THOUGHTS ON A COORDINATED AND COMPREHENSIVE APPROACH TO ACCESS TO JUSTICE IN CANADA

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[Brent Cotter, QC, delivered these comments at an Access to Justice panel at the University of New Brunswick, on October 28th, 2011. The panel followed the thirty-third Viscount Bennett Lecture by The Honourable Justice Cromwell.]

INTRODUCTION

I propose, in these comments, to address the question of Access to Justice in a broad, holistic way. I will begin by defining the topic broadly, essentially building on the definition proposed by Justice Thomas Cromwell in his Viscount Bennett Lecture.[1] I will then set out five assumptions about the topic of Access to Justice that seem to me to be essential, foundational dimensions of the subject and our ability and willingness to tackle it. Third, I will offer a brief examination/critique of the four critical 'actors' in relation to the challenge of Access to Justice, and in so doing, offer some relatively controversial approaches that I believe are required by all of us in the various sectors of the legal system – in partnership – to improve Access to Justice for Canadians in a meaningful and sustainable way. I will close these remarks with a brief conclusion.

A Definition

As Justice Cromwell elegantly articulated, we do not have hope for success if we are not able to identify the issue we are addressing, or if we are unable to determine the nature of the problem. He described 'Access to Justice' in terms of a state of affairs where "in general terms, members of our society would have appropriate access to civil and family justice if they had the knowledge, resources and services to deal effectively with civil and family legal matters."[2] Justice Cromwell's focus, and the subject matter of his talk was *Access to Civil and Family Justice* and his definition

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[1] The Honourable Justice Thomas A Cromwell, "Access to Justice: Towards a Collaborative and Strategic Approach" (The Viscount Bennett Memorial Lecture, delivered at the Faculty of Law, University of New Brunswick, 27 October 2011), (2012) 63 UNBLJ 38.

[2] *Ibid* at 39.

was accordingly focussed on Access to Justice in that context. In my opinion, the definition he offers, with one slight modification, is applicable to a whole range of issues within the broad scope of Access to Justice.

When we talk about the legal needs of our citizenry in any area, whether it be advice about the drafting of a will, dealing with one's immigration or refugee status, sorting out a landlord-tenant dispute, making a claim for employment insurance, dealing with a criminal charge, or a host of other matters, the 'knowledge, resources, services' conception is equally applicable. I would only add the following. The range of needs of our citizens in relation to Access to Justice in any of these or other areas varies. Some people need meaningful, perhaps comprehensive legal service, so that they can be represented in court or before an administrative agency in order to obtain justice. Others may need less, perhaps access to a mediator or to other resources that can facilitate a resolution of a legal problem on their own. Still others may only need more information, thereby enabling them to make decisions or plan their lives and careers in ways that suit them best. For this reason, and in its broad application to the spectrum of circumstances in which people need assistance, I am inclined to take the view that Access to Justice means access to *'knowledge, resources* ***or*** *services'*, as needed, to address the individual's particular circumstances. Sometimes Access to Justice will mean full-scale legal representation; in some cases it will mean no more than providing a person with the information he or she needs to sort things out without resorting to additional resources or services.

Five Assumptions or Presumptions

Justice Cromwell has ably articulated the 'problem' with Access to Justice in civil and family law. As far back as 2002 the Canadian Judicial Council stated:

> The needs of individuals who appear in courts without legal representation are a serious and growing challenge for the judicial system.[3]

Similar views have been articulated about other areas of law in Canada. In *Foundation For Change: Report of the Public Commission on Legal Aid in British Columbia*, Commissioner Len Doust stated:

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[3] Canadian Judicial Council (CJC) *Annual Report*, 2001-2002 (Ottawa, 2002) at 27.

