



## Unmet and Underserved Legal Needs

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### **Access to Justice Advisory Committee**

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Date: December 2, 2022

Prepared for: Benchers

Prepared by: Policy and Planning Department

Purpose: For Decision

## **I. Purpose and Problem**

1. The policy problem that the Committee was asked to consider is set out in the President's mandate letter for 2022:

*[c]onsider whether there is sufficient evidence in respect of the scope and nature of unmet needs for legal services in British Columbia, including the extent that unmet needs may undermine the goals of facilitating both truth and reconciliation and equity, diversity and inclusion and if the Committee concludes there is not sufficient evidence, and make recommendations to the board on obtaining the necessary information.*

2. This report sets out the Committee's consideration, findings and recommendations on the steps the Law Society should take to address key issues relating to unmet and underserved legal needs.

## **II. Process, Findings and Recommendation**

3. In order to complete its work, the Committee reviewed a number of memoranda, studies, articles, presentations and reports in order to understand the problems that led to unmet and underserved legal need and barriers to access to justice. Its review included consideration as to the sufficiency of available data. Over the course of its meetings, the Committee narrowed its focus to the topics of triage and data collection and analysis, and sought additional input from staff that included feedback on the elements of the referral relating to Reconciliation with Indigenous Peoples ("Reconciliation") and Equity, Diversity and Inclusion ("EDI").
4. It is obvious to the Committee (and to other observers) that there are unmet needs for legal services in BC. However, the true scope and nature of those needs is difficult to ascertain through existing evidence. Some method of providing a way to improve access to unmet and underserved needs that also enables evidence on the needs to be gathered must be developed.
5. The Committee concluded that access to justice relating to unmet and underserved needs can be improved by giving effect to the recommendation in the Legal Aid Task Force report<sup>1</sup> that a universal legal needs diagnostic model be established in British Columbia, which the Committee also believes will assist in better collecting data about the extent and nature of those needs. This will in turn assist in developing further initiatives through which they can be addressed. It therefore recommends that the Law Society reach out to

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<sup>1</sup> Law Society of British Columbia, Legal Aid Task Force, "A Vision for Publicly Funded Legal Aid in British Columbia" (March 2017) at p. 21.

other stakeholder groups and the government with the intention of encouraging the creation of “triage hubs” through which access to and delivery of legal services can be improved.

### **III. Proposed Resolution**

6. The Task Force proposes the following resolution:

BE IT RESOLVED that in order to

- improve the collection of data about the extent and nature of the needs of individuals relating to the access to legal services,
- improve the take-up of existing low (or lower)-cost legal services and improve timely and appropriate referrals to needed services, and
- gather information about legal needs that will inform decisions on other initiatives to improve access to the delivery of legal services,

the Law Society will, through consultation with other justice-system stakeholders and the government, explore how to establish “triage hubs” through which people facing a problem that may include a legal element can obtain information, guidance and preliminary advice.

### **IV. Underlying Observations**

7. Data from an extensive body of research and writing on the incidence of problems people experience that have the potential to be classified as “legal problems” provides a sufficient basis on which to conclude that the majority of Canadians will experience at least one difficult to resolve legal problem in their lifetime; and that a sizeable portion of the public will experience multiple problems, including serial problems that perpetuate over a long period. Approximately 15% people who experience legal problems will secure the help of a lawyer to resolve or manage the problem, about 26% will seek help from someone other than a lawyer and about 59% will seek no help at all.<sup>2</sup> These problems are often intertwined with other problems that can be classified as matters other than “legal” (e.g. health, social welfare and stability, necessities of life, etc.).
8. Less understood, and for which there is a scarcity of data, is the long term outcomes for people based on the paths chosen to address legal problems. In addition, we lack adequate data on how much people can afford to pay to resolve problems and when they do have

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<sup>2</sup> See the Law Society of British Columbia, “Legal Services in BC 2020 Survey” (IPSOS Reid).  
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some money to pay how they determine the value of the services relative to the potential cost. Our ability to respond to the justice gap regarding cost is compounded by the lack of certainty at the front end of many legal retainers what the total cost of the service will be. We know, for example, from research regarding self-represented litigants that many start out with a lawyer and only become self-represented once their money is exhausted and they cannot longer afford to retain a lawyer.

