

## MEETING NOTES

### Family Law Advisory Committee Meeting of December 1, 2009

#### Advisory Committee Members Present

John D. McCamus, Chair  
Justice Sidney B. Linden  
Kristen Bucci  
Thomas Dart  
Alex Finlayson  
Crystal George  
John Liston  
Alf Mamo  
Susan McGrath  
Charlotte Murray  
Lise Parent  
Mary Reilly

#### Legal Aid Ontario Representatives Present

Janet Budgell  
David McKillop  
Rod Strain  
Heather Morgan  
Stephanie Mealing

#### Others Present

Anne Marie Predko, MAG  
Aileen Page, 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 10, 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 the new funding is not under the Ministry's control and 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 has emphasized 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 making improvements in the quality and range of services provided, and for modernizing legal aid as a system.

The Chair thanked committee members who had circulated e-mail submissions prior to the meeting, noting that these were generally consistent with the committee's discussions on November 10. He drew the committee's attention to the two slide decks that had been circulated with the agenda, and introduced David McKillop, LAO's Vice President, Policy and Research, who provided a brief overview of the information in the Family Law slide deck.

## **Discussion**

### *Proportional Allocation of New Funding to Family Law; Compensation Issues*

The comment was made that family law has been chronically underfunded in the past and should therefore get a proportionally greater share of the new money than the "historical allocation" amount, which would be about \$11.5 Million, based on family law matters historically accounting for 19 or 20 per cent of LAO's spending. It was suggested that the amount should be more like 30 per cent, although some study would be required in order to establish the proper amount.

Family breakdown can lead to health and emotional problems and also to criminal law issues that place a burden on society. Dealing with family law on a more level playing field would help to reduce these societal problems.

Charter jurisprudence is only now starting to be developed in family law, and the reason for this is that these cases have not been funded.

The federal funding for family (civil) matters has no strings attached, since it comes to the province as part of the provincial transfer. Pressure should be put on the federal government to be more transparent about the money it provides to provinces for civil legal aid.

### *Family Law Tariff*

An increase to the family tariff should be part of the funding package. The tariff for family law is underfunded. The family tariff should not stand still if the criminal tariff is increased.

### *Financial Eligibility for Legal Aid*

The thresholds for financial eligibility for legal aid have eroded over the years. One suggestion was that they should be moved up to the LICO (Low Income Cut Off) standards. It was also suggested that LAO could make more contributory certificates available.

### *Negotiation and Mediation*

LAO should look at the creation of a separate tariff for the negotiation of separation agreements. Negotiation of domestic contracts was once funded by legal aid, but got squeezed out during previous cutbacks. Providing resources for mediation and negotiation would get these matters out of the courts and would give collaborative lawyers a chance to help clients.

It is likely that more lawyers would be interested in taking family cases if there were certificates available for non-litigation matters. The certificates should be issued to lawyers, because the starting point is always the client's legal rights. The lawyer may then recommend a mediator if appropriate.

The non-litigation certificates should likely be in a separate tariff category. It will be necessary to look at the number of hours that should be assigned to the different issues involved.

### *Providing Front-End Information and Services*

There should be a way for clients to get early information and access to someone who can provide a legal assessment of their case. Duty counsel would be ideal for this. It could be done at the FLIC or at the legal aid office. The main thing is to get information to people at an earlier stage, to divert them from the court process.

There needs to be an available location for this service. FLICs are inconsistent; they come in all shapes and sizes, from Cadillac versions to ones that are really no more than a few pamphlets in a window.

### *Recruitment and Mentoring*

This is especially important in the child protection area. The Law Society and OBA have mentoring programs, but they are not focused on family law. Perhaps LAO could consider paying an honorarium to lawyers who are good mentors.

Mentoring is important, but learning by doing is even more important. There is a need for opportunities for young lawyers to shadow on cases. The problem with articling students is where to put them – most family lawyers are sole practitioners and lack the infrastructure for taking on a student. Perhaps LAO could provide certificates that have an add-on for a junior, as opposed to creating articling positions.

### Crown Wardship Appeals

It was felt that 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. The purpose of the project is to reduce or eliminate the appearance of unrepresented appellants in matters where children have been made Crown wards without access.

It is recognized that the project will be partly dependent upon the provision of *pro bono* services by private lawyers, since not all applicants will qualify for legal aid. LAO, however, can provide critical assistance to the success of the project at relatively minimal cost. For example, by funding a “point person” at LAO to whom all applicants for certificates in these matters will be directed, early assistance and procedural advice can enable these applications to be expeditiously processed and directed to qualified, willing counsel. The automatic provision of “opinion” certificates to eligible applicants, which permit a reasonable expenditure of time for file review and preparation, will help to ensure that meritorious appeals do not “fall through the cracks”.

While the cases affected by this project are relatively few in number (approximately 25-30 annually) the significance of Crown wardship decisions, which are “the death sentence of family law”, cannot be overestimated.

### Big Cases

Some members thought that LAO might want to consider having a “BCM” (Big Case Management) program to assist in managing expensive family law cases. However this initiative should not be supported by the new funding.

### Participating in Family Law Reform Process

The family law reform process is a cooperative venture that will require partners to work together. It is hard to know what to specifically recommend that LAO do to support this process (for example, holding workshops), because these reforms have yet to take shape.

Family law information workshops are a good idea, however. Most people in family court are low-income people, even though they may not be eligible for legal aid. It was suggested that there should be no eligibility threshold for information workshops. Some who attend them will qualify for legal aid, some will not qualify (although they ought to) and some will be more inclined to retain a lawyer, rather than self-represent, once they know more about the issues that are involved. The logistics of workshops (where to hold them, what materials to use) would have to be worked out.

## **Recommendations from the Committee**

The following recommendations were unopposed by all members present.

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.