

# Building Bridges:

## Improving Legal Services for Aboriginal Peoples



Legal  
Services  
Society

British Columbia  
[www.lss.bc.ca](http://www.lss.bc.ca)

Prepared for Legal Services Society  
by Ardith Walkem

October 7, 2007

**Author:**

**Ardith Walkem**

62 – 4100 Salish Drive, Vancouver V6N 3M2

Tel: (604) 264-7557 Fax: (866) 282-5701

Ardith\_Walkem@telus.net

# Executive Summary

---

Addressing the unmet legal needs of Aboriginal people requires acknowledging that solutions must be found within Aboriginal cultures and delivered in partnership with Aboriginal communities. There are four key areas where changes could be made by the Legal Services Society (LSS) to significantly improve Aboriginal peoples' access to, and use of, the legal services LSS provides: (1) Aboriginal representation within LSS, (2) legal representation available to Aboriginal people, (3) communication and outreach to Aboriginal communities, and (4) involvement of Aboriginal people in LSS program planning.

A significant portion of LSS's client base is Aboriginal. In many regions, Aboriginal people represent over 25% of LSS clients, yet few Aboriginal people work within LSS (less than 3% of staff overall) or are available to take LSS legal aid referrals. The lack of Aboriginal people within LSS impacts Aboriginal people's willingness and comfort with using or accessing LSS services. Representation of Aboriginal people within LSS should be proportional to the numbers of Aboriginal clients that LSS serves and could be accomplished through an Aboriginal equity policy in hiring, and increasing Aboriginal involvement on LSS board. Increasing the number of lawyers who take legal aid representation cases would be achieved by creating an Aboriginal articling student program, mentoring program, and Aboriginal Legal Aid Boot Camp. Creating the position of an Aboriginal community legal worker within LSS would assist in providing active outreach to Aboriginal communities and addressing the unmet legal needs of Aboriginal clients, particularly in the areas of criminal law, Aboriginal youth justice, and child protection services.

There is currently little active engagement between the LSS and Aboriginal communities. Responding to the real and pressing legal needs of Aboriginal peoples requires a commitment to outreach to Aboriginal communities to let them know of the services LSS provides, and also to provide meaningful opportunities for Aboriginal input into LSS program and policy planning. An Aboriginal Advisory Committee and an annual review

process would help LSS to remain responsive to Aboriginal peoples' legal and justice needs.

To the extent that Aboriginal people perceive LSS legal information services as impersonal, or technical and difficult to use, Aboriginal clients avoid using these services. Services such as the LawLINE and websites require adjustments to provide more opportunities for in-person service and content that is culturally relevant to Aboriginal peoples. The creation of an Aboriginal website and an Aboriginal LawLINE would allow these services to be delivered in culturally appropriate ways.

Aboriginal legal advocacy training workshops, delivered in Aboriginal communities, would empower people locally to help Aboriginal people in need of legal assistance. The Aboriginal Reference Group identified a need for LSS to foster understanding between Aboriginal communities and the legal system to encourage holistic resolutions to the legal issues that Aboriginal clients face by increasing opportunities for dialogue and education between Aboriginal peoples and the legal community.

There is a critical lack of legal representation available to Aboriginal peoples in the province. At the same time, levels of incarceration of Aboriginal peoples (particularly women and youth) continue to increase, as does the rate of Aboriginal children involved in the child protection system. Aboriginal peoples are often left with stop-gap legal services due to lack of legal representation, and steps are needed to increase the legal representation available to Aboriginal clients. The creation of expanded Aboriginal duty counsel would provide ongoing support and legal services within Aboriginal communities, particularly in the areas of (1) criminal law and (2) Aboriginal families (including family law and child protection). Similarly, changes to the *Guide to Legal Aid Tariffs* are necessary to reflect the additional time involved in addressing Aboriginal peoples' legal issues.

LSS currently treats family law and child protection as separate matters. Aboriginal Reference Group members suggested that these two issues should be treated in a holistic fashion and that LSS should target the services that it provides toward ensuring that family law and child protection services reflect the fact that Aboriginal children and families are part of extended families, communities, and nations.

LSS's willingness and commitment to investigating the changes necessary to increase Aboriginal peoples' access to, and use of, LSS services represents a positive opportunity for change.

# Acknowledgements

---

Many people contributed their time and energy to this project. Thank you to the Aboriginal Reference Group members and individuals who attended the working group and or made time available for separate discussions, including Chief Leah George-Wilson, Professor June McCue, Professor Gordon Christie, Justice Marion Buller-Bennett, Raymond Phillips, Kelly Harvey Russ, Hugh Braker, Ken Pruden, Frank Charlie, Louise Mandell, Laurie Wilson, Linda Thomas, Ed Pongracz, Margaret Belcourt, Faith Tait, Farley Stewart, Elizabeth Duerr, Les Taylor, Keith McKay, Nancy Smith, and Pamela Shields.

Many people within LSS dedicated a significant amount of time and effort to ensuring that this project was supported, and provided valuable feedback and guidance, including the Aboriginal Project working group, comprised of project manager Fran Auckland, John Simpson, and Rochelle Appleby. Other LSS staff and management who offered comments or participated in the working group meetings include Heidi Mason, Michelle Angus, Coralie Gregoire, Rosanna Farrell, David Griffiths, Michael Bradshaw, Sherry MacLennan, Heidi Mason, Thom Quine, Allan Parker, Kyong-ae Kim, and Allen Vander Linde.

# Contents

---

<b>Executive Summary</b> .....	<b>i</b>
<b>Acknowledgements</b> .....	<b>iii</b>
<b>Introduction</b> .....	<b>1</b>
Barriers.....	3
Opportunities .....	4
Methodology .....	5
<b>Key Recommendations — All LSS Service Areas</b> .....	<b>7</b>
Aboriginal representation within LSS .....	7
Key recommendation 1: Increase Aboriginal representation at all levels within LSS, including staff, management, board, tariff bar lawyers, and contractors. ....	7
Availability of legal representation.....	11
Key recommendation 2: Actively work to increase the number of lawyers with training specific to Aboriginal people who take legal aid cases. ....	11
Communication and outreach to Aboriginal communities .....	13
Key recommendation 3: Improve communications and outreach to Aboriginal governments, communities, and organizations. ....	13
Involving Aboriginal people in LSS program and policy planning.....	14
Key recommendation 4: Ensure Aboriginal participation in LSS policy and program development.....	14
Summary — Four key recommendations .....	16

**Recommendations — Specific LSS Program Areas ..... 17**

- Legal information and education services .....17
  - Recommendation 5: LawLINE .....18
  - Recommendation 6: LSS websites.....19
  - Recommendation 7: Public legal education.....21
  - Recommendation 8: Legal advocacy training .....23
- Legal representation services.....24
  - Recommendation 9: Tariffs .....25
  - Recommendation 10: Expanded Aboriginal duty counsel .....28
  - Recommendation 11: Legal aid intake .....29
  - Recommendation 12: Criminal law representation .....30

**Aboriginal Families.....33**

- Recommendation 13: Family law representation and duty counsel services.....35
- Recommendation 14: Child protection representation and duty counsel services .....36

**Conclusion ..... 39**

**Appendix A: Reports and Recommendations Considered..... 40**

**Appendix B: Summary of Recommendations..... 41**

- Key recommendations — All LSS service areas .....41
- Recommendations — Specific LSS service areas .....44

**Sources..... 49**

# Introduction

---

[The] legal system has played an active role in the destruction, denial or limitation of First Nations cultural practices. The operations of the criminal justice system, whether intentional or not, have resulted in significant over-incarceration rates of First Nations peoples. This is coupled with their almost total invisibility at the most senior levels of policy-making and decision making in the administration of justice.<sup>1</sup>

Aboriginal people have a long and difficult history of involvement with the law and legal systems. Residential schools and the child welfare systems removed Aboriginal children from their families and communities and tore apart the social fabric of Aboriginal nations. Criminal law has been used to outlaw traditional governance systems and resource harvesting practices, and continues to incarcerate Aboriginal people at an alarming rate. Not surprisingly, the legacy of this history is that Aboriginal people continue to be disproportionately enmeshed with Canadian law and legal systems, reflected in the high numbers of Aboriginal peoples involved in criminal law, youth justice, and child protection systems. To many Aboriginal people, the legal process continues this history of interference, domination, and control, and its operation is far removed from any concept of justice or fairness. The impact of policies of assimilation (such as residential schools and the imposition of the *Indian Act* system) may mean that some Aboriginal people find it difficult

---

<sup>1</sup> Joanne St. Lewis. “Virtual Justice: Systemic Racism and the Canadian Legal Profession” in *Racial Equality in the Canadian Legal Profession* (Ottawa: Canadian Bar Association, 1999) at 69.



to challenge people in positions of authority, such as social workers, police, or others within the legal process.<sup>2</sup>

As Justice Anthony Sarich observed in the *Report on the Cariboo-Chilcotin Justice Inquiry*:

The Canadian court process is a strange and bewildering one to most native people. Even those who have been through the process a number of times remain confused and frightened. With rare exceptions, natives simply don't trust those who operate in it and administer it.<sup>3</sup>

The Supreme Court of Canada in *R. v. Williams* acknowledged that there continues to be pervasive racism against Aboriginal people, which “includes stereotypes that relate to credibility, worthiness and criminal propensity” and is reflected in systemic discrimination in the justice system.<sup>4</sup> Knowledge of the systemic racism that has been acknowledged by the Supreme Court of Canada, and echoed in the voices of Aboriginal Reference Group members, provides useful consideration for assessing how to improve Aboriginal peoples' access to, and use of, legal services, and suggests that it is necessary for legal services to be provided in a way that actively involves Aboriginal peoples in program design and delivery, and actively reflects Aboriginal cultural values.

It is within this complex cultural and historical context that LSS operates. Providing legal services that meet Aboriginal people's justice and legal needs requires an awareness and commitment to not duplicating this history of control imposed from the outside, and instead working closely with Aboriginal peoples in seeking solutions. Addressing the legal issues that Aboriginal peoples face also requires a commitment to taking a holistic approach by acknowledging that people may be facing more than one legal

---

<sup>2</sup> Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples*. Vol. 1: *Looking Forward, Looking Back*. (Ottawa: Royal Commission on Aboriginal Peoples, 1996) at 376-77 [*Looking Forward, Looking Back (RCAP)*] described the intergenerational impacts of residential schools in this fashion:

The schools were, with the agents and instruments of economic and political marginalization, part of the contagion of colonization. In their direct attack on language, beliefs and spirituality, the schools had been a particularly virulent strain of that epidemic of empire, sapping the children's bodies and beings. In later life, many adult survivors, and the families and communities to which they had returned, all manifested a tragic range of symptoms emblematic of ‘the silent tortures that continue in our communities’. [References omitted]. See also: Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples*. Vol. 3: *Gathering Strength*. (Ottawa: Royal Commission on Aboriginal Peoples, 1996), esp. Chapter 2 [*Gathering Strength (RCAP)*].

<sup>3</sup> Sarich, Anthony (Commissioner). *Report on the Cariboo-Chilcotin Justice Inquiry* (Victoria Ministry of Attorney General, 1993).

<sup>4</sup> *R. v. Williams*, [1998] 1 S.C.R. 1128 at para. 58. See also *R. v. Gladue*, [1999] 1 S.C.R. 688.

problem at once (for example, child protection matters and a tenancy issue) and a satisfactory resolution might require legal assistance for both issues.<sup>5</sup>

## Barriers

LSS has undertaken numerous studies to suggest improvements to the provision of legal services to Aboriginal peoples from the *Review of Legal Services to Aboriginal People in British Columbia* in 1999 to, most recently, the *Struggle for Justice: Northern Aboriginal Needs Assessment Report* in 2005. Similar studies have been undertaken in other jurisdictions across Canada. Each of these reports identified very real cultural differences and social barriers that impact Aboriginal peoples' ability to access and use legal services.

