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WINDIGO FIRST NATIONS • Bearskin Lake First Nation • Cat Lake First Nation • Koocheching First Nation • North Caribou Lake First Nation • Sachigo Lake First Nation • Slate Falls First Nation • Whitewater Lake First Nation	MATAWA FIRST NATIONS • Aroland First Nation • Constance Lake First Nation • Eabametoong First Nation • Ginoogaming First Nation • Marten Falls First Nation • Long Lake #58 First Nation • Neskantaga First Nation • Nibinamik First Nation • Webequie First Nation	WABUN TRIBAL COUNCIL • Brunswick House First Nation • Chapleau Ojibwe First Nation • Matachewan First Nation • Mattagami First Nation • Flying Post First Nation • Beaverhouse (affiliate) • Wahgoshig First Nation
KEEWAYTINOOK OKIMAKANAK • Deer Lake First Nation • Fort Severn First Nation • Keewaywin First Nation • MacDowell Lake First Nation • North Spirit Lake First Nation • Poplar Hill First Nation	Nishnawbe-Aski Legal Services Corporation 1805 Arthur St. East, Thunder Bay, ON P7E 2R6 138-B Mission Road, Fort William First Nation, ON P7J 1K7 Toll Free: 1-800-465-5581 (T) 807- 622-1413 (F) 807-622-3024 www.norlegal.on.ca	INDEPENDENT BANDS (Bands not affiliated with any Tribal Council) • Mishkeegogamang Ojibway Nation • Moccreebec Eeyoud Council • Sandy Lake First Nation • Weenusk First Nation (Peawanuck)



