THE CASE FOR REPLACING THE 2002 *LEGAL SERVICES SOCIETY ACT*

PART I: TRACKING THE TRAJECTORY OF LEGAL AID IN BRITISH COLUMBIA

By the Honourable M. Anne Rowles and Connor Bildfell

The *Legal Services Society Act*, R.S.B.C. 1979, c. 227 created the Legal Services Society (the "Society"), through which government-funded legal aid is provided and administered in British Columbia. In 2002, what was then the *Legal Services Society Act*, R.S.B.C. 1996, c. 256 (the "1996 *Act*") was repealed and replaced by the *Legal Services Society Act*, S.B.C. 2002, c. 30 (the "2002 *Act*"). The Society was continued but the 2002 replacement legislation eliminated the stated objects or purpose of the Society set out in the original statute and failed to stipulate the services that the Society is obligated to provide.

The purpose of this article is to consider the nature of the 2002 legislative changes and whether the negative effects that we say the legislation has had on the provision of legal aid services in British Columbia should now prompt the repeal and replacement of the 2002 *Act*. Part I of this article tracks the trajectory of legal aid in British Columbia; Part II, which will appear in a later issue of the *Advocate*, issues a call to action.

THE LEGISLATION

In the pre-2002 legislation, s. 3(1) set out the two objects of the Society:

> 3(1) the objects of the society are to ensure that
>
> (a) services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them because of financial or other reasons, and
>
> (b) education, advice and information about law are provided for the people of British Columbia.

Subsection 3(2), which adopted a consequence-based approach to coverage, stated with notable clarity the services the Society was obligated to provide for the purposes of s. 3(1)(a):

3(2) The society must ensure, for the purposes of subsection (1) (a), that legal services are available for a qualifying individual who meets one or more of the following conditions:

(a) is a defendant in criminal proceedings that could lead to the individual's imprisonment;

(b) may be imprisoned or confined through civil proceedings;

(c) is or may be a party to a proceeding respecting a domestic dispute that affects the individual's physical or mental safety or health or that of the individual's children;

(d) has a legal problem that threatens

(i) the individual's family's physical or mental safety or health,

(ii) the individual's ability to feed, clothe and provide shelter for himself or herself and the individual's dependents, or

(iii) the individual's livelihood.

Section 10 of the 1996 *Act* gave the Society the authority "to determine the priorities and criteria for the service it or a funded agency provides under this Act."

The 2002 *Act* as amended and in force as of May 31, 2007 differs markedly from the pre-2002 legislation. Section 9 of the 2002 *Act* contains a statement of "objects" of the Society and a list of "principles" to guide it[1] but, substantively, s. 9 of the 2002 *Act* bears no resemblance to s. 3 of the 1996 *Act*.

The provisions of s. 9(1) of the 2002 *Act*, which are outcome-based, might charitably be described as aspirational:

9(1) The objects of the society are,

(a) subject to section 10 (3), to assist individuals to resolve their legal problems and facilitate their access to justice,

(b) subject to section 10 (3), to establish and administer an effective and efficient system for providing legal aid to individuals in British Columbia, and

(c) to provide advice to the Attorney General respecting legal aid and access to justice for individuals in British Columbia.

Subsection 9(2) contains the guiding principles to be applied by the Society:

(2) The society is to be guided by the following principles:

(a) the society is to give priority to identifying and assessing the legal needs of low-income individuals in British Columbia;

(b) the society is to consider the perspectives of both justice system service providers and the general public;

(c) the society is to coordinate legal aid with other aspects of the justice system and with community services;

(d) the society is to be flexible and innovative in the manner in which it carries out its objects.

The powers of the Society, for "the purposes of its objects", are contained in s. 10(1):

> 10(1) For the purposes of its objects, the society has, subject to subsections (2) and (3), all the powers and capacity of an individual and, without limiting this, may
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> (a) establish priorities for the types of legal matters and classes of persons for which it will provide legal aid,
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> (b) establish policies for the kinds of legal aid to be provided in different types of legal matters,
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> (c) determine the method or methods by which legal aid is to be or may be provided, with power to determine different methods for different types of legal matters and different classes of persons,
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> (d) determine who is and who is not eligible for legal aid based on any criteria that the society considers appropriate,
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> (e) undertake, inside or outside British Columbia, commercial activities that it considers appropriate for the purposes of obtaining funds for the pursuit of its objects,
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> (f) recover, through client contributions or any other methods it considers appropriate, its costs of providing legal aid, and
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> (g) facilitate coordination among the different methods, and the different persons and other entities, by which legal aid is provided.

