

Submission to Legal Aid Ontario

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Introduction

The Canadian Hearing Society (CHS) is a non-profit charitable organization incorporated in 1940. We provide services that enhance the independence of deaf, deafened and hard of hearing people, and encourage prevention of hearing loss. CHS strives to develop high quality and cost-effective services in consultation with national, provincial, regional and local consumer groups and individuals. Through its 28 offices in Ontario, CHS provides services to the one in ten people who experience hearing loss or deafness.

All CHS offices see consumers who

- o have no income, no home, no food, minimal literacy, are living on the street.
- o are currently experiencing or have experienced physical and sexual abuse.
- o arrive at our offices in emergency situations, sometimes depressed and suicidal, needing an immediate response to protect their safety.
- have mental health and addiction issues.
- are experiencing or have experienced discrimination in workplace and other public services

Population Statistics

- o 10% of Canadians experience some degree of hearing loss.
- o 10% of Canadians with hearing loss use sign language.

Statistics on Unemployment/Underemployment

- o 20% of Deaf Canadians are employed, 42% are underemployed and 38% are unemployed (Canadian Association of the Deaf, 1998)
- o 85% of Deaf Ontarians are underemployed or unemployed (CAD, 1998)
- o 48% of Deaf Canadians are unemployed (Statistics Canada, 1992)
- Recent research studies indicate that large numbers of persons, especially deaf, deafened and hard of hearing consumers from northern and rural Ontario, have become victims of layoffs from private businesses and governments.

Statistics on Level of Education

According to Statistics Canada (1992):

- 2% of Deaf Canadians have university degrees compared to 14% of the general population
- o 13% of Deaf Canadians have received a certificate/diploma.
- o 8 % of Deaf Canadians have obtained post-secondary education.
- o 25% of Deaf Canadians have received high school education.
- o 52% of Deaf Canadians have obtained elementary education.

The Ministry of Education and Training's *Literacy Survey of Ontario's Deaf* and Hard of Hearing Adults (1998) reported that deaf, deafened and hard of hearing individuals are less likely to be employed and earn less on the average than other Ontarians. This finding reflects their older age profile, their relatively low level of education, and their low literacy levels.

Stereotypes About Deafness

Medical professionals believe deafness is a disease, disorder or health impairment, or a threat to the health and safety of others. For example, studies have shown that deaf and hard of hearing drivers have better safe-driving records. However, the Canadian Medical Association has taken the position that hearing loss poses a threat to safe driving.

Recently, a number of deaf applicants and parents of deaf children have been denied permanent entry into Canada on the grounds that their admission could cause "excessive demands on health or social services."

Serious attitudinal barriers may be evidently in the expectations, perceptions, beliefs and behaviours of employers regarding the employability and capabilities of deaf persons. An example is an employer's concern that training will take longer and be more difficult. The continued underemployment and unemployment of deaf individuals is a result of deep-rooted discrimination.

Legal Developments

Supreme Court of Canada (October 1997)

In *Eldridge v. British Columbia*, the Supreme Court ruled unanimously that deaf Canadians are entitled to equal access and equal benefit under the Human Rights Code. All services funded directly or indirectly by government must be equally accessible and of equal benefit to deaf, deafened and hard of hearing Canadians, as they are to hearing

Canadians. The principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is accepted in the human rights field.

Tax Court of Canada (September 2000)

In an out-of-court settlement, the Tax Court announced a landmark policy that acknowledges and accepts responsibility for arranging and paying for accommodation for deaf, deafened and hard of hearing lawyers, articling students and any parties they represent. This policy also confirms that the needs of persons with disabilities must be accommodated if we are to ensure equal participation for everyone within our society. A fundamental human right is acknowledged with this policy: Access to justice is not the exclusive prerogative of able-bodied Canadians, but of all Canadians.

Ontario Human Rights Commission (November 2000)

According to the Commission's new *Policy and Guidelines on Disability and the Duty to Accommodate*, accommodation with dignity is part of a broader principle, namely, that our society should be structured and designed for inclusiveness. This is to ensure equal participation for those who have experienced a disadvantage from society's benefits. The duty to accommodate persons with disabilities means accommodation must be provided in a manner that respects the dignity of the person, meets the individual's needs, promotes integration and full participation and ensures confidentiality.

Even with these landmark cases and policies, individuals continue to shoulder the responsibility to fight for their rights if a school, hospital, business or government department does not provide access. It is costly in time, money and human dignity to take every violation before the Human Rights Commission on a case-by-case basis.

