

Public Interest Law Centre



Fall 2020

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Four decades of public service for Manitobans.

Our History

The Public Interest Law Centre (PILC) works to amplify the voices of those who are far too often silenced in legal and public policy debates, by providing high quality, evidence-based advocacy.

PILC works in partnership with individuals, community organizations, academics and First Nations to enhance the lives and law for all Manitobans, and especially people with low incomes, consumers, Indigenous people, persons with disabilities, members of the LGBTQIA2S+ community, immigrants, people in custody, and senior citizens.

The 1960s brought tremendous social change to North America with the civil rights, environmental and feminist movements gaining strength and visibility. It was an era where people were challenging the established institutions of power and seeking access to justice and equality.

Up until this time, Manitobans with low incomes who needed legal help had to rely on a patchwork of charities with lawyers who donated their time. In 1972, the Manitoba government established the first non-profit, self-governing body that came to be known as Legal Aid Manitoba.

The architects of the legal aid movement also realized that, in many cases, the rights of low-income people were not being advanced because of systemic barriers as well as individual barriers that prevented people from accessing justice. The moment to act on this came following the 1982 repatriation of the Canadian constitution and adoption of a Canadian Charter of Rights and Freedoms. It was clear that the Charter would create a new role for the courts in Canada.

In 1982, Winnipeg lawyer, Arnie Peltz, approached the Manitoba Attorney General with an idea. He wanted to establish a law centre that would commit to handling public interest cases, including Charter test cases. The Public Interest Law Centre (PILC) was born, with Peltz as its first director, housed within Legal Aid Manitoba (LAM).

The opening of the PILC office within LAM was unique in Canada. It represented an express acknowledgement by LAM that its mandate of serving the public interest included tackling the systemic barriers that individuals and groups can face in accessing justice.

PILC has achieved significant successes on behalf of Manitobans for the past 38 years, leading to changes in laws and public policies, benefiting hundreds of thousands of consumers and improving thousands of individual lives. Recent recognition of PILC include the Manitoba Human Rights Commission's Aaron Berg Award in 2018, a Service Excellence Award in 2017, as well as a commendation from the Clerk of the Executive Council in 2016. The PILC team has also been the recipient of honours from The University of Winnipeg (2017), the Manitoba Bar Association (2017), the Canadian Bar Association (2015) and the Manitoba Law Society (2013). A 2015 stakeholder survey highlighted strong reviews regarding the quality of the Centre's work with "high praise" coming "not only from clients but from Government, the Judiciary, the Academy and from private bar lawyers".



01.

Advancing Accessibility

01. Advancing Accessibility

Creating a Barrier-Free Manitoba

In 2008, Barrier-Free Manitoba was formed as a non-profit, cross-disability initiative to lobby for the removal of barriers facing persons with disabilities. PILC provided ongoing legal advice. After a five-year campaign, the Accessibility for Manitobans Act was unanimously adopted by the Manitoba Legislature. This made Manitoba the second Canadian jurisdiction to enact legislation aimed at removing barriers to persons with disabilities in the labour market and in day-to-day services.

Age and Disability Discrimination

In September 2018, the Manitoba Human Rights Commission agreed that the Manitoba government systematically discriminated against two young adults with disabilities who lost support services upon graduating from high school. Both Tyson and Amy have cerebral palsy and require assistance with all aspects of everyday activities like dressing and eating.

The Commission found on a prima facie basis that Tyson Sylvester and Amy Hampton, along with other adults with severe lifelong disabilities, are discriminated against based on their age. At the outset of this process, the Manitoba government characterized Tyson and Amy's complaint as "frivolous and vexatious". PILC filed the complaints against the Manitoba government and Winnipeg Regional Health Authority in 2016 and the case is currently in mediation.

PILC also partnered with the Cerebral Palsy Association of Manitoba to create a public awareness campaign and website LockedOutofLife.com. It features Tyson in a compelling video: <https://youtu.be/jHR0XXMaDxA>

A Lasting Victory for Manitobans with Disabilities

In May 2020, Martin Stadler won a significant victory on behalf of Manitobans with disabilities. The Manitoba Court of Appeal ruled that his Charter right to equality was violated. A former computer engineer unable to work since 2014 due to health issues, Stadler relies on Manitoba social assistance. Yet when he turned 60, his caseworker told him he had to collect Canada Pension Plan (CPP) early, rather than wait until he was 65. His CPP payments would be reduced by 36 percent as a result for the rest of his life. The ruling stated: "Persons with disabilities are among the groups at greatest risk of living in poverty in Canada. The adverse financial consequences are particularly harsh given the increased vulnerability of persons with severe disabilities to poverty."