Subsections 10(2) and 10(3) place limits on the services the Society is able to provide by means of regulation and budget restrictions. Subsection 10(2) refers to "prescribed services", i.e., services identified by regulation as provided in s. 27:[2]

> 10(2) The society must not provide prescribed services to prescribed persons or classes of persons in prescribed circumstances unless it does so without using any of the funding provided to it by the government.

Any activity of the Society is subject to the funding restrictions referred to in s. 10(3):

> 10(3) The society must not engage in an activity unless
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> (a) it does so without using any of the funding provided to it by the government, or
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> (b) it does so in accordance with this Act, the regulations and the memorandum of understanding referred to in section 21 and money for that activity is available within the budget approved by the Attorney General under section 18.

STATUTORY INTERPRETATION AND REMEDIES

It is common for legislation creating statutory boards or societies to include a statement of a statute's purpose or objects or a statement of the duties of the statutorily created body,[3] but the 2002 legislation governing the provision of legal aid in British Columbia lacks such guidance. The 2002 *Act*, in

contrast to the pre-2002 legislation, also fails to enumerate the services the Society is required to provide.

As a matter of statutory interpretation, the implications of the omissions in the 2002 legislation are significant. The principle of statutory interpretation repeatedly approved by the Supreme Court of Canada[4] states that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[5]

The object or purpose of the 1996 *Act* was readily discerned and the *Act* provided the foundation for a remedy if the Society failed to provide the services stipulated in s. 3(2). That a remedy was available under the pre-2002 legislation is illustrated by the decision in *Mountain v. Legal Services Society*,[6] a case in which the interpretation of ss. 3(1) and 3(2)(a) of the pre-2002 *Act* was in issue. In an application brought under the *Judicial Review Procedure Act*, the petitioner sought an order for *certiorari* to quash a decision of the Society denying him legal aid under the *Act* and an order for *mandamus* compelling the Society to provide him with legal services under s. 3(2)(a). The application was precipitated by a directive (issued by the Society to counsel accepting legal aid referrals) that read, in part:

> ... effective September 1, 1983, no coverage will be provided for an accused charged with a summary conviction offence or mixed offence where the Crown is proceeding by way of summary conviction unless:
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> (a) the accused, if convicted, will probably be sentenced to a jail term or will lose his means of livelihood; and
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> (b) the accused has no record, or has a record which is unrelated to the current charge.

The application in *Mountain* was brought as a result of the Society's denial of legal services to the petitioner on the ground that the Crown was proceeding by way of summary conviction and the petitioner had previously been convicted of offences like the one with which he had been charged. Before the directive, the petitioner would have been entitled to legal services by reason of his "being a defendant in a criminal proceeding that could lead to his imprisonment". On the application, it was common ground that the petitioner, if convicted, was likely to receive a jail sentence. In concluding that the petitioner was entitled to coverage, Lambert J.A. wrote:

> [19] The question is whether the society is required to make legal services available for Richard Mountain or whether it may decline to do so. That depends on the meaning that should be given to the *Legal Services Society Act*, R.S.B.C. 1979, c. 227. The statute must be interpreted as a whole, but the sections on which the argument particularly turned were ss. 3 and 10 ...

