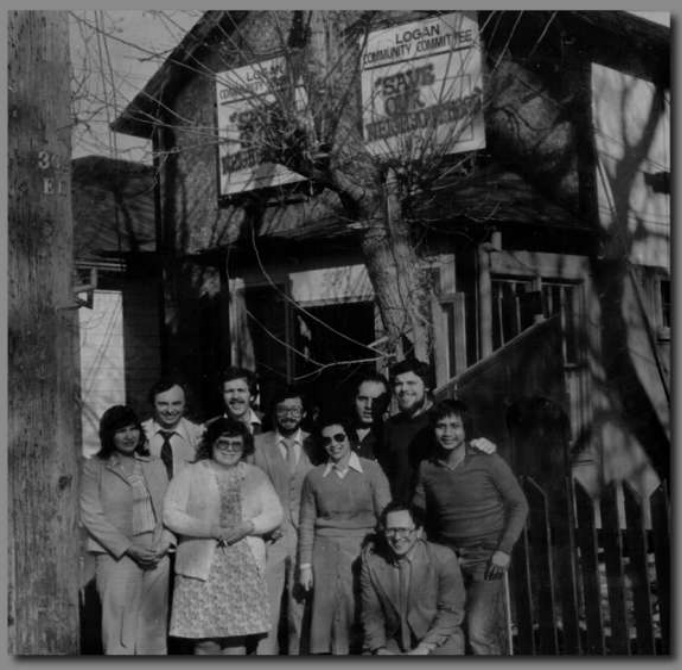
IN THE PUBLIC INTEREST:

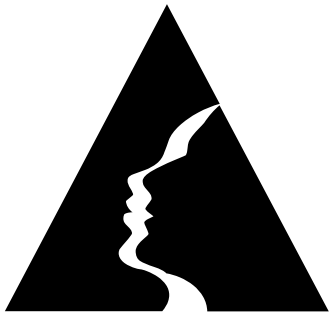
The first 25 years of The Public Interest Law Centre



Public Interest Law Centre
Winnipeg, Manitoba
25th Anniversary
1982 – 2007

Front cover photo: *Logan Community Committee neighbourhood office, 1982, during the Logan Expropriation Inquiry.*

The team includes Alan Fineblit (lawyer), Arne Peltz (lawyer), Dudley Thompson (architect), Greg Selinger (organizer), Grant Wichenko (engineer), Helen Schultes (resident and community leader) and several residents.



IN THE PUBLIC INTEREST:

The first 25 years of
The Public Interest Law Centre

Public Interest Law Centre
Winnipeg, Manitoba
25th Anniversary
1982 – 2007

March 2007

This report is available free of charge from the Legal Aid Manitoba website at **www.legalaid.mb.ca** or the Public Interest Law Centre website at **www.publicinterestlawcentre.ca**

Public Interest Law Centre
294 Portage Avenue, suite 610
Winnipeg, Manitoba
R3C 0B9

Email: **centre@pilc.mb.ca**

Phone: **1-800-261-2960**
(204) 985-8540

Fax: **(204) 985-8544**

Public Interest Law Centre
an independent service of Legal Aid Manitoba

Centre juridique de l'intérêt public
un service de L'Aide Juridique du Manitoba

About the Author

Doug Smith is a Winnipeg writer and editor. He is the author of *As many liars: the story of the 1995 Manitoba vote-splitting scandal; How to tax a billionaire: Project Loophole and the Campaign for Tax Fairness;* and *Joe Zuken: citizen and socialist*. He has worked as a consultant for the Aboriginal Justice Inquiry, the Pediatric Cardiac Surgery Inquest and the Public Interest Law Centre.

Acknowledgments

While this 25th Anniversary history was a labour of love for staff at the Public Interest Law Centre, it would not have been possible without the generous financial assistance of Legal Aid Manitoba. Special thanks is owed to Ms. Patricia Simpson for the attention and detail she devoted to layout and to Ms. Diane Poulin for the editorial advice which she offered. A number of individuals agreed to be interviewed regarding this history. We appreciate the time and thought they put into those interviews.

Table of Contents

Foreword 1
PILC history.....3
The origins of civil legal aid.....5
Going on the ATAC.....7
Standing up for inner-city communities.....9
Establishing PILC.....12
Educational rights.....15
Early welfare rights cases.....17
Consumer law.....21
Representing people with disabilities.....27
Winning new rights for the mentally ill.....30
Wild in the city: protecting the urban environment.....32
Bringing new evidence before the courts.....35
The G Case.....37
Law behind bars.....39
Aboriginal cases.....44
Poverty law in the 1990s.....50
Public interest law goes to med school.....58
PILC in the oil patch.....61
Human rights and family law.....63
Conclusion.....64
Looking forward.....67
References.....69

Foreword

The celebration by the Public Interest Law Centre (PILC) of the 25th anniversary of its founding, and the publication of its history, is a timely and important reminder of the importance of "access to justice", particularly for those marginalized in our society by poverty, powerlessness, and discrimination. It is a timely reminder because the elimination by the current Government of Canada of the Court Challenges Program of Canada and the Law Reform Commission of Canada, almost perversely, demonstrate the importance and effectiveness of access to justice programs in challenging the established institutions of power, whether corporate or governmental. The Court Challenges program has been cancelled precisely because of its effectiveness. Fortunately, PILC, a provincial program, remains.

No doubt poverty and powerlessness are not themselves justiciable. For example, the Supreme Court of Canada has, so far, narrowly interpreted the *Charter of Rights and Freedoms* as not providing a basis for court initiated social and economic programs. But the adverse effects of poverty are justiciable and, in the legal arena, no institution has demonstrated that fact more effectively than PILC, as this book so amply demonstrates.

Lyndon Johnson's much-heralded "war on poverty" in the 1960s, which led to the widespread establishment of community law office systems of legal aid delivery, is a war which, as one cynic put it, the poor lost. A mixed legal aid plan such as Legal Aid Manitoba, inspired in part by the U.S. community law office model has done an excellent job in providing basic legal aid services. But, it must be said, that it is the Public Interest Law Centre, as initiated by Arne Peltz, Vic Savino and others working within Legal Aid Manitoba, which has been able to overcome the "case load crisis" which has bedeviled so many legal aid plans and frustrated so many committed legal aid lawyers. PILC has, in so many important ways and on so many important issues, helped to overcome the powerlessness of the poor and strengthened access to justice in Manitoba.

Congratulations to all providers in class action and group legally-aided cases! PILC has, indeed, cause for celebration.

Roland Penner, C.M., Q.C.

Roland Penner is a Professor at the University of Manitoba and former Dean of the Faculty of Law. He is the former Attorney General of Manitoba, and in 1972 served as the first Chair of Legal Aid Manitoba.

PILC history

In the spring of 1982, Brandon City Council, faced with a mounting deficit on transit services, was considering reducing services and increasing bus fares. A group of residents who depended on bus service to get to and from work mounted a campaign to oppose both measures. Two residents, Marie Saito and Melba Chrzaszcz, collected over 2,500 names on their petition to maintain services and fares. When the issue came before Council in June of that year, the Council chose to go behind closed doors and exclude the public, but not the media, from the deliberations. When the public, which included over 60 people who had shown up to protest the proposed cuts, was let back into the Council Chamber, rather than debating the issue, Councillors simply voted to adopt the minutes of the previous closed door meeting and then adjourned. The protesters had to wait until the following morning to discover that the Council had held off on the fare increase but was reducing service. Members of the informal group opposed to the cuts decided to keep up the pressure on Council, but they were hardly confident of success.

One of their members, Patricia Dyck, a single parent who used the bus daily to get to her job as a waitress, contacted Legal Aid Manitoba to see if it could provide her with any assistance. She was put in touch with Arne Peltz, the director of Legal Aid's newly established Public Interest Law Centre (PILC). After examining the issue, Peltz concluded that Dyck and the other riders had the makings of a class-action suit. On their behalf he filed a motion asking the court to quash the service cuts because the public had been excluded from the meeting where the decision had been debated. In addition, he pointed out that the Council had failed to gain the approval of the Public Utilities Board (PUB) before putting the cuts into effect.

Brandon politicians were not impressed. Then alderman and future mayor Rick Borotsik said he was very disappointed that Legal Aid was becoming involved in the case. "It is getting to the point," he said, "where we are not the masters of our destiny and it's to the detriment of the taxpayers." The case went to court on December 11, 1982, and on December 23rd Justice Alvin Hamilton gave the bus riders an early Christmas present. Saying that "Councillors are elected representatives of the public, doing the public's business, the public is entitled to know what [they are]doing," he overturned the motion reducing service. The Manitoba Court of Appeal subsequently confirmed his ruling.

By this point the bus riders had organized themselves into the Brandon Transit Consumers Association (BCTA). When the PUB approved a proposed fare increase, Peltz sought to overturn its decision because the board had not considered the changes in the quality of the service when it approved the fare increase. In its 1985 judgment on the case, which Lawrie Cherniack argued on behalf of PILC, the Court of Queen's Bench ruled that the PUB ought to have taken quality of service into consideration when ruling on rates. Three years after the Council had passed its initial motion, the case was still alive and had a few more twists and turns left to it. But by that time two points were clear: as a result of the court action, service had been partially restored, and bus riders had won the right to have the PUB listen to their concerns over the quality of service before it decided on rate increases.

This was the first case that the Public Interest Law Centre handled. Looking back on it from a distance of a quarter century, Arne Peltz notes that the case embodied values that would be common to most PILC cases. "It was about a broader concept of democracy, openness, proper decision-making, citizen empowerment. No one was saying that the Council did not have the power to run the transit system, but it did have to operate by the principles of due process." Errol Black, currently a Brandon City Councillor, and a longtime figure on the Brandon political scene, credits the case with ushering in a much more open attitude on Brandon Council. "The city has been a lot more open about decision making, and on the issue of transit, it does a lot more consulting with the public before making changes to service."

The origins of civil legal aid

The Brandon City Councillors of the 1980s could be forgiven for wondering why Legal Aid Manitoba was helping bus riders fight city hall. Legal aid in Manitoba originated as a charity provided by lawyers to low income people. Starting in 1938, the Manitoba Law Society's Indigent Suitors Committee organized civil legal services, largely in family law matters, for people who could not afford lawyers. A little over a decade later, the Society created the Legal Aid Committee on Criminal Matters. The lawyers involved in this work rarely received any compensation and, as time progressed, the number of people in need of legal aid increased. In the mid-1960s demand increased by 75 per cent in just two years. To control the demand, the Society took no measures to publicize the availability of the service. Until 1970 it only took on divorces in exceptional situations, while it did not handle summary conviction matters until 1969. While there was a small amount of government funding in these later years, in Manitoba legal aid remained largely a charitable matter.

This changed in 1972 when the Manitoba government established what was meant to be a comprehensive, fully funded legal aid plan, administered by a non-profit, self-governing corporation. Known formally as the Legal Aid Services Society of Manitoba but commonly referred to as Legal Aid Manitoba, it was funded by the provincial and federal governments. In its first year of operation, Legal Aid Manitoba established a neighbourhood Law Centre on Isabel Street in Winnipeg's inner city. This initiative was followed up with the establishment of a Legal Aid office on Ellen Street. These offices were expected to provide service to individual clients and to undertake community engagement. Because there was a recognition that people in low income communities lacked access to the resources needed to establish and maintain effective organizations to lobby for their rights, assisting in the organization of such groups was seen as a legitimate role for Legal Aid staff to play.

The inspiration for this approach came from the civil legal aid movement in the United States. As part of the U.S. war on poverty and civil-rights movement, the civil legal aid movement grew out of a recognition that low income people experience the law in different ways than other members of society. Indeed for most Canadians, their only contact with a lawyer comes when they are buying property, probating a will, or dissolving a marriage. Because they are not directly

dependent on the state for income, housing, or child support, middle-class Canadians rarely find themselves involved in civil legal conflicts with the state. For low income people, these conflicts are much more common and the stakes can be very high: they can include committal to a mental health institution, removal of a child from a parent's home, loss of a pension, or eviction onto the street. Low income Canadians are often dependent for their incomes on social assistance, employment insurance, workers compensation, or disability pensions: these are all systems with complex and changing rules and regulations. Price hikes that many consumers find inconvenient or irritating can have a devastating impact on the poor. For these reasons, the approach taken by boards and agencies that regulate monopolies can have a serious impact on people's lives. In other words, low income people not only have many similar concerns, in many cases they have collective interests.

Most civil legal disputes never get into court. Businesses and higher income Canadians retain lawyers to protect and advance their interests. When those interests come into conflict with either the state or other private actors, lawyers are expected to advise them of their legal rights, and negotiate an agreement that is based on those rights. While the lawyer does not create law, a lawyer can develop a legal position that provides the client clout—and advise against action that can jeopardize existing legal rights. For large scale private and public institutions, and wealthy individuals, lawyers often serve as part of a larger team working to achieve strategic ends.

The architects of the civil legal aid movement realized that in many cases low income people had rights that were not being advanced or articulated because they lacked the sort of legal representation available to others in society. They envisioned a storefront community legal-action model in which community members would work with lawyers and other professionals on issues that affected the community as a whole. That was the theory.

However, civil legal aid and public interest law in Canada were, in many ways, undeveloped fields. Most lawyers hired by Legal Aid Manitoba lacked the background, training or skills to engage in community organizing as had been envisioned by the system's founders. Furthermore, the community office's double mandate meant that in reality practising some form of community law took a backseat to the criminal and family law cases that dominated most lawyers' workload. However, by the mid-1970s a number of young lawyers in Winnipeg began to explore the agency's public interest mandate.

Going on the ATAC

In January 1977, fire struck an inner-city apartment block, the Town and Country Lodge on Preston Avenue. It left 8 people dead and 17 people injured, including one firefighter and two babies. The run-down building was a converted rooming house, and city health officials had on a number of occasions raised concerns about the health conditions in the building. The residents, seeking representation at the inquest called into the cause of the fire, were referred to the Ellen Street Legal Aid office. Two of the staff, lawyer Vic Savino and articling student Arne Peltz, both had a strong interest in inner-city housing issues. They not only represented the residents at the inquest, but assisted them in forming the Associated Tenants Action Committee (ATAC). On its behalf they represented tenants in landlord-tenants issues and in matters under the recent rent-control legislation.

