



## BOARD POSITION STATEMENT

ACWS has the position that Legal Aid Alberta should provide both

- a) Mandatory services, including cases where there is a danger of the client losing care of their children in child welfare cases and
- b) Non-mandatory services, in including the provision of Emergency Protection Orders and quick responsive services where the family relationship has broken down.

ACWS has 41 member organizations across Alberta. Women requiring women's shelter services express a constant need to have access to family law services including custody and support orders. There is an ongoing frustration about the inability to access lawyers due to long and frustrating wait times to get through to LAA on the phone and then having to wait for longer periods of time for a lawyer to be appointed - if the client qualifies for services. Women may return home to an unsafe situation due to financial pressures or for fear of losing her children in a custody battle (a common threat made by the perpetrator). Further, ACWS members see numerous situations where the perpetrator - who usually has financial resources - hires private counsel to obtain quick custody orders which require the police to attend the shelter to remove the children. It is essential that women get to court quickly to obtain custody orders so that the children will not be at risk of returning to a dangerous situation. Studies show that a child's exposure to the father abusing the mother is the strongest risk factor for transmitting violent behavior from one generation to the next.

One of the biggest challenges is 24/7 access to service. These events usually occur outside of normal business hours. It is important to have access to service/a lawyer immediately. This provides the best opportunity for good advice at this critical time. The passage of time tends to minimize the urgency of these events, with long term impact. Timeliness of service is a key competent in terms of effect.

Obtaining legal services is a challenge for women fleeing violence and shelter workers trying to support them. Indeed, a recent ACWS report, Building Informed Service Delivery in Second Stage Shelters identified that while 87% of women were able to achieve some progress on at least one of the goals they set for themselves (e.g., safety, basic needs, child safety, linkages with community resources, self-care and living skills) women were least successful in achieving goals related to legal issues, most likely due to the systemic barriers they face.

There is also a need to extend services to indigenous women who are currently underutilizing protection remedies. These clients need both accessible information and resources. Training and support also needs to be provided to police services so that indigenous women on reserve and in rural areas have the ability to access protection services.

## FUNDING

ACWS agrees that high cost cases should be funded separately so that LAA resources are focused on funding mandatory and non-mandatory services especially in the area of family law.

ACWS is concerned that the majority of funding is being used to fund criminal cases even when there is no significant risk of loss of liberty or livelihood. Funding should be sustainable so that LAA is not vulnerable to annual funding shortfalls should demand for services increase. Studies should be undertaken to

1. Demonstrate the economic benefit of LAA services to women leaving abusive relationships. For instance, a study from the University of Arkansas by Amy Farmer and Jill Tietenthaler showed that “the availability of legal services decreases the likelihood that women will be battered. The study notes that while shelters, hotlines and counseling are vitally important crisis-intervention services, it is legal services that offer women certain important alternatives to the abusive relationships. The economists theorize that by helping domestic violence survivors obtain protective orders, custody of their children, child support and sometimes public assistance, legal services programs help the women achieve physical safety and financial security and thus to leave their abusers. Because legal services help women achieve self-sufficiency, they are a good place to spend public money.”<sup>1</sup>
2. Through a gendered analysis, determine a method for gender equitable resource allocations for legal aid services. It is quite likely that the demand for family law services is a greater need for women, while criminal law services a needed for men. It is patently unfair system, where government funded legal support is available for men facing criminal charges for abusing their female partner and potentially her children, while no support is available to the woman to ensure their safety and financial security.
- 3.

---

<sup>1</sup> <http://ncequalaccesstojustice.org/wp-content/uploads/2015/09/NC-IOLTA-DV-report-1-14-low-res-.pdf>

## ELIGIBILITY

ACWS believes that the financial eligibility guidelines should be adjusted annually and that additional funding be provided in cases where family violence is demonstrated. ACWS believes that the model of roster and staff lawyer should continue because clients will benefit from the expertise of staff lawyers particularly in the area of family violence. Generally, we believe that the financial eligibility guidelines are too low with only the poorest of the poor being eligible for services. For many women, leaving an abusive relationship can be a choice between violence and poverty. As one shelter director reported recently, a woman with child custody issues (see below for an example) tried to access legal aid and she was denied because she had \$5,000 cash to her name and in her possession. She had squirreled it away so she could leave. It is now gone as she has had to pay a retainer for a private lawyer.

Women who leave a partner to raise children on their own are five times more likely to be poor than if they had stayed.<sup>2</sup>

Lone parents, in particular, were engulfed in poverty even though they participated in the workforce.<sup>3</sup>

## GOVERNANCE AND ACCOUNTABILITY

ACWS supports the independence of LAA from the government and the crown and also believes that LAA should be accountable and transparent in dealing with public dollars. ACWS agrees that all 3 signatories be consulted for any future changes in the Governance agreement. Part of their governance and accountability requirements should include a regular gendered analysis of programs and financial supports provided by legal aid and greater involvement of stakeholders.

