

MEETING NOTES

Immigration and Refugee Law Advisory Committee

Meeting of November 9, 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*)

Members Not Present

Marcel Castonguay

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. The Chair thanked the members for their participation and Justice Sidney Linden for his assistance in facilitating the committee process.

The Chair noted that this is one of five committees established by the Attorney General to provide advice on the best use of the new funding for legal aid. The

new funding is to be used for modernizing and improving services and improving support for service providers, and is not meant to be used to deal with LAO's current funding shortfall.

Members were invited to make opening remarks before turning to the specific questions in the Committee Terms of Reference.

Opening Remarks by Participants and General Comments

A member asked whether a breakdown was available showing how the new funding was likely to be allocated amongst the different areas of law. The Chair indicated that the allocations had not been predetermined, and that the Minister wants to hear the committees' advice before any decisions are made.

A member voiced concern about not wanting his name or the name of the organization he represents to be used to lend credibility to the advisory process if the process turns out to be "window-dressing". The Chair and Justice Linden said that they believe the exercise is genuine.

It was remarked that the funding shortfall is relevant to the exercise at hand, because there is little point in figuring out how to use new money if LAO has not first determined how it will deal with the existing deficit.

It will be important to discuss what specific proposals will cost and how they will actually work, before sending them to the Ministry as the committee's advice. Sending the Ministry half of an idea would be worse than sending no idea at all. Good decision-making requires consideration of practicalities. For example, the decision to increase the articling student rate did not result in a single additional articling student being hired, because the idea was not properly thought out beforehand. Practicalities such as how lawyers could be assisted in providing office space and computers to students were not considered before this decision was made.

Discussion of Questions: Emerging Themes

1. *Alternative Payment Models to Better Support Lawyers*

Separate certificate for PIF services: This could be workable if the hours currently allocated for writing an opinion letter could be combined with the hourly allocation for PIF preparation; good lawyers do the work contemplated by both of these steps when preparing a PIF. This had been previously recommended by the LAO Board's Immigration and Refugee Law Advisory Committee, but it was not followed up on because tariff amendments were not being considered at the time. However, it was pointed out that unbundling PIF services could mean

higher expenditures for LAO, because it would mean that PIFs would automatically be authorized for every case. Another issue to consider is whether preparing a client's PIF is ethically the equivalent of going on the record for that client, meaning that the lawyer who prepares the PIF is essentially obligated to continue working for the client even if further work is not authorized by LAO. A further consideration is continuity, since unbundling PIF services means you could have one lawyer preparing the PIF and another relying on it.

Block fees: Formalizing block fees will invite abuse. Although the hourly ceilings act as a de facto block fee, formalizing a block fee system will prejudice clients. Individual lawyers may be retained by their clients on a block fee basis, but one lawyer is not a government system and refugee clients are less likely than private retainer clients to confront their lawyer. For refugee work, the hourly rates are there for a reason.

Contracts: Regular payments could help to ease cash-flow problems, and would eliminate the problems that occur when billing deadlines are inadvertently missed. This is an interesting idea. It raises the issue, however, of what sort of qualifications a lawyer would need to become part of this group: would there be higher standards for lawyers working on contracts. It was suggested that standards should ideally be universal, applying equally to all lawyers doing legal aid work (whether on contract or not). The advantage of the certificate model is that it is a commitment to one case.

2. *Other Reforms to Support the Bar Providing Refugee Law Services*

Opportunities for Students and New Lawyers: There is no shortage of refugee clients, and the human rights aspect of the work is attractive to young lawyers. Other factors are keeping new lawyers from gravitating to this work. The challenges are:

- The rate of pay: new lawyers are carrying student debt;
- Not getting training or mentoring: lawyers have no budget for training new people, and most are sole practitioners who are in no position to hire them;
- Law schools do not focus on this area of law, so students get little exposure to it;
- New lawyers are looking for security in employment;
- New lawyers who start out doing refugee work often find out that they have to take on family or real estate work that brings in cash retainers, just to survive.

There needs to be flexibility in billing LAO for work done by students. Under the current system, if a lawyer gets a student to help him or her, the hours will come

out of the lawyer's certificate allotment. It is not possible to train someone if the time spent on training comes out of the lawyer's 16 hours.

A pool of articling students is a good idea, but it would probably be necessary to have one student assigned to only a few lawyers. Lawyers want students to be with them long enough to learn how they like things to be done.

A pilot project could work, but would need to be in place for more than one year. Students require a salary, and office space so that they can speak with clients in privacy. Lawyers would need to know that they would have ongoing support for planning for such a program, and that the necessary infrastructure was not being put in place for a one-off experiment.

3. *Ways to Seek Enhanced Federal Government Support for LAO*

LAO would be wasting an opportunity if it limits a funding request to the federal government to increasing the refugee law transfer, since refugee law accounts for only 6 per cent of LAO's budget. LAO should think of the big picture and seek an entirely separate federal agreement for legal aid funding. On one hand this would make the funding transfer more visible (cut free from the transfer program) but on the other hand the federal government would not want to be viewed as being insensitive to Charter rights and access to justice. If legal aid could be expanded to help more people in a concrete way, more people would care about it and it could become untouchable, much like health care. The federal government should be asked to match Ontario's contributions to legal aid.

Interest rates are set federally, so when rates go down the federal government should be asked to top up LAO's Law Foundation funding shortfall.