> [20] The Act establishes the Legal Services Society by continuing the existing society of that name. Section 3(1) sets out the objects of the society, and by doing so empowers the society to carry out any purpose within those objects. So by s. 3(1) the society is given the power to ensure that services ordinarily provided by a lawyer are afforded to individuals who would not otherwise receive them. It is also given the power to ensure that education, advice and information about law are provided for all the people of the province.
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> [21] If it was intended that the society alone would decide how to allocate its resources among the purposes that come within its objects, that intention is carried out by s. 3(1). If any further confirmation of the society's powers to make decisions about allocation of its resources were needed that confirmation is supplied by s. 10.
>
> [22] So I think that s. 3(2) must have been intended to place the needs of particular people for particular legal services on a different basis than the general run of needs for legal services, and to impose on the society a duty to provide legal services in the circumstances set out in s. 3(2). In short, if a person's liberty, safety, health or livelihood are in real jeopardy, the society is required to make legal services available. It must do so. But if liberty, safety, health or livelihood are not in jeopardy, then the society may allocate its resources as it thinks best.
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> [23] That interpretation was the one placed on the Act by Mr. Justice Dohm [ante, p. 171]. In my opinion it is the interpretation most consistent with the words of the statute. It gives full weight to the words "shall ensure", in accordance with s. 2(1) of the *Interpretation Act*, R.S.B.C. 1979, c. 206, and the definition of "shall" in s. 29 of that Act; it contemplates that the word "priorities" in s. 10 will have ample scope in relation to the allocation of resources among candidates for legal services whose liberty, safety, health or livelihood are not at risk, and also between some such candidates for legal services, on the one hand, and the provision of education and information, on the other hand; and, it contemplates that the word "criteria" in s. 10 will have full scope in relation to decisions as to the granting of legal aid where liberty, safety, health or livelihood are not at risk, and also in reaching decisions favourable to the applicant, where those matters are at risk. There is no need to conclude that s. 10 must be given a meaning that denies the existence of any duty to provide legal services under s. 3(1), and I would reject that interpretation.

THE EFFECT THE 2002 LEGISLATION HAS HAD ON THE PROVISION OF LEGAL SERVICES IN BRITISH COLUMBIA

The repeal and replacement of the 1996 *Act* has resulted in a progressive diminishment of legal aid services in British Columbia. In a 2012 report to the B.C. Ministry of Justice, the Society summarized the 2002 legislative changes and the subsequent funding reductions that have fundamentally changed the face of legal aid in this province:

> The changes eliminated poverty law representation, restricted family law to child protection and emergency services in cases involving domestic

> violence, and decreased the society's budget by nearly 40 per cent over three years. LSS reduced office and agency staff by 74 per cent, and replaced its province-wide network of 60 branches, community law offices, Aboriginal community law offices, and area directors with a new delivery model using seven regional centres, 22 local agents, and a centralized call centre. The restructuring represented a marked shift from a mixed staff/private bar model of service delivery to one that is almost exclusively private bar.

The cuts in funding have continued, thereby limiting the scope and capacity of the Society to provide legal aid services. Overall provincial government funding to the Society was reduced from $88 million in 2001[8] to $69 million in 2008/2009.[9]

Criticisms of the inadequacy of legal aid services in British Columbia are legion. In 2010, the legal profession had become so concerned about the impoverished state of legal aid services in B.C. that the profession decided to pay for a public commission to investigate and report on the matter. The entities commissioning the report were the Law Society of British Columbia, the B.C. Law Foundation, the B.C. Crown Counsel Association, the B.C. Branch of the Canadian Bar Association, and both the Vancouver and the Victoria Bar Associations. The report of the Commissioner, Leonard Doust, Q.C. (the "Doust Report"), was released in 2011, and contained the results of his extensive hearings and inquiries. The first two recommendations in the Doust Report provide the foundation for change:

(i) amend the *Legal Services Society Act* to clearly recognize legal aid as an essential service and the entitlement to legal aid where an individual has a legal problem that puts into jeopardy their or their family's security;

(ii) develop a new approach to define core public legal services and priorities.[10]

Since the release of the comprehensive Doust Report, no action has been taken by the provincial government to amend the 2002 *Act* to make transparent the foundation for the legal services the Society is to provide. The Society continues to be seriously underfunded and that is so despite the imposition of a special tax on legal services that was intended to fund legal aid but instead has gone, in large measure, to general revenue. More on this in Part II of this article.

While criticisms about the inadequacies of legal aid in this province have come mainly from the bar and other law-related professions and entities, the extent to which many people are unable to pay for representation or to seek remedies in the courts in criminal law, as well as family law and other

civil cases, is receiving increasing publicity. The link between access to justice and the ability to pay for legal services is indisputable.