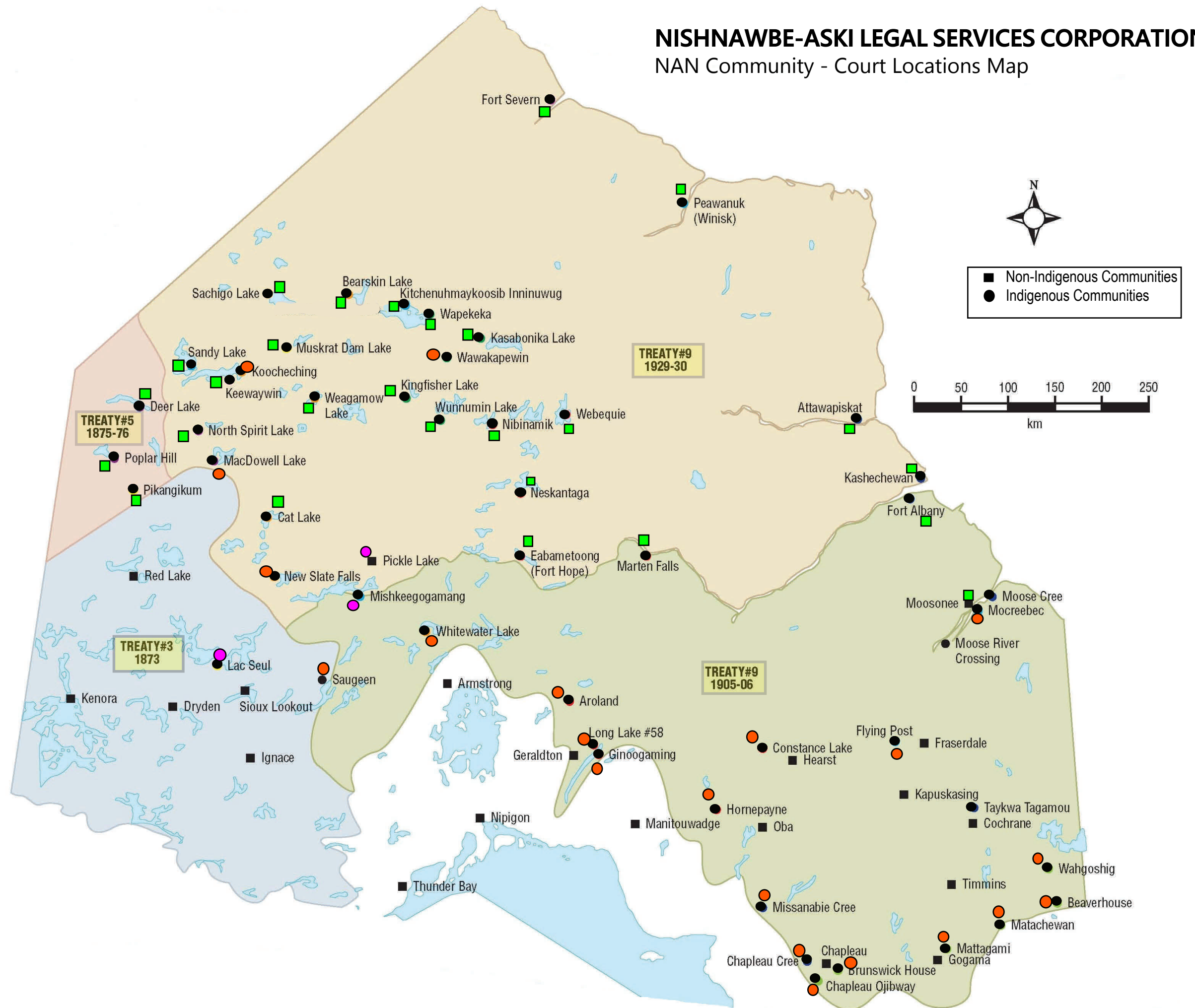
LEGEND

NAN Community Court Locations

- Drive in Court Locations
- Fly in Court Locations
- Attends Urban Courts

NISHNAWBE-ASKI LEGAL SERVICES CORPORATION

NAN Community - Court Locations Map



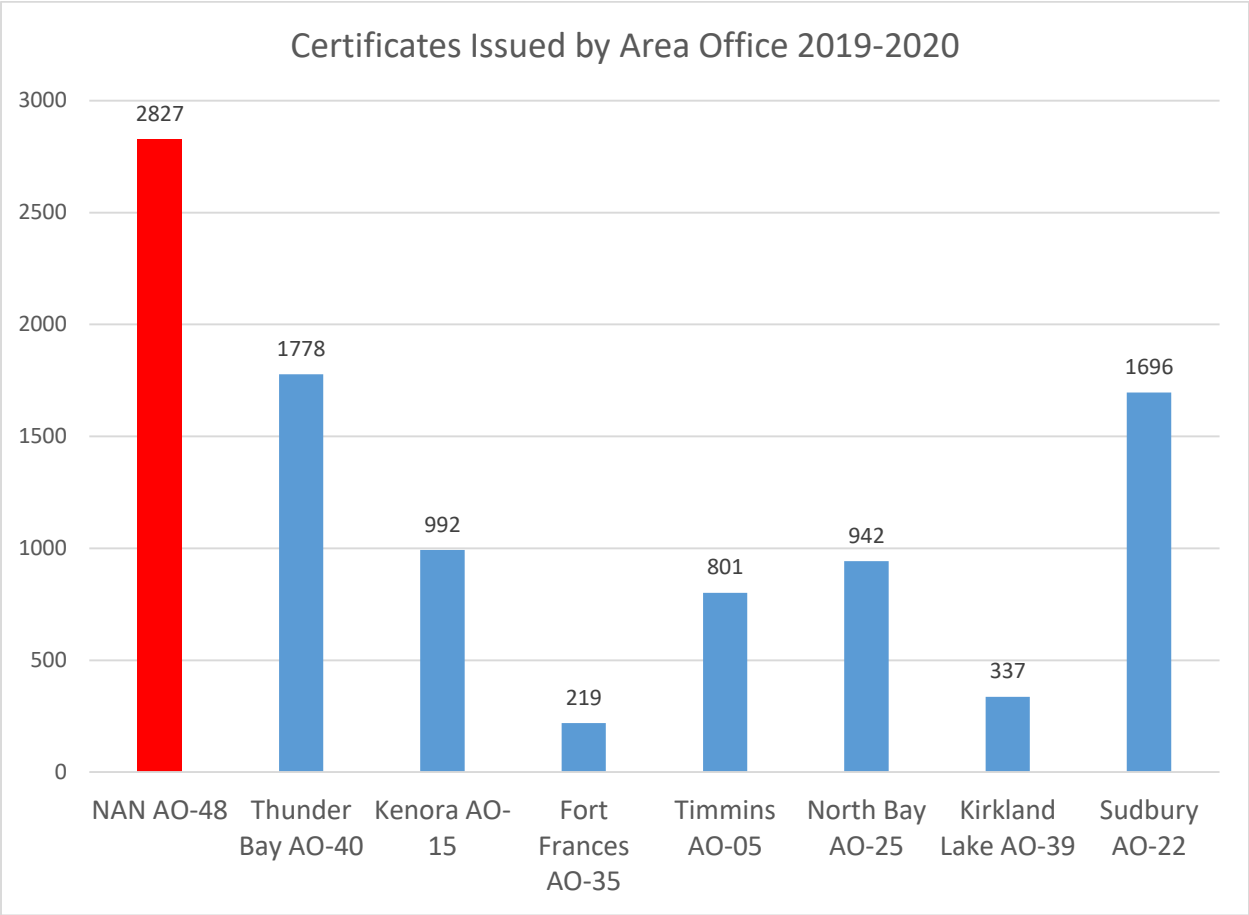


CHART A

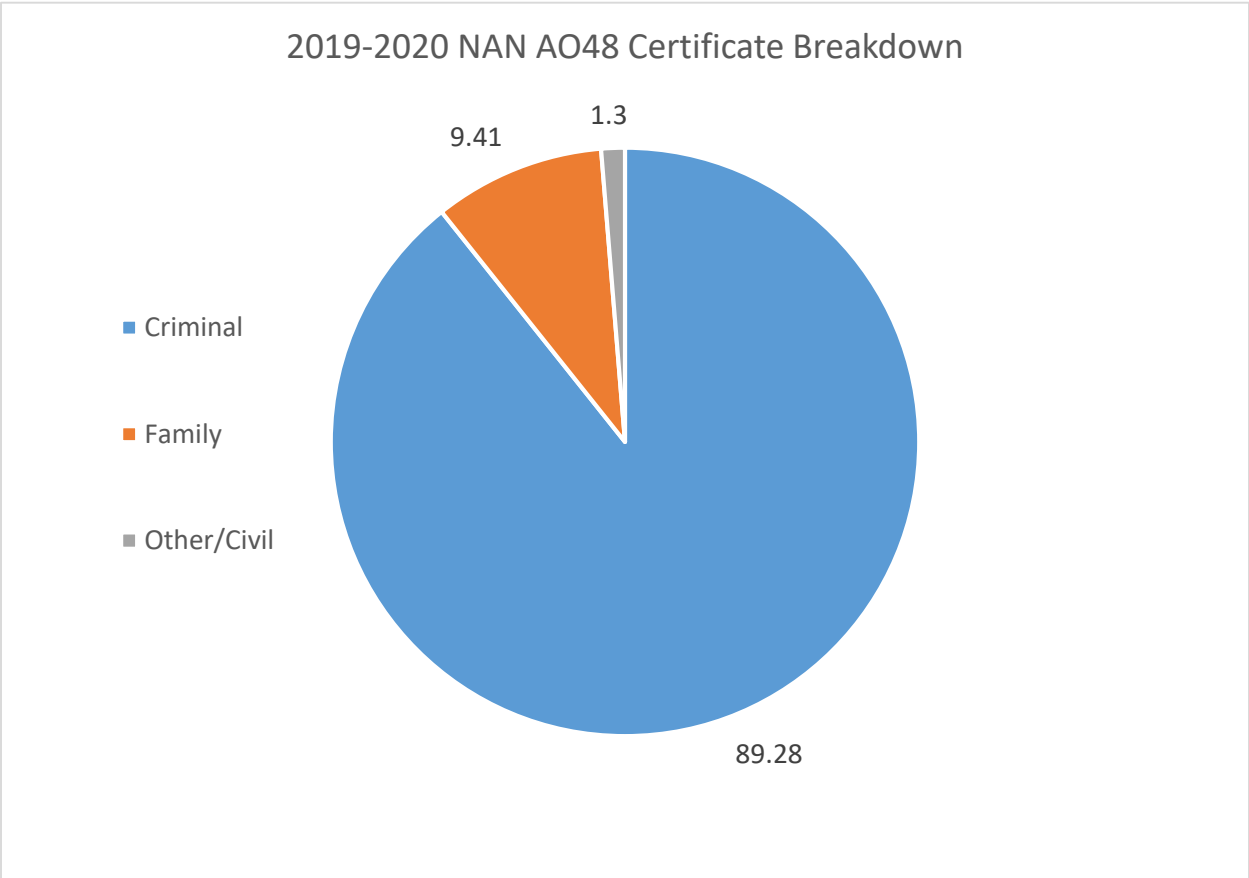


CHART B

NAN - Certificates Issued / Population 2019-2020

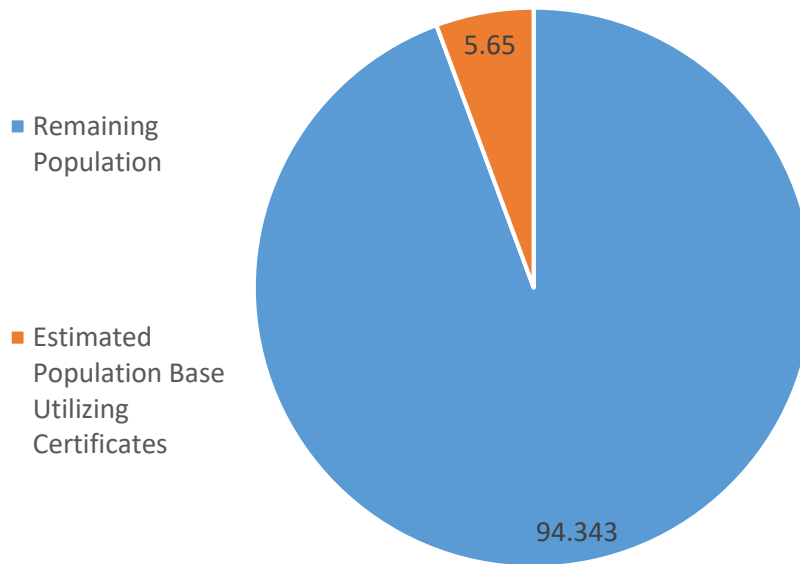


CHART C

Ontario - Certificates Issued / Population 2019-2020

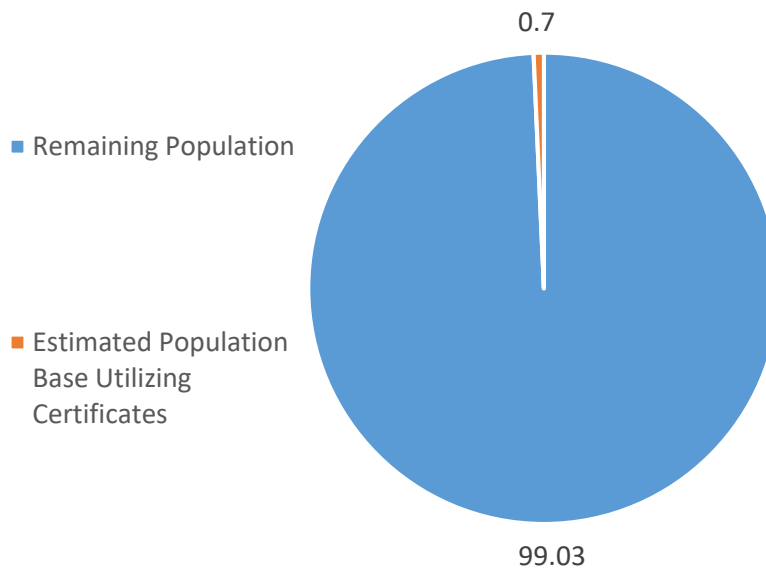


CHART D

RE: BILL 161 SMARTER AND STRONGER JUSTICE ACT, 2020

2nd Reading

SCHEDULE 15 *Legal Aid Services Act, 1988 and*

SCHEDULE 16 to enact *Legal Aid Services Act, 2019* that repeals *the Legal Aid Services Act, 1998*

SUBMISSION TO STANDING COMMITTEE ON JUSTICE

Nishnawbe Aski Nation

Nishnawbe Aski Legal Services Corporation

Deputy Grand Chief Derek Fox
Board of Director Chair Jim Beardy
Executive Director Irene Linklater
Area Director Danielle Wood
100-1801 Arthur Street East
Thunder Bay ON P&E 2R6

June 12, 2020

INTRODUCTION

The *Smarter and Stronger Justice Act, 2020* (Bill 161)¹ introduced to 1st Reading on December 9, 2019 proposes to make amendments to 20 different pieces of provincial legislation. “If passed, the bill will make changes, large and small, to over 20 acts impacting the courts, legal aid, legal practice and regulation.”²

This submission to the Standing Committee on Justice is specific to SCHEDULE 15 Legal Aid Services Act, 1998 sections repealed and SCHEDULE 16 to enact *Legal Aid Services Act, 2019* that repeals *the Legal Aid Services Act, 1998*.

WHO WE ARE

NISHNAWBE ASKI NATION

Nishnawbe Aski Nation (NAN) previously known as Grand Council Treaty No. 9 until 1983. NAN was established in 1973; it represents the legitimate, socioeconomic, and political aspirations of its First Nation members of Northern Ontario to all levels of government in order to allow local self-determination while establishing spiritual, cultural, social, and economic independence. In 1977, Grand Council Treaty No. 9 made a public declaration of the rights and principles of Nishnawbe Aski and those objectives still are the leading force today in 2020.

NAN’s objectives are:

¹ Bill 161, Smarter and Stronger Justice Act, 2020 <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-161>