Aboriginal people have a greater need for legal services in areas such as criminal and child protection law, but also face greater barriers in accessing these services. Socio-economic and cultural factors that impact Aboriginal peoples' ability to access and use legal services include:

- Lower rates of literacy. Less than half of all Aboriginal people complete high school and only 25% of the on-reserve Aboriginal population has a minimum Grade 9 education level.<sup>6</sup>
- A history of institutional abuse at residential schools and within the child welfare and criminal justice systems leads to an increased level of distrust and difficulty in dealing with the courts and legal system.<sup>7</sup>
- Fetal Alcohol Spectrum Disorder (FASD) is a growing area of concern amongst Aboriginal clients. Cognitive impacts of FASD on attention, memory, and reasoning capacities lead people with FASD to be more

---

<sup>5</sup> Canadian Criminal Justice Association. *Aboriginal Peoples and the Criminal Justice System*. Bulletin. (Ottawa: Canadian Criminal Justice Association, 2000) which outlines the correlation between Aboriginal peoples' socio-economic conditions and involvement with the justice system and suggests that it is necessary to take these conditions into account when addressing the legal issues Aboriginal peoples face.

<sup>6</sup> Indian and Northern Affairs Canada. *Comparison of Socio-economic Conditions, 1996 and 2001: Registered Indians, Registered Indians living on reserve and the total population of Canada*. (Ottawa: Minister of Indian Affairs and Northern Development, 2005) [INAC, *Socio-economic Conditions*]. The level of high school completion amongst Aboriginal people is 48.6%.

<sup>7</sup> Royal Commission on Aboriginal Peoples. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*. (Ottawa: Royal Commission of Aboriginal Peoples, 1996) [*Bridging the Cultural Divide (RCAP)*].

involved in the legal system while simultaneously impairing people's abilities to seek the legal help that they need.<sup>8</sup>

- “Aboriginal People in Canada endure ill health, insufficient and unsafe housing, polluted water supplies, inadequate education, poverty and family breakdown at levels usually associated with impoverished developing countries.”<sup>9</sup>
- Higher poverty rates amongst Aboriginal people pose a myriad of problems related to illness and lack of appropriate housing, nutrition, health care, transportation, and limited access to telephones and computers.<sup>10</sup>
- Many Aboriginal people live in remote communities, making it difficult to access and use legal services.<sup>11</sup>

## Opportunities

At the same time that there are significant social, cultural, and economic barriers that prevent Aboriginal peoples from fully accessing legal services, there is an increased awareness of the need for change in the relationship between Aboriginal peoples and broader society. These changing values are reflected in the New Relationship entered into between British Columbia and Aboriginal organizations, which expressed a mutual commitment to “identify institutional, legislative and policy changes” necessary to “restore, revitalize and strengthen First Nations and their communities and families to eliminate the gap in standards of living with other British Columbians.” The ongoing revitalization and strengthening of Aboriginal communities, and the resurgence of Aboriginal governance and justice systems, combine to present opportunities for transformative change.

---

<sup>8</sup> Child and Youth Officer for British Columbia. “Special Report: A Bridge to Adulthood: Maximizing the Independence of Youth in Care with Fetal Alcohol Spectrum Disorder.” (Victoria: Child and Youth Officer for British Columbia, 2006) at ii, 12 and 17. The province estimates that a “significant” number of Aboriginal children in care suffer from FASD.

<sup>9</sup> *Gathering Strength (RCAP)* at 1.

<sup>10</sup> See: Linda Locke, *Struggle for Justice: Northern BC Aboriginal Needs Assessment Report* (Vancouver Legal Services Society, 2005) [Struggle for Justice] and Marion Buller, *A Review of Legal Services to Aboriginal People in British Columbia* (Vancouver: Legal Services Society, 1994) [Review of Legal Services to Aboriginal People] for two past examples of reports done for LSS which chronicle the interplay between poverty and barriers to getting legal help experienced by Aboriginal clients. For a survey of different quality of life indicators as they impact Aboriginal peoples, see: Indian and Northern Affairs Canada, *Basic Departmental Data 2004*. (Ottawa: Department of Indian and Northern Affairs, 2004) [INAC, *Basic Departmental Data*].

<sup>11</sup> See: *Struggle for Justice* and *Review of Legal Services to Aboriginal People*.

The recommendations in this report identify solutions to eliminate the gap in the provision of legal services to Aboriginal peoples by strengthening Aboriginal peoples' ability to respond to their own legal needs. On a practical level, this requires the involvement of a greater number of Aboriginal people within LSS, and open and dynamic lines of communications between LSS and Aboriginal peoples.

## Methodology

A review of existing studies by LSS and in other jurisdictions was done to explore barriers to the provision of legal services to Aboriginal peoples.<sup>12</sup> These reports chronicle a broad spectrum of access to justice and legal services issues faced by Aboriginal peoples. There is, likewise, a considerable amount of overlap in the issues that have been identified as impeding or denying Aboriginal peoples' access to legal services. Rather than re-documenting the problems that Aboriginal peoples face in accessing legal services, the goal of LSS with this project was to craft real, workable solutions.

The focus of the report was on all "Aboriginal people" within British Columbia. Included within this definition are status and non-status Indians (living on and off-reserve), Métis and Inuit. The Aboriginal Reference Group was made up of people who work with Aboriginal peoples in different regions across the province, including Vancouver Island, the North, Okanagan, Shuswap, as well as urban centres such as Vancouver and Kamloops.

An Aboriginal Reference Group made up of Aboriginal community legal workers, advocates, lawyers, and community members provided recommendations and direction at a two-day workshop based on their experience of working with Aboriginal peoples. The Aboriginal Reference Group was asked to generate innovative ideas for ways that LSS could change its services to better meet the legal needs of Aboriginal clients.

Additional discussions were held with Aboriginal lawyers, advocates, and justice and community workers. Further discussions were held with several members of the Aboriginal Reference Group about their particular areas of expertise and concern. LSS created a working group who provided on-going feedback and suggestions during the course of the drafting of the report.

Many recommendations were generated in the course of the Aboriginal consultations, and only those that the Aboriginal Reference Group prioritized as being the most important in different LSS services areas are reflected here. The recommendations in this report reflect the recommendations made by the Aboriginal Reference Group and Aboriginal community members, and in each

---

<sup>12</sup> For a full list of the reports considered, see Appendix A.

section are presented according to the priority assigned to them by the Aboriginal Reference Group.

Copies of the initial draft report were circulated to Aboriginal Reference Group members, Aboriginal people who had participated in individual discussions and lawyers, legal advocates, and justice workers who work with Aboriginal peoples on an on-going basis. The comments and suggestions generated from this review process were then incorporated into the final report. In total, the Aboriginal Reference Group, separate discussions, and commentary on drafts of this report involved review by approximately 40 people (excluding LSS management), who work with Aboriginal people to address their legal and justice issues across different regions of the province.

## Key Recommendations — All LSS Service Areas

---

Across all LSS service areas, four recommendations were consistently highly prioritized by the Aboriginal Reference Group. These top four recommendations apply to all LSS service areas and form the four key recommendations of this report. The four areas where changes could be made by LSS to significantly improve Aboriginal peoples' access to, and use of, the legal services LSS provides are: (1) Aboriginal representation within LSS, (2) legal representation available to Aboriginal people, (3) communication and outreach to Aboriginal communities, and (4) involvement of Aboriginal people in LSS program planning.

### Aboriginal representation within LSS

**Key recommendation 1:** Increase Aboriginal representation at all levels within LSS, including staff, management, board, tariff bar lawyers, and contractors.

There is a significant divide between the numbers of Aboriginal people who work within LSS (as directors, managers, staff, tariff bar lawyers, and contractors) and the number of Aboriginal people that LSS serves. In many regions of the province, Aboriginal people represent over 25% of LSS clients, yet few Aboriginal people work within LSS, or are available to take LSS legal aid referrals. The lack of Aboriginal people working within LSS impacts Aboriginal people's willingness to and comfort with using or accessing LSS services.

### Percentages of LSS Aboriginal clients<sup>13</sup>

% of Aboriginal clients	Communities
Over 25% of all LSS clients	Campbell River, Chilliwack, Kamloops, Nanaimo, Port Alberni, Quesnel, Salmon Arm
Between 50%–88% of LSS clients	Dawson Creek, Duncan, Fort St. James, Hazelton, Prince George, Terrace, Williams Lake

Despite these numbers, there is a divide between LSS and Aboriginal communities. Few Aboriginal people work within LSS, and fewer still are actively involved in planning service delivery.

The lack of engagement between LSS and Aboriginal communities has led to a number of missed opportunities where adjustments to LSS policies and services could make a significant difference in responding to the real and pressing legal needs of Aboriginal people.

In both the Aboriginal Reference Group workshop, and in separate discussions with Aboriginal lawyers and justice workers, Aboriginal people consistently emphasized the need for more Aboriginal people (lawyers, LSS staff, community legal workers, and so on). Aboriginal people prefer to speak with an Aboriginal person and may not seek the legal help they need if they are unable to do so. This preference reflects the complex and difficult history of Aboriginal peoples' involvement within the justice system and inter-generational experience of institutional racism. The need to incorporate more Aboriginal people into the delivery of legal services to Aboriginal people has been explained as follows:

[Aboriginal clients] are uncomfortable with seeking help from [non-Aboriginal people] because most of the times non-Aboriginal people are not sensitive or aware of Aboriginal history and culture, or do not fully understand their unique legal needs. Aboriginal peoples face ongoing stereotyping and discrimination...<sup>14</sup>

The lack of Aboriginal representation within LSS is a source of serious concern for Aboriginal Reference Group members and negatively impacts Aboriginal peoples' willingness to use or access LSS services.

Aboriginal people comprise approximately 4.5% of British Columbia's overall population.<sup>15</sup> The actual population of Aboriginal peoples in the regional centres that LSS serves is considerably higher.

<sup>13</sup> These figures reflect applications to LSS offices between 01/11/2005 and 31/10/2006. *Struggle for Justice* at 5–6.

<sup>15</sup> BC Stats. *2001 Census Fast Facts: BC. Aboriginal Identity Population — Regional Distribution*. (Victoria: Ministry of Management Services, 2004) [*2001 Census Fast Facts*]. This number is likely low given the lack of participation of a number of Aboriginal communities in the census. Figures used here are rounded to the nearest full percentage point.

## Aboriginal populations in areas served by LSS regional centres and local agents<sup>16</sup>

Despite these numbers, Aboriginal people represent less than 3% of LSS staff.

Aboriginal population	Select regions
36–60%	Central Coast, Stikine, and Haida Gwaii
13–20%	Northern Vancouver Island, Alberni, Clayoquot, Bulkley-Nechako, and Peace River
6–12%	Cariboo, Lillooet, Thompson, Nicola, Cowichan Valley, and Powell River

Many areas with a large Aboriginal client base that are served by LSS regional centres or local agents have no Aboriginal staff. For example, there are no Aboriginal people working in LSS offices (or local agent offices) that serve Prince George and Duncan, despite the fact that at least 50% of all clients in these areas are Aboriginal. No senior management positions at LSS are filled by Aboriginal people. The lack of Aboriginal representation within LSS is acute and requires an organizational response. Representation of Aboriginal people within LSS management and front line services should be increased substantially to reflect the numbers of Aboriginal clients that LSS serves.