As Chief Justice McLachlin observed in an influential article published in the *Manitoba Law Journal*: "Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care or education. The well-being of our justice system—and the public's confidence in it—depends on it."[11]

The impoverished state of legal aid services in this province has also attracted international criticism. In 2014, Lawyers' Rights Watch Canada published *The Right to Legal Aid: How British Columbia's Legal Aid System Fails to Meet International Human Rights Obligations*,[12] which provided a comprehensive analysis of the question of whether the provision of legal aid services meets Canada's international treaty obligations. Canada fails in meeting those standards, with British Columbia receiving particular criticism. Most notably, the U.N. Human Rights Council, in its 2013 Universal Periodic Review of Canada's human rights record, emphasized the need to ensure access to justice, particularly for Indigenous women and members of minority groups.[13] Moreover, in a 2008 report, the U.N. Committee on the Elimination of Discrimination Against Women ("CEDAW") lamented the lack of financial support for legal aid, as well as the increasingly severe lack of access to legal aid: "The Committee is concerned at reports that financial support for civil legal aid has diminished and that access to it has become increasingly restricted, in particular in British Columbia, consequently denying low-income women access to legal representation and legal services."[14]

THE DEVELOPMENT OF LEGAL AID IN BRITISH COLUMBIA

A history of the development of legal aid in British Columbia serves to illustrate what a sharp break the 2002 *Act* made with the earlier jurisprudential underpinnings for the provision of legal aid services.

The laws of British Columbia are rooted in English common law and statute. The need for "access to justice" was recognized in 1495 when Henry VII proclaimed the *In Forma Pauperis Act*,[15] which enabled judges to assign counsel to the poor. State-funded legal aid is of much more recent origin.

Until the early 1930s, no mention of legal aid appeared in Canada. The idea was sparked by a judgment of the Alberta Court of Appeal, *Augustino v. C.N.R.* In *Augustino*, a widow living in Italy attempted to bring an action under the *Fatal Accidents Act*[17] against Canadian National Railway in *forma pauperis*, but the court disallowed the procedure. The decision resulted in a debate by the Law Society of Alberta about legal aid, and shortly thereafter

the debate spread across Canada.[18] In 1934, the following resolution was passed at the annual meeting of the Law Society of British Columbia: "It is resolved that it is the sense of this conference of the British Columbia Law Society that the local Bar Associations should be urged to form in the various districts legal aid societies whose objects will be to render legal aid to indigent persons who appear to be worthy thereof and who are unable to obtain legal assistance themselves".[19]

The early roots of the implementation of legal aid in Canada trace back to World War II. The Canadian Bar Association ("CBA") offered "free legal services to the armed forces in response to an overwhelming demand for family and civil law services caused by the dislocations of war".[20] The presumptive rationale for free provision of these services was that armed forces should be entitled to free legal aid for their dedicated service to their country. By 1945 the War Work Committee estimated that total services provided reached approximately 5,550 matters nationally: 2,400 falling under family law, 900 under housing issues, and 134 under criminal law.[21] The provision of these services is generally in keeping with the conception of legal aid as a socially integrative mechanism—i.e., the purpose of legal aid is to remedy deficiencies within society.

In 1951, the Ontario government enacted legislation creating the country's first formally structured legal aid program.[22] The Law Society of Upper Canada oversaw its day-to-day operations and the government provided the funding. The Ontario government expanded the program in 1967 by providing for a statutory right to legal aid, establishing a loosely defined group of financially eligible clients and permitting lawyers to collect counsel fees.[23]

By the end of 1951, the Law Society of British Columbia had approved rules and regulations for an exploratory province-wide legal aid scheme that included honorariums.[24] Procedures for running clinics and referring cases were established, and lawyers were recruited to attend to each office. Panels met weekly in Vancouver and Victoria to consider applications and to refer them as necessary to individual lawyers.[25] Applicants were expected to pay their own disbursements but, when they lacked the financial means, the Law Society would pay the disbursements.[26] Financial eligibility was not fixed; each case was determined on its individual merits. Legal aid cases increased from a total of 323 in 1952 to 1,681 in 1962.[27]

Legal aid in B.C. was provided through *pro bono* services of the legal profession until the 1960s, but in the early 1970s, the federal and provincial governments began to contribute funding for such services.[28]

On August 12, 1963, a brochure was published by the Law Society of British Columbia[29] that set out the test for eligibility for legal aid:

> A person is qualified for free legal aid if requiring him to pay legal fees would impair his ability to furnish himself and his family with the essentials necessary to keep them decently fed, clothed, sheltered and living together as a family, or where he is at the moment without funds and requires immediate legal assistance for the preservation of his legal rights.[30]

The Law Society brochure shows the breadth of the eligibility requirements in 1963, with an end goal of preserving legal rights and maintaining what were regarded as essential legal services.

