

# PRESENTATION MADE TO THE LEGAL AID COMMITTEE OF THE CBABC NOVEMBER 2018 LEGAL AID COLLOQUIUM

By Richard Peck, Q.C.

**T**wo years have passed since our last colloquium. The purpose of today's colloquium is to hear a series of presentations by groups and individuals who understand and work to ameliorate the challenges faced by persons for whom access to justice—the very promise of the rule of law—has become elusive, if not illusory.

We need to hear and learn from you about the problems and concerns which arise in the course of dealing with persons whose access to the justice system is constrained.

We need to know your perspectives and your views. We need to engage in dialogue, and we hope that in the discussion that follows the presentations we can have a free flow of ideas. The more information we share, the more informed we will become.

These are difficult times for access to justice. They were difficult times two years ago and we had the first colloquium and nothing has appreciably changed, which is not surprising. Two years is nothing in this context. The first major review of legal aid in this province was the Attorney General's task force in 1984. That was 34 years ago.

Thirty-four years in which the recommendations contained in that report have lain fallow. What is the old expression? Everything changes, nothing changes. Let me illustrate. In 1894, almost 125 years ago, the French author Anatole France penned what were to become his most famous and lasting words: "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread." More than a century passes but nothing changes!

The forbidden acts referred to by the author are acts aimed at availing oneself of the mere necessities of life—to wit, shelter and sustenance. Yet these are still impugned acts pursuant to our laws whether under the *Crim-*

*inal Code*, federal or provincial regulatory statutes or civil ordinances and by-laws.

Some of you may think I jest or have resorted to hyperbole, so allow me to illustrate.

Anyone who steals a loaf of bread—commonly referred to as shoplifting—is subject to being charged with the offence of theft pursuant to the *Criminal Code*. The punishment for this offence, on summary conviction, is a fine of up to \$5,000 or imprisonment for up to six months or both.

Last year the Allard School of Law's Criminal Law Clinic assisted a person charged with shoplifting baby formula. He was a 45-year-old man who had come to Canada as a refugee from the war in Serbia. He was unemployed and disabled, having suffered a back injury which included leakage of spinal fluid. He had long suffered from PTSD. He was on medication for depression and took painkillers for his back. He was known to act erratically. He and his common law wife had no money, but they did have a newborn. He had two prior convictions for shoplifting: one in 2013 for a pair of socks and one in 2015 for a pair of shoes. Do the words necessities of life come to mind? In the result, he was granted a conditional discharge. It is doubtful the result would have been the same if he had not been represented by counsel.

With respect to "sleeping under bridges" we have s. 10 of Vancouver's Parks Control Bylaw, which provides that "no person shall ... take up a *temporary abode overnight* in any place on any portion of any park". This offence is subject to a fine of not less than \$250 and not more than \$2,000. As you can see, some things do change. We no longer restrict this dire offence to bridges. Stanley Park should be a good source of income for the city.

Finally, "begging in the streets". This bit of malfeasance is governed by provincial statute—namely, the *Safe Streets Act* of 2004. This benignly named statute prohibits soliciting another person using the spoken, written or printed word or by gesture for the purpose of receiving money or anything of value. That, of course, is legalese for "begging". This statute makes it an offence to bug people for the odd coin—in other words, being aggressive (i.e., persistent); you can't ask the same person for money a second time after they have said "no" or ignored you.

Further, you can't beg near a bus stop, taxi stand, ATM, payphone or on a roadway which includes medians. The penalty for an offence under the statute is a fine ranging from \$86 to \$215. I note, sarcastically, that it's always a good idea to impose a monetary penalty on someone who doesn't have any money. To me, that breathes life into the fictional words of Mr. Bumble in Dickens's *Oliver Twist*: "If the law supposes that, the law is a ass—a idiot."

People are actually charged with the offence of "begging" in this province.

Last year the Allard School of Law Criminal Law Clinic represented a man charged under the statute for standing on a centre-dividing median and holding up a cardboard sign. Printed on the front of the sign were the words "Spare change for food and necessities". On the reverse the words "Thank you" were printed. The police seized the sign. The charge was eventually stayed. I doubt very much that it would have been stayed but for the fact that this particular accused had legal representation.

And what happens if you are indigent and charged with theft, or ticketed under a statute or by-law or for a vast array of other offenses including common assault, uttering threats, mischief, criminal harassment, causing a disturbance, etc.? To whom do you turn for legal help?

In the vast majority of cases, you will not qualify for traditional legal aid. Duty counsel can help you at the intake stage. If your intention is to plead not guilty, you might be one of those few cases where the Allard School of Law Criminal Law Clinic will assist.

What if you are a single mother with two children who is facing a "renoviction" notice? Where do you turn?

There are many groups who volunteer time to help people in legal distress. We will be hearing from a number of them today. These groups perform invaluable public service. They do so out of dedication, commitment and kindness. But the question has to be asked: Why is this necessary? Why is this necessary in this country, this vaunted liberal democracy, in 2018?

The question has to be asked: Why, despite repeated calls for it, is access to justice not treated by our governments, provincial or federal, as an essential service?

The question has to be asked: Why have we not restored the 40 per cent cutback of 2002 that resulted in the elimination of some 60 Legal Services Society branch offices, many of which served persons in remote areas of the province, including significant groups of Aboriginal peoples?

The question has to be asked: Why has there been no meaningful governmental response to the 2014 Lawyers' Rights Watch Canada report concluding that British Columbia's legal aid system has failed to meet international human rights obligations?

The question has to be asked: Why has there been no meaningful response to the 2008 report of the United Nations Committee on the Elimination of Discrimination against Women which stated: "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"?

Our first colloquium was held two years ago in November 2016. At that time, we had a lively and stimulating discussion about the general state of legal aid in this province. Two years later, nothing has changed! Today's colloquium is focused on the problems that arise from the constriction of access to the justice system.

Our presenters represent diverse interests and will address some of the following issues:

1. How groups and organizations that deliver legal services are coping, particularly women's groups.
2. How the police are dealing with the challenges they encounter.
3. The problems arising from the proliferation of unrepresented litigants.
4. How to ameliorate the difficulties faced by persons with mental health issues.
5. Access issues faced by Aboriginal persons.

Hopefully two years hence, no one will have to say that nothing has happened.

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## APPENDIX 1

# THE LAW SOCIETY'S VISION FOR PUBLIC LEGAL AID IN BRITISH COLUMBIA

### WHEREAS

*The rule of law is the foundation of our democratic society. Every person must have the opportunity to understand how the rule of law affects their daily lives. Legal Aid is an essential service necessary to ensure all persons have that opportunity and understand its effect and to access our justice system.*

### RECOGNIZING

Access to justice is a fundamental human right, and:

- (a) Our democratic society cannot exist without the rule of law, and the rule of law depends on all people having meaningful and effective access to justice,
- (b) not all people in society have the ability or means to access justice,