² KNOW HOW the blog of the Great Library of the Law Society of Ontario, *One to watch – Ontario Bill 161, Smarter and Stronger Justice Act, 2019* February 18, 2020

- Implementing advocacy and policy directives from NAN Chiefs-in-Assembly
- Advocating to improve the quality of life for the people in areas of education, lands and resources, health, governance, and justice
- Improving the awareness and sustainability of traditions, culture, and language of the people through unity and nationhood
- Developing and implementing policies which reflect the aspirations and betterment of the people
- Developing strong partnerships with other organizations

NAN is a political territorial organization representing 49 First Nation communities within NAN Territory also referred to as Northern Ontario with the total population of membership (on and off reserve) estimated around 50, 000 citizens. NAN members are comprised of seven (7) Tribal Councils; Windigo First Nations Council, Wabun Tribal Council, Shibogama First Nations Council, Mushkegowuk Council, Matawa First Nations, Keewatinook Okimakanak, Independent First Nations Alliance and the Independent Bands (not affiliated with a Council/Alliance).

NAN encompasses the James Bay Treaty No. 9 and a portion of Treaty No. 5, with a total land-mass covering two-thirds of the province of Ontario spanning 210,000 square miles. The NAN peoples traditionally speak four languages: Oji-Cree in the west, Ojibway in the central-south area, and Cree and Algonquin in the east.³ (Appendix 1 Map of NAN-NALSC Communities and Councils)

³ NAN-NALC Treaty Map also posted on NALSC website <https://www.nalsc.on.ca>

NAN's mandate is representing the legitimate, socio-economic, and political aspirations of its First Nation members and communities of Northern Ontario to all levels of government in Canada, in order to allow local self-determination while establishing spiritual, cultural, social, and economic independence.

NAN continues to work to improve the quality of life for the Nishnawbe Aski territory, through existing partnerships and agreements with Treaty partners (governments of Canada and Ontario) where, NAN continues to advocate on behalf of the communities and represents self-determination for its communities with a functioning self-government goal.

