

Transcript of Kasari Govender's remarks to the Standing Committee on Justice and Human Rights in Ottawa, February 2, 2017

Kasari Govender: 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 last here in April. The demand was huge. We knew that 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 university in order to open this clinic. Even with all that work we were surprised that, within two weeks of opening the doors, 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 focused 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 from legal services in B.C. around the information side of things, but really, really reduced services on the representation.

There are three limitations on the 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 dependents 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 where 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 where 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 provide a protection order in situations of violence. In some circumstances it can cover some other interim orders, but primarily 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, but 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 were 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 go, the law has zero meaning. That means the justice system that we are all proud of in this country only applies, in family law, to those who can afford it.

Women in particular are impacted by these cuts to legal aid for a number of reasons. Primarily, it is because women have lower income because of the pay gap in this country, and so are less likely to be able to afford a lawyer. Those stats 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 the primarily the caregivers for their children, and they're still primarily because their safety is at risk, their children's well-being is at risk.

That also leads me to a disproportionate impact on children. If courts don't have access to the information they need to determine the best interests of a child, be that 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 heard a little bit, I think, already about some of the costs of underfunding legal aid and I think I won't go there right now, I think I'll wait and see if there's questions on that. I'll leave it as it's more costly to underfund legal aid.

I do want to give you one example though, which is 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 and what means is that something that 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 some minimal representation, they might have had their family law issues resolved much earlier. 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 nonprofit community much more to try to resolve this one case than being 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 passed through my hands who 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 that I can apply for a permanent care order. She is receiving death threats. The police have been involved. The safety of herself and her children is 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, so 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 of underfunding family legal aid, the implications for women's equality. It specifically recommend earmarking funds in the Canada social

transfer for civil legal aid in order 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 actually 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 and stay within their jurisdiction.

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

The Chair: Thank you. 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, and those are two excellent presentations here and I have a number of questions. Ms. Govender, 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 people who go through the criminal justice system and have a little better control of everything than many people going through there.

Yet, and I know it's a little bit complicated with respect to funding from the federal government whether it's going to a justice or 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? I mean 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 on child protection, and immigration and refugee to some extent. So there hasn't at this point, and I would say that there should be, but there hasn't at this point proven to be 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 they want to do, yet you said that in 2002 they immediately cut family law when they were under some financial constraints.

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 to, and 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 that they can play with in any real sense. There were cuts. They totally eliminated poverty law services, so they went from

servicing over 40,000 people a year in poverty law, to servicing 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 families severely, and they 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, but that being said, and the example that you gave us of the woman who was being threatened by her ex-spouse or estranged spouse, you said that she's used up her 25 hours. Is there no flexibility to apply to legal aid and say, just a second here? I appreciate 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, 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've got 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 there need to be proper guidelines in place to allow for that

Hon. Rob Nicholson: I'd love to pursue this further, but I should ask a question also of you, Dr. Currie, and thank you very much for your testimony here today. It was interesting when you had the list of all the different legal issues here. I was glad the crime was the smallest one here. For our society, we're better off.

I noticed that people have more disputes with their neighbours than they do within their own family here, 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 the people have no real conception as to what their legal issues are. I notice in my own community of Niagara Falls, I remember one time a number of lawyers getting together on an evening, quite apart from the legal aid system, just to provide anybody who wanted to walk in the door to get some sort of legal advice or direction if they needed it. I always thought that this 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, 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 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 this ought to be an important role for legal aid plans, as we call them in Canada, to provide that kind of continuum of service so they can begin to help people early on and help as large a number of people as possible.

The Chair: Thank you very much. We're going to go to Mr. Fraser now.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Chair, and thank you both very much for your presentation today, and we really appreciate your work in this area. Ms. Govender, if I could begin with you. I'm just going 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, in a family law area. Is that what you were referring to specifically?

Ms. Kasari Govender: Yes.

Mr. Colin Fraser: That seems unfair, and 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 is thinking. I would imagine that there would be cases where, if they knew that the maximum time a person had representation was 25 hours, they would just delay the matter, and do what they could to administratively 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 called litigation harassment, where there is a lawyer on the other side, or potentially an abuser on the other side, who just runs out the resources—brings all kinds of applications, everything they can think of, to throw at the wall, and see if they can exhaust the resources so the person will walk away from whatever rights that they have. You exhaust 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 experience of increasing self-represented litigants, and has that caused any problem with delays in court and the court administration getting bogged down because people don't understand rules of evidence and procedure, and all of the filings that are necessary? Has that been an experience that's 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 it's over 50% of family litigants are self-represented. It's a significant problem for the court. It causes huge delays, and there's hard costs associated with those delays for everybody involved. Even 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 meet those needs of people who are now unemployed. It sounds maybe farfetched, but, in fact, there's really significant economic research that shows these costs, and 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 women 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, if the women is oftentimes the applicant, they would now be the ones who are 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 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 to have legal clinics that could assist people in preliminary advice, or even mediation services that may be available on a walk-in type arrangement, so that we could try to get agreements, avoiding the court process altogether?