In December 1974, the Justice Development Commission's "Delivery of Legal Services Project" presented what is referred to as the "Leask Report", calling for the creation of a Legal Services Commission. The Leask Report concluded that a single method of delivering legal services throughout B.C. would be inappropriate due to B.C.'s marked social, economic and geographical diversity.[31] As a result, the *Legal Services Commission Act*[32] was enacted in 1975, bringing to life the Legal Services Commission (the "Commission"). The Commission's functions included planning the development of legal services tailored to each region of B.C. and aiding in the establishment and funding of organizations and individuals wishing to deliver such services.[33]

The creation of the Commission led to organizational problems that were, in part, linked to the Legal Aid Society. The Legal Aid Society was incorporated as a private society under the *Societies Act* on 26 February 1970, and its mandate was to "administer throughout the province of British Columbia a program of legal aid to persons unable to afford legal services". Policy-making and day-to-day operations of community law offices and legal aid offices remained within the purview of the Legal Aid Society and its centralized board of directors, while overall policy regarding the nature of work carried out at such offices was set by contracts between the community law offices and the Commission.[34] The solution to this organizational problem came in 1979 with the legislation creating the Legal Services Society (as defined above, the "Society"), which was made responsible for administering the legal aid program as well as the former work of the Commission in providing education, advice, and information about the law.

Before the enactment of the *Legal Services Society Act*, the legal profession in B.C., working with government, brought into being another key entity to support legal aid: the Law Foundation of British Columbia. The Law Foundation was an innovation—the first such foundation in North America—and came into being through amendments to the *Legal Professions Act*.[35] Before the Law Foundation's creation on April 2, 1969, financial institutions had paid no interest on lawyers' pooled trust accounts.[36] The Law Foundation's statutory purpose was to receive interest on these accounts and to use the

money to fund five core areas: legal aid, legal education, legal research, law reform, and law libraries.

With respect to legal aid, the "Programme Objectives" the Law Foundation adopted were as follows:

> 4. Legal Aid
>
> 1. To assist in the provision of legal services, including:
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> a. advice to and representation of economically disadvantaged persons;
>
> b. support of community service and non-profit organizations which address issues that benefit groups of disadvantaged persons or the public
>
> 2. To facilitate access of the public to the justice system.[37]

The legal profession in British Columbia has had a long history of taking steps to ensure that those who require legal aid receive assistance. Reference to articles published in the *Advocate* over a number of years reveal the extensive history of the profession's involvement in the development of legal aid in the British Columbia, including the legislation establishing the Society and the British Columbia Law Foundation.[38] Moreover, the history of the many *pro bono* organizations and entities in British Columbia brought into being by the profession provides a picture of how legal aid services and the provision of public legal information have evolved over time to accommodate changes in the law and society as well as the diverse needs of those in communities around the province.

WHAT WAS THE FOCUS OF THE REPEAL AND REPLACEMENT OF THE 1996 *ACT*?

The debates concerning the 2002 legislation reveal what areas were targeted for change. The Honourable Geoff Plant, in introducing Bill 45, stated: "This act provides new or amended provisions in four main areas: the mandate of the [Society], the society's governance model, the society's revenue-generating capacity and the relationship between the society and government."[39]

The effect of the legislative changes made in the four areas identified by the Minister have been extensive and, along with cuts in funding, have been profoundly negative.

The 2002 amendments repealed the previous statutory mandate of the Society and replaced it with broad statements about the Society's role, its objects, its principles, and its powers. The 2002 sections are enabling rather than mandatory. As it stands the 2002 *Act* does not tell the Society who, at a minimum, must be provided with legal aid and on what terms; rather, the

2002 *Act* purports to grant the Society broad flexibility in determining what services to provide while at the same time enabling government to severely limit services through the extent of the funding it provides.