Shortly after ATAC was created, Manitoba Hydro announced a rate increase of 21 per cent. The 21 per cent rate increase came just one year after Manitoba Hydro rates jumped by 14 per cent. At that time, it was thought that Manitoba Hydro had the right to raise its rates without any public review by the provincial Public Utilities Board (PUB). Although it had, a decade earlier submitted its proposed rates to the PUB for review, the corporation took the position that the PUB had no power to set its rates. Peltz, who had been called to the bar by that point, received a phone call from someone who had a detailed understanding of both *The Manitoba Hydro Act* and *The Public Utilities Board Act* and maintained that the PUB did have the legal authority to regulate Manitoba Hydro rates. Arguing that the existing rate structure placed an unfair burden on residential and rural consumers, Peltz and Savino launched an appeal on behalf of ATAC. Over Manitoba Hydro's objections, the PUB agreed to hold hearings into the rate increase and further dismayed Hydro by accepting the argument that the PUB had authority over Manitoba Hydro rates. At the end of the hearings, the PUB rolled back the rate increase from 21 per cent to 15 per cent, saving Manitoba consumers $10-million dollars.

Peltz soon found himself representing the Health Action Committee before the Milk Prices Review Board and challenging Inter-City Gas (then owned by Conrad Black) before the PUB. Peltz recalls feeling that initially both regulators and utilities treated his intrusion into what had been a relatively low-key and polite world of utility regulation with "laughter and derision. The

attitude was basically, 'Okay sure, go ahead sue us.' Then you win a case." A new era of consumer law was dawning in Manitoba. The PUB acknowledged it in its 1977 annual report, stating the appearance of ATAC before the Board marked "a new phase in regulation in which consumers would have a better knowledge of their rights and how they may be protected."

Standing up for inner-city communities

The work with ATAC led the Ellen Street Legal Aid lawyers to involvement with two high-profile campaigns in which inner-city residents found themselves forced to fight for their communities' future. In the summer of 1978 Winnipeg's Executive Policy Committee (EPC) made a closed-door decision to extend Sherbrook and Furby Streets on the south side of the Canadian Pacific Railway tracks in preparation for the construction of a proposed $12.5 million overpass connecting Sherbrook and Furby Streets in the city's core with McGregor Street in the North End. The project would involve the demolition of houses, apartment blocks and community buildings, many of which had been recently renovated as part of a $3-million urban renewal program. Instead of letting the local community committee assess the proposal, the EPC took its recommendation directly to a City Council meeting.

One of the buildings that would be knocked down was Rossbrook House, an inner-city community centre run by the Catholic Church. The centre's director, Geraldine MacNamara, was to play a leading role in the community campaign to defeat the overpass. That campaign focused on replacing the need for an overpass by stressing the long-term advantage to the city of relocating the Canadian Pacific Railway instead. The 200-acre CPR yards had been a scar, cutting through the inner city for nearly a century. The environmental health hazards of a large rail yard in the centre of the city were underlined by the evacuation of much of the city of Mississauga in the fall of 1979 and similar, but smaller, methanol spill in the CPR yards in 1980.

Dubbing themselves the Rail Relocation Committee, the residents put together a multi-prong campaign to block the overpass and gain support for relocation. Peltz became the Committee's legal advisor. While he was not able to win them any victories, he made the case for a public review of the overpass before the Canadian Transport Commission and Federal Court. The applications for a public review were rejected, but they raised public awareness of the issue and allowed the residents to develop political allies. Disturbed by what was seen as Legal Aid's efforts to frustrate provincial government support for the overpass (and unwillingness to fund relocation), the provincial Attorney General's department communicated its concerns over Peltz's involvement to Legal Aid. However, he was allowed to continue to represent the

residents. In the end, the city abandoned the overpass, but no government had the appetite to address all the issues that rail relocation would entail.

The community's campaign for inner-city renewal was one of the factors behind the establishment of the Core Area Initiative (CAI) in 1981. That urban renewal plan called for the creation of a Logan industrial park, which in turn involved the expropriation and clearing of residents from the North Logan community. Because the provincial government waived the requirement for public hearings when it adopted an order-in-council authorizing the expropriation, area residents only became aware of plans for their neighbourhood when the CAI Agreement was announced. Within weeks a Logan Community Committee (LCC) was established with the support of the Community Education Development Association. The issue was similar to the Sherbrook-McGregor controversy as planners and bureaucrats had failed to realize that inner-city people might have a connection to their neighbourhoods.

When LCC members appeared before Winnipeg City Council they outlined the problems that the expropriation had caused to this point. A widow spoke of how she was not able to rent her home. A man had been denied a loan to purchase a truck because his land was frozen, leaving him without collateral. Acting on behalf of the residents, Peltz filed a Notice of Motion to have the expropriation nullified because the province had waived the hearings required under *The Expropriation Act*. This motion provided the LCC with the leverage it needed to have the province hold public hearings into the relocation. The residents were also awarded funding to allow them to prepare an alternate community plan. The hearings vindicated the residents' position: Logan was a stable neighbourhood in need of revitalization, not expropriation. After a lengthy political fight, the development was redesigned and the residents were allowed to play a significant role in reshaping their community.

At the same time that Peltz, Savino, and a number of other lawyers including Alan Fineblit were working on these cases, they continued to carry a more standard legal aid caseload, handling such matters as criminal trials, divorces, and civil suits. Legal Aid management told them that if they had a systemic case that they wanted to take on they would be relieved from their caseload for several weeks at a time. Peltz recalled, "I had lots of ideas of what could be done, and kept getting releases to take these cases." But the regular caseload fell on the others working in the community office. Peltz concluded that what was needed was a specialized litigation unit that

would be housed in Legal Aid's administrative office. The storefront offices could serve as referral points for cases. Some legal aid programs in the United States had established such dedicated litigation units, although they usually simply focused on tenancy issues. Peltz had in mind something broader.

Establishing PILC

In the fall of 1981 a dramatic political compromise between the federal government and a majority of Canadian provinces allowed for the repatriation of the Canadian constitution and the adoption of a *Charter of Rights and Freedoms* that would be the supreme law of the land. The Charter guaranteed the fundamental freedom of religion, thought, belief, expression, press, peaceful assembly and association. Furthermore, it guaranteed democratic rights (such as the right to vote), mobility rights, legal rights (such as the right to life, liberty, and security of the person), equality rights and language rights. These were to be "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The Charter also included what has come to be referred to as the "notwithstanding clause", which allows governments to override some Charter guarantees.

The new Constitution was proclaimed in 1982, although the Equality clause of the Charter did not come into full effect until 1985. It was clear from the outset that the Charter would create a new role for the courts in Canadian society. With the Charter applying to the operation of most public institutions in Canada, the Courts were going to be asked to scrutinize many laws and practices in light of the new constitutional rights and freedoms. Roland Penner, who had been the Chair of Legal Aid from 1972 to 1978 and had been appointed provincial Attorney General in 1981, was one of those who believed that the Charter provided a potential tool for the advancement of social equality in Canada. Shortly after Penner's appointment as Attorney General, Peltz, who described himself as a Charter believer, approached him with a proposal to establish a law centre that would be committed full-time to handling public interest cases, including Charter test cases. It was envisioned that the Centre would take on cases with the potential to have a broad impact and establish new principles and practices, particularly through Charter test case litigation. For these reasons, cases would require extensive research and preparation. The Centre staff would have to be involved not only in research but consulting with expert witnesses and maintaining close relations with client groups.

Penner was supportive of the concept, which he recognized as a vehicle for achieving some of the unrealized goals of the original Legal Aid plan. In 1982, Penner was able to get the provincial Cabinet to agree to the establishment of the Public Interest Law Centre. Rather than working out

of a community legal aid office, the proposed Centre would be housed in the Legal Aid Head Office. The province was also able to persuade the federal government to contribute $64,000 toward the establishment of the Centre. Then the provincial government amended the *Legal Aid Act* to allow any group, whether incorporated or not, to be entitled to representation in a matter "relating to an issue of public interest including, without restricting the generality of the foregoing, any consumer or environmental issue."

A set of criteria was set up to determine the conditions under which PILC would take on a case. It was not necessary that all members of the organization meet the general Legal Aid financial criteria—the key question was the group's ability to afford legal fees for the issue in question. This meant that groups representing low income people would not be penalized if they recruited members who were not poor themselves. (Depending on their resources groups might be expected to make contributions to the case.) Secondly, the group had to be advancing an arguable and meritorious public-policy position. While the issue should provide a maximum benefit to low income people, the Centre would also handle cases that affected the public at large. Within PILC, this became known as the mixed-portfolio policy, meaning that while at all times the Centre would handle cases that defended the interests of marginalized (and politically unpopular) members of society, such as prisoners and people on social assistance, it would also take on cases that provided tangible benefits for most Manitobans, most commonly by representing their interests as consumers at Public Utilities Board hearings.

While it was Legal Aid policy not to pass moral or political judgment on the cases that the Centre took on, it was against the Centre's policy to take on cases that would harm the interests of low income people. The new Centre's mandate was "to represent groups and organizations on public interest and low income issues of law." Areas of emphasis were identified as disability law, Aboriginal rights, social welfare and public services, and consumer matters.

In 1986 the Centre moved away from direct provincial funding, receiving instead core funding from the newly established Manitoba Law Foundation (which is in turn funded by the interest on lawyer's trust accounts). In addition, from 1985 onwards the public interest interveners were able to recover costs from participation in PUB hearings, which dramatically increased the amount that PILC clients were able to contribute to the Centre's costs.

The concept of a public interest centre was not without its critics. In the legislature, opposition leader Sterling Lyon argued that it was unnecessary since regulatory agencies such as the PUB were already in existence to protect the public interest. By setting up the Centre, the government of the day was, Lyon said, creating a system where, "People on whim, on caprice or whatever, can say, hey, here's an open sesame. We've got a way now, thanks to the Attorney General of Manitoba and his colleagues, to have the taxpayer give us a day or a week or whatever in court. Mind you, we can't afford to pay and we know that our case is malodorous and we know that it's probably vexatious and it's largely fictional, but we've got the right now in this day and age of rights that we heard so much about to put our hand in the taxpayers' pocket to fund our whim and that's what we're going to do." In responding to critics, Penner stressed the rationale behind the civil legal aid movement by reminding listeners that "The poor are not just the rich without money. The poor are powerless, basically. That's what poverty is all about. It's about powerlessness; about the inability to change the course of one's own life; about being effectively disenfranchised because of the lack of knowledge of your rights and lack of ability and resources to bring your interests to bear."

Educational rights

From the outset PILC was a bare bones operation. Peltz was the director, but he usually directed only one additional lawyer, a paralegal, an articling law student, and an administrative support worker. A key member of this team was Mel Holley, who came to work for PILC in the spring of 1983. His job title was paralegal, although the work he did for PILC bore little resemblance to the work many paralegals do assisting lawyers in real estate transactions. Holley came to the Centre with a background in trade unionism and advocacy on behalf of the unemployed. His work with PILC focused on client relations: meeting with clients regularly to obtain evidence, communicating legal strategy, and receiving instruction. Under Peltz's supervision, Holley regularly appeared as an advocate before such tribunals as the Social Services Advisory Board and the Public Utilities Board.

The first case that he worked on pitted parents from the Amaranth School Committee against the Turtle River School Board. Grace Johnson, the Amaranth representative on the board, had brought the issue to PILC. She had been working with a local parents' group, trying to get more resources for the kindergarten to Grade 9 program in the Amaranth school. Of particular concern was the fact that a large number of Metis students were not achieving at the same rate as non-Metis students. When the Amaranth School Committee, the local parents group, tried, with Johnson's support, to get the school board to provide extra resources to meet the special needs of the Aboriginal students in Amaranth, the Board turned them down, arguing the community had no special needs.

The parents committee contacted Legal Aid, and in turn was put in touch with PILC. Because there was a legal obligation to provide effective and meaningful education, coupled with a number of irregularities in the way that the Board had handled the issue, the Centre launched a legal challenge of the Board's decision to reject the parents' request. The litigation dramatically raised the issue's profile, leading to a meeting between the Amaranth School Committee, Board members, and Education Minister Maureen Hemphill. As a result, the provincial government provided a $90,000 compensatory grant to the school. When the Board realized it stood a good chance of losing the court challenge, it negotiated a settlement with the parents group, providing additional staffing and programming. Grace Johnson recalls that shortly after the school division

superintendent served for a period as principal of the Amaranth School. “He was not in the school very long before he told me that he realized the Board had been wrong, there was a need for special needs programming at the school.” She also felt that it might not have been possible to have made as much headway without the support provided by PILC. “If you have some legal clout behind you, people sit up and take notice.”

Early welfare rights cases

Holley also handled a high volume of welfare appeal cases, which were referred to the Centre by Legal Aid. Prior to PILC's involvement, there were few successful appeals of welfare decisions in Manitoba. Holley said, "Very few people on welfare know their rights under the system. As a result, they are unwilling to appeal decisions, or even know how to do so. The fact that the next step of appeal beyond the Social Services Advisory Committee was the Court of Appeal, meant that no one on welfare could afford to pursue their rights." Because people appeared before the Social Services Advisory Committee without representation, the Board operated in a relatively informal manner, and according to Holley might often disregard precedent or the actual welfare rules. With Holley appearing before the Committee on their behalf, appellants began to enjoy more success as the Committee was obliged to adhere to both precedent and the specific rules.

As he represented people on an individual basis, Holley identified welfare practices that might be contrary to statute or to the Charter of Rights. These became the basis of cases that the Centre would take to the Court of Appeal. Many of these cases revolved around the level of resources that welfare recipients were allowed to retain. In one case a woman had received a lump sum family maintenance payment that included a lengthy period of arrears. This payment put the woman over the social assistance income limit, and as a result, the province tried to reclaim a portion of previous social assistance payments. PILC took on the case, and pointed out that if the family maintenance payments had been made on time, the amounts involved would have been fairly modest and would not have triggered any attempt on the social assistance system's part to clawback any payments.

This victory at the Court of Appeal created a precedent for all women in this situation. This case links to a broader issue; the way social assistance rules and regulations prevented poor people from acquiring and retaining assets. Without assets people have difficulty developing the skills and abilities they need to escape poverty, yet an underlying philosophy of social assistance programs historically has been the concept of ensuring that social assistance was the least attractive option available to a person.

