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Chair

Mr. Anthony Housefather

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•(1535)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): I'm going to call this meeting to order. It is a great pleasure to convene this meeting of the Standing Committee on Justice and Human Rights.

[Translation]

It is also a great pleasure today to welcome individuals who are replacing some permanent members of the committee, including Sylvie Boucher.

Welcome, Mrs. Boucher.

Mrs. Sylvie Boucher (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, CPC): Thank you. I am pleased to be here today.

The Chair: Excellent.

[English]

We also have Jamie Schmale. He is a frequent visitor to this committee and always gives excellent comments when he's here.

Welcome, Mr. Schmale.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): You're too kind, Mr. Chair. Thank you.

The Chair: We're also welcoming Darshan Singh Kang. He is here for the first time.

Welcome, Mr. Kang. It's a pleasure to have you.

Mr. Darshan Singh Kang (Calgary Skyview, Lib.): Thanks for having me, Mr. Chair.

The Chair: Today we are welcoming witnesses from Legal Aid Ontario—

Oh, sorry. Go ahead, Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): We have a new parliamentary secretary here.

The Chair: You're right. I was forgetting. I thought he was here at our last meeting, or I would have said something. But he wasn't. So I'd like to welcome Mr. Marco Mendicino, our new Parliamentary Secretary to the Minister of Justice and Attorney General.

Voices: Hear, hear!

[Translation]

Mr. Marco Mendicino (Eglinton—Lawrence, Lib.): Thank you, Mr. Chair, for welcoming me.

[English]

Thank you very much to my honourable colleague for mentioning it. I appreciate it. It's nice to see you, sir.

The Chair: Of course, I don't want to introduce Marco without again acknowledging the wonderful contribution of Bill Blair, the other Parliamentary Secretary to the Minister of Justice and Attorney General.

Voices: Hear, hear!

Mr. Bill Blair (Scarborough Southwest, Lib.): Thank you.

I appreciate that my silence is always appreciated.

The Chair: Now that I've done exactly what a typical politician does and inent praise everywhere—

Mr. Marco Mendicino: What's the old adage about walking softly and...?

The Chair: Exactly.

I'm going to stop giving effusive praise to everybody and now introduce our witnesses for today.

We are very pleased to have, from Legal Aid Ontario, two Daves. We have David Field, the president and chief executive officer. Welcome, Mr. Field. We also have David McKillop, the vice-president. Welcome, Mr. McKillop.

Mr. David McKillop (Vice-President, Legal Aid Ontario): Thank you.

The Chair: As we had discussed, we're going to start with your statement.

By the way, just so you're aware, the brief arrived on Monday, and so the committee was able to have only certain portions of it translated. The whole brief will eventually be translated and given to the committee.

The floor is yours, gentlemen.

Mr. David Field (President and Chief Executive Officer, Legal Aid Ontario): Thank you very much for inviting us to appear before you today to talk about the very important issue of access to legal aid. I would like to address not only the challenges, but also the opportunities that exist in this area.

Legal Aid Ontario, or LAO, is Canada's largest legal aid plan. It provides services to over 4,000 low-income people in the province of Ontario every day through a mixed-model system that includes private bar, staff, telephone-based, and online services. LAO has a budget of approximately \$450 million and is also responsible for funding and oversight of 76 independent legal aid clinics across the province.

In Ontario we have been fortunate to be able to expand eligibility thanks to a generous investment by the provincial government. The financial eligibility thresholds had not been adjusted for two decades in Ontario when an independent study commissioned by LAO established that one million fewer low-income Ontarians were eligible for a legal aid certificate in 2011 than had been eligible in 1996. The gap population of low-income Ontarians was found to be more likely made up of families, children, the working poor, indigenous people, and members of visible minority groups.

With this recent increase in provincial funding, LAO has been able to implement three consecutive 6% increases to financial eligibility since 2014 as part of a long-term plan to raise eligibility thresholds to the 2011 low-income measure over eight to ten years. We have also been able to expand the range of services that are eligible for legal aid coverage. We think this is extremely important and we support the idea of establishing national benchmarks for the provision of legal aid services in the future.

We also think there is more that can be done to expand access to legal aid and access to justice. For example, Legal Aid Ontario has experience in developing and implementing vulnerable client strategies that improve and prioritize services for vulnerable and marginalized groups. We have developed aboriginal justice and mental health strategies and we will soon be introducing a domestic violence strategy. A racialized community strategy is also in development.

Our focus is on groups that are disproportionately represented in the criminal justice, child protection, and correctional systems and on groups that face particular challenges and barriers due to marginalization, or in the case of victims of violence, fear for their safety. We believe that the federal government should continue to encourage legal aid services that expand access to justice for vulnerable and marginalized groups.

The use of technology can also increase effectiveness and efficiency, and it can also expand access to legal aid services. Legal Aid Ontario has used technology in a variety of ways, from providing telephone summary legal advice, to introducing an electronic worksheet that allows all services provided to a client by duty counsel to be captured in a single record, meaning that the client has to tell their story only once. To broaden and improve access, reduce barriers, and simplify the client's experience, all of these things are important and are a useful use of technology. In the future, LAO anticipates moving to expanded chat and electronic services.

The federal government's support for more effective use of technology by legal aid plans would be a positive contribution that could help eliminate duplication of work and support more consistency and uniformity in the ability of plans across the country to use technology.

Another opportunity of federal government support lies in the areas of data collection and outcomes reporting. Legal aid plans across Canada are just starting to develop capacity in this area. Because LAO has a aboriginal self-identification question, we now know that 15% of legal aid certificates in Ontario are issued to clients who self identify as aboriginal. Knowing more information about our clients enables us to improve our services.

LAO is like other legal aid plans in that criminal law services make up its largest single area of service delivery by area of law. The financial demand that criminal law services places on legal aid plans leaves fewer resources available for providing services in other areas of client need such as family law. We think that the federal government can be of assistance in reducing demand for criminal legal aid services and the disproportionate impact and involvement in the criminal justice system has on vulnerable and marginalized groups by continuing to focus on initiatives and reforms aimed at reducing criminal justice system delay and addressing the over-representation of indigenous Canadians and the criminalization of persons with mental illnesses.

Specifically, LAO would like to recommend that the federal government continue to pursue sentencing reforms to reverse the legislative trend over the last decade. There is an opportunity to revisit mandatory minimum sentences, to increase the availability of conditional sentences, and to promote alternatives to incarceration for less serious offences and less serious offenders.

● (1540)

Problems with the bail and remand system have been well publicized of late. In Ontario, the remand population in provincial institutions is larger than the population of persons serving a sentence.

LAO has developed a bail strategy and is playing a key role in the province's new bail initiatives. We would like to see the federal government develop a new legislative framework for bail and remand.

It is worth noting that the introduction in 2003 of a new legislative framework, the Youth Criminal Justice Act, to address the over-criminalization of young people, provided and proved to be very successful in reducing youth incarceration.

Refugee claimants fleeing persecution and torture and other cruel treatment are among the most vulnerable people in Canada. World events, including the recent developments, are changing the landscape and narrowing the options for these vulnerable people. Only this week the federal government has reaffirmed Canada's commitment to welcome refugees.

In the first two quarters of this fiscal year, LAO experienced a 45% increase in refugee applications for legal services compared to last year. That number is only expected to grow. LAO has been successful in obtaining additional in-year funding from the federal government to assist with this year's pressures, and is grateful for this assistance, but we have serious concerns about the future. We ask that the federal government increase its contribution to refugee services and ensure equal and adequate access to justice as the demands for refugee legal aid services continue to grow. We believe there must be a mechanism for adjusting the federal contribution to respond to fluctuations and increasing demand.

LAO also sees opportunities for the federal government to contribute by supporting greater collaboration among all refugee system partners by supporting the addition of countries to the Immigration and Refugee Board's expedited country list—as claims that proceed by being expedited are less costly for legal aid—and by supporting the regularization of the status of over 3,000 legacy refugee claimants who have endured long delays in having their claims addressed.

Finally, the problem in accessing the family justice system is well known. Improving and expanding access to legal aid family law services has been an area of focus for Legal Aid Ontario. We offer a number of new services such as mediation and information and advice services that emphasize early intervention and a greater focus on resolution. We would like to recommend the federal funding assistance for family law be specifically targeted to expand access to family law services and reduce the number of self-represented litigants in the family justice system, with an emphasis on supporting front-end early intervention services.

Again, I would like to thank you for the opportunity to appear before you and to provide you with these ideas for ways in which the federal government can increase access to legal aid and access to justice.

I welcome any questions you may have.

The Chair: Thank you very much, Mr. Field.

We'll now go to questions, and we'll start with Mr. Nicholson.

Hon. Rob Nicholson: Thank you very much.

Thank you for your presentation here today.

On the last issue you mentioned having direct financing or contributions from the federal government with respect to family law services. Is this something that would have the support of the Province of Ontario?

