

Report of the Interim Legal Advocacy Director
December 11, 2017

1. Introduction

In my new role as the Interim Legal Advocacy Director, I have spent the last year being continually impressed with the dedication, skill, and hard work of the ALS Advocacy staff. Every day I have the opportunity to observe the difference ALS makes in the lives of our clients and how the Legal Clinic staff work as part of the ALS team to serve the community as a whole.

This year I have faced a steep learning curve as I try to maintain- and build on- the many past successes fostered by Christa Big Canoe. I am very grateful for the support, patience, and good humour of all ALS staff as I have peppered them with questions and sought their guidance. I would also like to express my sincere appreciation for the mentorship and assistance Jonathan Rudin has provided. Finally, I want to thank the Board for their help with my transition and more importantly, the generous donation of their time and expertise in support of ALS' success.

As can be seen from the breadth and depth of the work set out below, 2017 was a tremendously busy year. From a meeting with the Standing Senate Committee on Aboriginal Peoples about the ongoing sexism of the *Indian Act* to many hearings at the Landlord and Board protecting clients and their families from eviction to a keynote address at a vigil for Missing and Murdered Indigenous Women to submissions in Geneva about Canada's failure to honour its commitments under the Convention to Eliminate Racial Discrimination, the ALS Advocacy team did amazing work advancing the Vision and Mission of ALS.

2. Direct Services/Casework

ALS continued to provide excellent advocacy to financially eligible Indigenous Torontonians in areas including landlord and tenant law, social assistance, *Indian Act* registration, police complaints, human rights, and applications to the Criminal Injury Compensation Board.

Requests for services continued at the same levels as past years, but our system for tracking and managing our cases changed, making statistical comparisons difficult. The transition to the new LAO Clinic Information Management System (CIMS) was a major undertaking at the Legal Clinic this year. All staff received training and we are working together to find ways to use the system to best serve our clients. I would like to specifically acknowledge the leadership of Patricia Farr, senior paralegal, as she led the team through this sometimes challenging process. LAO has received a great deal of feedback (much of it pointing out the problems with the new system) and we are continuing to try to develop in-house solutions to the delays and inconsistencies in the program. I hope by next year the Legal Clinic will be able to provide robust statistics on the delivery of our front-line services.

Another example of change in our direct services is in the area of victim rights. In a new initiative funded by the Indigenous Justice Division of the Ministry of the Attorney General, the Advocacy team has been developing a more comprehensive response to clients who have survived violence and are turning to us for assistance. We have developed a new intake

procedure to ensure that victims of violence are identified and connected to supports more quickly. We are building on last year's research project to develop more trauma-informed processes and increase the capacity of all our staff. This work recognizes the reality that a great many of our clients have experienced the direct and inter-generational impacts of violence.

3. Systemic Advocacy and Litigation

Inquests

This year ALS represented/is representing 5 families at 4 mandatory inquests pursuant to the *Coroner's Act*. As part of developing our in-house advocacy skills, each lawyer at ALS was able to participate in at least one inquest. The inquests were held in Thunder Bay, Kenora, Toronto (upcoming), Sioux Lookout (upcoming.) Recommendations are focused on systemic changes to policing on and off reserves; mental and physical health services to inmates in provincial correctional facilities; and health services on reserves.

International Advocacy

On behalf of ALS, Professor Brenda Gunn, an expert on Indigenous Rights and International Law, attended the Committee on the Elimination of Racial Discrimination (CERD) for Canada's 21st-23rd Periodic Reports in Geneva. ALS' shadow report focused on access to justice; over-representation of Indigenous people in the criminal justice; murdered and missing Indigenous women, inequalities in education and healthcare; and ongoing sex discrimination in the *Indian Act*. Many of our concerns were reflected in the Committee's final "report card" back to Canada. Our report can be found here:http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_NGO_CAN_28100_E.pdf