### 1.1 Institute an Aboriginal equity policy that addresses hiring, promotion, and retention of Aboriginal people at all levels of LSS.

#### 1.1.1 Hiring

- Actively seek Aboriginal applicants to fill positions, including by posting jobs in Aboriginal media and using existing Aboriginal networks.
- Reflect the *requirement* for knowledge of Aboriginal cultures and the ability to work with Aboriginal people and organizations in job descriptions.
- Post positions outside of the LSS internal process (so that Aboriginal applicants are considered for new positions).
- Place proper and due weight on Aboriginal applicants' skills, knowledge, and ability, including exploring where this combined experience is equivalent to formal education.
- Involve local Aboriginal people in the hiring process.

<sup>16</sup> 2001 Census Fast Facts.



1.1.2 Promotion and retention

- Increase opportunities for promotion and advancement of Aboriginal staff,
- Consult with Aboriginal employees about the organizational changes necessary to increase retention rates and eliminate barriers to advancement within LSS.

1.1.3 LSS Board

- Recruit Aboriginal people, including members of the Aboriginal bar, to join the LSS Board. At least three of the LSS Board seats should be filled by Aboriginal people.

1.1.4 Tariff bar lawyers

- Increase the number of Aboriginal lawyers who take legal aid representation cases by creating an Aboriginal articling student program, mentoring program, Aboriginal legal aid training courses, and an active recruitment process for Aboriginal students and lawyers.
- Initiate partnership opportunities with the University of British Columbia and University of Victoria law schools to teach or train law students in providing legal aid representation services, through legal clinics or other legal training programs.
- Consult with Aboriginal tariff bar lawyers, including the Indigenous Bar Association, on a regular basis, to identify and eliminate barriers that may prevent them from continuing with an LSS tariff practice.

**1.2 Set organizational benchmarks for Aboriginal representation within LSS, proportional to the number of Aboriginal clients LSS serves. In regions where there is a substantial Aboriginal client base and no Aboriginal staff, remedial measures are necessary to identify internal barriers to the hiring and retention of Aboriginal employees. LSS managers should be required to produce a plan for recruiting and retaining Aboriginal staff.**

**1.3 Create a new position within LSS of Aboriginal community legal worker.**

The duties of Aboriginal community legal workers would be broader than those of legal information and outreach workers (LIOWs), with increased responsibilities and a higher pay scale. Aboriginal community legal workers' duties would include:

- active outreach to Aboriginal communities about the services that LSS provides;

- coordinate and assist in delivering legal advocacy workshops regionally;
- help Aboriginal clients to identify and access appropriate LSS services;
- client advocacy and representation to address the key legal issues that Aboriginal peoples face (including criminal law, youth criminal justice, family and child protection matters, and non-family civil law) and how LSS may be able to assist;
- work with, and support, the work of expanded Aboriginal duty counsel (Recommendation 10.1); and
- assist with fostering a holistic approach between the legal system (courts, Crown and legal aid representation lawyers) and Aboriginal communities and people.

**1.4 Create a senior position within LSS responsible for implementing the recommendations of this report within four months.**

1.4.1 This senior position should report twice per year to the LSS Board, Aboriginal Advisory Committee (Recommendation 4.1), and Attorney General on the progress of LSS in implementing the recommendations of this report, including identifying progress that has been made or impediments to implementing the recommendations.

This position would work with the board and senior management of LSS to identify the steps necessary to implement the recommendations of this report. In the longer term, this position could ensure that LSS remains responsive to Aboriginal peoples' legal needs, and that Aboriginal peoples remain an active and dynamic part of LSS program planning.

## Availability of legal representation

**Key recommendation 2: Actively work to increase the number of lawyers with training specific to Aboriginal people who take legal aid cases.**

The Aboriginal Reference Group highlighted the fact that there are few lawyers with the training and expertise to deal with issues specific to Aboriginal people, and identified the need for more Aboriginal lawyers with the training and ability to do legal aid work in the different regions of the

province.<sup>17</sup> Lack of legal representation and advice has a significant impact on Aboriginal people, particularly in areas serviced by circuit courts, or where Aboriginal community law offices were closed due to cutbacks. Aboriginal lawyers who were interviewed emphasized their observations that Aboriginal people often have no access to legal representation in advance of court dates which results in more cases proceeding to court because legal counsel is not available to resolve issues before they reach court (for example, by resolving issues with Crown counsel in criminal law matters). Aboriginal people in diverse regions of the province (from Northern Vancouver Island, the Kootenays, and Interior) commented that it is a common occurrence that Aboriginal people have no legal representation in court because duty counsel is conflicted out of acting because of other contracts with the Ministry of Children and Family Development or Crown counsel.

**2.1 Increase opportunities for Aboriginal law students to article in areas of representation services covered by LSS.**

- Create Aboriginal articling positions within LSS.
- Provide bursaries to private bar lawyers or firms who do legal aid work to encourage them to hire and train Aboriginal articling students. A bursary could help offset the salary and Professional Legal Training Course (PLTC) costs. Partnership opportunities could be explored with the Law Foundation and Law Society of BC.

**2.2 Create a mentoring process to partner lawyers interested in developing an Aboriginal legal aid practice with lawyers who have knowledge and experience in legal aid representation.**

**2.3 Develop a “Providing Legal Aid Services to Aboriginal Clients Boot Camp” to train lawyers about Aboriginal legal aid practice areas.**

Develop a practical two- to three-day “How to do legal aid with Aboriginal clients” workshop in partnership with the Continuing Legal Education Society of BC (CLE). The boot camp would cover:

- 1) criminal law representation (including Aboriginal youth criminal justice),
- 2) family law representation,

---

<sup>17</sup> Law Society of British Columbia. *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers* (Vancouver: Law Society of BC, 2000). This study shows a high non-practicing rate for Aboriginal lawyers — 30% of the Aboriginal lawyers were no longer actively practicing. The report suggests causes rooted in systemic discrimination, economic and other factors for this high non-practicing rate.

- 3) child protection representation,
- 4) other legal issues specific to Aboriginal peoples,
- 5) poverty law issues that impact Aboriginal people both on and off-reserve, such as housing, employment, debt, and social benefits,
- 6) a primer on LSS tariff system and administrative requirements,
- 7) cross-cultural issues in working with Aboriginal clients, and
- 8) the role of Aboriginal communities and advocates within the legal process.

The Providing Legal Aid Services to Aboriginal Clients Boot Camp, delivered in several regional centres, could incorporate local Aboriginal resources to assist people in building regional networks and taking a holistic approach to the delivery of legal services to Aboriginal clients. Opportunities for building relationships and networks locally would be increased if the boot camp was offered in conjunction with a First Nation Resource Day (Recommendation 8.4). A bursary program would encourage Aboriginal lawyers to attend.

## Communication and outreach to Aboriginal communities

**Key recommendation 3: Improve communications and outreach to Aboriginal governments, communities, and organizations.**

Aboriginal Reference Group members observed that Aboriginal people and communities have little knowledge of the services that LSS provides, and identified a need for LSS to reach out to Aboriginal communities, including directly to First Nation organizations (bands, tribal councils, and political organizations) in addition to Friendship Centres and other Aboriginal service agencies or providers.

- 3.1 Target advertising and communications to existing Aboriginal media (newspapers, radio, APTN, community newsletters, websites) to publicize LSS services.**
- 3.2 Dedicate a set amount of time for LSS regional managers and local agents to outreach to Aboriginal communities.**
- 3.3 Provide cross-cultural training to LSS staff and legal aid lawyers in working with Aboriginal clients.**

Topics for cross-cultural training could include:

- cultural sensitivity about Aboriginal societies, traditions and social values;
- working with people with FASD or addictions;
- issues in working with Aboriginal families, including child protection;
- legal issues specific to Aboriginal identity (wills and estates, membership and status, Métis issues, matrimonial property, on/off reserve issues, non-insured health benefits, and social assistance benefits on reserve);
- use of Aboriginal alternative dispute resolution processes such as restorative justice programs and family circles; and
- intergenerational impacts of residential schools and issues related to the Indian Residential School claim settlement process.

## Involving Aboriginal people in LSS program and policy planning

**Key recommendation 4: Ensure Aboriginal participation in LSS policy and program development.**

Currently, LSS identifies the programs and services it will provide, and then asks how to make these services available to Aboriginal people. Aboriginal people are not actively involved in policy and program planning, and Aboriginal Reference Group members highlighted the need for a shift in the way that LSS delivers services.

An earlier LSS report, *A Review of Legal Services to Aboriginal People in British Columbia*, identified the need for greater Aboriginal involvement in LSS:

LSS is charged with developing policies that affect the lives of Aboriginal people; yet, LSS receives little Aboriginal input.

Herein lies LSS's challenge — accept Aboriginal people as having vital roles in [LSS's] administration, policies and programs. Aboriginal people are no longer willing to be consumers of the legal system; they demand to be active participants in its delivery.<sup>18</sup>

---

<sup>18</sup> Buller, Marion. *A Review of Legal Services to Aboriginal People in British Columbia* (Vancouver: Legal Services Society, 1994).

The need for Aboriginal involvement within LSS program and policy planning remains, and has become even more critical given the steadily increasing rate of Aboriginal involvement in areas such as criminal, youth justice, and child protection law.

**4.1 Establish an Aboriginal Advisory Committee, with representation from the major BC Aboriginal political organizations, lawyers, board members, and LSS Aboriginal staff.**

The Aboriginal Advisory Committee would work with LSS management and staff to:

- provide advice and recommendations, on an on-going basis, to ensure that LSS programs and services meet the needs of Aboriginal clients;
- create direct communication links with the Aboriginal community; and
- assist with seeking additional funding or partnership opportunities to support the provision of services to Aboriginal clients.

**4.2 Review LSS programs and services on a yearly basis to assess how well they are meeting Aboriginal peoples' legal needs as part of LSS's planning process.**

A regularly scheduled annual review (such as a workshop with LSS Aboriginal board members, LSS managers, Aboriginal lawyers, community legal workers and Aboriginal organizations) would (1) identify successful examples of service delivery to Aboriginal peoples, (2) identify areas where legal service delivery to Aboriginal clients is in need of improvement, and provide recommendations for those improvements to be made, and (3) ensure that all new LSS initiatives incorporate an Aboriginal component and respond to the needs of Aboriginal clients.

**4.3 Actively engage Aboriginal people in the planning and implementation of the new family law and civil justice pilot hubs and any future hubs.**

Specific actions could:

- ensure that the civil law hub addresses issues specific to Aboriginal people, such as residential school claims and settlements, Indian status and band membership, wills and estates, lands and leasing of reserve lands, and non-insured health benefits;
- ensure equity in the recruitment, consideration and hiring of Aboriginal staff;
- hire an Aboriginal community legal worker for each hub;

## Key Recommendations — All LSS Service Areas

- ensure that the regional Aboriginal population, beyond the immediate vicinity of the hubs, accesses and benefits from the hubs;
- open satellite offices in local Aboriginal centers (For example, a Duncan satellite office for the Nanaimo family law hub);
- incorporate Aboriginal child protection advice services within family justice hubs; and
- evaluate how successful each hub is in serving Aboriginal clients.

## Summary — Four key recommendations

The four key recommendations apply across all LSS service areas and reflect the need for LSS to explore new approaches to bridging the cultural, organizational, and policy gaps that exist between LSS and Aboriginal clients. Improving communications with Aboriginal governments and communities, and ensuring Aboriginal peoples' involvement in LSS program development and delivery can result in transformative change that responds to the critical legal needs of Aboriginal peoples. The invitation to action contained in this report is for a systemic shift in the way that LSS interacts with, and incorporates, Aboriginal peoples in the provision of legal services to Aboriginal clients.