Mr. David Field: I think that's a complicated question.

There's a lot of debate between the federal and provincial governments on whether the federal government contributes to family law, because it's mixed in with a broader transfer payment.

Hon. Rob Nicholson: The social transfer, yes.

Mr. David Field: I think this is something we have to consider discussing with the province. We certainly feel that it would be helpful if there were some way we could allocate family resources or investment, but the province may have a different point of view than my own on this issue.

● (1545)

Hon. Rob Nicholson: A lot of times the provinces do have a different point of view. They want the cheque, but they don't want the federal government to be too specific about where it goes. It's really a two-pronged thing. You have to have both sides agreeing, because very often the province says, "Keep sending us bigger cheques and we'll decide where it's going to go."

You said in your testimony as well that you've seen a 45% increase in refugee legal aid services. Are you seeing more people from Mexico now claiming refugee status? I appreciate that it has only been a couple of months since they've had the opportunity to come into the country without a visa, but have you seen any increase in that area?

Mr. David Field: I think it's pretty early to tell. I think we have seen some increases. I wouldn't say it's fairly significant as of yet, but certainly that is another risk that's on the horizon for us as a service delivery organization.

Hon. Rob Nicholson: Who then comprises the 45% increase? Is it people from Syria, the Middle East?

Mr. David Field: Our largest source of refugee applicants is Nigeria, and second is China. The changes in the Middle East, and certainly the uncertainty that is present there, could potentially add again to the pressures that we're seeing. There's certainly a lot of risk for us as an organization that the demand for our services will continue to grow.

Hon. Rob Nicholson: Do you get together with your other provincial or territorial counterparts, and are there better examples of how the allocation of funding takes place, in your opinion, than what we experience here in Ontario?

Mr. David Field: I think if you look at the funding that other legal aid plans receive, it's significantly less than what we receive. For example, none of the other provinces have community legal aid clinics. We have 76. We spend about \$80 million on community clinics. None of the other provinces have similar services.

We have the Association of Legal Aid Plans. We meet on a regular basis to compare notes. I think many of our colleagues are under financial pressure from the provinces to save resources. They look at us with some envy in that we just received a fairly significant increase in an investment for legal and financial eligibility.

Hon. Rob Nicholson: Will this increase that you've received help alleviate or assist you in the area of family law services? What is putting the pressure on that? Is it the increase in refugee claimants, or is it just overall budgetary constraints and difficulties?

Mr. David Field: The funds that we were provided with were specifically targeted to increasing our financial eligibility. If we didn't spend the money on financial eligibility, then those funds had to be returned to the province. It didn't really help us with our ongoing operating pressures, and it does help to a certain extent with refugees, but not.... Many of the refugee clients have no income, and it hasn't really had an impact in that area. We do see an increase in refugee claims, but I don't think it's really related to the financial eligibility issues at all.

Hon. Rob Nicholson: Fair enough.

Those additional services, the new eligible services, are they part of what you're trying to do in the area of family law, in mediation and other things? Is that what you're specifically referring to?

Mr. David Field: In addition to the funds we receive for legal and financial eligibility, a number of years ago the province committed \$30 million over three years to address issues related specifically to family law. We did expand our mediation. We're trying to invest our services in areas in family law that take the cases out of the court system and speed things up so it doesn't put pressure on other aspects of the court system.

Hon. Rob Nicholson: That's good.

Thank you very much, Mr. Chairman.

[Translation]

The Chair: There's one minute left. Do you want to ask a question, Mrs. Boucher?

Mrs. Sylvie Boucher: Yes. Thank you, Mr. Chair.

I am new here, since I'm replacing a member of the committee today.

Mr. Field, to my knowledge, legal aid comes under provincial jurisdiction. Have you estimated the amount that you would like to receive from the federal government to help you? Could you give us an amount or a percentage?

• (1550)

[English]

Do you understand the question?

Mr. David Field: Yes. I'm weighing my answer.

The federal government has made a commitment to increase criminal legal aid services. The thing is, it doesn't come anywhere close to a 50/50 split between the Province of Ontario and the federal government. I think in the past that was the target. If you look at how much money we're spending—\$440 million, \$55 million for criminal and another \$10 million for refugees—you do the math, and it's not a 50/50 split. Anything would be great.

The Chair: You said that very well. It would be great.

Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): Thank you so much.

Perhaps I misheard, but you said there is reducing demand for criminal justice services for vulnerable groups. I was wondering if you could expand on that.

Mr. David Field: Increasing?

Mr. Chris Bittle: Reducing demand for—

Mr. David Field: Oh, yes.

If you look at our stats, there is an overrepresentation of marginalized groups within the criminal justice system. How can we reduce that? We have an overrepresentation of aboriginal clients. The aboriginal population in Ontario is 5%; 15% of our clients self-identified as aboriginal. How do we develop strategies to address some of the unique challenges that people from marginalized parts of society have so we can reduce their overrepresentation in the criminal justice system?

Mr. Chris Bittle: From a judicial reform or Criminal Code reform standpoint, is there a role for the federal government? What do you see as the federal government's role in achieving that objective?

Mr. David Field: One of the things it started to do is to look at issues related to Gladue. It looked at issues related to sentencing and what other influences and demands for services we could identify, such as issues related to bail. One of the challenges we have is that clients get into the system and then they accelerate and come back again and again. How do we stop that treadmill of charges in the system?

I think it's not just a federal issue. I think it's an issue for all levels of government to consider what we can do in the area of improving access to justice for clients who are marginalized. There are mental health issues as well, and an overrepresentation in the system of clients who have mental illness. Those are areas that I think the federal government and the provincial government should be looking at. If we can address these issues and keep people out of the criminal justice system, it does, I think, benefit everyone.

Mr. Chris Bittle: You mentioned mental health. My understanding is that a third of LAO clients have a mental health issue. There are many diversion programs, bail programs, etc., but they're localized and are different at various courthouses. Would a standardized approach work? If that's the case, how would you see that rolling out?

Mr. David Field: David, would you like to answer?

Mr. David McKillop: Sure.

There is very much a patchwork of programs available for incarcerated individuals in terms of mental health. Some of it is on an institution-by-institution basis. I know that the jurisdiction of this room is not for provincial institutions, but there are almost no programs for mental health or addictions at the provincial level. We're talking about federal institutions where the sentence is two years or more. There is very much a patchwork of programs there, and I think we would be very much in support of seeing national standards with that type of programming.

Mr. Chris Bittle: Because I know my Conservative friends might get a little upset at the talk of reducing mandatory minimum sentences, can you explain why LAO is calling for a reduction of those types of sentences? I think we acknowledge on our side that mandatory minimums can be good, especially for violent offences, but why is LAO calling for a reduction?

Mr. David Field: I think one of the things it does is cause a churn in the system. It encourages, or really forces, people to go to trial when perhaps if there were not a mandatory minimum, they wouldn't need to do that. It causes delays in the system and compounds some of the other challenges we have in terms of administration of justice.

• (1555)

Mr. Chris Bittle: Just to rephrase it, it limits the ability to settle, and the vast majority of cases in our criminal justice system settle without a trial.

Mr. David Field: That's right.

Mr. Chris Bittle: Do you know the percentage?

Mr. David Field: It's 93%, or in that neighbourhood.

Mr. Chris Bittle: Okay.

The Chair: There is still two more minutes on the Liberal side.

Mr. Chris Bittle: Oh, I can keep going.

The Chair: Yes, you have two more minutes, sir.

Mr. Chris Bittle: I can still keep talking. I'm sorry, you nodded as if I—

The Chair: I nodded at the sageness of your words, as opposed to —

Voices: Oh, oh!

Mr. Chris Bittle: Okay. I appreciate that.

I was wondering also if you could expand on bail and what the issues are there. Why are there individuals who keep coming back? Why is that a significant issue for individuals and for LAO?

Mr. David McKillop: In terms of understanding who our clients are, legal aid clients are the most marginalized members of society. They're very poor and, again, they suffer from mental health and addiction issues.

Once they arrive in the courts, they are asked to provide sureties to the court. Sureties are generally upstanding members of the community who are going to ensure that the person comes back for subsequent court appearances. A lot of people who live on the streets or are very marginalized don't hang around with those types of people. They don't have what would be considered an acceptable surety for the courts, but this insistence on sureties still happens. There are also the conditions that get placed on some of these individuals. You hear them telling alcoholics that they shouldn't be drinking alcohol, and it just sets them up to fail. We see a huge amount of court time, police resources, and legal aid resources going into defending charges of breach of these conditions.

I think there needs to be a wholesale review of the bail system to ensure that for most non-violent offences there is not a need to incarcerate these individuals and that we reserve remand for the the most violent of offenders.

Mr. Chris Bittle: I have one very short question, and perhaps it's not fair. Do you know the percentage of court time at the provincial level, or remand court, spent on breach of condition-type cases?

