



500-211 Yonge Street Toronto ON M5B 1M4 (T)416.408.4041 or 3967  
Toll Free 844-633-2886 (F)416.408.1568 (E)[alst@web.ca](mailto:alst@web.ca) [www.aboriginallegal.ca](http://www.aboriginallegal.ca)

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VIA ELECTRONIC MAIL: [fieldd@lao.on.ca](mailto:fieldd@lao.on.ca)

David Field, CEO and President  
Legal Aid Ontario  
Atrium on Bay  
40 Dundas Street West, Suite 200  
Toronto, ON M5G 2H1

Dear Mr. Field:

**Re: Legal Aid Modernization Project- Aboriginal Legal Services Submissions**

Further to the meetings that Aboriginal Legal Services (ALS) has participated in on the Modernization Project at the Clinic Roundtable, the Aboriginal Issues Advisory Committee and the Clinic Virtual Roundtable; and further to our support of the Specialty and Ethno-Linguistic Clinics submissions, ALS is providing written submissions that are specific to the services that ALS delivers to Indigenous people and communities throughout Ontario.

We support the submissions on the Legal Aid Modernization Project Consultations provided to you by the Specialty and Ethno-Linguistic Clinics because we deliver similar services within the same funding parameters and LAO imposed structures. We believe in the principles of delivering sound legal aid services and poverty law with expertise, integrity, and to provide a balance and be independent of the government of Ontario. We believe that their submissions lay this out well.

Our submissions will focus on the need for protection and provision of mixed service delivery models of Aboriginal Legal Service Corporations (ALSC) within the *Legal Aid Services Act (LASA)*. ALS offers a good example of an approach to modernization and innovation because we deliver an array of services that does not fit into one legal aid service model but has been providing integrated services in a “hub” long before these terms or concepts were vogue or in common use. The biggest barrier we face is prohibitions on practice areas or the ability to truly determine the direction of our

services. LAO classifies ALS's type of service as a Ethno-Linguistic Clinic. We submit that ALSCs should be better defined in the *LASA*, so that there is more protections for ALSCs and flexibility in service delivery. ALSCs also need to be resourced and funded in line with the services they are delivering.

## **Aboriginal Legal Services Submission to Legal Aid Ontario on the Modernization Project:**

### **Background of ALS**

Aboriginal Legal Services (ALS) formally Aboriginal Legal Services of Toronto (ALST) was established February 21, 1990. ALS was formed following a needs assessment by the Native Canadian Centre of Toronto in the mid-1980s. The Centre had been operating legal-related programs for Aboriginal people in Toronto but concluded an agency dedicated to this issue was needed. In its almost 30 years in operation, ALS has become a reliable, credible and well recognized legal service that has demonstrated time and time again the ability to adapt to community needs and address the unique legal issues of Indigenous people. ALS's reputation in litigation, before courts and boards and through other advocacy mechanism and programs is remarkable ALS has been a leader and innovator in delivering services to its community of interest and working with others to teach, improve and support other programs not just in Ontario but across the country and internationally. Indigenous and other legal aid service providers look to us for development of service models and delivery.

### **ALSCs Need better protection in *LASA***

ALS has been advocating for over twenty-one years to be recognized as an Indigenous Legal Service Corporation (ILSC) or as referred to in the *LASA*, an Aboriginal Legal Service Corporation (ALSC). ALS has made submissions to LAO prior to the enactment of the *LASA*. Specifically ALST made written submissions to the commission that produced the *Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services* in 1997. Jonathan Rudin also wrote a paper for that Report. In 1998 Jonathan Rudin and Kimberley Murray made submissions to the Standing Committee on Administration of Justice regarding Bill 68, *Legal Aid Services Act, 1998*.

Twenty-one years later many of the concerns we raised then persist. ALS is not afforded the same legislated protection as other methods of legal aid services, nor are we given the ability to deliver services as effectively as we could. For example, having staff lawyers who can assist in criminal and child welfare matters<sup>1</sup> in a more efficient and

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<sup>1</sup> In our 1998 submissions to Ontario Legislature [http://www.ontla.on.ca/web/committee-proceedings/committee\\_transcripts\\_details.do?locale=en&Date=1998-11-17&ParlCommID=829&BillID=&Business=Bill+68%2C+Legal+Aid+Services+Act%2C+1998&DocumentID=19430](http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?locale=en&Date=1998-11-17&ParlCommID=829&BillID=&Business=Bill+68%2C+Legal+Aid+Services+Act%2C+1998&DocumentID=19430) Excerpt is attached as **Appendix A** to these submissions we stated: "we are this combination of different services with different funders, so we don't really fall into any of the categories under section 19

culturally sound way with knowledge of the application of law for Indigenous people would increase access to justice and provide enhanced services.

