



Executive Office

January 11, 2010

Re: Legal Services Funding and Withdrawal of Services by the Kamloops Bar

I write in response to Graham Kay's letter of January 6, 2010 which was copied to a number of our justice system partners, and to clarify some of the points made in that letter.

As Chair of the Legal Services Society ("LSS") Board, and a long-time legal aid lawyer myself, I understand Mr. Kay's frustration with the current state of legal aid funding and the decision to replace five of the society's seven regional offices with local agents. This decision was not made lightly. Rather, it was part of a larger decision by the board that the society should devote as much of its revenue as possible to client services and to helping low-income British Columbians with their legal problems.

By reallocating the money spent on the regional centres, the Legal Services Society will be able to restore many of the services Mr. Kay mentions as having been previously cut. The society announced in a December 16, 2009 media release that the following services will be introduced during 2010:

- **Extended family services:** Restoring services for clients who qualify for legal aid but require assistance beyond the standard legal aid referral to ensure their safety or the safety of their children.
- **Family duty counsel enhancements:** New programs to provide legal advice between court appearances and outside the court setting, for example at Family Justice Centres, community agencies, friendship centres, and in partnership with other service providers.
- **Family services for related civil issues:** Restoring funding for clients who have legal issues, such foreclosure, bankruptcy, housing and debt, that are related to a family law problem.
- **Family law website:** Funding will allow LSS to continue to offer up-to-date information and self-help materials on Canada's leading family law website familylaw.lss.bc.ca.
- **Family law resolution support:** New funding for lawyers to provide information to LSS regarding resolution of a client's family law issues. This will assist LSS in budget forecasting.
- **Community engagement:** Funding to continue public legal education initiatives around BC and in Aboriginal communities.



- **Initiatives for Aboriginal services:** Continuing funding for programs to ensure legal aid services are accessible and relevant to First Nations communities throughout BC.
- **Criminal duty counsel expansion:** New assistance for persons charged with minor criminal offences and additional support for lawyers who provide duty counsel services.

The society's regional centres all provide excellent services to legal aid clients. The local agent model does, however, work in 22 other locations throughout BC and has done so for the past eight years (it is a modest variation on the Area Director model that was in place for many years prior to that). The local agent model will not change the way in which cases are referred to lawyers or the way duty counsel work is assigned. At present, LSS provides services to the public through a combination of local agents and regional centres in 29 locations across the province. Once we move to local agents we will have 31 locations because we will be replacing the Surrey regional centre with more than one local agent. We also have the province-wide, toll-free call centre.

Mr. Kay is incorrect in his assertions that local agents are only successful in smaller communities and that they take longer to make referrals. In the 2008-2009 fiscal year, the local agent for Abbotsford and Chilliwack processed more applications than the Kamloops regional centre (during that same time frame, the call centre handled 20 per cent of all applications). In addition, statistics for the five fiscal years ending in 2007 (the most recent statistics I have readily available) show that the average referral time for criminal cases in Abbotsford was 6.2 days compared to 8.1 in Kamloops and 3.9 days compared to 11.7 for family cases. A better comparison might be with the call centre which handles referrals province-wide. The average time for a criminal referral was 3.8 days while the time for family referrals was exactly the same as Kamloops. The primary factor in referral time is the willingness of lawyers in a particular community to take the work, not the office that takes the application. I also note that the average wait time to get through to the call centre from April to December 2009 was less than six minutes.

During the past eight years, neither individual lawyers nor any of the lawyers' professional organizations have raised concerns about the local agent service delivery model. This past summer the society's Executive Director, Mark Benton, QC, sent a letter to the chairs of all CBA-BC family and criminal law sections soliciting their advice on managing legal aid costs. He received no replies. A similar message was sent to the tariff bar through the society's newsletter (Legal Aid Fax) and received only a few replies. Complaints about individual local agents have been rare and have been dealt with according to LSS policies.

Mr. Benton met with a portion of the Kamloops legal aid bar on December 11, 2009 at a meeting that Mr. Kay and David Dundee organized. The lawyers who attended the meeting expressed a broad and diverse range of concerns about legal aid funding as well as number of concerns about the appointment of a local agent in Kamloops. I believe many of the concerns about the use of local agents are addressed in this letter especially given that the use of a local agent should not impact lawyers' practices. Mr. Benton offered to meet with them again, but they have not yet provided him with a date for that meeting.



While some Kamloops lawyers have decided not to sign up for duty counsel work in the future, not all have done so. LSS has a statutory mandate to provide legal aid and where there are gaps in the Kamloops duty counsel roster, it will fill those gaps first with local lawyers and then with lawyers from out of town, if necessary, so as to ensure the people who need legal aid are not disadvantaged. It is my understanding that Kamloops lawyers are not refusing legal aid cases referred to them.

Mr. Kay's correspondence declares a lack of confidence in the LSS board of directors. In doing so he not only misapprehends the role of the board at LSS but appears to fault them for having made decisions that give priority to services over administrative costs. The board of directors has specific legislated responsibilities and board members are fiduciaries with a duty to the society and its statutory objectives. Those responsibilities relate to the governance of the society; advocacy for better access to justice is an adjunct to that responsibility not an objective in itself.

There can be no denying that everyone would like to see a fully funded legal aid program that offers the range of services necessary to meet the legal needs of those who cannot afford to hire a lawyer. For the past five years, a key board priority has been to engage the Ministry of Attorney General, as well as government broadly, on the issue of funding. This will continue to be a board priority in coming years. I can assure you that the society and my fellow board members have raised and continue to raise the issue of funding with both the provincial and federal governments. In light of current funding, however, the board's position is that available revenues should be devoted to services. In our experience those services are best delivered by hard-working and dedicated lawyers like Mr. Kay and his colleagues in Kamloops and I would like to see them continue helping those in need by once again signing up for duty counsel work.

More information about the Legal Services Society is available from its website www.lss.bc.ca . See, in particular, the "Legal Aid Facts" and the "News Releases" sections of the "Media" page for a good introduction to the current situation at LSS.

Yours truly,

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Chair – LSS Board of Directors