Mr. David McKillop: I do not know that number precisely. My best guess is that probably upwards of around 15% of court resources go to administration of justice charges.

Mr. Chris Bittle: Thank you.

The Chair: Thank you very much.

Mr. MacGregor.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you very much, Mr. Chair.

Mr. Field and Mr. McKillop, thank you very much for appearing before the committee today.

I want to visit specifically the issue of civil legal aid. On December 13 last year, we heard testimony from the Canadian Bar Association about the Canada social transfer and how there tends to be finger pointing between the federal government and the provincial government. That can be true for a lot of different areas. The federal government can say that they do fund civil legal aid, that it's in the Canada social transfer. Then the provinces can say that, no, they don't, because we use that money for other stuff.

We have testimony from colleagues of yours from other provinces, specifically Alberta, who appeared before the Senate committee. They've noted that the announcement of new funding for legal aid programs doesn't really do all that much.

What I want is a little bit more testimony from you on the Canada social transfer and to know how we should prioritize funding for civil legal aid. Do you find, as in Ontario's example, it sometimes gets lost in the mess?

Mr. David Field: That's a tricky question, given that our political masters will be paying very close attention to what we're saying today.

I think it does. For us, as a recipient of provincial funding, we really don't get into the middle of the debate about federal-provincial transfers and the investments the federal government makes in civil legal aid. I don't know how it's measured by the province and how that's taken into consideration when they're determining the transfer payment we receive as an agency. I don't think I can make a comment that would be of any help in trying to address this issue.

It would be nice if we could identify more specifically funds that would come from the federal government for legal aid, but I think there are a lot of other political issues that need to be taken into consideration as part of that discussion.

• (1600)

Mr. Alistair MacGregor: Mr. McKillop.

Mr. David McKillop: My own view on that is that the Province of Ontario has a criminal justice agreement with the federal government. That amount of investment from the federal government is specifically tracked through our performance measures that attach to it. We can say exactly what that money buys for the federal government. We can do the same on the refugee file. There is an agreement in place, and we know how much money specifically comes from the federal government.

We don't have that luxury with the Canada social transfer. In my view, we are unable to say what the federal government would get for its money. There is no specific amount. There are no performance measures attached to that amount of money. You're right; it's lost in a much larger transfer. I think that having it separate would give us the ability to provide a much better performance measure in reporting on how family law services are being delivered and at what cost.

Mr. Alistair MacGregor: We've had representatives from British Columbia who noted that 30% to 40% of litigants in civil law cases go unrepresented. We know that a lot of the people appearing are women. We've heard from officials at the Department of Justice that they have not conducted a gender-based analysis of legal aid funding. Do you think that's necessary in order to piece out some of the inequalities that exist?

Mr. David McKillop: Absolutely. I think the more we know about our clients, the more it allows us to better tailor services toward them. Right now we ask all of our clients to self identify as indigenous. That gives us some of the statistics that Mr. Field quoted about the number of indigenous certificates we issue, and we certainly can do that on a male/female basis.

We have actually just embarked on an initiative that will allow for the collection of race-based data from Ontario legal aid services. Again, we can track the clients we're trying to assist the most, the most vulnerable clients, who are overrepresented, for instance, in the criminal justice system. Knowing as much as we can about our clients is something that we would be very much in favour of.

Mr. Alistair MacGregor: We've heard the figure that for every dollar invested in legal aid, you can save six to seven dollars in other areas. Can you tell me a bit about what some of the cascading effects are, in Ontario specifically, when clients don't have adequate legal representation? Are there specific areas where you've noticed ripple effects from that in Ontario society and social programs?

Mr. David Field: One of the issues is the long-term effects of having a criminal record and what that does to your ability to work and to get an education. We don't have the statistics to indicate the long-term impact of legal aid in that regard. I think there are lots of examples where keeping someone out of the system.... Diversion is a good example. If we can keep someone from getting a criminal record, from having a charge against them, and keep that initial group of people out of the system, it has a long-term impact.

It would be interesting to see what happens with the drop in the youth criminal justice charges, for example. Over the last four or five years, we've seen a fairly significant drop in the number of charges, the number of certificates that we issue for youth, in terms of criminal.... What is the long-term impact of that? Does that mean these young people never get into the criminal justice system? If that's the case, it will have a long-term, beneficial impact on

everyone. It's the kind of thing we'll be tracking over the course of the next little while.

Mr. Alistair MacGregor: Thank you.

The Chair: Thank you very much.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Mr. Chair.

Thank you, gentlemen, for coming in and for your testimony today.

I want to start by asking, how is the effectiveness of the legal aid plan in Ontario measured? Are there annual reports that we can refer to as to the effectiveness of the process of service delivery?

Mr. David Field: We have a number of performance measures. We table an annual report in the legislature that is required of us as an agency of the province. We submit a business plan to the attorney general every year, identifying what our plans are for the future and indicating what we think are important performance measures. Certainly we have efficiency measures. We look at the cost-per-assist, for example. Decision-making is something that we spend a lot of time on, making sure we make fast decisions so that our processes don't slow down the administration of justice.

We do client satisfaction surveys, and we just expanded those. We used to do those by mail, which, today, is not appropriate. So we've now started to collect client satisfaction surveys and survey information online. We've seen quite a difference in the satisfaction levels. It's the kind of thing we need to continue to look at because we have clients who have identified some challenges with the quality of the legal services they're receiving. This is again something we need to do as an organization to make sure that the lawyers who are providing our services are providing appropriate services.

We do spend a lot of time and energy looking at various ways of addressing issues related to the effectiveness of our services.

• (1605)

Ms. Iqra Khalid: Based on all the measures that you're taking, have you identified any that you are working on or that you want to flag?

Mr. David Field: One of the things we asked clients is what they would do if legal aid services were not available to them. Many of them have no idea what they would do. We can provide you with the survey results. One of the things they do say is that they have to self-represent in the system. If legal aid weren't there to represent a client, it would certainly have a very significant impact on the speed with which justice could be administered in Canada.

Ms. Iqra Khalid: Thank you. I want to change tracks a bit.

In your brief, under refugee law, you make some recommendations. You call on the federal government to support greater collaboration among all refugee system partners, including the Immigration and Refugee Board, Immigration, Refugees and Citizenship Canada, the Federal Court, and the Department of Justice.

We understand that refugee law and immigration law is really clogging up the system. Do you have any examples or ideas for what kind of collaboration can occur, perhaps a specific policy that is troublesome, that is creating some of these backlogs?

Mr. David Field: One of the ones that we referenced was expedited reviews. Do we need to have a hearing? There are certain countries where there clearly are issues related to human rights violations and where clients are at risk. Do we need to go through the same lengthy process?

For us, the difference between an expedited case that doesn't include a hearing and one that does is that it costs us, essentially, twice as much. I think there are examples where we could work with the federal government on what information is required to make a decision and how we could speed that up so that clients are not waiting around. That's something that not just legal aid could participate in, but many of the other players in the system would also welcome a discussion of that nature.

David, maybe you have other things to add?

Mr. David McKillop: I certainly agree with what Mr. Field said.

Right now there are only three countries on the planet that are considered "expedites", and those are Syria, Iraq, and Eritrea. For instance, Syria is not on the expedite list, so any unsponsored refugee claimant has to go through a full refugee hearing. It's a very expensive and lengthy process, and it's becoming lengthier.

The new refugee determination process that was introduced in 2012 has very tight timelines associated with it as to when a hearing must take place, and that system is already developing its own backlog. We still have what are called the "legacy" claimants who are from the previous refugee determination system. There are about 3,000 of them in Ontario. Nationally I think it's closer to about 5,000 or so. Both systems now have their own unique back issues that they need to resolve.

Could refugee determination be more of an administrative process? Does a refugee claimant from Syria really need to go through a full hearing process, or can a board member from the IRB, the Immigration and Refugee Board, have a look at the paper file and determine that on its face it meets what could be considered a proper refugee claim and adjudicate it accordingly without the need of a hearing?

Ms. Iqra Khalid: Thank you. Do I have time for...?

• (1610)

The Chair: Yes, you do.

Ms. Iqra Khalid: I'm changing tack a little bit again.

Talking a little bit more about family law, I had a very interesting conversation with some of my colleagues this morning with the Law Society of Upper Canada with respect to a pilot project in Ontario, the unified family court.

Do you have any feedback on that process? Do you support it? Do you have any criticisms of it?

Mr. David McKillop: At Legal Aid Ontario we do support the unified family courts, but I say that as someone who is probably not heavily invested in that.

In Ontario right now, family matters are adjudicated in both the provincial courts and the superior courts. The provincial courts are where the vast majority of our clients adjudicate their family law issues. It's the superior courts that adjudicate property issues and divorce, and typically we don't cover either. Our clients, being as vulnerable as they are, don't have property worth fighting over. They might be fighting over small property items, but generally we're not talking about anything of any great value.

