



OFIFC

Ontario Federation of
Indigenous Friendship Centres

A Response to Legal Aid Ontario's Modernization Project

August 2018

About the Ontario Federation of Indigenous Friendship Centres

Founded in 1971, the Ontario Federation of Indigenous Friendship Centres (OFIFC) works to support, advocate for, and build the capacity of member Friendship Centres across Ontario.

Emerging from a nation-wide, grass-roots movement dating back to the 50's, Friendship Centres are community hubs where Indigenous people living in towns, cities, and urban centres can access culturally-based and culturally-appropriate programs and services every day. Today, Friendship Centres are dynamic hubs of economic and social convergence that create space for Indigenous communities to thrive. Friendship Centres are idea incubators for young Indigenous people attaining their education and employment goals, they are sites of cultural resurgence for Indigenous families who want to raise their children to be proud of who they are, and they are safe havens for Indigenous community members requiring supports.

In Ontario more than 85 per cent of Indigenous people live in urban communities. The OFIFC is the largest urban Indigenous service network in the province supporting this vibrant, diverse, and quickly-growing population through programs and initiatives that span justice, health, family support, long-term care, healing and wellness, employment and training, education, research, and more.

Friendship Centres receive their mandate from their communities, and they are inclusive of all Indigenous people – First Nation, Status/Non-Status, Métis, Inuit, and those who self-identify as Indigenous.

Introduction

Legal Aid Ontario (LAO) is currently undergoing a modernization project to identify opportunities to make the legal aid system more client-focused and efficient. LAO is seeking to implement innovative approaches for cost-effective service delivery for low-income Ontarians, with a long-term commitment to sustainability. The OFIFC is pleased to share our submission on LAO's modernization project.

Indigenous People and Legal Aid Ontario

In Ontario, Indigenous people make up approximately 3% of the total provincial population but are disproportionately represented within the legal and justice sectors. According to LAO in April and May 2018, 11% to 13% of certificates issued were to Indigenous clients.¹ According to the OFIFC's Indigenous Courtwork Program's statistics for the 2018-2019 program year, 3,114 participants were documented as having applied for a Legal Aid certificate and 2,174 were documented as successful in receiving one. These high numbers demonstrate not only the over-representation of

¹ Office of the Auditor General of Ontario. Annual Report 2018. Chapter 3: Legal Aid Ontario. Retrieved from: http://www.auditor.on.ca/en/content/annualreports/arreports/en18/2018AR_v1_en_web.pdf

Indigenous people accessing Legal Aid, but the overwhelming need for coordination between Friendship Centres and Legal Aid's intake and administrative services, Clinics, and regional offices.

Consultation Questions:

The OFIFC offers the following feedback to LAO as it relates to the unique needs of urban Indigenous communities:

1. Clients' legal issues often intersect with each other, and with other issues they may be experiencing in areas such as health and social services. **How could the legal aid system meet the needs of clients in a holistic way and facilitate a seamless client experience?**

The OFIFC advocates for the renewal of the Aboriginal Justice Strategy (AJS), to ensure that the intersecting experiences of Indigenous people's engagement with the criminal justice system (i.e. mental health, domestic violence, family legal issues, etc.) are accounted for in legal aid services. The OFIFC recommends that an Indigenous Advisory Committee be specifically created to guide the work of the AJS to ensure that justice related issues impacting Indigenous communities across Ontario are regularly shared with LAO, which serves as an accountability measure for maintaining effective service delivery. Furthermore, a strategy can be regularly renewed with strategic directions that are co-developed with Indigenous partners.

In Ontario, the lack of Aboriginal legal services corporations is a significant barrier to Indigenous people's access to adequate legal representation.² Therefore, the idea of locating services within Friendship Centres and providing regular drop-in services (embedding LAO services within a continuum of care) within Friendship Centres goes a long way to build relationships with Indigenous people and within urban communities. Currently, some Courtwork Programs invite LAO (and in some cases Indigenous Legal Aid lawyers) to come to Friendship Centres and provide information to clients (i.e. Parry Sound Friendship Centre, N'Swakamok Friendship Centre, Ininev Friendship Centre, etc.). It is important that Legal Aid certificate lawyers engage with Friendship Centres to gain the knowledge needed to make informed referrals for culturally relevant programs and services. Friendship Centres' provision of culture-based, wholistic, wrap-around programs and services address urban Indigenous people's various needs associated with their interactions with the justice system.

