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National Action Committee on Access to Justice in Civil & Family Matters: Prevention, Triage and Referral Working Group

Action Committee on Access to Justice in Civil and Family Matters

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Action Committee on Access to
Justice in Civil and Family Matters

Comité d'action sur l'accès à la
justice en matière civile et familiale

National Action Committee on Access to Justice in Civil & Family Matters

Prevention, Triage and Referral Working Group

Final Report

Responding Early, Responding Well: Access to Justice through the Early Resolution Services Sector

February 12, 2013

“Resolved that the Action Committee approve the Working Group report for distribution and consultation on March 12, 2013”

EXECUTIVE SUMMARY

This report has been prepared by the Prevention, Triage and Referral (PTR) Working Group of the National Action Committee on Access to Justice in Civil and Family Matters. The Working Group first met in Ottawa on March 2, 2012 and subsequently created a first draft report. The group then consulted with key players in the PTR field across Canada and internationally, using a web survey with a link to a second draft of the report. The survey, conducted in the summer and early fall of 2012, requested feedback on 14 potential recommendations. While the 125 respondents were generally supportive of the recommendations, their collective feedback resulted in a major restructuring for this final report. The focus is now more clearly on how to move the sector forward, and on recommendations that support this process.

This report begins by establishing a vision of access to justice that focuses first and foremost on the needs and concerns of individuals. It is one that looks at legal problems from the point of view of the people experiencing them. The sector of the justice system best able to respond effectively and with minimal delay to the largest volume of legal problems of citizens' everyday life is what the working group calls the Early Resolution Services Sector (ERSS). This sector is defined in greater detail in the report, but loosely refers to the "front end" of the justice system which precedes – and often obviates the need for – formal representation in the court system.

Solid foundations for the ERSS already exist in all jurisdictions in Canada, but there are many challenges in terms of overall resources allocated to the sector, the piecemeal and uncoordinated nature of funding, the lack of recognition of the value of these services, and the lack of oversight to encourage coordination and collaboration among service-providers and stakeholders.

The working group proposes eleven recommendations which outline a process to move the ERSS forward as a sector and establish it as a more prominent component of the overall justice system. Significant progress cannot be achieved unless there is fundamental acceptance of the principle, enunciated in Recommendation #1, that justice resources should be directed towards serving the greatest number of people, in the most effective way possible and as early as possible as they begin to experience a legal problem. Based on this principle, Recommendation #2 calls for greater support of the ERSS as a whole by government and other key funders.

Subsequent recommendations address fundamental activities that will help to raise the profile and effectiveness of the ERSS by more clearly defining, resourcing and developing the sector in each jurisdiction, by structuring connections between it and the formal justice system and by strengthening it through evaluation and empirical research.

Summary of Recommendations

Recommendation #1: That all stakeholders adopt the principle that priority and resources should be directed toward serving people in the most just and effective way possible, as early as possible, as they begin to experience a legal problem.

Recommendation #2: In addition to existing principles that prioritize resources for critical legal matters, stakeholders – particularly government and key funders – should commit to greater support of the ERSS, based on the principle in Recommendation #1.

Recommendation #3: That in each jurisdiction stakeholders – particularly service-providers, government and key funders – agree on what functions and services comprise the ERSS, and that this be communicated to the public and other stakeholders in both the ERSS and formal justice system.

Recommendation #4: That stakeholders – particularly service-providers, government and other key funders – work towards integration of existing services and the development of new services of the ERSS in each jurisdiction in order to maximize the effectiveness of the sector.

Recommendation #5: That stakeholders – particularly funders and service-providers – foster collaboration between ERSS service-providers so as to reduce silos between organizations, maximize the exchange of technical knowledge and sharing of content and platforms, increase product quality and innovation, and more effectively promote services.

Recommendation #6: That stakeholders in each jurisdiction – particularly service-providers and/or networks of service-providers with the help of key funders – establish a coordinating body or mechanism to facilitate development and collaboration within the ERSS.

Recommendation #7: That strategies be created by stakeholders – particularly those involved in education and community outreach – to develop legal capability among the Canadian population from youth through adulthood. The objective will be to help people better manage legal disputes that emerge in everyday life, recognize legal aspects of problems, know how to find appropriate assistance, participate in an informed way in the resolution of their problems, and minimize their recurrence.

Recommendation #8: That stakeholders – particularly government, other key funders and service-providers – support and engage in the necessary training of PLEI providers, intermediaries and providers of direct legal services to reinforce assessment, triage and referral mechanisms so that citizens can quickly find the help they need.

Recommendation #9: That the ERSS be acknowledged and integrated into policy development, collaborative planning, innovation development and service implementation in the administration of justice in each jurisdiction.

Recommendation #10: That stakeholders – particularly government, service-providers and key funders within the ERSS – work together to identify key outputs and outcomes of the sector and monitor their achievement.

Recommendation #11: That relationships be developed between service-providers in the ERSS, government and universities to promote research concerning access to justice and ERSS sectoral issues and outcomes.

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1.0 Introduction

1.1 THE NATIONAL ACTION COMMITTEE ON ACCESS TO JUSTICE IN CIVIL AND FAMILY MATTERS

The National Action Committee on Access to Justice in Civil and Family Matters was established to increase the public's access to the civil justice system.

The committee envisioned:

A society in which the public has the knowledge, resources and services to effectively deal with civil and family law matters:

- by prevention of disputes and early management of legal issues,
- through negotiation and informal dispute resolution processes, and
- where necessary, through formal dispute resolution by tribunals and courts.

The Action Committee established four working groups:

- Court Processes Simplification
- Access to Legal Services
- Family Law
- Prevention, Triage and Referral (PTR)

Each working group was tasked with identifying:

- how the vision can be achieved;
- tools that can assist people in dealing with their civil needs effectively and expeditiously;
- system changes that will increase the public's access to justice.

This is the final report of the Prevention, Triage and Referral working group.

1.2 BACKGROUND AND METHODOLOGY: STAGES OF PTR WORKING GROUP ACTIVITY

The PTR Working Group first met in Ottawa on March 2, 2012¹ and subsequently created a first draft report. The group then engaged in a consultation process with key players in the PTR field. For this

¹ Working Group members include:

- Rick Craig, Executive Director, Justice Education Society (BC) (Chair);
- Ab Currie, Principal Researcher, Research & Statistics Division, Justice Canada;
- Nathalie Des Rosiers, General Counsel, Canadian Civil Liberties Association;
- Mary Ellen Hodgins, President, Hodgins and Co., Management Consulting (BC);
- Gillian Marriott, QC, Executive Director, Pro Bono Law Alberta;
- Sarah McCoubrey, Executive Director, Ontario Justice Education Network;
- John Sims, QC, former Deputy Minister of Justice and Deputy Attorney General of Canada;
- Colleen Suche, QC, Justice of Manitoba Court of Queen's Bench;
- Barb Turner, QC, Acting Executive Director, Strategic Initiatives, Justice and Attorney General, Alberta;
- André Wery, Associate Chief Justice, the Quebec Superior Court.

Tim Roberts of Focus Consultants attended the meeting as a recorder, and in consultation with other working group members, has written the various iterations of this paper.

purpose, a revised document was created that described the deliberations of the working group, presented preliminary draft recommendations, and invited reaction and/or alternative recommendations by readers. Using listserv and contact databases of their respective organizations, working group members sent the consultation document electronically to a large number of respondents in relevant federal, provincial/territorial (FPT) government departments, the judiciary, universities, and PLE organizations at the FPT and community levels, both throughout Canada and internationally. The email connected respondents to an on-line survey link which contained rating questions about the recommendations.

There was considerable overall support for the recommendations proposed in the survey consultation document, but qualitative feedback from respondents suggested a desire for fewer recommendations, a clearer focus on how to move the PTR sector forward, a reconfiguration and balancing of some of the key concepts, less mention of specific actors in recommendations, and the need to incorporate more clearly references to technological innovations and the role of conflict resolution. Although the working group has not had the resources to undertake specific research that has been suggested by some respondents, this paper addresses the key concerns raised by respondents.

Following several teleconferences, a second meeting on January 7, 2013, and numerous draft documents, the working group is pleased to present this final report.

1.3 CONTENTS OF THIS REPORT

This report begins by establishing a principle on which the concept of access to justice should be founded. It introduces the Early Resolution Services Sector (ERSS) as the name of the sector of the justice system that can build on this principle and recommends a shifting of resources to this sector.

It then articulates the key functions and services provided by this sector as a preliminary description, and recommends that this description be undertaken and modified in each jurisdiction to better communicate the ERSS to government, traditional justice sector institutions, funders, service-providers and the public. The report then addresses several approaches to develop the ERSS and to build structural connections between it and the formal justice system. Finally, it recommends that ERSS outputs and outcomes be developed and monitored.

2.0 Focusing on the Problems People Experience

Historically the discourse about access to justice has been centered on the formal justice system. That is, it has revolved around the notion that justice for individuals is best achieved if they are provided with access to lawyers, judges, courts and tribunals.

This report does not contradict the need for any of these important elements of a well-functioning justice system. However, its primary starting point and consistent focus is on the broader range of problems experienced by the public, not just those that are adjudicated in courts. It looks at legal problems from the point of view of the people experiencing them. This approach is in keeping with current innovative trends and thinking internationally, exemplified in the recent Hague Institute for the Internationalization of Law (Hiil) Trend Report.

Most recently researchers and reports have begun to focus on new approaches, more bottom up, working from the problems people actually experience and from their capabilities. . . . We will call these initiatives justice needs approaches, because they have in common that they start from the actual problems that people experience and their capabilities to solve them. These capabilities are then strengthened. This can be done by local initiatives, which some proponents of bottom up reform are arguing for. But. . . justice needs approaches can also be scaled up across borders, and stimulated by new types of codification, precisely because they start from people's problems and not from the laws or the legal system that has been built in their country.²

What would a "new type of codification" for a justice needs approach which begins with people's problems look like? Recommendation #1 advocates for a new starting point based on the following principle:

Recommendation #1: That all stakeholders adopt the principle that priority and resources should be directed toward serving people in the most just and effective way possible, as early as possible, as they begin to experience a legal problem.

The working group strongly feels that without an understanding of and commitment to this principle, other recommendations in this paper will have no foundation on which to build. The principle fundamentally recasts the notion of access to justice because it is built on the recognition of the breadth and depth of problems in people's everyday lives, and the need to develop a wide range of appropriate responses to these problems, rather than to funnel them to a single high cost destination (the courts and legal representation). This type of response begins with an understanding of the everyday experiences of individuals and whether they possess the legal capability to address problems. It then builds towards an analysis of the functions (triage, referral and advocacy) and services (PLEI, dispute resolution and legal

² Hiil, Towards Basic Justice Care for Everyone: challenges and promising approaches. Trend Report, Part 1. April 2012, p. 15. http://www.hiil.org/data/sitemanagement/media/TrendReport_Part1_020412_DEF%20%282%29.pdf.

clinics) required to support their capacity to understand, anticipate and resolve issues that have legal implications. In this paradigm, the formal justice system remains important, but is not the starting point. From a systems perspective, the starting point is what will be called in this paper the Early Resolution Services Sector.