As I said, our clients are predominantly in the provincial courts. We also do not cover divorce. This is something we eliminated in the early 1990s as a cost-saving measure. We cover custody support, access, and those types of things, but that final hurdle to end the marriage is something we do not cover.

The Chair: Thank you very much.

Just as a follow-up to Ms. Khalid, regarding the expedited country list to which you recommend adding countries, who has the power to do that? Is it the Immigration and Refugee Board or is it the federal government?

Mr. David McKillop: I think the board is entitled to add countries to the expedite list, although I wouldn't want to necessarily be quoted on that.

The Chair: I just want to know if it's something that's within our power to recommend or it's really not, but thank you.

We have some extra time, but we don't have time to do a whole second round, so we're going to do short "snappers". For whoever has a short question with a relatively short answer, we'll do that. They can just put up a hand.

Madame Boucher.

[Translation]

Mrs. Sylvie Boucher: Thank you, Mr. Chair.

I will ask my question in French.

I'm from Quebec. Do all the legal aid plans cover the same type of legal measures across the country. Do you all have the same goals? The English word came to mind.

The Chair: You mean the same goals.

Mrs. Sylvie Boucher: Yes.

Do the provinces have the same goals or does this vary from province to province?

[English]

Mr. David Field: I think there's a fairly significant amount of funding and that it really drives what legal aid plans across Canada can do.

For example, we spend a significant amount of our resources on family; other jurisdictions don't. British Columbia does not provide the same level of services, for example. It does vary. One of the challenges for the Association of Legal Aid Plans is to compare which services are provided across Canada. As has been indicated, there's a patchwork of services across the country, which vary from province to province.

I do think our plan provides a much more significant amount of resources, or the Province of Ontario provides a much more significant amount of funding and resources, to legal aid than any other province does.

The Chair: Mr. McKillop, you wanted to add something?

Mr. David McKillop: Yes, thank you.

Just to give a further example, only six jurisdictions in the country provide refugee legal aid. The other provinces and territories provide no refugee legal aid services whatsoever.

Mr. Field spoke about the patchwork of services for the family. Many of the criminal law services are constitutionally protected, so when legal aid plans are looking to save money or cut back services, they naturally go to their family programs because there's very little in that sphere, beyond the child protection services, that is not constitutionally protected. That has resulted in a real patchwork of services across the province.

Mr. Field mentioned earlier the community legal clinic system in Ontario. We are the only jurisdiction in the country that provides a community legal clinic system. The other 12 jurisdictions do not.

[Translation]

The Chair: Thank you very much.

Mr. Boissonnault, you have the floor.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Field and Mr. McKillop, for being with us today.

[English]

I have two quick questions. One is, what are you seeing in terms of representation of members of the LGBTQ2 community, that is, two-spirited trans folk who are living rough because of troubling circumstances and then getting in trouble with the law?

• (1615)

[Translation]

I'd also like to know what statistics you have on services in French.

I know that the Government of Ontario is focusing a lot on the rights of francophones outside Quebec.

[English]

I'm interested in knowing what your official languages or francophone client load is like.

Mr. David Field: We're obligated to provide services under the French Language Services Act of Ontario. We have, for example, a clinic in Vanier that's entirely francophone. We have staff who are francophones and provide services in French. Clients who phone for

our services are able to receive services in French, as is required by law in Ontario.

One of the challenges we have is that sometimes we have service providers who can speak French but who cannot necessarily provide legal services in French, especially in smaller communities in northern Ontario. In Sudbury we have some support, but when you get into smaller communities in the north, the northeast particularly, there is a challenge for us as an organization.

We work very closely with the Office of Francophone Affairs, and we provide training for lawyers who are interested in doing work for and supporting francophone clients. We spend time seeking feedback from stakeholders in the francophone community about what we can do better. We have a positive relationship with the francophone community, but I think there's more we could be doing.

The Chair: Mr. McKillop.

Mr. David McKillop: One of the 76 clinics we fund in Ontario is called the HIV and AIDS Legal Clinic Ontario. It is funded by my organization.

We also see a lot of work with that community on the refugee side. The number one source country for refugee claims in Ontario is Nigeria, and many of those claims are LGBTQ claims. There are also a lot of them coming out of the Caribbean countries.

There are also lots of issues on the criminalization of non-disclosure of HIV status. If people are charged with that, and they qualify for our services, we would provide services to them.

The Chair: Thank you very much.

Mr. MacGregor, and then Mr. Kang.

Mr. MacGregor.

Mr. Alistair MacGregor: Thank you.

The Supreme Court has rejected arguments that there is a general constitutional right to legal aid. I wanted to look at the spirit of the charter, and specifically at section 15, where everyone is equal before and under the law, with equal benefit of the law and without any discrimination based on race, ethnic origin, colour, religion, sex, age, or mental or physical disability.

On December 13, when we questioned a representative from the Canadian Bar Association, Ms. Kerri Froc mentioned that you could make an argument under section 7 that some women may not have security of person when they can't get their cases against their abusers adjudicated. They're suffering under that. I respect the Supreme Court's ruling on this, but sometimes we have to go above and beyond that and look at whether the spirit of the charter is being complied with.

I would like to know your thoughts on this. When you look at the state of legal aid in Ontario and across Canada, do you think we are honouring the spirit of the charter? Are people really getting that protection under sections 7 and 15?

Mr. David McKillop: I think you raise an excellent point.

As I mentioned earlier, with many of the criminal services that we offer being constitutionally protected, I think in terms of sections 7 and 15, we're well on point in that area.

It is, though, the family law civil area where I think we do lack some protections. There will probably come a day when the interpretations of sections 7 and 15 do expand the protections afforded to family law clients.

I'll just give you an example of something that Legal Aid Ontario has done. Our financial eligibility, while increasing with the investments that the Ontario government has made, is still low. A single individual has to earn less than \$13,000 to qualify for free legal aid services in Ontario. As a means to protect women—not exclusively, but primarily women—who are victims of domestic violence, we've actually raised the financial eligibility level to that which we use for our duty counsel services, which is significantly higher. That same single individual who might not qualify because they make \$13,000, \$14,000, or \$15,000 would qualify under the duty counsel test because it has a \$21,000 cut-off for a single individual.

We're trying to do our part, notwithstanding that no one is forcing us to provide services to vulnerable women, but I think you're going to see more growth in that area as courts do further interpret the sections.

• (1620)

The Chair: Thank you very much.

We'll take a question from Mr. Kang, and then if I don't see anybody else we'll have a short break and then we'll take our next panel.

Mr. Kang.

Mr. Darshan Singh Kang: Thanks, Mr. Chair.

Thanks, gentlemen, for appearing before the committee.

We are a diverse country, so my question is this. Does LAO have a blanket approach? Do you have some data on whether different ethnic communities are using the legal aid service? Do you have some data so you can steer your resources towards the community that needs the most help?

Mr. David Field: One of the things we've been doing with the community legal clinics, for example, is really looking at community legal needs. We have a number of legal aid clinics that focus on a particular community. We have a metro Chinese community. We have a South Asian clinic that looks at specific issues related to the South Asian community. We are spending time and energy looking at the differing needs of communities across the province.

I think we need to do more in terms of our general research. As I said, we have these specific clinics, but I think we need to do a better job in gathering data about the service delivery in the area of criminal law, family law, and how those are affected by the diversity in the province. I think we really have some work to do in that area.

Mr. Darshan Singh Kang: The reason I'm asking this question is that there are cultural sensitivities, the language, etc., all of those things that could be kept in mind. Sometimes a language barrier causes a big problem. That's why I was asking that question.

I appreciate your keeping that in mind. Thanks.

The Chair: Thank you, Mr. Kang.

Thank you very much, Mr. Field and Mr. McKillop. It was a pleasure having you as witnesses. Your testimony has been very helpful to the committee.

We're going to take a short break while we get the next panel up. For those in the next panel, please come on up.

We will be resuming in about two minutes.

• (1620)

_____ (Pause) _____

• (1625)

The Chair: It is an absolute pleasure to greet the members of our next panel. We have the Canadian Forum on Civil Justice, represented by Mr. Albert Currie. He's a senior research fellow.

Welcome, Mr. Currie. It's a pleasure to have you.

We're welcoming once again, from West Coast LEAF, Ms. Kasari Govender, the executive director.

Welcome, Ms. Govender.

Mr. Currie is going to be presenting first.

The floor is yours, sir.

Dr. Albert Currie (Senior Research Fellow, Canadian Forum on Civil Justice): Thank you.

I want to thank the committee for inviting me. It's very much a privilege.

I'm going to begin my remarks by highlighting the results of some research on the prevalence of legal problems experienced by the public. It's a body of research that has had considerable influence on the thinking about access to justice around the world. Then I'm going to try to highlight a few examples of responses from the legal aid world to the results of this research.