NISHNAWBE ASKI NATION JUSTICE DEPARTMENT

The Nishnawbe Aski Nation Indigenous Laws and Aboriginal Law are recognized from time immemorial but are defined by the treaties of Treaty 9 and a portion of Treaty 5, internationally recognized treaties that are binding with the Federal government of Canada as recognized and further protected in section 35 of the *Constitution Act 1982*,⁴ furthermore as protected in section 15 of the *Canadian Charter of Rights and Freedoms*.⁵

Treaty 9 states in part:

“They promise and engage that they will, in all respects, obey and abide by the law; that they will maintain peace between each other and between themselves and other tribes of Indians, and between themselves and others of His Majesty's subjects, whether Indians, half-breeds or whites, this year inhabiting and hereafter to inhabit any part of

⁴ Constitution Act Canada, 1982 <https://laws-lois.justice.gc.ca/eng/Const/page-16.html>

⁵ The Charter of Rights and Freedoms <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/check/art15.html>

the said ceded territory; and that they will not molest the person or property of any inhabitant of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or travelling through the said tract, or any part thereof, and that they will assist the officers of His Majesty in bringing to justice and punishment any Indian offending against the stipulations of this treaty, or infringing the law in force in the country so ceded.” (obligation to consult on administration of Justice)

Treaty 9 and Treaty 5 protect the inherent right to exercise First Nations’ jurisdiction to law and have been exercising that right and continue to do so. As stated by the leadership, a Declaration of Nishnawbe-Aski (The People and the Land) By the Ojibway-Cree Nation of Treaty 9 to the People of Canada was delivered by the Chiefs of Grand Council Treaty 9 to Ontario Premier William Davis and His Cabinet in the City of Toronto, Wednesday, July 6, 1977, states and is the inherent right of the people and the land: (See NAN website at www.nan.on.ca)

“...We declare that all laws, rules, regulations, orders-in-council and act passed on or enacted by you and your federal, provincial, and territorial governments, which interfere with our sovereignty, must be re-examined in the light of our position. The right to make laws which govern our people must be returned to our people...”⁶

⁶ NAN DECLARATION <https://www.nan.on.ca/article/a-declaration-of-nishnawbeaski-431.asp>

Further more to the inherent rights of the Indigenous peoples of Canada and Nishnawbe Aski Nation rights are internationally recognized and further recognized by the United Nations Declaration on the Rights of Indigenous Peoples, Canada and Ontario must uphold this document to improve the relationship and reconciliation.

Reconciliation and law reform for our territories is a priority and Nishnawbe Aski Nation chiefs in assembly have supported such justice reform recommendations as noted in the Truth & Reconciliation Commission of Canada: Calls to Action⁷ and the First Nations Representation on Ontario Juries, Report of the Independent Review Conducted by the Honourable Frank Iacobucci, February 2013.⁸ Released June 2019, the 231 calls to action for justice in the Final Report, Reclaiming Power and Place: The National Inquiry into Missing and Murdered Indigenous Women and Girls and the conclusion that Canada's treatment of cases has amounted to a genocide"⁹ reads;

"The violence the National Inquiry heard about amounts to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Metis, which especially targets women, girls, and 2SLGBTQIA people. This genocide has been empowered by colonial structures, evidenced notably the Indian Act, the Sixties Scoop, residential schools and breaches of human and Indigenous rights, leading directly to the current increased rates of violence, death, and suicide in Indigenous populations."

⁷ http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf

⁸ https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html

⁹ <https://www.mmiwg-ffada.ca/final-report/>

NISHNAWBE ASKI LEGAL SERVICES CORPORATION (NALSC)

In 1988-89, NAN Chiefs by Resolution, selected a mixed legal service model. NALSC was created to address the shortcomings of the administration of justice and improve access to justice for the NAN member First Nations. NAN provides political oversight to NALSC and the Deputy Grand Chiefs sits on the Board as ex-officio.

NALSC is governed by a Board of eight Directors who are nominated or delegated by the Chiefs of each Tribal Council/Alliance and Independent First Nations (not affiliated with a Tribal Council/Alliance). The NALSC members are the NAN Chiefs who convene annually at the Annual General Assembly for the NALSC Board to report to the Chiefs. There are Elders representing the Zones (East, Central, West) of the NAN Territory that spans from the Manitoba/Ontario border to the Ontario/Quebec border, from just north of Thunder Bay to the shores of James Bay and Hudsons Bay.

NALSC 's Main offices are located at Fort William First Nation, and across the 3 Zones at Timmins, Thunder Bay, Kenora, Sioux Lookout, community based program offices and staff in the 49 NAN member First Nation community offices.

The NALSC mandate, mission and principles are;

Mandate

To promote creative community based justice systems and to deliver on a wide range of law-related services including legal, paralegal, public legal education, and law reform services to members of Nishnawbe Aski Nation.

Mission

To deliver the programs and services in a culturally appropriate manner sensitive to the unique values, customs, and traditions of the Nishnawbe Aski Nation communities.

Principles

Unity, Self-Governance and Sustainability

Respect and Dignity

Integrity and Honesty

Sharing and Partnership

Humility

Courage

Compassion and Caring

Wisdom

Truth

Founding Objectives

Plan, develop, deliver, coordinate and administer the provision of legal and paralegal services including community legal education, for the people of the NAN in a manner sensitive to and respectful of their unique cultural heritage.

More specifically, to:

Establish a permanent office responsible for the direction and administration of the programme;

Maintain a panel of local lawyers willing to accept cross-cultural training and provide legal services;

Hire and train paralegals to provide assistance within their expertise;

Provide culturally sensitive training to the personnel working within the justice system;

Provide community legal education about traditional native forms of dispute resolution;

Assist in the development of community based justice programmes;

Assist in the coordination of court schedules;

Consult and liaise with Legal Aid Ontario and hire an area director;

Act as a focal point for community justice concerns;

Engage in relevant research and promote law reform;

Perform other means necessary to facilitate the provision of quality legal services; and

Disseminate information pertaining to the services provided by the Corporation

NAN LEGAL SERVICES AND PROGRAMS

In 1990, Nishnawbe-Aski Legal Services Corporation (NALSC) received direction from the NAN Chiefs in Assembly to create and promote alternative and community-based justice systems for its members. Elders are integral to the vision and mission of NALSC in providing guidance to Board and Staff.

In 1996, NALSC's Restorative Justice Program was created, and it is this mandate received from the Chiefs that NALSC delivers by providing Restorative Justice to 49 First Nation communities in the NAN territory. The Iacobucci Report¹⁰ succinctly states the reason for the existence of NALSC, that it about "respecting the systemic concerns about the Justice System". Excerpts of the record of presentations and recommendations include:

¹⁰ Iacobucci Report supra 8.

271. Justice system is an alien system. First Nations people do not view the justice system as a positive presence in their lives. They view it as a foreign system of imposition that has subjugated traditional and more peaceful and culturally driven approaches to resolving conflict. First Nations view themselves as object of the criminal justice system rather than meaningful partners and participants in it....

282. NAN acknowledges serious limitations associated with NALSC's program delivery, in that it is unable to offer the full scope of services to all NAN communities owing to funding constraints. NAN proposes that if the restorative justice programs were properly resourced, NALSC would be in a better position to meet its objectives of diverting a majority of criminal matters to restorative justice, enabling First Nations to move towards a culturally specific justice model. NAN also proposes that adequate funding be provided for NALSC's public education mandate to help First Nations people in NAN communities understand the justice system and role of juries therein, ...

285. Ownership: enhancement of restorative justice programs. NAN states that the way forward to reconcile competing worldviews regarding justice is to foster long-term participation of First Nations peoples in, and ownership of, the justice system. NAN proposes that this reconciliation can be achieved by creating partnerships within First Nations on self-governance and justice, and making necessary room for legal plurality and the existence of dual justice systems

286. Reparations: improvements of the justice system. NAN proposes that the government make significant investments to improve the operation of the justice system in the northwest Ontario. Discussions with First Nations have exposed a system that fails at its most rudimentary level and

has lost the confidence, trust and respect of First Nations people generally and propose recommendations for a process to address the basic failings of the system.