Why is it important to expand the concept of the justice system to include the ERSS? It has typically been viewed as an array of activities and services loosely connected to and existing more or less on the threshold of the formal justice system. Despite the fact that the ERSS deals with a much larger proportion of people's everyday legal problems than the formal justice system, it has not been planned, funded or coordinated on a sustained basis as an important sector in its own right. Nor is it seen as a critical element in providing access to justice. Consequently, the expertise within this sector has been underutilized in past access to justice initiatives. Without clear acknowledgement of the role the ERSS plays, access to justice will remain a lofty vision unconnected to the daily lives and problems of the majority of people.

The relationship between the volume of every day problems people have that involve a legal component, and the type of mechanisms that are available to address them is portrayed in Figure 1. Our understanding of the true volume and scope of legal problems and unmet legal needs has matured in the past decade as a result of a growing body of research beginning with the pioneering work of Hazel Genn in the UK³, followed by similar studies in Canada, the Netherlands, Australia and other jurisdictions.

Collectively these studies show that:

- most ordinary life transactions have legal aspects, and one-third to one-half of all adults in most modern countries experience one difficult legal problem in any given three year period. These problems are considered serious and difficult to resolve by people who experience them⁴;
- legal problems frequently do not occur in isolation. They also have momentum; the more problems an individual experiences, the greater is the likelihood he/she will experience additional legal problems as well as other non-legal problems. The individual problems making up the resulting problem clusters are often inextricably inter-related, making the achievement of durable resolutions of any one of the problems impossible without addressing the others simultaneously. For individuals who have little understanding of law, who are unaware of available services and who may lack skills in problem resolution, this scenario becomes overwhelming and irresolvable⁵;
- there are a large proportion of people who either do not recognize their problem as having a legal component or do not know where to go for help. They do not obtain timely and effective advice that could help them manage their legal problems early on. As a result, a proportion of these problems move from problems that could be resolved relatively easily at the early stages to ones that require expensive legal services and court time⁶;

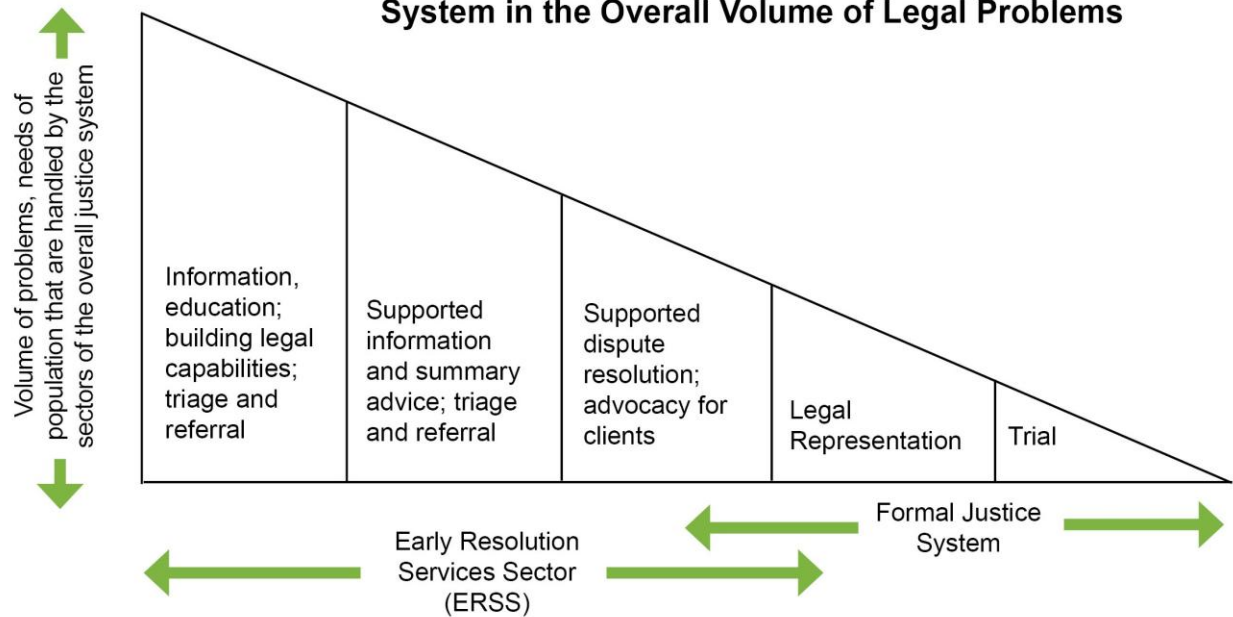
³ Hazel Genn and Alan Paterson. *Paths to Justice: What people do and think about going to law*, Scotland, Hart Publishing, 1999.

⁴ Ab Currie. *The Legal Problems of Everyday Life: The nature, extent and consequences of justiciable problems experienced by Canadians*. *Department of Justice Canada*, 2007, p. 9.

⁵ A. Buck, P. Pleasance, and N.J. Balmer (2005), "Social Exclusion and Civil Law: Experience of civil justice problems among vulnerable groups," *Social Policy and Administration*, 39 (3), pp. 302-322.

⁶ See, for example, H. Genn, B. Lever, L. Gray with N.J. Balmer. (2006), *Tribunals for diverse users*. Department for Constitutional Affairs Research Series 1/06, London: Department for Constitutional Affairs; Balmer, N.J., Buck, A., Patel, A., Denvir, C., and Pleasance, P., Knowledge, capability and the experience of rights problems. *Research Report*, March 2010, Legal Services Research Centre, Public Legal Education Network.

Figure 1: Involvement of the ERSS and the Formal Justice System in the Overall Volume of Legal Problems



- fifty percent of people try to solve such problems on their own⁷;
- only a tiny proportion of legal problems ever reach courts or tribunals⁸;

The principle of meeting the high volume of people's legal needs in a timely and effective manner clearly focuses more attention and places greater priority on the services that comprise the ERSS, which is described in the next section.

2.1 WHAT IS THE ERSS?

The following is a preliminary description of the ERSS, which is expanded in Section 4.0. It should be emphasized that this description will be subject to change and/or refinement by stakeholders, government and other funders, as per recommendation 3 on page 13 of this report.

The ERSS refers to an array of services and resources that provide information and assistance to individuals and/or groups concerning the law and legal issues, and that are designed to reach people as early as possible in the life cycle of their problem. They include, for example, public legal education and information, problem assessment, triage and referral, conflict resolution, advocacy, self-help options and advice services.

The sector includes services that:

- assist people to clarify the nature of law and of problems that have a legal component;

⁷ Balmer et al, *ibid*.

⁸ Ab Currie, (see footnote 4), 65.

- help people to develop their legal capability to manage conflicts, resolve problems earlier by themselves and/or seek early and appropriate assistance;
- promote early understanding and resolution of legal problems outside the court system through alternative dispute resolution mechanisms and/or directly by parties themselves;
- assist people to navigate the court system efficiently and effectively;
- provide effective referrals.

In most cases the definition of the ERSS is unlikely to include privately-provided fee-based legal services or legal aid representation services, nor the court system in which paid representation services are delivered. However, the parameters of ERSS services will be defined slightly differently in each jurisdiction, and the intent here is to initiate that discussion.

2.2 EXISTING FOUNDATIONS OF THE ERSS IN CANADA

There are many services in all Canadian jurisdictions that provide a foundation on which to build or integrate with an emergent ERSS. Canada has a strong tradition of community and regionally based PLEI⁹ services that have developed to meet the needs of the general population and people within specific geographic, cultural or economic communities. The organizations and projects currently addressing the legal information and education needs in each province and territory have experience with challenges in their jurisdictions, expertise in effective delivery and strong relationships with the community.

Some jurisdictions also have organizations that perform legal triage and referral functions. These include many community based advocacy organizations (often funded by Law Foundations or Legal Aid organizations), pro bono law delivery services, government agencies, and public libraries. In many cases these organizations have formed networks with varying levels of management and coordination, and capacity to make effective referrals.

Mediation and conflict resolution services exist in all jurisdictions of the country, either through individual mediators, community based organizations, provincial/territorial NGOs, or as part of court services.

It was not possible to research the full range of services in any of these categories. However, in support of the activity of the Working Group, an online review was conducted in all 13 jurisdictions to determine the extent and scope of the primary free legal information and assistance resources/services that could be characterized as part of the ERSS. Key highlights of this review include:

- There are at least 285 distinct services provided by approximately 110 separate organizations¹⁰ in Canada that provide free legal information, advice or referrals.
- The distribution of services varies across the country.¹¹ The reach of the services, the extent of coordination among services, ease with which people can reach an entry point or portal into the net of

⁹ A PLEI provider is essentially any service or organization that provides legal information to individuals, groups, and/or the general public. This definition encompasses organizations for whom PLEI is a small component of legal advice and representation services, organizations that are not legal services but have developed limited legal information on a particular aspect of their social service delivery, and sole-purpose PLEI organizations that regularly provide workshops, develop literature and/or manage legal information websites.

¹⁰ These numbers depend on the method of counting. For example, the 80 community legal clinics in Ontario were not counted as separate organizations, and different programs within each clinic were not counted.

available services, the seamlessness with which users can be referred to services where they can obtain appropriate service are all important features that could not be explored in the review.