Supreme Court Advocacy

Between May 2017 and April 2018 ALS acted or will act as an Intervener in five Supreme Court of Canada cases. To my knowledge this is a record number of interventions in a single year. As part of developing our in-house advocacy skills, each lawyer at ALS was able to participate in at least one SCC case. The cases are as follows:

1. *Boutilier v. Her Majesty the Queen*, which was about whether changes to the dangerous offender regime violate s. 7 of the *Charter*. Our factum is here: http://www.scc-csc.ca/WebDocuments-DocumentsWeb/37168/FM080_Intervener_Aboroginal-Legal-Services.pdf
2. *Ewert v. Her Majesty the Queen* which considered whether the use of current assessment tools with Aboriginal inmates is contrary to the *Corrections and Conditional Release Act* and the *Charter*. Our factum is here: <http://www.scc-csc.ca/WebDocuments-Documents>

3. *Canadian Human Rights Commission v. Attorney General of Canada* is about whether discrimination cases arising from the *Indian Act* can be heard at the federal Human Rights Tribunal. Our factum is here: http://www.scc-csc.ca/WebDocuments-DocumentsWeb/37208/FM060_Intervener_Aboriginal-Legal-Services.pdf
4. *Bird v. Her Majesty the Queen* which is about the role of *Gladue* and s. 7 of the *Charter* in Parole Board decisions about long-term offenders. Our factum is here: http://www.scc-csc.ca/WebDocuments-DocumentsWeb/37596/FM060_Intervener_Aboriginal-Legal-Services.pdf
5. *Boudreault v. Her Majesty the Queen* which considers whether a victim surcharge should be considered a mandatory minimum sentence. Our factum is not yet available online.

Indian Act reform

ALS had a victory in the *Indian Act* registration case of *Gehl v. Canada* (decision at: <https://www.canlii.org/en/on/onca/doc/2017/2017onca319/2017onca319.html?resultIndex> and press release at <http://www.aboriginallegal.ca/assets/als-gehl-press-release-april-20-2017.pdf>) which ALS has been working on for 22 years. Building on this success, ALS advocated for amendments to the *Indian Act*. Part of that work included Staff Lawyer Emilie Lahaie making a presentation to the Standing Senate Committee on Aboriginal Peoples (transcript here: <https://www.sencanada.ca/en/Content/Sen/Committee/421/APPA/22ev-53323-e>)

Other strategic litigation

ALS also participated in two s. 15 (equality rights) *Charter* challenges to sections of the *Criminal Code* which impose mandatory minimums and prohibit access to rehabilitative sentences such as Curative Discharges and Conditional Sentences. In both cases ALS (represented by Jonathan Rudin and myself) called expert evidence about the disproportionate impact of the impugned provisions on Indigenous offenders. In one case (*R. v. Sharma*) we are awaiting a decision from the Superior Court and the other (*R. v. Daybutch*) the matter was returned to the Ontario Court of Justice for a re-hearing after the Crown's successful appeal.

ALS is working with partners in two other legal cases aimed at policy reform. First, ALS is intervening in a case in which a former inmate is suing the federal government for failing to provide a needle exchange in prison. The case is progressing slowly and involves both political and legal advocacy, as set out here: <http://www.prisonhealthnow.ca/index.php#update>

ALS also announced it would intervene in a *Charter* challenge to Ontario's anti-panhandling law which was launched this year by the Fair Change Legal Clinic. Senior Staff Lawyer Jessica Wolfe spoke at the press conference. This article discusses the case: <http://www.cbc.ca/news/canada/toronto/ontario-safe-streets-act-challenged-panhandling-1.4173214>

National Inquiry

ALS was granted standing at the National Inquiry into Missing and Murdered Indigenous Women and Girls. ALS has created a Community Advisory group to guide our involvement at the Inquiry.