The Centre also acted on behalf of a young immigrant woman living in Winnipeg who found herself homeless after she left her abusive spouse. Her application for provincial welfare was denied, because, as a sponsored immigrant she should be receiving assistance from her sponsor, who was her brother-in-law. However, the brother-in-law was refusing to provide her with any support, which left her with no option but to return to what she saw as an abusive relationship. The Centre took on the case and the day before the injunction hearing, PILC and welfare officials reached an agreement under which the woman would be granted assistance and the welfare office would attempt to recover the costs from the sponsor. While it did not go to court, it did change the way such cases were handled from that point forward.

One of the problems that dogged PILC's welfare work was the social assistance system's practice of resolving cases just before they went to court. While these resolutions were invariably in the client's favour, and PILC would attempt to have a commitment to systemic reform included in settlement agreements, settling the case in this manner meant that no legal precedent had been established. The policy to which PILC was objecting could continue in place, at least until some other client came forward with the same issue. While the policies were often changed as a result of PILC challenges, the practice of settling before the case went to trial was to prove frustrating. On occasions courts might agree to let a case continue once the dispute at issue had been resolved, but most clients were not interested in pursuing the case once their problems had been addressed.

Perhaps the most significant welfare-rights case to come out of Manitoba over the past 25 years was the Finlay case. Because James Finlay suffered from severe epilepsy, he qualified for Manitoba social assistance. In the early 1970s he was receiving $213.40 for basic requirements plus a housing allowance of up to $45 a month. The provincial government insisted that he move because he was living in what it viewed to be too large an apartment. Finlay moved to smaller, and less expensive quarters, and told the mover to send the $189 moving bill to the province. The provincial government paid the bill but because the maximum moving allowance was $80, it concluded that Finlay owed the province $109. It also identified two other overpayments: one relating to Finlay living in shared accommodation, the other having to do with a business development grant he had received. In total, the province concluded Finlay had been overpaid by $1,100. To recover this amount, the province deducted five per cent per month from his basic

living allowance, a process that, given the size of Finlay's welfare payments, would have taken eight years to recover. To survive, Finlay had to give up three meals a month, losing 60 pounds in the process. The province eventually stopped the deduction before all of the money had been recovered, but it continued to make deductions from other welfare recipients whom it concluded had received overpayments: in 1986, for example, it was making deductions from approximately 5,000 people.

At the time, the federal government, under the Canada Assistance Plan (CAP), paid for half of the provincial government's welfare costs. The CAP agreement stated that welfare recipients must receive "the basic requirements" of a person in need. Finlay believed that the five per cent reduction had brought his payments below that basic level. If this were the case, Manitoba was in breach of its agreement with the federal government. It had generally been considered that this was simply a matter between the two levels of government—if the federal government felt Manitoba was living up to its obligations, it was nobody else's business. Finlay thought that it was his business as well, and with the assistance of Winnipeg lawyer Patrick Riley (who had met Finlay while articling with Legal Aid) he launched a court case seeking to have the federal government's contribution to the Manitoba social assistance scheme declared illegal. The point was not to deprive Manitoba of federal contributions, but to ensure that overpayment recovery methods did not deprive people on welfare of the basic necessities of life. In a significant victory, Finlay was awarded standing in the case as a public interest litigant—in other words it *was* his business if the Manitoba government was not living up to the terms of the CAP. PILC acted as an intervener in the case on behalf of the National Anti-Poverty Organization and also provided assistance to Finlay's legal team.

At first Finlay made legal headway on the case, with the Federal Court of Canada ruling in his favour. However, the Supreme Court of Canada overturned that decision by a five-to-four margin, concluding that the provincial government was acting within its rights in this case. In the minority decision, Justice Beverley McLachlin concluded that to deny a person on social assistance their monthly allocation for basic needs "is in fact to deny them their food, shelter and other basic necessities." The decision left open the possibility of the Court enforcing national standards in future cases.

From the outset, PILC initiated a number of test cases dealing with the enforcement of housing standards and compliance with rent control regulations. In 1985 it won clients a rent rollback worth $11,000. Holley was appointed to serve as the tenant representative on the Ministerial Review Committee that was revising the province's landlord, tenant and rent control laws and also served on the board of the Manitoba Anti-Poverty Organization. The Centre also took on a training role, in 1986 publishing *How to Get What You Want – An Advocacy Manual* and organizing a conference on advocacy. Two years later it organized another conference, called "Where and How Do I Want to Live – People Power in Housing." The conference also saw the launch of the Centre's housing and advocacy manual *Making It Work: A Guide to Housing Law and Bureaucracy*. Another PILC-generated manual, *Know Your Welfare Rights*, addressed Holley's concern that "People on welfare lack the basic information on the regulations that drive their lives."

While most of PILC's housing work focused on tenant-related issues, in the mid-1980s the Centre represented a group of homeowners from older communities of the City of Winnipeg in a property tax case. Because the City had gone twenty years without doing a new property tax valuation many homeowners in older—and often low income—communities were shouldering more than their fair share of the property tax burden. These residents established the Self-Help Alliance for Fair Taxation (SHAFT) and with PILC's assistance successfully sought a court order to have the city conduct a new assessment of all real property.

Consumer law

While the inspiration for the type of litigation PILC carried out came from the war on poverty, from the outset Peltz believed the Centre should carry what he would refer to as a balanced portfolio of cases—some of which might not be immediately seen as poverty-law cases. A key element of the balanced-portfolio approach were the consumer cases that the Centre took before the Public Utilities Board. While increased telephone, electricity, and gas prices would have a particularly heavy impact on low income people, it was recognized that limits on price increases would benefit all Manitoba consumers.

Shortly after PILC was established, Peltz met with Wendy Barker, the president of the Manitoba branch of the Consumers' Association of Canada (CAC), to talk about the prospect of representing the CAC in rate review hearings before the Public Utilities Board. Following Peltz's representation of ATAC before the PUB in 1978, the CAC had made a number of appearances before the PUB to oppose natural-gas price increases. As Barker recalled, "we did not have the kind of funding or expertise to sift through the voluminous filings that the gas company made and make a cogent rebuttal. We would go and say 'It is very difficult for senior citizens to meet these kinds of rate increases.' But we recognized that there was much more that could be done." Barker quickly realized that PILC would be able to provide the sort of representation and expertise the CAC needed if it were going to have a real impact at the PUB. It was the beginning of a lengthy relationship, which saw PILC regularly represent both the CAC and the Manitoba Society of Seniors (MSOS) at PUB hearings.

The Manitoba Public Utilities Board was one of a number of regulatory agencies that were established by federal and provincial jurisdictions in the early 20th century to regulate corporations that operated as monopolies or near monopolies. The earliest such boards were set up to regulate the railways (initially broadcasting in Canada was regulated by the Board of Railway Commissioners). Regulators were expected to allow companies a rate of return that would resemble the sort of return they might expect in a competitive market and at the same time ensure that prices charged to consumers were just and reasonable. When it came to regulating non-profit Crown corporations, regulators were expected to be guided by legislation, which often required the corporation to provide its service at the least possible costs while also ensuring the

long-term financial health of a publicly owned asset. There was rarely much public involvement in utility board hearings, which meant that the regulator had to play a dual role, being both a consumer advocate that examines the industry argument (usually for a rate increase) and the judge that determines whether the industry has made its case. Up until the late 1970s, it was not uncommon for the only two bodies at PUB hearings to be the regulated industry and the Board. Those interveners who did appear were usually associations of industrial consumers of power or natural gas, and they represented specific industry concerns, not the public interest.

In setting prices and revenues, regulatory bodies such as the Public Utilities Board deal with a series of complex and arcane issues. In fact, some economists have argued that regulated industries are able to use a mixture of political influence, detailed technical knowledge, and the regulator's dependence on the industry for information and cooperation to capture the regulator. Under this model, the regulator risks becoming a rubber-stamp. This issue is further complicated in jurisdictions such as Manitoba where many regulated industries are Crown corporations, owned by the very government that appoints the membership of the PUB. PILC's interventions were part of a growing trend in consumer law across the country - and the reception was not always smooth. Industries were not used to the detailed and aggressive questioning that came with public interest intervention and regulators often were angered by the implication that they had not been doing an adequate job of representing the public interest. The PILC view was that by representing consumers and seniors it was introducing new perspectives to what had been a very closed and private process.

The early cases before the PUB brought home an important point. The financial situation - and operating options - of the public and private corporations that the PUB regulated were very complex and diverse. They could involve intricate questions in accounting (what constituted an appropriate level of financial reserve?), engineering (could an aggressive conservation program generate as much power as a new hydro-electric dam?) and social policy (what are the negative impacts of a low-level of telephone service in northern Manitoba?). While the PILC staff was improving its legal skills in administrative law, no one had the expertise to address these questions. For there to be a fair fight at the PUB, PILC's clients needed to be able to hire experts to examine the arguments that the applicants were making. PILC argued that the corporations applying for increases ought to be compelled to pay those experts.

Initially this argument met with disbelief. Why, the applicants asked, should they have to pick up their opponents' legal costs? The traditional approach to participant funding, based on a mistaken view that industries and interveners should be seen being in direct conflict with one another, held that while it might make sense to award interveners funding if their views prevailed (if the proposed increase were rejected or rolled back), it would make equal sense to have the interveners pay the industry's cost if the decision was in the industry's favour. Since this would deter any group from intervening, it was seen as best not to pay anyone's costs. Peltz made the argument that money consumers paid in fees, usually to corporations that held a monopoly position, was being used to fund the case for a rate increase. Some of the consumers' money should be used to fund the case being made on their behalf. More significantly, he pointed out that the PUB process was not a contest but a hearing to assess issues of public importance. The quality of an interveners' participation could not be judged solely by whether the interveners' view prevailed, but whether they raised valid issues and contributed to the debate in a responsible manner. In response to these arguments the PUB, after holding hearings into the question of intervener funding in 1984, reversed its policy and began to fund interveners who met certain criteria. Wendy Barker said that from the consumer perspective "This was manna from heaven. We could finally begin to make very effective interventions." It also meant that PILC could charge the CAC and the MSOS for the work it did on their behalf, increasing the Centre's financial independence.

In 1985, PILC appeared before the National Energy Board on behalf of the Consumers Association of Canada. While the issue at hand was Manitoba Hydro's application for a license to export electricity to the United States, the broader issue was the construction of the Limestone generating station in northern Manitoba. The CAC witnesses argued that rather than building more generating stations, it might make more sense for Manitoba Hydro to explore what had come to be known as the soft-path approach to energy generation. Soft-path strategies involve encouraging and even subsidizing consumer conservation measures. They pointed to U.S. jurisdictions where such an approach had allowed electrical utilities to delay or even abandon plans for the construction of additional generating capacity. An aggressive pursuit of soft-path strategies might create surplus electricity for export without building a generating station.

The Limestone plant was the centrepiece of the Manitoba government's economic strategy, both for generating additional income for the province and creating employment during a period of economic recession. Indeed, because of the recessionary conditions, Hydro officials were eventually able to bring the project in under budget. Because of Limestone's political importance, PILC's involvement in the case generated considerable opposition to the Centre's existence within the provincial government. Why, Cabinet Ministers wanted to know, was the government paying people to frustrate its policies? The provincial Attorney General was successful in fighting off the Centre's critics, but the event underscored the need to provide the Centre with a measure of economic independence.

Over the years that PILC has been in operation the regulated industries have been Manitoba Hydro, former Centra Gas (which was once a private corporation but is now owned by Manitoba Hydro), the Manitoba Public Insurance Corporation (MPIC) and Manitoba Telephone Services (MTS, now a private corporation and currently regulated by the Canadian Radio-Television Telecommunications Commission (CRTC), but formerly a Crown corporation).

The CAC and MSOS took a fairly sophisticated approach to PUB hearings and understood that the public interest meant more than low utility costs. In the mid-1980s a number of Crown corporations, possibly influenced by pre-election political considerations, sought very low rate increases. In its representations on behalf of the CAC and the MSOS, PILC took the position that the PUB ought to approve rate increases that were higher than those being requested by the industry. Barker notes "We did this in a fairly low-key way and did not broadcast our position widely." In the early 21st century, the CAC and the MSOS took a similar position at MPI hearings before the PUB. While they argued that the corporation's rate stabilization fund was too large, they also argued for rate increases that would ensure that MPI's financial situation was not jeopardized.

With PILC's assistance, the CAC and the MSOS began to have an impact on PUB rulings. In 1986, in response to recommendations for "life-line" rates to assist low income MTS subscribers, the Board recommended changes in the deposit and installation charges policy. That same year, following a PILC intervention, a large gas rate increase for western and southeastern Manitoba was substantially reduced. Two years later, after a hearing into Manitoba Hydro rates, the Board adopted PILC's recommendation that the corporation adopt least-cost energy

principles in its future presentations. At that same hearing, the Board ordered a $5.3-million reduction in the proposed rate increase. In 1990 the increase was rolled back by $3-million, in 1991 by $6-million, and in 1992 by $5-million. A key to keeping domestic hydro rates affordable is the allocation of surplus export revenues. From the early 1990s until 2006, PILC clients argued that residential customers were receiving too small a share of export revenues, while large industrial users were getting too much. In 2006, the PUB accepted this argument, leading to annual savings worth millions of dollars to residential consumers.

In 2004, Manitoba Hydro came before a joint panel of the PUB and the Clean Environment Commission with a proposal for the Wuskwatim hydro-electric generating station in northern Manitoba. The project was novel because it would be jointly owned by Manitoba Hydro and the Nisichawaysihk Cree Nation. Many of the recommendations put forward by the CAC and MSOS regarding approaches that Manitoba Hydro should take in assessing future projects were adopted in the final report.

The PUB, after a PILC intervention, rolled back the MTS rate increase request by 1.5 per cent in 1991 and denied it completely in 1992. Shortly afterwards MTS came under the jurisdiction of the CRTC. Following MTS's privatization in the mid-1990s, the corporation sought several large rate increases, one of which was to cover the cost of the pre-collection of income taxes. In two separate CRTC hearings, PILC, representing the Manitoba Society of Seniors and the Consumers' Association of Canada, successfully made the case for rejecting rate increases worth $16-million and $12-million a year. In 2001, the CRTC reduced an MTS rate application by $7-million.