> Without adequate legal aid, we all fail in our social obligation to ensure that every citizen of our province has available at least the basic necessities of their lives so they can adequately sustain themselves and their families.[4]

The Canadian Council of Administrative Tribunals has observed:

> Hundreds of thousands of Canadians come to administrative tribunals each year. Clients who appear before administrative tribunals are less likely to be represented by counsel than if they were in court. These people are faced with an unfamiliar environment, probably unknown administrative processes, and difficult legal language. Add low literacy skills and we have to question how well justice is served.[5]

With respect to civil and family justice, Justice Cromwell came to the same conclusion:

> Is there a problem with access to civil and family justice? My answer, and the answer of every commentator that I know of, is "yes". Is the problem serious? Again, I believe the answer is "yes".[6]

There is little doubt that Access to Justice is a serious problem across a wide spectrum of our society. On the basis of this uncontrovertible premise I turn to five 'assumptions' about the fundamental nature of the 'problem' and about the orientation we need to bring – collectively – to the challenge in order to make a meaningful impact. The five 'assumptions' are:

> 1 Not only 'justice' but 'Access to Justice' is itself fundamental to how citizens live their lives in a respectful society governed by the rule of law.
>
> 2 Lack of Access to Justice undermines our society and our confidence in its essential fairness and justness, undermining our confidence in the rule of law itself.[7]

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[4] British Colombia, Foundation For Change: *Report of the Public Commission on Legal Aid in British Columbia*, (Vancouver: Public Commission on Legal Aid, 2011), at 9, online: <http://www.publiccommission.org/media/PDF/pclas_report_03_08_11.pdf> [Doust Commission].

[5] Canadian Association of Administrative Tribunals, Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language (Ottawa: University of Ottawa, 2005), at 1.

[6] *Supra* note 1 at 39.

3 Ensuring Access to Justice gets harder every day.

4 No one person alone can solve the problem of Access to Justice, but every single one of us has a responsibility to contribute to the solutions, even when those solutions are and must be 'uncomfortable' for us.

5 Each of us associated with law has been given an opportunity, and a 'trust' in relation to the justice system, and we have an obligation to preserve and strengthen Access to Justice as part of that 'trust'.

The Roles and Responsibilities of the 'Legal Actors' in Relation to Access to Justice

(A) Legal Education

I start with the sector of the legal continuum that is closest to home for me and for many of you – Legal Education. My sense of legal education a generation ago, when I was a student and a junior professor, is that there was in those years a greater commitment to 'public service' in our law schools.[8] We learned then, and should be learning still, that service in the law is an important calling, a calling to 'public service' in whatever way that we make use of our law degree. To some extent we have lost that orientation to public service and we must get it back again.

How might we do this? First, we must teach our students about the importance of Access to Justice, and the role of the law and lawyers in facilitating, rather than impeding, this goal. This means the incorporation of Access to Justice themes in our law school courses, from the start. For example, in most of our courses we study significant cases and legal decision-making processes without acknowledging or appreciating the implicit assumption that legal representation was in place for the participants. The significance of the role of the lawyers in these

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[7] As Chief Justice Beverly McLachlin has noted in recent remarks, "Public confidence in the system of justice is essential. How can there be confidence in a system that shuts people out, that does not give them access?" (Delivered at the Middle Income Access to Civil Justice Colloquium, Faculty of Law, University of Toronto, 10 & 11 February 2011), online: University of Toronto <http://www.law.utoronto.ca/visitors_content.asp itemPath=5/5/4/0/0&contentId=2113>.