NAN outlined some of these key needs:

- Increased frequency of court sittings, and, in consultation with First Nations leadership, explore the feasibility of holding jury trials in remote communities;
- appropriate infrastructure for court hearings;
- adequate legal representation and a review of the Legal Aid system in the North;
- properly trained language interpreters; and
- adequate funding for the accused and their witnesses to properly access the justice system.

Recommendation 4 (a): The Ministry of the Attorney General carry out the following studies for eventual input by the Implementation Committee:

4 (a). a study on legal representation that would involve Legal Aid Ontario, particularly in the north, that would cover a variety of topics, including the adequacy of existing legal representation, the location and schedule of court sittings, and related matters; ...

372. These systemic issues include:

- conflict between First Nations and Euro-Canadian approaches to criminal justice;
- the systemic racism the unfortunately still appears to be present in our justice system, including instances of mistreatment of First Nations inmates in prison, general disrespect by police and discriminatory public reaction to First Nations complaints;

- the problem of inadequate legal representation of First Nations individuals, particularly in the north, resulting in virtually automatic guilty pleas; ...

The Debwewin Jury Implementation Committee¹¹ developed a Themes Document entitled “Barriers to Accessing Justice: Legal Representation of Indigenous People within Ontario”. (This is not addressed here, and provided for further reference to support our recommendations.)

The unique justice and legal aid services requirements of NAN stems in part from the reality that the majority of NAN communities have scheduled Fly-In Court Communities and some are Drive-In to Courts, as depicted in the map at Appendix 2 Map of Fly-In Court Communities and Drive-In Communitiies. The map provides a visual of the epic vastness of the geographic NAN Territory covering 2/3 the land mass of the Province of Ontario.

NALSC’s Restorative Justice Program has been successfully operating and provides programs to the fly-in remote communities of NAN. Our Restorative Justice programs use the Circle Process model called "Community Accountability Conferencing". This model is based on the tradition of involving extended families in resolving disputes, and incorporates the beliefs, values, customs and practices of the community. The goal of our Restorative Justice Program is to help address the over-representation of Indigenous people in the mainstream justice system. NALSC aims to achieve this goal by working with NAN First Nations in the administration of justice affecting their community, and to provide a culturally based diversion process that uses the Circle process to promote healing in the community.

¹¹ <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/debwewin/>

NALSC has grown in the last 30 years of successful operations where now LAO services and funding comprises 1/3 of NALSC's total administrative operations and funding.

AUTHORITIES AND MEMORANDUM OF UNDERSTANDING

1988: Chiefs of NAN selected a mixed legal service model – with support from Legal Aid Ontario (LAO), Ministry of the Attorney General (MAG) and the Department of Justice (DOJ)

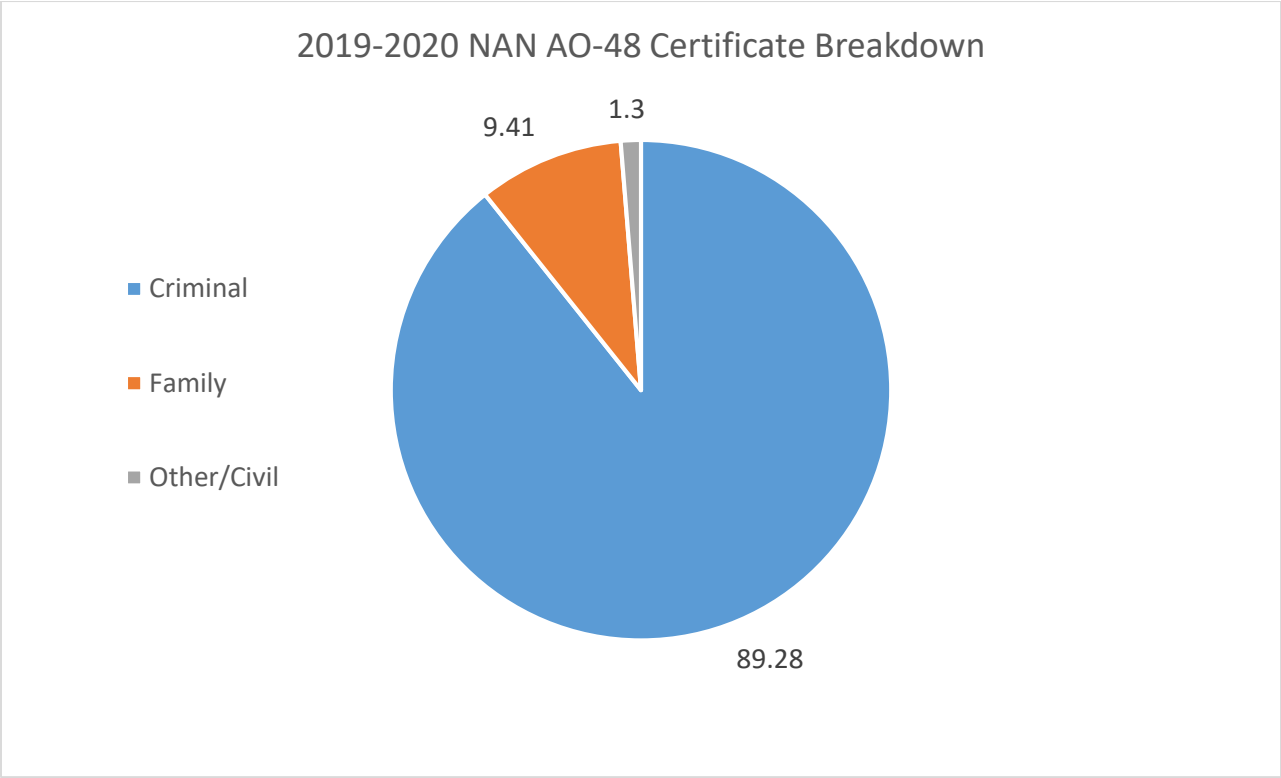
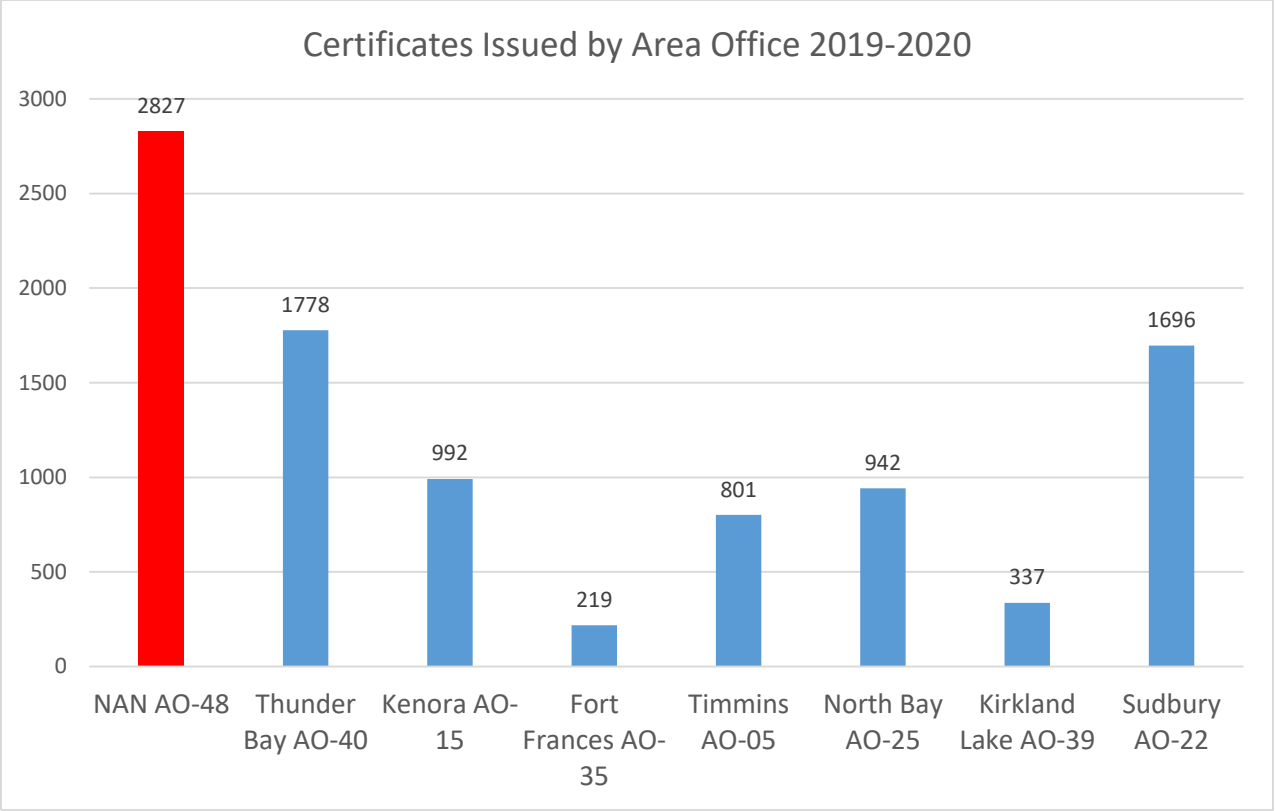
March 1, 1990, NALSC created by letters patent under the laws of Canada, with its purpose to address the shortcomings of the administration of justice and improve access to justice to the 49 NAN member First Nations.

