

2015 Downtown Eastside Legal Access Forum — Report

Written by Naomi Moses

About the Downtown Eastside Literacy Roundtable

The Downtown Eastside Literacy Roundtable is a coalition of adult educators working in the Downtown Eastside. The group has been collaborating since 2005 to share skills, ideas, support and information. Its members understand literacy as “the knowledge, skills and confidence to participate fully in our lives.” In keeping with this definition of literacy the Downtown Eastside Literacy Roundtable organized a forum to discuss participation in the legal system.

About the Downtown Eastside Legal Access Forum

The forum was planned to assist community members and community organizations in addressing the serious and persistent legal access issues in the neighbourhood. With funding from the Arbutus Rotary Club, the Downtown Eastside Literacy Roundtable partnered with the UBC Learning Exchange to hold the forum on June 24, 2015. The forum was held for three hours and included nine short presentations from the following attendees:

- Nikos Harris** of the Peter A. Allard School of Law at UBC
- Ronnie Grigg** from Insite Supervised Injection Site
- Perry Omeasoo** and **Gail Bell** from Vancouver Coastal Health’s Strathcona Mental Health team
- Laura Track** from the BC Civil Liberties Association (BCCLA)
- Amber Prince** from Atira Women’s Resource Society (Atira) and Crabtree Corner
- Lu Zhao** from the Law Students Legal Advice Program (LSLAP) at Allard Law
- Erica Olmstead** from Edelman & Company and Legal Services Society (LSS)
- Richard (Rick) Lavallee** from the Vancouver Police Department (VPD)

About this Report

This report is a compilation and summary of the notes taken during discussions, and of the key points from the speakers’ presentations. Every effort was made to remain as true to the content of the original conversations as possible. This report is focused on sharing the views, priorities, and concerns of the presenters and community members present.

This report is organized into nine parts, based on issues and topics raised by participants.

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1) The Unique History of the Downtown Eastside Community

Participants described how many people – particularly First Nations people – flocked to this area in the 1960s because it offered affordable housing and a sense of camaraderie. These people chose to stay here because of this housing and also because they had become very comfortable here. This remains a vibrant community. While many who drive through the neighbourhood lock their car doors out of fear, many of the residents feel very comfortable here and distrust services offered elsewhere.

For Aboriginal residents, much of this distrust stems from their and their family’s residential school experiences. Some continue to move here because of the need for housing, or they feel as though they are being “pushed” here, but many continue to come

here by choice. One reason for this choice is because resources and services are offered in the neighbourhood. This aspect of the community is often not seen by outsiders.

There is a very real sense of community here. The neighbourhood is also diverse. While it is better known as home to people who face various barriers such as drug use and survival sex work – families also live here. Also, many who grew up in the Downtown Eastside choose to stay in the neighbourhood and give back to a community that accepted them when no one else would.

2) Access to Justice

Barriers

Timing, consistency, community support

The limited amount of legal resources presents a major barrier for residents who need to access legal services. Because of a lack of consistency in service provision, the access to justice problem is often approached in an inefficient piecemeal fashion. Legal appointments are only available in the morning or daytime which can present major barriers for people in the neighbourhood who work at night. This makes it harder for them to follow through with addressing their legal issues. There is also a lack of community support once a legal issue is resolved but an underlying social issue remains. One of the major barriers for those working in the community is that the work can be very demanding and exhausting.

Digital access

Computerized and online resources can create barriers for people in the neighbourhood who do not have reliable access to computers and the internet. For instance, the digitization of the income assistance application process has made applying for welfare more difficult for many people. The Residential Tenancy Branch is also moving services online, while in-person services have been cut dramatically– this is a major problem and a major area of need. One participant expressed the need to cut back on computerized services when they create barriers for the people who need them the most. People with intergenerational trauma, Post-Traumatic Stress Disorder, or Fetal Alcohol Spectrum Disorder may also have limited computer literacy which acts as a barrier to accessing digital resources.