One of the most significant changes from the pre-2002 *Act* was the repeal of s. 3(2)(d). That provision had ensured that legal aid would be provided for an individual who had a legal problem that threatened "(i) the individual's family's physical or mental safety or health, (ii) the individual's ability to feed, clothe and provide shelter for himself or herself and the individual's dependents, or (iii) the individual's livelihood."[40] By repealing that provision, the 2002 *Act* effectively removed the mandate of the Society to provide poverty law and family law services. Notably, the Doust Report, after extensively canvassing the ramifications of the changes, called for a reinstatement of coverage for many family law and poverty law matters.[41]

By specifying what legal services the Society was obligated to provide, the 1996 *Act* gave clear and certain guidance to its board of directors. By contrast, that clarity is lost in the 2002 *Act*. The 2002 legislation is drafted in such a way that it invites uncertainty as to its purpose and opacity as to the services the Society must provide. That uncertainty and opacity that result appear inevitable, given the "principles" listed in s. 9(2) that are to "guide" the Society.

Disagreements concerning the allocation of resources, the level of compensation for services, and the extent to which legal aid services are needed in society will inevitably arise, but such disagreements cannot be used to justify enactment of legislation that lacks clarity and certainty on the purpose and goals of legal aid.

Removing the Society's mandate in favour of a more "flexible" approach has had a wide array of negative social and legal effects. The purpose or object of legal aid was never to be as "flexible" as possible, nor was "efficiency" to supplant fair trial principles and access to justice. In *The Cult of Efficiency*, a book consisting of the 2001 CBC Massey Lectures, Janice Stein, a Director of the Munk School of Global Affairs at the University of Toronto, observed:

> Efficiency is only one part of a much larger public discussion between citizens and their governments. Efficiency is not an end, but a means to achieve valued ends. It is not a goal, but an instrument to achieve other goals. It is not a value, but a way to achieve other values. It is part of the story but never the whole. When it is used as an end in itself, as a value in its own right, and as the overriding goal of public life, it becomes a cult.[42]

Using a consequence-based approach (e.g., is imprisonment a likely outcome?) to determine eligibility in criminal law matters may risk overlooking an accused's personal circumstances such as disabilities; linguistic,

social, or cultural characteristics; overlapping legal problems; and needs related to systemic social factors.[43] However, a move to an outcomes-based approach does not exclude enacting a clearly articulated threshold for entitlement to legal aid.

The government has embraced the position that, under the post-2002 statute, only those services that have been identified by the courts as being required under the *Charter*[44] should be covered through legal aid.[45] To say that a legal aid system is adequate or sufficient if it meets the bare minimums established by the *Charter* is to adopt a misguided view of both the *Charter* and the need for legal aid. The *Charter* was never meant to establish the baseline requirements for a legal aid system, and that is so regardless of whether a failure to provide legal representation may be found to violate a *Charter* provision.

A legal aid system, at its core, is aimed at fostering and maintaining access to justice and the rule of law. In *BCGEU v. British Columbia (Attorney General)*,[46] Chief Justice Dickson observed: "There cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide who shall and who shall not have access to justice".[47]

The policies that emerged under the 2002 *Act*, in common with those adopted in civil actions, injected business concepts into the provision of legal services and court facilities. The language of "rights" or "entitlements" to legal aid has been lost in favour of an emphasis on raising revenues and prioritizing cases based on rationed resources.

A philosophy that the civil courts should function as a "profit centre" is incompatible with ensuring access to justice. The common law is premised on the court's ability to provide *remedies*, not *profits*.

A goal of "breaking even" through imposition of court fees inevitably results in an impediment to access to justice based on wealth. Access to the courts, including provision for legal aid services, should be viewed as a necessary cost of good government and maintenance of the rule of law

Maintaining the rule of law requires that equal and meaningful access to justice is accorded to everyone, regardless of wealth. The 1996 *Act* was aimed at that goal; the 2002 *Act* is not. What should be done? We will return to this in Part II of this article.