4. Developing/fostering partnerships

The ALS Advocacy team did a great deal of work developing and fostering partnerships this year, including the following:

- ALS continued our work as a community partners in a SSGRC-funded research project entitled the *Prison Transparency Project* focused on human rights violations experienced by inmates.
- ALS staff volunteered as mentors in Level's Indigenous Youth Outreach Program ("IYOP", formerly "Dare to Dream").
- Staff Lawyer Caitlyn Kasper was the keynote speaker at a Sisters in Spirit Annual Vigil.
- ALS continues as a partner with St. Michael's Hospital Academic Family Health Team, St. Michael's Hospital, ARCH, the HIV & Aids Legal Clinic of Ontario (HALCO), and Neighborhood Legal Services on the Health Justice Initiative.
- ALS participated in consultations and round tables:
 - with Marco Mendicino, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada and Bill Blair, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada;
 - about a proposed community court in downtown Toronto;
 - with Justice Tulloch in his review of police oversight;
 - with other stakeholders to encourage the adoption of Justice Tulloch's recommendations;
 - with The Ministry of Community Safety and Correctional Services concerning corrections reform and modernization; and
 - with Justice Tulloch in his review of racial profiling.

5. Representing the Indigenous Community and providing training for other professionals

- ALS Legal Clinic staff provided training to the following audiences: Toronto Legal Clinic Training (Caitlyn Kasper was an opening speaker), Justice of the Peace Annual Training Conference (twice), a Crown Counsel training session on Coroner's Inquests, the Office of the Chief Coroner Training for Coroners; the Yukon Law Society; the Law Union of Ontario (keynote); Toronto Police Services; and PLAN International.

- ALS presented in the following academic programs: University of Windsor; University of Toronto Law School; Osgoode Hall Law School; University of Toronto Criminology Program; Ryerson University Social Work Program; and George Brown College.
- ALS co-presented a Continuing Legal Education session in November 2017 with a number of other clinic lawyers about how to effectively make submissions to the United Nations
- Staff Lawyer Caitlyn Kasper participated in the two-day “Canada’s Drug Futures Forum”
- ALS continues to participate in an advisory capacity on the following:
 - Practice Advisory Committee, Criminal Injuries Compensation Board, Social Justice Tribunals Ontario
 - LAO Aboriginal Issues Advisory Group
 - LAO Prison Law Advisory Group
 - LAO Gladue Test Case Committee
 - Access As Justice Project: Enhancing Relationships Between Racialized Communities and Administrative Tribunals in Ontario
 - Toronto Regional Bail Steering Committee
 - Ontario Human Rights Commission Community Advisory Board
 - Not Okay Project: Breaking Down Barriers to Criminal Justice for Women who Experience Sexual Assault coordinated by the Barbra Schlifer Commemorative Clinic
 - Due Justice for All Project Steering Committee
 - The Toronto Police Service Police and Community Engagement Review (PACER)
 - Toronto Health Public Policy Community Dialogue Steering Committee
- Lawyers from ALS were featured in the Toronto Star, on CBC Radio, CBC Television, APTN, in The Globe and Mail, and the Thunder Bay Chronicle Journal

6. Public Legal Education

Staff from ALS presented Public Legal Education on various topics to the following audiences:

- Toronto high schools
- Staff and clients of NaMeRes (Native Men’s Residence)
- Staff and clients of the Native Women’s Resource Center
- Staff and clients of 2 Spirited People of the First Nations

7. Acknowledgements

On behalf of the ALS Advocacy team I would like to thank our funders who make our work possible. They are:

- Legal Aid Ontario;
- Miziwe Biik Aboriginal Employment and Training;
- Ontario Ministry of the Attorney General;

- Law Foundation of Ontario; and
- Individual donors.

Finally, ALS has greatly benefited from the time and energy of a number of students over the last year who chose to spend their placement hours working at ALS. Their contributions, along with those of our many volunteers, help keep ALS the busy, vibrant, effective organization that it is.

Chi miigwetch,
Emily Hill
Interim Legal Advocacy Director