

# **Meeting of Legal Aid Ontario Aboriginal issues advisory committee on October 13, 2017**



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# 1 Committee members

John McCamus (Chair); Mary Bird; Christa Big Canoe; Paula Corbiere; Sarah Dover; Margaret Froh; Lettie Gariba; Barbara General; Katherine Hensel; Arthur Huminuk; Jason LeBlanc; Justin Lewis; Shane Monague; Christina Ninham; Karen Restoule; Brenda Young; Nancy Cooper (Legal Aid Ontario Board Liaison)

## 1.1 Guests

Josh Payer; Chelsea Krahn

# 2 Welcome and introductions

Chair John McCamus opened the meeting and welcomed those present.

# 3 Minutes, May 1, 2017

The minutes of the May 1, 2017 meeting were approved.

# 4 Legal Aid Ontario business planning slide deck and discussion

The Chair presented an overview of the [Legal Aid Ontario updates and business planning discussion slide deck](#), highlighting recent developments and matters for the committee's consideration.

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

- Addressing bail system issues is important. The Community Justice Centre initiative supports restorative justice principles, and fits well with Legal Aid Ontario's Bail Strategy. There will be a Community Justice Centre in Kenora, and a new bail verification worker will be working in communities so people are not required to come in for bail verification.

- Concern was expressed about the future of family law services offered by the student legal clinics (Student Legal Aid Services Societies) located at law schools. The new family law services at the student clinics were introduced with one-time three-year funding from the Ministry of the Attorney General, with direction that the services needed to be sustainable afterwards. Legal Aid Ontario has approached the Ministry of the Attorney General and has also been talking with the student clinics, which are maintaining the family law services until the end of the fiscal year.

## 5 Aboriginal Justice Strategy update and discussion

The update on Aboriginal Justice Strategy initiatives and priorities was provided by Legal Aid Ontario's policy counsel, Aboriginal Justice Strategy.

This is an important time for the Strategy. A number of community initiatives are progressing well, largely due to the work of the communities themselves. Legal Aid Ontario has been fortunate to provide funding and support to this work. For example, Legal Aid Ontario has been working alongside Six Nations of the Grand River on a number of ways to improve services and has transferred its criminal and family legal advice services to Six Nations of the Grand River to oversee and manage.

The Aboriginal Justice Strategy has been working with staff to raise awareness and engage them in important issues. These internal initiatives have included documentary screenings, the rollout of Indigenous Self Identification Training for all staff, and the launch of an internal newsletter.

Legal Aid Ontario is working to design a child protection training program that is geared towards Legal Aid Ontario staff who are assisting Indigenous clients. Legal Aid Ontario will be engaging the advisory committee to assist with the development of this training. Legal Aid Ontario has conducted a staff survey to gauge knowledge and identify training needs. It will be important to work with local communities to support this initiative. Legal Aid Ontario has also been in contact with the Motherisk Commission.

The I AM AFFECTED campaign will be launched by Halton Community Legal Services on October 19, 2017, to raise awareness of intergenerational trauma and other impacts of the residential school system. This campaign is being supported by the Aboriginal Justice Strategy.

At the last committee meeting, advice was provided that Legal Aid Ontario should have a voice at the Missing and Murdered Indigenous Women and Girls Inquiry. At that point, standing was limited to individual groups and families. A second round of standing applications has been opened up since the last meeting, and it may now be appropriate for Legal Aid Ontario to make written submissions to support systemic change. The Aboriginal Justice Strategy and Domestic Violence Strategy have collaborated on a note to the Legal Aid Ontario Executive to consider the issue of Legal Aid Ontario seeking standing in the second round of applications.

Legal Aid Ontario has reviewed the test case funding that it has provided to Indigenous litigants and communities over the past three years, and a summary of test cases has been provided to the committee. Legal Aid Ontario's test case program is looking for more good cases to support.

The committee's advice was sought on the future of the Aboriginal Justice Strategy. The strategy is now in the final year of its second five-year phase. There is strong support for the strategy across the organization. The task is to develop a strategic plan that will guide the work over the next five to ten years. Legal Aid Ontario is seeking input on future priorities for the strategy and also on what the Aboriginal Justice Strategy should look like in the future. The options might include another five year phase, or a program or department within Legal Aid Ontario.

A specific issue to consider, and one that has been raised for discussion by a member of the committee, is how *Gladue* programming should be funded and managed in the future. Currently, funding for *Gladue* consumes the largest part of the strategy's budget. In 2013, Legal Aid Ontario was the largest funder of *Gladue* services, but now the Ministry of the Attorney General funds more of these services than Legal Aid Ontario does. A question for the committee is whether funding for *Gladue* should continue to be a major focus for Legal Aid Ontario or whether other priorities would be a better fit, should the Ministry be willing to assume responsibility for *Gladue* funding.

Another important question has to do with data. The data that Legal Aid Ontario is collecting through the use of its Aboriginal Self Identification Question may help to support a business case for federal funding for *Gladue* reports, if it can help to demonstrate that these reports make a positive difference. There has been no real study on the outcomes and benefits of *Gladue* reports, and such a study could support Legal Aid Ontario's mandate from the Truth and Reconciliation Commission to reduce over-representation. Legal Aid Ontario's data is aggregate data, and not data that is specific to individuals. There is an opportunity for Legal Aid Ontario to work with communities to frame a research question that will produce useful data, and then determine how best to use the data. Legal Aid Ontario would not use the data in any manner that communities would object to.