ENDNOTES

1. Section 9 took its current form after amendments to the 2002 *Act* were made by Bill 33 (*Attorney General Statutes Amendment Act, 2007*) in 2007. The amendments broadened the Society's mandate while seeking to ensure that low-income people are given priority for legal aid. The amendments included removing "low-income" from the Society's objects in s. 9(1) and adding to the principles in s. 9(2) that the Society's priority is to identify and assess the legal needs of low-income people in BC.
2. 27 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

   (2) Without limiting subsection (1), the Lieu-

tenant Governor in Council may make regulations as follows:

(a) prescribing services, persons, classes of persons and circumstances for the purposes of section 10 (2);

(b) prescribing the form of any record for which a prescribed form is contemplated by this Act;

(c) prescribing circumstances for the purposes of section 15 (7);

(d) respecting the matters referred to in section 21 (2) (b) to (d).

3. See e.g. the *Legal Profession Act*, SBC 1998, c 9, which in s 3 outlines the purpose of the Law Society of British Columbia:

3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

(a) preserving and protecting the rights and freedoms of all persons,

(b) ensuring the independence, integrity, honour and competence of lawyers,

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,

(d) regulating the practice of law, and

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

See also the *Medicare Protection Act*, RSBC 1996, c 286, which in s. 2 outlines the purpose of that Act:

2 The purpose of this Act is to preserve a publicly managed and fiscally sustainable health care system for British Columbia in which access to necessary medical care is based on need and not an individual's ability to pay.

See also the *Engineers and Geoscientists Act*, RSBC 1996, c 116, which in s. 4.1 outlines the duties of the Association of Professional Engineers and Geoscientists of the Province of British Columbia:

4.1 (1) It is the duty of the association

(a) to uphold and protect the public interest respecting the practice of professional engineering and the practice of professional geoscience,

(b) to exercise its powers and functions, and perform its duties, under this Act, and

(c) to enforce this Act.

(2) The association has the following objects:

(a) subject to subsection (1), to uphold and protect the interests of its members and licensees;

(b) to establish, maintain and enforce standards for the qualifications and practice of its members and licensees;

(c) to promote the professions of professional engineering and professional geoscience.

4. See e.g. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27; *R v Gladue*, [1999] 1 SCR 688; *CUPE v Ontario (Minister of Labour)*, 2003 SCC 29; *Canada (House of Commons) v Vaid*, 2005 SCC 30; *Canada (Attorney General) v JTI-Macdonald Corp*, 2007 SCC 30; *R v DAI*, 2012 SCC 5; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36.
5. Elmer A Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87.
6. 1983 CanLII 277 (BCCA) [*Mountain*].
7. Legal Services Society, "Making Justice Work: Improving Access and Outcomes for British Columbians", Report to the Minister of Justice and Attorney General (1 July 2012) at 19 [footnotes omitted], online: <www.lss.bc.ca/assets/aboutUs/reports/submissions/makingJusticeWork.pdf>.
8. See Legal Services Society, "Annual Report, 2001/2002" (Vancouver, BC: 2002) at 21, online: <lss.bc.ca>.
9. See Legal Services Society, "Annual Service Plan Report, 2009/2010" (Vancouver, BC: 2010) at 27, online: <lss.bc.ca>.
10. Leonard T Doust, QC, "Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia" (Vancouver, BC: 2011) at 9, online: <www.publiccommission.org/media/pdf/pcla_report_03_08_11.pdf> [*Doust Report*].
11. The Right Honourable Beverley McLachlin, "Preserving Public Confidence in the Courts and the Legal Profession" (2002) 29:3 Man LJ 277 at 282.
12. Lois Leslie, *The Right to Legal Aid: How British Columbia's Legal Aid System Fails to Meet International Human Rights Obligations* (Vancouver, BC: 2014), online: Lawyers' Rights Watch Canada <www.lrwc.org/ws/wp-content/uploads/2014/09/Right-to-Legal-Aid.BC-Fails-Sept.19.BN_.pdf>.
13. Human Rights Council, Report of the Working Group on the Universal Periodic Review, at paras 128.54, 128.998, 128.102, UN Doc A/HRC/24/11 (28 June 2013). See Leslie, *supra* note 12 at 4–5.
14. UN Committee on the Elimination of Discrimination against Women ("CEDAW"), *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, 7 November 2008, UN Doc CEDAW/C/CAN/CO/7.
15. See *Statute of Henry VII*, 11 Hen 7, c 12, 1495.
16. [1928] 1 DLR 1110, [1928] AJ No 25 [*Augustino*].
17. RSA 1922, c 196.
18. See Alfred Watts, "History of Legal Aid in British Columbia to 1969" (1969) 27 Advocate 199 at 199.
19. Minutes of the Annual Meeting of the Law Society of British Columbia 1934.
20. Eugene Kung, "Background: The Emergence of Legal Aid", *Coalition for Public Legal Services*, online: <cplsbc.wordpress.com/renewing-our-commitment-to-legal-aid/background-the-emergence-of-legal-aid>. See Richard L Abel, "Law Without Politics: Legal Aid under Advanced Capitalism" (1984–1985) 32 UCLA Law Review 474 at 543–44.