9. Another knowledge gap relates to why some people who might benefit from existing low cost services are not taking advantage of them. When reviewing the topic of unbundled legal services the Committee learned from consulting with stakeholders that a major barrier to the uptake of unbundled services is “discoverability”. Some people don’t know what unbundling is or that some lawyers offer it, and some who have heard of it can’t find the lawyers who offer the services.
10. The justice system has not developed a means to collect data to analyze how well lawyers and the justice system are serving the people who utilize the system of access those legal services. The justice system tends to measure inputs and outputs, not outcomes.
11. Over the years the Committee has considered numerous materials leading the Committee to understand:
  - a. A legal problem can have a legal element and a non-legal element. Sometimes the best solution is to address the non-legal need (either first, in parallel, or as the preferred solution).
  - b. Not all legal needs manifest in demands for legal services. The unmet demand for legal services, as we categorize it, refers to incidences where people seek out legal help but are unable to secure it (also, for a range of reasons). This is important so the Law Society does not develop responses to legal need for which there is no demand (or a realistic potential for demand in the case of novel responses).<sup>3</sup>
  - c. Having data about unmet legal needs does not necessarily answer the question of what services are required to best address the need, although such data might support the rationale for a new policy or initiative.
  - d. Access to legal services is important to ensure access to justice but it is not the only way of achieving access to justice. The need for legal services has to be connected to the outcomes that are important to the people experiencing the problem.

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<sup>3</sup> Some people may decide the problem being experienced is not important enough to pursue a legal remedy or seek legal help to plan for future legal contingencies. Care should be taken not to categorize this as an unmet need for legal services. Simply put, people in this situation have made a decision that they do not need legal services.

- e. There are many barriers to accessing legal services that are manifested in unmet or underserved legal needs. They include:
  - i. Lack of understanding that a problem has a legal element with legal solutions.
  - ii. Lack of knowledge about what services are available, their cost, and the benefit of using the services relative to the risks of not using the services.
  - iii. Lack of capacity to access and understand the available services.
  - iv. Cost of legal services.
  - v. Perception of the value of the legal services relative to the cost (this is linked to knowledge but is also linked to the importance the person experiencing the problem places on resolving or avoiding the problem).
  - vi. Geographical, demographic and supply-side barriers to accessing legal services.
  - vii. Barriers related to systemic inequality, as well as the lack of available services that are delivered in a culturally appropriate fashion.
  - viii. Lack of trust in legal service providers and the overall justice system.

12. When analyzing its mandate relating to access needs, the Committee assessed the adequacy of data and evidence regarding unmet and underserved legal need. Then it considered the extent to which the current state of unmet and underserved need might frustrate the Law Society's efforts regarding Reconciliation and EDI. Lastly, the Committee considered what might be done to address knowledge gaps.

13. Several challenges are associated with analyzing the issue and are important to keep in mind. Primarily, as noted, data does not tend to demonstrate whether legal services or the justice system provide enduring outcomes, or how well the various paths to justice work. The direction to base recommendations, in part, on empirical data therefore creates problems as the existence of reliable empirical data is, the Committee believes, lacking. The Committee may be able to obtain some data on unmet legal need, but it will be more difficult to identify empirical data related to a specific solution, particularly in circumstances where the Law Society wishes to position itself as a leader. The Law Society has created a number of initiatives where it was the first out of the gate and could not, therefore, look to empirical data from another jurisdiction.

14. The Committee makes these observations to provide clarity regarding its process, but also to stress that while empirical data is important, empirical data does not always provide answers to important questions relating to social values.

## V. Discussion

15. The fact that many people lack knowledge regarding the nature of life's problems (including their legal aspect), lack of knowledge of how best to proceed when faced with a problem, and lack knowledge regarding how to reduce the chance of such problems occurring creates significant access to justice issues. Finding ways to address these problems, while collecting data that will help improve initiatives in this regard, is the goal of this exercise.
16. After discussing the subject and having regard to the frailties in the available data, the Committee concluded that the Law Society could take a more proactive role in developing ways to address known problems in the access to justice realm while using the processes developed to collect better data on unmet and underserved legal needs.
17. The Committee concluded that this could be accomplished by working to bring about the legal needs triage model recommended in the 2017 Report of the Legal Aid Task Force. The Benchers have already endorsed the need for establishing a universal diagnostic service when they adopted the findings in the Legal Aid Task Force's report.<sup>4</sup>
18. The way a problem is classified is an important aspect necessary to ensure that people are aware of what options exist for resolving it, including which options (legal, non-legal, or a hybrid approach) are preferable. The Committee believes that triage can help ensure what follows leads to better outcomes, while permitting the collection of reliable data on outcomes. A triage model provides an identifiable means of access that people can engage in to help identify the nature of their problems, and get guidance as to the best avenue for resolution. Where the problem has a legal aspect, general advice may ameliorate or solve the issue, and (or) a referral can be made where more complex issues arise. This addresses need and, if properly constructed, can assist in the collection of data to understand where needs arise that are not currently being addressed.
19. The Committee considered a number of approaches from a narrow triage to a broad model. The Committee favours, as an initial step, exploring the model set out in **Appendix 1**. If such a model can be developed that generates reliable data, the Law Society and those