- Apart from the primary or sole-purpose organizations, there are hundreds, or perhaps even thousands, of organizations that might serve as contact points where people can access information or assistance with problems. In the course of reporting a “presenting problem” to an organization with a mandate other than legal information and advice (e.g. a community health clinic), legal aspects might be identified, and people may be provided with public legal information or a referral to a legal services agency. The Alberta Mapping Project, which is the most comprehensive research of its kind in Canada, reported 1548 legal services access points in Alberta and between 704 and 924 sole purpose legal services.¹² The Alberta research makes clear that the number of possible sources of legal information, advice and referral could be extremely large nationally.
- Province-wide toll free law information lines exist in 10 jurisdictions. These may be considered to be the primary method for integrating legal services at regional or provincial-territorial level.¹³ Nunavut, Saskatchewan and Quebec do not have toll free services. A toll free service was provided until recently by *Educaloi* in Quebec.
- Most jurisdictions have web sites that list the major available sources of free legal information and advice on a web site, accessible by entering search words such as “*legal information and advice*” into the Google search engine. Current information does not exist about the legal capability of the public e.g., how many people would think they might need legal information and proceed with a web search.
- All jurisdictions with the exception of Nunavut have substantial publications programs. Material on a large variety of subjects is available in print form and on-line. According to *Community Legal Education Ontario* (CLEO), which distributes over one million copies of print and on-line publications a year, these publications can support individual self-management of legal problems and also play a role in avoidance of problems. However, much depends on the characteristics of the person experiencing problems (e.g. literacy and language abilities) and the complexity of the problem itself.
- Seven jurisdictions have substantial programs targeted at youth in schools. Because of their concentration in a school setting, more didactic approaches with both short- and long-term objectives are feasible.
- Legal aid plans in Ontario, British Columbia and Alberta provide, in different ways and to varying degrees, integrated access to justice services. These include a toll free information line, referrals to services within the legal aid organization and to other services and, in Ontario and British Columbia, extensive public legal information. This reflects an emerging concept of legal aid that is evolving beyond “the services normally available from a lawyer.”
- Five provinces – Ontario, British Columbia, Alberta, Quebec and Saskatchewan – have well-organized Pro Bono Legal Services (as distinct from lawyer referral services).
- There is at least one sole-purpose Public Legal Education & Information (PLEI) organization in all jurisdictions except Nunavut and Northwest Territories. British Columbia has three dedicated PLEI

¹¹ The counting method used in this review produced the following numbers of services: Newfoundland and Labrador – 7; Nova Scotia – 9; Prince Edward Island – 6; New Brunswick – 13; Quebec - 24; Ontario - 121; Manitoba - 12; Saskatchewan - 16; Alberta – 26; British Columbia – 38; Yukon – 8; Northwest Territories – 3; Nunavut – 1.

¹² <http://www.cfcj-fcjc.org/sites/default/files/docs/2011/mapping-final-sum-en.pdf>.

¹³ see Rebecca Sandefur, Access in America, American Bar Association, 2011.

organizations and Ontario and Alberta each have two. Selected examples in smaller jurisdictions include the bilingual service of Public Legal Education and Information Service of New Brunswick (PLEIS-NB), the Public Legal Education Association of Newfoundland (which also includes a Lawyer Referral Service and Legal Information Line), the Yukon Public Legal Education Association, which has regular walk-in hours, and the Community Legal Information Association (CLIA) of Prince Edward Island, which has numerous resources, publications and services.

- The organized bar, represented by the provincial branch of the Canadian Bar Association and the Law Society in the jurisdiction, plays different roles in each jurisdiction.
- There is little evidence of co-ordination of access to justice services at the policy level. However, there are some notable examples of linkages: the integration of services within the three legal aid plans that have a broader access to justice orientation toward legal aid, the partnerships between the pro bono legal services organization in Alberta and the five Alberta legal clinics, and the role of CLEO as a functioning part of the Ontario legal clinic system.

2.3 CHALLENGES TO EFFECTIVE DEVELOPMENT OF THE ERSS

Historically there have been serious funding, communication and planning constraints on development of the ERSS. Government is downsizing and reducing funding generally, and is disinclined to invest in new structures involving “bricks, mortar and people.” With declining interest rates, Law Foundations have declining revenues. Furthermore, much is being asked of the private bar in terms of lawyers’ donating time pro bono, and it may not be realistic to seek a sustainable funding source through Law Society levies from bar members.

In the face of threatened revenues, local services may be protective of their “turf,” and not welcome rationalization of services or increased referral and networking protocols. Silos are often reinforced. What is needed is exactly the opposite response: justice system stakeholders need to collaborate more than ever and develop common approaches and shared resources. This need also applies to organizations with common mandates within a silo.

From a funder’s standpoint there can be a tension between nurturing local energy (often using small grants) and facilitating effective networks that involve more centralized coordination. This tension is not limited to the justice field or to government, and if not effectively handled, can lead to piecemeal and uneven development of services within the ERSS. When numerous small projects are developed, effective communication may decrease. Protocols around confidentiality are important for clients, but they complicate communication between organizations about individual client circumstances and needs. This may lead to clients having to repeat their stories with each new referral, unless protocols and waivers are developed to permit transmission of information under specific conditions.

Technologies in the sector are rapidly and constantly changing. On the one hand this can lead to improved communication and networking between service-providers, greater geographic reach of services (e.g. online dispute resolution) and the development of innovative solutions in the ERSS that constantly extend the reach of law-related information to new audiences. On the other hand, rapid development of new technologies can make planning, oversight, coordination and rationalization of services more complex, especially in the context of limited resources. As part of the development of a more encompassing vision of the justice system and the ERSS, it is important to develop mechanisms for good decision making about where, why and how technology is used.

3.0 Shifting the Allocation of Resources

Recommendation #2: In addition to existing principles that prioritize resources for critical legal matters, stakeholders – particularly government and key funders – should commit to greater support of the ERSS, based on the principle in Recommendation #1.

There is a compelling case to allocate more resources and service support to the ERSS relative to the formal justice system. As described in Section 2.0, the fundamental driver of that case is the overall volume of problems faced by people, and the impossibility of meeting that demand through the traditional justice system.

The second driver is that the range of services in the ERSS is intentionally designed to facilitate early resolution. Well designed outreach programs for youth and adults help to build legal capabilities that prevent disputes from becoming problems. Plei provides information that helps people resolve matters on their own or avoid unnecessary court involvement. Similarly, conflict or dispute resolution projects provide early resolution. Avoiding problems or the escalation of problems, and/or early resolution of problems is generally cheaper and less disruptive than resolution using the courts.¹⁴ To borrow Richard Susskind's observation, "it is much less expensive to build a fence at the top of a cliff than to have need of an expensive ambulance at the bottom."¹⁵

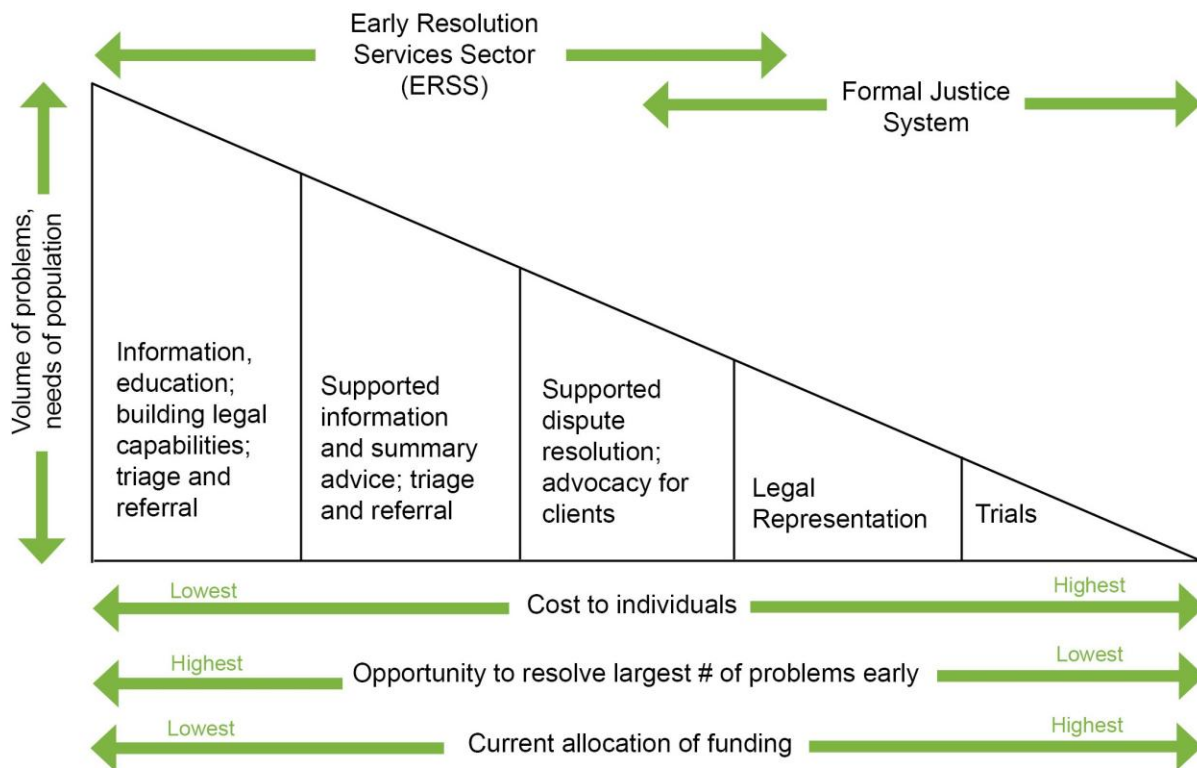
Finally, there is a range of cost impacts under the current system that logically favour the allocation of increased resources to the ERSS. These include impacts on individuals in terms of various legal fees and related costs, and on the state in additional costs to health care and other publicly funded sectors as a result of unresolved problems. They also include impacts on courts that need to accommodate self-represented litigants and on society as a whole in terms of mistrust in the justice system and other public institutions, arising out of people's inability to achieve outcomes to their problems.

Figure 2 shows the primary activities of the ERSS and formal justice system, the relationship between the type and volume of problems, the cost to individuals to resolve problems, the allocation of funding to these activities and the opportunity to resolve the largest number of problems early.

¹⁴ Maurits Barendrecht, Legal Aid, Accessible courts or legal information? Three access to justice strategies compared, TISCO working paper series on civil law and conflict resolution systems, No. 010/2010, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1706825

¹⁵ Richard E. Susskind, *The End of Lawyers?* Oxford University Press, 2008, p. 231. Susskind in turn was borrowing from a poem called "A Fence or an Ambulance," written by a 19th century British activist, Joseph Malins.

Figure 2: The ERSS and Formal Justice System: Volume of needs vs. cost and funding allocations



The need for a shift in emphasis in the allocation of resources is clearly expressed by the Access to Justice Task Force for the Attorney-General's Department in Australia.

"Courts are not the primary means by which people resolve their disputes. They never have been. Very few civil disputes reach formal justice mechanisms such as courts, and fewer reach final determination. Most disputes are resolved without recourse to formal legal institutions or dispute resolution mechanisms. To improve the quality of dispute resolution, justice must be maintained in individuals' daily activities, and dispute resolution mechanisms situated within a community and economic context. Reform should focus on everyday justice, not simply the mechanics of legal institutions which people may not understand or be able to afford ...