NALSC began operations to provide legal aid services to low-income individuals seeking legal assistance on matters related to criminal and family law.

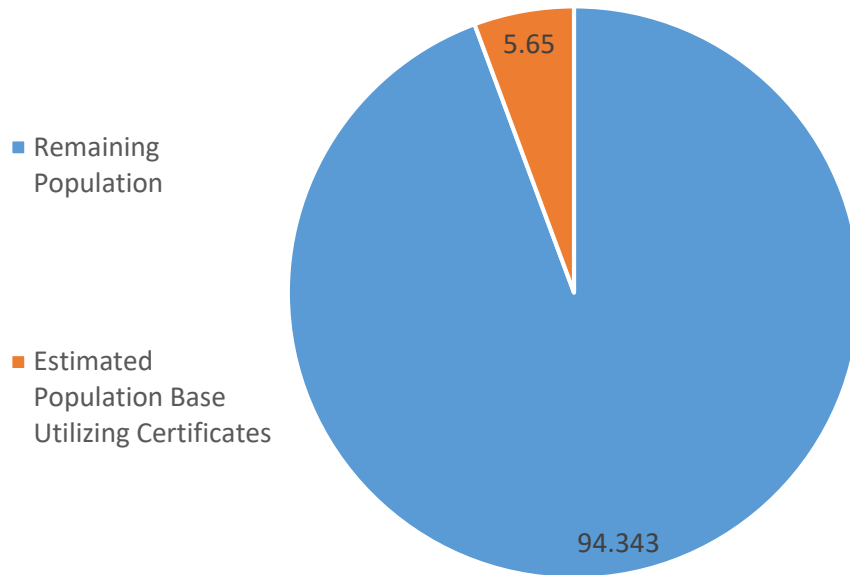
NALSC functions as a Legal Aid Ontario (ALO) *Area Office #48* and has the authority to issue Legal Aid Certificates to qualifying on and off reserve members and an "Aboriginal corporation" under *Legal Services Act, 1998* section 14 (new proposed legislation "*Smarter and Stronger Justice Act*,"

NALSC maintains a panel of lawyers who provide duty counsel and certificate services for family and criminal law.

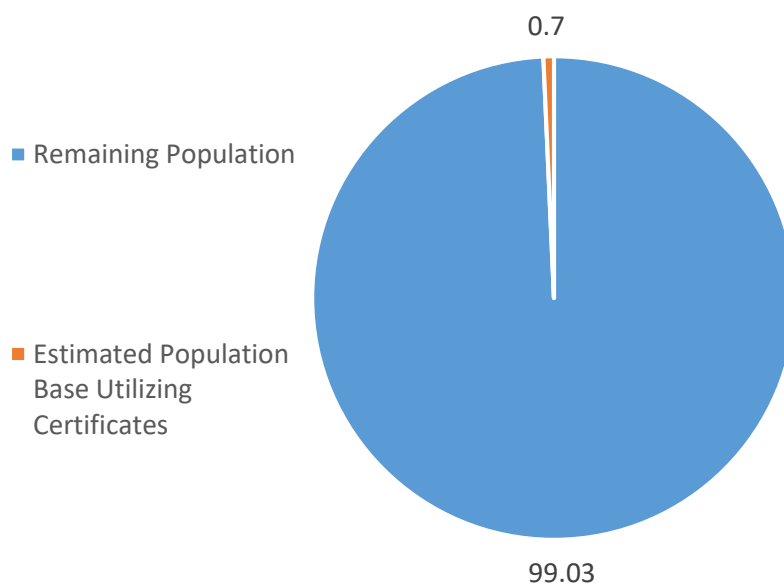
NALSC provides free summary advice in-person or via telephone on a variety of issues from criminal to family to criminal injuries compensation. Duty Counsel attend at NALSC office on a schedule.



NAN - Certificates Issued / Population 2019-2020



Ontario - Certificates Issued / Population 2019-2020



Bill 161 introduced at 1st Reading December 9, 2019 in particular *Schedules 15 & 16* will make changes that will centralize decision making authority with a greater empowered LAO Board of Directors. This is a matter of grave concern to NAN-NALSC.

Memorandum of Understanding entered into between LAO and NALSC on November 9, 2004 (section 46. "... remain in effect until a new or amended MOU is agreed to by the parties.") to provide legal aid services to low income persons seeking legal assistance on matters of criminal & family law.

2018 NAN Chiefs in Assembly Resolution – to formalize negotiations to renew MOU. NALSC submitted proposed amendments to MOU and advised the LAO legal department to review and respond. No response received.

