

Legal Aid Services Act, 1998, Bill 68, Mr Harnick / Loi de 1998 sur les services d'aide juridique, projet de loi 68, M. Harnick

Submissions of **ABORIGINAL LEGAL SERVICES OF TORONTO**

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The Chair: We call on our next presenters. If the representatives of the Aboriginal Legal Services of Toronto could come forward and identify yourselves for Hansard, we would appreciate it. Thank you for coming. You may begin.

Mr Jonathan Rudin: Thank you very much. My name is Jonathan Rudin. I'm the program director at Aboriginal Legal Services of Toronto. With me is Kimberly Murray, who's the director of the legal clinic at Aboriginal Legal Services of Toronto.

We'd like to thank the committee for allowing us to make the presentation today. We have distributed a brief summary of our presentation. We're here in particular with reference to clause 14(1)(f) of the proposed Legal Aid Act which states that the legal aid corporation "shall provide legal aid services by any method that it considers appropriate," including subsection (f): "The funding of aboriginal legal services corporations is to provide legal aid services to aboriginal individuals in communities."

I'm not sure, but I suspect we will probably be one of the few, if not the only, organization here to speak on this issue, and we would like at the outset to say that we think this is a very good suggestion to put into the act. We have some suggestions that Kimberly will be talking about in a moment about how to integrate that more fully within the act.

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I thought I would briefly talk about our organization, because it is, I think, the model for the notion of an aboriginal legal services corporation. Aboriginal Legal Services of Toronto, in its initial planning, was meant to be a one-stop location for aboriginal people in conflict with the law in Toronto. The planning was done by the Native Canadian Centre of Toronto in the late 1980s. The vision for the organization was one that would have within it both services for aboriginal people in conflict with the law, such as aboriginal criminal and family court workers, a program that is currently funded by the Ministry of the Attorney General along with the Federal Department of Justice; family and young offender court workers, funded by the Ministry of Community and Social Services and the Federal

Department of Justice; as well as a legal aid clinic providing the range of poverty law services that clinics provide; as well as services specific to aboriginal people in a variety of issues, and Kimberly will probably talk about some of those; also, the provision of family and criminal law services as well. The idea was that all these programs would be under one roof.

At Aboriginal Legal Services of Toronto, when we were funded, when we were created, the clinic funding committee told us in no uncertain terms that we could not have criminal or family law services provided at our organization, so at this point we do not have that.

In addition, in terms of our organization, we also have an alternative justice program, known as the community council, which has been functioning since 1992. It's an alternative criminal justice process, the first one of its kind in urban areas in Canada, that is funded by the Ministry of the Attorney General and the Department of Justice.

The idea for having an aboriginal legal services centre such as ours, and I believe the idea behind including this in the legislation, is that aboriginal people have particular legal needs that are best served by an organization that represents aboriginal people, is comfortable and is welcoming to aboriginal people. The more people can access a range of services in one place, the less likely it is that anyone will fall between the cracks and be lost. I don't think we have to go into detail for this committee about issues in terms of aboriginal people and overrepresentation in the criminal justice system, as well as in family, young offenders, child welfare and a whole range of issues.

The idea behind the aboriginal legal services centre, and why this seems like such a good idea to us and we were so happy to see this in the legislation, is that it would allow for the creation of other organizations such as Aboriginal Legal Services of Toronto across the province. It would also allow for one organization to provide all the services. I would just let the committee know that ALST as an organization was forced to break up into two corporate entities last year, by the clinic funding committee in particular, which was concerned that the vulnerability of the non-clinic programs to funding cuts might mean that if we were one organization we could default on our lease or something like that. We now have two organizations in one location, with the same board of directors sitting in two areas. We pay double insurance -- you know, slip and fall insurance -- and everything, and we have two photocopiers. It's not exactly the ideal situation.

I will turn to Kimberly now to talk about how to integrate some of these suggestions specifically in the legislation.