ALS has the expertise in these areas of practice, but we are treated as a “clinic” which means we are prohibited from delivering services in areas of practice that our clients actually need. We already deliver integrated services that allow us to refer clients within our organization for other programs but if we could actually deliver the direct service or advice in areas that clinics traditionally do not practice, we would skip a whole external referral or delay in service and that would benefit clients. Further we would do it in a competent way that knows how the law applies to Indigenous people in a culturally appropriate and supported manner.

In relation to program funding that enables us to deliver services not covered under certificate, duty counsel and clinic work, there are strict limitations that prevent us from delivering innovative, integrated methods of legal service that would be most cost effective and beneficial to Indigenous people or communities. If ALS could determine which mixed services (with all required accountabilities to funders) to delivery with the best interest of our clients and community, we would be a step closer to being an actual ALSC.

The Modernization Project’s terms of reference and the desire for integrated services that the Ministry of the Attorney General and Legal Aid Ontario seem to be moving towards is what ALS has done with their services for at least a couple of decades. Despite how our funders define ALS, or what work-arounds we have had to create to operate in a manner more accessible to our community, we put forward our best efforts daily to provide our clients a seamless, wrap-around service in the areas we practice.

In our 1998 submission on Bill 68, we submitted:

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; ... family and young offender court workers; ... providing the range of poverty law services that clinics provide; as well as services specific to Aboriginal people in a variety of issues ... also, the provision of family and

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or section 33 of the legislation [LASA], 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.” **Note** the majority of our Board of Directors are Indigenous—which increases accountability and relevancy to our community.

criminal law services as well. The idea was that all these programs would be under one roof.<sup>2</sup>

Jonathan Rudin's paper "Legal Aid Needs of Aboriginal People in Urban Areas and on Southern Reserves," includes the following recommendation and explanation of these corporations or centres:

It is therefore recommended that one-stop Aboriginal legal services centres, comprised of Courtworkers, a legal clinic providing poverty-law services, and criminal and family staff lawyer, be established in all Ontario urban centres with significant Aboriginal populations. Since these centres will likely act as the source for the development of alternative justice projects, the province should increase the funds available for such projects.<sup>3</sup>

Aboriginal Legal Service Corporations (ALSC) is largely undefined. The *Legal Aid Service Act* (LASA) recognizes ALSCs but the LASA does not define "Aboriginal legal services corporations."

#### **LASA**

- 14. (1)** Subject to subsections (2) and (3), the Corporation shall provide legal aid services by any method that it considers appropriate, having regard to the needs of low-income individuals and of disadvantaged communities, the need to achieve an effective balance among the **different methods of providing legal aid services**, the costs of providing such services and the Corporation's financial resources, including,
- (f) the funding of Aboriginal legal services corporations to **provide legal aid services** to Aboriginal individuals and communities; (emphasis added)

ALS has more than 70 staff; a main office in Toronto; offices throughout courthouses in Toronto and perimeter courts for court workers; office space west, east and in the near north for Gladue writers and caseworkers; 40 community volunteers for the Community Council Program and 20 community volunteers for Giiwedini Anang, an alternative dispute resolution program for child welfare matters. Each year ALS receives an Annual Approved Budget for the delivery of clinic services from LAO. LAO funds 6 full-time positions for the clinic and portions of salary for a couple of other positions. LAO along with both Federal and Provincial governments fund ALS's Gladue program. The majority of funding for programs and services for the entire agency come from government funders and other funders and not LAO.

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<sup>2</sup> *Ibid.* Excerpt is attached as **Appendix A** to these submissions

<sup>3</sup> Rudin, Jonathan. "Legal Aid Needs of Aboriginal People in Urban Areas and on Southern Reserves." In *Report of the Ontario Legal Aid Review: A Blueprint for Publicly Funded Legal Services*. Toronto: Queen's Printer, 1997.

