

Meeting of Legal Aid Ontario family law advisory committee on May 9, 2017



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1 Committee members

John McCamus (Chair), Nicholas Bala, Leighann Burns, Pam Cross, Danette Edwards, Nikki Gershain, Jean Hyndman, Marian Jacko, Charlotte Murray, Laure Prévost, Joanna Radbord, Sherrill Rogers, Louise Toone, Carol Hartman (Legal Aid Ontario Board Liaison)

2 Welcome and introductions

The Chair opened the meeting and welcomed those present.

3 Minutes, October 17, 2016

The minutes of the October 17, 2016 meeting were approved. The Chair noted that advisory committee minutes are now posted on the Legal Aid Ontario 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.

Family law services update and discussion

Legal Aid Ontario family law policy counsel provided an update on Legal Aid Ontario's family law initiatives, noting that the committee's feedback and advice has been valuable and has helped to inform Legal Aid Ontario's work.

The report of the Family Legal Services Review (Bonkalo Report) has been released, and Legal Aid Ontario has submitted feedback, as invited. Legal Aid Ontario's response reprised the cautious position on paralegal services taken in its original submission. Legal Aid Ontario also echoed much of what Justice Bonkalo said in her report about services provided by law students, and particularly that direct 1:1 supervision of law students at all times should not be required.

An update was provided on funding for family law services delivered by Student Legal Aid Services Societies (SLASS). It was noted that Justice Bonkalo's report asked for support for these valuable programs. All of the SLASS want to continue delivering family law services. Legal Aid Ontario has advised the SLASS that they may use any surplus remaining from the three-year family funding initiative to keep their programs operating.

The chair of the Family Rules Committee sought input from Legal Aid Ontario on changes to Rule 24, dealing with costs. Legal Aid Ontario's response supported a more consistent and transparent approach. The report has not yet been released.

Legal Aid Ontario is reviewing its online Family Law Information Program (FLIP). The Ministry of the Attorney General (MAG) has redesigned its mandatory in-person information program, or MIP, and Legal Aid Ontario is working with MAG to ensure that the FLIP family law information program and the MIP mandatory in-person information program will be aligned.

Legal Aid Ontario has been monitoring and responding to recent changes in family law, including the government's decision to end mandatory pursuit of child support for social assistance recipients. LAO Legal Aid Ontario is also looking at the consequences of the application of the *Hague Convention on Service Abroad* in Ontario. There are some concerns for Legal Aid Ontario clients, including the cost of translation of documents and the service fee that is charged by the reciprocating jurisdiction.

Legal Aid Ontario has been meeting with the Family Lawyers' Association (FLA); the next meeting is on July 6th, 2017. The FLA Family Lawyers' Association has worked with Legal Aid Ontario to identify cost-neutral options for tariff reform, including a potential summary judgment motion allowance pilot to test whether authorizing these motions would help to reduce trial expenses.

Legal Aid Ontario is working to improve its capacity for data collection in the area of family law. Legal Aid Ontario has made a request to the Ministry of the Attorney General for general data on resolutions, but courts own this data and it is difficult to get, other than for specific types of requests. The government is working on revising its data systems but the information is considered private.

The Law Society of Upper Canada has committed to rewording its bylaws to capture the work of all law students, including students working for Legal Aid Ontario in summer placements. At the last meeting, the work that Legal Aid Ontario has done on creating an electronic worksheet for criminal duty counsel was showcased, and the committee expressed interest in the development of a similar worksheet for family duty counsel. The ball is now rolling on developing this initiative and the committee will be kept up to date on progress.

Another idea proposed by the committee, the placement of mental health workers in family court sites, is being pursued. It was noted that the Ontario Psychological Association has written a paper suggesting this as well. Funding is not available from the Ministry of the Attorney General for this initiative but Legal Aid Ontario is looking at creative options, including the possibility of obtaining federal funding.

Legal Aid Ontario's Domestic Violence Strategy is scheduled to come to the Board for approval in June 2017. Despite Legal Aid Ontario's current financial difficulties, its commitment to its client strategies is strong. There are cost-neutral improvements that can be implemented in the short term.

Legal Aid Ontario continues to work on accessible training options for staff and the private bar. Legal Aid Ontario's internal lunch and learn sessions are now on LAO LAW's website and are available to panel lawyers. In the coming year, Legal Aid Ontario plans to review and update its panel standards. Training supports and mentoring will also be looked at as part of this initiative. There will be consultations with the family bar, FLA, and others.

Legal Aid Ontario also continues to follow up on lawyer feedback about its billing portal and billing issues.

