

Address of the Honourable Chief Justice Lance Finch

2011 Pro Bono Appreciation Breakfast

March 31, 2011

1. Introduction

[1] When I last addressed the Pro Bono Appreciation Breakfast in 2006, I expressed my gratitude to the lawyers of British Columbia who give so generously of their time and professional expertise to help those who would not otherwise have access to the advice and advocacy of a legally trained person.

[2] The Legal Profession's Canons of Ethics say:

All lawyers should bear in mind that they can maintain the high tradition of the profession by steadfastly adhering to the time honoured virtues of probity, integrity, honesty and dignity.

[3] To those virtues one can safely add generosity, as evidenced by all that you have done and continue to do in assisting those in need.

[4] In 2006, I recognized the work of what was then Access Justice and Pro Bono BC as well as other organizations such as the Salvation Army, and the contribution made by the Law Students' Legal Advice Program (LSLAP).

[5] Today, I once again applaud the wonderful record of contribution and achievement spearheaded by these organizations. They have continued to develop and expand their services in new and unique ways in an attempt to fill the gap left by reductions in funding to the Legal Services Society.

[6] The issue of legal aid is increasingly gathering media attention – and deservedly so. Despite the best efforts of pro bono organizations, there continues to be an increase in the number of self-represented litigants before the courts of British Columbia.

[7] The desperation and frustration felt by many of these litigants was highlighted in the recent report by the Public Commission on Legal Aid authored by Leonard Doust, Q.C. The report provides some unexpected findings. For instance, in consulting with rural communities, the Commission discovered that, for many individuals, the biggest barrier to accessing justice is often just having the necessary means of getting to the Courthouse. Once there, like all self-represented litigants, the individual is faced with what Mr. Doust called the “unbearable stress and hopelessness” of being overwhelmed and unable to understand the complexity of the system.

[8] The sad truth, as noted by Mr. Doust, is that between 1996 and 2006 “...no other province or territory in Canada, other than British Columbia, has made such

drastic reductions to its legal aid budget while coping with the same fiscal environment. In fact, Ontario has managed to increase its contribution to legal aid during the same lean economic years”.

[9] It is no surprise then that this past year Access Pro Bono has seen a 15% increase in initial client calls, with a 10% overall increase in clients served by its programs and projects. A similar increase in demand is being seen in other legal information and advice clinics, including the Salvation Army.

[10] These demands will no doubt increase further if current funding reductions continue and closures of services such as the Law Students' Legal Advice Family Law Program and LawLINE continue.

2. Experience in the Court of Appeal

[11] Unfortunately, the news concerning unrepresented litigants is not any better in the Court of Appeal.

[12] Despite the increased provision of pro bono services, the number of self-represented litigants remains high. In the Court of Appeal, according to 2010 statistics, more than a quarter of civil appeals filed (28%) and 20% of criminal appeals filed are by self-represented litigants. When I last spoke at this breakfast in 2006, the numbers at that time were slightly lower: 18% of new criminal appeals and 23% of new civil appeals involved a self-represented litigant.

[13] There has been an uptick in self-represented filings in 2010. There was a 6% increase in civil appeals filed by self-represented litigants as against 2009 (22% to 28%) and a 6% (14% to 20%) increase in criminal appeals involving self-represented litigants as against 2009.

[14] Although not all new filings end up with a court hearing, the statistics for appeals heard do not provide any more comfort. In 2010, out of 289 civil appeals disposed of, 61 (21%) involved a self-represented litigant, a similar increase of exactly 6% from the previous year. On the criminal side, out of 189 criminal appeals heard in 2010, 17 (9%) were by self-represented litigants, a 3% increase from the previous year.

[15] For the year 2010, 47 self-represented litigants received pro bono advice with respect to an appeal. That number includes those who filed a notice of appeal or notice of application for leave to appeal, and those who were advised not to proceed. Twenty-one persons either received full representation on their appeal, or received assistance from pro bono duty counsel in chambers.

[16] In the Court of Appeal, the expansion of the Civil Chambers Duty Counsel Project from one to two days per week has been a welcome change. It is also reassuring that younger lawyers are well represented in the Access Pro Bono Roster Program, and Civil Chambers Duty Counsel Program. I have been led to believe that the Civil Chambers Duty Counsel Program appeals to many younger lawyers for

the rare advocacy experience it provides. The Court of Appeal encourages the participation of younger lawyers in these programs and their appearance before the Court. I hope that the idealism of these younger lawyers is contagious, and that they are receiving appropriate mentorship.

3. New Initiatives

[17] Although the statistics involving self-represented litigants are often disheartening, legal aid organizations continue to provide significant assistance to address the most immediate needs of British Columbians.