Access to justice is not only about accessing institutions to enforce rights or resolve disputes but also about having the means to improve 'everyday justice'; the justice quality of people's social, civic and economic relations. This means giving people choice and providing the appropriate forum for each dispute, but also facilitating a culture in which fewer disputes need to be resolved.¹⁶"

¹⁶ Australia, Attorney-General's Department. A Strategic Framework for Access to Justice in the Federal Civil Justice System: Report by the Access to Justice Taskforce, September 2009, pp. 3-4. <http://www.ag.gov.au/Publications/Documents/Full-Report-of-the-Access-to-Justice-Taskforce.doc>

Although it is well beyond the scope of this report to cost out national expenditures on the formal justice system, private bar and legal aid representational services and compare them with expenditures on the array of services within the ERSS, the major allocation of resources is clearly to the formal sector.

This report is not recommending a reduction in current resources to the formal justice system when it is experiencing its own major challenges. However, even if the aim is simply to reduce pressures on the formal justice system and make it operate more effectively, it is arguably a cost-effective strategy to invest an increasing proportion of disposable justice resources in the ERSS. The argument for a reallocation of resources to the ERSS is even stronger, however, if the aim is to achieve resolution of the vast majority of problems experienced by individuals long before they cascade into greater and more entrenched disputes.

It is not the Working Group's role or mandate to suggest where additional resources for the ERSS can or should come from in any given jurisdiction, but rather to point out the current lack of focus on how to resource the sector. Resources allocated to this sector need not necessarily be justice resources. For example, part of the funding for training of intermediaries in the health, legal and social service fields to help workers identify legal problems of their clientele and facilitate referrals to legal advocates could come from those sectors as part of a collaborative partnership with PLEI or advocacy organizations within the ERSS. If creative funding approaches and partnerships of this type are not created, a strengthening of the sector will not happen.

4.0 Identifying the Functions and Types of Services in the ERSS

Recommendation #3: That in each jurisdiction stakeholders – particularly service-providers, government and key funders – agree on what functions and services comprise the ERSS, and that this be communicated to the public and other stakeholders in both the ERSS and formal justice system.

If the ERSS is to fulfill an effective role within the overall justice system, its roles and the services or organizations that comprise the sector need to be clearly conceptualized and articulated by government, funders and services themselves, and be understood by the public and the traditional justice system institutions. Collectively, we need to “define the box” of the ERSS. This section describes three key functions and four types of organizations or services that the working group feels constitute the main elements of the sector in most Canadian jurisdictions at present. As noted in Section 2.1, this is a preliminary description only, intended to foster discussion in each jurisdiction. Configurations may differ between jurisdictions and may change over time, but overall clarity about the sector remains important for all stakeholders.

4.1 FUNCTIONS OF THE ERSS

4.1.1 Development of people’s legal capabilities

The development of people’s legal capabilities is a key function of the ERSS. Legal capability refers to the level of knowledge, skills and confidence as well as the attitudes of people that allow them to:

- recognize that there are legal components or aspects to many activities and events¹⁷ of everyday life;
- better anticipate and manage these components;
- be able to sort legal from non-legal aspects of their problems and address their interdependence;
- avoid unnecessary escalation of conflicts¹⁸ into more serious problems¹⁹ or disputes²⁰ that may require legal intervention;
- assess options that are available and that foster reasonable solutions in situations of conflict;
- be aware of when and how legal representation can assist with disputes and how to access legal representation.

¹⁷ *Events* – are simply things that happen in people’s everyday lives. They can be a set of circumstances that are unique to an individual at a particular time (e.g., an accident, illness or loss of employment), or more routine or predictable, “life passage” events.

¹⁸ *Conflicts* – are divergent goals, interests, attitudes and/or behaviours that exist between individuals, groups or populations. Conflicts can be latent (i.e., not result in a problem or dispute), emerging (and perhaps preventable if well-managed), or manifest (serious enough to require concerted intervention).

¹⁹ *Problems* – are issues that need to be addressed, arising either out of natural events (e.g., the need to make a will or have power of attorney), or out of emerging conflict.

²⁰ *Disputes* – involve conflicts that have become manifest and require intervention. A dispute arises from a problem or conflict, but a problem or conflict does not have to become a dispute.

Legal capability needs to be exercised in a timely way when a problem emerges. However, to make this possible, it also needs to be developed as a preventive set of knowledge, skills and attitudes, before specific legal problems are encountered, because it is this capability that helps people avoid and solve problems. Legal capability developed as part of a preventive orientation may be of a more general nature (knowing generally about law, communicating well, being organized, understanding how to manage conflict and knowing where to find reliable information) than the specific skills required when a legal dispute actually arises. If legal disputes do occur, a person’s legal capability will involve knowledge about laws affecting their problem, an understanding of sources of assistance, and knowledge of court, tribunal and/or alternative dispute resolution procedures. Legal capability should also involve the development of a basic knowledge about and confidence in legal/court or alternative dispute resolution service options in case it ever proves necessary to enter the formal justice system.

There is thus a continuum along which different aspects of legal capability are at play, as shown in Figure 3.

Figure 3: Emphasis of legal capability at different stages

Things that Happen to Individuals	Life events and conflicts	Problems	Disputes
<p>Legal Capabilities (help individuals deal with life events, conflicts, problems and disputes)</p>	<p>← To avoid problems →</p> <ul style="list-style-type: none"> ▪ Identifying what you need to know about law in specific life events and transitions ▪ Having Communication skills ▪ Managing conflict constructively ▪ Being organized ▪ Knowing where and how to get reliable information 	<p>← To solve problems →</p> <ul style="list-style-type: none"> ▪ Same as for avoiding problems, plus: ▪ Knowing rights ▪ Knowing what you want ▪ Knowing type of help you need ▪ Knowing who to speak to ▪ Having problem resolution skills ▪ Understanding different perspective in a dispute 	<p>← To solve disputes by alternative methods →</p> <ul style="list-style-type: none"> ▪ Same as for avoiding and solving problems, plus: ▪ Understanding of costs of pursuing justice in courts ▪ Understanding of and openness to alternative dispute resolution processes ▪ Trusting the available processes to be fair
			<p>← To solve disputes in court or tribunals →</p> <ul style="list-style-type: none"> ▪ Same as for previous columns, plus ▪ Knowing how to find reliable formal legal representation, legal aid and/or advocacy assistance ▪ Being able to access and interpret resources to be a self-represented litigant ▪ Having confidence in an unbiased, transparent and fair resolution

At the “dispute” end of the continuum the term “legal problem” is often understood in the same way by both service provider and client. However, on the “life events and conflicts” end of the continuum, use of the term “legal problem” can be confusing. The average person often does not think of events or issues as generating “legal problems.” Rather, they simply are “problems.” An individual may talk to peers, friends, family, religious or community contacts long before coming to understand that there is a legal component involved. The purpose of prevention activity is to help people anticipate the legal dimensions of life events that may involve conflict, lead to problems or result in disputes, and to develop skills to manage and resolve conflicts.

An Australian respondent to the consultation survey extended the concept of legal capability and access to justice even further by introducing the notion of resilience:

The Australian Government takes a broad view of access to justice. It goes beyond access to courts and lawyers and the capability to resolve legal disputes. It is also about access to information, support and opportunities, and about having a fair and equitable experience in everyday life. 'Resilience' is reinforcing and enhancing the capacity of people to resolve disputes themselves. The focus on helping to build resilience in individuals, the community and the justice system by reinforcing access to information and supporting the cultural changes necessary to ensure improvements in access to justice are continuing. This includes equipping people with the basic skills necessary to resolve their own issues (including by accessing appropriate information and support services).

These functions are critical in a society in which normal activities and life transitions have legal implications, e.g., making major purchases, signing contracts, terminating employment, etc. All these everyday activities are defined by laws and require people to address problems. They can escalate into disputes when people do not appreciate the legal dimensions (e.g. a major purchase may not seem like a legal issue until one relies on the warranty; a lease might not need review by a lawyer, but an eviction notice pursuant to that lease might well require review).

4.1.2 Triage and referral

Triage and referral comprise the second primary role of services in the ERSS. Triage refers to the practice of responding to and "sorting" the problems of individuals based on their degree or type of need, in order to determine the appropriate type of service/approach within a context of limited resources. Referral means directing the individual to the appropriate resource(s) to assist with and/or resolve the problems.

Referrals can take the form either of "sign posting" or "referrals." "Sign posting" refers to situations in which the client takes or is given responsibility for contacting other organizations through which they can acquire the desired information or skills. "Referrals" refers to situations where the advisor takes at least partial responsibility for contacting another organization or service that can fulfill the client's need (e.g., by enrolling the client in an employment law workshop or phoning a service and arranging an appointment for the client).²¹

Triage and referral can occur at three stages within the ERSS, as shown in Figure 4.

²¹ For a discussion of signposting and referral networks, see www.asauk.org.uk/fileLibrary/pdf/SignpostingReferral_ReferralNetworksDiscussion.pdf.

Figure 4: Stages of Triage and Referral Activity

Stage 1: Early Triage and Referral	Stage 2: Triage and Referral at Entry to Formal Justice System	Stage 3: Triage and Referral Related to Processes within the Formal Justice System
Triage and referral to increase legal capability and manage conflict.	Triage and referral upon entry into the larger justice and advocacy system when a legal problem has been defined.	Triage and referral at various points as clients navigate court/tribunal systems.

In the early stage of this continuum, the function of triage is likely to be established within networks of services that are not explicitly “legal” or “justice” services. They may, for example, be advice, community, health or educational services. Triage in these settings is likely to be a component of a larger assessment process, e.g. where a service is assessing the range of needs a client might have (e.g., an immigrant, a senior or other individual adjusting to a disability, a woman who has sought refuge in a transition house).

Effective triage in this early stage requires that service-providers have an understanding of the range of a client’s needs, are able to identify that some of these needs may have legal dimensions, can assess the importance of accessing legal information relative to other client needs, and can identify appropriate resources if they are needed. For example, a community service for immigrants might become aware that a client is seeking employment, and together with the client determine that a workshop on employment standards could be critical in helping the client manage conflict, understand their rights as employees, or address problems knowledgeably before they develop into disputes.

This implies that from a developmental perspective, considerable “bridging” activity needs to occur between social/health/community services and justice and advocacy services. This bridging activity is critical, because individuals’ legal problems are often hidden from the view of the formal justice system and even from networks of advocacy organizations. It is only by deepening and extending the reach of triage and referral functions within the social service realm and building connections back into the justice realm that access to justice becomes a robust and meaningful concept. Training of “intermediaries” in the social service sector is discussed more fully in Section 5.3.2.

To effectively fulfill these triage and referral functions at this early stage, staff in community and government organizations would need training in preliminary identification of problems that may have a legal component. This of course raises issues of mandates and funding.