Barriers Facing Deaf, Deafened and Hard of Hearing Consumers

We have identified major barriers and gaps in accessibility to Ontario government services by the deaf, deafened and hard of hearing communities. For example, American Sign Language and La langue des signes Quebecoise interpreters, real-time captioners, computerized notetakers, assistive listening devices and other means of communication assistance are not being provided, even for the most essential services. These forms of access are being denied despite a clear statement from the Supreme Court of Canada in the *Eldridge* case that equal access to our communities is guaranteed by Section 15(1) of the Charter.

We need to ask the Ministry of the Attorney General the following questions:

o Are ASL/LSQ interpreters, real-time captioners, computerized notetakers, assistive listening devices and other alternative means of communication to be provided in all Courts and administrative tribunals in Ontario If not, what are the limits and the rationale for them?

- o Are ASL/LSQ interpreters, real-time captioners, computerized notetakers, assistive listening devices and other alternative means of communication to be provided to all clients of Legal Aid Ontario for meetings with their own lawyers and other preliminary matters? If not, what are the limits and rationale for them?
- o What other measures are in place to ensure that equal access to the justice system is provided for deaf, deafened and hard of hearing citizens of Ontario? For example, are they to be routinely notified by alternative means when their cases are "called" by Court officials so they do not inadvertently "fail to appear"?

Ouestions

What legal issues are encountered by client group?

- Welfare entitlement
- Landlord and tenant disputes
- o Immigration matters
- o Minor criminal offences
- o Family support or custody
- Debtor and creditor issues
- Small claims court matters

What are some of the barriers they face in accessing services?

- o Duty counsel at court does not know sign language.
- o Time constraints in court and confusing procedures.
- o Lack of education among some resulting in a lack of knowledge of the legal process
- Most legal aid offices do not have staff who know sign language.
- Lawyers who accept legal aid certificates do not know sign and are unwilling to pay for interpreters (although Ontario Interpreter Services will provide interpreters for free).
- Lack of qualified interpreters resulting in delays of meetings or court hearings.
- o Lack of awareness of legal aid and who is eligible to receive it.
- o Types of cases that are not funded by legal aid even if person is poor, i.e., civil cases or employment law.

What are some of the "hot" issues in this community right now? Legal or non-legal.

Human rights with respect to access and employment law.

What are the special needs of this client group? Describe them. Communication facilitation and education about the legal system, both prior to and during the legal aid screening process.

Who are key service providers to client group?

- Ontario Ministry of Community and Social Services (Ontario Disability Support Program and Ontario Works)
- o Ontario Ministry of Health and Long Term Care
- Ontario Ministry of Citizenship
- o Ontario Human Rights Commission
- o Human Resources Development Canada
- Health Canada
- o Citizenship and Immigration Canada
- o Canadian Human Rights Commission

What service agencies are or should be connected to this group?

- o The Canadian Hearing Society
- Bob Rumball Centre for the Deaf
- Huronia Hearing Impaired
- Silent Voice
- Durham Deaf Services
- Ottawa Deaf Centre

Who are the advocacy groups for this client group?

- o The Canadian Hearing Society (CHS)
- Canadian Association of the Deaf (CAD)
- o Canadian Hard of Hearing Association (CHHA)
- Ontario Association of the Deaf (OAD)
- o Goal: Ontario Literacy for the Deaf (GOLD)
- o A Legal Resource Centre for Persons with Disabilities (ARCH)

What are the relevant or most important reports or studies available about this client group?

Position papers and submissions by The Canadian Hearing Society, the Canadian and Ontario Associations of the Deaf, the Canadian Hard of Hearing Association, the Canadian and Ontario Human Rights Commission, and Statistics Canada.

What are the unmet legal needs?

- o Cases not covered by legal aid: wills and estates, civil litigation, tax law, human rights, employment, divorce, real estate matters.
- o Clients who are not poor enough to meet financial criteria for legal aid
- o Lawyers who cannot communicate in sign language
- Lack of sign language interpreters

What legal aid services would you change?

Set up a clinic for deaf clients with two full-time interpreters and a lawyer who can sign. The interpreters must be able to go out to courtrooms all over the city and to meetings with lawyers and their clients. When their workload is low, the interpreters can do freelance work for non-legal appointments and collect fees on behalf of the legal clinic or

use the time to study legal issues or do consulting work (e.g., advising court interpreters). They could also provide simple forms to the deaf community explaining legal aid eligibility requirements.

Who are we serving well? Who aren't we serving well? Only those deaf people who are able to see paralegals who can sign and can get an interpreter when they begin the legal process are being served. Very few lawyers are familiar with the needs of deaf, deafened and hard of hearing clients

What can LAO do that could reduce the demand for legal aid services? Law reform work that would simplify process and reduce demand. Simply advise the deaf community better. Many clients come in expecting to be served but find out that they do not qualify because they are too well-off, or because they want legal action in an area that is not covered by legal aid.