

## **MEETING NOTES**

### **Major Criminal Cases Legal Aid Advisory Committee Meeting**

**Monday, October 26, 2009**

**4:30 – 6:10 p.m.**

#### **Advisory Committee Members Present**

John D. McCamus, Chair  
Justice Sidney B. Linden  
Malcolm Heins  
Norman Williams  
Kenneth Hall (by teleconference)  
John Struthers  
Norman Boxall (by teleconference)  
John Rosen (by teleconference)  
Nancy Cooper (by teleconference)  
James McNee  
Paula Rochman  
Bob Ward (ex officio)

#### **Legal Aid Ontario Representatives Present**

David McKillop  
Heather Robertson  
Nye Thomas  
Heather Morgan  
Stephanie Mealing

#### **Others Present**

Brent McCurdy  
Martha Otton

#### **1. Introductions**

The Chair welcomed and thanked Committee Members for their participation.

Attendees briefly introduced themselves.

#### **2. Opening Remarks – John McCamus**

#### **3. Committee Terms of Reference, Process and Expectations**

The Chair briefly described the purpose of the Committees and the goal for this meeting, and described his role and the role of Justice Linden. He reviewed the materials provided to Committee members, and the Terms of Reference, including the questions to be addressed by the members of this Committee. The Chair also reviewed the new funding that was recently announced by the Attorney General (\$15M in 09/10, \$30M in 10/11, \$45M in

11/12 and finally \$60M in 12/13). The Chair expressed appreciation for the efforts of the Attorney General in securing this new funding during challenging economic times.

#### **4. Opening Remarks by Participants**

The following points of committee members were noted:

- Some members wanted to know what kind of BCM case information is tracked by LAO and to receive more statistical information about the BCM Program.
- What is the amount of new money that might be allocated to criminal and big case costs: it was suggested that \$5 million this year and \$10 million next year would not be enough.
- There was a question about whether the committee was expected to revisit areas in which significant work had already been done, for example the ESM panel standards and Exceptions Committee.
- Concern was expressed by a member about the Law Foundation of Ontario (LFO) revenue shortfall, and how this funding envelope is supposed to do more when it is not enough to replace the loss of LFO income.
- LAO stands to lose its greatest asset, the private defence bar, unless something is done about compensation. Over 1,000 lawyers have joined the boycott now. The current tariff is untenable. There is need for an independent, ongoing tariff review mechanism.
- The CLA is very interested in the issues referenced in question 2 in the Terms of Reference – for example mentoring. The bar is willing to work with LAO on these things but something needs to be done about compensation. Panel management requires the cooperation of the private bar.
- LAO appears to be a large organization that must have significant overhead. Perhaps the head office should be moved to a less expensive location such as Hamilton.
- Back when Legal Aid was managed by the Law Society, lawyers felt that legal aid work was really a form of charity work, done for the good of society. Now that legal aid has become a government program, this rationale is no longer sufficient. It is an affront to see the Crowns being paid so much more than defence counsel.
- One of the original failures of the legal aid plan was the failure to integrate it with the court system and the Crowns. LAO carries the cost of lengthier and lengthier cases and has to be accountable for the costs, but the Crowns who run these trials are not accountable. There is no end to the amount of money that is available to the Crown's office. Defence counsel are moving there for the steady pay and good benefits.
- The cost impact of rule changes has not been taken into consideration.

- The problems are systemic. Judges and juries are becoming fed up. They see the inefficiencies and how proceedings drag on and on. Citizens attempt to avoid jury duty. Until there is a coordinated effort to address the problems, rather than looking at the situation piecemeal, as a “legal aid problem”, there will continue to be one crisis after another. The A-G has to bring everyone to the table, and a coordinated effort has to be made.