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

- Members reported that family law services at all Student Legal Aid Services Societies will be continuing in the short term, and that this is being achieved through their use of surplus family funding initiative money, and their financial eligibility funding. However, this is a one-time solution.
- Members asked Legal Aid Ontario to consider seeking Ministry of the Attorney General support for implementing recommendations made by Justice Bonkalo in the report of the Family Legal Services Review. It was also noted that Legal Aid Ontario could be well placed to undertake pilot projects that would test out some of the report's more controversial recommendations on an experimental basis, and should think about developing these projects with Ministry and Law Society support.
- It was noted that the Bonkalo report speaks to maintaining and expanding the Family Law Program operated by Pro Bono Students Canada (PBSC). The program's funding from the Law Foundation of Ontario has been capped since 2009 and the committee is aware that Legal Aid Ontario, which also provides funding to PBSC, is not able to offer further assistance. It was suggested that Legal Aid Ontario could work with PBSC on reaching out to the Ministry of the Attorney General on how to be responsive to Justice Bonkalo's report.
- It was reported that the City of Toronto has elected to continue providing funding for Family Support Workers and it is hoped that other municipalities will do the same thing on the basis that the work they do for clients, though no longer linked to income assessment, supports poverty reduction.
- The increased use of summary judgment motions in child protection cases was noted. Children's Aid Societies are bringing these motions with increasing frequency and the volume of records involved is approaching the volume that would be seen in an actual trial. Legal Aid Ontario was asked to consider expanding mid-level case management or finding some other way of increasing the hours available on these matters. It was noted that mid-level case management appears to be the best solution, and is currently available for Crown Wardship and complex Society Wardship cases. If expanded

further, including to non-child protection family matters, it could help to reduce the need for counsel to seek discretion.

- The committee advocated continued work on improving availability of data, particularly on case outcomes. If Legal Aid Ontario wants to find out whether the move to more focused trials and summary judgment motions is having an impact, it needs to know how these cases are being resolved. Early resolution is not only less expensive, but also better for the parties, who tend to become more entrenched in their positions the longer a matter continues. Legal Aid Ontario's own data could indicate how many certificates were authorized for trial, although it would not be capable of showing how many were settled before trial.
- It was suggested that outcome data might also be used to help Legal Aid Ontario identify cases of lawyers using up their certificates and then "dumping" clients before their trial. This should not be tolerated and is particularly worrisome where clients are experiencing domestic violence. Legal Aid Ontario has heard anecdotal reports of this happening but has no hard evidence. Legal Aid Ontario has a complaints mechanism and an ethics hotline; it also reviews change of solicitor requests as potential complaints. Members noted that it is difficult for many clients, particularly those who come from certain vulnerable communities, to make formal complaints.
- Members raised a recent family law case from Hamilton that the presiding judge had described as a waste of time, even though the case involved allegations of domestic violence. The committee was advised that Legal Aid Ontario's CEO had responded with a piece that was published in the Hamilton Spectator, underscoring the importance of providing services where people are impacted by or at risk from domestic violence. It was noted that others had also responded to the decision by making this point.
- The committee was encouraged to hear that Legal Aid Ontario is pursuing development of an electronic worksheet/interview sheet for family duty counsel. This will be extremely helpful and is a good example of Legal Aid Ontario using technology to save resources and improve effectiveness of client service.
- The committee was pleased to hear that Legal Aid Ontario is following up on options for obtaining funding for on-site mental health workers in family courts. If federal funding is not obtained, it was suggested that Legal Aid Ontario pursue partnerships with local agencies that provide or have access to mental health workers.
- Input was provided on making training programs more accessible to the bar. There was support for making the 47 Sheppard and 311 Jarvis training sessions available to panel lawyers online. This would increase the educational value of these sessions by making them more accessible, including to lawyers located outside of Toronto.
- Panel lawyers support Legal Aid Ontario's billing improvement efforts. It would be helpful for lawyers to be able to find out online through the portal how many hours are

left on their certificates. Being able to update case conference billing information is even more important.

5 Action items

1. Legal Aid Ontario will consider seeking Ministry of the Attorney General support for implementing recommendations made by Justice Bonkalo in the report of the Family Legal Services Review.
2. Legal Aid Ontario will look at the possibility of working with the Ministry and the Law Society to develop a pilot project or projects based on some of the recommendations in the report of the Family Legal Services Review.
3. Legal Aid Ontario will consider making a joint business case to the province, along with Pro Bono Students Canada, for funding to help maintain and expand Pro Bono Students Canada's Family Law Program.
4. Legal Aid Ontario will continue to focus on improving data collection in family law.
5. Legal Aid Ontario will follow up on how best to investigate for cases of lawyers who are "dumping" clients before their trial.
6. The committee will be apprised of the status of Legal Aid Ontario's Domestic Violence Strategy and will receive a copy as soon as it becomes available following approval.

6 Other business

None raised.