When the PUB began scrutinizing Manitoba Public Insurance Corporation rates, PILC was able to assist the CAC and the MSOS in having an impact as well: in 2002, a one-time $80-million surplus dividend was paid to consumers. In 2006 consumers received a surplus dividend of more than $50-million, while they can expect a $60-million dividend in 2007. Furthermore, public interest interventions had an influence on other aspects of Board approaches. Where once it would have taken the position that revenues ought to keep pace with inflation, the PUB is now far more likely to seek justification of every aspect of an increase. As Barker notes, one of the biggest changes has been in attitudes towards conservation. "When we started saying 'Why don't you encourage people to save energy rather than building dams to encourage them to use energy?' the response would be, 'That would never fly.' Now you see Manitoba Hydro

encouraging people to use energy-saving light bulbs and appliances. I think to myself 'What a difference a couple of decades can make.'"

There are two sorts of benefits to this work. The first is that the public interest interventions saved money for consumers, particularly low income consumers. The second benefit is the improvement of decision-making and democracy. The financial rationales provided by regulated companies were assessed by independent experts, new ideas were introduced into the public debate, and new interests were heard. New projects and investments were subject to increased scrutiny - and the knowledge that such scrutiny was going to take place led the regulated industries to alter their approach to the PUB process. The interests of groups who had previously been silent were now being heard - and the record makes it clear that when they had the resources available to them to investigate industry proposals, they were able to intervene in a way that led regulators to take their views into consideration.

Representing people with disabilities

While *The Manitoba Human Rights Act* has long prohibited discrimination on the basis of disability, organizations acting on behalf of people with disabilities have had to fight a number of long and frustrating battles to overcome many forms of systemic discrimination. In the 1980s PILC became involved in cases that focused on improving access to affordable transportation and access to public buildings.

On behalf of the Manitoba League of the Physically Handicapped (now known as the Manitoba League of Persons with Disabilities), PILC appeared on at least half a dozen occasions before the provincial Taxicab Board, which has a mandate to ensure that persons within Winnipeg receive adequate taxicab service at a reasonable cost. According to Dave Martin, who was then the coordinator of the Manitoba League of the Physically Handicapped, there were two basic issues. The first was to convince the Board to regulate that sector of the industry that focused solely on providing transportation to people with disabilities. At that time there were no limits on fares, no minimal safety standards, and little training. Said Martin, "Certainly some of the services were better than others but anyone with a van and a piece of plywood to use as a ramp could get into the business. In some cases, a person had to pay $10 just to be picked up, and the mileage rate could be quite steep. Finally, there were numerous stories of people being injured or drivers who were not well trained to provide services."

The second issue was to force the regular taxi industry to provide service to people who used wheelchairs at the same rate that it charged the general public. At the time, the taxi industry provided no services to people in wheelchairs. Both the unregulated industry that served people with disabilities and the taxi industry opposed these proposals, saying that they could not afford to provide the sort of service being requested. The Board initially took the position that the Manitoba League of the Physically Handicapped was raising human rights issues and the Taxicab Board was not responsible for enforcing the provisions of *The Manitoba Human Rights Act*. Martin recalled how, when representing the League before the Board, Mel Holley took the position that *The Manitoba Human Rights Act* applied to the Board and it had an obligation to make sure that its decisions were consistent with the Act. "I can also remember him telling the Board that it was not appropriate for it to simply accept industry arguments regarding cost without proper evidence.

The Board had been reluctant to debate with the industry on that point, so PILC played a central role in saying, 'where is your evidence, prove to us that you cannot do this.'"

In June 1988, the Taxicab Board deregulated handicapped taxi service. Disabled groups opposed the move and the Centre obtained a restraining order in Queen's Bench against the Board. Later the Board relented and abandoned the deregulation order, deciding instead to hold hearings with a view to overhauling the industry. Over time, PILC succeeded in convincing the Board to regulate that sector of the industry that provided services specifically to people with disabilities, establishing rates and safety and training standards. The Board also agreed to provide a number of new taxi licenses to taxi companies that serve the general public on the condition that they provide a number of wheelchair accessible vehicles. While the specialized industry is allowed to charge a higher rate (and is required to provide additional services), the mainstream taxi industry is now required to provide service to people with wheelchairs at the same rate it charges the general public. Martin thought that by pushing the Board to take a more aggressive role in the way it carried out its duties, PILC had caused the Board to do a better job in the way it regulated the industry in the interest of all taxi users.

One of the most high profile access cases involved the Fort Garry Place apartment and conference centre complex just south of the Fort Garry Hotel. Unapproved last minute changes in its design meant that the Royal Crown revolving restaurant atop the building was not wheelchair accessible. With PILC's assistance both the Manitoba League of the Physically Handicapped and the Canadian Paraplegic Association filed human rights complaints. At the end of a lengthy process, Manitoba Labour found the restaurant to be in violation of the provincial building code. While improvements were ordered, the restaurant, which had added a lift, was not required to provide an equal level of access to people with disabilities. Martin said, "It was disappointing, but it was an important victory in principle. I don't know how we could have done these cases without PILC. The Manitoba League and the Paraplegic Association are very small organizations, with very limited budgets. These cases were lengthy, and they required specialized legal knowledge and a great deal of research. We could have never been able to afford to hire a lawyer to take these cases on." In a related case, the Centre filed a series of Human Rights Code complaints against a number of public premises in Winnipeg that had either inadequate or non-existent physical access.

The Centre also played a role in cases intended to help people with disabilities move out of institutions and into the community. Eric Fernandes was a quadriplegic man who was a resident of the Riverview Health Centre in Winnipeg. He wanted to live at home, and with sufficient supports from provincial welfare he could have lived at home. However, the provincial welfare regulations did not provide the level of support he would need, despite the fact that the amount he would need to live at home was less than what the provincial government was paying to keep him in the Health Centre. After launching a Charter of Rights appeal on Fernandes' behalf, the Centre was able to get him released into the community.

In 1990, as part of the Decade of Disabled Persons, the Public Interest Law Centre received a recognition award presented by the Decade Conference Committee in cooperation with the Manitoba Human Rights Commission for its disability work.

Winning new rights for the mentally ill

Many of the cases that PILC handled over the years revolved around matters of due process - providing people with protection against arbitrary state action. The Charter right to life, liberty, and security of the person guarantees these rights, but many Canadian laws, particularly those dealing with people suffering from mental illness, give little or no consideration to due process.

Up until the late 1980s Manitoba's *Mental Health Act* permitted the detention of people suffering from a mental disorder for medical examination if they were "suspected or believed to be in need of examination and treatment" in a psychiatric facility. It was allowable to continue to detain such people if a physician (not necessarily a psychiatrist) felt that they should "be confined as a patient at a psychiatric facility." Mental disorder was defined as "mental illness, mental retardation, psychoneurosis, psychopathic disorder, addiction, or any disability of mind caused by disease, senility or otherwise." PILC had represented a number of people who were being detained in mental health facilities under the provision of the Act.

Mel Holley would usually meet with these individuals in Winnipeg's Health Sciences Centre (HSC). "I negotiated with the hospital and the patient, sometimes encouraging them to stay there. But it was clear that the system failed to meet the criteria of due process." Holley met with Leona Thwaites, who was being held at the HSC. She had been seriously affected by mental illness, but she had never hurt anyone and was not a danger to herself, although her behaviour could bring her to public attention. She was in essence locked up because she refused to take her medication. On her behalf, PILC applied for a declaration that her detention was arbitrary and violated Section 9 of the Charter, which protects Canadians against arbitrary detention or imprisonment. While the initial application was struck down, in 1988 the Court of Appeal ruled in her favour, declaring several sections of *The Mental Health Act* unconstitutional. While the Thwaites case was working its way through the court system, the provincial government adopted new provisions that allowed detention only if there is an assessment that the person is likely to cause serious harm to himself or herself or to another person, or to suffer substantial mental or physical deterioration without detention and treatment. However, the government also continued to oppose Thwaites' position in the courts and did not proclaim the new provisions until the day after the decision came down in the Thwaites case.

One evening in 1989, Manitoba social services officials appeared at the doorstep of the parents of a young man with a developmental disability who was living in a Winnipeg group home. The officials said that since the young man had assaulted someone else in the group home, it was necessary to have him committed to the Manitoba Developmental Centre (MDC) in Portage. This required the consent of the parents, who declined to be rushed into committing their son to an institution. The parents were told that the province would then seek a committal order under Part II of *The Mental Health Act*, which required the authorization of two doctors. As Holley noted, if the young man had been convicted of assault he would likely not have been sent to jail, but even if he were jailed it would be a set period of time. However, Holley said, a committal to the MDC could have amounted to a life sentence.

The parents immediately contacted the Manitoba Association for Community Living (ACL), which aside from providing them with advice, put them in contact with Legal Aid. The ACL had been lobbying at that time to have these provisions of *The Mental Health Act* revised. Peltz and Holley at the Centre were both aware of the provisions of *The Mental Health Act* and believed that they also violated the Charter. Working through the weekend, the Centre put together an application for an interim injunction that would block the committal. Rather than having the application go to court, the government consented to the injunction. The legal challenge precipitated a lengthy consultation process, during which ACL worked with lawyer Anthony Dalmyn. It eventually led to the adoption of *The Vulnerable Persons Living with a Mental Disability Act*. The young man was never committed, and has remained in the community continuously. In reflecting on the role that PILC played, Dale Kendel, executive director of the ACL said, "Without PILC's involvement the legal challenge would have been far too costly an approach to even contemplate. Because the Centre acted so quickly and had a strong grasp of the legal issues, we were able to create positive social policy change."

Wild in the city: protecting the urban environment

Early in its history, the City of Winnipeg and the suburbs that surrounded it allowed most urban riverbank property to fall into private hands. This situation began to be reversed in the 1980s with the development of the Forks and the river walks along the Red and Assiniboine Rivers. Similar developments took place on the east side of the Red River in St. Boniface, particularly opposite the Forks. On several occasions the protection of the urban environment brought local residents into conflict with developers.

The Old St. Boniface Residents Association was established in 1977 and continued to operate into the 1980s, participating in various planning exercises. One area of focus for the Association was the area to the north of the old Canadian National Railway mainline. This area was seen to be largely potential parkland, but there was also a recognition that, to ensure community stability, residential development should be encouraged. While the Association was supportive of this approach, it opposed high-rise development. Before any specific development went ahead, the Association wanted to see an overall community plan developed for North St. Boniface. The local City Councillor, Guy Savoie, had repeatedly assured the Association that it would be involved in the development of such a plan.

Given this promise, news in 1986 that a local property developer was going to be allowed to build two condominium towers on land that he had purchased from the city along the Red River in North St. Boniface deeply angered members of the Association. Even though a community plan had not yet been developed, Plan Winnipeg, the city's overall development plan, had clearly intended that the land in question be developed as a public park.

Before the development could go ahead, there was a requirement that a city committee rezone the land. As a member of the zoning committee, which was expected to operate as a quasi-judicial body, Savoie supported the rezoning, which was approved. The residents discovered that prior to the zoning meeting, Savoie had appeared at a closed-door meeting of Winnipeg's Executive Policy Committee to support the proposed condominium project. While there is nothing necessarily improper about a councillor supporting a community development, decision makers were expected not to have taken positions on matters before them in quasi-judicial hearings.

Given these facts, PILC applied to the courts to have the zoning decisions quashed, arguing that Savoie ought to have abstained from voting on the issue. It also argued that the development project violated Plan Winnipeg, and as a result, before going ahead, the city needed to amend Plan Winnipeg.

While a Queen's Bench Court judge agreed with the Association, the Supreme Court of Canada sustained a Court of Appeal ruling that overturned the Provincial Court ruling. In doing so, the Supreme Court noted that while Savoie had supported the project, there was no evidence suggesting that he had a personal or financial interest in the case. It also ruled that Plan Winnipeg was intended to be a broad statement of policy objectives and was not necessarily binding on city Council. A dissenting Supreme Court opinion argued that city Council was overstepping its authority if its zoning bylaws did not conform with Plan Winnipeg. While the case was a legal defeat for the residents, it played a role in killing the proposed development. The court challenges delayed the project for a considerable period of time, creating financing issues for the developer, who eventually resold the land back to the City of Winnipeg.

There were once many small creeks and streams flowing into the Red and Assiniboine Rivers in the area of what is now the City of Winnipeg. As the city grew many were filled in, while others such as Omand's Creek, which starts to the northwest of the city near the town of Rosser and flows through Brookside Cemetery (hence the name), have been turned into little more than drainage ditches. However, Omand's Creek comes back to life just south of the former Winnipeg Velodrome (now home to a series of big-box stores). In the mid-1980s, the Marwest Development Corporation gained control of the property on both sides of the creek south of the velodrome and proposed building a 16-storey apartment complex over the creek. The creek bed would be filled in for nearly 200 metres and its flow diverted through two culverts. In an act of what *Winnipeg Free Press* columnist Val Werier termed tunnel vision, Winnipeg's Rivers and Streams Committee approved the project. At the time the city's stated policy was "to preserve existing public and private open space on rivers, streams and creeks." The committee argued that its responsibility was simply to make sure development did not impede stream flow or impair bank stability. Councillor Harvey Smith, who opposed the project wondered aloud "How are we saving the banks by eliminating them?"

The Manitoba Naturalists Society opposed the project, which it believed violated *The Rivers and Streams Act*'s intent to preserve existing waterways. The Society is a good example of an organization that under previous Legal Aid rules might not have been able to gain representation since few of its members were low income people. Nor was the issue one that specifically affected the situation of low income people. However, it was an environmental case, and pursuing it could have placed a significant strain on the Society's financial resources. For these reasons, the Society qualified for PILC assistance.

The Centre's research showed that under that *The Rivers and Streams Act*, the Minister of Natural Resources had the authority to reverse the city's approval. Furthermore, there was an additional approval for the project that the developer had failed to apply for. The Centre provided legal advice for the appeal to the Minister. This succeeded in drawing sufficient attention to the issue to force the provincial government to seek a resolution that saved the creek but allowed the developer to go ahead with the project in a different location. In the wake of the controversy, the provincial government provided funding for the creation of what is now Bluestem Park.

