

Section 5: Canada – British Columbia (BC): Legal Services Society (LSS)

Summary of the operation of legal aid

The Legal Services Society (LSS) is a non-profit organization created by the Legal Services Society Act in 1979 to provide legal aid to people with low incomes in BC. Legal aid is defined quite widely in the Act; as well as the services usually provided by a lawyer it specifies: assisting individuals representing themselves, funding ADR and providing public legal education¹. This does not mean that the Government funds legal aid to be delivered on an equally generous scale.

The LSS is funded primarily by the provincial government (95%), and also receives grants from the Law Foundation of BC and the Notary Foundation. The Law Foundation is a non-profit foundation established in 1969 under the *Legal Profession Act*. The Foundation receives the interest on funds held in lawyers' pooled trust accounts maintained in the banks and credit unions of the province. The Foundation in turn distributes these funds by way of grants, and works closely with the LSS. The *Legal Profession Act* directs the Law Foundation to distribute these funds in five areas: including legal aid. In 2017 69% of funding went to legal aid.

The 1979 LSS Act specifies that the LSS should “coordinate legal aid with other aspects of the justice system and with community services” and “be flexible and innovative in the manner in which it carries out its objects”². The services offered by the LSS range from static online content (brochures, information), through the MyLawBC guided pathway (for selected civil problems), to advice (from duty and family lawyers) and legal representation.

At one time the LSS employed some salaried lawyers but these were very unpopular with the private Bar and disappeared with one of the rounds of cuts to legal aid in the last 15 years. Legal representation services are therefore delivered through private practice lawyers paid by the LSS on a case by case basis. Eligibility for these is limited by type of case, how serious the matter is and client financial eligibility. The costs of representation (lawyer fees, duty

¹ Part 2, 11 (1)

² LSS Part 2, para 9, section 2 (c) and 2 (d).

counsel fees and disbursements) account for around two-thirds of the annual budget of the LSS³.

Constraints on legal aid in BC

General

Availability of legal services is limited due to the fixed budget that the LSS receives. For instance the LSS' Service Plan 2019/20 – 2021/22 notes “complex criminal trials are taking longer ...result[ing] in higher costs to LSS, including case preparation and court attendance. Having a fixed budget that does not allow for deficits means that LSS may need to restrict services in other areas in order to manage these cost pressures”⁴. The LSS is not permitted to run at a deficit, this has a crippling effect on the coherent operation of a legal aid programme.

In 2017/18 family services were reduced between January 2017 and April 2018, due to costs exceeding budget in 2016/17. This was done by eliminating discretionary spending. This meant that the LSS were unable to approve cases: under exception review (for cases that do not meet standard coverage criteria); under discretionary coverage (for cases marginally over the financial eligibility guidelines); for family extended services (for cases where LSS provides lawyers with additional hours to work on a case).

Whilst the majority of revenue comes from the provincial government and is fixed, the amount of the remaining 5% will vary depending on interest rates, making this hard to predict. This revenue is used specifically to fund various services, including: the Indigenous Services Department, the Community & Publishing Services Department (including MyLawBC), and legal information outreach workers.

Current issues

The publication of two documents in early 2019 (the Maclaren Review of legal aid in January, and the Association of legal aid lawyers' (ALL) restoring funding proposal to the Attorney General in February) highlighted issues with the legal aid system in BC.

³ Summary Financial outlook table pp18-19 of LSS service plan.

⁴ LSS Service Plan Feb 2019 p 20

The Maclaren Review made 25 suggestions to improve the operation of legal aid. The most common themes were: the need for client / community involvement in shaping legal aid, as well as increased data collection on the justice system, auditing of the LSS and promoting a multi-disciplinary approach to client problem solving.

The ALL proposal highlighted low fees (the legal aid tariff has increased by 10% in 28 years, inflation has risen 60% in the same time) and the limits on eligibility for applicants, which means that many low income people are financially ineligible, and that representation for many types of civil / family law is not covered under legal aid.