## 5. Discussion of Questions

### Discussion of Questions/Suggestions from the Committee members

**Ideas for Expanded Staff Support:** LAO has an excellent resource in the Research Facility (LAO Law). This resource could be expanded. Why should every defence counsel have to re-invent the wheel? Why not have staff lawyers who have specialization in all sub-areas, such as DNA evidence, so that defence counsel could reduce the time and therefore the cost of preparing cases.

**Improve the Payment System and Ease Lawyers’ Cash-Flow Problems:** A lawyer’s account may be paid two weeks after it is submitted, or it may take four months. This leads to cash-flow problems for lawyers and should be unnecessary if the hours attached to a certificate have been allocated and approved.

**Increase Payment for Defence Experts:** Crown psychiatrists are being paid double the amount that defence psychiatrists are paid. Predicting future dangerousness is a grey science, and the psychiatrists are guaranteed double what the defence are able to pay if they come up with a finding of dangerousness. This is appalling. The Crown is virtually guaranteed the result it wants; this is completely biased. The issue has been identified in a number of cases. So many cases are about experts and not about the law. The A-G said that this would be fixed, but it has not been fixed yet. LAO’s fee schedule for experts needs to match the Crown schedule.

#### **Opportunities for Junior Counsel and Co-Counsel on Big Cases:**

Exceptions Committee should feel comfortable in approving junior counsel or, preferably, co-counsel (the junior counsel fee is insulting) to bring someone less experienced along. Some cases present great opportunities for training. Newer lawyers have to be brought along somehow. The bar is greying and retiring, and the new lawyers coming up lack the necessary experience and knowledge; therefore quality of service starts to become an issue. Perhaps newer lawyers could simply be given these cases with conditions attached, or under supervision (but that would also cost LAO money).

**Control Panel Membership; Keep Bad Lawyers from Taking Big Cases:** To ensure efficiencies, LAO needs to think about how to control panel membership

for big and serious cases. Some lawyers are incompetent and should never be allowed to do legal aid work. The question is how to keep bad lawyers off of the panel? One idea is to form a group that judges them. It is up to LAO who does legal aid work; it is not the responsibility of the Law Society. A statutory amendment might be required, but the bar would be in favour of this.

**Senior Lawyers Are More Efficient: Bring Back the Senior Bar by Improving Compensation:** Good lawyers save legal aid money. Specialists do not come cheap. Good lawyers are being driven away by low compensation. Legal aid needs to find a way to bring them back. LeSage/Code, Goudge and Trebilcock all said this. Enhanced pay is needed for these cases. It's about the bottom line. If it is not possible to talk about a "tariff increase" per se, then the bar is willing to discuss "alternatives", including block fees – but it is still about the bottom line. The bar needs to know if improved compensation is on the table.

**Keep Improving LAO's Exceptions Committee:** LAO is already doing a good job with the Exceptions Committee, and should keep working to augment it. The forms were improved this summer. The gang cases should be identified upfront and treated differently from other cases by the Exceptions Committee. In one matter, a sub-committee was formed and spent a couple of days organizing the case. These cases take a lot of work, and there should be resources assigned to monitoring them (not Exceptions Committee volunteers).

**Make a Distinction Between BCM/Guns and Gangs and ESM Cases:** LAO needs to remember that BCM guns and gangs cases and ESM cases are different. Guns and gangs cases are all the same; they are all about wiretap and the Crown never drops the charges. Assigning two or three senior lawyers to these cases could save LAO a fortune on guns and gangs. For the ESM cases, for example the serious homicides and some significant robbery cases, there is a need for more senior lawyers at the table.

Members were invited to e-mail Stephanie Mealing [mealins@lao.on.ca] with any additional ideas.

## **6. Next Meeting**

As a result of the December 15<sup>th</sup> deadline to report to the Attorney General, the Chair advised Committee members that a second meeting would be arranged soon and likely would take place in late November or early December. The notes of this meeting would be circulated to members in advance of the next meeting.

The Chair thanked the Committee members for their participation. The meeting adjourned at 6:10 p.m.