

## MEETING NOTES

### Immigration and Refugee Law Advisory Committee Meeting of December 7, 2009

#### Advisory Committee Members Present

John D. McCamus, Chair  
Justice Sidney B. Linden  
Raoul Boulakia  
Randy Hahn  
Gerri MacDonald  
Sheena Weir  
James Yakimovich  
Bob Ward (*ex officio*)

#### Legal Aid Ontario Representatives Present

David McKillop  
Vicki Moretti  
Rod Strain  
Heather Morgan  
Stephanie Mealing

#### Others Present

Brent McCurdy, MAG  
Sunny Kwon, MAG

### **Introductions and Opening Remarks**

Committee Chair John McCamus opened the meeting and welcomed the participants. There were introductions around the table and on the phone.

There were no comments on the November 9, 2009 meeting notes

The Chair advised that, while some of the committees had expressed concern about the short timeline for completing the process, the Minister had indicated that it was important to meet the December 15, 2009 deadline since there is some concern that the money could be allocated to other government priorities if left unattended. Although this process will be ending in December, LAO's own consultative processes such as the LAO Board advisory committee meetings will be ongoing.

The Minister also reaffirmed his view that the new funding is not meant to be used for doing the same things in the same ways. There can be recommendations for using the money to improve compensation and supports for

service providers, but there must also be ideas for increasing the effectiveness and efficiency of the legal aid system.

The Chair introduced David McKillop, LAO's Vice President, Policy and Research, who provided a brief overview of the information in the Refugee Law slide deck, including the estimated amounts of money that would be required to increase the legal aid tariff for immigration and refugee law matters, and for all certificates. It was noted that federal funding for immigration and refugee lawyers has been in decline.

There was some discussion among members about the wide range in the average cost, per lawyer, for completing refugee matters; the cost can range from \$972 to \$3,394. There are a number of different considerations that can explain the variation in costs, such as the complexity of a case or the conduct of particular Board members, geographic considerations, the fact that many lawyers do not seek discretionary increases and the fact that some lawyers become known for taking hard cases. Raoul Boulakia indicated, however, that the RLA does not want to see the legal aid system being abused, and would be happy to work with LAO, subject to entering into the necessary confidentiality agreements, to support investigations into potential abuse. The Chair thanked Raoul for this offer.

The Chair thanked Raoul Boulakia and Gerri MacDonald for their submission to the committee on behalf of the Refugee Lawyers Association, and invited discussion from the committee on the ideas outlined in that submission as well as on any other ideas that the committee would like to bring forward.

## **Discussion**

### *Ideas for Improving Compensation*

A proportionate, equitable allocation of the new resources among all areas of law and service delivery, based on historical allocations, should be the starting point for making recommendations. This would mean that, in the first year of funding, with \$15 million available, \$1,139, 240 should be allocated to immigration and refugee law.

75 per cent of the new funding should be allocated to increasing compensation. If an hourly rate increase is not possible, then an increase should be designated as support or a subsidy for lawyers' overhead costs. When lawyers cannot afford support staff, they make accommodations that are not ideal. Compensation for overhead costs could also help lawyers to afford articling students and juniors.

More hours should be added to existing services. The hours for preparation on a refugee certificate should be expanded from 16 to 20 hours. This could reduce administrative costs by reducing the number of requests for discretion.

Coverage should also be made available for other services, such as preparation of preliminary forms on refugee cases, preparation and attendance at CSIS interviews, and expanded coverage for H&C applications and PRRAs.

The tariff hour limit of eight hours for expedited hearings came into being as a result of the cutbacks of the 1990's and should be eliminated. It acts as a disincentive to lawyers seeking an expedited hearing. Eight hours is not representative of the time spent in preparation, and if a lawyer spends only eight hours then the client's representation will suffer. It was suggested that increasing the number of hours (to 16 or, ideally, 20) would not necessarily increase costs to LAO because disbursements and other costs are lower for an expedited hearing.

LAO's budgeting for making discretionary payments should be improved. It is very frustrating for lawyers when discretionary requests are refused. It has to be assumed that discretionary increases will be necessary, since the tariff maximums were lowered in the 1990's.