As a result of the decision, Mr. Stadler will not be required to apply for CPP benefits until the age of 65, and other Manitoba recipients of income assistance with disabilities will no longer be forced to apply for CPP before age 65. The Social Planning Council, represented by PILC and Vince Calderhead of Pink Larkin LLP, intervened in Stadler's case.

Promoting Community Living

Working with Community Living Manitoba, PILC launched a human rights complaint against the continued institutionalization of persons with intellectual disabilities by the Province of Manitoba at the Manitoba Development Centre in Portage La Prairie.

Decades of social science research shows that persons with intellectual disabilities benefit and even flourish when living in a community setting. The case was settled when the Province agreed to return 49 persons to the community. By 2016, most of these individuals had found new lives outside of an institutional setting.

Saying Yes to Inclusion

In 2010, New Directions for Children, Youth, Adults & Families sought to convert a home in Springfield, Manitoba into a residence for up to three adults with intellectual disabilities. The rural municipality argued this would be a group home requiring a zoning variance. In partnership with pro bono partners Taylor McCaffrey LLP, PILC represented New Directions before the Manitoba Human Rights Commission. The issue was successfully mediated, leading to the amendment of by-laws to ensure they were not discriminatory. The house in Springfield was converted and those adults with intellectual disabilities are now able to live in a home setting.

Fair Pay

Up until 2013, the Manitoba government could issue permits to employers that would allow them to pay individuals with disabilities less than the minimum wage. PILC helped the Manitoba League of Persons with Disabilities argue that these permits violated the Charter of Rights and Freedoms. Shortly after receiving the opinion, the provisions of the Manitoba Employment Standards Code that allowed this practice were repealed.

“ Persons with disabilities are among the groups at greatest risk of living in poverty in Canada. The adverse financial consequences are particularly harsh given the increased vulnerability of persons with severe disabilities to poverty.”

— *Manitoba Court of Appeal*

Fighting for Support for First Nations Children

PILC represented a First Nations mother, Harriet Sumner-Pruden and her son Alfred “Dewey”, who lives with disabilities, in their complaint before a Manitoba Human Rights adjudicator. At issue, along with a related complaint at the Canadian Human Rights Tribunal, is the significant gap in services and supports for First Nations children with disabilities who live both on and off reserve. Harriet prepared a video statement for PILC’s 35th anniversary.

UPDATE: On August 20, 2020, the Manitoba Human Rights Adjudication Panel determined that the Manitoba government discriminated against Dewey. The decision found there was no justification for the discriminatory behavior that Dewey and his family experienced, and also recognized Dewey’s right to access healthcare on an equal level to other Manitobans. The Manitoba government has been ordered to pay the family \$42,500 in damages. The Assembly of Manitoba Chiefs applauds the Sumner-Pruden victory but expresses concern about the limitations and restrictions of the decision to individual circumstances, rather than systemic and structural contexts.

National Challenge Re: Systemic Discrimination

PILC is representing the Council of Canadians with Disabilities, People First Canada, and the Canadian Association for Community Living in an important national case regarding systemic discrimination and de-institutionalization of individuals with intellectual disabilities. The case has significant national and provincial implications as it offers the opportunity to clarify ongoing confusion over the Supreme Court of Canada’s decision *Moore v British Columbia (Education)*, which have also proved challenging to Manitoba Human Rights adjudicators in recent hearings, including in the recent Harriet Sumner-Pruden case.

Recently, a Nova Scotia Human Rights Board of Inquiry found that the Province had discriminated against three individuals with intellectual disabilities by confining them to a mental institution when they properly should have been living in the community. However, the Board of Inquiry also dismissed a complaint of systemic discrimination, despite evidence of a “broken” system. While the concept of “systemic discrimination” is not new, administrative tribunals and courts continue to struggle in its application. Thompson Dorfman Sweatman LLP has also agreed to donate the time of three lawyers to this case. The hearing is currently scheduled for November 19, 2020.