A strike by legal aid lawyers, planned to begin on April 1st, was averted by at the end of March. This was done through a one-time grant of \$7.9 million (\$4 million from government and \$3.9 million from Legal Service Society reserve funds). This will be used to increase payments to lawyers from April 28, 2019, to October 31, 2019, during which time the Association of Legal Aid Lawyers, LSS, and the ministry will negotiate a framework for a future increase in payments beyond the end of October⁵. For technical accounting reasons this grant cannot be handled by the LSS so it is being distributed by the Law foundation of BC.

This situation has been building up over a number of years. An article in the Vancouver Sun from November 2018 noted that “Lawyers’ Rights Watch Canada ... delivered an eight-page submission urging the reversal of a generation of neglect [of legal aid in BC] documented in scathing reports by UN agencies from 2006 to July 2018”⁶. The LSS also raised concerns in their 2019 service plan, noting “lawyer dissatisfaction with low tariff rates is an ongoing concern for LSS. The last time LSS raised tariff rates was in 2006. If we are unable to address their dissatisfaction, there is a risk that we will not be able to attract or retain highly skilled lawyers for our clients”.

What is the relationship between the legal aid body and the solicitor?

The relationship BC lawyers have with the LSS is similar to that in Scotland, in that it is less formal than other jurisdictions.

⁵ <https://lss.bc.ca/communications/news/lawyer-withdrawal-legal-aid-services-averted>

⁶ <https://vancouversun.com/news/politics/ian-mulgrew-do-the-right-thing-on-legal-aid-province-told>

To undertake legal aid work lawyers need to register with the LSS. This will give them access to LSS Online, where most communication between the LSS and tariff lawyers will take place.

Applicants for legal aid come to tariff lawyers via the LSS, who will assess eligibility either in person or by telephone. Each individual legal aid case is seen as a contract, with service starting on the day the contract is issued (allowing lawyers to begin work immediately⁷ if needed, although they do have the option to withdraw from the contract). The contract may include instructions about the services the lawyer is authorised to provide, the contract start and stop date, and any restrictions that apply.

The requirements for registration are based around legal competence and probity, as well as record keeping and quality of service to client.

Standards and on-going requirements are set out in the General terms & Conditions relating to LSS tariff lawyers, as well as the Lawyer Compliance Policy. These include the provision for audit, via post-payment reviews of individual case contracts by the LSS. In 2017/18, 97.5% of lawyers' invoices were processed for payment without review⁸.

The number of cases undertaken by each lawyer is noted as an issue by the LSS in their 2017/18 service plan report. The number of lawyers taking three or more contracts in their first six months of joining LSS was lower than hoped (50, rather than the target of 60). The report does not say how many lawyers in total were included in this measurement. In 2016/17, 28,286 contracts were issued⁹, and a total of 1,038 lawyers accepted at least one contract¹⁰.

Who pays for work done under legal aid?

The Legal Services Society Act sets out provision for recovering the costs of providing legal aid “through client contributions or any other methods [the LSS] considers appropriate”. However it is unclear how often this is used.

⁷ The LSS had a target of 58% of approved applicants receiving a representation contract on the same day as applying in 2017/18. 2017/18 Annual Service Plan Report p11.

⁸ 2017/18 Annual Service Plan Report p18.

⁹ Ibid p12.

¹⁰ Restoring Funding for Legal Aid, ALL. 2019. P32.

When are lawyers paid?

They will submit an invoice at the end of a case, via LSS online.

What are they not paid for?

The LSS may restrict what can be provided under the contract. Unauthorised work will not be paid.

The standard for client quality of service is “the same quality of service as a reasonable person of modest means”¹¹.

How are the payment mechanisms defined and controlled?

The LSS administers the system, within the constraints of the fixed budget. Unlike Scotland or Ontario the LSS is responsible for setting fee tariffs, rather than the Justice Department.

¹¹ Lawyer Compliance Policy, part 2, para 1.