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<sup>4</sup> "All people, regardless of their means and without discrimination, should have access to legal information and publicly funded professional legal advice to assist them in understanding whether their situation attracts rights and remedies or subjects them to obligations or responsibilities." (At page 21).

stakeholders involved in bringing about the triage model might explore a broader model at a later date.

20. Consultations regarding establishing a triage model for BC will involve various government ministries, the courts, administrative tribunals, Legal Aid BC, Access Pro Bono and other stakeholders, and should include a discussion about how to collect and share better data about legal needs and how solutions are working in order to ensure that outcomes (and not simply outputs) are measured.
21. The Committee discussed the element of the referral related to Reconciliation and EDI, and obtained input from staff. Any conversation about developing triage services requires consideration of Reconciliation and EDI. The Committee imagines that various communities will tailor triage to meet their needs, and as such it is important to consult with those communities and build the systems with appropriate input at the design stage.
22. Legal needs studies suggest that Indigenous Peoples and equity-seeking groups experience “legal” issues at a greater rate than average, have a greater likelihood to have problems cluster, and face a range of barriers to accessing legal services and justice. Enough data exists, in other words, to justify developing policy responses towards individuals in these groups to promote access to justice. We know enough to realize that a generic policy response that does not consider discrete data relevant to these groups is unlikely to meet needs that may be either particular to the group or require additional nuance. In many cases we will be missing important data (and information) in the form of input from people in these groups.
23. The Committee was able to conclude, therefore, that the development of a triage initiative must include the objective of improving access to legal services and justice for Indigenous Peoples and members of equity-seeking groups. With this in mind it will be necessary to liaise with the Law Society’s Truth and Reconciliation Advisory Committee and Equity, Diversity and Inclusion Advisory Committee to ensure any proposal adequately takes into account the needs of Indigenous People and members of equity-seeking groups, and is not simply based on data extracted from surveys and studies on legal need that did not engage those groups.

## **VI. Evaluation Criteria**

24. The recommendation is to explore the development of the proposed initiative to determine the appetite of other groups and the costs and benefits that may be incurred and realized. But it is also helpful at this stage to give some consideration to the evaluation criteria with regard to the proposed triage model itself, because if it would not meet those criteria, assessing the appetite of others to work to develop it would be moot.

### Public Interest

25. The proposed initiative is designed to provide greater access to people whose legal needs are not being served at present by providing a simple method for people – particularly unsophisticated users of legal services – to obtain advice about the nature of a problem they might face, and if it is a legal one, to be able to get advice or a referral for advice. Currently, it is understood that many people simply do not bother to seek advice because they do not know how to do so, or they believe the advice will be too expensive. The proposal provides a way to address those issues. At the same time, it will allow evidence to be gathered about what needs might otherwise be unmet or underserved, and this will allow the development of other initiatives to address findings. There is a public interest in exploring the development of a model that will assist in this way.

### Government Relations

26. The initiative should demonstrate to government the willingness of the profession to address access to justice and access to legal service initiatives. Government would likely have to be asked to provide at least partial funding for the proposed model, which will necessitate discussions and advocacy.

### Licensee Relations

27. Many lawyers are generally concerned about access to justice. Creating a model that will help improve an entry “into the system” for people facing a problem but do not know how to go about obtaining advice should be perceived favourably by lawyers, and may even result in greater business for lawyers and firms, including small and rural firms, who serve individuals or smaller corporations. The model may, however, require some funding through the profession. Whether that would require greater practice fees is not at this time known.

### Reconciliation with Indigenous Peoples

28. The initiative is targeted at the entire population. However, because there is evidence that Indigenous peoples experience legal issues at a greater rate than average, have a greater likelihood to have problems cluster, and face a range of barriers to accessing legal services and justice, it is possible that the initiative will have a particular benefit of advancing opportunities for Indigenous people to access advice and legal services.