Removing Barriers

One participant mentioned a “barefoot lawyers” program in India, in which young people from rural villages are trained as paralegals and then work in their communities to educate residents and help protect their legal rights. She suggested that this could be a helpful solution in the Downtown Eastside. Another expressed the need for solutions that would provide immediate legal help for residents so that their needs could be met right away, rather than in several weeks or months.

The Crisis in Access to Justice in BC

There is a major crisis in access to justice in BC. Nikos Harris spoke about two parts of this crisis. Firstly, our legal system is complex and lawyers are needed to guide people through it. Secondly, few people can afford services. It costs \$100-\$500 an hour to hire a lawyer, and a 2-3 week trial can cost upwards of \$200,000-\$300,000. While the system is for the most part only complex when it needs to be (for example in evidence rules that prevent people from being wrongly convicted) this complexity prevents non-lawyers from effectively accessing it. While legal services are expensive, this is not just a sign that all lawyers are getting rich. Some do very well, but they also tend to work very long hours and some of them are not well-paid, are paying off law school debt, or covering the operating costs of big firms. Lawyers also spend more time on pro bono work (free legal services) than any other profession.

Self-Representation

People representing themselves in court end up costing the system more than a properly funded legal aid process would. Harris noted that when both sides are unrepresented in family court, the trials take much longer – sometimes 2-3 months instead of 2-3 days – because judges must take extra time to explain all the processes and rules. This costs more money than if lawyers represented everyone.

Strategic Litigation & the Law of Standing

Laura Track from the BC Civil Liberties Association (BCCLA) discussed recurring system-wide problems that lead to people needing to go to court or retain legal representation. While the BCCLA does not provide direct legal services and does not go to court for individuals, they and other organizations work on test cases that can change the law in important and significant ways. Lawyers sometimes call this work “strategic litigation.” Track’s work also includes advocating for law reform, which can diminish the amount of legal issues people must deal with.

One of the major questions in access to justice is who is able to go to court to say the law is harming them. This is called the law of standing: who has the ability to stand before a court and challenge a law. In a recent case brought by a group of sex workers from the Downtown Eastside – Sex Workers United Against Violence (SWUAV), represented by Pivot Legal Society – the applicants successfully argued that organizations representing groups of people can challenge laws. SWUAV argued that it is unreasonable for a single person to challenge the sex work laws, especially when that person is struggling with poverty and faces arrest or harm by going to court. SWUAV’s case went all the way to Supreme Court of Canada, and they were successful in getting opening up the test for public interest standing. The legal principles established from this case are now guiding other groups, like a group of homeless people in Abbotsford, BC, who are challenging laws that harm them.

Resources

Allard School of Law at UBC

The law school at the University of British Columbia offers clinics where students do actual legal work (supervised by practicing lawyers) while they attend law school. Some of the

advantages of this include giving students realistic legal experience, serving thousands of people who would otherwise not have lawyers, and offering students a chance to see access to justice issues firsthand which often inspires them to continue working or volunteering in access to justice after law school.

Clinics at the University of British Columbia's Allard School of Law

The University of British Columbia offers several clinics run by students and supervised by lawyers. All of them offer free services to people who would otherwise be unrepresented.

- The Indigenous Community Legal Clinic offers a wide variety of legal services to Aboriginal people from their Alexander Street location.
- There is a criminal clinic at 222 Main Street supervised by Judge Galati and staffed by volunteer lawyers and students.
- The Innocence Project assists people who say they were wrongly convicted by taking a last look at files and applying to the Justice Minister to have cases reopened.
- Pro Bono Students Canada is a student organization that helps law students volunteer at public interest organizations, where they deliver direct legal services (supervised by lawyers) and also help people fill out paperwork and file court documents.
- In early 2016, the University of British Columbia will begin operating a women's legal clinic especially to address family law, an area of law experiencing the greatest crisis in access to justice.