The second stage (Entry to the Formal Justice System) occurs at the point when problems emerge and are defined as legal. On the one hand this stage is currently the most dynamic and active of the three; on the other hand it still requires considerable coordination and integration. Although the function of triage and referral at this stage is similar to that in the early stage, there are two differences. First, the locus of triage activity is no longer primarily within the social service sector, but is shared more fully with the advocacy and PLEI provider sectors, i.e., groups whose knowledge and skill base is more rooted in legal and justice issues. Secondly, triage and referral at this stage has more to do with identifying the type and level of legal, advocacy or dispute resolution resource necessary to resolve a dispute that has materialized. It may also be that at this stage the distinction between “signposting” and “referral” becomes even more important

(i.e., that the referral agent needs to take a more active role in ensuring a client reaches the intended resource). Nevertheless, in both stages a critical concern is that the triage and referral networks be well developed and coordinated.

As part of this orientation it will be important to develop a more comprehensive understanding of the range of models that may be necessary to adequately serve triage needs for the ERSS in different jurisdictions or sub-regions. For example, the Justice Access Centre (JAC) ²² is a comprehensive model in BC that provides intake, triage, referral to in-house resources and related agencies, and provision of and assistance with self-help resources. The model is fairly resource-intensive, and may be most feasible for larger population centres. Northern respondents in the consultation survey conducted by the Working Group emphasized that there are far fewer resources in northern and rural communities. In smaller communities other models might be applicable, e.g. based in courthouse or public libraries or facilitated by JACs through Skype or comparable communications.

The third stage related to process (within the Formal Justice System) occurs as various streams or options are considered by individuals who are pursuing cases within the legal system. The large majority of triage decisions at this stage are defined within the courts/tribunals, and/or by lawyers and/or by court-run mediation services, but there is nonetheless some role at this stage for PLEI and possible referrals (e.g. for self-represented litigants) and/or to ERSS sector dispute resolution services.

4.1.3 Advocacy and advice

A third function of the ERSS is advocacy and advice. Timely and accurate advice is key to early and effective resolution. This may simply mean the client uses an advocate to resolve an issue (through inquiries, phone calls, letters, applications, or assistance in court, etc). It can also mean the client decides not to proceed with a matter because he/she has gained a better understanding of the law, decides to seek alternative dispute resolution options, is better prepared to use legal counsel, or has improved capability to proceed as a self-represented litigant.

Advocacy services often produce early and effective resolutions because they specialize in specific areas of family and civil law, or because the clientele they serve generate similar types of problem patterns. A letter, email or phone call from an advocate frequently resolves a matter immediately for a client who cannot afford a lawyer or navigate the court system without assistance.

4.2 TYPES OF SERVICES IN THE ERSS: THE INNER CORE

This section describes three types of organizations or services that comprise the inner core of ERSS. Each of these types of organizations may address one or more of the roles described above. A fourth service type comprising the outer ring of the ERSS is discussed in Section 4.3.

The distinction between an inner core and outer ring of the ERSS is important in terms of understanding the function and vitality of the sector as a whole. The core services – PLEI, conflict resolution and legal advocacy clinics – are where the concentration of legal expertise resides in the ERSS. The outer ring of community, social, health and other services are called “intermediaries” in Section 4.3 because they create

²² <http://www.ag.gov.bc.ca/justice-access-centre/vancouver/index.htm>

a massively larger interface between the core's concentration of legal expertise and the everyday legal problems of the population as a whole.

The way the core services and outer ring of intermediary services reach out to and interact with each other is critical in building the vitality of the ERSS. It is generally the role of the core to produce relevant legal materials, and train service-providers in the outer ring how to identify legal problems and where to refer people with legal needs. It is also their role to be aware of and listen to intermediaries in this wider service environment who tap into people's legal needs, so that legal materials and information remain topical and relevant. In terms of legal information, it is the role of the intermediaries in the outer ring to be the eyes and ears of emerging legal problems in people's every day lives, to be able to identify potential legal problems of their clientele and develop their referral expertise in relation to the core legal services.

This general division of roles is intended to contribute to rather than lessen the vitality of civil society organizations. It cannot be prescriptive across all jurisdictions. For example, in some jurisdictions there may be stronger integration of core and outer ring services within a single organization. This is true, for example, of the Ontario Justice Education Network (OJEN), in which judicial and legal expertise is systematically built into educational programs that develop the legal capability of students in the province. Ontario also has a much larger and widespread community legal clinic structure through Legal Aid Ontario than do other jurisdictions, which means that the direct interface between legal expertise and the general public is greatly enhanced. In any given jurisdiction a funder can also strongly influence who plays what role simply by publically stating the types of organizations it will fund to perform certain types of functions.

4.2.1 Public Legal Education and Information (PLEI) services

PLEI organizations are integral to the development of legal capability, and are also an essential mechanism to support the triage and referral activities described in Section 4.1.2. PLEI can be delivered by stand-alone PLEI organizations or as part of legal aid, pro bono, intermediary, advocacy or government services. Courthouse libraries, which can be accessed by the public in most jurisdictions, and public libraries, are also valuable providers of PLEI. It can be delivered in workshops, one-on-one situations, through printed materials, traditional media, videoconferencing, phone line services, mobile services, social media, webinars, websites and portals.

PLEI can target the general public, specific linguistic or social sub-groups of the population (e.g. immigrant, refugees, street youth) and intermediaries such as community workers, community advocates and social service-providers. Given these diverse audiences, the content of PLEI can range from broad problem-solving approaches to highly specific content about law or court and tribunal procedures.

Historically the emphasis of PLEI has been on knowledge about specific laws and court procedures. In this role PLEI organizations have also played a type of triage function, because they provide information to individuals that helps them sort through their problems and determine what to do and where to go next. In the past decade, PLEI organizations have increasingly incorporated a focus on the building of skills and attitudes that can be related to the development of legal capability. It has also begun to extend the notion of skills (e.g., through social media) into the realm of building community, social engagement and community resilience. The development of skills and attitudes is necessary if the ERSS is to fulfill its role of helping people to avoid and/or resolve legal problems early, rather than simply helping them navigate the

court or tribunal system. However, ultimately, all three aspects – knowledge, skills and attitudes – are critically important.²³

With the enormous expansion of PLEI initiatives to websites, portals and social media, the issue of quality control of legal information and content has become increasingly complex. For example, although attempting absolute control of legal information on the web is a non-starter, the notion of ensuring quality (and directing people to quality sites) is definitely feasible. Suggestions along this line include a system of ratings (e.g. Wikipedia-type star system), the development of a complaint mechanism, certification (quality control) by an oversight body, and more generally developing mechanisms to educate consumers that certain sites/portals are better than others. While these are external mechanisms, there are also mechanisms that need to be built internally into the operation of sites. Government funds are used to develop some portals, so it is logical that funders should require that mechanisms be established internally to ensure ongoing quality control of the portal or website.

Users of legal portals and sites often do not understand that resources in one jurisdiction do not apply to their jurisdiction. This problem may best be handled by a screening mechanism that asks users to state their province or territory (and/or the P/T where a legal problem arose), so that they are automatically screened to materials pertaining to that jurisdiction. Even if such a mechanism is not feasible, at a minimum there should be a clear alert to users upon entering a portal that materials they use must be jurisdiction-specific.

Additional fundamental questions about the purpose and strengths of different types of technology are discussed in Section 5.1.1 in relation to the Just A Click Away (JACA) Conference in February 2011.

4.2.2 Conflict resolution and alternative dispute resolution services

Conflict resolution and dispute resolution services are a critical component of the ERSS, in terms of both being recipients of referrals from a triage process, and of developing the knowledge, skills and attitudes of people to resolve problems.

In general it can be said that there is a trend towards the use of alternative dispute resolution in courts across Canada for certain legal matters. For example, family mediation services are developed in most jurisdictions either as a government service (e.g., Family Justice Centres in BC, Comprehensive Co-Mediation Services in Manitoba, and Mediation Services in certain communities in Nunavut), or legal aid services (FLICs in Ontario courts) in family law matters. In Alberta the Dispute Resolution Office offers free mediation to Court of Queen's Bench and Provincial Court clients in Edmonton and Calgary. While the Edmonton project is limited to child support matters, the Calgary office will assist with all family issues. From 2009 – 2012 BC piloted a distance family mediation project for non-urban communities.²⁴ Mediation has also been used in child protection mediation in a number of jurisdictions. Free court or government-provided mediation services in civil cases are less prevalent. Mediation in small claims cases with a certain claim threshold exists in five BC courts. In addition, in the Vancouver Justice Access Centre a small roster

²³ PLENET, Measuring young people's legal capability, July 2009 at www.lawforlife.org.uk/data/files/measuring-young-peoples-legal-capability-2009-117.pdf.

²⁴ Colleen Getz. Evaluation of the Distance Mediation Project: Report on Phase II of the Technology-Assisted Family Mediation Project, prepared for the British Columbia Mediation Roster Society, May 2010. <http://mediatebc.com/PDFs/1-2-Mediation-Services/Distance-Mediation-Project---Evaluation-Report.aspx>

of civil mediators coordinated by Mediate BC offer three hours of pro bono or low cost mediation based on the income of the initiating party, to assist in civil situations where both parties agree to participate. Some of these mediations involve complex civil matters. The Provincial Court Civil Claims Mediation Program in Alberta is free to participating parties.

The above examples are of conflict and dispute resolution mechanisms for matters that are about to enter the formal justice system or have already done so (i.e., Stage 2 and Stage 3 in Figure 4 on page 16). In either situation they are conceptually a part of the ERSS in that they are mechanisms for early non-court resolution of disputes. At present there is almost no government/funder support for early triage/research activity directing individuals to conflict resolution services before issues evolve into disputes (i.e. Stage 1 in Figure 4). For example, many tenancy issues border on becoming legal disputes and may disrupt the lives of many parties. Even if there is initially no formal legal recourse or cause of action, there may be possibilities to develop more harmonious relations through conflict resolution services, and thereby avoid the deterioration of conflict into court actions with both sides firmly entrenched. These types of opportunities exist in many civil areas such as employment, debt, consumer and a range of community neighbourhood disputes.

4.2.3 Legal clinics, community justice centres and justice access centres

Legal clinics, community justice centres and justice access services are the third primary service component of the ERSS. These services are established specifically to provide legal information, advice, advocacy and in some cases representation services, whereas the latter may undertake some advocacy work but their primary focus is on serving health, social service and other needs of their clients.

The range of services provided in these centres varies considerably across jurisdictions, but in all cases they involve an information, triage and referral function for specific clients (as opposed to the general delivery of PLEI). In some locations they also offer direct advice, advocacy and/or representation services (usually “unbundled”). Service-providers may include staff lawyers, pro bono lawyers, law students, paralegals and/or community workers trained in specific aspects of the law. Some centres (e.g. Justice Access Centres in BC) co-house multiple related services such as legal aid, mediation, credit counseling, and family maintenance enforcement, together with mutual referral arrangements with a variety of advocacy or service agencies.