*Excerpts from an earlier ACWS Report: Making Amends. At the time ACWS received funds to fill service gaps when all other remedies were exhausted. Here are two examples related to legal supports and identified how important it is that lawyers understand the dynamics of abuse and that there are funds to support women with custody orders.*

*Jane B's husband had hired a lawyer and served her with an application for custody of the children when he found out she was planning to leave him due to his abusive and controlling behavior toward her. She was served on a Friday, and the situation escalated [and]...she called RCMP Sunday for assistance because he threatened to kill her. When RCMP arrived, her husband (and father-in-law) were calm and told RCMP there was a custody application in process. Jane B was hysterical and begged police to let her take her 3-year-*

<sup>2</sup> Canadian women on their own are poorest of the poor, Monica Townson, Canadian Centre for Policy Alternatives, Sept. 8, 2009. Available: <http://www.policyalternatives.ca/publications/commentary/canadian-women-their-own-are-poorest-poo>

<sup>3</sup> The Healing Journal, Intimate Partner Abuse and Its Implications in the Labour Market, Linda DeRiviere, 2014

*old and 1-year-old with her. RCMP left the children with her abuser and abuser's father, and brought her to our shelter.*

*She was approved for legal aid, however, when we finally got hold of the legal aid lawyer (who was on holidays for the first week Jane B was in shelter), her lawyer recommended she "go back to her husband" to get her children because no judge would award Jane B custody given she has no resources and is residing in a women's shelter. The lawyer also stated that she would not be able to appear in court with Jane B for the first hearing and recommended that Jane B go in alone and request an adjournment. Family court is only heard once a month [in northern Alberta town]..... Given that Jane B was not prepared to return to abuser, but needed a lawyer to represent her and fight for her rights in court, the shelter found her a lawyer on a private retainer.*

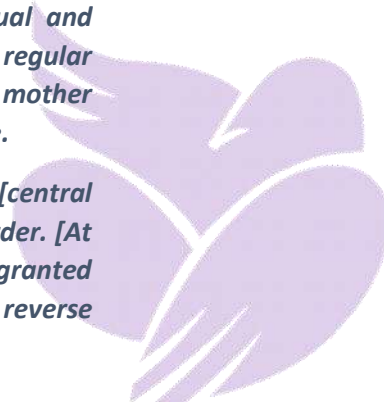
*Without these funds, this woman would have been forced to work with a legal aid lawyer who recommended she go home to her abusive husband rather than affirming her right to be protected and represented in court. The lawyer who was hired did indeed perform a miracle at the first court hearing and had the judge order that in the interim, children are to be with mom 50% of the time (every other week) at the shelter. Jane B is very grateful that she has someone who understands the nature of the relationship she has been in and who believes her and advocated for her in the family court system.*

---

*The day after Jane C was admitted to our shelter, the RCMP arrived at our door to enforce an ex parte guardianship order which had been obtained in [central Alberta municipality] by the mother of Jane C's abusive ex-partner. Jane C had lived for four years in [central Alberta municipality] with this abuser and had come to northern Alberta to keep herself and her children safe.*

*Since this was a valid court order, we were obliged to allow the police to take the woman's [children] and hand them over to their grandmother. As you can imagine, Jane C was extremely distraught...She stated that not only had her ex-partner subjected her to severe physical, mental, sexual and financial abuse, he was also an alcoholic, a cocaine addict and a regular consumer of child pornography. She said she was certain that his mother would allow him free access to the children if she had them in her care.*

*Jane C was served papers requiring her to appear in court in [central Alberta municipality] ... if she wished to challenge the guardianship order. [At the hearing] the presiding judge, who was the same judge who had granted the guardianship order in the first place, stated that he had decided to reverse*



*the order and turn the children back over to their mother on the basis of my testimony. However, the grandmother was not prepared to drop the case, and another hearing was scheduled in [central Alberta municipality]. When we arrived for the hearing... we found out that the grandmother had suddenly decided to apply for a postponement of the hearing. The judge granted a postponement, even though Jane C and I had travelled with her young children all the way from northern Alberta for this hearing.*

*The lawyer for Jane C sought a long postponement so that [she] would be able to prove over an extended period of time that she was able to provide appropriate care for her children. A mediation hearing...and additional hearing for a court order were set.*

*At the mediation hearing, the judge stated that the judge who had granted the ex-parte guardianship order had made an error in law. He stated that that order should never have been granted because the grandmother was not a legal guardian of the children. He stated that it was up to the mother to decide whether or not the grandmother could have access the children. He also threw out the grandmother's request to have the children for one week every month.*