Resources for Self-Represented People

One participant expressed that when her friend brought a case challenging some of Canada's drug laws, she thought she was already an engaged citizen with knowledge of the *Canadian Charter of Rights and Freedoms* (the Charter) – but she did not know enough. Learning more allowed her to have better understanding. She stressed that more resources are needed to help laypeople understand how the Charter and human rights laws works.

Lu Zhao mentioned several places where people can get legal information.

- Clicklaw is an online resource offering legal information and education for people in BC.
- The Justice Education Society provides in-person workshops, support at the courts and at their offices, and legal guides and information.
- CanLII is a website that makes Canadian case law available for free.
- And LSLAP has a free manual on their website and in libraries – it's updated every year and is an excellent legal resource.

Free Legal Clinics: Law Students' Legal Advice Program

Lu Zhao spoke about the Law Students' Legal Advice Program (LSLAP), which has offices at UBC and runs roughly 20 clinics across the Lower Mainland. Each clinic is held every two weeks for two hours in the evening. The Port Coquitlam clinic is the furthest away from the centre of Vancouver, and LSLAP students assist with paperwork for clients all over BC. LSLAP is the largest provider of free legal services in BC, and their students see 60% of cases through to the end. 60% of their files are civil cases, and the other 40% are criminal

cases. The civil files they accept cover many employment issues, including injuries, employment insurance, severance, human rights, and termination. The students work for free or for course credit, while two lawyers provide oversight and supervision. The clinics run on a shoestring budget – LSLAP can run a trial for \$300.

Legal Advocacy at First United Church

An advocate from First United Church described their legal advocacy program. They have intake every weekday in the mornings and early afternoons, and they take on cases in areas including income assistance, employment insurance, residential tenancy, and disability. Their services are for people who need legal assistance but are not going to court.

3) People with Addictions

Ronnie Grigg from Insite spoke at length about his experiences working with people with addictions who use Insite. As the night shift coordinator, he sees nights as the starting point for access to justice. Many people who visit Insite have a difficult time accessing services during the day because they earn money at night through the drug trade or survival sex work. Access to legal care is very limited for these people. There are three inadequate options for an advocate who is trying to help a person who comes in at night seeking services: defer the work to someone else, work with the participant and then hand off the work to a colleague on the day shift, or use personal time to be a physical support during the day. Other barriers for drug users seeking legal help include the environment of prohibition, in which a person can have their sense of wellness removed at any moment, either through arrest or confiscation of drugs. This is a major barrier to functioning. Street homelessness also makes it very difficult for people to keep track of appointments and set alarms. People who have no idea where they will be sleeping often find that it is easy to miss court appearances, and this is an especially difficult barrier to address.

Insite as a Legal Tool

Insite is an essential service that in many cases protects people from arrest and imprisonment. The police and the courts are willing to recognize Insite as a lifesaving service, and so while people may be red-zoned (ordered to stay away) from the area surrounding Insite, they will still be permitted to access Insite itself. People who have been using drugs openly on the street are often told by police to use at Insite or have their drugs confiscated. Grigg emphasized the importance of letter writing as a big part of advocacy. Another complex issue for people who use drugs is their need for advocacy and support with family law issues – access to and custody of their children are especially important to them.

The Future of Insite

Grigg noted that Bill C-2 was recently passed, and the new laws require Insite to renew their exemption from federal drug laws annually. This requires a great deal of resources, and in 2016 the process will change as a result of the new legislation. Despite support from

the police, the community, and the city, there is still uncertainty surrounding the continued existence of Insite.

4) Mental Health

Perry Omeasoo, a First Nations Mental Health Liaison worker with Vancouver Coastal Health's Strathcona Mental Health team, described his work assisting First Nations people in accessing services. Including helping people understand what it means to be certified under the *Mental Health Act*. This happens when they've been found to be a danger to themselves or others. Supporting people through this process includes issues of rights retained after certification, second medical opinions, how to stop the certification process, and how the process is different on-reserve compared to off-reserve. He stressed that cultural barriers exist even when English is a common language, and that commitment and patience are required to gain trust with First Nations people. Lingering issues from residential schools and negative experiences with police services have created stigma about relationships with mental health workers. He identified aboriginal spirituality as a tool to assist First Nations clients in discussing their experiences.