[8] I recognize that things are different now in many ways for today's law students, and that things may not even have been as wonderful a generation ago as I am suggesting. As my father used to say, "Nostalgia isn't what it used to be." Admittedly, I had the opportunity to study law at a time when the pressures of career, of finding that first, best, job opportunity, were less than they are today. And the burdens of high tuition and correspondingly high student debt were less.

processes, or the consequences that may have befallen a person who couldn't draw upon his or her lawyer's skills, are taken for granted. They are almost never acknowledged in law school classes. We need meaningful educational strategies at our law schools to incorporate these understandings - and their significance to the administration of justice in our society - into our law school curricula. To date this is a 'hit or miss' proposition, and it is simply too important a matter for it to be allowed to 'miss'. This is a role for law schools and they should show leadership, appropriate to their important place in the firmament of society-building institutions.[9]

Second, we must be more pro-active in our expectations that law students learn about 'public service' through experience, ideally through facilitating Access to Justice experiences writ large. In my opinion, this can only be achieved by law schools mandating that, as a prerequisite to obtaining their law degrees, students must participate in at least a limited amount of prescribed, structured public service during their time at law school. This calls for change. It imposes, and makes demands of law schools and law students. But it can be done – look at the public interest requirement at Osgoode Hall Law School.[10] And if Chief Justice McLachlin is correct about the challenge our society faces, it must be done if law schools are going to do their part in preparing strongly-oriented, self-aware students and graduates to do their part.

Third, we must begin to rethink our law school curriculum with greater emphasis on service. I am still in favour of our students learning a little law. But we have to teach it less for its own sake, and more as a set of tools designed to enable those who study it to make use of that learning to solve people's problems. Legal understanding must be seen as part of the toolkit for Access to Justice. This calls for more contextual learning, more experiential learning and more clinical education.

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[9] The fact that this work must be law-school initiated is evident in the recent work of the Federation of Law Societies of Canada to establish mandated educational requirements for Canadian common law schools. Despite having commissioned a hard-working Task Force that gave consideration to law schools for nearly three years, having produced a lengthy Task Force Report on the Canadian Common Law Degree (2010) <http://www.flsc.ca/_documents/Common-Law-Degree-Report-C(1).pdf>, and a lengthy Implementation Committee Report, the focus on students' education in relation to Access to Justice is limited to one oblique reference to learning, in a mandated course of study in legal ethics, 'the importance and value of serving and promoting the public interest in the administration of justice'. Task Force Report on the Canadian Common Law Degree: Final Report, (Ottawa: Federation of Law Societies of Canada, 2009) at 9.

[10] Osgoode Hall Law School at York University's Public Interest Requirement, where students must undertake a minimum of 40 hours of approved public interest activities during the course of their degrees in order to graduate. See online: York University <http://www.osgoode.yorku.ca/programs/jd-program/upper-year-program/opir>.

Here, students can learn the law and contribute to Access to Justice at the same time. Once again, this calls for change. It makes demands on law schools and on students, but it can be done. It must be done.

Fourth, we need to think of the ways in which laws can be changed to facilitate Access to Justice and at the same time ensure that legal education is responsive to those changes. A small example of this occurred in Saskatchewan in the 1990s. When the Government of Saskatchewan introduced a 'mandatory, front end exploratory mediation' requirement for nearly all civil litigation undertaken in the province, it also funded a position at the College of Law to enable the development of an educational program aimed at teaching law students about dispute resolution approaches other than litigation to solve their clients' problems. These measures have been successful both in terms of the 'mediation' project itself and in terms of a rich academic undertaking to strengthen the legal problem-solving skills of students and graduates.

Fifth, we need to attract candidates for law school – most of whom will become lawyers – at least in part on the basis of their genuine inclination toward service, and in their belief in and desire to foster Access to Justice. Canada's law schools have a remarkable pool of talent of applicants from which to draw.[11] We should include in our criteria for selection, from this talented pool, an expectation that they be committed to service and to the betterment of our legal system. After all, these will be the lawyers of Canada's future.