Examples of these services range from the many individual advocacy clinics serving specialized populations (e.g., Aboriginals, seniors, people with psychiatric disabilities, immigrants) funded by the BC Law Foundation, to Family Law Information Centres (FLICs) in Alberta and Ontario, pro bono clinics and roster services involving partner arrangements with law firms, Young Bar Association lawyers (Quebec) and/or law students in BC, Alberta, Saskatchewan, Ontario, Quebec and Nova Scotia, to individual services in other provinces and territories (e.g., fly-in assistance by Aboriginal Court Workers and lawyers in NWT, the Halifax Refugee Clinic, and several clinics such as Mile-End Legal Clinic, Joint Solutions and Mouvement Action Chômeage in Quebec).

4.3 INTERMEDIARIES: THE OUTER RING OF THE ERSS

The term “intermediary organizations” refers to services whose primary focus is not law, but who serve many of the same populations that are targeted by PLEI organizations, conflict resolution services and advocacy clinics. In this sense they form what could be considered an “outer ring” of the ERSS that is

nonetheless essential to the vitality and responsiveness of the sector. When individuals do not recognize the legal aspect of their problem, trusted intermediaries trained to refer to appropriate legal services can provide a conduit to the justice system. They thus play a critical role in the triage and referral functions described in Section 4.1.2.

Often workers in intermediary organizations play advocacy roles, but their function may not be seen specifically as legal, as in the legal clinics described in Section 4.2.1. However, in reality the line between the two may be blurred, e.g., a legal advocate may work within a community service setting, or the advocacy work of a community worker may involve broad-based community development, part of which involves attempts to change laws, regulations or policies.

Target audiences served by intermediaries include, for example:

- newcomers (i.e. immigrants, refugees)
- students, as well as youth who are not engaged in school
- Aboriginal peoples
- disability communities
- families/seniors
- adults when they have a problem
- linguistic minorities
- renters
- consumers
- inmates
- victims

Potential intermediaries include:

- settlement agencies
- friendship centres; band councils
- seniors organizations
- organizations serving people with disabilities
- schools
- public libraries
- front line government staff; social workers
- recreation coaches; recreation centres
- doctors/health clinics/hospitals/nursing stations
- financial advisors; banks
- police; RCMP
- counselors/therapists
- religious organizations
- community organizations
- Youtube/net
- crisis lines
- 211 lines

The most difficult target audiences are those not affiliated in some way with institutions or groups. It is for this reason that intermediaries not typically involved in social service delivery are also listed. Different engagement strategies may be necessary for each type of intermediary if they are to serve a useful purpose in relation to preventing or resolving problems. In northern or other remote/rural settings where

there is often an absence of legal resources, community organizations are an important and often untapped resource that could help refer people with legal problems to appropriate resources.

It is with organizations of the type listed above that major training and bridging activities need to be developed as will be discussed in Section 5.3.2, in order for the ERSS to serve its mandate of avoidance and early resolution of legal problems. Three examples of concerted training and bridging activity are the work done through the Immigrant PLEI Consortium Project in BC with immigrant serving groups, by Pro Bono Law Ontario with medical staff at Sick Kids Hospital in Toronto, and by Courthouse Libraries BC with staff in public libraries.²⁵

²⁵ Focus Consultants, An Evaluation of the Immigrant PLEI Consortium (IPC) Project, for BC Ministry of Attorney General, February 21, 2011(http://www.ag.gov.bc.ca/public/IPCFinal_Report.pdf); PBL0 at Sick Kids: A Phase II Evaluation of the Medical-Legal Partnership between Pro Bono Law Ontario at Sick Kids Hospital, Toronto, Feb 17, 2012. http://www.pblo.org/library/item.451249-PBLO_at_Sickkids_Evaluation; LawMatters Public Library Legal Resources Project: Final Training and Legal Reference Survey Findings, for Courthouse Libraries, BC, April 2010. <http://www.courthouselibrary.ca/training/ForThePublic/LawMatters.aspx>.

5.0 Developing the ERSS

Recommendation #4: That stakeholders – particularly service-providers, government and other key funders – work towards integration of existing services and the development of new services of the ERSS in each jurisdiction in order to maximize the effectiveness of the sector.

Although Section 2 showed that there are significant foundations of the ERSS in many jurisdictions, funding has often been unsystematic, inconsistent and/or has inadvertently created silos or competition between local projects. These situations bespeak the need for more integration within the sector. There are two approaches to integration that in combination can help the ERSS move forward effectively and with vitality. Firstly, wherever possible there should be encouragement and facilitation of on-the-ground self-organizing and networking between key stakeholders. Secondly, some mechanism of sector governance and coordination should be established. Although there can be a conceptual tension between the two approaches, they should be seen as complementary rather than mutually exclusive. A coordinating mechanism ideally encourages networking and organizing between service-providers in the field. On the ground activity can stimulate understanding and responsiveness by a body that is well placed to advocate for the sector at a higher level. These two approaches are described in Sections 5.1 and 5.2 below. Developmental approaches concerning legal capabilities and triage and referral training are also discussed.

5.1 SELF-ORGANIZING AS ONE COMPONENT OF SECTOR INTEGRATION

The vitality of the ERSS will be dependent on organizations that:

- are closely connected to and interpretive of the daily experiences of their constituents or client groups;
- able to conceptualize how their activity connects to other organizations in the ERSS to create a more effective way of dealing with people's legal problems;
- actively build linkages, consortiums, networks, partnerships and referral relationships that will help them respond more effectively to their clients' needs.

Three examples of this ground-up organizing approach are the activities of PovNet (www.povnet.org), the Immigrant PLEI Consortium in BC's Lower Mainland,²⁶ and the national Just A Click Away (JACA) conference in February 2011, which consciously fostered a culture of sharing and collaboration between PLEI groups around the issue of technology and innovation. In all three cases, the sector has been strengthened by the sharing of knowledge and in two cases by the development of a network built by the organizations in the field. The JACA conference is described more fully in the following section as one example of self-organizing within sectors.

²⁶ See footnote #25.

5.1.1 Self-organizing and communication around the issue of technology: the JACA conference

Recommendation #5: That stakeholders – particularly funders and service-providers – foster collaboration between ERSS service-providers so as to reduce silos between organizations, maximize the exchange of technical knowledge and sharing of content and platforms, increase product quality and innovation, and more effectively promote services.

As in society at large, innovation and change in the technology and underlying modes of communication and learning for PLEI and the ERSS is constant, rapid and challenging. It offers opportunities to serve both the general public, specialized populations and intermediaries in the ERSS in ways unimagined even a decade ago. If poorly handled, the response to new technologies can build walls between groups and encourage competitiveness and proprietary behaviour. If well handled, the sharing of information about technological innovations can build collaboration that benefits the whole sector.

In February 2011 a national conference on technologies for PLEI was held in Vancouver.²⁷ The diversity of media and technologies discussed in the conference session was significant:

- websites and portals and related analytical tools;
- social media – Twitter, Facebook, YouTube;
- distance legal advice via Skype;
- law librarian chat legal reference services;
- online legal forms for self-represented litigants (SRLs) using guided interviews
- other social media tools that foster collaboration and connections between PLEI and advocacy or other groups in the ERSS – e.g., LinkedIn, various meeting collaborative authoring and collaborative knowledge management tools;
- sites in languages other than English or French for new immigrants.

Key themes from the conference that indicate ways for PLEI groups and the ERSS to best take advantage of technology for different purposes while at the same time organizing the delivery of services collaboratively and effectively are summarized below.

Themes about differentiation

- technologies serve different purposes: – e.g. websites are content-oriented; whereas social media may best be used for organizational purposes such as branding and marketing, being known by funders, getting volunteers, building program strategies, and mobilizing or engaging people; social media tools such as wikis, mindmaps and Google docs can help a geographically dispersed group to work on a document together. Thus social media can be important tools to break down barriers between groups and to reduce silo-ing.

²⁷ Information in this section is drawn from the conference report: Brenda Rose, Drew Jackson, Carol McEown and Gayla Reed. Just a click away conference report. Courthouse Libraries BC, August, 2011. <http://www.justaclickaway.ca/wp-content/uploads/2011/09/Just-a-Click-Away-Conference-Report-FINAL.pdf>.

- technologies may be used to serve different audiences: – portals such as Clicklaw (BC) and LawNet (Alberta) and websites such as Educaloi (Quebec) and LawHelpOntario.org are directed to the public. CLEONET (Ontario) is a portal directed to intermediaries in Ontario (community workers serving low income and disadvantaged communities), but is also open to the public, as in Povnet, a national website for anti-poverty workers.

Themes about sharing and collaboration

- mechanisms exist to share technologies, content and information between jurisdictions: – Pro Bono Net started in New York, but has used a syndication model to expand to 28 states (Pro Bono Net provides the portal technology platform and support, and the state portals provide local content and access to local groups).
- content and project models pertaining to laws under federal jurisdiction and/or on PLEI development themes can be readily shared across jurisdictions (e.g., Ontario Justice Education Network’s “Charter Challenge” project; Justice Education Society of BC’s “Families Change” and “Explore the YCJA”; Public Legal Education and Information Service of New Brunswick’s “Family Violence Prevention in Aboriginal Communities”; Courthouse Libraries BC’s “LawMatters at Your Local Public Library” initiative materials)
- Educaloi disseminates legal information to other organizations by using a content management system to “push” information to partner websites in manageable packages; updating is managed by Educaloi.
- it is possible for organizations to team up to share licensing and usage fees for a particular webinar platform.
- PLEI Connect, developed as Phase II of Just A Click Away is a national online community of PLEI providers designed to foster a culture of sharing between organizations to increase capacity in the PLEI community for cooperation and collaboration on technology-related initiatives, including webinar broadcasts, hands-on web labs, an online community of practice, and documentation of best practices.
- The PLE Learning Exchange in Ontario helps organizations across Ontario develop and deliver effective public legal education for their communities by building a body of expertise and knowledge around the practice of community-based PLE, developing shared learning opportunities and tools, and increasing the number of PLE initiatives in Ontario that involve collaborative partnerships.

5.2 THE SECOND COMPONENT OF SECTOR INTEGRATION: A COORDINATING MECHANISM

Recommendation #6: That stakeholders in each jurisdiction – particularly service-providers and/or networks of service-providers with the help of key funders – establish a coordinating body or mechanism to facilitate development and collaboration within the ERSS.