It is important to acknowledge that LAO's 2019/20 Budget Allocations significantly reduced legal aid services, which will have a direct impact on the OFIFC's Criminal Courtwork Program and Combined/Family Courtwork Program. Unrepresented

² "Barriers to Accessing Justice: Legal Representation of Indigenous People within Ontario" Report prepared by the Indigenous Justice Division, Ministry of the Attorney General (2016).

Indigenous people will increasingly rely on Courtworkers to explain aspects of their case. Additionally, Indigenous people may be left in jail without legal representation and recent research has linked the use of pre-trial detention as impacting an individual to be twice as likely to enter a guilty plea, regardless of their level of guilt.³ Furthermore, the recent statute, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, 2019* increases the maximum penalty for summary offences to two years less a day in jail—which, reduces the ability for law students and paralegals to support clients who cannot afford a lawyer or do not qualify for legal aid because the new default penalty will exceed six months imprisonment. More accused will be left to fend for themselves and rely on community-based program, such as the Courtwork Program.

The OFIFC anticipates that for the Combined/Family Courtwork Program, there will be an increase in direct-service user's need for support completing forms to change motions (variance) and referrals to Family Law Information Centres. Additionally, with the cutback to mediation or separation agreement certificates, Courtworkers may find themselves attending mediation or supporting in separation agreements. The OFIFC will be tracking and monitoring how the changes to LAO impact the Courtwork program—however, the downloading of responsibilities to Friendship Centres and the Courtwork program will exacerbate the practical barriers that hinder Indigenous people from gaining access to effective legal representation.

2. LAO has heard through its client consultation that clients can have trouble knowing about or accessing legal aid services. **How could LAO ensure that clients can more easily find a legal aid service to assist them?**

Friendship Centre staff have reported that LAO is supportive, however the telephone based service is a barrier for access to justice for many Indigenous people. The dial-in automated process can be confusing and difficult to navigate – even for front-line workers who support clients. Clients have also expressed that the response times can take a while (up to a week to two to get any answer or reply).

The OFIFC advocates for Indigenous cultural competency training for all of LAO's Client Service Centre (CSC) telephone operators that is designed and delivered by an Indigenous organization in a face-to-face setting. While it is acknowledged that this may be difficult to accomplish, the OFIFC advocates for this type of training be the minimum requirement for CSC telephone operators who assist Indigenous callers, especially those callers who have experienced violence and/or mental health issues. Such training should serve as the foundation to understanding the complex needs of many

³ Bressan, Angela. and Kyle, Coady. (2017). "Guilty pleas among Indigenous people in Canada." Department of Justice Canada. Retrieved from: http://publications.gc.ca/collections/collection_2018/jus/J4-62-2017-eng.pdf. 10.

Indigenous people who access LAO services as well as the importance of one's role in offering responsive supports and referrals.

Another explicit recommendation of the OFIFC is to increase CSC telephone operators' familiarity with culturally-relevant resources at the community-level such as Friendship Centre programs and services offered by other Indigenous organizations. This information should not serve to supplant referrals to mainstream agencies, but should be offered alongside in an effort to enhance referrals and supports to callers.

LAO has identified that clients utilizing the legal aid system are often repeat offenders and people who are incarcerated while waiting for bail hearings or trials.⁴ The Friendship Centres' approach to wrap-around service delivery model takes an evidence-based approach⁵ to crime prevention programming by strengthening one's ties to their culture and to positive opportunities. A coordinated approach between LAO and Indigenous service delivery organizations is required to reduce Indigenous people's engagement with the criminal justice system and build healthy communities.

3. What factors are effective indicators of client success?

- Accessible, high quality and culturally competent legal representation;
- Referrals to Indigenous service delivery organizations; and,
- A clear understanding of their case and the legal services available to the individual.

