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**Commonly asked questions**  
about legal aid and the campaign for public legal services in BC  
March 2012

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*This document containing commonly asked questions and answers around the campaign for public services and legal aid is meant as a backgrounder for constituents who are going to meet with their MLAs. It is intended to help constituents answer questions and to clarify any confusion about the purpose of legal aid, the impact of underfunding and the importance of adequate funding.*

**What is legal aid exactly?**

- Legal aid is a service that provides legal assistance to those who can't afford it
- There are three types of legal help: legal information; legal advice; and legal representation. When we talk about a crisis in legal aid, we are talking about a lack of legal advice and representation – in other words, the help of a lawyer. Legal information is important, and there is a fair amount available through LSS and community organizations, but legal and other literacy is a huge problem and many people are not able to fully understand written legal information or apply it to their case without the help of a lawyer
- Legal aid is administered by the Legal Services Society (LSS) , although other legal services are offered by other public and non-profit organizations

**What is the Coalition for Public Legal Services?**

- The Coalition for Public Legal Services formed in response to the sweeping cuts to legal aid in BC since 2002. It is a coalition of non-profit legal organizations, NGOs, labour unions and community advocacy groups from across the province. We are both concerned and directly affected by the deterioration of legal aid services in B.C.

**Is it true that the government has not cut legal aid since 2004?**

- Many of the recent cuts to legal aid were a result of reductions in interest rates, which impacted funding of legal aid through the private sector. However, the 38.8% cut to legal aid from 2002-2004 were from public funds, and government refused to make up the shortfall in 2009 when the Notary Foundation was forced to reduce funding due to falling interest rates. (see question below "Can we afford to fund legal aid in the current economic climate?" for why governments have a responsibility to make up the short fall in private funds)

- Recently, LSS received \$2.1 million from the government and have announced that this money will allow them to maintain some current family law and child protection services – it will not allow them to reinstate or increase any services that they don't currently offer.

### **Why can't lawyers fill the gap with pro bono legal services?**

- The legal community in BC already donates thousands of hours every year to helping clients for free, and yet there is still a huge gap in legal services available to those who need them. Through the non-profit organization Access Pro Bono, BC lawyers helped well over 5000 clients in 2011 for free and donated almost 6000 hours. Pro bono services are a necessary complement to legal aid services, but can never meet the substantial need for services for low income individuals and families.
- In addition, access to the legal system should be considered a human right. People seeking to enforce the law or defend themselves should not have to rely on the charity of lawyers in order to access justice. Access to the justice system cannot depend on the good will of the legal profession.

### **Can we afford to fund legal aid in the current economic climate? Shouldn't we prioritize essential services like health care and education before legal aid?**

- We can't afford not to fund legal aid – spending on legal aid more than pays for itself through savings in other social services such as housing and social assistance. While we don't have Canadian statistics on the amount saved, logic and evidence from other jurisdictions supports this assertion.
- For example, a UK study shows that legal conflicts are more likely to afflict vulnerable people and to “reinforce characteristics of vulnerability (such as unemployment, relationship breakdown and illness)” — meaning unresolved legal problems perpetuate social problems and therefore social costs. For example, 27.7 per cent of respondents to that study had a stress-related illness as a consequence of their civil legal problem, mostly resulting from domestic violence, mental health problems, homelessness and problems relating to their children (custody and other legal issues). In addition, 14.2 per cent of respondents reported a physical illness, with the vast majority visiting a health care professional about their illness.
- This isn't a matter of government prioritizing spending for essential services: firstly, because legal aid should be considered an essential service itself (as recommended by Len Doust, Q.C., in the report of the Public Commission for Legal Services); and secondly, because reducing spending on legal aid increases the cost of other essential services like health care.

### **How many BCers does the legal aid crisis impact?**

- There is a huge need for legal aid. LSS's own research shows that 83 per cent of BC residents with annual incomes under \$50,000 — 1.5 million people — are likely to have a civil legal problem in a three-year period, and only 11 per cent retain a lawyer.
- The number of legal aid cases approved for legal representation declined dramatically between 2001 and 2010: the number of family law cases approved dropped from 15,526 to 6,270 and poverty law referrals went from 40,279 to 0 (legal representation for poverty law — housing,

welfare, disability pensions, debt — has been eliminated). There is no evidence that these cases have gone away – just that these individuals haven't received legal aid.

- A single person must make less than \$1450 per month to qualify for legal aid. This means that full time worker making minimum wage would not qualify for legal aid.