## Recommendations — Specific LSS Program Areas

---

The Aboriginal Reference Group offered innovative ideas for improving LSS service delivery to better meet the needs of Aboriginal clients. Many of these recommendations expand upon the four key recommendations, with more detailed discussions specific to each LSS service area.

### Legal information and education services

LSS has undergone a shift in the way that it delivers services to incorporate the use of new and emerging technologies (such as websites and telephone information services) to provide legal information to clients so that they can advocate for their own legal needs. Aboriginal clients are not using these services to the same degree as other clients, and there are large areas where the legal needs of Aboriginal peoples remain unmet. Without a change in the way that these services are delivered, a larger gap and further unmet legal needs will result for Aboriginal clients. Aboriginal cultures and communities value personal interactions and relationships. To the extent that Aboriginal people perceive LSS legal information services as impersonal, or technical and difficult to use, Aboriginal clients avoid using these services.

Aboriginal Reference Group members identified the need to recognize the social and cultural barriers that Aboriginal people face in using legal information and education services, and to adapt these services in culturally appropriate ways to ensure Aboriginal people benefit from them. Expanding opportunities for in-person service and providing service portals specific to the Aboriginal community are two important ways to do this.



### Recommendation 5: LawLINE

Aboriginal people report very low use of the LawLINE.<sup>19</sup> Reasons for lower Aboriginal use of the LawLINE, according to the factors identified by Aboriginal Reference Group members, include the cultural barriers posed by the impersonal nature of the service, difficulty understanding the telephone script, inability to access the information that they need, long wait times and lack of access to telephones. Aboriginal Reference Group members identified the fact that the current LawLINE is a near impossible service for clients with FASD to use.

#### 5.1 Create an Aboriginal LawLINE staffed by Aboriginal staff and lawyers.

An Aboriginal LawLINE would:

- use evolving telephone technology to distribute calls to a roster of Aboriginal lawyers with different areas of expertise (criminal, family, child protection, other legal matters) throughout the province on a rotating basis;
- avoid the complex instructions and wait times that prevent many Aboriginal clients from using the current LawLINE;
- create a shortcut for Aboriginal community legal workers or advocates to get legal advice to help Aboriginal clients;
- have extended hours to address emergency child protection issues;
- incorporate a special Aboriginal intake line to help clients in remote areas apply for legal aid;
- serve as a single entry point for helping Aboriginal clients to access LSS services (this feature could be expanded if supported by a Web page that had centralized information about the different support services available regionally); and
- allow Aboriginal clients to file complaints about legal aid representation lawyers or other areas of LSS service over the telephone.

---

<sup>19</sup> While Aboriginal peoples generally represent a disproportionately large number of LSS client applications and referrals, internal intake statistics show that in 2006–2007, only 5% of all people who called the LawLINE were Aboriginal. While these figures may not be entirely accurate (given that not all clients are asked to identify their cultural heritage), the number of Aboriginal peoples using this service is significantly lower than in other areas of service that LSS provides.

**5.2 Provide designated phone kiosks or wall phones in Native courtworkers' offices, Friendship Centres, and Band offices to allow people to directly call the Aboriginal LawLINE.**

Designated phones would allow Aboriginal clients who do not have telephones, or access to a private phone, to use this service, and reduce the pressure on the workers at Aboriginal centres (such as Native courtworkers or Aboriginal community service offices) who often have their phone lines tied up for hours while clients try to use the LawLINE.

**Recommendation 6: LSS websites**

Two significant barriers prevent Aboriginal people from using the LSS website. The “first digital divide” concerns availability and access to Internet connected computers. The “second digital divide” refers to the fact that access to Internet-connected computers does not address the barriers that prevent Aboriginal people from using the Internet. Where LSS has provided computer kiosks in Aboriginal settings, they are rarely used by Aboriginal people. Aboriginal people may not use LSS websites because they are not comfortable with using the technology, prefer to deal with their legal problems on a personal basis, find the Web content not to be relevant to them, or other cultural factors.

Half of all Aboriginal people do not use the Internet (51% of Aboriginal men and 49% of Aboriginal women) and those who do are more likely to have higher education and income levels and live in urban areas.<sup>20</sup> Aboriginal people in rural areas, with lower income and education levels, are the least likely to be able to use and access the Internet. These factors combined mean that potential LSS Aboriginal clients are the least likely (of any population in Canada) to use Web-based services. Any legal services that LSS provides based solely on the Internet will not be able to reach across the digital divide to the Aboriginal clients who need help. Where LSS uses the internet to provide legal services to Aboriginal clients, significant adjustments are needed in the way these services are offered to empower Aboriginal peoples use of them. Changes to make Web-based information more accessible to Aboriginal clients should include incorporating in-person training and support opportunities, building upon existing community networks and relationships, and reflecting Aboriginal cultures in their delivery and design.

<sup>20</sup> Crompton, Susan. “Off-reserve Aboriginal Internet Users” Canadian Social Trends (Winter 2004). Ottawa: Statistics Canada (Catalogue No. 11-008).

**6.1 Provide computers with Internet access in Aboriginal settings (such as Native Friendship Centres, Native courtworker offices or Band offices) with ongoing training and support to help Aboriginal people use this service.**

Provide ongoing training and support to help Aboriginal clients access LSS websites by:

- designating Internet support as a regular part of regional Aboriginal community legal workers' job descriptions; and
- entering partnerships with Aboriginal organizations (such as the First Nations Technology Council, Native courtworkers, HRDC training centers, Bands, and Tribal Councils) to provide support and training to help Aboriginal peoples to access the websites on an ongoing basis.

**6.2 Create an LSS Aboriginal website with content specific to Aboriginal peoples and communities.**

The Aboriginal website should:

- use less complex language and include more audio and visual material;
- be built and maintained by Aboriginal people/staff;
- enable clients to ask legal questions (in a forum with other Aboriginal people or in a link to LSS staff); one possibility would be to have the same roster of lawyers who answer the Aboriginal LawLINE available to answer these e-mails;
- serve as a clearinghouse to distribute useful legal information to Aboriginal clients (e.g., links to PIVOT's information card on knowing your rights if you are arrested, and the RCMP's booklet on youth criminal justice); and
- list legal aid lawyers, Aboriginal community legal workers, advocates, and other services regionally.

**6.3 Create a Web page for Aboriginal advocates on the Aboriginal website.**

This Web page would include:

- a list of potential funding sources;
- links to free legal resources to help advocates in assisting Aboriginal clients;
- question/answer board for Aboriginal advocates to share advice and seek direction from their peers;

- legal advocacy training materials; and
- a linked e-mail address to allow Aboriginal advocates to ask LSS lawyers questions; one possibility would be to have the same roster of lawyers who answer the Aboriginal LawLINE available to answer these e-mails.

### Recommendation 7: Public legal education

Lower levels of literacy among Aboriginal clients prevent many from fully accessing or using PLE materials. Of all Aboriginal students who enter Grade 8 within the province, over half do not progress through to high school graduation,<sup>21</sup> and over half of all Aboriginal people have not completed high school. While Aboriginal literacy rates are low, Aboriginal people are highly literate in oral traditions, and this fact suggests a need for greater audio-visual content and person-to-person interactions in providing legal services to Aboriginal peoples. LSS has made considerable efforts to develop PLE materials for Aboriginal people and Aboriginal Reference Group members felt that the materials were particularly useful for advocates who assist Aboriginal people. There remains a need to develop PLE materials that Aboriginal clients can use that respond to the real literacy challenges within Aboriginal communities.

#### 7.1 Develop one-page “step-by-step problem-solving guides” about legal issues for Aboriginal clients.

Topics for these one-page fact sheets should include:

<p><b>Criminal law</b></p> <ul style="list-style-type: none"> <li>• Arraignment</li> <li>• Bail</li> <li>• First appearances</li> <li>• Probation orders</li> <li>• Speaking to sentencing (<i>Gladue</i> hearings)</li> </ul>	<p><b>Family law</b></p> <ul style="list-style-type: none"> <li>• Disclosure hearings</li> <li>• Areas for Aboriginal community involvement (cultural factors in the resolutions of family law matters)</li> <li>• How to seek/challenge variation orders</li> </ul>	<p><b>Child protection</b></p> <ul style="list-style-type: none"> <li>• Steps in the child protection process (before and after ministry involvement)</li> <li>• Kith and Kin Agreements</li> <li>• Different child protection orders</li> </ul>
<p><b>Legal advocacy training</b></p> <ul style="list-style-type: none"> <li>• Role of advocates in the legal process</li> </ul>	<p><b>General</b></p> <ul style="list-style-type: none"> <li>• Going to court</li> <li>• Client rights in dealing with legal aid representation lawyers</li> <li>• Changing legal aid lawyers</li> <li>• What to bring for intake</li> </ul>	<p><b>Youth</b></p> <ul style="list-style-type: none"> <li>• <i>Youth Criminal Justice Act</i> proceedings</li> </ul>

<sup>21</sup> British Columbia Ministry of Education. “Aboriginal Report 2005/06 — How Are We Doing?” (Ministry of Education: Victoria, 2006) at 27–29.

One-page fact sheets should:

- use flow charts and visual images to show steps in the legal process;
- be written at a Grade 7 reading and comprehension level (Aboriginal teachers would be hired to review these materials);
- include space to allow the client to turn the sheet into a “work book” where appropriate; for example, in speaking to sentencing (a *Gladue* hearing), include questions to help clients plan what they want to say, or help them to provide this information to their lawyer or legal advocate;
- be printed on colour-coded paper according to different areas of the law (criminal law, family law, child protection) to make them easier to find and use;
- be made available (and regularly re-stocked) at different courthouses, LSS offices, Friendship Centres, Band offices, Ministry of Children and Family Development offices, and probation offices; and
- be distributed to Aboriginal media and community newsletters as part of an on-going public legal education project.

Writing the series of one-page fact sheets could be accomplished at minimal cost by building upon existing resources developed by lawyers, Aboriginal advocates, and community workers. A working group could draft these fact sheets, possibly using software (such as Wikipages) that allows for collaborative writing. Additional partnership opportunities may be available to have law students develop these as part of legal advocacy training courses.

**7.2 Develop PLE materials that use visual and audio content, including comic book or graphic formats and short videos.**

- Utilize videos or graphic book formats to provide legal information in the areas of criminal law, Aboriginal youth criminal justice, and child protection.
- Print materials in a smaller format (cards, small pocket booklets, one-page fact sheets) so that clients can carry them around.
- Play short videos in waiting rooms or other places where Aboriginal people seek legal help.
- Link to videos from the Aboriginal Web page.

**7.3 Hire Aboriginal writers and editors to develop PLE materials and field-test materials with Aboriginal clients before publishing them.**

**Recommendation 8: Legal advocacy training**

Providing legal advocacy training to local Aboriginal community members would have long-term benefits in addressing the ongoing legal and justice needs of Aboriginal people in their communities. The legal needs of Aboriginal people at the community level are influenced by a number of factors that require knowledge of local culture and traditions. Resolving legal issues in criminal, child protection, and family law matters often requires the support and assistance of an Aboriginal client’s home community. Training community members and people working within Aboriginal communities as advocates can help to resolve legal problems earlier and possibly avoid costly and lengthy court processes.