Ms Kimberly Murray: As Jonathan said, I'm the director of the legal clinic portion of our services, and we're funded by the Ontario legal aid plan. The services we provide are very similar in a sense as the other clinics', and I think you've heard from other clinic representatives; we do the welfare cases, the employment law cases etc. But we also have a strong component where we do aboriginal rights issues. We've appeared before the Supreme Court of Canada a few times this year on aboriginal-specific issues. We do a lot of work under the Indian Act.

On top of the work we do in Toronto, we get calls from all over Canada to our services. We get calls from all over Ontario from the other clinics, when people have aboriginal clients and they need some assistance and guidance on where to go and how to work with the Indian Act. We're very pleased to see this section in the bill that recognizes the unique nature of aboriginal people and the legal needs they have.

One of our concerns is that now we have this in the act, we want to make sure it's implemented correctly. Our first concern is with the board of directors of the corporation. We'd like to see in section 5 that there be a recommendation that one of the board of directors be an aboriginal person.

The history of our services and why we were created is because aboriginal people weren't going to the other legal aid clinics in Ontario. Part of that reason is the cultural experience of going to those other clinics; there's a cultural clash. We feel that in order to develop proper aboriginal legal services, we have to have at least one aboriginal person on the board of directors who understands the legal needs of the community.

In turn, that leads to the recommendations with respect to the advisory committee. If we're going to set up the aboriginal legal services, we need an advisory committee that understands the specific legal needs of the aboriginal community, specifically the needs that Jonathan mentioned earlier.

The other concern we have -- as Jonathan mentioned, we are this combination of different services with different funders, so we don't really fall into any of the categories under section 19 or section 33 of the legislation, which deal with the staff office model and the clinic model. We would like to have criminal and family law lawyers on staff so we're sort of a combination of the staff model and the clinic model. In turn, we don't want to have our criminal and family lawyers hired by the corporation; we'd like to have those people hired by our board of directors at Aboriginal Legal Services of Toronto so they can determine who is the most qualified to provide the legal services to the community we service.

Finally, the last concern we have is with the monitoring and funding of the aboriginal legal services. Because we're not similar to the other clinics -- because we're not identical to them and we're not identical to, say, a staff model -- we don't feel we can be judged or assessed according to the quality assurance program next to a non-aboriginal service that exists in Ontario. You can't put a clinic next to us and compare us to that clinic because we're so different. It's important under the bill that when quality assurance programs are being operated, they don't apply the same cookie-cutter method to our clinic, because it doesn't work. We've had numerous problems with our funders and conflicts because of what we were being compared to.

Jonathan has another recommendation.

Mr Rudin: We've suggested a couple of additions to the act. In the interest of saving trees, we also have a suggestion for taking something out of the act. We have a great concern about section 16 of the act, which says the corporation is entitled to place an application fee for people who are applying for legal aid. There is currently no application fee for legal aid, but that was in place for a number of years, and we can tell you from the point of view of our clients, and not just our clients but from across the province, that the effect of the application fee was to deny access to people who had a perfect right to legal services.

The application fee is not a way to raise revenue. If the concern is to raise revenue, the corporation can, through its assessment of the individual's financial needs, make arrangements for repayment of legal services. But our experience was that the application fee deterred people from applying. In fact, in some cases it was used, perhaps inadvertently, by staff at legal aid to deter people from applying. We can't see an application fee providing any positive assistance in terms of access to legal services. It simply is a barrier that will lead to denial of services, and we would urge very strongly that that section be taken out of the act.

The Chair: Thank you very much for your presentation. That affords us three minutes per caucus; we'll begin with the third party.

Mr Kormos: If this government or any other government were to defund legal aid services, which the act entitles them to do by virtue of there being no guaranteed funding or no minimum standards, what would that mean in the case of ALST? Other than it being shut down, what would that mean to the justice system in Toronto vis-à-vis aboriginal peoples and/or other utilization of ALST by aboriginal peoples?