The entire body of research now consists of 25 studies that have been done all around the world. Four of these were in Canada, the first in 2004. The most recent is called "Everyday Legal Problems and the Cost of Justice in Canada", which is a national survey that was conducted in 2014 by the Canadian Forum on Civil Justice. I'll briefly show you a few results from that survey.

We found that almost half, 48.4%, of adult Canadians experience one or more of what we call "everyday legal problems" within a three-year period. If you apply the weights and gross that up to the whole population, that's about 11 million people in a three-year period. Since people often experience more than one problem, that's 35 million problems. These are strikingly large numbers.

This is a percentage of people experiencing one or more problems, by problem type. You can see that consumer debt and employment are the major ones. This pattern is consistent with every survey that's been done around the world, in dozens of different countries.

I said there have been four national surveys in Canada—in 2004, in 2006, in 2008, and most recently in 2014. They've all come in with the same results. If you look at the 25 surveys around the world that I talked about, one of the remarkable things about the body of research is that they've produced very, very consistent results.

I want to emphasize that these are not problems that are resolved in the courts or by lawyers. The basic definition of the kind of legal problem these surveys deal with is any problem that is experienced by the public, whether or not that individual recognizes the legal nature of the problem, and whether or not they use any part of the formal justice system to resolve that problem. The vast majority of people have problems of all kinds, the normal transactions and transitions of everyday life, such as gaining employment, losing employment, contracting, and buying and selling all kinds of things. This is what I've called, in previous work, the legal problems of everyday life.

There are a couple of other interesting bits from the survey. We found that 67% of people experiencing these everyday legal problems did not understand the legal implications of the problem. I don't mean just a little bit; they had no clue. They said they did not understand at all. That's really interesting. It's kind of a striking result in the sense that you have such large numbers of people experiencing problems that they consider to be serious and difficult to resolve, and they have no idea of the legal implications of the problems they're facing.

Only about 7% of the people in this sample and in samples like it use the formal justice system to resolve their problems. Sixty per cent were self-helpers. That means they didn't access legal advice. They didn't access any kind of authoritative non-legal advice. They just tried it on their own.

•(1630)

Experiencing these problems comes at a cost. It costs individuals in terms of money, and it costs individuals in terms of intangible costs such as ill health and stress-related illness. It costs the state in terms of social services, employment insurance, health care costs, a whole range of things, when people have to rely on the social safety net as a direct consequence of the everyday legal problems they experience.

I'm going to leave a couple of reports for the committee. I'll give them to one of your associates at the end. There are more detailed results on this on the website of the Canadian Forum on Civil Justice.

This is not new. It's relatively new. It's an approach to understanding the legal problems experienced by the public that have resulted in a considerable shift in thinking over the years about access to justice and how to provide assistance to people experiencing this much larger number of legal problems.

I'll give you a couple of examples of the way that legal aid systems in Canada are responding to this. Generally, with digital delivery of services, one legal aid plan in British Columbia has

developed an online dispute resolution problem-solving website to try to reach this much larger number of people. It's called MyLawBC, and has been developed by the Legal Services Society of British Columbia. It's a response to this issue of hidden problems and is trying to develop the capacity for outreach, if you like.

In my own research I'm working with several community legal clinics in southwestern Ontario that are partnering with community groups. The community groups are given the tools to help people identify legal problems, and the relationship between the community group and the legal clinic is like a pathway, then, for people to seek and find legal help.

A second thing that we're doing, just to give you an example of some of the innovations that are flowing out of this research, is called secondary legal consultation, where the lawyer in a legal clinic assists a service provider in a service agency to help their own clients. You'd have something like a case worker in the Canadian Mental Health Association who's trying to guide a client through an application for disability. The way that legal aid can try to reach out and serve more people, and do it relatively inexpensively, is to assist other service providers. We're working on an approach to that.

There are a lot more examples, but all I want to say, quickly, is that there's a huge amount of innovation occurring in some corners of legal aid in Canada. It's really interesting, and it's attempting to address the broad problems that have come out of the research I was describing.

I'm going to leave you with two ideas that occurred to me when I was writing out these notes. The first one is with respect to the body of research on legal problems. Think of access to justice as more than access to the courts, because there's an enormous world of unmet legal need out there that goes way beyond that.

The second thing is what this means for legal aid. Think of legal aid as more than just a transactional system that links lawyers with people appearing in courts but who can't afford to pay the costs of private legal fees. It's a policy instrument. Legal aid is a policy instrument to address access to justice issues, and there's an enormous amount of capacity for creative, innovative work in legal aid that ought to be supported.

I thank you very much for the opportunity.

•(1635)

The Chair: Thank you very much, Mr. Currie.

Now we will move to Ms. Govender.

Ms. Kasari Govender (Executive Director, West Coast Women's Legal Education and Action Fund): Thank you for having me back today to speak about legal aid.

As you likely know, West Coast LEAF is a legal organization that focuses on the rights of women and girls. We work doing litigation, law reform, and public legal education. We've worked extensively in the area of access to justice for women in a broad systemic advocacy sense, but we also recently delved into the direct service side of things because the crisis in B.C. is so bad. I will give you some more of the details about that.

First, to pick up on the innovation point, we have partnered with UBC law in Vancouver and opened the Rise Women's Legal Centre. The doors opened in May, just after I was here last time in April. The demand was huge. We knew there was a crisis; that's what prompted us to spend years in developing this model. We consulted with service providers across the province. We spent years building up private funding. There's no public funding in the clinic, unfortunately. We partnered with the university in order to open this clinic. Even with all that work, we were surprised that within two weeks of opening the doors, which was in May, we had a wait-list into September. The wait-list has hovered at about 100 women since then.

It's against that backdrop that I want to tell you a bit about the state of legal aid in B.C. It was gutted in 2002—family law in particular—and family law services were cut by 60%, particularly on the connecting people with lawyers side of things, so not the legal information as much as the actual direct representation and advice. As you've heard from my colleague here, there is some interesting innovation in legal services in B.C. around the information side of things, but there are really, really reduced services on the representation side.

There are three limitations to family law coverage. There's the financial cut-off, which is very low. You basically cannot make much more than minimum wage, depending on the number of dependants you have. There is a very large gap between those who are covered by legal aid and those who can actually afford a market-rate lawyer. It's also provided mostly when there is violence in the relationship; there is very little coverage outside of that. There are very narrow circumstances in other high-conflict families, but primarily the focus is on relationships in which there is violence.

If you qualify under those two criteria, you only get 25 hours of service. This is a real limitation. It's not designed in any way—even explicitly—to meet the needs of a full family law dispute. It's not designed to resolve custody and access issues or anything else. It's designed, essentially, to get you a protection order in situations of violence. In some circumstances it can cover some other interim orders, but primarily it's to get you a protection order. In some really complex cases, it's not enough to do even that. I'll give you an example of that in a moment.

I want to speak about the representation side of things, and the implications of not providing access to lawyers. In my view, legal information is really important, but it is far from sufficient in actually providing legal access to justice. The major reason is that there is no rule of law for those who can't afford it in family law. In criminal law, in other areas, there's still law and the law applies to you whether or not you have a lawyer to help you understand your rights. In family law, that's simply not true. I don't say this with hyperbole; I say this in a very practical sense.

We have a very progressive piece of family law legislation in B.C., which was very exciting when it was passed a few years ago. However, if you don't have access to somebody who can tell you your rights and somebody who can help you enforce those rights, they are totally meaningless. If you are sitting in a room with your spouse and it's just the two of you trying to resolve your custody issue, trying to figure out who's going to live where and where your assets are going to go, the law has zero meaning. That means the justice system that we are all proud of in this country applies, in family law, only to those who can afford it.

Women in particular are impacted by these cuts to legal aid for a number of reasons, primarily because women have lower incomes because of the pay gap in this country, and so they are less likely to be able to afford a lawyer. Those statistics are borne out by who is applying for family law legal aid and who gets it. Women are also disproportionately impacted by not having it. As women are still primarily the caregivers for their children, and they're still primarily the victims of family violence, the implications of not getting legal aid are particularly severe because their safety is at risk, and their children's well-being is at risk.

● (1640)

That also leads me to the disproportionate impact on children. If courts don't have access to the information they need to determine the best interests of a child, whether or not that is to stay with either parent, then the courts have their hands tied behind their backs in actually trying to meet their obligation to meet the best interests of children, and children suffer through that.

You've already heard a little bit, I think, about some of the costs of underfunding legal aid. I think I won't go there right now. I think I'll wait to see if there are questions on that. I'll just say it's more costly to underfund legal aid.

I do want to give you one example, though, which is that at the Rise Women's Legal Centre we've had clients come in with literally suitcases full of documents from over a decade of not having a lawyer. That means that while their family law issues could have been resolved fairly simply at the front end if they had been able to access even summary advice at the beginning, let alone have some minimal representation, now no private lawyer will touch those suitcases of documents. They're a complete disaster, and it's costing either the public purse or the non-profit community much more to try to resolve that one case than it would to be able to move things through quickly because of the level of complexity.