4. What factors are most essential for an efficient, client-focused legal aid system?

- Accessible and high quality legal representation;
- Culturally competent legal representation; and,
- A clearly articulated *Gladue* strategy for Ontario developed LAO and the Ministry of Attorney General (MAG).

5. LAO has heard through its client consultations that some clients do not receive quality service. **How could quality assurance be strengthened within the legal aid system?**

The Office of the Auditor General of Ontario's 2018 Annual Report documents that LAO has not exercised its legislative authority to direct the Law Society of Ontario (LSO) to perform quality assurance audits on lawyers providing legal aid services.⁶ In 2016/17,

⁴ Office of the Auditor General of Ontario. Annual Report 2018. Chapter 3: Legal Aid Ontario. Retrieved from: http://www.auditor.on.ca/en/content/annualreports/arreports/en18/2018AR_v1_en_web.pdf

⁵ Bania, Melanie. (January 2017). 'Culture as Catalyst: Preventing the Criminalization of Indigenous Youth.' Crime Prevention Ottawa.

⁶ Office of the Auditor General of Ontario. Annual Report 2018. Chapter 3: Legal Aid Ontario. Retrieved from: http://www.auditor.on.ca/en/content/annualreports/arreports/en18/2018AR_v1_en_web.pdf

211 complaints relating to lawyers were submitted to LAO, of which 21% were regarding professional conduct issues.⁷ The OFIFC recommends that quality assurance audits be a priority area for LAO's modernization project. LAO and the LSO Access to Justice approach is recognised as a principal service model for service delivery.⁸ LAO's policies apply to LSO's licensees when they are providing legal aid services. LAO has a responsibility to ensure that LSO's licensees are delivering high quality and culturally competent services. The OFIFC recommends that a strategic direction for LAO include the development of policies to ensure that LSO's licensees delivering legal aid services have completed Indigenous cultural competency training and training about *Gladue* submissions.

Additionally, the OFIFC advocates for enhanced *Gladue* panel standards, particularly as it relates to LAO's responsibility to ensure that lawyers provided with additional time for *Gladue* reports (as part of a sentencing submission) are preparing high quality reports. The current patchwork of *Gladue* services in Ontario are necessarily insufficient to fulfill the Supreme Court's direction in *Gladue* and *Ipeelee* and address misconceptions about the application of *Gladue* principles in court proceedings—and the judiciary's inconsistent application of the Supreme Court's ruling. The latter is an issue which should be worked on by LAO. In addition, the proliferation of for-profit *Gladue* services compounds the issue and can stand as a barrier to Indigenous people's access to justice and rights before the courts. As a component of LAO's quality assurance audits, there needs to be mechanisms to monitor how *Gladue* panel members participate in Indigenous cultural training and maintain knowledge of local Indigenous service delivery organizations—which serves as a performance indicator of high quality legal aid services.

The Final Report for the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) elucidates the inconsistent application of *Gladue* principles across Canada. The Calls for Justice outlined in the Final report identify the need for national standards for the right to *Gladue* Reports,⁹ as well as an increase in community resources to ensure consistent application (i.e. *Gladue* Caseworkers). The OFIFC advocates for MAG and LAO to develop a clearly articulated *Gladue* strategy for Ontario. Furthermore, a *Gladue* rights database, specific to Ontario, would additionally support in archiving research and providing lawyers with access case law and research that supports the development of *Gladue* reports (Saskatchewan University and the Law Foundation of Saskatchewan launched a database in the spring of 2018).¹⁰

⁷ Ibid.

⁸ Law Society of Ontario (2018). Report of the Legal Aid Working Group: An Abiding Interest. Retrieved from: https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/2/2018_lawg_report.pdf

⁹ Ibid. Call for Justice: 5.15.

