

# Stakeholder Feedback

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<b>Session date, time &amp; location:</b>	Wednesday, June 7 <sup>th</sup> , 2017 5 pm - 6:30 pm  Legal Aid Ontario - Provincial Office (Toronto) 40 Dundas St. W., Suite 200 Toronto M5G 2H1 Tamarack Room
<b>Number of participants:</b>	4 in total: <ul style="list-style-type: none"><li>• 4 lawyers</li></ul>
<b>LAO participants:</b>	<ul style="list-style-type: none"><li>• Rod Strain, Vice President, Strategic Planning &amp; Compliance (A)</li><li>• Jawad Kassab, Executive Lead, Refugee and Immigration Services-GTA</li></ul>

## “What LAO Heard”

### Refugee & Immigration Trends

- One attendee highlighted that since 2002, the Federal contribution has been more or less stable, with the exception of small blips. However, LAO is only highlighting a limited four year horizon. It was suggested that a 20 year timeline would be more effective in highlighting to the Federal government that refugee trends have increased and subsided and that the current rate is at a global all time high. This does not mean that the current upward trend will continue.

**LAO Response:** LAO has presented the Federal government with a 10 year timeline. Expenditures during that period hover around \$20M. LAO can provide data for a longer time period.

- It was highlighted that there are fluctuations in the overall number of asylum seekers based on key global events. For example, after 9/11 and the implementation of the safe third country agreement there were decreases.

## Legal Aid Ontario's Refugee & Immigration Budget

- Did the increase in the tariff from around \$78 an hour to \$109 occur while federal funding stayed flat?

**LAO Response:** Yes. LAO received between \$7M and \$7.4M for the last 10 years, with the exception of 2016.

- What's staff and what's private bar costs?

**LAO Response:** \$29M is for certificate private bar services and \$3M is for the RLO-Toronto, and refugee staff services in Ottawa and Hamilton.

- One attendee wanted to know how the Federal contributions worked and what data was used.

**LAO Response:** LAO uses IRB data and federal court data to assess demand. In the current arrangement, if there is a change in demand by province, the federal government takes funding from one province and gives it to another because of the redistribution of the pie. The funding agreement does not index to the actual volume of refugee claimants in Canada; the pie remains the same. The federal agreement is a national agreement so the federal government funds the province and then the province supports the discussion on how that funding is distributed.

- One attendee highlighted that LAO has an across the board deficit, this is not a deficit that just applies to one aspect of LAO. It was suggested from a management perspective that it does not make sense to have the service user bear the brunt of the deficit. Other options should be explored such as salary rollbacks for employees, temporary rollbacks in tariffs and contributions from both levels of government. Essentially, why is LAO proposing that the solution be on the backs of the users and nowhere else?

**LAO Response:** LAO is under significant financial pressure in all areas of legal aid coverage – criminal, family, refugee and immigration. Service changes have been made in other areas of law. Internally, LAO has frozen salaries for staff, as well as implemented a vacancy savings program.

- One attendee did not support salary cuts and indicated this is a challenging problem. It was highlighted that there are many different ways of delivering programs, and the programs have a different costs depending on the delivery

method. The focus should be on looking at new models and ways to work together to deliver excellent services to the public.

**LAO Response:** there are opportunities to review the program and delivery methods and how it is being done today. The challenge remains addressing the short term financial crisis and continuing to consider longer term, sustainable program changes.

- One attendee suggested LAO's solution to the financial shortfall is to manufacture a crisis until the Federal government responds and increases funding because there will be an increase in the number of clients that do not have representation with refugee claims.

**LAO Response:** There is some truth to that, but the flip side is there is really no way we can close at \$13 million gap.

- One attendee wanted to know what happens if LAO runs a deficit?

Legal Aid Ontario has no ability to borrow money. LAO had a contingency reserve fund of about \$20 million for these types of fluctuations. The province, for the tariff increase, actually said use your contingency fund to pay for the last three years of the increase. We have no contingency reserve fund left. And it really is managing cash so if we run a deficit, then we don't have the revenues to support payments, things of that nature but we have no ability to run long-term and we have had a couple years worth of a deficit. LAO doesn't not have a lot of cash to manage these fluctuations and that may mean delaying payments to whoever to manage that cash flow.

- One attendee thought there should be an external investigation into how this situation occurred and that management may be the cause.
- One lawyer wanted to know why LAO's criminal and family services have been protected from service suspensions. It was suggested that LAO's Refugee services sit in a silo and are subject to more severe cuts.

**LAO Response:** LAO is under significant financial pressure in all areas of legal aid coverage – criminal, family, refugee and immigration. Savings have been found in other areas of law already. LAO is forecasted to have an \$11M deficit this year that does not include the \$13M shortfall in the refugee program.

- One attendee expressed the view that if LAO implemented these major service suspensions there would be little justification for the existence of an entire management board, an entire network of managers that will be employed to managed a program that does not exist.
- One attendee wanted to know if LAO had been working with the Refugee Protection Division around these issues? It was highlighted that within the reforms at the RPD that could address a significant percentage of this budget challenge and LAO should be strongly advocating for changes.

**LAO Response:** LAO has been meeting with the IRB or RPD regularly. There is a consultative national meeting in Ottawa on Monday, June 12<sup>th</sup> LAO will be attending. LAO has been advocating for expedites and short hearings, the expedites, cost LAO 50% less than a full hearing. There is an opportunity to reduce case costs from \$2,600 average case cost to about \$1,400.

- One lawyer indicated that there was a media report that the IRCC have a budget surplus in relation to immigration detention issues that could total millions of dollars. The attendee wanted to know if LAO was working with the IRCC to advocate to potentially access some of this funding.