Gail Bell, also from Vancouver Coastal Health's Strathcona Mental Health team, described some of the legal restrictions faced by people who have been certified under the *Mental Health Act*. They are often required to take medications and report to appointments, and they sometimes must live in specific housing. She assists about 70 clients at a time in learning their rights: to a second opinion, to talk to a lawyer or judge, and to see a Mental Health Review Panel and have their case reconsidered. She emphasized that these people need legal representation – some of them receive free representation from the Community Legal Assistance Society (CLAS). Bell said that they work with people with serious and persistent mental illnesses (usually bipolar disorder or schizophrenia) which can impair cognitive functioning and life functioning, and make it even more difficult for people to access legal help.

5) First Nations People

Participants stressed that Aboriginal people often have a history of neglect and abuse. This may contribute to a distrust of authority figures. It is important for advocates, police, doctors, and lawyers to trust the friends and family of a person in distress and allow these people to help. Making a person in crisis navigate the legal and medical systems without support can cause more harm than good.

Rick Lavallee, a police officer and the First Nations liaison at the Vancouver Police Department (VPD), described some of the barriers to legal access faced by people in the Aboriginal community. The overrepresentation of Aboriginal people in Canadian prisons is a serious problem. Aboriginal people face barriers including poverty, racism, ignorance, apathy, and residential school trauma. Sometimes people participate in the survival drug trade or the survival sex trade, because it is all they know. Participation in criminalized

activity often takes place in context of a failed foster care system, Fetal Alcohol Spectrum Disorder, or developmental disabilities. Distrust stemming from the residential school era and beyond has led to the underreporting of crime, in part because many people are used to having their children taken away. Despite these barriers, the Aboriginal community is becoming stronger and healthier, evidence of this can be seen in rising participation in education, increased cultural connections, more knowledge-sharing, and increased opportunities being offered to Aboriginal people, like the VPD's Aboriginal cadet program.

6) Legal Advocacy for Women

Amber Prince discussed her experience running the legal advocacy program at Atira Women's Resource Society, which is funded by the Law Foundation and offers free services for women. Prince and the staff at Atira work on the principle that people are not born with the same opportunities. Visibly Aboriginal people experience more barriers; women make lower incomes and are more often responsible for childcare, which can contribute to aboriginal women experiencing poverty. There are many barriers for women in the legal system. Prince aims to remove some of these barriers using her legal experience and privilege. Some of her work includes: challenging eviction notices and rent increases, helping women get their disability benefits, assisting women harmed by crime and abuse, helping women in the family law system, and helping women fill out documents, for instance welfare applications.

Prince stressed that women in the Downtown Eastside are very resilient, strong, creative, and funny. Unfortunately, the extent of the access to justice crisis means Atira cannot meet the needs of most of the women in Downtown Eastside. West Coast LEAF's recent report card on women's rights gave women and access to justice an F, and so very serious challenges remain. The Canadian Charter of Rights and Freedoms guarantees equality rights and we should aspire to uphold them.

7) Immigration Status

Erica Olmstead works at Edelman & Company and the Legal Services Society (LSS, commonly known as legal aid) in the appeals department on immigration issues. Olmstead described her work with clients in Downtown Eastside. Immigration issues can make people who are already marginalized invisible. Her clients often have multiple issues, such as addiction, mental health, and a criminal record, and either have no immigration status or are facing loss of status. Immigration issues can worsen the problems facing Downtown Eastside residents. The main issues for migrants in Downtown Eastside are a lack of status and a lack of knowledge about what to do about it. People often lose their refugee claim or permanent residency. If a permanent resident is convicted of a crime and is sentenced to six months' imprisonment or longer, or if the conviction is punishable by ten years or more in prison, they can lose their status even if they have been here for decades. This can

happen even when a person has mental health issues and hasn't been to their home country since childhood, has no connections there, and no ability to speak the language.