It also means that spousal violence can escalate. I had a case cross my desk recently—and again, we don't provide direct service in my office, but still we hear from the most desperate cases. A woman's file passed through my hands. She is desperately seeking protection from her abusive spouse. She has received legal aid. She has received extended services under legal aid, but all she's gotten are temporary restraining orders, protection orders, that keep expiring. She has now gone back to say, please give me more money so I can apply for a permanent care order. She is receiving death threats. The police have been involved. Her safety and that of her children are very seriously at risk, and she's being denied legal aid because she has used up all of her hours.

Where does the federal government come into this? You may know that the CEDAW committee, the UN committee that examines the Convention on the Elimination of All Forms of Discrimination against Women—basically the women's bill of rights—examined Canada's record earlier in the fall and released its concluding observations in December. It expressed explicit concern about civil legal aid in the provinces, and particularly the implications for women's equality of underfunding family legal aid. It specifically recommended earmarking funds in the Canada social transfer for civil legal aid to ensure that women have access to family justice, with a particular emphasis on victims of violence, indigenous women, and women with disabilities.

It is also explicitly concerned about the income-test thresholds, that gap I talked about between people who can qualify for legal aid and those who could afford to get a private market lawyer. I think that leads very clearly to the federal responsibility to step into this gap and what the feds could actually do while staying within their jurisdiction.

I'll leave it there and wait for comments. Thank you.

• (1645)

The Chair: Thank you so much, Ms. Govender.

Now we will move to questions, and we will start again with Mr. Nicholson.

Hon. Rob Nicholson: Thank you very much. Those were two excellent presentations here, and I have a number of questions.

Ms. Govender, there is the whole area of what gets funded and what doesn't get funded, and you set out very clearly the differences between family law and criminal law in terms of legal aid and other assistance. In the time that I practised law in both those areas, after a few years, I came to the conclusion that people who were going through family law problems were more devastated and more

personally affected many times than people who were going through the criminal justice system. I found that people who go through the criminal justice system have a little better control of everything than many people going through the family law area.

I know it's a little bit complicated with respect to funding from the federal government, whether it's going to justice or it's under the social transfer, but what are your thoughts? Why are the cuts always in the family law area? Presumably there are people who understand that area of the law and how devastating and challenging it can be. You set out a number of things there. What do you think the reason for this is? It can't be just the complications of federal-provincial funding. Why is it that they always cut the family law funding?

Ms. Kasari Govender: I think that might have been alluded to earlier, but there's constitutional support for criminal law legal aid, for access to justice in criminal law, and access to justice in child protection, and in immigration and refugee matters to some extent. I would say that there should be, but there hasn't to this point proven to be, a constitutional mandate to provide access to justice in family law—

Hon. Rob Nicholson: But quite apart from the federal-provincial split and jurisdiction here, it wouldn't stop any province or territory from doing what it wants to do, yet you said that in 2002 they immediately cut family law when they were under some financial constraints.

• (1650)

Ms. Kasari Govender: What happened is that the money that was received by LSS, our legal services society, was vastly reduced. Their budget was cut dramatically. They had to decide what priority areas to put that remaining money into. They put it where they knew they would be sued right away, and they left the areas where they thought, "Well, we won't be sued right away. We'll see what happens."

To put it crudely, that's what happened, and that is still what happens. When they are looking at their budget every year, they know that the family pot of money is the only money they can play with in any real sense. There were cuts. They totally eliminated poverty law services, so they went from serving over 40,000 people a year in poverty law to serving zero. Other provinces still maintain those poverty law services, but B.C. has none. They eliminated that one, which they had no constitutional obligation to do—or didn't think they did—and they cut back family law severely and kept only the bare constitutional minimum.

Hon. Rob Nicholson: You are quite familiar with what legal aid has provided for, of course, in the Province of British Columbia. That being said, in the example you gave us of the woman who was being threatened by her ex-spouse or estranged spouse, you said she had used up her 25 hours. Is there no flexibility to apply to legal aid and say, “Just a second here. I appreciate that a couple of years ago I had to have legal advice, but 25 hours isn't going to cut it”? Is there no ability within the legal aid system in British Columbia that you know of?

Ms. Kasari Govender: That particular woman has now appealed and reapplied, even though she had already applied and appealed and been turned down. She's gone back for one last effort.

Hon. Rob Nicholson: Was she turned down because they didn't think the threat was big enough?

Ms. Kasari Govender: It's a surprisingly common story. It's not just one person. I've heard it a lot. Part of the issue is that people are desperately seeking help and they don't know, nor should they have to know, that when they get a letter saying, “You have no further avenue for appeal,” that maybe sometimes if they call the office and get the right person, they might get a “yes”. It does happen occasionally, but that's not a functional rule-of-law system. They need to know that it's accessible from the outset and proper guidelines need to be in place to allow for that.

Hon. Rob Nicholson: I'd love to pursue this further, but I should also ask a question of Dr. Currie.

Thank you very much for your testimony here today. Your list of all the different legal issues was interesting. I was glad that crime was the smallest one here. That's better for our society.

I noticed that people have more disputes with their neighbours than they do within their own family, which again was an interesting statistic.

That being said, you said—and I think you're quite correct on that—that either 60% or 67% of people have no real concept as to what their legal issues are. I remember one time in my own community of Niagara Falls that a number of lawyers got together for an evening, quite apart from the legal aid system, just to provide anybody who walked in the door some sort of legal advice or direction if they needed it. I always thought that was an excellent way of sort of steering people in the right direction. As I said, it wasn't formalized in the sense that legal aid was doing it, but it was something that was pro bono by the lawyers themselves.

Have you heard of any examples like that? Again, the idea is to get people educated or informed as to what their legal rights and issues are.

Dr. Albert Currie: Yes, I think very much to the credit of the private bar, there are a number of examples of weekly or biweekly legal clinics that are held in church basements and so on, that do try to provide that kind of information.

A good example of having something like that institutionalized is with Legal Aid Ontario. There's a major division of Legal Aid Ontario called Community Legal Education Ontario, or CLEO. They focus on providing people, through a variety of mechanisms—electronic means are becoming much more popular—with not only legal information but also interactive sources of dispute resolution

and problem solving so that people can begin to resolve their own problems, take some steps, know where to go for help, and at least start the process before the situation is desperate.

The example I mentioned briefly before, MyLawBC, is somewhat similar. It seems to me that an important role for legal aid plans, as we call them in Canada, ought to be to provide that kind of continuum of service so they can begin to help people early on and help as many people as possible.

● (1655)

The Chair: Thank you very much.

We'll go to Mr. Fraser now.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Chair.

Thank you both very much for your presentation today. We really appreciate your work in this area.

Ms. Govender, perhaps I could begin with you. To pick up on a point that Mr. Nicholson raised, with regard to the 25-hour maximum time that a lawyer can work on a file for a civil client, I take it that's in the family law area. Is that specifically what you were referring to?

Ms. Kasari Govender: Yes.

Mr. Colin Fraser: That seems unfair, and it doesn't work well with our system, because obviously the amount of time on a file could very much depend on what the other side in an adversarial system was thinking. I would imagine there would be cases where, if they knew that the maximum time a person had representation for was 25 hours, they would just delay the matter and do what they could administratively to run out the clock on that litigant.

Do you see it that way, and is that actually the experience?

Ms. Kasari Govender: Absolutely. It's a very common experience and it's called litigation harassment. There is a lawyer on the other side, or potentially an abuser on the other side, who just runs out the resources. They bring all kinds of applications, everything they can think of to throw at the wall and see if they can exhaust the resources so that the person will walk away from whatever rights they have. One of the things you can exhaust is the financial resources, but you can also exhaust the legal aid hours.

So yes, it's a very common problem.

Mr. Colin Fraser: As a result, and with the reduced resources for legal aid in British Columbia, has there been an increase in self-represented litigants, and has that caused any problem with delays in court or the court administration getting bogged down just because people don't understand the rules of evidence and procedure or all of the filings that are necessary? Has that experience been seen?

Ms. Kasari Govender: It's a huge problem. I don't have the exact statistics, but I think in the court of appeal over 50% of family litigants are self-represented. It's a significant problem for the court. It causes huge delays, and there are hard costs associated with those delays for everybody involved—for the other side, for the court, for the judge, for all the court processes, and of course for the person who doesn't have counsel. Both parties often don't have counsel, but particularly if there's one party, it costs them in missed work hours.

The research that's been done on the cost of underfunding legal aid goes both from within the court system all the way out to missed work hours, to housing and social assistance costs, to meeting the needs of people who are now unemployed. It sounds maybe far-fetched, but in fact there is significant economic research that shows that these costs are very real.

Mr. Colin Fraser: From my experience in practising in family law, which was one area of practice that I did litigate in, oftentimes it would be the woman who would make an application for child support or to confirm custody or access provisions in a court order. I take it from what you're saying, then, that if the woman is oftentimes the applicant, they would now be the ones self-represented or appealing decisions that were made when perhaps they didn't have proper legal representation.