The need for a coordinating body to encourage linkages and collaboration between services within the ERSS is ultimately based on a concern for the effectiveness of the service response to individuals’ problems. In the UK it was found that government funded a large number of local legal and advocacy

services (“pioneering partnerships”), but little attention was paid to how to link them²⁸. Because these linkages did not exist, consumers often met dead ends or became confused rather than encouraged by the array of services. If they had 2 or 3 failures, they would give up trying to resolve their problems.²⁹

The types of goals a coordinating mechanism could embrace are:

- to advance the concept of the ERSS as a sector in public discourse and in overall justice system policy and planning;
- to encourage and advance strategies for the development of legal capability;
- to foster understanding of quality control issues, particularly in relation to PLEI and service delivery resources on the internet and accessible through portals;
- to help rationalize funding, challenge the “silo-ing” of service delivery and encourage cooperation and partnerships between organizations with complementary goals and/or overlapping catchment areas;
- to assist networks to develop coordinated and effective PLEI, triage and referral mechanisms that are sensitive to the various populations they serve;
- to address issues of training related to triage and referral processes (to help lawyers understand community-based services, and to help community organization staff understand the range of legal and advocacy services);
- to maintain the priority on local, responsive services developed by non-governmental organizations that have established relationships with the agencies and individuals helping people;
- to nurture and maintain a broad concept of access to justice as exemplified in the ERSS.

During the consultation phase of the working group’s activities leading up to this report, the recommendation to create an oversight mechanism received the highest rating of the 14 recommendations that were proposed. The original recommendation was not prescriptive about the form the mechanism should take in each jurisdiction, and the working group maintains that flexibility about the specific structure and mandate in each jurisdiction is still important.

5.3 SPECIFIC DEVELOPMENTAL NEEDS

As just described, integration is a developmental need of the ERSS as a whole. Effective integration and coordination in turn increases the capacity of the sector to respond to the differentiated needs of diverse populations and client circumstances. Two examples of approaches to specific needs are described below, first in addressing differentiated levels of legal capability within a population, and secondly when training service-providers in methods of triage and referral based on the differing complexity of problems and the capability of individuals.

²⁸ Richard Moorhead, *Pioneers in Practice*, the Community Legal Services Pioneer Project, 2000.

²⁹ Pascoe Pleasance et al., *Causes of Action*, Legal Services Research Centre, UK., 2004.

5.3.1 The need to develop legal capability strategies for different adult and youth populations

Recommendation #7: That strategies be created by stakeholders – particularly those involved in education and community outreach – to develop legal capability among the Canadian population from youth through adulthood. The objective will be to help people better manage legal disputes that emerge in everyday life, recognize legal aspects of problems, know how to find appropriate assistance, participate in an informed way in the resolution of their problems, and minimize their recurrence.

Section 4.1.1 described the development of legal capability as one of the three functions of the ERSS. In planning the approach to the development of legal capabilities in each jurisdiction, it is important to create targeted strategies for adults, youth and students, and be sensitive to the particular needs of different socio-economic groups. A major survey in the UK in 2010 found that “barriers to legal capability are not evenly spread across the population or across different legal problem categories.³⁰” Specifically vulnerable groups (e.g., low income, unemployed) displayed problem solving/advice seeking strategies that were not necessarily in their best interests, whereas educated and higher income respondents were more knowledgeable about their rights. These findings suggested that PLE strategies for disadvantaged groups should be aimed at raising awareness of and signposting to sources of advice and advocacy, while strategies for the higher educated might include education on how to handle problems alone. Segmentation of strategies according to problem type were also suggested. In the Canadian context, legal capability strategies and content would also differ in many respects for Aboriginal and northern populations.

Another UK research report on young people’s legal capability also recommended particular strategies for this group such as outreach via trusted intermediaries, development of communication and managing the emotional impacts of the stress caused by legal incidents.³¹

Individuals often learn best when timely information is provided at the moment a problem is identified, so it might be felt that students are not out in the “real” world where they will encounter legal problems. This is not the case. Students also experience emotionally engaging issues of a legal nature within which they can develop conflict management and legal capability skills, knowledge and attitudes. These issues could include, for example, bullying, internet use, abuse and privacy, consumer transactions and navigating sexual relations. Youth who have dropped out of school are particularly legally vulnerable; any legal capability strategy for these youth needs to involve intermediary organizations such as street associations, shelters and health outreach services.

³⁰ Balmer et al., (see footnote #6), p. 57.

³¹ See PLENET (footnote 23)

5.3.2 Training for effective triage and referral

Recommendation #8: That stakeholders – particularly government, other key funders and service-providers – support and engage in the necessary training of PLEI providers, intermediaries and providers of direct legal services to reinforce assessment, triage and referral mechanisms so that citizens can quickly find the help they need.

As described in Section 4.1.2, triage and referral occurs at three stages within the ERSS, the earliest involving intermediaries whose knowledge base is not explicitly a legal one, the second (at the threshold of the formal justice system) involving legal clinics, advocacy centres and self-help centres, and the third involving services that assist clients who are actively engaged in the formal justice system.

It is critical that as clients engage with services at any stage in this continuum, they be helped to move quickly to where they need to be. This means that linkages between services need to be strong, and this in turn requires an investment in training of the service-providers. Several principles should guide this training:

- *There needs to be an awareness of clients with multiple problems and problem clusters*
If service-providers think of their mandate narrowly, they will miss an opportunity to respond profoundly and effectively to the needs of clients. When clients identify their legal problems, they are just as likely to have two or more problems as they are to have only one. This is particularly true for certain demographic groups in the population, e.g., persons with disabilities, visible minorities, Aboriginal clients, social assistance recipients and young people.³² Similarly, certain types of problems are likely to cluster with other problems (e.g., debt, unemployment and consumer protection; personal injury and hospital treatment and release).³³

Addressing only one of these problems will not necessarily help the client significantly. This means, for example, that the legal advocate needs to be aware of the interrelatedness of problems and make appropriate referrals to other service-providers who can address the problems that the advocate cannot handle him or herself. Failing to do so may mean the effectiveness of the advocate's intervention is diminished, the client's problem cluster will still be unresolved, and/or the intervention will not feel "timely" because there is still so much to resolve.

- *Intermediaries need training to be able to identify that a problem has a legal component and that there are PLEI, advocacy and other alternative dispute resolution services available to address them.*
Effective referral networks will not develop without effective training of intermediaries. Examples of successful training initiatives with immigrant organizations, hospital clinicians and public librarians were given in Section 4.3.³⁴

³² Currie, Ab. (see citation in footnote 4), pp. 44-45.

³³ *Ibid.*, p. 25.

³⁴ See footnote 28.

- *Legal advocates need training to identify social service-providers who may be able to assist with key social aspects related to a legal problem.*
This does not mean that local advocates must be a compendium of community information, but that they develop knowledge of key resources that are available to address social problems that are frequently associated with legal issues they deal with. Manuals or electronic databases of key referral resources should be provided to advocacy staff. Advocates should also have a clear sense of an organization's capacity to accept referrals, and if it is necessary to refer to an organization with capacity problems, advocates should warn the client about any potential delays or limitations in service.
- *There should be an assessment of the degree of referral support needed by a client.*
The distinction between mere "sign posting" and more active or "warm" referrals was made in Section 4.1.2. It is important that advocacy or clinic staff be trained to assess when more active referral support is necessary for clients. This awareness is equally if not more important for advocates or staff lawyers who provide advice and referrals by telephone, as the caller is already at a disadvantage in not having direct contact with the service provider. It may be necessary to provide referral information by a follow-up email or letter and/or schedule follow-up calls to see if a client was able to complete the referral.
- *Service-providers should receive training in how to refer clients effectively to websites or other self-help resources*
Timely resolution of problems does not necessarily require that the client is referred to an in-person resource. They may be able to carry their case forward using a computerized "navigating" approach where they can get guidance on next steps and connect to court forms required for their process. Examples of an online resource of this type is that provided by the Justice Access Centre in Vancouver for Supreme Court litigants.³⁵ In the US, Ask a Law Librarian is a chat legal reference service provided by California County Law Librarians. On the internet members of the public can ask a question by typing it into a chat window and a law librarian will respond via a text chat.³⁶

³⁵<http://www.supremecourtselfhelp.bc.ca/self-help.htm>. A similar model is that used by the Superior Court Self-Service Center in Maricopa County, Arizona. <http://www.superiorcourt.maricopa.gov/superiorcourt/self-servicecenter>.

³⁶ This is described in the JACA conference report (see footnote 27). The Ask a Librarian service is at http://www.247ref.org/portal/access_law3.cfm

6.0 Creating a Structural Connection between the ERSS and the Formal Justice System

Recommendation #9: That the ERSS be acknowledged and integrated into policy development, collaborative planning, innovation development and service implementation in the administration of justice in each jurisdiction.

It is one thing to recognize, resource, and develop the ERSS as a vital sector that responds to people's legal problems. It is another to bring representatives of the ERSS to the table as an equal partner with representatives of the formal justice system in planning jurisdiction wide approaches to access to justice. The working group fully supports the notion of access to justice committees in each jurisdiction; however we feel they will fail to respond adequately to the underlying legal needs of people without a collaborative framework supporting strong and formal representation from the ERSS.

A US model for jurisdiction-wide access to justice committees is the State Access to Justice Commission, currently existing in 32 states.³⁷ The formal commissions are typically created by a Supreme Court rule or order. In most cases commission members are

... judges and court representatives, the organized bar, civil legal aid providers, law schools and in some instances, members of the executive and legislative branches of state government The commissions have a broad charge to assess the civil legal needs of low-income people in the state and to develop, coordinate and oversee initiatives to meet these needs.³⁸

These commissions reflect a traditional view of access to justice and a composition based almost exclusively on the formal justice sector. The composition of the governance structure within Canadian jurisdictions deserves careful consideration in terms of how it nurtures and maintains the broad concept of access to justice that is the basis of this report (and which is a concept that is shared by the Access to Legal Services Working Group³⁹), rather than one that interprets access to justice solely in terms of access to lawyers and to courts.

³⁷ Some are called "committees," "boards," or "groups," and four of these are established differently than the formal state commissions. See http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/state_atj_commissions.html

³⁸ Chief Justice Karla M. Gray and Robert Echols. Mobilizing judges, lawyers and communities: State Access to Justice Commissions. American Bar Association: The Judges Journal, Vol. 47, Number 3 (Summer 2008).

³⁹ Dated May 30, 2012, the working group's report (at page 6) also references the HiiL report (discussed in Section 2.0 of this report) emphasizing that access to justice needs to be understood from the perspective of people who experience legal problems. The Working Group report then describes four "fundamental elements of access to justice", all of which are largely external to the traditional justice system.