The need to ensure lawyer competence and provide access to appropriate training for lawyers is also an important issue. The client voice study that the federal Department of Justice developed in cooperation with Aboriginal Legal Services is anecdotal in nature, but a clear theme arising from this report is that clients need a lawyer who understands their needs and

their history, and also that clients may need assistance in their choice of counsel. Most clients find a lawyer before they come to Legal Aid Ontario, but others need guidance. Legal Aid Ontario supports choice of counsel and cannot direct clients to a particular lawyer although domestic violence clients, for instance, can be directed by shelters to lawyers that they know will be able to assist them. Currently, legal aid clients can search a referral list that randomly selects names in their geographical location.

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

- The committee was appreciative of Legal Aid Ontario's involvement in supporting test case work, and asked to be updated regularly on Legal Aid Ontario's test case funding for Indigenous litigants and communities. It was pointed out that at this time there is lively interest in test cases and test case issues at many different tables.
- It was pointed out that Gladue writers and support workers currently have a Toronto focus. There are historical reasons for this, in that Aboriginal Legal Services and the Ontario Federation of Indigenous Friendship Centres were the first to provide *Gladue* services, but the Toronto focus may no longer be appropriate. Under the current model, there can be insufficient transparency, as communities often lack information about the program, its services and its results. Without this kind of communication and information, it is difficult for the community to assist its members. It was suggested that *Gladue* services might best fall under the governance of First Nations. A shift is occurring towards community governance, and some communities now have their own *Gladue* writers. Training and quality control issues also need to be considered. All of these issues require analysis and careful thought, and the right people need to be at the table.
- Members indicated that Legal Aid Ontario should think about the Aboriginal Justice Strategy itself from the community perspective and at the local level, rather than from a broad Indigenous perspective. This approach, based on accountability to the community and community ownership, is likely to become even more important as work continues in implementing the recommendations of the Truth and Reconciliation Commission of Canada. When Legal Aid Ontario sends money into the community, Legal Aid Ontario is giving the community a voice. A good approach for Legal Aid Ontario is to sit down with communities and discuss what the strategy should look like, from the community perspective. Legal Aid Ontario and communities should work together. Legal Aid Ontario could also facilitate discussion of these issues at a shared table, through an Indigenous roundtable.

- The committee discussed Legal Aid Ontario’s role in responding to the recommendations of the Truth and Reconciliation Commission. Legal Aid Ontario’s choice of focus for the Aboriginal Justice Strategy going forward could potentially be to mirror the Truth and Reconciliation Commission’s Calls to Action. The Calls to Action have established benchmarks with a ten-year timeline and the strategy could adopt the same timeline in terms of concrete plans to address the Calls to Action and reduce over-representation. Legal Aid Ontario has direct involvement and expertise in the areas of child protection and the criminal justice system, and these have been identified as crisis points.
- Lawyer competence is still an issue, and a need for more training for lawyers was identified, particularly in the area of *Gladue* reports. Often these reports are not presented properly by lawyers representing Indigenous clients. It can be difficult for lawyers to access meaningful training.
- Legal Aid Ontario could play a role in fostering community leadership by connecting with the people who are doing Indigenous law scholarship at universities and starting a conversation with them that would support the development of best practices for *Gladue* work and for reducing over-representation. Legal Aid Ontario has been developing connections in the academic world, and it would not be difficult to take the informal network that already exists at law schools and formalizing it.
- The ownership and ultimate use of data are important issues to be considered. It was pointed out that when information is not owned by or shared with communities, this is a problem because it means that communities do not understand the information that is collected on their members. It will be important for Legal Aid Ontario to have conversations with communities about the data, what it shows, and how it may be used.
- In addition to statistical data, a qualitative study may also be useful to Legal Aid Ontario in developing a strategy for a suite of services that will address over-incarceration. Legal Aid Ontario could gather some of this information through an experts’ group or roundtable. Legal Aid Ontario could also build on work that has already been undertaken. For example, the *Gladue* court at Old City Hall courthouse in Toronto has been doing a three-year study.
- It was noted that *Gladue* reports are an important tool but are not the “be all and end all” to eliminating over-incarceration. Too often, they seem to be negative in their detailing of trauma and addiction. It could be valuable to brainstorm other approaches and mechanisms that may also be effective, rather than continually replicating the response

that was developed to the 1999 decision in *Gladue*. *Gladue* practice has come to be an exercise in identifying where people are broken. It is important to come back to first principles, with respect to the original mischief that *Gladue* was meant to address: the alienation of Indigenous people from the mainstream justice system and the fundamental differences in perception of justice. There should be a way to direct the conversation towards resilience, meaningful engagement with communities, and equipping lawyers to challenge systemic racism.

- Legal Aid Ontario's assistance in providing an articling student rotation at Aboriginal Legal Services was noted. Articling student opportunities make an important difference.

## 6 Action items

1. Legal Aid Ontario will provide the committee with regular updates on test case funding for Indigenous litigants and communities.
2. Legal Aid Ontario will begin a conversation with academics in the field of Indigenous law, with a view to creating a network that would support the development of training, best practices for lawyers doing *Gladue* work, and brainstorming on potential new approaches to reducing over-representation.

## 7 Other business

None raised.