The *LASA* did recognize the need to fund ALSCs but unlike every other model or type of service under 14(1), there are no subsections containing further substance or description in the legislation. Unlike certificate, clinic or duty counsel services, there is no legislative protection for ALSCs within *LASA* other than funding. The need to put more definition and create legislative protection for ALSCs has never been greater given the unique legal issues of Indigenous people, their growing over-incarceration, and over-representation in criminal systems, child welfare, and as victims of crime and violence. These problematic issues have only worsened in time. Now more than ever there is a need to modernize and ensure integrated and nimble service: something ALS has done for a long time.

Aboriginal Legal Services has been effectively operating as a hub (two corporations) providing strong Indigenous advocacy, legal services and culturally safe and relevant programs for over two decades. We have been doing this work well before cost saving measures or modernization looked to a model similar to ours for integrated services that are meaningful to the Indigenous individuals and community served.

Although ALS still operates as two separate corporations we function as one. ALST believes that the services that we provide to our community are being delivered by one organization. Despite our corporate structure, our mandate requires that we provide seamless or as integrated services as possible to our community of interest.

Some high level point to consider about ALS:

- We are experts in legal issues and programs for Indigenous people.
- We deliver services to various regions of the province for Indigenous clients
- We provide direct service to our clients in the following areas:
  - Poverty law,
  - In Court with court workers,
  - Writing Gladue reports and providing Gladue caseworkers;
  - Test case litigation on critical and relevant issues for Indigenous people;
  - Inquests and Inquiries;
  - Victim Services (clinic services but also court support and programming);
  - Alternative dispute resolution for child protection matters;
  - Criminal diversion for youth and adults
  - FASD programming
  - Welcome Home-traditional and cultural teaching
- Ensuring vulnerable clients and communities have a voice across all of these specialty areas of law and Indigenous justice programs.
- Ensuring that Indigenous people do not continue to be silenced and recognizing that they live with the daily impacts of colonial legacy and harm.
- ALS representation helps address power imbalances – gives our client communities a chance at real representation and access to justice

Twenty-one years after our submissions on Bill 68, *Legal Aid Services Act, 1998*, we still believe and submit that more legislative protection and definition is required for

Aboriginal Legal Service Corporations. In order to enable modernization that delivers service in a holistic way for Indigenous clients there needs to be provisions in *LASA* about ALSCs like there are in part III of the legislation about : Legal Aid Staff Services Offices (s. 19); Duty Counsel (s.20); Student Legal Aid Service Societies (s.21); Certificates (ss. 22-32); Clinics (ss. 33-39). ALS has some good ideas about what those types of provisions should include or look like, but we believe that other ALSCs or Indigenous organizations that are delivering legal services or programs need to help define them too.

This will require LAO or the Attorney General to do further consultation with Indigenous legal service and program providers before any change or protection is added or removed from *LASA*. At minimum that requires participation of Indigenous people and service providers provide input on how LAO through ALSCs can ensure Indigenous clients can more easily find a legal aid service that more client-centered while fulfilling their legal rights, needs and unique considerations

Again, given that we have supported the Specialty and Ethno-linguist Clinics' position and submissions, we will not spend a lot of time re-iterating those positions but we do want to highlight some points that we believe are essential principles to delivering services. We believe that ALS already meets the goals of the modernization project. Specifically we have comments that address LAO consultation goals on the following goals:

- “Enhanced accountability”
- “Modernized service delivery that is integrated and nimble”
- “Addressing gaps in the continuum of services”
- “High-quality legal services and information and Quality Assurance”
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- “Value for money”

#### “Enhanced accountability”

We use our areas of expertise to advocate for application and development of law in our areas of practice that are in the public interest. Acting in the public interest enhances accountability to all members of the public. We are accountable to our Boards. Our Board of Indigenous volunteers is accountable to the individuals and communities we serve.

We are also accountable to our funders, both LAO and others; the Law Society, and to decision-makers at tribunals and courts we appear before. Most importantly we are accountable to our community.

#### “Modernized service delivery that is integrated and nimble”

An example of our nimbleness is how we can provide additional support in-house to clients because we have integrated services. Another example is our test case practice.

Test case litigation is inherently innovative and provides a meaningful response to the day to day issues that our clients confront. Courts at all levels often grant ALS standing in interventions because of our areas of expertise, front line work, and value to the courts to provide Indigenous service perspectives and perspectives based on our frontline services.

