

Report says HDI lawyer accused of overcharging clients

By Jim Windle

SIX NATIONS—Documents obtained by the Two Row Times indicate HDI lawyer Aaron Detlor was investigated by an elected band council he was working for in northern Ontario, after that band suspected the lawyer was over charging them.

Chief Steven Miller, of the Atikameksheng Anishnawbek First Nation (AAFN), formerly known as Whitefish Lake First Nation, started questioning Detlor's payment demands for work, supposedly done on his Nations behalf, and ordered an independent report from a third party law firm to evaluate two of Detlor's lucrative retainer agreements.

At the end of October 2011, Chief Miller retained the services of Solmon Rothbart Goodman LLP to review the retainer and subsequent sundry accounts related to Detlor's legal activities on behalf of his Nation, over several years.

James P. McReynolds prepared the report on behalf of Solmon Rothbart Goodman LLP after reviewing several documents and other evidence that involved Detlor's business practices.

The investigation concluded that the AAFN appears to have been massively overcharged for questionable work done on the band's behalf.

According to the report, since being retained by the AAFN in 2003 Detlor was paid close to \$1.4 million in fees, many of which were highly unethical, if not illegal.

McReynolds began his investigation by reviewing two retainer agreements between AAFN and Detlor. One is dated June 1, 2009 and the other, June 10, 2010.

The 2009 retainer was

for legal help relating to that Nations Timber Claim dating back to 1886. Detlor was to be paid \$10,000 per month plus a "success fee" of 6.5% of any moneys obtained as a result of the Timber Claim.

However, the band was charged an additional \$225,000 over and above his monthly salary for "expert reports" relative to the claim over one year.

Detlor indicated to his clients that he anticipated a settlement of between \$13M and \$17M should they win, which would translate into an estimated \$845,000 to \$1.15 million plus all travel and sundry expenses over and above his lucrative monthly retainer fees.

In 2010, a second retainer was entered into which was to have lasted until June of 2012. It was during this time frame, while Detlor was still under that retainer, that Chief Miller launched the third party investigation into the validity of Detlor's expenses and actual work executed on their behalf.

Under the newer agreement, Detlor was to negotiate a Boundary Claim associated with the Timber Claim. For this he was retained for \$14,000 per month and AAFN was to pay 100% of Detlor's disbursements and expenses. The retainer agreement, which McReynolds believes was drafted by Detlor himself, also stated that although his services could be withdrawn at any time, he would require a 10-month advance notice in writing, to do so.

Regarding the 10 month written notice, McReynolds points out that the enforcement of this clause would require AAFN, in the event that it had completely lost confidence in Detlor, to continue to maintain him in a position of fidelity and trust for

10 months while paying his retainer fees and expenses.

"It is questionable whether a court of competent jurisdiction would enforce this clause," says McReynolds.

"It is not unheard of for a lawyer to be paid a fixed monthly rate," the McReynolds report says. "This is often the case for in-house council who act as employees of the companies for which they work. However, those employees are rarely afforded 'success fees' and the employer has an exclusive claim upon the lawyer's time."

Nowhere in either retainer does it say that Detlor would not work for anyone else during the life of the agreements, or that he would give the AAFN his top priority, as is usually required.

The report indicates that Detlor actually worked for four separate First Nations simultaneously, one of which was Six Nations of the Grand River traditional council. Details of those other agreements were not part of McReynolds report.

There were allegations made by Chief Miller of late or nonexistent reports, and bills that did not match filed time dockets provided to AAFN, and that they had no copies of the documents filed with the court on their behalf, as well as other problems in communication.

McReynolds reported to Chief Miller and council that in 2011, when Detlor had charged the AAFN more than \$4,000, a total of 14 hours at \$290 per hour, to attend a conference. The report states Detlor also presented identical bills on behalf of three other First Nations, quadruple billing those communities for attending the same meeting.

According to Chief Miller, Detlor was not instructed to attend this con-

ference on their behalf.

"The attendance at the June 3, 2011 conference and subsequent billing do not represent best practices for lawyers," said McReynolds in his report. "Lawyers owe clients a fiduciary duty of absolute honesty and complete disclosure. The purported performance of a joint retainer on behalf of four First Nations is also problematic. The lawyer should not be purporting to charge 100% of his fees to each of his clients simultaneously for the same period."

McReynolds goes on to report to the AAFN that joint retainers usually will at some point turn into conflict of interest. He also explains that Detlor's "suc-

cess fee" over and above his well-paid regular fees and expenses in this case is unusual at best.

"A lawyer is supposed to put his client first," says McReynolds. "When a lawyer is negotiating a major fee agreement with his or her client, however, the lawyer is negotiating on his own behalf and in his own interest, not the client."

He states that if a lawyer was looking out for the best interests of the client, he or she should advise the client against entering into a success fee in such circumstances.

"If it is in fact the case that there was no clear direction by Mr. Detlor for AAFN to obtain legal advice prior to executing

the retainer agreement," states McReynolds, "Then it is possible that a court of competent jurisdiction could find that Mr. Detlor breached his fiduciary duty to AAFN in failing to give such advice."

As far as Detlor's travel is concerned, Reynolds says, "It is not fair to expect our clients to pay at our full rate when we are performing non-legal services, such as travel. There is no indication in the retainer agreement of any sort of "travel discount".

Attempts to reach Detlor for comment on the report were not returned and details of the agreement signed between Detlor and the HCCC have not been made public.