Bringing new evidence before the courts

In 1989, PILC hired Betsy Gibbons to work as a researcher. Gibbons was trained as a sociologist and had worked extensively on sociological research for a wide variety of federal and provincial agencies. She undertook many tasks, particularly tracking down experts who could testify on PILC's behalf in the increasingly complex array of cases the Centre was taking on. Her hiring also reflected an important change in the sorts of evidence that Canadian appeal courts were accepting in light of the adoption of the Charter. In the past, appeal courts limited themselves to reviewing points of law and would not consider evidence that had not been introduced in the original trial. Given the range of issues that the Charter brought under consideration, Canadian courts became receptive to hearing socio-economic evidence, often presented in the form of Brandeis briefs, a term that comes from an innovation in United States law in the early 20th century.

In 1907 the United States Supreme Court heard an appeal from Curtis Muller, the owner of an Oregon laundry who had been convicted of violating that state's law prohibiting women from being required to work more than ten hours a day. Muller argued the law violated his freedom to contract, and he could point to recent court decisions to back up his position. Longtime social reformer and labour rights activist Florence Kelley hired Louis D. Brandeis to argue in favour of the law. Kelley and Brandeis realized that while legal precedent may have been against them, the weight of the sociological evidence on the dangers of overwork were in their favour. It was, however, against legal tradition to submit new evidence of this nature to the Supreme Court. Along with a third researcher, Josephine Goldmark, they prepared a detailed 113-page brief that outlined the research into the health effects of lengthy work days along with a list of cited articles. The Court accepted the brief, the first to use extra-legal data to prove its argument, and used it to uphold the Oregon labour law. From that point on briefs making use of non-legal data were regularly used in U.S. courts and referred to as Brandeis briefs.

When the Centre took on a case challenging the City of Winnipeg's bylaw controlling the location of group homes, Peltz decided to include a Brandeis brief on the origins of the types of discrimination faced by group home residents and the actual impact of group homes on communities. In his decision, Court of Queen's Bench Judge W.R. De Graves wrote, "I must

give deference to and acknowledge the voluminous and impressive material which was submitted as part of the appellants' case. The submissions are compelling in that I must conclude from them that the existence and operation of the group homes do not appreciably affect property market values or the quality and condition of life in the community which they are situated."

Gibbons quickly became the Centre's Brandeis brief expert, eventually writing a paper with Peltz called *Deep Discount Justice: The Challenge of Going to Court with a Charter Claim and No Money*, in which she outlined the ways she had found to do extensive socio-economic research on a shoestring.

The G Case

One of the most controversial and emotional cases that the Centre ever took on was the G Case, which challenged the state's right to impose treatment on pregnant women. In 1996, Winnipeg Child and Family Services was seeking to apprehend a young pregnant Aboriginal woman who was addicted to solvents so that she could be treated until she either gave birth or the pregnancy was terminated. The child welfare agency argued that the woman, referred to as G, was violating her duty of care to the fetus by continuing to abuse solvents.

The Centre represented the Women's Health Rights Coalition as an intervener in the case. The Coaliation was well aware of the risks that solvent abuse during pregnancy created. However, it believed that the rights of the woman and the rights of the child should not be placed in conflict. Good health-care policy depended on respecting the woman's autonomy and dignity, particularly if she was to overcome an addiction. The evidence in this case showed that the woman had been a solvent addict for a number of years who had on a number of previous occasions attempted unsuccessfully to seek treatment, but there were no treatment spaces to which she could be admitted.

The case eventually made its way to the Supreme Court, where PILC presented a detailed brief, based on Gibbons research, that outlined the contradictions between the agency's approach and good health-care policy, the links between Aboriginal poverty and fetal alcohol syndrome (a potential outcome in this case), the impact of provincial and federal government cutbacks in health care, which made it difficult for G to receive treatment when she sought it, and alternatives to coercive treatment practices. The PILC brief pointed out that Aboriginal communities, their leaders and their health organizations were addressing fetal-health issues, and had not endorsed involuntary confinement.

Another important piece of evidence was a report on a sharing circle organized by the Native Women's Transition Centre in Winnipeg, whose participants had been involved in some form of substance addiction. The women at the sharing circle stated that court orders would discourage women from seeking medical advice and treatment during pregnancy since they believed doctors and nurses would be obliged to report them. "Why," one of them asked, "would you go and see your doctor when you know they will end up taking your baby away?"

As an alternative, PILC argued for an approach that would provide comprehensive non-coercive treatment services that address the wider problems of the woman's life. The Supreme Court ruled in PILC's favour. In her decision, Justice McLachlin wrote, "It is far from clear that the proposed tort duty will decrease the incidence of substance-injured children. Indeed, the evidence suggests that such a duty might have negative effects on the health of infants." The evidence that she was referring to was from the briefs that Gibbons had researched on behalf of the Coalition.

Law behind bars

Life in Canadian prisons is highly regimented and organized, guided by complex legislation and a corrections procedures manual that fills several binders. Traditionally, there had been little attention paid as to whether the application of these rules and regulations stood up to the Charter's due process standards. Prisoner rights' cases became a part of the PILC portfolio and Holley began to represent inmates who were trying to appeal disciplinary decisions regarding such matters as being placed in segregated detention or solitary confinement. The result was the implementation of due process to internal provincial corrections policy.

In one case, a woman contacted the PILC office because her son, an inmate in the Headingley Correctional Centre, was not taking his medication that was prescribed to treat his mental illness. When Holley went to the jail, he found the man in a cell in the medical unit, in a very disturbed and uncontrolled mental state. The man needed to be at a mental-health centre, but the Selkirk Mental Health Centre would not accept him as a patient because he was an inmate. Working with the man's mother, the Centre launched an application in the courts to have the man moved to a facility where he could be treated. Before the case went to court, arrangements were made for the transfer. While a legal precedent was not established, practices were changed as a result of the case.

In 1993 a young pregnant woman who was an inmate at the Portage Correctional Institution sought the Centre's assistance in challenging a rule that she would have to give up care and custody of her child once it was born. Before the case went to court, the case was settled in her favour, allowing her to mother the child in the jail during its first year of life. Key to reaching this decision was the research the Centre had compiled demonstrating that allowing female offenders to maintain as much family integrity as possible was in the best interests of both the parent and the child.

The two largest prisoner rights cases that PILC was involved in were the unsuccessful challenge to double-bunking and the successful campaign for prisoner voting rights.

In the 1980s, as a result of a growing increase in the prison population and a decline in resources, the federal government dramatically increased its practice of putting two inmates in cells that had been originally intended for one person. Double-bunking was often carried out in high security units, in which the inmates had to spend 23 of 24 hours a day in the unit. In his 1984-1985 report, federal Correctional Investigator Ron Stewart wrote that life in these units "is hell at the best of times: however, we are aware that in some institutions because of staff shortages they are unable to provide such basics as daily showers and the minimum one hour of exercise per day for inmates in these special cells. The problem is of course compounded when these cells, hardly big enough for one man, are double-bunked." Despite government commitments to end the practice, double-bunking increased from 7 per cent in 1986 to 24 percent in 1993. By then it was standard procedure, one that the federal Auditor-General estimated saved the government $60-million in operating costs annually and had, over a decade, saved it $240-million in capital costs. While the Auditor-General approved of the savings involved, he warned that "the long-term effects of double-bunking and shared accommodation on the effectiveness of corrections are still unknown."

PILC took on the case in 1984, on behalf of the Inmate Welfare Committee at Stony Mountain, arguing that double-bunking constituted cruel and unusual punishment. While PILC was able to produce evidence demonstrating that the practice violated correctional policies in most industrial democracies, the federal government countered with expert witnesses from the United States who suggested that double-bunking was not as extreme as some U.S. correctional policies. In February 1989, the court upheld the federal government policy.

One of the most controversial cases that PILC took on was the fight to gain prisoners the right to vote. Despite the fact that the Canadian Charter guarantees every citizen the right to vote in every federal or provincial election, both federal and provincial legislation barred prisoners from voting. PILC first became involved in the issue in 1986 when it represented inmates at Stony Mountain Penitentiary who were barred from voting in that year's provincial election. In handling the case, PILC acted on behalf of the Inmate Welfare Committee and the Native Brotherhood Organization of Stony Mountain. The Centre successfully advanced the argument that the government could not justify the ban on prisoner voting on the basis of the Charter provision that allowed for those limits that could be "justified in a free and democratic society."

While the provincial government introduced new legislation that attempted to limit prisoner voting rights, the Centre was successful in having it struck down in 1999. PILC also advanced an equality argument in the prisoner voting cases. It argued that because such a high percentage of people in Canadian jails were of Aboriginal ancestry, and that this was a product of a variety of discriminatory and colonial policies, the law also violated the Charter's equality provisions.

A case arguing for voting rights in federal elections was heard in 1995. PILC presented extensive evidence that Gibbons had assembled on the relationships between poverty, imprisonment and Aboriginal ancestry; sentencing disparities; and class bias in defining criminal activity. Initially, the federal government did not ask for a stay of the trial court decision granting prisoners voting rights, which came out in late 1995, until one month before it called the June 1997 federal election. Unless PILC responded quickly, another federal election would have passed without prisoners being allowed to vote. By researching Hansard, PILC discovered that the stay was requested one day after an opposition MP had chastised the government for failing to pursue its appeal, arguing that this failure demonstrated that the government was soft on crime. In successfully opposing the stay, PILC pointed out that the government was well aware that an election was imminent, backing up its case with reference to thousands of media reports speculating on potential election dates. As a result, the 1997 election was the first federal election in which prisoners were allowed to vote.

In the prisoner voting case, both the federal and provincial governments responded to initial defeats by passing new laws, which banned only certain classes of prisoners from voting. The federal case, which had been joined to a prisoner voting rights challenge launched in Ontario, finally concluded in 2002, when the Supreme Court ruled in favour of granting prisoners the right to vote. In her decision, Chief Justice Beverley McLachlin wrote "The wholesale disenfranchisement of all penitentiary inmates, even with a two-year minimum requirement, is not demonstrably justified in our free and democratic society." The impact of the Centre's socio-economic research was reflected in her comment that the law also had a "disproportionate impact on Canada's already disadvantaged Aboriginal population."

In the early 21st century, the Centre won an important victory for patient medical health. In 1997 the Canadian government announced that, to combat the spread of Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) and other infectious diseases in

Canadian prisons, it was introducing a methadone maintenance program in Canadian prisons. HIV/AIDS, along with other infectious diseases, can be spread when drug users share needles, and illegal drug users in prisons are at a high risk of contracting and spreading these diseases. Methadone is used to treat people who are addicted to opiates by preventing withdrawal symptoms and cutting down on the person's drug cravings. In the process, it reduces the risk of infection. The Canadian prison program would help prisoners who were addicted to opiates manage their lives and prepare for their return to Canadian society.

However, when the program was implemented in the summer of 1998, its availability was limited only to those prisoners who had been involved in a methadone treatment program prior to their having been incarcerated. This dramatically reduced the number of people who could participate. The federal government stated that once the program had been reviewed, its availability would be expanded to the general prison population. The evaluation concluded that the program was a success, but the only expansion was the addition of a provision that allowed prisoners who had not been eligible previously to enter the program if they were judged to be in dire need, which in this case meant essentially on the brink of death.

A prisoner at Manitoba's Stony Mountain Penitentiary had been trying, with the support of the prison doctor, to get into the program, but had failed to meet its criteria. PILC lawyer Michael Conner filed an application for a judicial review of the Corrections Canada decision in 2000, arguing that the government had an obligation to provide methadone to all medically eligible federal prisoners who wished to participate in the program. The existing policy was paralyzing doctors who treat prisoners because of the conflict between their obligation to treat their prisoners and the policy that prevented them from doing so. Shortly after, the government admitted the PILC client to the program.

However, the Centre did not drop the case since the government had not conceded it had a duty to make methadone available to all who needed it - and indeed there were still many prisoners who were medically eligible but still not allowed to receive treatment. Initially, the Crown argued that since PILC's client was receiving treatment, there was no longer any complaint to be heard. The PILC client wished to continue with the case for a number of very good reasons. As PILC argued, the government policy of denying methadone to prisoners who were in medical need was a breach of a duty to provide essential health care, and a violation of the Charter right to life,

liberty, and security of the person and prohibition of cruel and unusual punishment. Finally, it also left the PILC client at continued risk, since he remained locked in an institution in which many addicted prisoners would continue to use and circulate illegal opiates. If methadone were available to those who needed it, PILC argued that the reduction in the use of illegal drugs in the prison would benefit its client. In 2002, the federal government recognized that prisoners had a right to receive methadone as a part of their essential health care, bringing the case to an end.

Aboriginal cases

In 1988, the Centre undertook a northern and Aboriginal outreach initiative, which would eventually lead to its involvement in a number of large-scale land claims cases. One of the first Aboriginal cases was on behalf of 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. Their efforts to negotiate a compensation agreement had proven fruitless since Saskatchewan Power was refusing to acknowledge any damage or responsibility. It was a typical case of a large corporation being able to virtually deny the existence of a complainant - particularly an out-of-province complainant. In such cases, PILC would adopt what was referred to (metaphorically) as the sharp-stick-in-the-eye strategy, namely, finding an inexpensive but legally meritorious claim that would serve to get the corporation's attention. In this instance, PILC took Saskatchewan Power to court for having failed to acquire a Manitoba license for flooding caused by the company's operations in Saskatchewan. The corporation sought to have the case thrown out of court, but both the Manitoba Court of Queen's Bench and the Manitoba Court of Appeal ruled that there was an arguable case for trial and that the First Nations had standing to raise the issues in court. When the Supreme Court declined to hear an appeal of these rulings, Saskatchewan Power finally agreed to commence an out-of-court negotiating process. The Saskatchewan Power case is instructive because in many of the Aboriginal law cases that PILC handled, the first goal was to force governments to acknowledge that they had an obligation to negotiate a settlement.

The second major Aboriginal rights case that PILC took on involved two communities that had been left out of the 1977 Northern Flood Agreement (NFA). The NFA had been established in response to the severe environmental and socio-economic damage that had been inflicted on Manitoba First Nations in the 1970s by the development of hydro generating stations in northern Manitoba. To provide the newly built hydro generating stations with predictable and adequate flows of water, much of the Churchill River had been diverted into the Nelson River, while the levels of Lake Winnipeg were regulated so that flow would be lower in summer and higher in winter. The resultant flooding in some places and lowering of traditional water levels in others played havoc with the local eco-systems and transportation systems. The First Nations that were affected were able to gain the support of the federal government in their negotiations with the

Manitoba government, arguing that Manitoba Hydro had to pay compensation for the right to flood treaty lands. With this support they negotiated the NFA.