(B) Lawyers and the Legal Profession

Both lawyers and the legal profession as a whole acclaim and celebrate the sacred trust given to lawyers. The legal profession is often claimed to be the last vanguard against authoritarianism. This role and its importance to the administration of justice, the rule of law and our confidence in a fair and just society is of fundamental

[11] As noted by Brian Mazer, Canadian Law Admissions Statistics Services and Innovations (CLASSI) Statistical Summary (2010-2011) [unpublished, on file with author] there were 27,929 applications for approximately 2683 places in Canada's common law schools in 2010. Taking into account multiple applications by many students, and using the number of Canadians who took the Law School Admission Test [LSAT] as a proxy, it is fair to say that approximately 10,000 actual candidates applied for these 2683 places, at or near the highest in Canadian history. By way of comparison, this ratio of candidates-to-places is more than double the comparable ratio of candidates-to-places among American Bar Association-approved law schools in the United States.

importance to Canadians. Yet the legal profession seldom looks itself in the mirror to reflect on just how well we are doing in ensuring that the ends of justice - large or small - are able to be pursued by our citizens. Lawyers have a monopoly or near monopoly with respect to the delivery of legal services in our society. We have this monopoly in order to preserve and protect the public interest.[12] As a society, we have decided that this is an excellent, or at least a preferred, model for ensuring that high quality legal services are made available to our citizens. But has it met societal expectations? For too long we have made use of this authority, and the concept of 'the unauthorized practice of law', as a shield to keep others out. Sometimes this has been a justifiable effort to protect people from incompetent service providers.[13] Sometimes it has been to protect the monopoly.[14] One consequence of this is that we have focussed on the delivery of services by lawyers to the exclusion of other potential legal service providers.

Despite obvious challenges to Access to Justice, we have not, as lawyers, used all the tools at our disposal to address these issues. Justice Cromwell has identified some of these challenges and opportunities. I note the work of the legal profession in relation to 'unbundling of legal services', where a lawyer may be retained to provide a portion of the legal services in relation to a matter, either because this is all that the client requires or it is all that the client can afford. Courts are becoming more accepting of this arrangement, and law societies, at least in British Columbia and Ontario,[15] have modified their Rules of Professional Conduct to accommodate the efforts of lawyers to assist clients in this limited way, particularly in pro bono representations, without them or their law firms encountering intractable conflict of interest problems as a result of a limited representation of a client in need.

This is a positive development, but I think we need to be bolder. In remarks at the University of Manitoba shortly after his retirement, Chief Justice Brian Dickson said:

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[12] *Legal Profession Act*, SBC 1998, c 9, s 3.; *Barristers and Solicitors Act*, RSNS 1989, c 30.

[13] *R v Scott*, (1988), 67 Sask R 69 (Sk QB); *R v Ronamowicz* (1999), 26 CR 246; 138 CCC 225 (Ont CA).

[14] *Law Society of British Columbia v Mangat*, [2001] 3 SCR 113; 2001 SCC 67.

[15] Law Society of British Columbia, Code of Professional Conduct, Rule 7.01 "Limited Representation"; Law Society of Upper Canada, Rules of Professional Conduct, c 2.04 (16-19 "Short-term limited legal services."

> [T]he external aspect – en effet l'envers de la médaille – is our special obligation to ensure that the less fortunate have access to the legal system and justice – the cost of legal advice should not put it beyond the reach of have-nots and have-little who claim the protection of the law.[16]

In my view, we in the legal profession, as people who make our livings - generally decent livings and in some cases very good livings – within and through the justice system, and to whom a certain authority and public trust is granted in relation to the justice system - owe it to that system, when it is struggling, to help make it better. This is captured in our Codes of Professional Conduct. For example, the Federation of Law Societies Model Code of Professional Conduct provides, under the heading "Encouraging Respect for the Administration of Justice", the following Rule:

> 4.06 (1) A lawyer must encourage public respect for and try to improve the administration of justice...[17]

The following two suggestions would take this hortatory and aspirational message and make it a reality. Neither suggestion is novel, but both of them, a challenge to our profession, would make a lasting difference in terms of Access to Justice and would immensely improve the public's regard for the legal profession. I put these suggestions in the context of the role and responsibilities of our self-governing law societies, but in each case their goal is to improve Access to Justice for those in need.