**8.1 Deliver Aboriginal legal advocacy training workshops in Aboriginal communities.**

Aboriginal legal advocacy training workshops, delivered in Aboriginal communities, would empower people locally to help Aboriginal people in need of legal assistance. Aboriginal legal advocacy training materials developed by LSS could include modules that address these topics:

- Criminal law (sentencing, diversion, representing yourself in court)
- Aboriginal youth criminal justice
- Child protection
- Domestic violence
- Residential school issues
- Aboriginal women’s issues
- Legal rights within the prison system
- On-reserve housing
- Non-insured health benefits
- Wills and estates on reserve
- Indian status

Aboriginal communities could choose to focus on areas of particular concern to them. Partnership opportunities include Native courtworkers, Friendship Centres, Bands, Tribal Councils and other Aboriginal community service organizations. The host or partner organization would provide the space, advertise and recruit participants, provide refreshments, and invite local resource people to co-teach the workshops. LSS would develop the legal advocacy training materials and co-teach the workshops. Legal advocacy training workshops delivered regionally would incorporate existing programs and services and provide a holistic response to Aboriginal peoples’ legal needs. LSS could also develop legal training modules with a view to training local Aboriginal community members to train others in their communities.

**8.2 Employ a model of “cross-training” by offering legal advocacy workshops to a broad range of people who work with Aboriginal people on a daily basis.**

A model of “cross-training” would provide legal advocacy training to non-traditional legal advocates to help ensure that the broadest numbers of people

are empowered to help Aboriginal people with the legal information that they need. Cross-training opportunities could be offered to Aboriginal community members, Chiefs and councils, teachers, social workers, youth workers, restorative justice workers, health and addiction workers, health nurses, school parent advisory committee members, victim's services workers, and Children and Family Development Ministry employees. Providing legal advocacy training to a broader range of people would increase the likelihood that Aboriginal people have access to legal information when they need it.

**8.3 Develop information materials to inform the courts, legal aid lawyers, Crown counsel, and others in the court process about the role Aboriginal communities and advocates can play within the legal process.**

Many judges and lawyers have no understanding of the role Aboriginal communities and advocates can play in the court process and the successful resolution of legal issues. The Aboriginal Reference Group identified a need for LSS to foster understanding between Aboriginal communities and the legal system to encourage a more holistic resolution to the legal issues that Aboriginal clients face.

**8.4 Coordinate an annual First Nation Resource Day for Aboriginal community legal workers, First Nation organizations, judges, lawyers, and LSS staff.**

A First Nation Resource Day, organized by LSS staff regionally, would create networking opportunities and a sense of community problem solving regionally between Aboriginal peoples and the legal community. The First Nation Resource Day could be offered in conjunction with the Providing Legal Aid Services to Aboriginal Client Boot Camp (recommendation 2.3) to increase the opportunities for networking.

## Legal representation services

Members of the Aboriginal Reference group observed that legal representation tariffs control access to justice for many Aboriginal peoples involved in the legal system. Tariffs are one area where small changes in LSS policy could make a significant impact in improving Aboriginal peoples' use of, and access to, LSS services. The LSS tariff structure reflects the provision of service to non-Aboriginal clients, and makes little or no allowance for the very real differences faced by Aboriginal people within the legal system, or of the additional time required to address Aboriginal peoples' legal needs.

While LSS allows lawyers to apply for additional funding to cover some issues specific to Aboriginal people, this funding is not always available and

requires additional layers of administration and paperwork. The limitations of the LSS tariff system were highlighted in discussions with lawyers who work with Aboriginal clients. Over half of the Aboriginal lawyers interviewed had entirely eliminated, or greatly reduced, their time on Aboriginal legal aid cases because the administration and additional time involved in working with Aboriginal clients had made it financially unfeasible. In many cases, lawyers reported that justifying the few additional legal billing hours required to fully represent Aboriginal clients actually took more time than they were trying to bill for.

Even where case law and legislation have evolved to address the disparities experienced by Aboriginal people in the legal system (e.g., *Gladue* submissions for sentencing; Aboriginal youth criminal diversion programs; Aboriginal provisions in provincial child and family legislation), the LSS tariffs do not provide adequate legal aid coverage to allow Aboriginal clients to benefit from these changes.

## Recommendation 9: Tariffs

### 9.1 Amend the *Guide to Legal Aid Tariffs* to reflect the additional time necessary to properly represent Aboriginal peoples' unique legal needs.

9.1.1 Aboriginal youth criminal justice issues — increase preparation time for applications under the *Youth Criminal Justice Act* (YCJA) to reflect cultural requirements in Aboriginal youth criminal matters.

Approximately 25% of all LSS youth criminal justice representations are for Aboriginal youth.<sup>22</sup> Preliminary involvement in the criminal justice system often leads to further involvement later, and successful attempts at diverting Aboriginal youth from this system would make a significant difference in the long term. Extra tariff coverage is needed for the conferencing provisions that are part of Aboriginal YCJA proceedings.

9.1.2 Aboriginal child protection issues — increase general preparation to cover alternate dispute resolution or mediation efforts that occur (formally or informally) within an Aboriginal context to divert escalating levels of ministry involvement.

This would include coverage for meetings with Aboriginal communities and extended families, in addition to the alternative dispute resolution and mediation options currently included in the *Guide to Legal Aid Tariffs*.

<sup>22</sup> Legal Services Society internal statistics. This figure is drawn from the referrals given in 2006–2007 and reflects only those youth who self-report as Aboriginal.



- 9.1.3 Criminal law diversion — create new tariff items to cover preparation and attendance at Aboriginal restorative justice or diversion projects, and increase the time spent prior to charges being laid on diversion efforts.
- 9.1.4 Criminal law sentencing (*Gladue* hearings) — create a new tariff item for preparing *Gladue* sentencing submissions.

In *R. v. Gladue*, the Supreme Court of Canada said that it was necessary to respond to the disproportionate number of Aboriginal people in prisons by considering factors such as the cultural background and possibility for rehabilitation and diversion in sentencing Aboriginal offenders.<sup>23</sup> Changes to the Canadian *Criminal Code* reflect this new direction in sentencing. However, in practice, very few Aboriginal offenders are actually able to use or benefit from these alternative sentencing provisions. In part, this stems from the lack of legal resources available for lawyers to prepare and make submissions. LSS has challenged whether or not it has an obligation to provide coverage for the preparation of *Gladue* sentencing reports.<sup>24</sup> Many Aboriginal people, who do not have the funds to pay for these reports or the extra legal time involved in presenting them, are denied the chance to present this information when they are convicted of a crime. Aboriginal Reference Group members felt very strongly that this was one area where tariffs (or lack of available tariffs) denies access to justice and requires change.

**9.2 Change the rates and rules around travel tariffs for lawyers who are required to travel to meet with Aboriginal clients. Tariffs should be increased to a level that would attract lawyers to work on Aboriginal legal representation cases, particularly in remote areas or those serviced by circuit courts.**

The current LSS travel tariff allows lawyers to claim for travel time when the total return trip is over 160 kilometres. Many Aboriginal clients live in small reserve communities surrounding larger villages and towns. In many cases, the reserve communities are close enough to the villages/towns that lawyers who travel to them are not eligible to charge for their travel time. At the same time, clients lack transportation to travel to meet with their lawyer in advance of court dates or about ongoing legal matters. Recommendations for changes to the travel tariff include the following.

- 9.2.1 Extend coverage to include travel time for client visits where clients reside in an Aboriginal community more than 60 kilometres return trip away and no public transit is available.

---

<sup>23</sup> [1999] 1 S.C.R. 688.

<sup>24</sup> *R. v. D.R.* (2000 BCSC 136).

9.2.2 Increase the current block fee (of \$180 for a half day of travel) as it is not sufficient to compensate counsel for the time spent away from their offices.

**9.3 Implement a Rural Aboriginal Legal Services Tariff that provides higher compensation to encourage lawyers to provide legal aid services to Aboriginal people in regions where the lack of legal representation is acute.**

This model would operate in a similar way to the Northern Needs or Remote Community allowance used by governments to encourage people to work in Northern or remote areas. The additional amount reflected in the tariff should be sufficient to act as an incentive encouraging more lawyers in these regions to take LSS representation cases. Lawyers who provide legal aid representation services to Aboriginal people in specific regions would be eligible for increased tariff and travel costs. Pilot project areas could include North Vancouver Island, West Kootenays, Williams Lake, Prince George, and Prince Rupert. The Rural Aboriginal Legal Services tariff, and increased travel coverage, would be advertised to the local bar who would be encouraged to add an Aboriginal legal aid component to their practice. This recommendation could be coordinated with the Aboriginal legal aid boot camps (Recommendation 2.3) to also provide training to encourage lawyers to develop a legal aid representation practice.

**9.4 Increase financial eligibility for Aboriginal clients.**

Lack of financial resources is an abiding issue in Aboriginal communities with very high poverty and unemployment rates.<sup>25</sup> Aboriginal Reference Group members spoke of many instances where clients were denied legal aid coverage, despite the fact that they did not have the resources to hire a lawyer.

Several suggestions were made for ways to address the fact that Aboriginal clients who need legal aid assistance are denied legal aid, including:

- where people do not have full time employment throughout the year (for example, they work in construction, fishing, or other employment that is less than full time), ensure that intake workers take this fact into

<sup>25</sup> There is a plethora of research detailing Aboriginal peoples' high poverty and unemployment rates. See, for example, Statistics Canada. *Aboriginal peoples of Canada: A demographic profile*. [Available online: [www12.statcan.ca/English/census01/Products/Analytic/companion/abor/Canada.cfm](http://www12.statcan.ca/English/census01/Products/Analytic/companion/abor/Canada.cfm) (Accessed: 11/03/2007)] [*Stats Can, Aboriginal peoples demographic profile*]; INAC, *Socio-economic Conditions*; INAC, *Basic Departmental Data*; and, *2001 Census Fast Facts*.

account in determining legal aid eligibility (include these questions as part of the script that intake workers use);

- increase financial eligibility levels so that more Aboriginal persons qualify for legal aid;
- create legal aid eligibility levels based on a proportional analysis of the legal costs involved measured against a client's income (for example, clients should be eligible for coverage if estimated legal costs for eligible legal issues would exceed 10% of a client's annual income) — LSS could develop a scale of the legal time required to address different categories of legal problems that clients face to simplify this process;
- consider factors specific to the Aboriginal community in assessing a person's eligibility including: support provided to extended family members (full time, or for parts of the year, who are not now recognized as dependents under LSS policy), cultural requirements (such as contributions to feasts or other cultural obligations and activities required in an Aboriginal context), and increased costs associated with living in rural or remote areas; and
- reflect a preventative approach by recognizing that preliminary convictions may lead to more serious charges in the future, and so increase eligibility for first-time charges on matters not currently eligible for tariff coverage to prevent escalating levels of involvement in the criminal justice system.

### **Recommendation 10: Expanded Aboriginal duty counsel**

#### **10.1 Create an Expanded Aboriginal Duty Counsel Program that provides representation, advice, and assistance to Aboriginal clients on a regular basis within Aboriginal communities.**

This concept, in different manifestations, is in use in New Brunswick (Aboriginal Expanded Duty Counsel Project) and Ontario (Expanded Duty Counsel in some areas). Creation of an Expanded Aboriginal Duty Counsel Program would allow for a more cohesive approach to address Aboriginal peoples' legal needs, and respond to the fact that people often face a multitude of legal issues at once. Aboriginal peoples are often left with stop-gap legal services due to lack of legal representation. An Expanded Aboriginal Duty Counsel Program could be piloted in areas of the province with a high Aboriginal client base, and where there is a shortage of lawyers willing to take legal aid representation cases.

