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Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

Tel: (604) 601-6000
Fax: (604) 682-0914
www.lss.bc.ca

**THE CASE FOR LEGAL AID – SHOULD WE CARE?
Mayland McKimm, QC, Chair, The Legal Services Society (BC)
Speech to the Canadian Association of Chiefs of Police
April 20, 2010, Toronto**

INTRODUCTION

As chair of the legal aid program in BC, I am naturally apprehensive about appearing before a roomful of police officers.

But when I see that one of the objectives of this conference is the furtherance of comprehensive, coordinated, and timely criminal justice reform, I am indeed honoured to be part of this discussion.

I am honoured because while we may have differences of opinion about aspects of the criminal justice system or the guilt of an accused, we also have many common goals.

I want to share with you today what I think are the best ways legal aid and law enforcement can advance those common goals. And by doing that, I hope to answer the question posed by this session – Why should you care about legal aid?

COMMON GOALS

So, what are those common goals?

I think everyone agrees that in any legal dispute, the ideal outcome is a speedy resolution that stands the test of time so the parties can get on with their lives.

In business litigation or a divorce case, this concept is easy to understand. The parties want a justice system that is faster, better and cheaper.

And I think everyone will agree that in the criminal context, the ideal outcome is conceptually the same – a speedy resolution that deals with the offender in an appropriate manner and allows all the parties – victim, offender, police, judges and lawyers – to get on with their lives.

If we take that ideal outcome as our common goal, what do we have to do to achieve it?

The answer is this – we have to have a criminal justice system that focuses on the needs of the client and not just the court process.

Over the past several years, I have noticed an increasing convergence of opinion amongst the police, prosecutors, judges, and defence counsel, amongst academics and governments, that the criminal justice system must focus on client-centred outcomes if it is to achieve its over-arching societal goals of addressing crime effectively and efficiently.

This is a considerable distance from where we were 25 years ago when I first began practising as a criminal defence counsel.

In those days, a principled and strong adversarial process was seen as the way to facilitate criminal justice. But in taking that approach, we turned process into an outcome and blinded ourselves to what the real outcome should be.

I'm not talking about being soft on crime, or that defence counsel should run the justice system. I'm talking about a criminal justice system that is proportional to the offence. I'm talking about a justice system that looks not just at the offence, but also at the underlying causes of the offence. Underlying causes such as homelessness, poverty, or addiction that must be treated if we ever hope to achieve that ideal outcome of a fast and final resolution.

A 2003 report prepared by the Department of Justice described the conventional approach to criminal justice as assuming that the client's legal needs – his defence, which is most often provided by legal aid – flow almost exclusively from the arrest, the offence, and the court process.

As a result, the legal process becomes more important than the outcome.

From this point of view, legal aid can meet the client's needs simply by providing the person with legal advice or representation.

This approach tends to see the criminal matter as an isolated legal issue disconnected from the disadvantages and disabilities of the accused that may be relevant to the offence.

On the other hand, says the DOJ report, the client-centred perspective takes the view that it is important to deal with the legal issues in a way that takes into

account the disabilities or disadvantages of the offender that are related to the criminal behaviour.

A client-centred approach employs reparative and preventative strategies that address the individual, or systemic factors that are linked to the offence.

The DOJ report also notes that the two approaches are not mutually exclusive.

The need for criminal legal aid is driven in the first instance by the criminal justice process; by the arrest, the charge, and the court process.

The client-centred approach merely adds a new dimension to the court-centred approach but may require a change in delivery methods to deal with the special needs of legal aid clients.

It does not replace the services a lawyer traditionally provides. Rather, it suggests a number of client characteristics that should be taken into account in order to provide an outcome that has stronger preventative or reparative aspects for that particular individual.

In BC, we are starting to see this approach take root.

The Attorney General's service plan says the criminal justice system brings offenders to justice with resolutions focused on reducing and tackling the causes of crime.

The Attorney General also has some projects underway that build on this model such as the Vancouver Downtown Community Court – which integrates the criminal justice system with social services – and the Nanaimo Justice Access Centre – which combines civil advice programs with social services.

These are very much first-generation projects and it is clear that they must become faster, better, and cheaper if they are to be truly effective, but there is research and evaluation in progress. Other projects include diversion programs, aboriginal courts, drug courts and the like. Several provinces have similar projects on the go.

Legal aid in BC is, like other Canadian legal aid plans, facing difficult times. We use a judicare model which means services are provided by private lawyers who are paid according to a tariff. While our funding has remained relatively stable for the past few years, demand and costs have risen. As a result we have laid off a significant number of staff so that we can put more money into services rather than operations.

WHY SHOULD YOU CARE ABOUT LEGAL AID?

This brings me to the question posed by this panel discussion – why should you, a roomful of Canadian chiefs of police – care about legal aid?

You should care because if you want to achieve that ideal outcome of timely and lasting resolutions, legal aid has to be a part of it.

Legal advice and representation are of pre-eminent importance in ensuring both fairness in, and proper functioning of, the justice system.

But imagine what could be achieved if legal aid worked in concert with all the various social services providers to address all facets of a person's problems – including legal problems – at an early stage before those problems fester and become even more costly. We would have a much greater chance of achieving the ideal outcome I just described – a speedy resolution that stands the test of time so the parties can get on with their lives.

This is best accomplished when legal aid and multiple government ministries, integrate their services and make them available early in the legal process or, better still, before the legal process is even needed.

Let me give you some examples from my 25 years as a lawyer...

HOW WE CAN WORK TOGETHER TO ACHIEVE OUR COMMON GOALS

This brings me to my final comments – how we can work together to achieve our common goals.

I recommend you develop your own vision for an outcomes-based criminal justice system that integrates legal aid with other social services. Your law enforcement perspective will bring an unique point of view to the debate.

Legal aid and law enforcement both want an effective justice system. Let's work together to define what that means.

You also have valuable experience, and perhaps a level of frustration, working with health care, mental health, housing, and other social services. Do not underestimate how valuable this experience is to others. Legal aid along with everyone else in the court system can learn a lot from you about making social services part of justice services.

Then I suggest you work collaboratively with Canadian legal aid plans to develop common messages about the importance of legal aid – messages that can be taken to government, the judiciary, and the public as we work toward our common goal of comprehensive, coordinated, and timely criminal justice reform.

The Canadian public does not understand what legal aid can be – they do not understand the social utility it can have. They see it only as part of the court process.

The reason for this is that too many people are mired in a vision of legal aid from the 1970s when lawyers in sandals challenged “the establishment” or “the man.”

Today we need leadership from everyone in the justice system – leadership that will engage the public and the politicians in a dialogue about what legal aid can be, not what it was.

I spoke to the Canadian Bar Association about this issue on Saturday and will be speaking to the BC Law Society on Friday.

I invite you, the chiefs of police, to be part of that leadership and to join the debate about the future of legal aid.