

**Meeting of Legal Aid Ontario  
criminal law advisory  
committee on October 23, 2017**



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# 1 Committee members

John McCamus (Chair); Scott Bergman; Sunny Dhillon; Anthony Doob; Paul Dray; Martin Friedland; Shaunna Kelly; Matthew McGarvey; Faisal Mirza; Emma Rhodes; Sandy Simpson; Ralph Steinberg; James McNee (Legal Aid Ontario Board Liaison)

## 1.1 Guest

Mary Birdsell

# 2 Welcome and introductions

Chair John McCamus opened the meeting and welcomed those present.

# 3 Minutes, May 3, 2017

The minutes of the May 3, 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.

# 5 Presentation on criminal youth panel standards

Guest presenter Mary Birdsell from Justice for Children and Youth presented to the committee on criminal youth panel standards. Justice for Children and Youth has been working with Legal Aid Ontario to support the development of standards for counsel representing criminally charged youth. The latest working draft of the standards was circulated to the committee prior to the meeting.

The goal of panel standards is to ensure that services provided to youth are effective. Lawyers may be experts in adult criminal justice but this does not necessarily translate to expertise in

youth criminal justice. It is very important for counsel to be aware of the law that applies to youth and of the circumstances that young people face.

For example, the law that applies to bail is different for young people. The treatment of records under the Youth Criminal Justice Act is complicated and often poorly understood, as are the privacy protections that apply to youth. There may be intersecting concerns and multiple vulnerabilities, for example related to mental health or learning disabilities. Many young people who are involved with the criminal justice system are Indigenous or racialized. There are corollary legal issues that counsel need to be aware of, in the areas of child protection and education law. There are very significant issues for young people in care that need to be considered. Although criminal youth charges are in decline overall, this is not necessarily the case for youth in care.

Members of the committee provided comments and feedback.

- The need for youth criminal panel standards is very clear. Often lawyers lack awareness of the applicable statute. For instance, few lawyers rely on section 29 of the *Youth Criminal Justice Act*, which sets out the requirements for detention at a bail hearing for a young person. They are thinking of the *Criminal Code* when the *Youth Criminal Justice Act* applies. Across Canada, the number of youth who are in custody awaiting trial is higher than the number of youth serving a sentence.
- It was noted that there is a growing awareness of the need for specialized knowledge and expertise in representing youth. For example, the Office of the Children's Lawyer has been providing training to their panel on the criminal justice aspect of the work that they do. There is also a new youth criminal justice policy manual for crown attorneys.
- Members emphasized that it is crucial for lawyers working with youth to read and understand the *Youth Criminal Justice Act*. It was suggested that Legal Aid Ontario could talk to law schools about devoting a class to youth criminal justice.
- Many practitioners tend to do less youth work as their careers progress, and there is a need for them to stay current. However, an annual requirement of three hours of continuing legal education to be on the legal aid panel may be too onerous for some lawyers unless the requirement can be met through self-study. Some continuing legal education is affordable but it can also be quite costly. There may be ways that Legal Aid Ontario can assist lawyers to meet the requirement, such as by making eligible training, such as lunch and learn programs, available to the bar and by providing self-study options on the LAO LAW website. There may also be training partnership opportunities for Legal Aid Ontario to explore.

- It was suggested that the LAO LAW website could include a dedicated page or area where lawyers could find materials and links related to youth criminal justice. The sections of the website that deal with bail and sentencing could also feature materials, or a link to materials, indicating how bail and sentencing are different for youth.

## 6 Criminal law services and Bail Strategy update and discussion

The update on criminal law and Bail Strategy initiatives and priorities was provided by Legal Aid Ontario's criminal law and Bail Strategy policy counsel.

With funding from the Ministry of the Attorney General, Legal Aid Ontario has hired ten new duty counsel bail coordinators to support the Bail Strategy and they are all in place in courts. Five of six new institutional duty counsel are working onsite at jails. The outlook is positive and optimistic. Draft key performance indicators have been developed to target delay issues and unfairness in bail courts.

The 1000 Finch best practices duty counsel bail court project has been operating since January 2016. The goal of the pilot is to demonstrate that adherence to courageous application of the law at every stage of the bail process will lead to better outcomes. Access to quick bail reviews is seen by Legal Aid Ontario as essential to changing advocacy. To date there have been six bail reviews at the site, of which five have gone forward, all successfully. There has been a statistically significant decrease in the use of bail conditions that rely on residing with a surety. The pilot is supported by training and tools. Legal Aid Ontario's goal is to replicate the successes and best practices of the 1000 Finch pilot at other locations.

The Bail Strategy has been developing supports and resources for bail. The Strategy has also developed a proposal for a new bail protocol that will support better decision-making in bail court. It is based on case law and is not surety focused. The new protocol grew out of Legal Aid Ontario's experience in Newmarket, which is one of the Bail Strategy sites. Legal Aid Ontario would appreciate feedback from the committee on this document. Legal Aid Ontario's goal is to share this document with the Ministry of the Attorney General with a view to establishing it as a general protocol for all bail court participants.