LAO made administrative policy changes in August 2019 that eliminated Area Directors.

NALSC Board of Directors were not informed of the LAO changes and learned of this change in October 2019 on calling for a face to face meeting with LAO representatives. Advised that new legislation is pending and the MOU will be governed by the new Legal Aid Services Act.

NALSC Services and Programs and Staffing funded by LAO

Executive Director, Area Director, Legal Aid Coordinator, Assessment Officers, Community Legal Workers, Public Legal Education Legal & Communication Coordinator, Staff Lawyer, Bail Workers, Bail Verification Worker, Release & Reintegration Workers, Gladue Team Lead and Gladue Writers.

NALSC maintains a panel of duty counsel lawyers and lawyer lists for NAN communities and fly-in courts.

NALSC Advice Lawyer program continues to be available by a rotation of per diem Duty Counsel panel lawyers on Monday, Wednesday and Friday from 1-5 pm EST to provide summary legal advice to NAN members.

NALSC Restorative Justice Services and Programs

NALSC receives funding for its Restorative Justice programs from MAG, MCCSS, DOJ.

Restorative Justice programs provide alternatives to incarceration focussed on a culturally-appropriate method of achieving justice sensitive to the issue of the over-incarceration of NAN peoples that serves to restore relationships and the traditional justice system.

NALSC applies the “Community Accountability Conferencing” model used by Indigenous Peoples throughout the world for centuries. Circles involve extended families and incorporate the beliefs, values, customs, and practices of the community. The program goals are to empower communities, promote accountability for offenders, provide collective support for victims, replace ineffective conventional court processes, and allow participants to repair damage caused.

Restorative Justice Programs and staffing includes, Sexual Assault & Domestic Violence, By Law workers, Youth Intervention, Youth Justice, YI and YJ, Community Hub, Guns & Gangs.

Youth Services assist to guide youth to a better understanding of how their behaviour affects others in the community and encourages them to make amends by giving back to the community in a meaningful way. Victims, offenders and the community are involved in this process.

Community Youth Justice Workers facilitate healing circles to work towards a resolution that provides for making amends, healing and successful re-integration into the community while

preventing further harm. This is an important role in the development of a local program and provides support and assistance to reintegrate youth back into the community and keep at risk youth out of trouble. The CYJW works closely with probation officers, leadership and education authorities, youth who are in conflict with the law by meeting regularly, building self-esteem and promoting healthy lifestyles, with at-risk youth by offering programing, activities, and education in the communities.

The HUB is a community based culturally-appropriate life skills program delivered in community. It is a digital suite of life skills programs delivered to youth and young adults through a large touch screen computer. Programs offered: Northern Ontario Substance Abuse Program, Northern Ontario Anger Management Program, Cultural Teachings, Resume Builder, Trade Up, Weed Out the Risk, Financial Lite.

NALSC programs and services work together to promote wrap-around client services to support clients in their journey through western legal systems. NALSC's other programs that incorporate traditional forms of justice within NAN communities include: Community Legal Workers, Public Legal Education, Gladue Writer, Gladue Aftercare, Victim Witness, Indigenous Bail Verification and Supervision, Talking Together Child and Family Wellbeing, Community Engagement and Learning HUB, Community Release and Reintegration, Guns and Gangs Intervention, Restorative Justice, Youth Justice, Youth Intervention, Specialty Restorative Justice for Sexual Assault, Domestic Violence, and Band Bylaw

Bill 161 – SCHEDULE 15 and SCHEDULE 16:

The areas of concern and recommendations for NAN-NALSC in our review of Bill 161 specific to SCHEDULE 15 and SCHEDULE 16 of a new Legal Aid Services Act, include the following;

Access to justice is a foundational principle in the *Legal Aid Services Act 1998* to addressing the challenges of delivery of justice and legal aid services across the vast geographic NAN territory.

NAN is concerned that the current terminology of 'shall' to providing legal aid services is reduced in the proposed new legislation to 'may' provide services that is to be determined by the LAO Board. This will result in others determining what services are best for NAN peoples and communities. The other term replete in the new legislation is that there must be 'value for money' that implies a cost benefit analysis will drive the legal aid services and the geographic and unique needs of NAN peoples and communities will be further disadvantaged

1. No consultation with NAN –NALSC on the planning and drafting of the proposed new Legal Aid Services Act, 2020.

We know the Government of Ontario legislative process involves a Legislative Planning and Drafting Legislation stages. At no time was NAN-NALSC informed of a plan to develop a new *Legal Aid Services Act*, only becoming aware by a verbal statement made in the early fall of 2019 by a LAO senior representative. We assume that the LAO Board and its senior staff would have been consulted. After all the Government is in the midst of a Modernization Review of Legal Services initiative. NAN-NALSC has not been advised of this Modernization initiative and not invited to participate.

To use the words of The Honourable Frank Iacobucci in his report "*First Nations Representation on Ontario Juries*" February 2013, the same applies in this case. "... it is also regrettably the fact

that the justice system generally as applied to First Nations peoples, particularly in the North, is quite frankly in a crisis. If we continue the status quo we will aggravate what is already a serious situation, and any hope of true reconciliation between First Nations and Ontarians generally will vanish. Put more directly, the time for talk is over, what is desperately needed is action.”ⁱ

In particular, the removal of the terms “access to justice” and a focus on “value for money” and that legal representation to low income individual “may” be provided replacing “must” be provided, is justification to call for the tabling of these SCHEDULES.

Legal Aid Services Act, 1998 ss.14 (1) Methods of providing legal aid services has turned into the *Manner of providing legal aid services* that no longer provides statutory protection for NALSC funding. Section 14 reads in part;

“14 (1) Subject to subsections (2) and (3), the Corporation shall provide legal aid services by any method that it considers appropriate, having regard to the needs of low-income individuals and of disadvantaged communities, the need to achieve an effective balance among the different methods of providing legal aid services, the costs of providing such services and the Corporation’s financial resources, including,

(a) the authorization of lawyers, by means of certificates, to provide legal aid services to individuals or a group of individuals;

(a.1) entering into agreements with lawyers, groups of lawyers or law firms under which the lawyer, group or law firm provides legal aid services;

(b) the authorization of service-providers, by means of certificates, to provide legal aid services other than legal services to individuals or a group of individuals;

(c) the funding of clinics;

(d) the establishment and operation of legal aid services staff offices;

(e) the funding of student legal aid services societies;

(f) the funding of Aboriginal legal services corporations to provide legal aid services to Aboriginal individuals and communities; (emphasis added)

Recommendation: That Bill 161 sections of Schedule 15 and Schedule 16 be removed from Bill 161 and Tabled. That any development of the *Legal Aid Services Act* must have full and informed consultation engagement with NAN – NALSC to demonstrate a genuine commitment by the Government of Ontario to achieve a true meaningful reconciliation with First Nations peoples.

