

**Meeting of Legal Aid Ontario
criminal law advisory
committee on May 3, 2017**



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1 Committee members

John McCamus (Chair), David Berg, Scott Bergman, Susan Chapman, Sunny Dhillon, Anthony Doob, Paul Dray, Martin Friedland, Shaunna Kelly, Matthew McGarvey, Faisal Mirza, Emma Rhodes, Sandy Simpson, Ralph Steinberg, James McNee (LAO Board Liaison)

2 Welcome and introductions

The Chair opened the meeting and welcomed those present.

3 Minutes, September 26, 2016

The minutes of the September 26, 2016, meeting were approved. It was noted that minutes of the advisory committees are now 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.

5 Criminal law update and discussion

Legal Aid Ontario's director, policy and strategic research, introduced Legal Aid Ontario's new criminal law policy counsel to the committee. They provided a joint update on Legal Aid Ontario's criminal law services and initiatives.

Legal Aid Ontario's experience with expanded eligibility points to the challenges of moving into new areas of service. Expanded criminal coverage had to be scaled back because it was the leading cost driver related to service expansion. Legal Aid Ontario is committed to providing access to justice for vulnerable groups involved with the criminal justice system, and would welcome advice on how it should proceed in order to be able to successfully revisit expanded coverage in the future when its finances are in order.

It was noted that the suspension of expanded criminal coverage was made with exceptions for victims of domestic violence fleeing a violent situation, who are Indigenous, or have an ongoing family or refugee law matter, and for cases where the facts and circumstances merit a

trial. These certificates are issued with local discretion and authority. Legal Aid Ontario's expanded bail initiatives remain in effect.

Although Legal Aid Ontario was unsuccessful in seeking an advance on future eligibility funding to prevent December's service suspension, new funding has been provided to legal aid by the province for duty counsel support for bail initiatives that are part of the Attorney General's Faster and Fairer Criminal Justice System action plan. This has coincided with Legal Aid Ontario's announcement of its own Bail Strategy. The new duty counsel coordinators are experienced duty counsel who will be working alongside the senior Crown vettors in ten selected bail court locations. Legal Aid Ontario hopes that this will help to re-vamp the relationship between Crown and defence, and is seeking advice on how its bail coordinators can best work with the private bar to make the bail process work better.

A lot is going on in the area of bail. Legal Aid Ontario recently attended a meeting of the expert panel that is advising the Ministry of the Attorney General as it reviews its Crown Bail Policy. Legal Aid Ontario's submission to this panel has been circulated to the committee. Legal Aid Ontario also made submissions to the House of Commons Standing Committee on Justice and Human Rights that included recommendations related to bail reform.

Legal Aid Ontario's best practices pilot at 1000 Finch is already showing results. There have been four bail reviews, all of them successful. When duty counsel are supported by training and tools, they are empowered to push back on unreasonable bail conditions.

Legal Aid Ontario's electronic service integration worksheet is being used at 1000 Finch to record the Crown's position on bail, so there will be accountability. Legal Aid Ontario will play an important role in determining whether the Ministry's approach to bail through the Faster and Fairer Criminal Justice initiative is working. Every adjournment on bail will be tracked, if it is Legal Aid Ontario's file, and the data will show whether the adjournment was at Crown or defence request and why. Race-based data is also being collected at the 1000 Finch location. Beginning in December 2017, Legal Aid Ontario will be asking all clients to self-identify their race and this information will be included in the electronic interview form. The data will be useful in showing unequal impact, and can be shared with experts.

Legal Aid Ontario's experience in the field is that private counsel are not the reason for most adjournments. It was noted that duty counsel already represent clients on 90 percent of bail hearings. Legal Aid Ontario is working on a policy approach to when duty counsel can assist a client who is represented by counsel. If an accused requests his or her own counsel for the bail hearing, Legal Aid Ontario obviously does not get in the way, but most counsel will not want their client to remain in custody any longer than necessary.

Legal Aid Ontario is involved in other delay reduction initiatives, in response to the *Jordan* decision. Following a pilot project in selected locations, Legal Aid Ontario is now providing province-wide expanded coverage for second judicial pre-trials. Legal Aid Ontario has also streamlined the application process for inmates in provincial institutions through a dedicated

inmate call centre line and fast-tracking of applications from clients who have previous Legal Aid Ontario history.

Legal Aid Ontario is also involved in a variety of training initiatives. In the past year, Legal Aid Ontario has introduced criminal mental health training and a manual that is available to certificate counsel on the LAO LAW website. The number of Legal Aid Ontario lunch and learn sessions has been increasing and these are also available through LAO LAW.

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

- The Crown's reliance on the tertiary ground in bail hearings is a problem. It is referred to frequently, even in "garden variety" cases. Addressing this would go a long way towards fixing problems in bail.
- Federal-provincial discussions on bail have been going on, and may affect Legal Aid Ontario. These discussions are expected to recommence during the summer.
- There is a need for a change of culture in order to improve bail. The Crown's starting position tends to be house arrest and curfew. A great deal turns on Crown policy and on their exercise of discretion. Legal Aid Ontario can help by encouraging more reasonable offers and more consistency through the work of the new duty counsel coordinators and Crown vettors. If there are more joint submissions on bail, then the justice of the peace will matter less. It was felt that if Legal Aid Ontario can show that one bail court is working well, this will become a model that can be used in other locations.
- Adjournments, which occur for a variety of reasons, are a major problem. Currently 55 percent of bail hearings go over the first day. Members noted that sureties are the reason for many adjournments, as are requests for unreasonable conditions. A move to more reasonable offers would help to address this problem. A member also noted that, if a proceeding is unable to go ahead because the accused's lawyer is unavailable or waiting for a legal aid certificate to be issued, this is something that Legal Aid Ontario should consider how to address.
- Tracking the reason for adjournments, including those resulting from Crown requests, is important. The point was made that the coding of adjournment requests matters; for example, if duty counsel are unable to assist at bail because of the seriousness of the matter, this will end up being recorded as a defence request. It was also noted that it can be difficult for private bar counsel to know how to respond when a client is detained for a bail hearing, since the situation sometimes arises where counsel arrives ready to assist with bail, and legal aid says "no" to coverage because the client is not looking at jail time.

- Members were enthusiastic about the potential for Legal Aid Ontario’s electronic service integration worksheet to capture data, including the reasons for bail adjournments, and client-specific information including race-based data.
- Legal Aid Ontario should be tracking disclosure since that is one of the biggest factors contributing to delay. Disclosure problems are more a Crown problem than a police problem, and are the source of a ridiculous waste of court resources.
- Another waste of resources is the local courthouse practice of scheduling trials based on shorter (three hour) judicial days, in order to accommodate other matters that pop up and require the judge’s time. Because of this, relatively uncomplicated matters are scheduled over two or three days, at added cost to Legal Aid Ontario. Studies of court system delay have tended to focus on long, complex trials, but these kinds of inefficiencies also take their toll.

6 Action items

1. Legal Aid Ontario will send committee members an electronic copy of its criminal mental health manual.

7 Other business

None raised.