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Mr Rudin: First we should recognize that it's not simply a decision to cut legal aid that would have an impact. If the province ceased to make contributions to the court worker program, if the province ceased to fund the alternative justice funding, any of those things would result in those programs ending. Certainly our criminal and family services provide a service to the courts that has been recognized by judges, by crowns, in Toronto and across Ontario. There would simply be more people clogging up the courts, unrepresented, pleading guilty.

Aboriginal people are already overrepresented in Ontario jails. It's something that people may not be aware of, but aboriginal people make up 1.4% of the Ontario population and they make up 8.3% of admissions to provincial correctional facilities. The overrepresentation of aboriginal people in jails in Ontario is of the same degree that it is in western provinces. I will just speak in terms of that. Kimberly can talk about the impact on legal aid.

Ms Murray: If we were to be defunded in the clinic sense, I imagine we'd go back to where we were pre-ALST, where our community wasn't accessing legal aid, wasn't accessing the services provided by legal clinics. Again, the studies show that they didn't feel comfortable going to those clinics, didn't feel those clinics met their needs. So there would be a big gap for aboriginal people. There would be no legal services available to them on both the clinic and the criminal justice side.

Mr Kormos: You know why I'm asking that. By and large, the general opinion out there among the public is that they don't like to see their tax dollars pay to defend criminals. I'm not telling stories out of school. That of course ignores things like presumption of innocence. My fear is that governments that cater to that sort of right-wing perspective may see an opportunity there, in a somewhat populist way, to accommodate that sort of bias. So I'm wondering, what do we say to the taxpayers of this province?

Ms Murray: That it will cost them more money, because they will be incarcerated, and aboriginal people are already overrepresented in the institutions. If they don't have lawyers, as they do now, they are more likely to plead guilty, so we'll have overrepresentation in the system. It has been proven to cost more money to jail someone than to not jail them.

Mr Kormos: I'm inclined to agree with that.

The Chair: We now move to the government members.

Mr Martiniuk: Thank you very much for your presentation. Is this particular clinic unique in Ontario?

Mr Rudin: Yes.

Mr Martiniuk: Do you service persons from outside of Toronto, therefore, in certain cases? You're not telling anything out of school. If a person from outside of Toronto were to phone, would you turn him away?

Ms Murray: Depending on the issue. Our mandate is the city of Toronto area. We can ask our board to exempt certain people, and we do that on a number of occasions. When it's an important legal issue, a law reform issue, we will do that. That's just the clinic side.

Jonathan, what does your side do?

Mr Rudin: We also have requests for our services from outside of Toronto. Our alternative justice program -- we'll go to Brampton and Oshawa. Certainly it's one of the reasons we think the idea of an aboriginal legal services organization makes sense. What's striking to us is the number of people who call us from outside of Toronto. It's always interesting that they even know we exist. If that service was available to them in a more local area, it would certainly make much more sense for them, because they could get more than simply telephone advice.

Ms Murray: Right. That's what we do now. We try and give as much advice over the phone or hook them up with their legal clinic. Say they're calling from a northern community; the problem is that with the northern clinics, there are many areas of the law they won't practise. In particular, they refuse to take any action against a band council, and a number of the community members living off reserve have issues with their band council. They have nowhere to go for assistance on that, so often we'll bend the rules for those cases.

Mr Martiniuk: It might be a little off topic, but both my fellow commissioner and I travelled to Manitoba to take a look at the citizenship courts, of which they have 70, and I think over 10 are native exclusively. They were very effective there. I assume you feel your system is effective here?

Mr Rudin: Yes.

Ms Murray: Actually, in Winnipeg they just created Aboriginal Legal Services of Winnipeg, and they used us as a model. I think we had people in from Saskatchewan, is it? People come in to use us as a model.

