

# **Meeting of Legal Aid Ontario clinic law advisory committee on October 2, 2017**



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# 1 Committee members

John McCamus (Chair); Lisa Cirillo; Lorraine Duff; Shelley Gavigan; Lyndon George; Karen Mathewson; Trudy McCormick; Ryan Peck; Kevin Pinsonneault; Jeff Plain; John Rae; Derry Millar (Legal Aid Ontario Board Liaison)

## 1.1 Guest

Stephanie Procyk

# 2 Welcome and introductions

Chair John McCamus opened the meeting and welcomed those present.

# 3 Minutes, May 10, 2017

The minutes of the May 10, 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.

- The community has been anxious about the continuation of refugee and immigration services from Legal Aid Ontario during the balance of the fiscal year. The news that the Board has determined there is sufficient funding to maintain these services until the end of March is very welcome.
- There is interest in learning more about how the Aboriginal Justice Strategy is working to address the Calls to Action of the Truth and Reconciliation Commission of Canada. Legal Aid Ontario is on the Ministry of the Attorney General's Implementation Committee, and works directly with communities. The United Way is also taking steps to

become more responsive to Indigenous communities, and would be interested in connecting with Legal Aid Ontario.

- Family law services at Student Legal Aid Services Societies are on life support. Legal Aid Ontario used one-time funding from the Ministry of the Attorney General to support these services and the time-limited funding ran out on March 31, 2017. One student clinic has already announced that they are wrapping up their family law services, and others have scaled back to half-time services. Still others are talking about moving to a summary legal advice service. These student programs were highly praised in the Bonkalo Report; indeed, Justice Bonkalo wrote that the role they play cannot be underestimated.
- There has been a significant increase in clinic advice, outreach and brief services. Clinic case files have not risen to the same extent. There may be several reasons for this. For example, some new clinic services need time to get up and running. Clinic staff may not always open up a new case file, and this could affect statistics. The word about expanded eligibility for more substantive clinic services may not have spread. Settlement agencies and trusted intermediaries can help to spread the word.
- Members advised that care must be taken in considering the meaning of caseload statistics. It has been said of statistics that what they reveal is interesting but what they conceal is essential. Legal Aid Ontario must be careful not to focus on counting the number of cases handled by clinics, because the numbers do not tell the whole story. A new type of case file, such as in the area of employment law, is not necessarily comparable to other kinds of case files that clinics are more used to handling. Legal Aid Ontario must also be mindful of what clinics were created to do.

## 5 Presentation on employment precarity and the PEPSO Project

Guest presenter Stephanie Procyk, United Way Toronto and York Region, presented to the committee on the Poverty and Employment Precarity in Southern Ontario (PEPSO) Project. The project is a partnership between the United Way and McMaster University. It involved working with over 30 community and university partners, and was informed by two telephone surveys.

The project examined the impact of the growth in the number of low-income people in the Greater Toronto Area and in Hamilton, working in part-time and short-term contract

employment. 44% of those surveyed were working in some degree of precarity. The research team developed a precarity index, using questions that asked things like whether people knew their work schedule in advance, or if they would be paid if they missed work. Many people in precarious employment experience difficulty moving into better work, and have limited career prospects. They rarely have access to employment benefits. They are often paid in cash. They often do not know their work schedule more than a week in advance.

The study found that employment precarity is associated with increased anxiety at home. In fact, low income people with secure employment experienced less anxiety than middle income people in less secure employment. Employment precarity was found to lead to increased social isolation. Racialized workers were found to experience two to three times more employment discrimination than others. The main conclusion of this study is that there is a need for increased labour market, social and community supports for people in precarious employment.

Members of the committee provided comments and feedback.

- Some new clinic services, such as in the area of employment law, are getting referrals and are just now hitting their stride in terms of uptake. For Student Legal Aid Services Societies beginning to offer employment law services, a significant increase has been noted in wrongful dismissal matters arising in small claims court. Employees in low income are often considered independent contractors so the traditional employment law remedies are not available to them. Many of the workers accessing these employment law services are young people.
- One of the issues noted in serving clients who have some employment income is that many of these people are in and out of employment. This creates a challenge in assessing their financial eligibility for clinic services, as eligibility is established at a point in time. This is an issue that Legal Aid Ontario should look at.
- Another challenge that will become more problematic as Legal Aid Ontario looks to serve more clients in paid employment is that the asset restrictions that are applied in financial eligibility testing are very low. It was noted that the Ontario Works and Ontario Disability Support programs have recently increased their asset exemptions. There is an opportunity for Legal Aid Ontario to look into this issue as well.
- Restrictions related to clinics' catchment areas may also pose a barrier to providing employment law services to some clients. People often do not live in the catchment area where they work. Legal Aid Ontario might want to rethink how catchment areas are defined, by looking beyond geographical boundaries, or by looking at a specialized clinic model for employment law services, if it wants to serve more precarious workers.