[18] Since the merger between Access Justice and Pro Bono BC on April 1, 2010, Access Pro Bono has been responsible for providing approximately 650 volunteer hours of pro bono legal advice every month. The positive impact this sustained level of service has on the layperson, costs savings to the courts, and the contribution to a fair and just outcome for every case is immeasurable. Other organizations, such as the Salvation Army Pro Bono Program also provide a consistent, sustained level of service. In 2010, approximately 1,700 individuals received pro bono assistance from the Salvation Army Pro Bono Program.

[19] It is these tangible efforts, rather than further study, that will help us alleviate the immense pressure on the limited financial resources of low and middle class British Columbians who seek to exercise their right to access justice. To maintain the trust of British Columbians, the profession must carefully deploy available resources in ways that achieve the maximum possible front-line impact to alleviate the desperate situation in which so many of our disadvantaged citizens find themselves.

[20] Today, I wish to highlight a few initiatives that address directly the concerns raised by Mr. Doust in his report. These appear to me to be initiatives that will have an immediate impact on access to justice and for which you are all to be congratulated.

a. Reaching Remote and Low Income Individuals

[21] The establishment by Access Pro Bono of two “televideo” clinics and the creation of an online client services program are innovative measures that embrace the use of technology to allocate and distribute legal information to a wide range of British Columbians.

[22] I am told that Access Pro Bono is exploring the possibility of expanding its televideo legal advice services and introducing telephone pro bono services for individuals whose civil legal matters are urgent. In this model, lawyers would be connected to a distant client over the telephone while sitting in their offices.

[23] While this cannot be a substitute for actual representation in Court, it is a positive approach in extending at least some legal services to more remote

communities, and to individuals who simply do not have the time or money to commute to a legal aid clinic.

b. Integration of Social Services

[24] Another approach recently championed by the Legal Services Society is to integrate legal services with existing, trusted social services. For example, the Legal Services Society's medical-legal partnerships provide legal services for vulnerable women at the B.C. Women's Hospital and other drop-in-centres, allowing legal problems to be recognized and addressed early, before they become overwhelming and unmanageable for a self-represented litigant.

c. Using Paralegals to Improve Access

[25] The affordability and accessibility of Pro Bono legal advice can be enhanced through the use of paralegals. The Law Society's willingness to embrace an expanded role for paralegals in legal practice was reflected by the Benchers' adoption of the Legal Services Task Force report in October 2010, which endorses an expanded role for paralegals in the giving of legal advice under the supervision of a lawyer.

[26] I welcome the creation of the Paralegal Pro Bono Program and Access Pro Bono's partnership with the Law Courts Center in its evening Pro Bono Paralegal Program at the Vancouver Justice Access Centre. The Program is unique in Canada in engaging paralegals as primary pro bono legal service providers who work under the supervision of a lawyer to provide assistance to those who would otherwise find themselves with no help at all.

d. "LowBono" rather than "ProBono" Legal Services

[27] Mr. Doust's report underscores the very real problem the "working poor" have in obtaining access to legal services. Middle class litigants find themselves priced out of the commercial legal market, but have incomes too high to qualify for pro bono services. As Chief Justice McLachlin has reiterated in many of her addresses, the options for middle class Canadians are grim. They either use up the family assets in litigation; become their own lawyers or give up. Injustice may be the likely result.

[28] I am told that along with Supreme Court Justice Mark McEwan and representatives of several large downtown Vancouver law firms, Access Pro Bono is now discussing the idea of screening middle-income individuals for referral to a prospective reduced-rate or "low-bono" representation program staffed by junior lawyers interested in gaining trial experience.

[29] This initiative is no substitute for the modernization of financial eligibility criteria for all pro bono services. Those criteria must be realistically linked to both the cost of legal services and established and accepted measures of poverty. However, this new initiative is a step in the right direction and may enable more lawyers to give their time to assist self-represented litigants.

e. Small Claims Duty Counsel Program

[30] As I have said before, I believe that the Provincial Court is a wonderful training ground for the aspiring young advocate. I wholeheartedly endorse the creation of a Small Claims Duty Counsel Program in conjunction with the Law Society of British Columbia that would encourage young lawyers to represent Small Claims litigants at trial, with appropriate supervision and mentorship.

4. Conclusion

[31] Mr. Doust's report makes a compelling case for treating legal aid as an essential public service. In a society governed by the rule of law, access to legal advice and representation is at least as important as access to an education and to health care. He has, I believe, challenged the profession to make that case to the public, and to our policy makers.

[32] However, we know we are not yet there and have a long way to go. That is why the services you provide to needy clients for free are so important and so valuable. You are doing what our honourable profession has always done – striving to ensure that all in need of legal assistance receive it, and that the rule of law prevails. I commend and congratulate you for your efforts.

[33] I also express the deep gratitude of all who have benefitted from your generosity, including those of us who work in the courts.