## **Does an inadequately funded legal aid system disproportionate impact women? Why?**

- While these cuts have affected all British Columbians, they have had the greatest impact on women. Women's need for legal services and representation is overwhelmingly in the areas of family or civil law, not criminal law. Even prior to the cuts in 2002-2004, women received only 38 per cent of LSS services; following the cuts, that dropped to 30 per cent. Most legal aid coverage and funding in BC goes to criminal law matters.
- Upon relationship breakdown, women's incomes tends to decrease while men's incomes increases. Women are more likely to not be able to afford counsel and therefore are more reliant on legal aid services in family law.

## **How does an inadequately funded legal aid system impact the justice system?**

- Legal aid is a right. Without adequate legal aid, only the rich have access to justice. The Chief Justice of the Supreme Court of Canada agrees that access to justice "is a fundamental right" and there is no justice without it.
- Rule of law is a fundamental principle of our legal system, and it means that the law applies equally to everyone. However, without equal access to a lawyer, not everyone has a fair chance of getting their rights enforced, getting remedies for wrongs done to them or defending themselves against charges or accusations. A lack of legal aid undermines the rule of law and creates a two tiered justice system in BC.

## **Doesn't government's recent announcement about overhauling the justice system fix the problem?**

- In a word, no. The government announced that it would be studying the problem – yet, the Report of the Public Commission on Legal Aid is less than a year old and government hasn't acted on its recommendations.
- The Coalition is pleased to see the announcement of more judges, which will reduce wait times for court time and therefore improve access to justice. However, it is important to note (as Chief Judge Crabtree did recently in a public speech) that most of these new appointments will be filling vacant posts on the Court and therefore do not constitute new positions.
- The announcement noted that more money was being spent on the justice system, but this is not reflected in the government's own documentation. In fact, the government's budget reports show that funding to the Ministry of Attorney General (which includes Crown counsel, the court system and the judiciary, courthouses and legal aid) has dropped by nearly 20% in the last five years. Any overhaul of the system must be made on the basis of the real facts.

## Why should we give taxpayers' money to rich lawyers?

- Funding for legal aid is NOT about getting more money for lawyers. It is about providing access to justice for our most marginalized British Columbians. Without adequate funding, individuals needing legal services are not getting approved for legal aid and therefore are having to represent themselves in access and custody hearings (often against a spouse who has counsel), in criminal cases, in cases concerning their own mental health, in immigration and refugee matters and more. This about the justice system and our society's most vulnerable people – the exact opposite of putting more money in the pockets of the rich.
- Where legal aid is provided, it is often still very restrictive. For example, family law coverage will not cover property, so a woman leaving an abusive relationship is left on her own trying to deal with family assets with a hostile ex partner. In addition, the hours given to complete the approved tasks are often too little (for example, refugee lawyers are only given 10 hours by legal aid for each file). In many cases, legal aid lawyers will donate many hours to cover the additional work. Legal aid lawyers donate considerable hours to get the job done right and meet a client's needs.

## Why should I care about legal aid?

- Because we need legal aid to ensure that we all have equal and fair access to the justice system. It is the most basic government responsibility to ensure that rule of law is upheld and therefore it is a government responsibility to ensure that individuals have access to the means to enforce the law and be awarded legal remedy.
- Because we all want to live a caring society in which our most vulnerable and marginalized citizens are treated fairly and equally.
- Because the cuts to legal aid impact a wide range of your constituents – workers, families, newcomers and others.
- Because underfunding legal aid is costing tax payers more than if it was adequately funded.

## Where can I find out more about legal aid?

- Doust, Leonard. "Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia", March 2011 available at: [http://www.publiccommission.org/media/PDF/pcla\\_report\\_03\\_08\\_11.pdf](http://www.publiccommission.org/media/PDF/pcla_report_03_08_11.pdf).
- Brewin, Alison and Kasari Govender. "Rights Based Legal Aid: Rebuilding BC's Broken System", November 2010. Copublished by West Coast LEAF and Canadian Centre for Policy Alternatives. Available at: <http://westcoastleaf.org/index.php?pageID=137&parentid=29#rights>.
- Buckley, Melina. "Moving Forward on Legal Aid: Research on Needs and Innovative Approaches" published by the Canadian Bar Association, June 2010. Available at: <http://www.cba.org/CBA/Advocacy/PDF/CBA%20Legal%20Aid%20Renewal%20Paper.pdf>.
- Canadian Bar Association BC Branch's campaign for legal aid: <http://www.weneedlegalaid.com/>.
- Legal Services Society factsheets: <http://www.lss.bc.ca/media/factSheets.php>.