¹⁰ University of Saskatchewan (2018). Retrieved from: <https://news.usask.ca/articles/colleges/2018/u-of-s-gladue-rights-research-database-first-of-its-kind-in-canada.php>

6. How can we build a legal aid system that is both responsive to client need and sustainable?

A. How can the legal aid system facilitate early resolution which benefits both the client and saves resources?

As identified in the Final Report for the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), Indigenous people must have guaranteed access to legal aid services in order to assert their Indigenous rights and to address the over-representation of Indigenous people in the justice system.¹¹ Accessible legal aid services and culturally competent LAO staff, private-bar lawyers, duty counsel, etc. supporting Indigenous people to know their rights and ensure that they are connected to the appropriate services will make a marked difference in building a responsive legal aid system.

B. Onerous and outdated legal aid system processes affect both clients and service providers. How can we make the legal aid system more efficient and responsive to both clients' and service provider needs'?

A critical aspect for enhancing Ontario's legal aid system will be quality assurance measurement to understand the current context of service delivery, gaps and emerging trends. LAO needs to establish policies to ensure that LSO's licensees delivering legal aid services have a comprehensive knowledge of Indigenous service delivery organizations and are providing informed referrals for client-focused legal aid services.

Furthermore, Indigenous communities and service delivery organisations need to be co-developing the renewal of the AJS and criminal justice related services. LAO's Strategic Plan for 2019-2024 includes the priority of working with organisations to develop prevention and early intervention programs for high-risk individuals and communities.¹² The OFIFC and Friendship Centres have requested to continually be engaged by LAO, to share information about the programs and services that are needed in their communities within the courts and jail.

C. How can we ensure that resource allocations align proportionally with client need? What criteria should we use to decide which service areas or programs to fund?

¹¹ Final Report for the National Inquiry into Missing and Murdered Indigenous Women and Girls. Calls for Justice 5.13. Retrieved from: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf

¹² Legal Aid Ontario Strategic Plan (2019-2024). Pg. 13

Indigenous people continue to remain over-represented in the criminal justice system and in 2017/18 accounted for 10.7 percent of the sentenced custody population and 13.5 percent of the remand population,¹³ while only representing 2.8 percent of Ontario's population.¹⁴ There is a demonstrated need for the increased use of Indigenous community-determined approaches to justice and the OFIFC's Indigenous Community Justice Program (ICJP), of which LAO is one of the funders, is a meaningful response to addressing this over-representation. The ICJP is a community-based pre- and post-charge diversion program that operates in six Friendship Centres across the province. The ICJP is a response to decades of colonial practices and government sanctioned assimilation policies that have denigrated Indigenous culture and resulted in the criminalization of many cultural customs (including performing and participating in spiritual ceremonies) and traditional forms of livelihood (such as fishing, hunting and trapping). ICJPs give Indigenous communities greater control and responsibility over justice issues in a manner that is grounded in specific cultural contexts, traditions, and community informed practices.

- D. What criteria should future decision about eligibility be based on (i.e., Auditor General's note that the gross-income threshold is not the only way to evaluate access to justice for low-income individuals)?

The Office of the Auditor General's 2018 Report provides extensive recommendations related to LAO's management practices including: an electronic documents strategy for LAO to track and reconcile private lawyers' billings; improving the accuracy and reliability of data collected by duty counsel; investment into a community legal clinic Information Management System to enable clinics to better use their time for service delivery, etc.¹⁵. It will be important for LAO to address these recommendations and provide regular updates to the public as part of LAO's modernization project. Once LAO operational practices are enhanced, there may be additional opportunities to address barriers to accessing legal and justice services for anyone (particularly Indigenous people) who is not facing incarceration and who does not meet the financial eligibility requirements.

¹³ Statistics Canada. Table 35-10-0016-01. "Adult Custody Admissions to Correctional Services by Aboriginal Identity." Retrieved From: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510001601>

¹⁴ Statistics Canada. 2018. *Ontario. Aboriginal Population Profile*. 2016 Census. Statistics Canada Catalogue no. 98-510-X2016001. Ottawa. (Released July 2018). Retrieved from: <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm>

¹⁵ Office of the Auditor General of Ontario. Annual Report 2018. Chapter 3: Legal Aid Ontario. Retrieved from: http://www.auditor.on.ca/en/content/annualreports/arreports/en18/2018AR_v1_en_web.pdf