

# **Meeting of Legal Aid Ontario Aboriginal issues advisory committee on May 1, 2017**



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# 1 Committee members

John McCamus (Chair), Mary Bird, Christa Big Canoe, Paula Corbiere, Sarah Dover, Margaret Froh, Barbara General, Katherine Hensel, Arthur Huminuk, Jason LeBlanc, Stacia Loft, Christina Ninham, Celina Reitberger, Karen Restoule, Brenda Young, Nancy Cooper (Legal Aid Ontario Board Liaison)

## 1.1 Guests

Chelsea Krahn; Emily Hill; Ida Bianchi

# 2 Welcome and introductions

Chair John McCamus opened the meeting and welcomed those present.

# 3 Minutes, September 12, 2016

The minutes of the September 12, 2016, meeting were approved. It was noted that committee minutes, once approved, are posted on Legal Aid Ontario's website.

# 4 Legal Aid Ontario business planning slide deck and discussion

The Chair presented highlights of the [Legal Aid Ontario Board Advisory Committees Spring 2017 Meetings: Legal Aid Ontario Updates and Environmental Scan](#) slide deck.

Committee members provided input and advice. The views expressed do not necessarily reflect the views of every member.

- Members expressed a concern that Legal Aid Ontario's refugee funding pressure could result in funding being taken away from certificates for Indigenous persons in the different areas of law where these clients receive services from Legal Aid Ontario. It was explained that Legal Aid Ontario is not looking to resolve its refugee funding problem by making cuts in other service areas.
- It was noted that Legal Aid Ontario is hiring fewer articling students. Articling students provide good value for money and their contributions include direct client service. Legal Aid Ontario's articling program has helped new Indigenous lawyers to enter the profession. Students have said that their placement at Aboriginal Legal Services provided them with role models and made them feel welcome. The articling placement at Aboriginal Legal Services has been an effective partnership between Aboriginal Legal Services and Legal Aid Ontario.

- Care should be taken to ensure a consistent standard of service for all Indigenous clients and communities. Legal Aid Ontario was advised that in some areas of the province the legal eligibility test that Legal Aid Ontario is using now is a test based on reasonable risk of incarceration for more than 30 days, and is not the likelihood of incarceration. Duty counsel are required to confirm that there is a risk of more than 30 days' incarceration before a certificate can be approved. In other areas, this 30 day rule is not applied. Another discrepancy that was pointed out is that in some locations, a conditional sentence is considered "incarceration" while in others it is not.
- It was reported that justices of the peace have become more liberal with releases in some areas of the province, particularly for Indigenous accused. This phenomenon is not known to be connected in any way to the Ministry of the Attorney General's emphasis on bail, but it is a positive development for clients.
- The expiration of one-time funding for family law initiatives has meant the discontinuation of successful programs like the Aboriginal Alternative Dispute Resolution program in Treaty #3 territory. This program was working well and attempts will be made at the community level to keep it going.
- In the northeast, video access has been introduced at the Monteith Correctional Centre south of Timmins. This is a positive development as counsel are better able to communicate with clients at the jail.
- It was reported that there is a new restorative justice initiative in Ottawa, led by Tungasuvvingat Inuit in partnership with the Ottawa Police Service.
- Indigenous service agencies have seen an increase in requests for consultation in the wake of the final report of the Truth and Reconciliation Commission of Canada (TRC). This is positive but, at the same time, there has been a lack of political action to address the disproportionate impact that legislation, such as mandatory minimum sentences in the Criminal Code, has on Indigenous people.
- The National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG Inquiry) is having a ripple effect, as Indigenous service agencies are seeing more people coming forward for assistance as victims.

## 5 Guest speaker presentation: Motherisk Commission

Motherisk Commission Counsel Ida Bianchi greeted the committee and provided an update on the work of the Commission. The Commission was established in January 2016, with a mandate to lead a review and resource centre for persons affected by Motherisk hair testing. The Commission has been reviewing cases. It has asked Children's Aid to identify high priority cases, including those involving customary care agreements, where Motherisk testing played a

role. Approximately 600 cases were identified. Cross-referencing has been done using the Family Court case management system and this has identified about 1,200 cases. Many of these cases have now been reviewed.