Expanded Aboriginal duty counsel would:

- offer services at locations that are easily accessible to local Aboriginal communities (Friendship Centres or Band offices, etc.) on a regular basis;
- allow for multiple visits and on-going assistance to Aboriginal clients to divert and solve legal issues before they escalate;
- be funded under a block-funding arrangement;
- have their travel time and costs covered to work with Aboriginal clients in remote or rural locations;
- work closely with Aboriginal communities;
- provide two types of expanded Aboriginal duty counsel services: (1) criminal law and (2) Aboriginal family law (including family law and child protection services);
- be supported by an Aboriginal community legal worker available to triage and do initial intake and to schedule appointments for clients where necessary; and
- preferably be Aboriginal lawyers who do not have contracts that would conflict them out of providing duty counsel representation to clients (for example, no conflicting contracts with the Crown or the Ministry of Children and Family Development).

### Recommendation 11: Legal aid intake

#### 11.1 Make legal aid intake regularly available in Aboriginal settings and accessible to clients before court dates.

- 11.1.1 Have existing intake workers shift where they do their work by providing regularly scheduled intake times at Friendship Centers, Band offices, or advocates' offices in advance of court dates;
- 11.1.2 Contract with Native courtworkers or other organizations regionally to assist Aboriginal clients in completing applications electronically.
- 11.1.3 Create a legal aid intake tariff that would allow legal aid lawyers to complete the legal aid application as part of their initial client interview.

## Recommendation 12: Criminal law representation

The Canadian criminal justice system has failed the Aboriginal peoples of Canada — First Nations, Inuit, and Métis people, on-reserve and off-reserve, urban and rural — in all territorial and governmental jurisdictions. The principal reason for this crushing failure is the fundamentally different world views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice.<sup>26</sup>

The number of Aboriginal people incarcerated has increased steadily over the years. In 2006, approximately 18.5% of all federal inmates were Aboriginal. Aboriginal women and youth are even more disproportionately represented. Approximately 30% of all federal women inmates are Aboriginal<sup>27</sup> and “Aboriginal youth (25 years and under) represent approximately 41.3% of all federal Aboriginal inmates.”<sup>28</sup> The number of Aboriginal people in federal prisons continues to grow at a crisis level, increasing by 21.7% from 1996 to 2004 (the growth rate for Aboriginal women was staggering, at 74.2%). During the same time, the non-Aboriginal population experienced a 12% reduction in their federal incarceration rates.

### 12.1 Ensure that Aboriginal clients in the criminal justice system have access to duty counsel services at all courthouses in the province.

Aboriginal Reference Group members reported a startling amount of cases where there is no duty counsel available (or they are conflicted out of acting) and Aboriginal peoples are left without legal representation in criminal law matters. LSS should focus a pilot project that operates in rural areas where Aboriginal people currently have limited access to duty counsel representation (Williams Lake, Port Hardy, Fort Saint James, West Kootenays, Fort Ware, Dease Lake, and Bella Bella). Expanded Aboriginal duty counsel (Recommendation 10.1) would address the lack of legal representation many Aboriginal peoples face in certain regions; however, where there is no expanded Aboriginal duty counsel available, LSS should take proactive steps to have duty counsel available to help Aboriginal clients. This would include having duty counsel travel to these locations and be available in advance of court dates, on court dates, and in interim periods between court dates.

<sup>26</sup> *Bridging the Cultural Divide (RCAP)* at 309. See also: Michael Jackson, *Locking Up Natives in Canada: A Report of the Committee of the Canadian Bar Association on Imprisonment and Release* (Ottawa: Canadian Bar Association, 1988).

<sup>27</sup> Correctional Investigator of Canada. “Backgrounder: Aboriginal Inmates” [Available online at: [www.oci-bec.ca/newsroom/bk-AR0506\\_e.asp](http://www.oci-bec.ca/newsroom/bk-AR0506_e.asp) (accessed 11/03/2007)] [*Aboriginal Inmates*]. These figures are based on 2006 figures.

<sup>28</sup> *Aboriginal Inmates*.

12.1.1 Work with court registries or existing duty counsel to identify matters where more than one accused is facing charges and arrange to have additional duty counsel available for those matters.

**12.2 Support and dedicate resources to restorative justice initiatives, including prevention and diversion programs and circle sentencing.**

LSS should target resources in the criminal law area towards preventative and restorative justice approaches and work with Aboriginal communities and organizations, the courts and Crown counsel, to increase the use of these restorative tools.

12.2.1 Expand tariff eligibility to focus on a preventative and restorative approach in the context of criminal law.

For example, creating new criminal law diversion tariff items (Recommendation 9.1.3) and criminal law sentencing (*Gladue* hearing) tariff items (Recommendation 9.1.4) would serve multiple functions by resolving or diverting criminal matters prior to court, or better preparing lawyers who represent Aboriginal clients.

12.2.2 Expand tariff eligibility for first time offenders.

**12.3 Provide a greater degree of choice in legal representation to Aboriginal clients facing charges on hunting and fishing or other Aboriginal Rights, Title and Treaty Rights issues to retain lawyers with experience in Aboriginal law.**

If there are two defences available, one based on Aboriginal or treaty rights, and one based on criminal law, LSS is often only willing to pay for the criminal law defence and requires that the Aboriginal client use a local lawyer with limited experience in Aboriginal and treaty rights defences. The result is that more legal time is spent and Aboriginal clients do not receive adequate representation in these very unique legal areas. LSS policy should not operate to limit or deny Aboriginal people's ability to rely on Aboriginal title rights or treaty rights defences in criminal law charges to retain lawyers in these highly specialized areas of law.

## Aboriginal Families

---

Aboriginal Reference Group discussions treated the two categories of “family law” and “child protection” — distinct within LSS service provision — in a holistic fashion. Recommendations in both family law and child protection centered on the need to provide legal services in a way that acknowledges that Aboriginal children and families are part of larger communities and Nations.

There are very real differences between Aboriginal families and the general Canadian population, which require that LSS adapt the legal services it provides to Aboriginal families:

- The maintenance of relationships and obligations within Aboriginal Nations and communities is of paramount concern to Aboriginal people. Children and families are not viewed as isolated nuclear units but rather as part of the social fabric of Aboriginal communities and Nations.<sup>29</sup>
- Aboriginal men are three times more likely, and Aboriginal women two times more likely, to head single-parent families than their non-Aboriginal counterparts.<sup>30</sup>
- Aboriginal children are almost ten times more likely than non-Aboriginal children to live in households headed by relatives or

---

<sup>29</sup> Union of B.C. Indian Chiefs. *Calling Forth Our Future: Options for the Exercise of Indigenous Peoples' Authority in Child Welfare* (Vancouver: Union of BC Indian Chiefs, 2002) and Lavina White and Eva Jacobs, *Liberating Our Children Liberating Our Nations*. Report of the Aboriginal Committee Community Panel Family and Children's Services Legislation Review in British Columbia (Victoria: Aboriginal Committee Community Panel Family and Children's Services Legislation Review in British Columbia, 1992).

<sup>30</sup> Indian and Northern Affairs Canada. *Comparison of Socio-economic Conditions, 1996 and 2001: Registered Indians, Registered Indians living on reserve and the total population of Canada*. (Ottawa: Minister of Indian Affairs and Northern Development, 2005).

extended family members (grandparents, aunts, uncles, etc.) rather than their parents.<sup>31</sup>

- “One in seven aboriginal children will come through the child welfare system in B.C.” and over 50% of all children in care in BC are Aboriginal.<sup>32</sup>

Given the history of the removal of Aboriginal children from their families and communities through residential schools and the child welfare system, it is not surprising that the number one priority — across both family law and children protection areas — identified by Aboriginal Reference Group members in providing legal services to Aboriginal families was to maintain and strengthen ties between Aboriginal children and their communities and Nations. The intergenerational impacts of the residential school experience continue to have a very direct impact on Aboriginal families:

...the sad experience of many who attended these schools has had such an inter-generational effect on children and grandchildren that I have no hesitation in laying a significant portion of responsibility for today’s unacceptable level of involvement of Aboriginal families in our child welfare system on the doorstep of that ill-conceived program of years ago.<sup>33</sup>

Currently, LSS family and child protection services reflect a limited model based on a nuclear family with no consideration of the larger social and cultural context that Aboriginal families exist within, and so do not provide necessary legal support to account for this cultural difference. To illustrate, current family or child protection legal services do not consider access requirements around cultural events and obligations (attendance at feasts, traditional activities, etc.) in resolving legal issues such as access or child protection orders.

---

<sup>31</sup> *Stats Can, Aboriginal peoples demographic profile*: “Just under 5% of [Aboriginal children] living in large urban areas lived with either a relative other than their parent(s), or lived with a non-relative. This compares with only about 0.6% among non-Aboriginal children.”

<sup>32</sup> B.C. Representative for Children and Youth, Mary Ellen Turpel-Lafond, quoted in “Too many native kids need help” *The Province*, A6, March 7, 2007. See also: Representative for Children and Youth and Provincial Health Officer (joint report). *Health and well-being of children in care in British Columbia: report 2 on educational experience and outcomes* (Victoria: Representative for Children and Youth and Provincial Health Officer (joint publication), 2007).

<sup>33</sup> Ted Hughes, *BC Children and Youth Review — Keeping Aboriginal Children Safe and Well* (Victoria: April 2006) at 49–50.



**Recommendation 13: Family law representation and duty counsel services**

**13.1 Dedicate resources toward restorative solutions, such as mediation or alternative dispute resolution, in an Aboriginal context.**

- 13.1.1 Involve Aboriginal communities, including houses/clans and extended families, in working together toward resolving family law disputes and dedicate resources to maintaining the broader concept of families reflected in Aboriginal cultures.
- 13.1.2 Incorporate a tariff for participation in mediation and dispute resolution services (including formal and informal) within an Aboriginal context, in addition to existing alternative dispute resolution and mediation tariff items.
- 13.1.3 Expand opportunities for diversion in domestic violence matters, which would provide legal support in seeking preventative and restorative solutions.

**13.2 Expand tariff eligibility to include coverage for issues related to the removal of Aboriginal children from their home communities or territories.**

There is currently no LSS tariff or service coverage in the family law area to address the removal of Aboriginal children from their home communities. A tariff does exist, generally, where children are removed from the province or country. In an Aboriginal context, the removal of children from their home communities or territories has deep and abiding social and cultural implications, and should likewise be eligible for legal aid tariff coverage.

**13.3 Educate LSS staff, family law tariff lawyers, and the courts, on cross-cultural issues related to Aboriginal family law.**

**13.4 Ensure that LSS family law services are advertised in Aboriginal communities.**

Aboriginal Reference Group members identified the need to inform Aboriginal peoples of the legal services available in the area of family law, and listed many examples where Aboriginal people had not sought LSS assistance because they were unaware of these services. Several Aboriginal Reference Group members shared their own observations that a disproportionate number of Aboriginal men are going to court, often unrepresented, in family maintenance enforcement proceedings, and many men are facing jail time. Aboriginal clients need to be educated on their eligibility for LSS family law services.

**Recommendation 14: Child protection representation and duty counsel services**

Levels of Aboriginal children in care are higher than they have ever been historically and the numbers continue to grow. Over one half of all children in care in the province are Aboriginal, and nearly half of all children in custody (43%) are Aboriginal.<sup>34</sup>

The high level of involvement of Aboriginal people within the child protection system reflects the tragic legacy of Aboriginal families being forcibly broken apart with the removal of Aboriginal children from their communities and their placement in residential schools. The number of Aboriginal children in the child welfare system has continued to grow over time as Aboriginal families face the intergenerational impacts of this history. The solution to the problem must be found in the rebuilding of Aboriginal families and communities, through supporting and increasing the opportunities for alternative dispute resolution and preventative measures built upon the strengths of Aboriginal cultures and families.