“

Hello, my Anishinabe name is Flying Eagle Woman from the Wolf Clan, and my English name is Harriet Sumner-Pruden. I live approximately 245 kilometres north of Winnipeg in the First Nation community of Piniwutan, also known as Fairford. I came to the Public Interest Law Centre because we could not afford legal fees to pay a lawyer to represent our son’s case. This case is very important to my son, our families and others across our nation on behalf of children like my son, for equality rights and access to services for First Nation children with disabilities who live on federal jurisdiction. If it wasn’t for the advocacy of PILC, I don’t believe we would be able to pursue my son’s case on our own. Thank you, Meegwetch.

— *Harriet Sumner-Pruden*

”



02.

Protecting Manitoba Consumers

02. Protecting Manitoba Consumers

PILC works collaboratively with community-based organizations to represent consumers, and especially low-income and vulnerable consumers at public hearings. Some of PILC’s partners include Winnipeg Harvest, the Consumers’ Association Canada - Manitoba, the Aboriginal Council of Winnipeg and Community Financial Counselling Services.

Manitoba Hydro Rates

PILC has successfully helped to slow Manitoba Hydro rate hikes over a number of years, saving consumers significant sums on their monthly energy bills. For example, in 2018, the Public Utilities Board (PUB) reduced a proposed 7.9% Manitoba Hydro rate increase to 3.6%, saving Manitoba ratepayers more than \$60 million annually.

Manitoba Insurance Rates

PILC annually intervened at Manitoba Public Insurance hearings and between 2001 and 2020, the PUB ordered a rebate of nearly \$660-million to Manitoba drivers.

Wireless Rates

PILC has made important contributions to Canadian Radio-Televisions and Telecommunication (CRTC) proceedings relating to the need for greater competition in the wireless market, and the necessity for low cost data options. High prices and a lack of innovative service offerings have created a substantial barrier for low income people in Canada who require access to phones and data to access essential health, educational and government services and simply to stay connected. PILC continues this advocacy work before the CRTC.

Payday Loan Rates

PILC successfully argued that the high rates charged by payday lenders left vulnerable consumers at risk of being trapped in a debt cycle. In its first report, PUB recommended rates for Manitobans that were more than 20 percent lower than any other Canadian jurisdiction in which rates are regulated. Manitoba continues to have among the lowest payday lending rates in the country.

Because every Manitoban deserves to have their voice heard.



03.

Advancing Human Rights & Equality

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Police Accountability

Machaur Madut is a South Sudanese man who was killed by Winnipeg Police in February 2019. He reportedly struggled with mental health issues, did not speak fluent English, and was likely in the throes of a mental health crisis at the time of an altercation with police. PILC is representing a coalition of non-profit community organizations which have standing in the Inquest. The coalition is interested in newcomer (in particular refugee) experiences around trauma and mental health, alternatives to a policing model of crisis response, and policing in racialized communities. Dates have not yet been set for the Inquest, however it is likely to begin at least a year to 18 months from now.

Caring for Family

In 2004, a Manitoban applied for federal Employment Insurance compassionate leave benefits to allow him to care for his terminally ill brother. He was denied the benefits, which were not provided to siblings. With the support of PILC, he appealed the ruling, arguing that the law violated the Charter of Rights and Freedoms and failed to recognize the value of siblings' relationships. Before his appeal was heard and as a result of the public awareness raising surrounding the case, the law was amended in 2006 to provide benefits to anyone the terminally ill person regarded as "like-family."

French Language Services

In 2006, PILC intervened at the Manitoba Court of Appeal on behalf of Marc-Yvan Hébert, Raymond Hébert, Joanne Boily, Angele Saaghy and Marc Boily. The challenge considered whether there is an obligation to provide offence notices such as traffic tickets in French under the City of Winnipeg Charter. The court accepted that there was an obligation to provide offence notices in French under the City of Winnipeg Charter.

International Medical Graduates

In 1999, PILC represented the Association of Foreign Medical School Graduates in Manitoba. Graduates of European, Asian, African and South American medical schools who were living in Manitoba were unable to practise their profession due to licensing restrictions. These were all graduates of institutions that had been formally recognized by the World Health Organization. PILC's work helped eliminate the discriminatory regulation, and a fast track was created for physicians who had been practising medicine within the previous two years.

The Right of Prisoners to Vote

In 2002, Canada's Supreme Court ruled that a provision in the Elections Act, which prohibited federal inmates from voting in federal elections, unjustifiably violated the Charter. In collaboration with legal counsel representing Ontario inmates, PILC represented a coalition of inmates from the Stony Mountain Institution in successfully challenging the unlawful provision.

