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December 15, 2009

Hon. Christopher Bentley
Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON M5G 2K1

Dear Mr. Attorney General:

Re: Legal Aid Ontario's 2009 Advisory Committee Process

We are sending this letter to report to you on the recently-completed 2009 Legal Aid Advisory Committee process, and to provide you with the advice from the advisory committees that emerged from that process.

As you know, five special legal aid advisory committees were constituted in October 2009. These committees were charged with providing advice and input to the Ministry on the best use of the new funding. The committees were each provided with Terms of Reference that outlined the parameters for their individual discussions. They were also encouraged to focus their discussions and recommendations along the two main thematic tracks that the Ministry had identified. One track for discussion sought ideas for improving compensation and supports for service providers, while the other was to be focused on ideas for increasing the effectiveness and efficiency of the legal aid system. The committees were advised that their discussions should not dwell on LAO's current funding shortfall, since the new funding is not meant to address the current deficit but rather to support new ideas and transformation.

Each of these committees met on two separate occasions. Meeting notes from the first round of meetings were prepared and then circulated to the committees in advance of the second round of meetings. The committees were also provided with background materials including statistical information, prepared by LAO staff, to facilitate the discussions. The meetings were all chaired by LAO Board Chair John McCamus, and Justice Sidney Linden participated in each meeting in his appointed role as conciliator. Throughout the process, the meeting materials and meeting notes have been posted on LAO's external website as they became available.

Without exception, the five advisory committees have provided thoughtful and constructive advice. While perfect consensus was not always achieved, each committee arrived at a set of recommendations that were supported by most members. All of the committees were actively engaged in the process, and they are to be commended for their commitment to legal aid issues and the sustainability of the system.

All of the committees were concerned, to varying degrees, about the short timeline for providing their advice and their ability to provide useful advice about the transformation of LAO in the course of only two meetings. Some members signaled their willingness and, in some cases, their desire to engage in a continuing dialogue about the allocation of the new funding and the formation of implementation plans. Each committee has been assured that this process does not mark the end of LAO's consultations and engagement with stakeholders, as there are a number of mechanisms, including the regular meetings of the LAO Board Advisory Committees, for continued consultation.

No attempts were made to specifically cost or to prioritize the ideas that were brought forward by the committees. Some of the ideas are by definition mutually exclusive, and it was evident, even as the discussions were taking place, that the funding that has been made available would be insufficient to support all of them. A common theme that was touched on by all of the committees was the insufficiency of \$150 million over four years to deal with all of the problems that the committees' recommendations are meant to address. The committees were alive to the fact that their own area of law is not the only one that requires new funding, and most voiced their support for a proportional division of the new money, along historical lines, across the different areas of law and legal aid service provision.

The following recommendations, taken from the meeting notes, received general support from each of the respective committees.

Recommendations from the Major Criminal Cases Advisory Committee:

1. LAO should develop appropriate mechanisms for offering enhanced fees to competent counsel handling extremely serious cases. The more serious the case, the higher the fee ought to be. Criteria for this will have to be developed.
2. The role of the Exceptions Committee should be strengthened, and in future should include ability to conduct post-case reviews.
3. To the extent possible, the defence should be placed on the same footing as the Crown in respect of retaining outside experts.
4. There should be better access for junior counsel to work on major cases, with payment as co-counsel at the appropriate tier level.

Recommendations from the Standard Criminal Cases Advisory Committee:

1. If block fees are to be acceptable, they need to be accompanied by a substantial increase in remuneration for service providers.
2. A block fee system should include an experience increase, to attract experienced lawyers back to legal aid work.
3. LAO should begin by piloting block fees.

4. LAO's block fee pilot should be limited to summary offences. Indictable and "super-summary" offences should not be included in the pilot at this time.
5. LAO should be muscular in removing panel lawyers who are abusing the system.
6. LAO should provide more opportunities for junior counsel and co-counsel to work on cases with more experienced lawyers.

Recommendations from the Poverty Law Advisory Committee:

1. Increase compensation funding to the community clinic system, over and above normal pay equity and cost of living increases, by 20% over four years. This would be for salary increases for all clinic staff, not just lawyers.
2. Target enhancing access to justice for racialized and immigrant communities through:
 - (a) the expansion of interpretation and translation services (for clinics and for all LAO services); and
 - (b) the creation of a fund of money available to all clinics who have an initiative for reaching out to racialized and immigrant communities.
3. Expand clinics' ability to serve rural and remote communities through a variety of means, including the use of technology and/or increased satellite office presence (including office space, travel and staffing resources), where appropriate.
4. Improve clinics' ability to reach client communities and provide them with poverty law services, through the use of clinic-controlled and clinic-centred technology.
5. Improve clinics' ability to engage in knowledge sharing and transfer, including the personnel needed to support this initiative.
6. Improve coordination and collaboration within the clinic system by funding a clinic-led, province-wide strategic planning process, with the necessary data and support to allow for meaningful planning. This strategic planning process would include community partners and stakeholders and would be an opportunity to play a coordinated role in furthering the reach of the government's Poverty Reduction Strategy. Specialty clinics and SLASSs should be more coordinated with the rest of the clinic system.
7. The committee would like to have an ongoing dialogue, after December 15, 2009, to discuss the allocation of the new money. This dialogue should involve LAO, clinics, and the Minister.
8. Allocation of the new funding should follow historical proportional allocations. Clinics support the existing mixed system of service delivery.

Recommendations from the Family Law Advisory Committee:

1. The historical amount of funding allocated to family law legal aid is insufficient and should be increased. There is a need for study in order to establish the amount by which funding for family law should be increased.
2. An increase to the family law tariff should be part of the funding package.
3. Consideration should be given to devoting some of the new resources to raising the legal aid financial eligibility thresholds, with the ultimate target of reaching LICO levels.
4. LAO should pilot certificates for resolution of cases outside of the litigation process, through mediation or negotiation of separation agreements.
5. There should be enhanced resources for duty counsel to provide more front-end family law information and triage, with referrals for certificates or alternative resolution service as appropriate. There needs to be a proper location for this service to be provided.
6. LAO should explore possibilities for enhancing recruitment and mentoring of practitioners in the field of child protection.
7. LAO should be funded to provide support to a new Crown wardship appeals pilot project that is being developed with the cooperation of all three levels of Court in Toronto.
8. LAO should play a vital role in the Ministry's proposed reform process for family law.

Recommendations from the Immigration and Refugee Law Advisory Committee:

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 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.

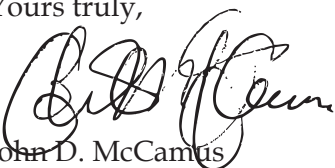
A complete list of the meeting notes, as approved by the committee members, is attached to this letter.

Also attached are two submissions of interest received from Committee members.

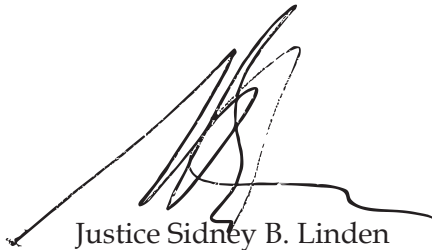
Obviously there is still a great deal of work to be done. LAO is looking forward to continuing to work with you on an ongoing basis, as the work of prioritizing and costing these ideas begins.

We have both been pleased to support this process, which we think has been valuable and quite productive.

Yours truly,



John D. McCamus
Chair, Legal Aid Ontario



Justice Sidney B. Linden