Ms. Kasari Govender: That's right, because her legal aid representation primarily covers her protection order. It only covers people where there's violence, and then it only covers enough hours to get the protection order. So when she's fighting over custody, she's generally doing that on her own.

Mr. Colin Fraser: Just changing gears a little bit, do you see any role for law schools having legal clinics that could assist people in preliminary advice, or even mediation services, that may be available in a walk-in type of arrangement so that we could try to get agreements and maybe avoid the court process altogether?

Ms. Kasari Govender: To address the law school point first, I think there is an interesting and growing movement around clinical education and what that means for access to justice in the country. In B.C. in particular, as I said, we started the Rise Women's Legal Centre, in partnership with UBC Law. It is UBC students who primarily staff the clinic, along with two staff lawyers. I see a huge niche there for law students.

It's not pure efficiency. These are students who are learning. There's a dual access to justice goal. There's meeting individual client needs, but if that was your only goal, lawyers would be more efficient. There's also the secondary goal of teaching new lawyers how to meet community needs and what it means to practise family law and to actually understand the gendered issues, particularly the gender-based violence issues that underlie a lot of family law. So I do see a significant need there.

You asked me something else. Sorry, I'm missing the second part of your question.

● (1700)

Mr. Colin Fraser: It was with regard to mediation services or walk-in services.

Ms. Kasari Govender: Oh, yes.

There is a push for mediation services in B.C. I think it's one we need to view with caution, from the access to justice perspective, because it can be seen as the solution to everything. Where there's violence and when there are power dynamics in a relationship, I don't think it's appropriate, and I think we need to be really cautious as to how we see that.

I also think that mediation can sometimes move faster if people understand their rights better, which they may not unless they can get at least summary advice at the front end to be able to understand what issues are even on the table. So there are even ways to make mediation more efficient.

Mr. Colin Fraser: Thank you.

Mr. Currie, I will turn to you on the same point regarding mediation services as a way to have, certainly in family cases, an agreement that could then be filed with the court to avoid the adversarial process right off the bat. Do you see that as a way to alleviate some of these problems?

Dr. Albert Currie: Yes. I think it's long been recognized that mediation is a much more humane way to deal with family disputes than is the court process. I'm not sure what to say except that I agree completely that mediation is a better approach. I'm not so sure that mediation is a cheaper approach.

Mr. Colin Fraser: Why would it not be if it gets the matter resolved more quickly, which would be the goal of having mediation at the front end?

The Chair: This is your last question.

Dr. Albert Currie: I think if family disputes or any other sorts of disputes can be tackled early in the process—I think Kasari made this point—then the issue is probably going to be less complex and easier to resolve. The longer a problem festers, if you will, the much more difficult it will be to resolve it, for a variety of reasons. Sometimes it's just the hardened feelings between parties when things have dragged on for so long.

The Chair: Thank you very much.

Mr. MacGregor.

Mr. Alistair MacGregor: Thank you very much, Mr. Chair.

I'd like to thank both witnesses for appearing before the committee today.

Ms. Govender, the subject of pro bono work has come up before this committee as well, and the report that was issued, "Rights-Based Legal Aid: Rebuilding BC's Broken System", states quite explicitly that "the justice system itself often falls back on an assumption that an increase of pro bono legal services offered by lawyers can fill the gap." It goes on to say, "There is no basis in fact for this expectation."

Can you just briefly relate some of your experiences regarding that statement?

Ms. Kasari Govender: Sure. Pro bono is really important. I don't want to undermine that. It's really important in terms of the spirit of the bar in meeting the needs of justice. In B.C., pro bono work is administered primarily through an organization called Access Pro Bono, which really struggles to connect family law clients with pro bono practitioners.

There are a couple of reasons for that. One is that we have a small family bar. I don't think this is unique to B.C. Not very many people go into it, for a whole number of reasons. A number of years ago, West Coast LEAF wrote a report called "Not with a ten-foot pole". As you can tell from the title, it was about why people don't go into family law legal aid. They talked to law students about that. People are really hesitant to go into this area. That's one issue.

The other issue is that most people don't do legal aid. They meet the needs of high-income clients and they aren't meeting the needs of marginalized and community-based clients. That's a big reason why pro bono doesn't meet the gap. Also, this isn't an issue that should be dealt with through charity. There is that philosophical point. Those are important practical points, but there is a philosophical point about people getting access to justice. We all deserve access to justice, not because someone feels that out of the goodness of their heart they will provide these services.

• (1705)

Mr. Alistair MacGregor: Thank you.

I also hold in my hands here a letter from the Feminist Alliance for International Action, and I see that your organization was one of the signatories here. The letter was addressed to several ministers of the Government of Canada, and it has to do with the Convention on the Elimination of All Forms of Discrimination against Women. It notes that Canada once held first place in women's equality, back in 1995, but that we have now fallen to 25th place on the United Nations gender inequality index. In the CEDAW report, one of the main recommendations is to increase funding for civil legal aid and to specifically earmark funds for civil legal aid within the Canada social transfer. Can you just expand a little bit about that? Would you like to see that civil legal aid completely separate and totally earmarked the same way as for the Canada health transfer?

Ms. Kasari Govender: I would like to see earmarked funds go to family law and legal aid in the provinces. There is precedent for that with the transfer that was made on criminal legal aid. It can be done.

I do think there is a role for the federal government in it. I think there was a case you referred to earlier with the previous panel.

There have been some important cases from the Supreme Court of Canada on access to justice. Yes, they have said that there's no generalizable right to counsel, but they have also gone far in saying that access to justice is a constitutional principle and that the federal government in particular, under the Constitution Act of 1867, has a jurisdictional role to protect the right to access justice.

I think there are a lot of reasons to support tied transfer funds. Where there isn't political will in the provinces, I think the feds can step in, in that capacity.

Mr. Alistair MacGregor: All right. Thank you.

Now, we've heard concerns about the delivery of legal aid in Canada. Because it falls primarily under provincial jurisdiction, there have been concerns voiced about the patchwork quilt. When you look at how British Columbia is doing in comparison to other provinces, and how women access the justice system in civil cases, where is the best place in Canada for a woman and where is the worst place? Do you have data on that?

I just wanted to emphasize the fact that we do have that patchwork quilt. Where is a woman getting the best service and where are they getting the worst?

Ms. Kasari Govender: The Canadian Centre for Policy Alternatives just put out an interesting report about the best place in Canada to be a woman. I can't remember where the best and the worst were, but B.C. is low in terms of spending on legal aid. It's very low in particular on family law. There is a patchwork. Different provinces weigh their different areas quite differently. They also have different levels of federal investment.

The other area, of course, in which women's equality matters is in refugee and immigration law. The federal government only contributes to some provinces, and B.C. is one of them. There is federal money going to B.C. on immigration and refugee law, whereas there isn't for places like Nova Scotia, for example.

There is a patchwork. I would like to see that equalized, and certainly see the services offered. Although Ontario right now is going through some push-back about how they have run their legal aid program, the fact that they have an extensive clinical system I think is enviable in terms of the rest of the country, and certainly enviable in terms of services to women and family law.

The Chair: Thank you very much, Mr. MacGregor.

Monsieur Boissonnault.

[Translation]

Mr. Randy Boissonnault: Thank you, Mr. Chair.

[English]

Ms. Govender and Mr. Currie, thank you both for being here today.

Ms. Govender, on your website your organization is described as being “committed to a vision of feminism that is inclusive of persons who are transgender and/or intersex and of their equality rights to be free from sex and gender discrimination.” Respecting intersectionalities and the role the organization plays in working with indigenous peoples as well, I have a policy question. Could you please advise this committee or make us aware of any issues related to gender identity or gender expression that this committee should be mindful of when we're making our recommendations in terms of legal aid funding and how the system is structured?

Then there's the organization writ large. Could you share with us some examples of cases in the LGBTQ community, whether they be refugee cases or same-sex domestic violence cases? What are the types of cases you see in B.C. within this particular community? Then I'll have follow-up questions.

• (1710)

Ms. Kasari Govender: We've been grappling with some interesting issues around gender identity in terms of the Rise Women's Legal Centre that we opened. Obviously it has the word “women” in the title, and the way we approached that, from the very beginning, was to define women as self-defined. That still does buy into a binary role around gender, and it's something that we have received some push-back on.

From my perspective, I do think it's really important to recognize how gender-based violence is a significant issue for people who do not identify as male. That could take into account people who identify as a woman, or identify as non-binary, or as anything else. There are unique ways in which violence impacts people who identify as women, and that needs to be included in our understanding, not necessarily explicitly outlined in policy but included in our understanding of how access to justice policy and funding disproportionately impacts different populations.