First, each of us as lawyers should be required to provide a modest portion of our time, or money's worth of our time, to support a pro bono program. Such a program could be established and overseen by our respective law societies, and should be applicable to all of the members of the profession including articling students, those in government service and those working as in-house counsel. I acknowledge that this requires a 'bureaucracy', and that it asks lawyers to contribute

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[16] Brian Dickson, "Remarks by Rt Honourable Brian Dickson, PC" (Dickson Legacy Dinner, delivered at Winnipeg, Manitoba, 19 October 1990), at 10, online: <http://www.biblio.uottawa.ca/static/ftx/docs/dickson/LEGACY-90.pdf>.

[17] Federation of Law Societies of Canada, Model Code of Professional Conduct, Ottawa: FLSC, 2011, Rule 4.06. This provision is itself modeled on similar Rules appearing in Law Society Codes of Professional Conduct across the country.

to the solution of a problem that they have not themselves directly created. But when we face a problem of the present magnitude, so important to our society and so close to home, so to speak, we all have to contribute to the solution, even if we are not paid to do so. The exact amount of time [or money's worth] required of each of us each year is something to be determined by those who best appreciate the challenge that a mandatory pro bono program would present - and who best know the Access to Justice needs in our society. But to stand idly by and declare that 'it is not my problem' would signal that we are only interested in the justice system for what we can gain from it rather than what we owe to it.

Second, we must begin to contemplate a fundamental redesign of the ways in which we deliver legal services. We need to engage in this in ways that are not 'lawyer-centric'. This requires that we be less focussed on what is referred to in other professions as 'scope of practice', in other words, the scope of the monopoly in the delivery of legal services. We need to imagine ways in which suitably qualified people - *who are non-lawyers* - can deliver certain legal services competently and at lesser cost.[18] Law remains one of the few professions in our society that has not undertaken a meaningful consideration of how it might be possible to redesign delivery systems for legal services that best serve the public interest by better aligning client needs with the skill sets of service providers.

It is possible for us to do this if the leaders of the legal profession's governing bodies take a broad, societal view of their mandate to govern in the public interest. Specifically, they must embrace, as their mandate, not just the governance of lawyers but the governance of the provision of legal services.

In Justice Cromwell's Viscount Bennett Lecture he ended with this question:

> [W]hat will be said about the contributions to improved Access to Justice by the legal profession – judges, practitioners, academics – of the early twenty-second century?[19]

[18] To the credit of the Law Society of Upper Canada, the legal profession in Ontario has taken on a legislated role in the supervision and governance of independent paralegal service providers in Ontario. See *Law Society Act*, RSO 1990, c L.8, ss 4.1(b), 25.1.

[19] *Supra* note 1 at 48.

While we may not regard Access to Justice as 'our problem', I greatly fear that if we do not, as a profession, begin to offer meaningful solutions to what seem today to be society's intractable problems of Access to Justice, the 22nd Century answer will be a negative and uncharitable one. Simply put, we lawyers have a monopoly on the delivery of legal services for a reason. And that reason is not about us. If we don't begin to imagine and implement ways by which affordable access to one of the great social goods of our society can be achieved, others will do it for us. And I can guarantee that we will not like it.

(C) The Judiciary

Despite the improvements that these changes would generate in addressing the challenge of Access to Justice, many are pessimistic about the prospects for fundamental change. In 2005 Rollie Thompson wrote:

> More lawyers for civil cases in our superior courts will not be forthcoming. There is no chance that our market system for allocating lawyers, based upon the wealth of parties, will be changed. Legal aid gives a low priority to civil matters outside family law. Even if there were more money for legal aid lawyers in civil matters, the real priority should be poverty law – like income assistance, residential tenancies, public housing, mental health, etc. – which takes place outside the superior courts. Given these legal aid priorities, duty counsel will likely never be allocated to civil matters in superior courts.[20]