21. Kung, *supra* note 20, n 6; Dieter Hoehne, *Legal Aid in Canada* (Queenston, Ont: Edwin Mellen, 1989) at 52, 55.
22. See Robert Todd, "Legal Aid: A System in Peril" *Canadian Lawyer Magazine* (3 October 2010), online: <www.canadianlawyermag.com/1918/Legal-aid-a-system-in-peril.html>.
23. See *ibid.*
24. Benchers' Minutes of 15 December 1951.
25. See Watts, *supra* note 18 at 201.
26. See *ibid.*
27. See *ibid* at 202.
28. See *ibid.*
29. See Law Society of British Columbia, "Legal Aid in British Columbia" (1963) 21 Advocate 157.
30. *Ibid* at 157.
31. See Pauline Morris & Ronald N Stern, *Cui Bono: A Study of Community Law Offices and Legal Aid Society Offices in British Columbia* (Vancouver, BC: Ministry of the Attorney-General, 1976) at 15.
32. SBC 1975, c 36.
33. See Morris & Stern, *supra* note 31 at 16.
34. See *ibid* at 17.
35. *An Act to Amend the Legal Professions Act*, SBC 1969, c 15 brought the Law Foundation of British Columbia into existence.
36. See Kenneth W Antifaev, "Law Foundation of British Columbia: Twenty-Five Years of Public Benefit" (1995) 53 Advocate 67 at 67.
37. See *ibid* at 71.
38. See e.g. George P Reilly & David T Rogers, "Interest on Solicitors' Trust Accounts" (1965) 23 Advocate 167; Watts, *supra* note 18; JR Cunningham, "Interest on Solicitors' 'Mixed Clients' Trust Accounts" (1967) 25 Advocate 145–46; Alex Robertson, "The Law Foundation" (1969) 27 Advocate 264; James M MacIntyre, "Law Faculty News: Student Legal Aid and the Inner-City Service Project" (1969) 27 Advocate 68; AM Harper, "The Law Foundation" (1972) 30 Advocate 18; Kenneth W Antifaev, "Law Foundation of British Columbia: Twenty Years of Public Benefit" (1990) 48 Advocate 25; Gary Wilson & Art Duhame, "Law Foundation Funding of Public Interest Advocacy: The Debate Continues" (1998) 56 Advocate 211; Antifaev, *supra* note 36.
39. British Columbia, Legislative Assembly, *Hansard*, 37th Parl, 3rd Sess, Vol 7, No 1 (1 May 2002) at 3092.
40. *Legal Services Society Act*, RSBC 1996, c 256, as re-enacted by the *Legal Services Society Act*, SBC 2002, c 30.
41. Doust Report, *supra* note 10 at 9.
42. Janice Gross Stein, *The Cult of Efficiency* (Toronto: House of Anansi Press, 2001) at 6.
43. See Melina Buckley, *Moving Forward on Legal Aid: Research on Needs and Innovative Approaches* (Ottawa, Ont: Canadian Bar Association, 2010) at 3, online: <www.cba.org>.
44. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].
45. See Alison Brewin with Lindsay Stephens, *Legal Aid Denied: Women and the Cuts to Legal Services in BC* (September 2004) at 15, online: Canadian Centre for Policy Alternatives <www.policyalternatives.ca/sites/default/files/uploads/publications/BC_Office_Pubs/legal_services.pdf> ("Shortly after the announcement of the 2002 cuts, the Attorney General (AG) Geoff Plant presented the LSS Board with a list of the 'hierarchy of services' that would now be covered by legal aid. The government was unabashed in its directions that only services that have been identified by the courts as required under the *Charter* would be covered").
46. [1988] 2 SCR 214, [1988] SCJ No 76.
47. *Ibid* at 230.