Gender and Sexual Orientation

In June 2020, seven couples filed legal proceedings in the Court of Queen's Bench against the Manitoba government's Family Maintenance Act and its definition of a legal parent which has not been updated since 1987. The Act does not recognize contemporary assisted reproductive technologies and the resulting implications for parents. This means many Manitoba families, including lesbian, gay, and bisexual parents, have been denied equality under Canada's Charter of Rights and Freedoms. One parent was recognized legally while the other had to go through the costly process of adopting their own child. That changed in November, 2020, when the Manitoba Court of Queen's Bench ordered, with the consent of both parties, that sections of the Family Maintenance Act violate the right to equality as guaranteed by the Charter. The Court also declared that the seven sets of parents who launched the legal proceedings are parents in the eyes of the law, and are not required to go through an adoption or declaration process through Court. The Province of Manitoba must now remedy the discrimination, so that any family who uses assisted reproduction has a meaningful and accessible pathway to legal recognition as parents. Taylor McCaffrey, LLP Barristers and Solicitors represented the seven couples pro bono, in collaboration with PILC.

“ We are excited that other LGBTQ2S+ families in Manitoba will not have to go through the expensive process to adopt their own children in the future, and will be considered equal parents from the beginning.”

— Courtney Maddock

“ We have both been equal parents from the beginning, and it is great that the law is finally catching up, recognizing what we have always known: we are both CJ's Moms.”

— Jill Stockwell

Courtney Maddock and Jill Stockwell married in Morden, MB in 2010. Two years ago, their daughter was born with the assistance of in vitro fertilization.



04.

Reconciliation & Respect for First Nations Laws

04. Reconciliation and Respect for First Nations Laws

PILC is considered a leader in Canada in its approach to representing First Nations clients. PILC lawyers are honoured to work in ongoing collaboration with Knowledge Keepers, Elders, First Nations and the Assembly of Manitoba Chiefs in achieving equal respect for First Nations laws. Essential to PILC’s approach is recognizing that First Nations people have their own ways of being and knowing and their own laws. PILC recognizes and respects that First Nations Knowledge Keepers are the experts in First Nations laws. PILC lawyering has evolved to listening more, participating in traditional ceremonies, and using technical skills to assist in navigating Euro-centric systems, while guided by the wisdom of Knowledge Keepers.

Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA People

PILC represented the Assembly of Manitoba Chiefs in the National Inquiry into MMIWG and 2SLGBTQQIA people between 2016 and 2018. Prior to and during the Inquiry, PILC listened and learned directly from survivors of violence, families, and service providers with the goal of ending violence against Indigenous women and girls and 2SLGBTQQIA people. Many of AMC’s recommendations are reflected in the final National Inquiry report, including the Call to Justice to end birth alerts, and to recognize the importance of making decisions that puts First Nations families first. As of July 1, 2020, birth alerts are no longer issued in Manitoba, replaced with preventative and community-based supports for families.

Revitalizing First Nations Laws

Representing the First Nations Family Advocate Office of the Assembly of Manitoba Chiefs and the Assembly of Manitoba Chiefs, PILC has appeared before the Manitoba Court of Appeal as well as administrative tribunals and independent review committees to argue that equal respect for First Nations laws is required as a necessary component of reconciliation and nation-to-nation relationships. Through legal research and writing, PILC is supporting the re-codification of First Nations laws relating to the protection of children and families.

Disabled and Without Services

Alice Taylor, a life-long resident of the remote Manitoba fly-in community of St. Theresa Point First Nation, spends most of her time caring for her adult son Kevin. Kevin Taylor, whose cerebral palsy means he has limited verbal skills and can only walk with the use of crutches, filed a complaint through PILC at the Canadian Human Rights Tribunal in 2010. The family says the disparity in services for First Nations people with disabilities on and off reserve amounts to discrimination.

First Nations/Manitoba Consultation Project

In response to pressure from the Manitoba Keewatinowi Okimakanak (MKO) and the prospect of a court challenge initiated by PILC, the Manitoba government issued a temporary moratorium on uranium exploration licenses issued in the traditional land of the Northlands Dene First Nation. In 2009, this led to the development of a consultation protocol and an economic development agreement that provided the First Nation with a greater say in mineral exploration activities on its traditional lands.