### Equity, Diversity and Inclusion

29. Again, the initiative is not created as an initiative that is designed solely to address equity, diversity and inclusion in the legal profession. However, because, like Indigenous peoples, members of equity seeking communities experience legal issues at a greater rate than



average, have a greater likelihood to have problems cluster, and face a range of barriers to accessing legal services and justice, it is expected that the initiative would particularly improve access to justice for these groups. But it is worth repeating that the initiative is meant to apply to and benefit the entire population. However, it is anticipated that the initiative may have a greater benefit for less affluent and more marginalized groups.

## **VII. Cost and Organizational Implications**

30. As the Law Society cannot create a triage model, the cost of exploring the concept is dependent on several factors. The main costs relate to the potential need to engage in outreach, and possibly host one or more consultation workshops with key stakeholders. These costs will be influenced by a range of factors. Without knowing the best path forward at this point, the Committee estimates costs would be similar to past Law Society consultation efforts on other initiatives.
31. The organizational implications involve the need to have staff in the Policy and Planning department, and likely Communications and Engagement staff, dedicate some of their time to support consultation and data gathering. While this does not necessarily create new costs, it does create opportunity costs in the sense these staff have limited bandwidth to do work, and work dedicated to such outreach means other work might be delayed, subject to other organizational priorities.

## **VIII. Subsequent Steps**

32. If the Benchers endorse the concept, then the Committee recommends that staff develop a work plan, including determining how best to start engagement with the stakeholders who would ultimately be required to bring about triage hubs. From that, one or more consultation sessions would be explored to obtain input from stakeholders and the public to further refine and define what is possible in creating legal needs triage services in BC.

## **VIII. Supporting reforms with data**

33. Although the referral to the Committee was outward looking in terms of what data is available about unmet legal needs, the Committee believes it is important for the Law Society to also consider what it can do to support better data analytics in-house. The Committee is one of several that is asked to base policy recommendations, in part, on empirical evidence. It would be helpful, therefore, if the Law Society developed means to analyze initiatives to see if they are achieving the desired result.
34. Consequently, it is important to ensure that methods are developed to collect data and to assess whether any initiative (such as that recommended in this report) that is being implemented is having the desired effect. This will serve two purposes: 1) develop in-

house data that could provide the empirical basis to support future policy development, and  
2) allow the Law Society to better assess whether initiatives and reforms are making a positive difference.

35. The Committee believes that such an approach will become all the more important when the shift to a single legal regulator occurs, particularly if part of the object of such regulation is to improve access to legal services. Some means of understanding the baseline data and data resulting from policy reform would be necessary to measure outcomes.

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## Appendix 1

### Proposed Triage Model to Address Unmet and Underserved Needs

1. Legal Service Provider triage would aim to provide people with a funded “in” to the legal system.
2. Ideally, the model would create hubs staffed by legal service providers (lawyers for now, but possibly licensed paralegals or other providers in the future), who could meet with people who need advice with respect to a problem that they are facing. The benefit of the triage hub would be to take the mystery out of how to go about seeking advice if you are not a sophisticated user of legal services. It would allow people to know with better ease than is now the case whether they have a real legal problem for which legal advice is necessary, or whether their problem is primarily something else that can be solved in other ways.
3. A model of this option would permit simple legal matters to be addressed on site, if possible, much as legal aid clinics do. The conflicts rules could be relaxed as they have been for clinics to permit providers to provide advice. Referrals could be made for more complicated matters. The assessment of the problem by a trained legal service provider would also likely be able to give the “client” a better estimate of what the cost and benefit of addressing the legal problem might be.
4. In this way, the model attempts at some level to replicate the “family doctor” model that enables patients to consult their family physician for a diagnosis of a health issue. The family doctor may be able to address the problem in his or her office, or may need to send the patient for tests or referrals. The triage hub would try to emulate the process so that a client can get a “diagnosis” of the legal problem (even as to whether it *is* a legal problem), have it addressed if it is amenable to a simple solution, or get a referral if it is more complicated, with an assessment of the pros and cons of doing so.
5. While triage hub service providers might be able to recommend where a client might go to address a problem that is not a legal problem, the Legal Service Provider model would not incorporate other agencies into the model.
6. The model would likely benefit from a number of physical locations in major centres around the province, but could incorporate virtual technology. How this would work to its best advantage would need to be addressed.
7. Funding would also need consideration. Government funding is a possibility, although funding from the profession might be contemplated as a demonstration of the commitment of the profession to ensuring access to informed legal services. A user-pay contribution model could be used to supplement funding.