

Meeting of Legal Aid Ontario mental health law advisory committee on May 5, 2017



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1 Committee members

John McCamus (Chair), Bipasha Choudhury, Lucy Costa, Shannon Down, Christel Francis, Colleen Gray, Greg Iwasiw, Jane Mackenzie, Marion Overholt, Donald Rose, David Shannon, Marshall Swadron, Marie Taylor, John Liston (Legal Aid Ontario Board Liaison)

2 Welcome and introductions

The Chair opened the meeting and welcomed those present.

3 Minutes, September 19, 2016

The minutes of the September 19, 2016, meeting were approved as amended. An amendment to page five was requested to clarify that Form 1 is a psychiatric assessment. It was noted that approved minutes 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.

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

- Members were concerned about the impact of rising demand for refugee law services, particularly in border communities where service agencies are feeling pressure from the increased flow of refugee claimants across the border.
- It was noted that the legacy cases in the refugee determination system are old now, and the financial circumstances of some of these people may have changed over time.
- Legal Aid Ontario should be aware of the province's new guaranteed income pilot. Some people who are currently receiving social assistance will be moving to guaranteed income under this pilot.

5 Mental Health Strategy update and discussion

Legal Aid Ontario policy counsel for the Mental Health Strategy provided an update on strategy initiatives.

The committee received an update on the Mental Health Appeal Program. Legal Aid Ontario has made a decision to reintroduce consideration of merit for Consent and Capacity Board appeals. Stakeholders were informed of this decision in February 2017. Legal Aid Ontario intends to fund more Consent and Capacity Board appeals that it did prior to 2014, when merit testing was suspended under the new program. However, patently unmeritorious appeals will no longer be funded. Legal Aid Ontario's plan is that merit testing will be reintroduced in summer 2017, following development of a modified merit test. Legal Aid Ontario is consulting with area committee chairs and senior panel lawyers as it develops the new test, which will be designed with the vulnerabilities of clients in mind. Stakeholders will be kept informed.

All Ontario Review Board appeals will continue to be funded, regardless of merit. Legal Aid Ontario has found that these appeals have a higher success rate and lower abandonment rate than Consent and Capacity Board appeals.

No decision has been made at this point about how mental health appeals will be funded when Legal Aid Ontario moves to a fully implemented program. Legal Aid Ontario is aware of the issues raised by the 16-hour tariff for appeals. Currently, the average payment is 30 hours for Consent and Capacity Board appeals and 35 hours for Ontario Review Board appeals.

Legal Aid Ontario is looking at what kinds of post-hearing supports it can offer to people who have a negative Consent and Capacity Board decision. One option that is being considered is a post-hearing informal resolution pilot program. Work on developing this pilot is expected to begin after the summer of 2017, and suggestions from the committee are welcome.

Legal Aid Ontario is working to improve its Consent and Capacity Board panel standards and is currently developing a best practice guide to support panel lawyers. Topics will include negotiations with doctors and reducing the number of adjournments.

An update was provided on training. Last summer, designated district leads received criminal mental health training and the aim is to have all criminal law staff trained by the end of 2017. The training was recorded and will soon be available to the private bar through the LAO LAW website.

Ongoing work is being done by Legal Aid Ontario to help the private bar address the issue of the high cost of photocopying medical charts.

Legal Aid Ontario is exploring how it can improve access to the legal aid application process for clients with communication disabilities. Legal Aid Ontario has been in touch with Communication Disabilities Access Canada.

Legal Aid Ontario has worked with Shift eHealth on a patient survey at CAMH hospital, to provide Legal Aid Ontario with input on the quality of legal services. So far, 25 patient surveys have been completed.

Development of the guided interview reference tool continues. This tool will support service providers in assisting clients with mental health issues.

Making legal services more accessible to clients in the community is an important part of the Mental Health Strategy. Legal Aid Ontario is supporting two embedded lawyer initiatives, the Justice in Time pilot project, which is being delivered through a partnership with Sound Times Support Services, and the Hamilton Outreach Project, which is a joint project of Legal Aid Ontario and the Hamilton Community Legal Clinic. Legal Aid Ontario is collecting statistics and performance measures information from both of these projects in order to learn from them and potentially replicate them in other locations. The Justice in Time project is being evaluated and the results of the evaluation can be shared at the next meeting.

Legal Aid Ontario continues to offer expanded certificate services in civil mental health for substitute decision makers before the Consent and Capacity Board, and for incapacitated persons who are the subject of a guardianship dispute. Legal Aid Ontario would like to engage with the Office of the Public Guardian and Trustee to look at the protocols for taking legal aid applications from vulnerable clients in guardianship cases. There are not many of these cases now, but the number may be expected to increase as the population ages. Legal Aid Ontario does not presently offer coverage to low-income persons who want to be appointed as guardians. Legal Aid Ontario is aware that these cases can be long, and will be looking at this issue in the context of the Law Commission of Ontario's recommendations with respect to guardianship matters.

It was noted that the Human Services and Justice Coordinating Committee recently held a forum on mental health courts in Ontario. The current reality of mental health courts is that every jurisdiction is different and has different resources available. Through membership on the Human Services and Justice Coordinating Committee, Legal Aid Ontario will be engaged in further developments and will engage with mental health duty counsel and district leads to obtain their input.

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

- Members discussed the tight seven-day timeline for appealing Consent and Capacity Board decisions. A client who wants to appeal a Consent and Capacity Board decision may miss the deadline if their lawyer does not file an appeal in their name following the hearing. Conversely, a lawyer who files an appeal for a client, risks not being compensated if the client fails to qualify for a certificate, now that Legal Aid Ontario is bringing back merit-testing for Consent and Capacity Board appeals.

- Members also raised the issue of future payment for appeals. Prior to the introduction of the new program, appeal certificates only allowed 16 hours for all services, except court attendance, and this created a barrier to access to justice.
- There was interest in Legal Aid Ontario's development of a best practice guide to support panel standards. The mental health legal committee would be interested in contributing to this initiative.
- Concerns with Consent and Capacity Board scheduling practices were reported. The Consent and Capacity Board chooses hearing dates without consulting the parties on their availability, and this leads to adjournments. It was suggested that Legal Aid Ontario can assist by raising this problem with the Consent and Capacity Board.
- It can cost lawyers \$180 to access medical records electronically.
- Other organizations have had experience with patient surveys and can provide Legal Aid Ontario with information to help it improve engagement and ease of access to the surveys.
- There was interest in whether community-based partnership and outreach projects like the Hamilton Outreach Project could be adopted by other clinics, and whether Legal Aid Ontario would be interested in seeing proposals for more projects that help clients with mental health issues to connect with the services they need.
- Members identified a need for duty counsel to go into hospitals to assist patients. Duty counsel used to attend psychiatric hospitals once a week, but in most communities, this practice ended years ago.
- It was noted that guardianship cases can take up to three years to resolve. The clients are vulnerable and tend to have overlapping disabilities. There are few of these cases and the amount of work they involve is not generally well understood or reflected in the number of hours available under the Legal Aid Ontario tariff. There should be an analysis of what is involved in these guardianship cases.
- The Ministry of Community and Social Services has revised its medical reviews process for persons on Ontario Disability Support Program benefits. These clients are frequently persons with mental health conditions, and the change has been positive for them.
- A member expressed the hope that Legal Aid Ontario's financial difficulties would not threaten the Mental Health Strategy, which has been so positive and full of promise.

6 Action items

1. Legal Aid Ontario will follow up on the question of whether the tariff allotment for civil guardianship matters adequately reflects what is involved in assisting these vulnerable clients.

7 Other business

None raised.