However, two non-status Aboriginal communities, Cross Lake and Norway House (as opposed to the Cross Lake and Norway House First Nations) were left out of the agreement even though the livelihoods of the people in those communities had suffered an equal level of disruption. In 1991 a PILC court action on their behalf argued that by leaving them out of the NFA, Manitoba Hydro, Manitoba, and Canada had breached their constitutional fiduciary responsibilities to Aboriginal people. As with the case of the Mathias Colomb and Barren Lands case, the lawsuit eventually forced the parties to negotiate with the non-status communities and eventually sign an agreement in principle in 2003 on a basis similar to that provided under the NFA.

One of the sadder ironies in northern Manitoba is the fact that electricity from the hydroelectric power stations whose operation was so destructive was for many years not available in many communities. In 1992 the Manitoba Keewatinow Okimkanak (representing 25 northern First Nations) retained the Centre to raise the issue of inadequate hydroelectric service in remote communities served by diesel generators. Residents of these communities were restricted to 15-ampere and 60-ampere service where most consumers enjoy 100 or 200-ampere supply. While the Manitoba Court of Appeal acknowledged that there may be a constitutional right to essential public service such as adequate electric power, it declined to hear the case. The following year, the Centre found itself working with Manitoba Hydro to successfully oppose a federal government plan to terminate a multi-million dollar subsidy to diesel services on reserves.

PILC's outreach efforts led to its representing two northern Dene First Nations, the Northlands First Nation (formerly part of the Barren Lands Band and currently resident at Lac Brochet), and the Sayisi Dene First Nation (formerly the Fort Churchill Band and currently resident at Tadoule Lake). While both of these First Nations had signed treaties in the early 20th century, by the 1980s not only had they still not received their full measure of reserve land, they found themselves being pushed to the sidelines as the federal government assigned land to which the Dene believed they had a claim to settle a Inuit land claim.

Throughout the 1970s and 1980s, the federal government was involved in a lengthy and complex set of negotiations with Dene, Inuit, and non-Aboriginal organizations in the then Northwest

Territories (NWT). The eventual result of these talks would be the splitting of the territories and the creation of a new territory, Nunavut, in the eastern Arctic and the simultaneous settling of the Inuit land claim by what was termed the Nunavut Land Claims Agreement. It was a significant development in Canadian history, leading to the creation of a territory with an Aboriginal majority. However, in the process the land claims of the Dene people of northern Manitoba whose traditional lands extended north of the sixtieth parallel, which constitutes the border between Manitoba and Nunavut, had been overlooked.

From the outset of discussions to split the NWT, the Manitoba Dene First Nations attempted to draw the Canadian government's attention to their rights, going so far as to attempt to select reserve lands north of the sixtieth parallel. In the early 1980s, the federal government rejected that request and the Dene's request for money to carry out a land-use study. As the negotiations over the Nunavut Land Claims agreement proceeded, provisions were included for the later negotiation of overlap agreements to accommodate Dene land use in Nunavut. But the federal government continued to maintain that the Dene had no Aboriginal or treaty rights north of sixty.

On behalf of the Sayisi Dene and the North Lands First Nations, PILC filed a court action challenging the Nunavut Settlement Agreement. Key to the challenge was a claim that the federal government had breached its fiduciary duty to the bands by giving traditional Dene lands to the Inuit as part of the Nunavut agreement. The court actions succeeded in winning the Dene a commitment from the federal government and the Inuit to negotiate the issue. These negotiations have been productive and are still ongoing - this may seem to have been a slow process, but Canadian land claims negotiations have taken an average of fifteen years to reach resolution.

Work with the Sayisi Dene First Nation on the Nunavut land claims case led to PILC's involvement in a related case, the relocation of the Sayisi Dene in 1956. At that time the Sayisi Dene spent a portion of each year near the Hudson's Bay Company (HBC) at Little Duck Lake in northern Manitoba. Other parts of the year were spent on the land or trading at other locations such as Churchill, Manitoba. When the HBC informed the federal government it was closing the Little Duck Lake Post, Indian Affairs officials then decided, without consulting the Sayisi Dene, that the Band members should be relocated.

The Dene were airlifted out of Little Duck Lake before the government had a clear plan of where they were to be located. As a result many of them spent the fall and early winter camping on the shores of Hudson Bay near the Port of Churchill. While the government originally intended to build the Dene housing, it later decided to winterize a number of abandoned cabins, a plan that was frustrated when needed housing supplies did not arrive. While the government concluded the relocatees should settle in North River, just north of Churchill, the Dene found the area lacked the natural resources to maintain them. As a result, many moved into Churchill. In 1957, the federal government evicted 17 Sayisi Dene families that had been living on federal land in Churchill to allow for the building of a fuel depot. When the federal government finally realized that the evictions and relocation had created a housing crisis, it established Camp 10, a collection of one-room cabins. Initially intended as a temporary solution, Camp 10 - with its substandard housing with substandard services - soon came to be seen as a long-term settlement.

In Camp 10, the Sayisi Dene experienced a multitude of social problems. The adults had little experience with the wage-labour market and few were able to find work as anything other than manual labourers. Unable to follow their traditional lifestyles from Camp 10, the majority of adults began a cycle of alcohol, spousal and child abuse. The community structure dissolved into violence and early death became commonplace. Children experienced racism and rejection in schools and turned to alcohol and violence. Most members of the community came into conflict with the law. The disruption of the family, which had commenced when children were sent to residential schools prior to relocation, was accentuated. In the mid-1960s the Dene were moved to a location just outside Churchill known as Dene Village, but the social problems only intensified.

In the late 1960s, Band members became interested in the possibility of moving inland and acquiring a reserve. Initially, it was thought that the reserve might be established at North Knife Lake. A plan was prepared to have a group spend a year at North Knife on an experimental basis. By 1972 the Sayisi Dene had decided to abandon Dene Village. However, those who were living inland felt that there were not sufficient resources at North Knife. When Indian Affairs indicated that it would not support another move, a group of people organized a trek to Tadoule Lake, to the west. In 1973 an airlift was organized to Tadoule Lake and by 1977 the Sayisi Dene had

moved to that community from Churchill. In the 1990s, the name Fort Churchill Band was abandoned for the name Sayisi Dene Nation.

During the 1990s the issue of the relocation of Aboriginal people gained a high public profile, particularly after the federal government agreed to compensate a group of Inuit who had been relocated from Quebec to the high arctic. PILC took on the case, conducted research into the history of the relocation and in 1998 filed a claim for compensation with the federal government on the basis of the community's relocation. This claim has been under review by the federal government since that time.

There is a temptation for most people to take telephone service for granted. But in remote northern communities, the phone can be a lifesaver - if it works. In the 1990s, MKO First Nations realized that the telecommunications revolution and a newly privatized Manitoba Telephone Services (MTS) were leaving its communities behind. It commissioned a number of surveys that came up with numerous examples of the impact of poor phone service in the north. A nurse from a remote northern community told a story about what happened when she tried to call a physician in Winnipeg to find out how to treat a patient with an unusual condition. The doctor, not used to northern phone service, was thrown off stride by the fact that there was echo on the line, which made it impossible for him to fully understand the nurse's questions. When the conversation became confused and muddled, the nurse suggested that she call back in hope of getting a better line. However, when she tried to call she discovered that the limited number of lines out of the community were busy: the doctor waited for ten minutes and then was called away to another matter.

The studies concluded that many remote communities did not enjoy high quality, accessible, reliable, and affordable telecommunication service. There were problems getting lines out, disconcerting levels of echo on calls, and unreliable fax and Internet service. The MKO First Nations are remote and often do not have year-round road access. They are the sorts of communities that could most benefit from high-quality telecommunications service.

In an effort to improve these services, PILC attorney Byron Williams represented the communities in a series of hearings before the Canadian Radio-Television Telecommunications Commission (CRTC). In December 2001, the Commission rejected the MTS proposal to improve northern telephone service over a ten-year period. Instead, MTS was ordered to develop

a five-year plan. MTS was also required to immediately address concerns with static, delay, and lack of lines in communities that are served by satellite, to consult with the residents of those communities and to consult with MKO First Nations on current and future needs. In 2003, PILC and MKO demonstrated to the CRTC that there were still significant service problems in northern remote communities. As a result, the Commission ordered MTS to invest in service improvements particularly for nursing stations and emergency service providers.

Poverty law in the 1990s

The 1990s were the age of fiscal restraint in Canadian politics. A continent-wide trade agreement coupled with a worldwide recession led to increased rates of unemployment and decreased government revenues. While many economists argued that the Bank of Canada's high interest-rate policy was crippling the country's economic performance, governments were more likely to put the blame on spending for social programs.

The result was a dramatic restructuring of the social safety net that had been put in place in the twenty years following World War II. At the federal level, the tax system was overhauled and a new consumption tax introduced, unemployment insurance benefits and eligibility were reduced several times, and the Canada Assistance Plan (CAP), which had set standards (albeit minimal standards) for social assistance, was eliminated. The federal government share of funding for health, education, and welfare all declined with the introduction of the CAP's replacement, the Canadian Health and Social Transfer.

In Manitoba, the government responded with cuts to social assistance and the introduction of a welfare phone line that people could call to report anyone they believed was receiving illegitimate welfare payments, a move that pandered to a view that social assistance recipients were in some way ripping off the system. Funding to schools, universities, and municipalities was cut or frozen and government support to over 50 social agencies, including the Manitoba Anti-Poverty Organization, the Manitoba Childcare Association, and the Indian-Metis Friendship Centres, was eliminated.

These developments had immediate and long-term impacts for PILC. Immediately, there was an increase in the number of welfare appeals the Centre took on as governments sought to implement a new "get-tough" policy towards welfare recipients. The end of the CAP also underscored how high the stakes had been in the Finlay case - under the new rules governments need not worry about being forced to adhere to national social assistance standards - there were no standards. In response the Centre carried out a wide-ranging review of practices that had adversely affected welfare recipients. As a result, a large number of individual appeals were launched and systemic issues identified.

One of these cases involved a welfare recipient who was in the last stages of amyotrophic lateral sclerosis. No longer able to speak, he had requested that welfare pay $100 a month for him to have access to a voice synthesizer. The province categorized the synthesizer as a lifestyle enhancer as opposed to an essential need, and turned down his request. Instead, provincial welfare officials stated, the man should use Morse code to tap out his needs. PILC took on his case, applying pressure through an appeal to the Manitoba Social Services Advisory Committee and making sure the issue was brought up in the Manitoba legislature, a move that caused a Cabinet Minister to question the PILC mandate. At the time Peltz commented on the welfare crackdown saying, "The problem is that we're becoming a pretty mean-spirited society and of course people in the social welfare system are particularly vulnerable."

The Centre also played a role in the defensive battles that organizations representing low income people fought in what they saw as a battle to stop governments from balancing their budgets on the backs of the poor and the unemployed. In the first of these cases, PILC represented Winnipeg's Community Unemployed Help Centre (CUHC), an organization that represented unemployed workers who were appealing Unemployment Insurance Commission rulings. The federal government had appointed a Royal Commission to recommend changes to the unemployment insurance system and chose to pay for the Commission with money from the Unemployment Insurance Fund. The CUHC took the position that the money in the fund had been raised for the specific purpose of paying benefits to unemployed workers and should not be used to fund a commission (particularly one that was predetermined to recommend reductions in benefits and eligibility). The courts agreed with the case that PILC presented and as a result, $6 million was restored to the fund.

The Commission report led to an ongoing series of reductions to the program, which in the 1990s was renamed Employment Insurance (EI). New rules introduced in 1996 required an unemployed person to have worked an average of 35 hours a week in order to qualify for benefits. In the past an unemployed person was required to have worked for a set number of weeks to qualify for benefits. Anyone who worked less than 15 hours a week was not eligible for benefits, a regulation that was seen as unfair to part-time workers.

While the change to an hourly as opposed to weekly rule had the potential to be helpful to part-time workers, the government set the number of hours so high that many part-time workers lost the right to qualify for EI benefits. The impact of this change fell heavily on women, who accounted for seven out of every ten part-time workers. They found themselves working part-time for many reasons, but one of the most significant was the ongoing social expectation that women would take responsibility for child rearing and domestic labour. In 1998, one such woman, Kelly Lesiuk, and her husband and children moved to Winnipeg from Brandon, where Lesiuk had been working part-time as a nurse while caring for her children. Lesiuk was pregnant at the time, but applied for work as a nurse. She also applied for Employment Insurance.

Her application was denied because she had worked 667 hours in the previous year: 33 hours short of the number needed to qualify under the new rules. She was also told that she would not qualify for EI maternity or parental benefits. She was shocked because she had qualified for all of these benefits when her first child was born. The decision had a significant impact on her family's finances - they were forced to cash in savings and to go into debt until she could return to work.

When Lesiuk took her case to the Community Unemployed Help Centre, the Centre's director, Neil Cohen and PILC lawyer Byron Williams concluded that Lesiuk's situation had the makings of a test case that challenged the EI rules as a violation of the Charter's equality rights provisions. In 2001 Employment Insurance Commission umpire Roger Salhany agreed with them, ruling that the Employment Insurance rules brought into effect in 1996 made it harder for women than men to qualify for EI benefits. In his decision Salhany wrote, "In my view, the eligibility requirements demean the essential human dignity of women who predominate in the part-time labour force because they must work for longer periods than full-time workers in order to demonstrate their labour force attachment." Salhany ordered that Lesiuk's application be reconsidered, using the pre-1996 rules.

Unfortunately, rather than accept that ruling and implement new rules that address the barriers to full-time employment that women faced in the labour market, the federal government appealed the ruling to the Federal Court of Appeal. In January, 2004, Justice Gilles Letourneau overturned the umpire's ruling stating that it had not been proven that women were being discriminated against by the new rule adding "I am satisfied that Parliament's choice in this case falls within a

range of reasonable alternatives." Despite this setback, the Lesiuk case helped focus political attention on gender inequities in the employment insurance system and was one of the factors that led the federal government to eventually lower the eligibility requirement for maternity benefits from 700 to 600 hours.