- Although employment standards matters are not on their face the most difficult or complex legal matters to handle, there is complexity in the fact that there are many different possible ways of proceeding. The choice of venue and forum may be important. For example, the desired remedy may be a determining factor. In some cases, a human rights complaint may be the best approach. In others, a remedy in bankruptcy law may be appropriate, such as where an employer decides to close shop, abandoning the workers, and then re-opens a few blocks away under a new name.
- Members noted the wide range of cascading impacts that are related to employment precarity, including housing, landlord-tenant and debtor-creditor matters. Consumer debt issues represent an area of growth for clinics, and these matters are time-consuming. Some public legal education materials have been developed.
- Clinics in the north are working together to make new legal services, including employment law services available to their clients. It is a challenge for clinics to add new areas of expertise, because staff have to be provided with relevant legal education. It is also a challenge to balance the demand for new services with the demand for services in core clinic law areas.

## 6 Clinic law services update and discussion

The update on clinic law initiatives and priorities was provided by Legal Aid Ontario's senior advisor, Clinics.

In 2018-2019, clinics will be receiving significant new funding for expanded financial eligibility. Financial eligibility funding has been allocated in different ways in the past, including by providing additional funding to clinics that had less resources with which to serve larger low income populations. Legal Aid Ontario would appreciate feedback from the committee on priorities for allocating the new funding in 2018-2019, and lessons learned from previous allocations. Legal Aid Ontario would appreciate advice on the most effective way to serve clients, based on expanding financial eligibility and client needs.

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

- Early confirmation of new funding will be important to clinics. If new staff are to be hired in April, clinics need to start the interview process in January.
- There is an important cluster of family-related legal issues that should be considered. There are domestic violence considerations, and considerations around child protection

law and Indigenous communities. Certificates are available from Legal Aid Ontario for family law matters and criminal law matters as separate things, and certainly there are concerns about clinics expanding too deep into the area of family law, but these separate categories do not reflect the way that low income people live. The private bar is not necessarily equipped to deal with the wide and complex range of legal issues experienced by low income people. If you go through the doors of the 311 Jarvis Street family courthouse in Toronto, you will see clinic clients there. It is important to try to address their family law matter before it gets to litigation. Perhaps these services could complement services provided by the private bar.

- There is a serious dearth of access to summary legal advice for clinic clients in areas that fall outside of clinic law, For example, pre-charge criminal advice is needed, and advice that addresses the intersections between criminal law and clinic law.
- Immigration law is an area of need. There is a massive need for assistance with spousal sponsorship matters.
- There is a need for more articling students. Clinics are able to offer very few articling positions. Articling positions bring new lawyers into the clinic system, and, even if they do not ultimately practice clinic law, the experience helps new lawyers to learn a holistic approach to working with clients. If the need for articling students can be linked to new resources for financial eligibility, this would be very good.
- Student Legal Aid Services Societies offer different kinds of services than most legal clinics. They have geographic flexibility and because they also serve clients with family and criminal law issues they straddle the worlds between clinic law practice and other areas of law. They should be kept in mind when Legal Aid Ontario thinks about expanded eligibility.
- It is important to remember that clinics do more than case work. They do important work in communities, including outreach and law reform work. Clinics that have been swamped by the demand for Ontario Disability Support Program appeals may have time to do more of this work, now that there is a decrease in these appeals. Community Legal Workers, who did much of the outreach work, were forced to become Ontario Disability Support Program caseworkers and now will need to relearn their former roles.
- The new Clinic Information Management System (CIMS) is now operational, but is not working well and is impacting client service and clinic morale. This is not an issue of getting used to a new system and a new way of doing things. It is a serious problem.

The platform is extremely slow and is being asked to do too many things. A communication to clinics about how Legal Aid Ontario is aware of the problems and committed to addressing them would make a difference.

## 7 Action items

1. Legal Aid Ontario understands the importance and value of family law services at Student Legal Aid Services Societies and will continue to consider options for their future.
2. Legal Aid Ontario is aware of issues with the new Clinic Information Management System and will work to make improvements.

## 8 Other business

None raised.