Recognizing these constraints does not mean it is not possible for the judiciary to look for and implement ways by which Access to Justice can be enhanced for litigants. I make four suggestions, the last of which is drawn from Thompson's observations. First, court processes, and our explanations of these processes, can be simplified.[21] We have rightly valued fairness and due process in court proceedings. However, our commitment to these values can sometimes cause us to lose sight of other values of equal or greater importance to the parties – the people, after all, for whom the process exists. Often litigants want timely,

[20] R A Rollie Thompson, "The Judge as Counsel" (2005) 8 News and Views on Civil Justice Reform 3 at 5. Though Thompson is pessimistic, and in the eight years since he wrote this piece his pessimism seems justified, there is another aspect of his comments that should be borne in mind. Improvements to Access to Justice require a coordinated effort on the part of the legal profession, governments and the judiciary. This latter constituency, the judiciary, was the focus of his article.

[21] One good example is the Act and Rules governing the Small Claims Court in British Columbia: *Small Claims Act*, RSBC 1996, c 430; Small Claims Rules, BC Reg 261/1993.

inexpensive and accessible processes to resolve their problems and procedural perfection is itself a less important value to them. For many, rough but affordable justice is better than no justice at all. We need to be mindful of the need for litigants' interests to be given priority in the design and operation of our dispute resolutions systems.

Second, we need to be open to dispute resolution processes that are less focussed on the legal framework of the dispute and more focussed on addressing the interests of the parties. This may mean that we use judges less and other dispute resolution professionals more in the resolution of certain kinds of conflict.

Third, judges need to be mindful in the exercise of their authority to order that when certain parties receive government-funded representation in individual cases, it is highly likely these directives – often in significant cases but at disproportionately high levels of legal cost – will be funded out of government resources that would otherwise be dedicated to other forms of subsidized legal services for citizens. In terms of cost-benefit analysis, it is likely that many deserving clients will go wanting in terms of access to legal advice and representation as a result of every single court-ordered, government-funded litigant.[22]

Fourth, in some cases we need to reconsider the role of the judge in certain proceedings involving unrepresented litigants. To the credit of the Canadian Judicial Council, it has begun to examine the role of the judge in cases where one or both parties are unrepresented.[23] Thompson called for a fundamental reconsideration of the role of the judge in addressing the needs of unrepresented parties in court proceedings. This approach has merit. It admittedly challenges one of the

[22] The most obvious example of this is *R v Caron*, 2011 SCC 5, [2011] 1 SCR 78, in which the Supreme Court of Canada directed that a provincial government provide funding to a litigant who wished to argue for his right to be tried in the French language in the case of a traffic violation, this despite a decision by the provincial francophone association to decline to financially support the court challenge. While a perfectly legitimate case for Caron to advance, the cost of his representation likely had the effect of depriving many citizens of his province of access to legal services to address their own legal concerns. Courts need to be mindful that their facilitation of some Access to Justice in cases of importance through court-ordered government funded legal representation can have the effect, sometimes profound, of denying access for others. This authority should be exercised rarely and in only the most compelling cases.

[23] Canadian Judicial Council, Statement of Principles on Self-represented Litigants and Accused Persons (Ottawa: 2006); online: <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf >.

fundamental principles of our adversarial system of dispute resolution that the parties are responsible for the advancement of their case, with the associated values of judicial independence and judicial neutrality. Nevertheless, it is possible to envisage that, in certain cases where the parties know and agree to a different approach, the judge might be expected to take on a significantly different role in court proceedings. In such cases where justice requires it, the judge would be much more engaged in the process. For example, Thompson argues that where both parties are unrepresented:

> [T]here should be different rules for the conduct of the trial or hearing. We should recognize the need to shift to a more inquisitorial procedure in such cases, with the judge examining witnesses, proving documents, retaining experts, suggesting possible arguments to the parties, etc.[24]