Block fees were opposed by all service providers and not supported by the majority of committee members, who felt that block fees would act as an incentive to abuse and bad practice. It was suggested that there are significant differences between refugee law work and criminal law summary conviction work. In a refugee case, the client, who is from another culture and who may have been traumatized and tortured, must go on the witness stand. In refugee law the claimant bears the burden of establishing her case, must prepare and present her case and must testify. Refugee lawyers who use a block fee system with their private retainer clients tend to estimate the fee at the high end, and they build qualifiers into the retainer agreement in case the matter does not go as expected. One member abstained from stating an opinion on block fees.

#### *Other Forms of Support for Service Providers*

A subsidy should be created for refugee lawyers who hire an articling student. The subsidy would contribute to the student's salary and overhead costs. This could be a pilot project. It would have to spread over four years and hopefully longer, since participating lawyers would have to lease space for the students. Greying of the bar is a serious problem, and mentoring on a sporadic basis is not the same thing as working and training day in and day out with an experienced lawyer. It was noted that the best articling students are those who have had some practical experience working with a SLASS or with a clinic like Parkdale that hires law students to do refugee law work,

LAO should consider, going forward, developing ideas for encouraging better supervision and mentoring of junior lawyers. Some ideas that could be explored include creating an add-on to a certificate for working with a junior, or adding extra hours for mentoring to lawyers who meet a designated standard for

mentors. Some members felt that this was not one of the highest-priority suggestions, but that it should still be flagged for consideration.

LAO should explore possibilities for increasing access to Lexis Nexis/Quicklaw for panel members. Many members find it too expensive, and perhaps LAO could negotiate a lower fee for lawyers on the legal aid panel.

### Administrative Reform Ideas

It was suggested that LAO should explore ideas for improving its audit processes. Audits should be more substantive, based on quality concerns, and not just fee-based account reviews. It was emphasized that this could not be framed as a recommendation to abandon financial auditing.

LAO should pursue ways to ameliorate the difficulties experienced by many service providers as a result of the strict requirement to meet billing deadlines. Lawyers feel cheated when they have performed work and, through inadvertently missing a billing deadline, are not paid. LAO is not able to make regulatory changes on its own. Perhaps LAO could follow up with the Ministry on options for practical amendment of the Regulation. Service providers would like the current regulation changed and would like to be directly consulted in any reform.

### Recommendations from the Committee

The following recommendations were unopposed by all members present.

1. The new funding should be proportionally allocated to immigration and refugee law on the basis of historical funding allocations. Distribution among legal aid service providers should be equitable.
2. 75 per cent of the available funds should be allocated to increasing compensation. If an hourly rate increase is not contemplated, then an increase should be designated as support for lawyers' overhead costs.
3. More hours should be added to existing services: the hours for preparation on a refugee certificate should be expanded from 16 hours preparation to 20.
4. Coverage should also be made available for other services: preliminary forms on refugee cases, preparation and attendance at CSIS interviews; expanded coverage for H&C applications and PRRAs.
5. The tariff hour limit of eight hours for expedited hearings should be eliminated. It acts as a disincentive to lawyers seeking an expedited

hearing, and if the lawyer spends only eight hours on the case the client's representation will suffer.

6. LAO's budgeting for discretionary payments should be improved. It has to be assumed that discretionary increases will be necessary.
7. Block fees were opposed by all service providers and not supported by the majority of committee members, who felt that block fees would act as an incentive to abuse and bad practice.
8. A subsidy should be created for refugee lawyers who hire an articling student. The subsidy would contribute to the student's salary and overhead costs.
9. LAO should consider, going forward, developing ideas for encouraging better supervision and mentoring of junior lawyers.
10. LAO should explore possibilities for increasing access to Lexis Nexis/Quicklaw for panel members.
11. LAO should explore ideas for improving its audit process. The audit process should place more weight on substantive complaints or concerns about a lawyer's work and not simply focus on random fee-based account reviews.
12. LAO should pursue ways to ameliorate the difficulties experienced by many service providers as a result of the strict requirement to meet billing deadlines. It may be possible to develop an option for making practical amendments to the Regulation.