**14.1 Increase and support the availability of preventative and restorative solutions, including alternative dispute resolution and mediation within an Aboriginal context.**

- 14.1.1 Involve Aboriginal communities, including houses/clans and extended families, in working together to find solutions in child protection matters, in an attempt to divert escalating levels of ministry involvement.
- 14.1.2 Incorporate a tariff for participation in mediation and dispute resolution (including formal and informal) within an Aboriginal context, in addition to existing alternative dispute resolution and mediation tariff items.
- 14.1.3 Provide ongoing legal support for preventative measures in child protection.
- 14.1.4 Work with court registries or existing duty counsel to identify family law or child protection matters where both parents may need independent legal advice and assistance and arrange to have additional duty counsel available for those matters.

---

<sup>34</sup> Representative for Children and Youth. “Fact sheet” (Victoria: Representative for Children and Youth, 2007).

**14.2 Educate LSS staff, legal aid lawyers, and the courts on cross-cultural issues related to child protection and Aboriginal children, including training on legislation specific to Aboriginal children.**

14.2.1 Create, in partnership with Aboriginal child and family organizations or other Aboriginal organizations that work with Aboriginal families, a Guidebook for Aboriginal Child Protection matters for use by the courts and legal representation lawyers.

Many Aboriginal Reference Group members observed that there is currently very little practical consideration of the backgrounds and cultures of Aboriginal children in child protection matters. Despite the fact that provincial legislation has been amended to reflect the need to keep Aboriginal children connected to their extended families, communities and Nations, these provisions are seldom taken into account in child protection proceedings. For example, if legal aid representation lawyers are not aware of these provisions, or do not have contact with the Aboriginal community or Nation(s) that the child is part of, they do not address these issues.

LSS should take a proactive approach in educating LSS staff, legal aid lawyers and the courts about cultural issues and legislative provisions specific to Aboriginal children. One example of a way that this could be done is provided by a number of American jurisdictions where the *Indian Child Welfare Act* sets out specific provisions that relate to Indigenous children.<sup>35</sup> A number of states and Indigenous organizations have created “Bench Books” which serve as guides to assist the courts (as well as lawyers and other legal advocates) involved in child protection proceedings to inform them about the specific legal provisions and processes where an Indigenous child is involved.<sup>36</sup>

14.2.2 Dedicate resources to ensure that child protection services reflect the fact that the definition of “best interests of the child” in an Aboriginal context must incorporate the child’s interest in maintaining a substantial and ongoing connection with his or her Aboriginal culture, extended family, community, and Nation.

<sup>35</sup> 25 U.S.C. §§ 1901-63 [ICWA].

<sup>36</sup> See, for example: Shaening and Associates, Inc, New Mexico Tribal-State Judicial Consortium and New Mexico Supreme Court’s Court Improvement Project Task Force, *Preserving Native American Families in New Mexico: The Indian Child Welfare Act & The Adoption & Safe Families Act* (New Mexico: New Mexico Supreme Court’s Court Improvement Project and New Mexico Tribal-State Judicial Consortium, 2005) and the California Indian Legal Services, *California Judge’s Bench Guide: Indian Child Welfare Act* (California: California Indian Legal Services, 2000).

- 14.3 Hire and train Aboriginal community legal workers to work with Aboriginal children and families within each LSS Region.**
- 14.4 Provide urgent advice services for Aboriginal child protection matters. This would include having a contact point at LSS after hours or in urgent situations (similar to the *Brydges* line for criminal law matters).**
- 14.5 Teach self-advocacy skills to parents, families and Aboriginal communities so that Aboriginal people are empowered to advocate for themselves in the area of child protection.**

## Conclusion

---

There is much work to be done. The recommendations in this report reflect the fact that solutions must reflect a willingness to build a bridge between Aboriginal communities and clients and LSS. LSS's willingness and commitment to investigating the changes necessary to increase Aboriginal peoples' access to, and use of, LSS services represents a positive opportunity for change. Addressing the unmet legal needs of Aboriginal people requires acknowledging that solutions must be found within Aboriginal cultures and delivered in partnership with Aboriginal communities. The recommendations of this report invite LSS to a greater level of commitment to working cooperatively with Aboriginal communities and incorporating Aboriginal peoples in decision making at all levels of LSS.

## Appendix A

# Reports and Recommendations Considered

---

A list of the reports and recommendations considered include:

- *A Review of Legal Services to Aboriginal People in British Columbia* (February, 1994)
- Bridging the Gap (Centre for International Indigenous Legal Studies, UBC Faculty of Law [Aboriginal Community Legal Needs Assessment], 2002)
- Newfoundland & Labrador Legal Aid Commission's Aboriginal Justice Project
- *Locking Up Natives in Canada* (Canadian Bar Association, 1987 – and as revisions are in progress)
- *Report on the Cariboo-Chilcotin Justice Inquiry*, 1993
- *Struggle for Justice: Northern BC Aboriginal Needs Assessment Report* (2005);
- Study of Unmet Civil Legal Needs in Nunavut, Northwest Territories and the Yukon, 2006
- Nanaimo First Nations Project, 2001
- Royal Commission on Aboriginal Peoples

# Summary of Recommendations

---

## Key recommendations — All LSS service areas

**Key recommendation 1:** Increase Aboriginal representation at all levels within LSS, including staff, management, board, tariff bar lawyers, and contractors.

1.1 Institute an Aboriginal equity policy that addresses hiring, promotion, and retention of Aboriginal people at all levels of LSS.

### 1.1.1 Hiring

- Actively seek Aboriginal applicants to fill positions, including by posting jobs in Aboriginal media and using existing Aboriginal networks.
- Reflect the requirement for knowledge of Aboriginal cultures and the ability to work with Aboriginal people and organizations in job descriptions.
- Post positions outside of the LSS internal process (so that Aboriginal applicants are considered for new positions).
- Place proper and due weight on Aboriginal applicants' skills, knowledge and ability, including exploring where this combined experience is equivalent to formal education.
- Involve local Aboriginal people in the hiring process.

### 1.1.2 Promotion and retention:

- Increase opportunities for promotion and advancement of Aboriginal staff.

## Appendix B – Summary of Recommendations

- Consult with Aboriginal employees about the organizational changes necessary to increase retention rates and eliminate barriers to advancement within LSS.

### 1.1.3 LSS Board

- Recruit Aboriginal people, including members of the Aboriginal bar, to join the LSS Board. At least three of the LSS Board seats should be filled by Aboriginal people.

### 1.1.4 Tariff bar lawyers

- Increase the number of Aboriginal lawyers who take legal aid representation cases by creating an Aboriginal articling student program, mentoring program, Aboriginal legal aid training courses, and an active recruitment process for Aboriginal students and lawyers.
- Initiate partnership opportunities with the University of British Columbia and University of Victoria law schools to teach or train law students in providing legal aid representation services, through legal clinics or other legal training programs.
- Consult with Aboriginal tariff bar lawyers, including the Indigenous Bar Association, on a regular basis, to identify and eliminate barriers that may prevent them from continuing with an LSS tariff practice.

1.2 Set organizational benchmarks for Aboriginal representation within LSS, proportional to the number of Aboriginal clients LSS serves. In regions where there is a substantial Aboriginal client base and no Aboriginal staff, remedial measures are necessary to identify internal barriers to the hiring and retention of Aboriginal employees. LSS managers should be required to produce a plan for recruiting and retaining Aboriginal staff.

1.3 Create a new position within LSS of Aboriginal community legal worker.

1.4 Create a senior position within LSS responsible for implementing the recommendations of this report within four months.

1.4.1 This senior position should report twice per year to the LSS Board, Aboriginal Advisory Committee (Recommendation 4.1), and Attorney General on the progress of LSS in implementing the recommendations of this report, including identifying progress that has been made or impediments to implementing the recommendations.



**Key recommendation 2:** Actively work to increase the number of lawyers with training specific to Aboriginal people who take legal aid cases.

- 2.1 Increase opportunities for Aboriginal law students to article in areas of representation services covered by LSS.
  - Create Aboriginal articling positions within LSS.
  - Provide bursaries to private bar lawyers or firms who do legal aid work to encourage them to hire and train Aboriginal articling students. A bursary could help offset the salary and Professional Legal Training Course (PLTC) costs. Partnership opportunities could be explored with the Law Foundation and Law Society of BC.
- 2.2 Create a mentoring process to partner lawyers interested in developing an Aboriginal legal aid practice with lawyers who have knowledge and experience in legal aid representation.
- 2.3 Develop a “Providing Legal Aid Services to Aboriginal Clients Boot Camp” to train lawyers about Aboriginal legal aid practice areas.

**Key recommendation 3:** Improve communications and outreach to Aboriginal governments, communities, and organizations.

- 3.1 Target advertising and communications to existing Aboriginal media (newspapers, radio, APTN, community newsletters, websites) to publicize LSS services.
- 3.2 Dedicate a set amount of time for LSS regional managers and local agents to outreach to Aboriginal communities.
- 3.3 Provide cross-cultural training to LSS staff and legal aid lawyers in working with Aboriginal clients.

**Key recommendation 4:** Ensure Aboriginal participation in LSS policy and program development.

- 4.1 Establish an Aboriginal Advisory Committee, with representation from the major BC Aboriginal political organizations, lawyers, board members and LSS Aboriginal staff.
- 4.2 Review LSS programs and services on a yearly basis to assess how well they are meeting Aboriginal peoples’ legal needs as part of LSS’s planning process.
- 4.3 Actively engage Aboriginal people in the planning and implementation of the new family law and civil justice pilot hubs and any future hubs.

## Recommendations — Specific LSS service areas

### *Legal information and education services*

#### **Recommendation 5: LawLINE**

- 5.1 Create an Aboriginal LawLINE staffed by Aboriginal staff and lawyers.
- 5.2 Provide designated phone kiosks or wall phones in Native courtworkers' offices, friendship centres, and band offices to allow people to directly call the Aboriginal LawLINE.

#### **Recommendation 6: LSS websites**

- 6.1 Provide computers with Internet access in Aboriginal settings (such as Native Friendship Centres, Native courtworkers' offices or Band offices) with ongoing training and support to help Aboriginal people use this service.
- 6.2 Create an LSS Aboriginal website with content specific to Aboriginal peoples and communities.
- 6.3 Create a Web page for Aboriginal advocates on the Aboriginal website.

#### **Recommendation 7: Public legal education**

- 7.1 Develop one-page “step-by-step problem-solving guides” about legal issues for Aboriginal clients.
- 7.2 Develop PLE materials that use visual and audio content, including comic book or graphic formats and short videos.
- 7.3 Hire Aboriginal writers and editors to develop PLE materials and field-test materials with Aboriginal clients before publishing them.

#### **Recommendation 8: Legal advocacy training**

- 8.1 Deliver Aboriginal legal advocacy training workshops in Aboriginal communities.
- 8.2 Employ a model of “cross-training” by offering legal advocacy workshops to a broad range of people who work with Aboriginal people on a daily basis.
- 8.3 Develop information materials to inform the courts, legal aid lawyers, Crown counsel, and others in the court process about the role Aboriginal communities and advocates can play within the legal process.
- 8.4 Coordinate an annual First Nation Resource Day for Aboriginal community legal workers, First Nation organizations, judges, lawyers, and LSS staff.