The Centre enjoyed greater success in the Dale case. The case was sparked by a provincial government decision in 1994 to change the funding that it was providing to certain University of Manitoba students through its ACCESS program. The program provided northern, inner-city, and Aboriginal students with a $72 a week living allowance as well as covering all the costs of their education as long as the students fulfilled a number of educational requirements. Students entering the program were led to believe the funding arrangement would be in place until they graduated. In 1994 the province announced that the students would be required to take out the maximum in student loans before they would receive any additional provincial funding. Many of the students found themselves forced to leave the program, while others took on what were very high debt loads given their financial situations.

After meeting with four of the students, PILC launched a court case on their behalf, arguing that the provincial government had entered into a legally binding agreement with the students and had to continue to fund them at the original rate. It was rare for the Centre to argue a case based on contract law, and one that the government lawyers thought they would win since there was no written contract committing the government to continue funding the students. However, in court, Peltz had a chance to make use of a 19th century English case, generally referred to as Carbolic Smoke Ball. In that case, a manufacturer had guaranteed that it would pay 100 pounds to anyone who came down with influenza after inhaling its product. Given that the smoke ball did not actually provide immunity from influenza it is not surprising that some poor flu sufferer eventually launched a breach of contract case. Even though there was no written contract, the courts ruled in the customers' favour. When studying the case as a law student, Peltz had found it so arcane and bizarre he considered giving up law school. Now he found himself arguing that the government had the same obligations as the purveyors of the Carbolic Smoke Ball, and was obliged to live up to its unwritten commitments.

The argument that the government had entered into a contract with the students in the ACCESS program prevailed at both a lower court and at the Court of Appeal where, in 1997, Chief Justice

Richard Scott concluded that "there was a legally enforceable offer made on behalf of the government." The decision won all the students (not just the four that PILC was acting on behalf of) a total of half a million dollars in support. One of the students, Clarence Dale, noted that the victory was bittersweet, given the number of people who had been forced to drop out of the program. "We're sitting here as winners," he said, "but there's still a lot of losers out here." Dale also noted that the ACCESS program had been responsible for bringing about real change in northern Manitoba. "The way it's always been in the north, our professionals have been shipped to us. For the first time, we're getting professionals in the north who have the same frontier mentality as the people they're serving." The case did not permanently tie the government's hands - students who entered the program under the new rules were not eligible for the living allowance, but were required to take out loans.

During this period the government continued to settle social assistance cases before going to court. As noted above, this could benefit the individual client, but did not change the overall policy, which was a long-term goal for the Centre. The growing number of one-time cases became a stress on the Centre's resources at a time when it was taking on a number of large test cases. In 1996, Mel Holley left the Centre to establish the Legal Aid Poverty Law office, which assisted low income people in addressing such matters as welfare appeals, disability cases, and pension-rights cases. The Poverty Law office continued to work closely with PILC, identifying systemic issues that proved to be the basis of court challenges.

In the mid-1990s the growing number of street people and panhandlers in Winnipeg's older commercial districts led merchants to press for a ban on panhandling. In response, City Council adopted a bylaw that prohibited panhandlers from approaching people for money if they were within ten metres of a bus stop, an automatic teller machine, or a bank entrance. Panhandling was also banned in elevators and after dark. Violators were subject to fines. Acting on behalf of the National Anti-Poverty Organization (NAPO), PILC challenged the bylaw as an infringement of Charter rights to free speech. At the time Peltz said, "people have the right to be on the street and express themselves, as long as they don't obstruct or interfere with other people."

Instead of proceeding to court, the case was resolved through what is termed an early neutral evaluation—in essence a non-binding confidential hearing of the case at the end of which a judge informs the parties what the likely outcome of the case would be should it go to trial. Based on

the hearing, the City chose to settle the case by negotiating the terms of a new panhandling bylaw with NAPO. The new bylaw prohibited panhandlers from obstructing pedestrians, threatening them or approaching people in groups of three or more and asking for money.

The decision not to litigate the case was an internally controversial one for the client, but it showed how PILC could serve as the legal counsel for an organization, helping it resolve conflicts through negotiation (by first of all using the threat of litigation to get the attention of more powerful political actors). The downside of the decision not to litigate is that no binding legal precedent was created. This meant that there was nothing to stop a later City Council from reintroducing the sorts of restrictions that NAPO had originally challenged. That is what happened in 2005 when Winnipeg City Council adopted a new bylaw prohibiting panhandling near bus stops, bank machines, pay phones and outdoor patios and in the indoor walkway systems in downtown Winnipeg.

One of the most high profile PILC cases to emerge from this era focused not on the defense of the rights of people benefiting from social welfare programs, but from a bold and ingenious effort to increase the level of government funding available to pay for such programs. The case originated in the 1996 report of the federal Auditor-General which concluded that the federal government had improperly granted a tax break worth hundreds of millions of dollars to a wealthy Canadian family. The story generated a few weeks of media attention, but likely would have died if a resident of Manitoba's Interlake, Sel Burrows, had not been seized with the idea that "Someone should take the government to court to force it to collect these taxes." Burrows was incensed that the federal government could have granted such a generous tax concession (in this case letting the family transfer $2 billion out of the country, without paying the millions owing on such a move) at a time when, as he put it "Everywhere you turned there were big cuts in government spending. There were patients in hospital hallways, there were fewer teachers in the schools, welfare payments, and unemployment insurance payments were being scaled back. And why? Because the government said 'We don't have enough money.'"

Burrows had a history of involvement with a Winnipeg coalition for social justice known as CHO!CES (the name was intended to emphasize the fact that despite their rhetoric, governments did have other choices than to cut social spending). CHO!CES was well aware of the fact that over the previous decade the federal government had benefited wealthy Canadians by cutting the

highest tax rate from 34 to 29 per cent and reducing the number of tax rates from ten to three while continuing to tax capital gains at a far lower rate than earned income. The case that Burrows was proposing fit in with the issues that CHO!CES was seeking to raise, particularly through the alternative federal and provincial budgets that it put forward annually.

When CHO!CES approached PILC with the cause, Peltz was initially skeptical. While it seemed that the Auditor-General's report laid a strong foundation for a case that the tax ruling should be reviewed, the basic thrust of tax law in Canada to that point had been that third parties did not have the right to sue the government if they felt the law had been misapplied to someone else. However, after mulling the case over—and being told by tax lawyer after tax lawyer that CHO!CES would never get standing—Peltz concluded there was a case, but it would have to be one launched by an individual taxpayer. George Harris, a CHO!CES member and a long-time international aid worker with a background in accounting, agreed to be the client, even after being warned that if he lost the case he might be bankrupted by the court costs.

The first battle was for standing, convincing a judge that there was a pressing public interest involved and that Harris as a taxpayer had an interest in seeing the issue redressed. Key to the case was the fact that the wealthy, but unnamed family in question, had originally been denied the favourable tax ruling that it sought. The ruling was reversed at the last moment in a series of high-level meetings that took place over a weekend. The issue was further clouded by the fact that, contrary to policy, no minutes were kept of these meetings. The decision on standing that Justice Frank Muldoon delivered at the end of 1998 was a devastating rebuke to the federal government position that the tax ruling was none of Harris's business. Muldoon wrote that the government was insisting, "this citizen and taxpayer is a nobody. By that medieval, aristocratic cast of thinking this free and democratic society founded on equality of civil rights and the rule of law belongs not to the people 'the electorate and the taxpayers' but to the mandarins and the bureaucracy. They would have the plaintiff just pay his taxes and shut up." While there were a number of subsequent legal skirmishes up to the Supreme Court, Muldoon's ruling cleared the way to take the underlying case to court in the fall of 2001. The CHO!CES case was presented by PILC staff lawyer Michael Conner and private practice lawyer Norm Cuddy. In 1996, the Manitoba Bar Association approved a Pro Bono Public Interest Law Project, through which law firms donated cash and time for public interest cases. Under the program, members of the private

bar also diverted billings for work on Legal Aid cases to the Centre. Cuddy carried out his work on the case as part of the pro bono program.

At the trial, Cuddy argued that by failing to live up to the appropriate standard of care and overturning a carefully thought-out decision at the last moment, the government had cost the treasury hundreds of millions of dollars in lost revenue. The trial had, however, produced no smoking gun. In her decision, Justice Eleanor Dawson concluded that since there has been no bad faith exercised in making the decision it was not up to her to rule as to whether the decision was appropriate or not—the government could apply the law in error just as long as it did not apply it in bad faith. In defeat, George Harris was philosophical: he had never expected the case to go so far or to reveal so much about the way in which one wealthy family was able to have its tax concerns addressed so easily. “I am impressed by how much our lawyers accomplished for us, but in the end, the decision brings home for me the fact that the courts constitute a legal system, not a justice system.”

Public interest law goes to med school

One does not normally think of medical school graduates as likely Legal Aid clients, either individually or as a group. But in the late 1990s, PILC undertook to represent the Association of Foreign Medical School Graduates in Manitoba (AFMGM). The Association represented over 100 graduates from Europe, Asia, Africa, and South America who were living in Manitoba but unable to practise their profession due to licensing restrictions.

These international medical graduates (IMGs) were all graduates of institutions that have been formally recognized by the World Health Organization, an agency of the United Nations. Because members of the AFMGM came from around the world and were all at different points in their careers, they had differing needs. Some required access to residency training to familiarize themselves with the Canadian medical system and its approaches. Others had been well established in their careers and could, with limited supervision, have been able to practice family medicine in communities in need of general practitioners. Others were specialists in need of a period of special training to familiarize themselves with the manner in which their area of specialization is practised in Manitoba, but were otherwise ready to offer their services to Manitobans immediately. Canadian immigration policy works to encourage such graduates to come to Canada, however, once they are here, many find that the licensing system makes it all but impossible to practise medicine. As a result, they are unable to make their full contribution to Manitoba society, often being forced to take jobs that pay very little and do not make use of their talents and skills.

In the late 1990s in Manitoba there were two paths that the graduate of an international medical school could travel to become a licensed doctor in Manitoba; regular licensure or conditional registration. In both cases many IMGs faced discriminatory barriers. The regular licensure process included a requirement that the graduate undergo two to six years of residency training. Each year, approximately 75 of these residency positions were available at the University of Manitoba (and approximately 1,000 were available across the country). These positions were distributed by the Canadian Resident Matching Service (CaRMS). In 1994, the University of Manitoba and the Manitoba government did not allow IMGs to participate in the first round of the CaRMS selection process, dramatically limiting the likelihood that they would be matched

with an appropriate residency program. On the instruction of the Manitoba government, from 1996 to 1998, the University of Manitoba prohibited IMGs from participating in the second round of the CaRMS process. For a number of years the University of Manitoba set aside between two and three residencies for IMGs, but in 2000 this policy was abolished.

The second route open to IMGs, conditional registration of doctors, was established by the College of Physicians and Surgeons of Manitoba in 1994 to address the shortage of doctors in rural communities. Under this process, graduates of foreign medical schools, who had successfully completed the Medical Council of Canada Qualifying Examination Parts I and II (MCCQE) could be conditionally licensed to practise medicine in certain regions of Manitoba. If, after five years of clinical practise, the doctor had successfully completed all the required examinations, the doctor was eligible to be fully licensed to practice medicine anywhere in the province.

While this was in many ways a sensible approach to addressing the medical needs of Manitobans, because the conditions for receiving conditional licenses were much less stringent for medical graduates from the United Kingdom, the United States, Ireland, Australia, New Zealand and South Africa (what came to be known as the preferred countries), the process created two separate classes of international medical graduates.

Unlike all other IMGs, graduates from the preferred countries were not required to complete the MCCQE examinations before receiving a conditional license. And while applicants from preferred countries were required to have completed one year of post-graduate training before receiving a conditional license, all other IMGs were required to complete two years of post-graduate training. As this summary suggests, the licensing process was a very complicated system with many actors—both federal and provincial—involved, making it difficult for PILC to determine exactly where responsibility for any discrimination with the system lay.

In 1999, PILC filed human rights complaints against the Province of Manitoba, the College of Physicians and Surgeons of Manitoba, and the University of Manitoba on behalf of Dr. Daljit Singh and the AFMGM. This was not a step that the IMG members took lightly - many of them came from authoritarian countries where one simply did not challenge the government, while others worried that they might be putting their career opportunities in jeopardy by taking the

government to court. The Centre argued that the licensing system was operating on an unproven assumption that doctors from some countries were prepared to practise here, while doctors from other countries were not. The AFMGM was also arguing for additional training that would provide IMGs with an understanding of how the Canadian health-care system operated. In response to the complaint, the AFMGM underwent a mediation process with Manitoba Health, the College of Physicians and Surgeons and the University of Manitoba. This led to a complete overhaul of the conditional licensing process in 2003. The new program provides for individual assessment of IMGs, and immediate licensure for those whose skills are assessed as satisfactory. It also provides for up to one year of remedial training, leading to licensure, for those who require it.

Progress on improving access to residency positions has been slower. In 2006, the rule prohibiting international medical graduates from participating in the first round of the CaRMS process was relaxed, although only in Manitoba and Quebec are IMGs allowed to compete with Canadian graduates with no restrictions. Myfanwy Bowman of the Centre is continuing to represent the AFMGM as a number of systemic barriers remain in place that limit IMGs' ability to gain access to residency positions.

PILC in the oil patch

The amendments made to the *Legal Aid Act* when PILC was established authorized the Centre to take on consumer and environmental cases. While consumer law has been a mainstay of PILC since the outset (and indeed PILC raised many environmental issues in the context of the PUB setting), it had in fact done relatively little environmental law. In the early 21st century it became involved in an environmental case in Manitoba's oil patch. In the oil-and-gas industry batteries are installations used to treat gas that has a high percentage of salt water. During this process hydrogen sulfide—which has a rotten egg smell—can escape into the atmosphere.

In 1993 Jim Anderson was working for Tundra Oil and Gas, doing maintenance on one of the company's batteries near Tilston in southwestern Manitoba. One day escaped hydrogen sulfide emissions paralyzed his respiratory system, causing him to pass out. Shortly afterwards, he was knocked down a second time. His family believes he would not have survived if his brother had not revived him with artificial respiration.

After discussions with neighbours, the Andersons began to wonder if a series of health problems that they had been experiencing were linked to gas emissions. Jim's wife, Wendy Anderson, a nurse at a local hospital, said the 1990s had been a period of chronic health problems for the family. Everyone had nausea, upset stomachs, headaches, dizziness, respiratory problems, inner ear problems, lethargy, and flagging concentration. Jim also began to develop severe skin discolouration problems. When their older daughter returned to live on the farm, she needed an inhaler to deal with her breathing problems. The Andersons moved off the farm for two months in early 1999. Jim recalled "I had forgotten you were supposed to feel so good." Wendy and their younger daughter also found that their health problems had disappeared.