2. LAO Board: Composition, Selection of Directors, and Duties of the Board

The main concern for NAN-NALSC is that the new LASA Board of Directors of Legal Aid Ontario (LAO) no longer provides for the protection for representation of geographic diversity of the Province. The increased and autonomous authority to be centralized Legal Aid Services Board based in Toronto with the existing Board or one similar to it that is not representative of the NAN territory peoples and communities fails to comprehend our reality and that is an injustice. The reality that no LAO Board member has visited NAN-NALSC communities and that some believe that one visit to Thunder Bay in 2019 was travelling in NAN Territory is astounding. Thunder Bay is situated in the Robinson-Superior Treaty, not Treaty 9 or Treaty 5 Territory.

Recommendation: The expanded role of the LAO Board in the proposed new Legal Aid Services Act 2019 heightens the need for a reinstatement of the geographic diversity provision and to ensure a substantive NAN-NALSC representative engagement of permanency that is based on geographic diversity across the North Region of Ontario – NAN Traditional Territory.

3. Diminished Role of Aboriginal Corporations/Indigenous Legal Aid Providers –raises further questions of Trust, Transparency and Accountability

NALSC is the sole ‘aboriginal legal services corporation’ existing as s. 14 (f) *Legal Aid Services Act*, 1989. This provision is not within SCHEDULE 16 and now determines NALSC to become a “service

provider”. The changes in SCHEDULE 15 and proposed amendments in SCHEDULE 16 serves to create extensive autonomous authority to be held by LAO Board and leaves unilateral decision making to it to developing policies at its discretion – without a provision that requires consultation. The primary purpose of Schedule 16 is focused on ‘value for money’ as opposed to ‘access to justice’. The broad powers to be held by LAO will impact the Eligible Areas of Service, how service provisions will be determined, in particular with the removal of regional approach, including eligibility of legal aid services. These elements for NAN-NALSC raise more concerns on the question of Trust Transparency and Accountability.

1988: Chiefs of NAN selected a mixed legal service model with two tracks – with support from LAO, Ministry of the Attorney General and the Department of Justice. This model utilizes the western justice court system and seeks reform to addressing the legal service needs of NAN First Nations, in parallel with the traditional justice systems of NAN peoples, in co-existence to re-establishing our justice systems. We had our own systems of justice that we wish to re-establish more formally.

NALSC has been functioning successfully in its interim capacity for 30 years and wishes to move forward in partnership with the Province of Ontario, and it will also require the involvement of the Federal Government. It is time for action for justice for NAN-NALSC to have its own Legal Services Institution.

Recommendation: That the Government of Ontario commit to engage with NAN-NALSC for the creation of an independent First Nation Legal Services institution with direct funding from Treasury Board to the new First Nation Legal Service institution to service the NAN members and communities and others to have access to justice.

4. **Interim Formal negotiations for a new Memorandum of Understanding (MOU) to replace the one between LAO and NALSC of November 9, 2004**

The MOU reads at section 46. "... remain in effect until a new or amended MOU is agreed to by the parties." to provide legal aid services to low income persons seeking legal assistance on matters of criminal & family law.

2018 November NAN Chiefs in Assembly Resolution instructed that NALSC and LAO engage in formal negotiations to renew the MOU. NALSC submitted proposed amendments to a renewed MOU and was advised the LAO legal department will review and a response would follow. One year later in the fall of 2019 the LAO representatives advised the NALSC Board that the MOU is on hold since there is a new Legal Aid Services Act to be announced that will govern the scope and authorities of a new MOU.

The unilateral decision by LAO to not enter into negotiations is bad faith in the view of the NAN-NALSC, a breach of the MOU. Not only was the MOU placed on hold, the LAO made administrative changes that eliminated the positions of Area Directors from the Area Offices and informed NAN NALSC that Area Directors no longer exist. The NAN NALSC had and continues to have an Area Director, although the former authorities of this position has now been reduced by LAO and has taken away authorities once held by this position for the NAN-NALSC.

A breach of Trust by LAO has driven a wall of mistrust between NAN-NALSC and LAO that serves to undermine NAN-NALSC authorities and decision-making.

Recommendation: That in the process to the development of a NAN First Nation Legal Aid Service institution, in the interim, LAO enter into a formal negotiation on a renewed MOU with NAN-

NALSC that will be in good faith negotiation and to ensuring adequate funding that includes operational costs being increased.

We wish to express our appreciation for the opportunity to present to the Standing Committee on Justice Policy on June 11, 2020.

Appendices:

1. Map of NAN-NALSC Communities and Councils.
2. Map of Fly-In Court Communities and Drive-In Communities

Appendix 1: Map of NAN-NALSC Communities and Councils.

NISHNAWBE ASKI LEGAL SERVICES CORPORATION

FIRST NATIONS COMMUNITIES



INDEPENDENT FIRST NATIONS ALLIANCE

- Kitchenuhmaykoosib Inninuwug First Nation
- Muskrat Dam First Nation
- Pikangikum First Nation
- Whitesand First Nation
- Lac Seul First Nation

SHIBOGAMA FIRST NATIONS COUNCIL

- Kasabonika Lake First Nation
- Kingfisher Lake First Nation
- Wapekeka First Nation
- Wawakapewin First Nation
- Wunnumin Lake First Nation

MUSHKEGOWUK TRIBAL COUNCIL

- Attawapiskat First Nation
- Chapleau Cree First Nation
- Fort Albany First Nation
- Kashechewan First Nation
- Missanabie Cree First Nation
- Moose Cree First Nation
- Taykwa Tagamou First Nation

WINDIGO FIRST NATIONS

- Bearskin Lake First Nation
- Cat Lake First Nation
- Koocheching First Nation
- North Caribou Lake First Nation
- Sachigo Lake First Nation
- Slate Falls First Nation
- Whitewater Lake First Nation

MATAWA FIRST NATIONS

- Aroland First Nation
- Constance Lake First Nation
- Eabametoong First Nation
- Ginoogaming First Nation
- Marten Falls First Nation
- Long Lake #58 First Nation
- Neskantaga First Nation
- Nibinamik First Nation
- Webequie First Nation

WABUN TRIBAL COUNCIL

- Brunswick House First Nation
- Chapleau Ojibwe First Nation
- Matachewan First Nation
- Mattagami First Nation
- Flying Post First Nation
- Beaverhouse (affiliate)
- Wahgoshig First Nation

KEEWAYTINOOK OKIMAKANAK

- Deer Lake First Nation
- Fort Severn First Nation
- Keewaywin First Nation
- MacDowell Lake First Nation
- North Spirit Lake First Nation
- Poplar Hill First Nation

Nishnawbe-Aski Legal Services Corporation

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INDEPENDENT BANDS (Bands not affiliated with any Tribal Council)

- Mishkeegogamang Ojibway Nation
- Mocrebec Eeyoud Council
- Sandy Lake First Nation
- Weenusk First Nation (Peawanuck)

Appendix 2: Map of Fly-In Court Communities and Drive-In Communities



LEGEND

NAN Community Court Locations

- Drive in Court Locations
- Fly in Court Locations
- Attends Urban Courts

NISHNAWBE-ASKI LEGAL SERVICES CORPORATION

NAN Community - Court Locations Map