Ms. Kasari Govender: Talking to the law school point first, I think there is an interesting 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, and 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, right? There are students who are learning. So there's a dual access to justice school. There's both meeting individual client needs, but if that was your only goal lawyers would be more efficient. But there is the secondary goal of teaching new lawyers how to meet community needs, and what that means to practise family law and to actually understand the gendered issues, and particularly the gender-based violence issues, that underlie a lot of family law. I do see a significant need there. And you asked me something else. Sorry, I'm missing the second part of your question.

Mr. Colin Fraser: 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 be 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's power dynamics in a relationship, I don't think it's appropriate and I think we need to be really cautious on how we see that. I also think that mediation can sometimes move faster if people understand their rights better which they may not do unless they can at least get summary advice at the front end to be able to understand who the issues are even on the table. So there's ways even to make mediation more efficient.

Mr. Colin Fraser: Thank you. Mr. Currie, if I could turn to you on the same point regarding mediation services as a way to have and certainly in family cases, an agreement that then could be filed with the court and 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 the court process. I'm not sure what to say except I agree completely that mediation is a better approach. I'm not so sure that mediation is a cheaper approach.

Mr. Colin Fraser: Why not? If it gets the matter resolved more quickly—

The Chair: Last question.

Mr. Colin Fraser: —I guess, would be the goal of having mediation on the front end

Dr. Albert Currie: I think that if family disputes or any other sort of dispute 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 is to resolve the problem for a variety of reasons. Sometimes it's just the hardened feelings between parties when things just have dragged on for so long. 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 in the report issued, you know, Rights-Based Legal Aid: Rebuilding BC's Broken System, it stated quite explicitly here 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.” And then 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, and it's a really important spirit of the bar and meeting the needs of justice. But family law—pro bono is primarily administered in B.C. through an organization called Access Pro Bono, and they really struggle to connect family law clients with pro bono practitioners. There's 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. There's not very many people going 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” which you could tell from the title it was about why people don't go into family law, [*Inaudible*] and talking to law students about that. People are really hesitant to go into this area. So that's one issue.

The other issue is 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. So that's a big reason why pro bono doesn't meet the gap. And also that this isn't an issue that should be dealt with through charity. I mean there is a philosophical point. Those are important practical points, but there is a philosophical point about people getting access to justice because we all deserve access to justice, not because someone felt out of the goodness of their heart that they would provide these services.

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. And it notes that Canada once held a 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. And in the CETA report, one of the main recommendations is that there's an increase in funding for civil legal aid and that specifically funds are earmarked for civil legal aid in 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 in a way like the Canada Health Transfer is done?

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 the 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, and, yes, they have said there's no generalizable right to counsel, but they have also gone far in saying that access to justice is a constitutional principle and the federal government in particular under the Constitution Act of 1867 has a jurisdictional role to protect that right to access justice.

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

Mr. Alistair MacGregor: Thank you. We've heard concerns that 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 women, and where is the worse place? Do you have data on that? It's to emphasize the fact that we do have that patchwork quilt. Where is a women getting the best service and where are they getting the worse?

Ms. Kasari Govender: In general, 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 worse were, but B.C. is low in comparison to spending on legal aid. It's very low in particular on family.

There is a patchwork. Different provinces weigh their different areas quite differently, and 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 so there is federal money going to B.C. for immigration and refugee whereas there isn't to places like Nova Scotia for example.

There is a patchwork, and I would like to see that equalized and certainly the services offered. Although Ontario right now is going through some pushback about how they have run their legal aid program, the fact that they have an extensive clinical system I think is enviable to 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.

[Français]

M. Randy Boissonnault: Monsieur Boissonnault.

[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 are 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, first 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 it's making its recommendations in terms of legal aid funding and how the system is structured. Then the organization at large. Could you share with us some examples of cases in the LGBTQ community whether they are refugee cases, whether we have same-sex domestic violence cases? What are the types of cases you see in B.C. within this particular community? Then I'll have some follow-up questions.

Ms. Kasari Govender: We've been grappling with some interesting issues around gender identity in terms of the Rise Women's Legal Centre we opened. Obviously, it has the word “women” in the title. The way we've approached that from the very beginning is to define women as self-defined, but that still does buy into a binary role around gender. It's something we have received some pushback on. I do think from my perspective it's really important to recognize how gender-based violence is a significant issue for people who do not identify as male so that could take into account people who identify as a woman, or identify as non-binary, or 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 needs to be 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 & Action Fund is a safe space, that people know they can be welcome, that people are going to have appropriate training, that you're going to be sensitive, and when they walk through the doors they are going to know it's a safe space.

