

Lack of legal aid leaves too many defendants to represent themselves: top judge

Indigenous, visible minorities over-represented in system, says Beverley McLachlin at Memorial University

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Chief Justice Beverley McLachlin, seen here speaking in Ottawa in August, said Thursday night at Memorial University that a lack of legal aid funding is the biggest problem facing Canada's legal system. (CBC)

The old adage goes something like this: a man who is his own lawyer has a fool for a client.

But Canada's top judge blames a lack of legal aid funding for what she says is the major challenge facing the criminal system — access to justice, especially for the poor and marginalized.

'Lost in a system they don't understand ... the accused lose faith in the system and in justice itself, and they give up. Is that access to justice? I don't think so.'- *Beverley McLachlin*

"We have a justice system to be proud of but it does not always do the job it was created for," Beverley McLachlin, chief justice of the Supreme Court of Canada, told a public lecture Thursday at Memorial University in St. John's.

She especially emphasized the number of people who struggle to represent themselves after being denied legal aid.

"The cutoff can be quite low," she said of funding restrictions.

"Lost in a system they don't understand, and that seems incompatible with their reality, the accused lose faith in the system and in justice itself, and they give up. Is that access to justice? I don't think so," she told the standing room only audience.

More likely to plead guilty, be denied bail

"We all have heard criticisms of the justice system for occasionally producing a wrongful conviction."

Beverley McLachlin is the longstanding chief justice in Canada and the first woman to hold the position. (Roy Grogan/Supreme Court of Canada)

Self-represented defendants are more likely to plead guilty, to be denied bail and to be convicted, McLachlin said.

"If I had a wish that some genie would fulfil, I'd say it would be to somehow impress attorney generals — people involved in the justice system and governance — with the vital importance of spending a little more on justice and making sure people are represented."

It was one of her last public lectures as chief justice before she gets set to retire in mid-December after 28 years on the country's highest court. She has been in the top job for almost 18 years.

Spending on justice system stagnant

McLachlin said while health and education spending have increased, spending on the justice system has been stagnant or declined across Canada in recent decades.

Yet she says various studies show that rehabilitating offenders pays off economically.

She believes the five most pressing access challenges for the criminal justice system are: access to professional legal advice, prompt trials, fair sentencing, access to a system that meets victims' reasonable expectations, and access to culturally appropriate processes.

Aboriginal people disproportionately jailed

The latter is especially vital for aboriginal people who are disproportionately incarcerated, McLachlin said.

"I'm not in the habit of telling governments what to do," she stressed. But she would like to hear debate on the judicial weight that should be placed on rehabilitation and how best to accomplish it. Offenders who go on to lead productive lives cost less, she added.

"I hope we have this conversation." Aboriginal persons are grossly over-represented in the system. It's an enormous problem.'- *Ian Carter*

Criminal defence lawyers have repeatedly called for changes to minimum mandatory sentences imposed by the last federal Conservative government.

They say minimum sentencing actually increases repeat offences, and have urged the governing Liberals to introduce changes expected sometime this fall.

There have also been widespread calls for action on disproportionate incarceration rates for Indigenous citizens and visible minorities.

"Aboriginal persons are grossly over-represented in the system," said Ian Carter, vice-chairman of the Canadian Bar Association's criminal justice section.

"It's an enormous problem. In fact, I'd say that's a bigger problem than the legal aid issue ... We have to find ways to reduce that level of incarceration," he said in an interview.

25% of prison population

About one-quarter of all prison inmates are aboriginal even though they make up just four per cent of the general population, the office of the federal correctional investigator reported in 2015.

"That number's just unacceptable," Carter said. "How can people have faith in a system with that kind of over-representation?"

McLachlin took no questions from media on Thursday but had a bit of fun answering some from the audience. She was asked if she had advice for anyone considering law school.

"Go for it," she said to laughs from the audience. "It certainly was good for me."