In Canada legal aid was the initial response to the access to justice problem in various jurisdictions from the 1940's to the 1960's, and has been the largest part of the access to justice landscape ever since. Legal aid has generally been understood as the services normally available from a lawyer, representing the traditional "lawyers and courts" version of access to justice. Much to its credit, the legal profession has taken the lead in promoting this paradigm of access to justice for decades. However, in order for the concept of access to justice to embrace the ERSS it needs to include the activities of PLEI service-providers, conflict resolution organizations, community legal clinics, advocacy groups, community organizations and non-court government services. Similarly, any oversight entity will need to promote and support these activities.

It is essential that the ERSS have sufficient cohesion as a sector to be seen as a credible partner with the formal justice sector in the overall planning of access to justice strategies, policies, innovations and service implementation. For this reason, one or other of the ERSS sector integration approaches discussed in Section 5.1 (self-organization) and 5.2 (coordinating mechanism) – or a combination of both – should be seen as a prerequisite for effective participation at this level.

Formal representation of the ERSS at the table could significantly impact the discourse about a range of justice issues. For example, the steady rise of self-represented litigants (SRLs) in both family and civil matters is seen as a significant problem for court services and the judiciary in all jurisdictions. Approaches to this issue have ranged from simplification of court forms, to the development of self-help materials, websites and centres and to increased alternative dispute mechanisms. While the second and third of these approaches are sometimes ERSS-based mechanisms, they are more often solutions within, or connected to the courts. Having more formal representation of the ERSS in system-wide planning would more likely lead to the development of mechanisms to avoid people becoming SRLs by identifying alternative approaches early in the trajectory of people's problems. These could involve for example, more intensive building of legal capabilities through development of intermediary ERSS services, early identification of high conflict civil or family situations and mandatory conflict resolution procedures before the court system can be accessed.

7.0 Identifying and Monitoring ERSS Outcomes

Recommendation #10: That stakeholders – particularly government, service-providers and key funders within the ERSS – work together to identify key outputs and outcomes of the sector and monitor their achievement.

Output and outcome indicators in the ERSS should reflect the content and goals of the sector. In each jurisdiction, appropriate indicators will be identified by stakeholders, government, funders and any coordinating body for the sector, so the following should be seen as examples. However, they are directly relevant to the key themes discussed in this report.

- *Indicators of problem resolution*

Not all people who use the ERSS services will have an immediate problem. Many will seek information to help them prevent a problem from becoming large and expensive. However, if they do have a problem, a critical indicator is whether they resolve it.

The ERSS needs to build on empirical knowledge of approaches that produce effective and durable solutions to problems. Determining whether a problem is resolved requires that the clients' contact information be recorded, their consent for a follow-up interview be obtained, and that a follow-up survey be conducted several months following the service (to allow sufficient time for a resolution to occur). Funders need to appreciate that this requires time, staff and material resources, but it is the only reliable method of measuring the ultimate impact of the service. In mediation or representation services (e.g., through pro bono activity), evaluating resolution of the problem is more straightforward, because the outcome of the case is in most instances determined at the time of providing service.

Any follow-up survey of course allows for exploration of other outcomes such as whether a client followed through on a referral that was given, whether the referral was useful, how long it took to achieve a resolution, and whether the client feels the service contributed to a timely resolution.

- *Indicators related to legal capability*

A significant portion of ERSS activity, especially for PLEI and early conflict resolution services, is directed to increasing people's legal capability. In general, legal capabilities concern knowledge, skills and attitudes, so outcome indicators need to be framed in terms of each of these outcomes.

In the UK, a study funded by the Ministry of Justice⁴⁰ outlined four principle domains of legal capability, each having several subsets of capabilities that were measurable. The four domains were:

- recognizing and framing the legal dimensions of issues and situations
- finding out more about the legal dimensions of issues and situations
- dealing with law-related issues and situations
- engaging and influencing

The development of appropriate indicators reflecting these domains or domain sub-sets would depend on the nature of the project being evaluated.

- *Indicators related to websites and portals*

Almost all indicators using tools like Google Analytics are output, rather than outcome measures. They reflect the way visitors use the site. Four questions these tools typically address include:

- how many people use the site, how long they stay, whether they come back;
- where visitors come from (links, keywords used);
- whether they are doing what you want them to do (e.g., memberships, donations);
- what they do on the site (pages viewed, content).⁴¹

Another way of approaching surveys of website users is to “piggy back” questions about a specific website onto other surveys of individuals who are using direct client services for a legal problem. For example in BC, questions about the use of the Clicklaw web portal were piggy-backed onto client surveys of other projects funded by the BC Law Foundation. Even though the main survey was not about Clicklaw, their respondents were people with legal problems. The surveys were therefore an opportunity to explore whether clients of the projects had also used Clicklaw as part of their approach to resolving their legal problems.

- *Indicators about referrals*

Section 5.3.2 discussed the creation of effective assessment, triage and referral mechanisms in the ERSS. An evaluation of the degree to which referral networks are being enlarged, strengthened and effective requires:

- documentation by service-providers of the extent to which they have explored possible problem clusters with their clients, whether and to whom they have referred their clients and whether they gave a “sign post” or “warm” referral;
- follow-up surveys with clients as to whether they followed up on the referral and whether it contributed to the resolution of their problems; and
- interviews with service-providers about outreach and networking initiatives they have taken to enlarge and/or strengthen their referral network.

- *Research by an oversight body*

⁴⁰ Sharon Collard, Chris Deeming, Lisa Wintersteiger, Martin Jones and John Seargeant. Public Legal Education from Evaluation Framework. University of Bristol, Personal Finance Research Centre. November 2011. <http://www.lawforlife.org.uk/data/files/core-framework-final-version-nov-2011-v2-370.pdf>

⁴¹ See Brenda Rose et al., in footnote 27 (these questions are on page 34 of that report).

Most of the indicators discussed above are ones that could be developed and monitored closely by the services concerned. Two other issues would require more global evaluation, and would logically fall within the purview of an oversight mechanism such as was discussed in Section 5.2. The first is a study on the overall allocation of funds to the ERSS in the jurisdiction in question in a baseline and subsequent years. This would be a complex study, but would permit assessment of progress on making the shift in allocations described in Recommendation 2 (Section 3). A second study could address the growth of collaboration and information exchange in regard to innovative technologies between ERSS stakeholders as per Recommendation #5 in Section 5.1.1.

7.1 BUILDING STRONG RESEARCH ALLIANCES

Recommendation #11: That relationships be developed between service-providers in the ERSS, government and universities to promote research concerning access to justice and ERSS sectoral issues and outcomes.

Although much of the outcome identification and monitoring activities discussed in the previous section can be addressed through funder support of project evaluation attached to individual projects, there is a need for more fundamental research to advance knowledge relevant to the sector. Although there are student legal clinics and centres promoting public legal education that are affiliated with some law schools, and although law schools typically have centres of research specializations, there are few Canadian examples of systematic research directly related to the ERSS comparable to that undertaken by the Hague Institute for the Internationalization of Law (HiIL) and Tilburg University,⁴² or PLENET in the UK.⁴³ Notable exceptions are the work of Ab Currie for the federal Department of Justice,⁴⁴ and the five year Cost of Justice Project awarded in 2012 to the Canadian Forum on Civil Justice by the Social Sciences and Humanities Research Council (SSHRC), which is operating out of York University's York Centre for Public Policy and Law. The project is developing methods to measure what our civil justice system costs, who it serves, whether it is meeting the needs of its users and the price of failing to do so.⁴⁵ A third example is "Listening to Ontarians"⁴⁶ and "Geography of Civil Legal Services in Ontario"⁴⁷, published in 2010 and 2011 respectively, which are two reports of the Ontario Civil Legal Needs Project undertaken by The Law Society of Upper Canada, Pro Bono Law Ontario, The Law Foundation of Ontario, and Legal Aid Ontario, with research conducted by Professor (now Dean) Lorne Sossin, at Osgoode Hall Law School at York University and Professor Albert Yoon and Jamie Baxter, Visiting Researcher, at the University of Toronto, Faculty of Law.

⁴² <http://www.hiil.org/about-us/history>. See also footnote 2 in this report.

⁴³ See, for example, footnote 23.

⁴⁴ See footnote 4.

⁴⁵ <http://www.cfcj-fcjc.org/sites/default/files/docs/2012/Cost%20of%20Justice%20Project%20Plan%20-%20Working%20Draft%20%28October%202012%29.pdf>

⁴⁶ http://www.lsuc.on.ca/media/may3110_oclreport_final.pdf

⁴⁷ <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236>

Studies about how people experience legal problems and about how the cost of justice manifests in the life of individuals, the justice system and government as a whole are essential to provide a more solid footing for the ERSS. Other fundamental types of research issues pertaining to the sector could include, for example:

- how people experience barriers and success in seeking web-based and/or virtual legal information and using technology;
- the combinations of formal and informal resources people use in making decisions about legal problems;
- models to engage and divert unrepresented litigants from the court system;
- understanding the cultural and socio-economic underpinnings of litigious behaviour and how it can be channeled to more collaborative processes;
- optimal combinations of self-help and support: possibilities and limits;
- effective distance modalities and infrastructures for assisting rural and Northern people with legal problems;
- the immigrant understanding and experience of legal problems;
- the long term impact of school-based justice education on legal problem solving.

One role of an oversight mechanism such as was discussed in Section 5.2 would be to define, in combination with service-providers, funders and government, research themes of significance to the ERSS and to build the relationship and structures necessary for their realization.

8.0 Conclusion

We conclude where we began, and where we feel the focus should remain – with people’s everyday legal problems.

The working group’s task was to develop a clear vision of how the justice system can engage with these problems in a more effective way. We have argued that the most fundamental principle on which to base a response is to direct resources towards serving the greatest number of people in the most effective way possible and as early as possible. This is the first principle by which the term “access to justice” acquires meaning and substance.

This principle leads to a paradigm shift in which the justice system itself is re-defined to fully incorporate a well established Early Resolution Services Sector. There is a need to better articulate, resource, develop and integrate the ERSS in each jurisdiction, to build stronger structural connections between it and the formal justice system, to evaluate its activities and outcomes and to conduct empirical research on underlying themes of importance to the sector.

Implementing a fundamental change in the justice system may appear challenging in an ongoing period of budget constraint. Widening inequalities in the distribution of wealth, the stresses of a fast-paced consumer society, changes in the composition of families, and shifts in the cultural composition of our nation add to the complexity of system adjustments. Technological changes can rapidly render communication and information systems redundant, and leave some segments of society un-served. However, these same challenges create an opportunity and imperative to undertake change that will ultimately strengthen the overall justice system and its ability to respond to people’s everyday problems.

The “fundamental change” proposed here builds on foundations in each jurisdiction that have been described in Section 2. In that sense, the change is evolutionary. The more “revolutionary” aspect of this change is to re-conceptualize and develop the sector as a key partner with the formal justice system, in order to provide access to justice in a way that is more meaningful and immediate to the broad mass of Canadians.