The Commission has done outreach to Indigenous and racialized communities, but these are vulnerable communities and trust is an issue, so the Commission believes that more outreach needs to be done. The Commission would like to hold a series of meetings, including with judges, Children's Aid Societies and groups that have been disproportionately affected, to discuss systemic issues, lessons learned, and ways of moving forward. There are many systemic issues:

- the legal system moves quickly in child protection cases
- some lawyers operate on a shoestring and child protection legal practice may need to be strengthened
- Children's Aid Societies face pressures and are risk averse.

The Commission would like to hear what communities have to say about the systemic issues. The committee was invited to participate in a meeting for Indigenous communities that will likely occur in May 2017. Travel costs will be reimbursed. The timing is right, following on TRC, for these kinds of conversations; the hope is that practical strategies will emerge.

Members noted that:

- The systemic issues that the Motherisk Commission is addressing are very important.
- There are linkages to be made with the province's Indigenous Children and Youth Strategy.
- The goal should be to have the system work for families, and not against them.

## 6 Aboriginal Justice Strategy update and discussion

Legal Aid Ontario's Policy Counsel, Aboriginal Justice Strategy, provided an update on strategy initiatives.

Legal Aid Ontario's funding to Aboriginal Law Services, Grand Council Treaty #3 and Nishnawbe-Aski Legal Services Corporation to provide *Gladue* report writing services has been renewed.

There is also a lot going on at the Ministry of the Attorney General's Indigenous Justice Division. In addition to expanding funding for *Gladue* report writing, they are expanding access to *Gladue* caseworkers around the province. Twenty-one caseworkers are currently funded by the Ministry and in the next few months that number will double.

Legal Aid Ontario has committed to funding a legal aid worker at Six Nations of the Grand River to assist clients in accessing legal aid. Hiring will be done by Six Nations.

Internally, Legal Aid Ontario is developing Indigenous-focused child protection training for lawyers and legal aid workers. Legal Aid Ontario is also continuing to build awareness and provide training opportunities for staff by, for example, screening documentaries on a monthly basis.

In 2017/18, the Aboriginal Justice Strategy will be reviewing the past four years and looking at what has been accomplished, as this second five-year phase of the strategy comes to an end. Legal Aid Ontario will be reaching out to the committee to talk about strategy renewal and what that should look like.

The committee was provided with a copy of the Legal Aid Client Voice Interview Results final report for review and future discussion. The Department of Justice Canada contracted the University of Toronto Ethnography Lab to conduct 15 client interviews with the assistance of Aboriginal Legal Services. The report is informative about how people access legal aid services, and about the challenges they face. It will inform Legal Aid Ontario's longer-term strategic planning process.

Legal Aid Ontario continues to collect data on services provided using the Aboriginal Self Identification Question. Compliance in asking the question is now at 90 percent for certificate clients but lower for duty counsel clients, as duty counsel have not been using the Aboriginal Self Identification Question for as long. Legal Aid Ontario will be following up with duty counsel.

Committee members provided input and advice. The views expressed do not necessarily reflect the views of every member.

- There was interest in, and support for, Legal Aid Ontario's data collection work. It was noted that Legal Aid Ontario's work is considered a best practice as ministries are now starting to look at how to collect standardized data.
- There was discussion of the role that Legal Aid Ontario is best suited to play with respect to the work of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Legal Aid Ontario has not made an application for standing at the Inquiry. Members agreed that Legal Aid Ontario has a valuable voice and expertise that it can share. The view was expressed that Legal Aid Ontario should not remain on the sidelines, but instead needs to participate in a meaningful way. It was noted that the inquiry is calling for submissions from institutions, and some members suggested that this may be the best and most respectful way for Legal Aid Ontario to support the inquiry's work.

## 7 Action items

1. Legal Aid Ontario will make a note of the point that was made about the value of articling placements at Aboriginal Legal Services.
2. Legal Aid Ontario will follow up to see which districts are using a "30 day rule" when applying the loss of liberty test for eligibility for a criminal certificate.

# 8 Other business

None raised.