**LAO Response:** LAO has been working closely with the IRCC and the IRB to help improve refugee determination processes and to find efficiencies. The IRB has no interest in clients not having representation at hearings.

### Service Suspension Prioritization

- One attendee highlighted that it was problematic to try and prioritize services in this manner because there is an obligation for legal representation which is constitutionalized in Canada and connected to Section 7 rights. Life, liberty and security of the person's interest is potentially at stake in all of the services being proposed for suspension. It was suggested that the service suspensions will not be constitutional and LAO would be vulnerable to legal challenges by prioritizing in the form of types of services as opposed to the interests at stake.
- One attendee highlighted that they thought LAO was asking the wrong questions through the proposed service suspension categories. If there is a merit assessment being done for LAO, the merit test should be individual client need focused are there seven section interests at stake and if there are, that's your answer and that applies equally in family, criminal and immigration.

- One attendee suggested for H&C applications, those clients who have been here for a number of years are often more established than those who are just arriving as refugees. Therefore, LAO should prioritize refugee claims and the protected rights.
- One attendee highlighted that each case should be an individuated assessment. For example, there are individuals who apply for H&C consideration who essentially have no other option for a variety of reasons, the people like Mavis Baker, who would not be in the is country but for the fact that she finally got legal aid to get to the Supreme Court of Canada. It may be possible to determine that there are certain types of services that may not necessarily deemed priority, when it comes to a question of right to legal aid, it is an individuated assessment and that is what the Supreme Court of Canada has said.
- One attendee agreed it was impossible to prioritize one service type over the other.

### Service Suspension Option 1

- One attendee wanted to know if RPD attendance for people with mental health issues would still be covered?

**LAO Response:** LAO is considering approaches to triage highly vulnerable clients.

- One attendee wanted to know if there would be a new requirement on the Legal Aid Online Portal for a new document indicating vulnerability?

**LAO Response:** LAO is considering approaches to triage highly vulnerable clients. There would be clearly defined categories. For example, a diagnosed schizophrenic, would get representation at the board, preparation and hearing attendance, a minor, domestic violence.

### Service Suspension Option 2

- One lawyer highlighted that many clients can't access psychiatric appointments. The timelines for the RPD hearings are challenging and often expend before the average summer when an Ontario psychiatrist can provide an appointment. A CCBT appointment takes 7 – 8 weeks and this could lead to a situation where clients who are schizophrenics will be forced to wait outside to be diagnosed as schizophrenics whilst they're going through the RAD process.

## Alternative Service Suspension Routes

- One attendee highlighted that in the Canadian context where we have a push for reform of the RPD, it is very likely efficiencies will be found and in fact we won't be seeing the same level of demand. That is what seems to me to be behind the rationale for an increase over two years on the expectation that two years from now we will be looking at a slightly different procedure that will be less expensive.
- One attendee highlighted that Legal Aid is organized differently in each Province. In Quebec, for example, there is a community involvement in immigration and refugee processes. It was suggested that there are many different arrangements in the other provinces and that the Federal government should not give Legal Aid Ontario any more money because this transformation has not been properly managed. Instead, there should be a realignment of how services are delivered so that we use the community, such as in Quebec, so that the private bar takes more of a role and certificates go to the private bar. The whole structure of the private bar should interact with the clinics. It was indicated that the private bar have very high standards and they should be responsible, much as the lawyers in Quebec, who don't have these problems, because they have a different arrangement for community involvement and for how legal aid certificates are distributed.
- One attendee highlighted that the reason for the significant involvement of civil society in Quebec was due to the limited funding received for refugee and immigration services and civil society organizations step in to "fill the breach".

## Financial Eligibility Assessment

- One attendee wanted to know why more financial eligibility funding could not have been allocated to refugee and immigration services, as opposed to primarily Criminal and Family law?

**LAO Response:** Many of LAO clients already qualified in the refugee field. Financial eligibility funding provided by the province enabled all of the RADs to be funded.

## Impact on Private Bar

- One lawyer indicated that more legal training was required at the IRB. Private bar lawyers see cases come back and the same mistakes are repeated over and over again by the same members of the Board.

## Impact on Staff

- One attendee wanted to know if LAO made changes to the staff model would that include staff cuts?

**LAO Response:** LAO is not considering cutting staff positions at this point, some of the certificate clients needing these services may be diverted to Refugee Law Office.

## General Feedback

- How do people who have gone to these consultations over many days and have asked questions that you have not answered get access this info that they want to know and are you going to present it as part of the consultations?

**LAO Response:** LAO will be answering questions raised during the consultation and providing requested data when possible.

- What is the timeline for posting the panel standards implementation evaluation report?

**LAO Response:** LAO is translating the executive summary, recommendations and conclusion of the panel standards implementation evaluation into French for the purpose of posting to LAO's website by the end of June 2017. Once posted the full report will be available upon request.

- One lawyer wanted to know if British Columbia were having the same issue.

**LAO Response:** This is a national issue for the federal government and LAO is continuing to work closely with both the Department of Justice and the Ministry of the Attorney General to try and resolve this crisis. British Columbia and other provinces across the country are facing similar issues.

- One attendee wanted to know when the consultation focused on the longer term program changes would occur?

**LAO Response:** At this time, LAO is looking at September, depending on the outcome of the consultation and LAO Board's direction.

- One lawyer wanted to know why is this conversation not happening with LAO's Board of Directors. It was suggested that LAO's Board needs to go back and define what are the most important services across the entire spectrum of LAO services and then make a decision, rather than focussing on refugee and immigration services for cuts.
- One lawyer stated that the challenges LAO is facing has to do with the quality of management. Really in the same way that e-Health had the auditor general come in, that somehow how this has arisen has to do with what happened here internally, and it isn't all explained by any change from the United States. There is something that happened here. And I think there has got to be an external investigation.