Flood Compensation

In the late 1980s, PILC represented the Barren Lands and Mathias Colomb First Nations in northwestern Manitoba. The lands of both First Nations were subject to flooding as a result of water regulation on the Churchill River by the Saskatchewan Power Corporation (SPC). PILC took SPC to court for having failed to acquire a Manitoba licence for the flooding. Both the Manitoba Court of Queen’s Bench and the Court of Appeal ruled that there was a case for trial. SPC agreed to an out-of-court negotiation process.

Kevin and Alice Taylor’s story

Kevin Taylor, a shy 30 something-year-old who has cerebral palsy and can’t walk on his own, has a few bathroom options in his St. Theresa Point home, and they’re all a humiliating hassle. He can use his crutches to get from his perch on the living room sofa to the small room that serves as the bathroom. That’s where the new slop pail is parked under the chair-like commode, near the plastic basin that serves as a makeshift sink. If Taylor’s in a hurry, though, he usually drags his body down the hall in a scooching motion he’s perfected and heaves himself up onto the commode.

“If he goes in a hurry, he crawls there. He doesn’t have time to grab his crutches because his crutches slow him down,” his mother Alice said. “I say ‘Kevin are you OK?’ and he will whistle away. That means he’s OK.”

The Taylors are among 300 families in St. Theresa Point without any running water — no sewer lines or water pipes, no cistern, no toilet, no bath, no kitchen sink. That doesn’t take into account the reserve’s dramatic housing shortage that jams a dozen or more people into small two- or three-bedroom bungalows, forcing people to sleep on old couches or mattresses strewn on the floor. The band estimates it needs another 900 homes to give residents the kind of space most Winnipeggers enjoy.

Alice Taylor has chosen to focus her considerable energy on getting help for her son, not necessarily demanding running water, though a sink and a toilet would be a godsend. The Taylors have filed a federal human rights complaint about the almost total lack of programs for disabled people on reserve. There is no physio or speech therapy, no work- or life-skills programs and no respite for the family. Taylor spends most of his day watching television and doing word-search puzzles when Alice knows he is capable of much more.

“I’m fighting for him to stay on the reserve instead of going out to some institution,” Alice said. “I’d like the services to come to him, because I know there are services that are available, so he can stay with his siblings and local people that he knows, so he doesn’t have to go to some other place, like in the city.”

Because of the work of PILC, the lives of Kevin Taylor and his family will soon change significantly. He will receive a full suite of services ranging from one-on-one supports, a case worker, access to all clinical supports, technology, equipment, and an addition to his home.



Story by Mary Agnes Welch, Winnipeg Free Press, 2011 (edited for brevity)
Photo: Kevin and Alice Taylor,

A short documentary about Kevin and Alice Taylor can be accessed at:
<https://www.winnipegfilmgroup.com/films/alice-and-kevin/>



05.

Protecting the Environment

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The Environment and Reconciliation

This month, on September 22 and 23, 2020, the Supreme Court of Canada begins a significant and potentially transformational hearing. PILC, representing the Assembly of Manitoba Chiefs, will address the Court as an intervener. On the surface, the case is about the Greenhouse Gas Pollution Pricing Act, the federal government's first attempt to impose a national carbon pricing scheme in Canada. Dissenting provinces argue it is an unconstitutional intrusion into areas of exclusive provincial legislative jurisdiction. First Nations are in agreement with any attempts to mitigate greenhouse gas emissions. But as the AMC intervention argues, neither the federal or provincial governments acknowledge the existence of First Nations laws, or the implications of this constitutional debate on nation-to-nation relationships and reconciliation. To prepare for this case, the PILC team held consultations with Knowledge Keepers from the AMC Council of Elders. The AMC intervention will be heard on September 23, 2020.

Updating the Manitoba Environment Act

In 2015, the Manitoba Law Reform Commission recommended wide-ranging changes to modernize the Manitoba Environment Act and provide a greater role for public and Indigenous input. PILC staff played a major role on the law reform committee.

Halting the Race to Build More Hydro Dams

Between 2003 and 2015, PILC participated in regulatory proceedings before the Manitoba Clean Environment Commission and Public Utilities Board (PUB) which led the Manitoba government to halt development of the \$10.5-billion Conawapa hydro-electric generating station. The hearings also led to recommendations including:

- The modernization of environmental assessment legislation and practice in Manitoba;
- The need for a regional cumulative effects assessment for the Nelson River watershed; and
- Reform to water-power governance in Manitoba.

Because
we must
protect
our home.

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