Mr. Randy Boissonnault: What steps have you taken to make sure that West Coast Women's Legal Education and Action Fund is a safe space; that people know they can be welcome; that people will have appropriate training; that you will be sensitive; and that when they walk through the door, they know it will be a safe space?

Ms. Kasari Govender: It's mostly Rise Women's Legal Centre that they will be walking through the doors of. That's a separate organization, but it's one that we're intimately involved in. The students are all receiving training from a lawyer in the community who's very active on trans rights and who also identifies as non-binary.

We're building that in more and more. We've made it quite central on the website, because we've received some feedback around the fact that we have “women” in the title. We were asked how people who don't identify along traditional gender lines could identify with the way in which we've described the limitations of our clinic. So we've tried to really put that out there in the world.

For the people who staff the clinic, there are no restrictions on the gender identity of the people who work there.

Mr. Randy Boissonnault: Given this wait-list now and your current caseload, what are your early statistics telling you about the number of indigenous versus non-indigenous people you're serving?

Ms. Kasari Govender: I don't have those. Rise clinic is gathering that information in all their intake forms, but I don't have that at my fingertips. We are doing outreach to the indigenous community. There's a community advisory council that directs the work of the clinic, and there's strong indigenous representation on that.

Mr. Randy Boissonnault: So for my colleagues, what we're hearing across the country is the lack of training in the legal system—the basic courts system, the lawyers system. That's certainly so when a case gets to trial in terms of issues related to gender identity, gender expression, and even within the LGBTQ community more broadly. I'm wondering if you're taking any steps, if you've been asked to provide training to law students, or if you've been invited to provide training to people who are actively members of the criminal justice system as it stands right now.

Ms. Kasari Govender: We haven't, but some of that work is happening in B.C. There isn't a really strong legal organization representing those interests. Certainly we do, but we also recognize that we have some limitations in where we're coming from. There are couple of lawyers in the community who are really doing a push out and doing some work through our Continuing Legal Education Society, reaching out to lawyers. I don't know about the judiciary, though. I can't answer that.

Mr. Randy Boissonnault: I appreciate that.

Mr. Currie, thank you for your presentation. I loved the last two bullets of your presentation—it was all great—about legal aid being an active laboratory for policy change and also an incubator. Could you share with us a couple of experiences, perhaps in the work you've seen done, where legal aid has provided advice to policy changes for diverse or marginalized populations?

Dr. Albert Currie: Could you say the last sentence again, please? It's for what kind of populations?

Mr. Randy Boissonnault: It's with regard to indigenous populations, LGBTQ, women—wherever you've seen alternative forms of justice actually serve as the kind of indicator you're saying they are.

Dr. Albert Currie: I'll ask Kasari to help me here. I can't think of any that specifically address aboriginal populations.

Ms. Kasari Govender: There are clinical services that are directed at indigenous communities. There's the indigenous legal centre in Vancouver. Going back to the earlier question, that is another partnership with UBC. In fact it's not just a partnership; it is a UBC law clinic, whereas ours is not. That is a really innovative model.

As well, the LSS, or the Legal Services Society, launched just last year what they call their parenting legal centre. It's a little bit confusing, because it doesn't do family law, only child protection. It is particularly focused on the needs of the indigenous community because so many indigenous kids are in care. It's staffed by an indigenous lawyer. Their only lawyer there is indigenous. There are some potentially interesting things happening around access to justice in the indigenous community in B.C.

I just want to note that in the concluding comments of the CEDAW committee, there's a specific recommendation about training indigenous people to deliver legal aid and to work in legal aid services in order to build that connection more. In particular, there's the Kell case, a specific complaint to the CEDAW committee coming out of the Northwest Territories about an indigenous woman seeking legal aid on family law. Canada has not resolved that. So there's a particular call around indigenous legal services from the international community.

• (1715)

Dr. Albert Currie: It has just occurred to me—I think slowly—that with regard to the intermediary partnerships I was talking about, one of the clinics partnered with an aboriginal organization. They didn't produce very many assessments and referrals, so we went out and asked them why. The people managing the aboriginal service told us that young aboriginal people want to talk to elders. They want to talk to aboriginal lawyers. So there's a matter of trust here.

With regard to the clinics, similar to what Kasari was talking about in terms of the legal aid clinic system in Ontario, for example, there's an aboriginal justice clinic. At least for now, given the state of relations, I think that's what will make a difference: developing delivery mechanisms that establish trust. If you don't have that, they won't come.

Mr. Randy Boissonnault: Thank you both very much.

The Chair: Thank you very much, Mr. Boissonnault.

We have a couple of minutes left, so what I suggest again is doing our short “snappers”.

[*Translation*]

Brief questions are fine.

[*English*]

We ask also for brief answers.

Who has a brief question?

[*Translation*]

Mrs. Boucher, would you like the floor?

Mrs. Sylvie Boucher: Yes, Mr. Chair. I have some questions to ask, and perhaps Mr. Currie or Ms. Govender could respond.

Thank you very much. What you're saying is very interesting. You mentioned that very few people go to court to solve their problems, and that 60% of them do it on their own, which has an impact on legal aid.

Based on these figures, is it possible to know whether women seek aid less often than others?

[*English*]

Dr. Albert Currie: Forgive me, while I caught the last part of your question, the first part didn't come through.

Generally, no, but it depends on the area. In family law, women are more likely to seek help. In other areas, I can't remember the numbers specifically, but I'm going to say, no, there's not much of a difference.

Mrs. Sylvie Boucher: Violence against women—

Dr. Albert Currie: This gets complicated because these problems very often do not occur in isolation. They occur in clusters, and they're interdependent. You find people with family law problems, but they're linked to debt problems, consumer problems, and a range of other problems, not only legal problems but clusters of legal and non-legal problems that are connected together in ways that are difficult to disentangle. In situations like that, it's difficult just to tease out men versus women.

The Chair: Thank you very much.

Ms. Govender, did you have anything to add to Madame Boucher's question?

Ms. Kasari Govender: No.

The Chair: Any other questions from the panel?

Mr. MacGregor.

Mr. Alistair MacGregor: Dr. Currie, you were talking earlier about the fact that some community legal clinics in southwestern Ontario are experimenting with two different approaches to outreach and the secondary legal consultation. I remember the situation in British Columbia, the fallout from 2002, because I worked for a former member of Parliament at the time, and we shared an office space with a member of the legislative assembly. You could see that a lot of people who couldn't get access to legal aid were turning to their elected representative for legal help, who were absolutely flooded on a daily basis by this. Then you look at your stats with 67% not having an understanding of the legal implications of the problem, and flowing from that only 7% deciding to use the formal justice system. Those are some pretty worrying statistics. I have seen evidence of it as well, so I would like some additional comments from you, and then following that, Ms. Govender, if you could offer some comments on that as well.

• (1720)

Dr. Albert Currie: Legal aid is always going to have limited resources. There always has been and always will be a limited amount of money that the state is prepared to spend on the poor. That's the root of the problem.

With these partnering arrangements, we're trying to leverage the enormous resources that are already out there in the community—services and agencies that have significant financial and human resources, that have an identity of interest—with legal aid plans, because ultimately we're trying to address issues of poverty. If you can do that, you can magnify the impact of legal aid enormously. It's a little bit of work and it's a very different way of delivering legal aid, and a very different way for lawyers to think about what they do than has traditionally been the case. That's part of the solution.

Again, part of it is to recognize that what you want to achieve is early intervention. You want to get as far upstream as you possibly can. A lot of that can be achieved through early-stage information and assistance mechanisms that can be provided, not only by legal aid. Don't forget that across the country there has been, for the last 40 years, a network of public legal education associations, the primary mandate of which is to provide legal information. It used to be about the law and how the justice system works. They're evolving, as well, to provide information that's solution-oriented to help people address their problems.

To address the other part of your question, for the 67% who experience problems—at various levels of complexity, I admit—who haven't a clue about the legal implications, and for the smaller percentages who didn't recognize the seriousness of the problem at all, didn't know where to go for help, had really no idea what sort of help they might need, the legal information and early assistance self-help dimensions of legal aid are probably the direction to go in.

The Chair: Thank you very much for that.

Ms. Govender, did you have anything to add?

Ms. Kasari Govender: I would say maybe one thing, which is that there's a tiny silver lining to the cuts in legal aid in B.C., because other services have grown up to try to cover the gap. They haven't done that, but if we had legal aid back, it would provide a much more fulsome system than we had before. For example, there are the legal advocates, lay people who provide legal information and who

can provide that more holistic look that some people may have been looking for from their MLAs. If lawyers could actually deal with the legal problems and the advocates could do what they do best, which is to coordinate housing and social assistance and all these other pieces that could come together, there would be better solutions to the problems than there were before.

● (1725)

The Chair: Thank you very much. We really appreciate your testimony. It was very, very clear, very compelling, and very helpful.

Thank you very much, Dr. Currie.

Thank you very much, Ms. Govender.

The meeting is adjourned.

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