## Legal representation services

### Recommendation 9: Tariffs

- 9.1 Amend the *Guide to Legal Aid Tariffs* to reflect the additional time necessary to properly represent Aboriginal peoples' unique legal needs.
  - 9.1.1 Aboriginal youth criminal justice issues — increase preparation time for applications under the *Youth Criminal Justice Act* (YCJA) to reflect cultural requirements in Aboriginal youth criminal matters.
  - 9.1.2 Aboriginal child protection issues — increase general preparation to cover alternate dispute resolution or mediation efforts that occur (formally or informally) within an Aboriginal context to divert escalating levels of ministry involvement.
  - 9.1.3 Criminal law diversion — create new tariff items to cover preparation and attendance at Aboriginal restorative justice or diversion projects, and increase the time spent prior to charges being laid on diversion efforts.
  - 9.1.4 Criminal law sentencing (*Gladue* hearings) — create a new tariff item for preparing *Gladue* sentencing submissions.
- 9.2 Change the rates and rules around travel tariffs for lawyers who are required to travel to meet with Aboriginal clients. Tariffs should be increased to a level that would attract lawyers to work on Aboriginal legal representation cases, particularly in remote areas or those serviced by circuit courts.
  - 9.2.1 Extend coverage to include travel time for client visits where clients reside in an Aboriginal community more than 60 kilometres return trip away and no public transit is available.
  - 9.2.2 Increase the current block fee (of \$180 for a half day of travel) as it is not sufficient to compensate counsel for the time spent away from their offices.
- 9.3 Implement a Rural Aboriginal Legal Services Tariff that provides higher compensation to encourage lawyers to provide legal aid services to Aboriginal people in regions where the lack of legal representation is acute.
- 9.4 Increase financial eligibility for Aboriginal clients.

**Recommendation 10: Expanded Aboriginal duty counsel**

- 10.1 Create an Expanded Aboriginal Duty Counsel Program that provides representation, advice, and assistance to Aboriginal clients on a regular basis within Aboriginal communities.

**Recommendation 11: Legal aid intake**

- 11.1 Make legal aid intake regularly available in Aboriginal settings and accessible to clients before court dates.
  - 11.1.1 Have existing intake workers shift where they do their work by providing regularly scheduled intake times at Friendship Centers, Band offices, or advocates' offices in advance of court dates;
  - 11.1.2 Contract with Native courtworkers or other organizations regionally to assist Aboriginal clients in completing applications electronically.
  - 11.1.3 Create a legal aid intake tariff that would allow legal aid lawyers to complete the legal aid application as part of their initial client interview.

**Recommendation 12: Criminal law representation**

- 12.1 Ensure that Aboriginal clients in the criminal justice system have access to duty counsel services at all courthouses in the province.
  - 12.1.1 Work with court registries or existing duty counsel to identify matters where more than one accused is facing charges and arrange to have additional duty counsel available for those matters.
- 12.2 Support and dedicate resources to restorative justice initiatives, including prevention and diversion programs and circle sentencing.
  - 12.2.1 Expand tariff eligibility to focus on a preventative and restorative approach in the context of criminal law.
  - 12.2.2 Expand tariff eligibility for first-time offenders.
- 12.3 Provide a greater degree of choice in legal representation to Aboriginal clients facing charges on hunting and fishing or other Aboriginal rights, title and treaty rights issues to retain lawyers with experience in Aboriginal law.

**Recommendation 13: Family law representation and duty counsel services.**

- 13.1 Dedicate resources toward restorative solutions, such as mediation or alternative dispute resolution, in an Aboriginal context.
  - 13.1.1 Involve Aboriginal communities, including houses/clans and extended families, in working together toward resolving family law disputes and dedicate resources to maintaining the broader concept of families reflected in Aboriginal cultures.
  - 13.1.2 Incorporate a tariff for participation in mediation and dispute resolution services (including formal and informal) within an Aboriginal context, in addition to existing alternative dispute resolution and mediation tariff items.
  - 13.1.3 Expand opportunities for diversion in domestic violence matters, which would provide legal support in seeking preventative and restorative solutions.
- 13.2 Expand tariff eligibility to include coverage for issues related to the removal of Aboriginal children from their home communities or territories.
- 13.3 Educate LSS staff, family law tariff lawyers, and the courts on cross-cultural issues related to Aboriginal family law.
- 13.4 Ensure that LSS family law services are advertised in Aboriginal communities.

**Recommendation 14: Child protection representation and duty counsel services.**

- 14.1 Increase and support the availability of preventative and restorative solutions, including alternative dispute resolution and mediation within an Aboriginal context.
  - 14.1.1 Involve Aboriginal communities, including houses/clans and extended families, in working together to find solutions in child protection matters, in an attempt to divert escalating levels of ministry involvement.
  - 14.1.2 Incorporate a tariff for participation in mediation and dispute resolution (including formal and informal) within an Aboriginal context, in addition to existing alternative dispute resolution and mediation tariff items.
  - 14.1.3 Provide ongoing legal support for preventative measures in child protection.
  - 14.1.4 Work with court registries or existing duty counsel to identify family law or child protection matters where both parents may need

independent legal advice and assistance and arrange to have additional duty counsel available for those matters.

- 14.2 Educate LSS staff, legal aid lawyers, and the courts on cross-cultural issues related to child protection and Aboriginal children, including training on legislation specific to Aboriginal children.
  - 14.2.1 Create, in partnership with Aboriginal child and family organizations or other Aboriginal organizations that work with Aboriginal families, a Guidebook for Aboriginal Child Protection matters for use by the courts and legal representation lawyers.
  - 14.2.2 Dedicate resources to ensure that child protection services reflect the fact that the definition of “best interests of the child” in an Aboriginal context must incorporate the child’s interest in maintaining a substantial and ongoing connection with his or her Aboriginal culture, extended family, community, and Nation.
- 14.3 Hire and train Aboriginal community legal workers to work with Aboriginal children and families within each LSS region.
- 14.4 Provide urgent advice services for Aboriginal child protection matters. This would include having a contact point at LSS after hours or in urgent situations (similar to the *Brydges* line for criminal law matters).
- 14.5 Teach self-advocacy skills to parents, families and Aboriginal communities so that Aboriginal people are empowered to advocate for themselves in the area of child protection.

# Sources

---

## Publications

- BC Representative for Children and Youth, Mary Ellen Turpel-Lafond, quoted in “*Too many native kids need help*” *The Province*, A6, March 7, 2007.
- BC Stats. *2001 Census Fast Facts: BC. Aboriginal Identity Population — Regional Distribution*. (Victoria: Ministry of Management Services, 2004).
- British Columbia Ministry of Education. “*Aboriginal Report 2005/06 — How Are We Doing?*” (Ministry of Education: Victoria, 2006).
- Buller, Marion. *A Review of Legal Services to Aboriginal People in British Columbia* (Vancouver: Legal Services Society, 1994).
- California Indian Legal Services, *California Judge’s Bench Guide: Indian Child Welfare Act* (California: California Indian Legal Services, 2000).
- Canadian Criminal Justice Association. *Aboriginal Peoples and the Criminal Justice System*. Bulletin. (Ottawa: Canadian Criminal Justice Association, 2000).
- Child and Youth Officer for British Columbia. “*Special Report: A Bridge to Adulthood: Maximizing the Independence of Youth in Care with Fetal Alcohol Spectrum Disorder*.” (Victoria: Child and Youth Officer for British Columbia, 2006).
- Correctional Investigator of Canada. “*Backgrounder: Aboriginal Inmates*” [Available online at: [www.oci-bec.ca/newsroom/bk-AR0506\\_e.asp](http://www.oci-bec.ca/newsroom/bk-AR0506_e.asp) (accessed 11/03/2007)].
- Correctional Investigator of Canada. “*Backgrounder: Aboriginal Inmates*” [Available online at: [www.oci-bec.ca/newsroom/bk-AR0506\\_e.asp](http://www.oci-bec.ca/newsroom/bk-AR0506_e.asp) (accessed 11/03/2007)].
- Crompton, Susan. “*Off-reserve Aboriginal Internet Users*” *Canadian Social Trends* (Winter 2004). Ottawa: Statistics Canada (Catalogue No. 11-008).
- Hughes, Ted. *BC Children and Youth Review — Keeping Aboriginal Children Safe and Well* (Victoria: April 2006).
- Indian and Northern Affairs Canada. *Basic Departmental Data 2004*. (Ottawa: Department of Indian and Northern Affairs, 2004).

## Sources

- Indian and Northern Affairs Canada. *Comparison of Socio-economic Conditions, 1996 and 2001: Registered Indians, Registered Indians living on reserve and the total population of Canada*. (Ottawa: Minister of Indian Affairs and Northern Development, 2005).
- Indian and Northern Affairs Canada. *Comparison of Socio-economic Conditions, 1996 and 2001: Registered Indians, Registered Indians living on reserve and the total population of Canada*. (Ottawa: Minister of Indian Affairs and Northern Development, 2005).
- Joanne St. Lewis. "Virtual Justice: Systemic Racism and the Canadian Legal Profession" in *Racial Equality in the Canadian Legal Profession* (Ottawa: Canadian Bar Association, 1999).
- Law Society of British Columbia. *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers* (Vancouver: Law Society of BC, 2000).
- Locke, Linda. *Struggle for Justice: Northern BC Aboriginal Needs Assessment Report* (Vancouver: Legal Services Society, 2005).
- Michael Jackson. *Locking Up Natives in Canada: a Report of the Committee of the Canadian Bar Association on Imprisonment and Release* (Ottawa: Canadian Bar Association, 1988).
- Representative for Children and Youth. "Fact sheet" (Victoria: Representative for Children and Youth, 2007).
- Royal Commission on Aboriginal Peoples. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*. (Ottawa: Royal Commission of Aboriginal Peoples, 1996).
- Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples*. Vol. 1: *Looking Forward, Looking Back*. (Ottawa: Royal Commission on Aboriginal Peoples, 1996).
- Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples*. Vol. 3: *Gathering Strength*. (Ottawa: Royal Commission on Aboriginal Peoples, 1996).
- Sarich, Anthony (Commissioner) *Report on the Cariboo-Chilcote Justice Inquiry* (Victoria: Ministry of Attorney General, 1993).
- Shaening and Associates, Inc, New Mexico Tribal-State Judicial Consortium and New Mexico Supreme Court's Court Improvement Project Task Force, *Preserving Native American Families in New Mexico: The Indian Child Welfare Act & The Adoption & Safe Families Act* (New Mexico: New Mexico Supreme Court's Court Improvement Project and New Mexico Tribal-State Judicial Consortium, 2005).
- Statistics Canada. *Aboriginal peoples of Canada: A demographic profile*. [Available online: [www12.statcan.ca/English/census01/Products/Analytic/companion/abor/Canada.cfm](http://www12.statcan.ca/English/census01/Products/Analytic/companion/abor/Canada.cfm) (Accessed: 11/03/2007)]



Union of BC. Indian Chiefs. *Calling Forth Our Future: Options for the Exercise of Indigenous Peoples' Authority in Child Welfare* (Vancouver: Union of BC. Indian Chiefs, 2002).

White, Lavina and Eva Jacobs. *Liberating Our Children Liberating Our Nations*. Report of the Aboriginal Committee Community Panel Family and Children's Services Legislation Review in British Columbia (Victoria: Aboriginal Committee Community Panel Family and Children's Services Legislation Review in British Columbia, 1992).

### Cases

*R. v. D.R.* (2000 BCSC 136).

*R. v. Gladue*, [1999] 1 S.C.R. 688.

*R. v. Williams*, [1998] 1 S.C.R. 1128.

### Legislation

*Indian Child Welfare Act*, 25 U.S.C. §§ 1901–63.