ALS supports “more tech” and efficient systems if they will benefit for our clients. We can solve problems or assist Indigenous clients expeditiously because of our relationships with others in the community and our ability to refer our clients to other Indigenous service providers.

“Addressing gaps in the continuum of services”

ALS came into existence to address gaps in legal aid services and to provide culturally relevant and sound representation to Indigenous people. We continue to solve the gaps that clients experience and rely on relationships and innovation to meet clients’ needs.

“High-quality legal services and information and Quality Assurance”

Training of our staff is essential to high quality services; we agree with the importance of skilled lawyering. We prioritize and foster Indigenous talent, which ensures culturally safe services to our clients and helps build capacity in the Indigenous community thus increases cycles of success.

We support good quality assurance to ensure that highly competent services are being provided with legal aid resources –but we note, that like our submission back in 1998– that the quality of services ALSCs deliver cannot be measured against one model or type of service. Quality assurance must include Indigenous representation, input, and participation. To fail to include Indigenous perspectives would result in inappropriate assurances or standards.

“Clear accountabilities and appropriate independence in required areas”

There has to be legislated definition of legal aid and legal services, especially if the *LASA* removes protections of any service models. Again, any change, enhancement or removal of the recognition of ALSCs or funding for ALSCs should be done in direct consultation with ALSCs or Indigenous organizations and communities delivering legal aid services or funded programs.

LAO and the Ministry of the Attorney General should formally recognize that Aboriginal Legal Service Corporations provide better service and outcomes for Indigenous clients and work with ALSCs to enhance protection in the *LASA*

### “Value for money”

There has been no value for money audit that takes into account a cost saving benefit analysis that demonstrates how much money ALSCs save courts and justice sector partners specifically. But at ALS we do know that we pay wages that are too low to a mostly Indigenous staff, who despite low compensation give compassion, professionalism and culturally sound services to one of Legal Aid Ontario’s most vulnerable client groups.

On LAO’s own statistics, 20% of certificate services and duty counsel legal services are provided to Aboriginal people. The expertise required to deliver services to individuals with unique legal rights is high and should be adequately compensated. Arguable, even in a world that would pay the lawyers and legal professionals that work for an ALSC justly, the potential cost savings of delivering services through ALSCs to Indigenous communities where integrated services, programs and expertise already exists in one place has value that should be considered.

### **Concluding remarks**

As a final note, ALS wants to make it clear that our submission on building up legislative protection for ALSCs is not about our organization only. It is about ensuring that other ALSCs can flourish and deliver the best services to Indigenous communities. There needs to be means and mechanisms to allow differing methods and the most appropriate legal aid services as defined by Indigenous agencies for Indigenous clients that is not crammed into a service deliver model that does not suit of fit the needs of clients.

For ALSCs to be effective, decisions must be made by the service provider directly. It is time for LAO to recognize what so many recent commissions and reports<sup>4</sup> have found, specifically that Indigenous services, delivered by Indigenous people and organizations are in the best position to provide services to Indigenous clients. Indigenous community holds solutions for the harm colonial legacy, policy, and laws have created.

We submit that you should also recognize that Indigenous communities and organizations are in the best position to provide solutions and services to Indigenous people in a competent way. Indigenous communities and organizations understand the unique rights, histories, and issues that impact the community because they are part of the community.

Finally we request you consider and acknowledge that Indigenous communities and organizations, and specifically ALSCs look beyond colonial legal systems and integrate Indigenous law, culture, practices and healing into their daily work to address the root causes of poverty, violence and promote the strength and resiliency Indigenous people have despite all of the systemic and colonial harm they have experienced. With all of

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<sup>4</sup> For example: The Truth and Reconciliation Commission and The National Inquiry into Missing and Murdered Indigenous Women and Girls.



this in mind we submit that for LAO to truly modernize---they need to support, acknowledge and work with ALSC so that ALSC can provide Indigenous clients better services.

Submitted on behalf of the Board, and Senior Management of Aboriginal Legal Services

Miigwech, Respectfully  
ABORIGINAL LEGAL SERVICES

Christa Big Canoe  
Legal Director  
[canoecd@lao.on.ca](mailto:canoecd@lao.on.ca)

cc Charles Harnick, Chair, Board of Directors, Legal Aid Ontario  
Jayne Mallin, Vice President, Clinic Law Services Division, Legal Aid Ontario  
Signatories of Speciality and Ethno Linguistic Clinics