Immigration arrest and detention can result when a person is ticketed for jaywalking or failing to pay a transit ticket. If they are caught by a Canadian Border Services agent, they can be deported within a few days. Deportation can also result when someone does not appear for immigration proceedings. Humanitarian and compassionate grounds applications can help people stay in the country, and legal aid does fund lawyers to do this, but people can't fight their removal once they've been arrested. This means it's important to get help quickly. There are many resources available, and more exist for refugee claimants. Olmstead suggested that people dealing with immigration issues should get in touch with Legal Services Society, duty counsel at detention reviews, Access Pro Bono, Law Students Legal Access Program, or MOSAIC.

Some of the problems facing immigrants in the Downtown Eastside include a lack of coordinated response for people with multiple issues (status, mental illness, addiction), non-legal aid issues where representation is harder to find, and arrest for very minor offences (like jaywalking, unpaid transit fares, urinating in an alley) that can lead to deportation. People without status should try to connect to resources like legal aid. Immigrants also often struggle with a lack of medical care, though they may be eligible for income assistance.

Possible Solutions for Immigration-Related Legal Issues

One participant described the Sanctuary City Campaign, which is a city-wide campaign to ensure that police stop asking for immigration status unless the person has a warrant for their arrest or a serious criminal record. In San Francisco, where this program has been implemented, people are no longer arrested for lack of status. Hamilton, Ontario was declared a sanctuary city in February of 2014, and Toronto has been putting some of the principles of this campaign in place since June of 2014.

8) Policing Issues

Richard Lavallee described the lack of resources in the Vancouver Police Department. Detectives each have hundreds of cases, which often makes it difficult to protect victims. There is also a common perception that the police are the "bad guys." Lavallee stressed that the Vancouver Police Department is in fact on the leading edge of progressive policing, and their officers are trained in mental health and cultural competency. He also believes it is important to remember that being a police officer is a difficult job. They deal with violent crime and upsetting situations on a daily basis, and while this does not excuse a police officer from acting unprofessionally, it helps explain it. An officer may have just come from dealing with a violent or upsetting situation and may still be affected by it.

One participant who works with mothers and young children in the neighbourhood shared a story about how a lack of immigration status, limited legal knowledge, and pro-active policing can cause harm. She described how a mother without immigrant status witnessed

a robbery across street and called police. When the police came, they asked about her immigration status. She had no involvement in the robbery and was simply reporting it. She had a young baby and was very scared and upset, and started crying. This resulted in a disturbing situation. The participant asked how the Vancouver Police Department should respond to this, and said that women often won't report crimes out of fear of immigration enforcement. Lavalley responded that while police officers have an obligation to enforce the law, it was strange for the officer to have raised immigration status, and said that officers normally only take interest in immigration status if a person is known to be a violent drug dealer or criminal.

Another participant mentioned that the heaviest police presence in the neighbourhood is around 3:00 am, when Insite closes. A community member stressed that preventive work should be more important for police. More peer support networks would reduce police involvement. Peers can often help get a person calmed down, but when police arrive they may exacerbate the situation. He stressed that police should first do no harm.

9) Conclusions from Participants

Participants in the discussion groups noted that “literacy” in this context means “access” and not simply the ability to read and write. Funding is integral to all the programs and projects discussed at the forum – and so funding cuts (which many of these organizations face) present serious risks. There are huge demands on both frontline workers and those who address more systemic problems.

Despite funding cuts and other barriers, there are great innovations in programs and projects undertaken to address the needs in this area. Participants expressed that there was a need for more workshops and forums like the Downtown Eastside Legal Access Forum – even if only so people doing the exhausting and sometimes alienating work of ensuring legal access can come together, share information, and support one another. Many participants felt strongly that change comes from the bottom, and their capacity to improve legal access in their neighbourhood is important.