Mr Martiniuk: This is a tricky question, if I may; I pre-warn you. With a community courts system, whether exclusively native or otherwise, I feel that one of the elements of appearing there is the element of what I call good shame rather than bad shame. Does that form an element in your diversion program?

Mr Rudin: The idea behind our diversion program is to allow the offender to take responsibility for what they do, to make sure they do that, and also then to take the steps necessary to make the change in their life to lead to their moving to a more positive lifestyle.

What's important to recognize about the people we work with, which may not be similar in other places, is that over 40% of the people we see in our program have been adopted or in care, and 60% to 70% have no connection with the aboriginal community whatsoever.

Toronto has over 60,000 aboriginal people. In our diversion program, we work primarily with people who have been estranged from the aboriginal community, often not through their own volition, and who are trying to find a way back. Unless they can find a way back, they won't find their way out of that jail-street cycle. They know who they are in a negative sense, because they've been told that by their teachers, often, unfortunately, by their foster parents or their adoptive parents. They know that in many people's eyes they are nothing. They are an Indian, and they have no positive sense of what that means.

We've had very moving and difficult hearings where people have said to the members of our community council, "I've never been in a room where there have been three sober Indians before." It's not that that's a remarkable thing; it's just that for them that's not a reality that's ever been shown to them.

What's particularly important about our program, we think, is that people have very positive role models, people living in Toronto, some of them with good jobs, some of them unemployed, but all of whom are living a good life in Toronto, a meaningful and productive life, one that's integrated between the aboriginal community and the non-aboriginal community.

The Chair: We now move to the official opposition.

Ms Castrilli: Your institution, your clinic, the services you offer here in Toronto are obviously quite successful. What we're engaged in here now is trying to devise a new form of legal aid, I hope, a reform of legal aid that will meet the needs of the entire province. With that in mind, I wonder if I could ask you some questions about how we use your experience to provide an effective service for aboriginal people throughout Ontario.

Let me tell you that yesterday in Thunder Bay we were given a presentation by two very thoughtful women who were part of the Native Women's Association of Ontario, very courageous women who came forward and spoke up about what alternative justice means for them and how they as women have really been victimized within the Indian community. They recounted an example of one chief, for instance, who had been found guilty of sexual assault and was permitted to live out his sentence in relative comfort to ponder his ways, but there was no justice provided for the women involved.

I hear what you're saying about alternative justice. I'm wondering how you reconcile those two realities and if there is any way that you can give us any advice.

Mr Rudin: Certainly in Toronto the way we're able to deal with this is that we work with the entire community. On our diversion program, for example, we have people who work with native child and family services, the native women's association. So we consult widely. I think one of the strengths of the aboriginal legal service organization model is that it can be located, for example, not on a reserve. The idea would be that it could be located in an urban area.

As Kimberly mentioned, sometimes there are real issues between band members and band governments, and there is no way for those to be resolved. Many legal clinics, if they go on to reserves, will not challenge the band government, because otherwise they won't be able to come back. It's important that people have an outlet where the organization they talk to understands their issues and their needs. I think the idea of an aboriginal legal services organization is that it will be able to do that. It will be able to call upon the resources not of a small community necessarily, but of the surrounding community and the urban community. I don't think the problems that these women spoke to you about are as likely to have occurred in Thunder Bay, where I know, for example, the alternative justice program is run by a woman, the friendship centre there is run by a woman. They are not as likely to occur in that context.

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By setting up legal services organizations which would have the opportunity to combine criminal law, family law, clinic work, court workers and alternative justice under one roof, you'd be able to address those issues in a much more meaningful way.

Ms Castrilli: Would you think that requires substantially more funding than is given now?

Mr Rudin: Right now, for example, in Thunder Bay there is already funding for court workers, there's already funding for an alternative justice program. It would be a question of integrating them. But yes, at some point it may be more funding because, as Kim said, aboriginal people aren't accessing in many cases the legal services they are entitled to.

The Chair: Thank you very much for coming forward today. We very much appreciate your taking the time to present to us.