Ms. Kasari Govender: It's mostly Rise Women's Legal Centre that they're going to be walking through the doors of, and so a separate organization but one which 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 identifies as non-binary themselves. We're building that in more than more, and we've made it quite central on the website, because we received some feedback around “Well, you've got ‘women’ in the title. How are people who don't identify along traditional gender lines going to identify with how you've described the limitations of your clinic?” So we've tried to really put that out there in the world. Then for the people who staff the clinic, there's no restrictions on the gender identity of the people who work there.

Mr. Randy Boissonnault: What are your early statistics, given this wait list now and your current case load, telling you about the number of indigenous versus non-indigenous people that you're serving?

Ms. Kasari Govender: I don't have those. Rise Clinic is gathering that information in all their intake forums, 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 at the basic court system, at the lawyers system, and certainly when the case gets to trial in terms of issues related to gender identity, gender expression, 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 some work through our Continuing Legal Education Society and reaching out to lawyers. I don't know about the judiciary though. I can't answer that.

Mr. Randy Boissonnault: I appreciate that. I think I have about two minutes left. Mr. Currie, thank you for your presentation. I loved the last two bullets in your presentation—and the rest was great as well—being an active laboratory for policy change and also be an incubator. Could you share with us a couple of experiences in the work that you've seen done where legal aid has provided advice to policy changes for diverse or marginalized populations?

Dr. Albert Currie: Could you repeat the last sentence please? What kind of populations?

Mr. Randy Boissonnault: It's indigenous populations, LGBTQ, women. It's where 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 addressed aboriginal populations.

Ms. Kasari Govender: Well there's clinical services that are directed at indigenous communities. There's the Indigenous Legal Centre in Vancouver, and based on the earlier question, it's another partnership with UBC. In fact, it is a UBC law clinic whereas ours is not. That is a really innovative model. The LSS, or the Legal Services Society, also launched last year what they call their Parents Legal Centre, which is a little bit confusing, because it doesn't do family law it only does child protection. It is particularly focused on the needs of the indigenous community, because so many indigenous kids are in care, and it's staffed by an indigenous lawyer as well. The only lawyer there is indigenous. So there's some potentially interesting things happening around access to justice in the indigenous community in B.C.

I want to note that in the CEDAW committee, the concluding comments, 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, particularly with the Kell case, which was 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, and so a particular call around indigenous legal services from the international community.

Dr. Albert Currie: I think slowly, but something occurred to me.

In one of the intermediary partnerships that I was talking about, one of the clinics partnered with an aboriginal organization. They didn't produce very many assessments and referrals, and so we went out and asked them why. The people managing the aboriginal service said "Well, young aboriginal people want to talk to elders. They want to talk to aboriginal lawyers". So there's a matter of trust here.

I think with clinics similar to what Kasari was talking about, in the legal aid Ontario system, the clinic system, 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. It's developing delivery mechanisms that establish trust. If you don't have that, they're not going to 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'd suggest again is doing our short snappers.

[*Français*]

Si vous avez de courtes questions, on peut les passer.

[*English*]

We'd ask also for brief answers.

Who has a brief question?

[*Français*]

Madame Boucher, vous en avez une?

Mme Sylvie Boucher: Oui, j'ai des questions. Merci beaucoup, c'est très intéressant. Monsieur Currie, et peut-être que, madame Govender, vous allez pouvoir me répondre aussi, vous dites que très peu de personnes recourent aux tribunaux pour régler leurs problèmes et que 60 % de la majorité des gens se débrouillent tout seuls. Cela a une incidence sur l'aide juridique. Avez-vous, de ces chiffres-là, départagé, d'après Mme Govender, sait-on si les femmes demandent moins souvent l'aide que les autres?

[*English*]

Dr. Albert Currie: Forgive me, I caught the last part of your question. The first one 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 [*inaudible*]—

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

The Chair: Thank you very much. Ms. Govender, did you have anything to add to Madam 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, and 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, and they were just absolutely flooded on a daily basis. Then you look at your stats, 57% not having an understanding of the legal implications of the problem, and I guess flowing from that only 7% decided to use the formal justice system. Those are some pretty worrying statistics. I have seen evidence of it as well, so just some additional comments from you, and then following, Ms. Govender, if you can offer some comments on that as well.

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. What we're trying to do with these partnering arrangements is to leverage the enormous resources that are already out there in the community—services, agencies that have significant financial and human resources, that have an identity of interest with legal aid plans—because ultimately what you're trying to do is 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, but don't forget that across the country there has been, for the last 40 years, a network of public legal education associations whose primary mandate it 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, the 67% who experience problems—at various levels of complexity, I admit—who haven't a clue about the legal implications, smaller percentages 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, probably, are the direction to go in.

The Chair: Thank you very much for that. Ms. Govender, did you have anything to add?

Ms. Kasari Govender: Maybe one thing, that there's a tiny silver lining to the cuts in legal aid in B.C., which is that there have been other services that have grown up, trying 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, the legal advocates, they're lay people who provide legal information 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 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.

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. Meeting adjourned.