencies, may be co-located and tend to be outcome focused. Several traditional legal aid approaches continue to offer significant promise such as the use of a team approach, including community advocates/paralegals, lawyers, social services and health care. These models are commonly found in mental health settings (such as CLAS in Vancouver) and the clinic model in Ontario.

As well, particularly vulnerable and needy populations require specialized strategies; for example many legal aid plans in Canada have specific strategies to address the legal needs of aboriginal communities, homeless persons, immigrants and refugees, and women and children. There is a need for a consistent approach to outcome evaluations in order to create a strong foundation for effective service in this area.

Integrated (holistic) service delivery will require breaking down silos between government ministries and agencies, additional funding, and innovative approaches to funding across ministries and agencies. It is particularly important for federal and provincial governments to continue to pursue the development of integrated justice, health and social services by ensuring there is a coordinated budgeting process and communications network that provides sufficient resources in all ministries to support these innovations. The economic costs that result from not addressing the health and social problems people face are now well documented.¹⁷

Recommendation 10:

Wherever appropriate, publicly funded legal services should be coordinated with social services and health care to better meet the needs of low income Canadians.

8. Access to legal assistance in rural and remote communities

The lack of lawyers in remote communities is a growing problem. The expected increase in the number of Canadian law graduates as well as the growing number of foreign trained but Canadian accredited lawyers may mitigate this trend. However new graduates as well

¹⁷ Pleasance, Pascoe, Causes of Action: Civil Law and Social Justice, <http://www.lawforlife.org.uk/data/files/lsrc-causes-of-action-2004-186.pdf>.



as recent immigrants tend to stay or move to larger urban centres rather than rural communities.

The Canadian Bar Association BC Branch and the Law Foundation of BC are running an extremely successful Rural Education and Access to Lawyers Initiative (REAL) that assists law firms and practitioners in small communities and rural areas in the province to recruit, hire and retain new lawyers. The key components of REAL are:

- funding for second year summer student placements in rural and small communities throughout BC
- promotional support to assist with the marketing of regions to law students and new lawyers
- professional support from the Regional Legal Careers Officer for students who are interested in practicing in rural and small communities
- professional support from the Regional Legal Career Officer to assist law firms and practitioners with the recruitment, hiring and retention of students and new lawyers in rural and small communities.

The Law Society of Manitoba has begun a joint initiative with the Law Foundation of Manitoba and the University of Manitoba to encourage students from underserved communities to apply to law school, and to support students from those communities through tuition assistance and non-repayable loans for their legal education if they return to their communities to practice. The Manitoba Bar Association is expected to find appropriate summer employment for these students in their home communities to mitigate the risk that students will be head hunted by Winnipeg firms through offers of summer employment and will choose to remain in Winnipeg as a result.

Recommendation 11:

Key justice stakeholders should collaborate to identify and implement strategies to encourage lawyers to practice in rural or remote communities.

9. Research

Although there is now significant research in the area of legal needs and the ways people currently deal with legal problems, more work needs to be done, particularly in the area of assessing client outcomes and the effectiveness of different service provision strategies. Questions include: How can we best measure and demonstrate the success of legal



services? Who benefits from each of the strategies? What cost benefits result from intervention at different points in the legal continuum?

Legal aid plans and governments are well placed to collaborate on national initiatives that evaluate the effectiveness and efficiency in the provision of publicly funded legal services, research best practices, and document the methods that best address client need.

Other justice system stakeholders should be encouraged to collect the data needed to measure the impact of access to justice initiatives in Canada.

Recommendation 12:

All justice stakeholders and the academic community should become engaged in evidence-based research that will support real improvements to access to justice in Canada.

10. Legal Training

Law school education needs to reflect the changing world of legal services and the reality that lawyers of the future may have to practice law in entirely different ways. There needs to be an openness to different approaches to justice, recognizing strengths of different legal systems, with a focus on dispute resolution and innovative ways of delivering legal services to groups of clients rather than the client by client model that is still most common today.

Recommendation 13:

Key justice system stakeholders should collaborate with legal educators to promote an awareness of access to justice issues and to identify the types of legal education that will best develop the critical legal skills to address future access to justice needs.

11. Conclusion

The recommendations in this report are focused on maximizing people's access to legal information, advice and assistance, largely through adjustments to the way services are currently delivered. The recommendations address the need to create increased flexibility in the way legal services are provided. They stress the need to focus on good outcomes for clients. There is an emphasis on coordination and streamlining of services and information to facilitate public understanding of what services are available. While the first



recommendation, the creation of a single information portal, would benefit from additional funding, much can be achieved through the coordination of existing resources.

In this report we have identified possible solutions that we suggest will require relatively little if any financial investment, but will each expand access to justice for people with legal problems to resolve. There is no one solution to access to justice, nor is there an end in sight to the access crisis. It is after all an ongoing process, one that involves learning what works. There is no final conclusion or resolution or one right answer, but we believe that acting on the above recommendations will bring us closer to the vision articulated at the beginning of this report.



Summary of Recommendations

Recommendation 1:

Create a national justice internet portal to simplify and coordinate access to justice information.

Recommendation 2:

Publicly funded legal services including public legal education and information services should be integrated to better meet the legal needs of the public and of low income people in particular.

Recommendation 3:

Web-based legal information should be supported and supplemented by a variety of interactive services to provide additional information, referral and assistance.

Recommendation 4:

Priority should be given to increasing the availability of telephone and internet-based legal information and advice systems.

Recommendation 5:

Provincial and Territorial Rules of Professional Conduct, Rules of Civil Procedure and related practices should be reviewed to ensure that wherever appropriate they promote the availability of legal services to those of modest means; promote the use of unbundling of legal services as an acceptable and appropriate part of any lawyer's practice; and, ensure that the court process supports this form of discrete legal service and that lawyers are not required to act beyond the scope of their retainer.



Recommendation 6:

Insurance industry organizations and insurance regulators should be encouraged to promote the distribution and sale of legal expense insurance as part of more routine insurance products. A communication strategy should be developed to ensure that people who are covered by legal expense insurance are aware of their benefits and take advantage of them.

Recommendation 7:

Those institutions involved in the regulation and delivery of legal services, such as legal aid plans, law societies and bar associations, should be encouraged to collaborate and explore innovative, collaborative approaches to making legal services more affordable, including looking at a variety of payment methods.

Recommendation 8:

The key justice system stakeholders in each Province and Territory should collaborate to explore and realize the access to justice benefits of web-based legal services and on-line dispute resolution models.

Recommendation 9:

Services that provide low cost or free dispute resolution services should be developed in each Canadian province and territory.

Recommendation 10:

Wherever appropriate, publicly funded legal services should be coordinated with social services and health care to better meet the needs of low income Canadians.

Recommendation 11:

Key justice stakeholders should collaborate to identify and implement strategies to encourage lawyers to practice in rural or remote communities.



Recommendation 12:

All justice stakeholders and the academic community should become engaged in evidence-based research that will support real improvements to access to justice in Canada.

Recommendation 13:

Key justice system stakeholders should collaborate with legal educators to promote an awareness of access to justice issues and to identify the types of legal education that will best develop the critical legal skills to address future access to justice needs.