Legal Aid Ontario is also focusing this year on reviewing and updating panel standards in the area of criminal law. In addition to the draft criminal youth panel standards which have been circulated to the committee for feedback, Legal Aid Ontario will be developing and seeking input on standards and expectations for counsel representing mentally ill accused on a section 85 certificate. Section 85(2) of the *Legal Aid Services Act* provides the only exception to the rule against recommending a specific lawyer to a legally aided client, in cases where the client

is unable, due to mental illness, to choose a lawyer. Legal Aid Ontario is in discussions with the Law and Mental Disorder Association regarding the development of these standards.

Legal Aid Ontario's guilty plea inquiry tool, which was circulated to the committee at a previous meeting, is in use and has been well received. It is available to the private bar as well as to duty counsel. Its purpose is to ensure that guilty pleas are informed and voluntary.

Legal Aid Ontario has initiated a six-month pilot project at the Toronto South Detention Centre that involves counsel making certificate applications on behalf of in-custody clients and emailing the applications to Legal Aid Ontario. The pilot is intended to assist vulnerable accused, including accused with mental health issues.

To support the private bar, Legal Aid Ontario has created a "mentorship opportunities" page for its website. It will be posted soon and will enable the bar to view all of Legal Aid Ontario's mentorship initiatives together in one place. Legal Aid Ontario also continues to work to address concerns that have been raised by the bar about Legal Aid Ontario's billing processes.

Legal Aid Ontario's electronic worksheet for duty counsel has now been updated to include fields that will help Legal Aid Ontario to identify and track bail issues and reasons for delay in criminal courts. For example, 24 different reasons for adjournments are available for selection. The worksheet allows for real-time transfer of data. 121 criminal court locations will be using the updated worksheet following its November launch.

The criminal chapter of Legal Aid Ontario's duty counsel manual is being updated to align with current practices and should be available internally in the next few months. Legal Aid Ontario would like to post the updated manual on its public website.

A new policy document is being developed that will provide direction to duty counsel on how best to serve clients in "grey area" situations where private counsel are involved. The private bar will be invited to provide input.

Legal Aid Ontario continues to expand its public engagement activities. These have included participation in consultations on criminal justice system delay and on correctional reform and the use of segregation. Legal Aid Ontario and the John Howard Society of Ontario sent a joint letter to the Minister of Community Safety and Correctional Services, highlighting the issue of the high cost of collect call fees made by provincial inmates. Legal Aid Ontario also continues to participate in the Ontario Court of Justice's Modernization Committee, and has been involved with the Ministry of the Attorney General's proposal to establish Community Justice Centres in three locations.

Members were urged to provide their input on any of the issues raised and to comment on the documents that were circulated, either at the meeting or afterwards via email.

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

- Members discussed the draft key performance indicators. A decrease in the total remand population may be misleading as an indicator of success, since the size of the remand population also has to do with delay in the broader sense and is driven by people who are in “bail limbo”, languishing for four or more months without a bail disposition. Just one of these cases can be the statistical equivalent to 100 others. It was suggested that a good key performance indicator for Legal Aid Ontario might have to do with an increase in fair bail conditions that are related to the case. Legal Aid Ontario affirmed that, while performance indicators are meant to be broad, an increase in fair bail conditions is key to Legal Aid Ontario and is an expected outcome of this pilot. Already there has been a significant increase in “own recognizance” releases at the 1000 Finch pilot site.
- Members indicated their approval of Legal Aid Ontario’s overall approach and of the effectiveness of the Bail Strategy to date. Access to bail reviews was felt to be key to the strategy’s success. The point was made that successful bail review decisions trickle down, so that the threat of a bail review can be enough to change decision-making.
- The quick response at the 1000 Finch court site was noted with approval by the committee. It was pointed out that duty counsel, unlike the private bar, can bring forward a bail review quickly because there is no need to wait for Legal Aid Ontario to approve a certificate. The point was also raised that this wait time for a certificate presents a barrier to quick response by private bar counsel who are representing clients at bail.
- Legal Aid Ontario’s proposed bail procedure document was well received. It was described as being both sophisticated and helpful on a practical level.
- It was noted that there has been remarkable success in clearing the lists for bail at the College Park courthouse site, and that bail hearings there are taking 30 minutes or less to complete. Bail court at this site is being handled by three Provincial Court judges working in rotation, rather than by justices of the peace.
- The committee noted that outcomes can vary widely by site, and are affected by the personalities involved. For example, where crown attorneys are more conservative or aggressive, this tends to make a material difference to outcomes. One of the aims of Legal Aid Ontario’s proposed bail protocol is to foster a process that is more principled and therefore less personality-driven.
- The committee indicated that another important aspect of improving the bail system will involve engaging crowns and the police in effective screening to reduce the number of charges. This would also be capable of having a significant impact.

## 7 Other business

None raised.