The Andersons were one of four families in the Tilston area that experienced what they believed were hydrogen sulfide-related knockdowns and other health problems. Some of these farm families felt that the emissions from the battery were affecting their livestock, leading their cattle to abort and going off their feed. On several occasions these families moved off their property and moved their cattle operations to leased land.

For many years the battery had been allowed to emit many toxic gases and chemicals directly into the air. The prevailing winds blew these products right into the local farmyards. Some residents came to believe the exposures had a long-term, negative impact on their health, leaving them far more sensitive to the products that are being emitted from the Tilston battery, even when the gases were being incinerated. The name for this condition is multiple chemical sensitivity (MCS) and people who suffer from it can experience ill effects from exposure to chemicals even when these exposures are below scientifically defined acceptable limits.

The families banded together to form Group Advocating Safe Petroleum Emissions (GASPE) and approached PILC for assistance. Their situation underscored one of the real problems in environmental law, namely the difficulties in linking specific pollutants with specific health outcomes. Such cases can last for years, require significant use of expert witnesses, and have very uncertain outcomes. PILC proposed that GASPE seek to have the batteries regulated under *The Environment Act*. This would require the Clean Environment Commission (CEC) to hold hearings into whether the batteries should be licensed and what conditions should be placed on their operation. In reaching its decisions, the CEC would be expected to take public-health issues into consideration. The provincial government rejected this approach, noting that the batteries were already regulated under *The Oil and Gas Act*. PILC disagreed with this position, arguing that *The Oil and Gas Act* did not have the same health focus as *The Environment Act*. After an attempt to have the CEC mediate the dispute failed, PILC went to court in 2002 seeking an application to have the battery licensed under *The Environment Act*. Due to a number of unfortunate delays, that court case has yet to be heard. During the period of time that GASPE and PILC have been pursuing the issue, Tundra has made a number of expensive improvements to the batteries.

Human rights and family law

In 2001, PILC lawyers Beverly Froese and Byron Williams launched a Charter challenge on behalf of four same-sex couples to address an anomaly in Manitoba's adoption laws. Under the then existing law, there was no bar against a single person, regardless of sexual orientation, from becoming an adoptive parent. However, same sex couples could not legally adopt. In practice this meant that one member of a couple would become the legal adoptive parent, while the other member of the couple (who would be just as involved in parenting) would have no legal standing as a parent. Faced with a court challenge, the Manitoba government appointed a two-person panel to assess the constitutionality of the law and make recommendations as to how to address the issue. When the panel concluded that the law was unconstitutional, the provincial government announced that it would amend it to allow for same-sex adoption.

Conclusion

2007 marks the 25th anniversary of the establishment of the Public Interest Law Centre. Today, the Centre has a staff of four lawyers, an administrative assistant and an articling student. Arne Peltz left the Centre to go into private practice in 2003, but continues to work on a number of cases that he initiated during his period with PILC. He was succeeded as the Centre's director by Byron Williams, who first came to work for PILC as an articling student in 1992 and has handled much of its regulatory work since then. The Centre still maintains a complex and varied caseload that deals with essential public services, consumer, Aboriginal, environmental, poverty, human rights, and prisoner rights cases - the mixed portfolio that PILC adopted at the outset. It works for law reform through test case litigation, undertakes advocacy work in regulatory matters, provides advice on public policy, carries out public education, and facilitates pro bono work.

It continues to break new ground: in 2004, PILC's Beverly Froese and Byron Williams and the Community Unemployed Help Centre joined forces under tragic circumstances, when CUHC executive director Neil Cohen's brother was diagnosed with terminal cancer. Cohen took time off work to care for his brother and his family. He then applied for Employment Insurance Compassionate Care benefits only to be denied because under legislation the benefits were available to the parents, spouse or children of a dying family member. With PILC's assistance, Cohen appealed the ruling, arguing that it was discriminatory. Before the case could be heard, in November 2005, the federal government announced that it would be extending up to six weeks of compassionate care benefits to anyone the terminally ill person designates as his or her caregiver.

And there are new challenges on the horizon. In the fall of 2006, PILC launched a human rights complaint against the Manitoba government on behalf of the Association of Community Living (ACL). The complaint revolves around the future of the Manitoba Developmental Centre in Portage la Prairie, the largest residential centre for Manitobans with intellectual disabilities. Built in 1890 as an institution for persons with mental or intellectual disabilities, the MDC has come under considerable criticism over the past two decades. In a 1987 report on the MDC, the Manitoba Ombudsman describe the residents of the MDC as "lost souls" lacking in needed programming and training opportunities. The ACL describes the current situation at the MDC as abysmal.

Currently persons can only be admitted to the Centre by court order if they cannot be safely managed in the community or are a threat to themselves or the public. The expectation is that these individuals will be housed in the MDC for a short period and then returned to the community. However, most of the 380 people in the MDC were committed in the 1960s and 1970s, a period when there were fewer restrictions on who could be institutionalized. As a result, the average age of residency at the MDC is over 50 and most residents can expect to live for another 20 years - most are likely to spend those years in the Centre.

While the Manitoba government has been decreasing the number of residents at the Centre, it shocked members of ACL, the main lobby group for Manitobans with intellectual disabilities, when, in 2004, it announced that it would be spending $40-million on renovating the Centre. While the ACL does not dispute that MDC is in need of renovation, its members would prefer to see the money spent on closing the MDC and moving its residents into the community.

Two important Aboriginal law cases under development have their origins in charges laid against members of the Sagkeeng First Nation for violating land-use and resource regulations. Working with the First Nation, PILC developed a legal strategy in these cases that argues that there is currently an unextinguished Aboriginal title in Manitoba and that the Western Canadian treaties should not be interpreted as simple treaties of surrender.

The Aboriginal title argument was developed in response to charges laid against First Nation members for using all-terrain vehicles and snowmobiles on restricted forestry roads that lay within their traditional territory. For many years the prevailing legal opinion had been that in Western Canada, the series of numbered treaties that were signed in the late 19th and early 20th centuries extinguished Aboriginal title (the right of an Aboriginal First Nation to exclusively use and occupy a territory). However, the first three numbered treaties deal only with rights in specific areas (now referred to as treaty lands) and are silent on Aboriginal rights in other locations where First Nations had traditionally exercised exclusive use and occupancy. If the First Nation can demonstrate in court that their rights in these lands were never extinguished and that these lands were a part of their traditional land base, the case could create significant resource development and harvesting opportunities for a number of Manitoba First Nations. While the Crown has stayed the original charges, the First Nation and PILC lawyer Aimée Craft, continue to develop the title claim.

The second case, which arose from charges laid against a First Nations member for harvesting timber on Crown lands that fall within the First Nation treaty area, challenges what has been the conventional interpretation of the early numbered treaties. Namely, that by agreeing to the treaties, Aboriginal people surrendered both land and resource rights. The cases draw on the considerable evidence that Aboriginal people had good reason to believe that the treaties confirmed their freedom to hunt and fish and use resources as they had in the past. Given that Canadian courts are expected to interpret the treaties in light of their original spirit and intent, this case, being conducted by Beverly Froese and Aimée Craft, also has the potential to dramatically expand the economic rights of a number of First Nations.

The Public Interest Law Centre was established as a response to a recognition that, left unchecked, social and political inequality contribute to undesirable social outcomes. When the poor are voiceless, decision makers not only ignore their interests, they often do not know that they are ignoring them. In case after case, whether PILC won or lost, it has obliged decision makers to listen to the arguments of those without social or economic power. In an age when many decry the quality of public debate, the decline in the rate of participation of political life, and the growing concentration of media ownership, it is no small task to speak out on behalf of the existence of such a thing as a public interest and no small accomplishment to win legal battles on behalf of that interest. Those who have at times been critical of PILC's work might reflect on the proposition that by letting the other side be heard it has strengthened society and increased its legitimacy. It is also worth remembering that PILC was not established to eliminate inequality. While it has succeeded in striking down many unjust laws and regulations and introduced the rule of law to various administrative practices, the struggle against inequality lies largely in the political and economic sphere. It has, however, been a good and faithful counsellor to those who participate in that struggle.

Looking Forward

Our decision to review the first twenty-five years of the Public Interest Law Centre was made during a recent planning exercise. Trite as it might sound, we felt that a more complete understanding of the Centre's roots would help us as we looked forward to the next five years.

We made a good decision. Doug Smith's research has given us a much better understanding of what we intuitively sensed. Over the past quarter century, the Public Interest Law Centre has been an innovative and important player in the effort to improve both access to justice and democratic accountability in Manitoba.

Some individuals might find such a legacy daunting. However, as we look at the Centre's track record over the current decade, we take more than a little encouragement from recent achievements.

Since the year 2000, Manitoba consumers have enjoyed almost two hundred million dollars in rebates from provincially-owned Crown corporations. Doors of opportunity once firmly shut have begun to swing open for internationally trained medical graduates. Important social programs such as Employment Insurance Compassionate care benefits are now delivered in a more equitable fashion. Manitoba First Nations have started to look with fresh eyes upon their treaties with a view to reclaiming their sacred role as stewards of their traditional lands. The adopted children of same sex parents can now have both their adoptive parents recognized by law. In our respectful view, the Centre continues to play a key role in advancing the rights of consumers, Aboriginal People, Manitobans with low incomes and those seeking equality.

Where do we go from here? Historically, one of the great strengths of our Centre has been the creativity of both our clients and our staff. To a certain extent, our efforts will be driven by the next client with an important case who walks through our door. But as we reflect upon our statutory mandate, our current priorities and the vision of those who founded the Centre, some obvious issues come to mind.

Our express statutory mandate directs our attention both to consumer and to environmental issues. Manitoba consumers benefit on an annual basis from the efforts of the Centre. But while there are some successful environmental cases in our portfolio, we see many potential opportunities. One of the great challenges we face is the need to reconcile the interests of consumers and environmentalists in a manner that best serves the central objectives of sustainability and affordability.

We also see a need to better serve low income Manitobans and those with disabilities. A striking note from our review of the early years of the Centre is the large number of cases brought on behalf of those on income assistance, in subsidized housing or with physical or mental disabilities. The past two years have seen an increased demand in these areas.

Finally, there is the issue of Manitoba's Aboriginal Peoples. Since the latter part of the 1980s, our efforts in this area have been an important part of the Centre's work. Our recent review of the historical record has persuaded us that a reconsideration of the early numbered treaties presents an unparalleled opportunity to advance equality and living conditions for Manitoba First Nations. Stay tuned for developments on that front.

As staff of the Public Interest Law Centre, we have been given a unique opportunity to strive for excellence in our practice on behalf of those most who are most likely to benefit from improved access to justice. As the Centre's current staff, we would like to express our appreciation to those who walked before us and who had the imagination, drive and foresight to create such a special tradition.

We are confident that the next few years will see us build upon that legacy in a manner that is innovative, accountable and caring.

Thank you.

Myfanwy Bowman, Attorney
Aimée Craft, Attorney
Beverly Froese, Attorney
Suzanne Knowles, Legal Assistant
Byron Williams, Director

References

A.B.D. Associates. 1983. *Priorities for the Public Interest Department, Legal Aid Manitoba*. Toronto.

Auditor-General of Canada. 1994. Annual Report, Chapter 16. http://www.oag-bvg.gc.ca/domino/reports.nsf/html/9416me.html, accessed December 22, 2006)

Black, Errol. 1987. "Small Struggles, Major Victories: The Fight Against Transit Cutbacks." *City Magazine*. Volume 9 Number 2, Summer, 19-24.

Furlong, Jordan. 1996. "Manitoba Public Interest Law Centre fights for disadvantaged". *The Lawyers Weekly*, Volume 16. Number 8, June 28.

Jackson, Michael. 2002. *Justice behind the walls: human rights in Canadian prisons*. Vancouver: Douglas & McIntyre.

Kane, T. Gregory. 1980. *Consumers and the Regulators: Intervention in the Federal Regulatory Process*. Montreal: Institute for Research on Public Policy.

Larsen, Norman. 1977. "Legal Aid in Manitoba." in *The Law Society of Manitoba 1877-1977*, edited by Cameron Harvey. Winnipeg: Peguis Publishers. 158-175.

Louis D. Brandeis School of Law Library. The Brandeis brief. http://library.louisville.edu/law/brandeis/muller.html. accessed December 22, 2006.

Manitoba Public Utilities Board. 1978. *Annual Report 1977*. Winnipeg, Government of Manitoba.

Manitoba Public Utilities Board. 1979. *Annual Report 1978*. Winnipeg, Government of Manitoba.

Martin, Dianne L. A Seamless Approach to Service Delivery in Lead Aid: Fulfilling a Promise or Maintaining a Myth, Department of Justice, Canada, http://www.justice.gc.ca/en/ps/rs/rep/2001/seamless/seamless.html, accessed December 23, 2006.

National Council on Welfare. Justice and the Poor. http://www.ncwcnbes.net/htmdocument/reportjusticepoor/repjusticepoor_e.htm accessed December 23, 2006.

Peltz, Arne, with the assistance of Betsy Gibbons. 1999. "Deep Discount Justice: The Challenge of Going to Court with a Charter Claim and No Money." unpublished paper.

Penner, Roland and Arne Peltz. 1998. "The State of Legal Aid in Manitoba in 1997." *Windsor Yearbook of Access to Justice,* 271.

Purdy, Chris. 1997. "Broken promises cost gov't. "*Winnipeg Sun*. June 21.

Winnipeg Free Press. 1997. "Students win case against the province." *Winnipeg Free Press*. June 21.

Russell, Frances. 1982. "Using tax dollars to pay for class action." *Winnipeg Free Press*. July 7.

Selinger, Greg. 2000. "Organizing Hope: Reflections on Civic Engagement in Winnipeg, Manitoba, Canada: 1978-1988." unpublished doctoral thesis, London School of Economics.

Smith, Doug. 2002. *How to tax a billionaire: Project Loophole and the campaign for tax fairness*. Winnipeg: Arbeiter Ring.

Werier, Val. 1984. "City committee capitulates to developers." *Winnipeg Free Press*. December 8.