This is a very different role for the judge, and the design of such a judicial role is both challenging to our conventional thinking, and potentially complicated in its implementation. Whether he is right in the details is less important than whether he is right in principle. That is, in order to provide better justice to unrepresented litigants should we not begin to consider less conventional judicial approaches and roles that can achieve this objective of meaningful Access to Justice for the unrepresented?[25]

(D) Governments

I begin by repeating the foundational point that Access to Justice is a critical feature of the rule of law, and a cornerstone of people's confidence in a fair and just society. Governments have a great interest in the preservation of the rule of law and people's confidence in our society's fairness and justness. It is therefore critical that governments not only respect these principles but advance them in their actions, investments and policies.

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[24] *Supra* note 20 at 6.

[25] As Justice Cromwell noted in his Viscount Bennett Lecture, *supra*, note 1, at 41, Canada ranks sixteenth out of twenty-three high income countries in the area of Access to Justice in the 2011 Rule of Law Index [M. Agrast, J Botero, A Ponce, WJP Rule of Law Index, 2011 Washington, D.C.: World Justice Project. Interestingly, European countries where the inquisitorial model of justice is predominant rank at the top of the list. Perhaps there is a correlation between Access to Justice and the judicial processes in use to achieve it.

Obviously greater financial support is both justified and needed to facilitate Access to Justice for citizens. With respect to Legal Aid, that case has been powerfully made by Len Doust in Foundation for Change. As he noted, in Recommendation 6 of his Report:

> The provincial and federal governments must increase funding for legal aid and provide this funding through a stable, multi-year granting process. The provision of essential public legal services is a governmental responsibility and the delivery of core services should not depend upon charitable contributions from the Law Foundation, the Notary Foundation, community groups, and pro bono efforts of the legal profession, paralegals and others.[26]

Similarly, legal information services often perform a significant Access to Justice role at modest cost and deserve the government's support and investment. In the same way, court-based information services can assist unrepresented litigants in the basics and in the explanation of court processes serving litigants, courts and the process of justice at modest cost.

Beyond funding, governments can make a contribution in other important ways. First, they can make a real commitment to the crafting of laws and procedures in clear, simple, understandable ways. This means that not only precision but simplicity and clarity should be articulated objectives of government drafting. Second, governments should develop 'policy screens' as a means of assessing whether any particular policy, law or administrative practice facilitates or impedes Access to Justice for citizens. The mandate would be to review critically, and with a view to modification, any that impede access. Such screens would operate in ways that are similar to the assessment of laws and government policies used to determine whether they contravene the Charter of Rights. Laws that impede Access to Justice would require special justification, financial compensation, or policy support to ameliorate the impediments created.

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[26] *Supra* note 4 at 10.

CONCLUSION

I have suggested that Access to Justice is a critical dimension of our society, in the sense that it is fundamental to citizens' confidence in the rule of law, and to our confidence that we live in a fair and just society. Absent Access to Justice, law appears to be available for only the powerful or the wealthy. We live in a country where the rule of law is fundamental to our belief in a civilized society. Where citizens have little or no access to law to enable them to understand and, if necessary, advance our rights, their confidence in a just society based on law will be eroded. This is not just a question of who 'has' and who 'has not' in our society. It is a recipe for the diminishment of our society as a whole.

The challenge of providing Access to Justice for citizens is so broad and so diverse that its solutions can only be achieved through the concerted efforts of many sectors of our society. While the 'law' sector is not the only dimension of our society that should be called upon, we have a special place in the 'system' and bear a 'trust' with respect to that system. As Justice Cromwell noted in his Viscount Bennett Lecture:

> We in the profession are the trustees of our legal system. We not only function within it and know how it works in practice, but we are also primarily responsible for its preservation – and there is of course much worth preserving.[27]

If we do not care enough to invest our time, energy, ideas, expertise, and sometimes our resources to address this problem, why should we expect that others will?

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[27] *Supra* note 1 at 47.