

**Meeting of Legal Aid Ontario  
mental health law advisory  
committee on  
September 25, 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

Chair John McCamus opened the meeting and welcomed those present.

# 3 Minutes, May 5, 2017

The minutes of the May 5, 2017 meeting were approved, as amended.

# 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.

- Legal Aid Ontario's new certificates to assist with pre-litigation child protection matters are very valuable. Parents are often pressured to sign documents without the opportunity to obtain legal advice. They are often unaware that alternative dispute resolution can be an option. Legal Aid Ontario could rely on training opportunities to help make the family bar more aware of these certificates
- The family law services provided by Student Legal Aid Services Societies are important. The Bonkalo report supported these services. However, the funding that supports these services has run out. Legal Aid Ontario should keep these services in mind when planning for the future

## 5 Mental Health Strategy update and discussion

The update on Mental Health Strategy initiatives and priorities was provided by Legal Aid Ontario's policy counsel, Mental Health Strategy, who was accompanied by the project lead of Legal Aid Ontario's Justice in Time Project and who provided a first-hand report on progress.

The Justice in Time project, in which Legal Aid Ontario is working in partnership with Sound Times, a mental health agency in Toronto, is one of two alternative service model embedded lawyer initiatives introduced through the Mental Health Strategy. It is a two-year project that has now been operating for approximately one year. The clients are vulnerable clients with complex needs who are hard to serve. Legal Aid Ontario's traditional service models and channels do not necessarily work well for them.

The goals of the project are to increase access to legal services through a community partnership model. The project has two prongs. The first prong is the provision of legal services 3.5 days per week at Sound Times. Clients are assisted in a number of areas including family, child protection, criminal and quasi-criminal law, and housing matters. Clients also receive coordinated referrals. The second prong involves providing legal aid services at the Provincial Offences Court at Old City Hall courthouse in Toronto, where clients are assisted with so-called "nuisance charges" such as panhandling, trespass, and public intoxication that are commonly laid against the homeless population. A lawyer attends court 1.5 days per week, with support from a staff paralegal.

Project results are being tracked. In the first year, the project reached its target population, with approximately 200 files being opened at Sound Times. The staff lawyer leading the project also conducts public legal education and community engagement sessions, and engages in law reform work, such as in the area of Provincial Offences reform. In the first year, there were 65 resolutions at Provincial Offences Court, with most charges being withdrawn or stayed. A first year report is being prepared and will be circulated shortly. In year two of the project, stakeholder feedback will be incorporated, and there will be a focus on sharing best practices and increasing outreach work.

The Hamilton Outreach Project is another Mental Health Strategy embedded lawyer initiative. This is a joint project involving Legal Aid Ontario and the Hamilton Community Legal Clinic. Legal Aid Ontario and clinic staff lawyers and paralegals attend a variety of sites such as food banks, shelters and crisis centers around Hamilton. Clients are provided with legal advice and referrals. To date, over an eight month period, 233 clients have been served through this initiative. Over a five month period, approximately 55 clients have been triaged to receive specialized mental health supports. Feedback surveys are being used and a mid-point evaluation of the project is expected in November 2017.

Legal Aid Ontario will continue to evaluate its embedded lawyer projects, and would like to explore similar projects and initiatives in other communities, based on information and results from the Justice in Time and Hamilton Outreach projects.

An update was provided on the Mental Health Appeals Program. Legal Aid Ontario continues to provide funding for all appeals made to the Ontario Review Board, but will be re-introducing merit testing for Consent and Capacity Board appeals. The new test will be a modified, more relaxed test and will involve two stages, with the first stage focused on reasonable likelihood of success and an optional second stage that gives consideration to personal or systemic impacts. Although the second stage is discretionary, it is expected that area committees will also consider this stage. A draft of the test has been shared with the committee. Legal Aid Ontario has formed a working group to ensure that appeals are processed efficiently and that appeals are not unduly delayed by consideration of merit. Legal Aid Ontario would also appreciate feedback on the Consent and Capacity Board merit guide that has been developed to support area committee members when assessing the merit of a Consent and Capacity Board appeal.

In other updates, Legal Aid Ontario is currently developing a best practices guide to support Consent and Capacity Board panel lawyers. It is likely to include a section on drafting opinion letters. Legal Aid Ontario has clarified and confirmed its financial eligibility testing practices and policies for Consent and Capacity Board matters, to ensure that these are applied consistently. Legal Aid Ontario is also working to develop a fast track legal aid application process for trusted intermediaries.

Legal Aid Ontario's mental health training program will have been provided to all Legal Aid Ontario criminal law staff by December 2017. The training program is also now available to private bar lawyers on the legal aid panel through LAO LAW.

Legal Aid Ontario will be further developing its guided interview reference tool to assist duty counsel in assisting criminal law clients with mental health issues. Legal Aid Ontario has also been working with Communication Disabilities Across Canada (CDAC) to explore ways of improving the Shift eHealth Client Survey that has been developed to inform Legal Aid Ontario about the quality of legal services that mental health clients receive. So far 24 surveys have been completed.

Legal Aid Ontario's new certificate authorization for guardianship cases provides 15 hours with the potential for additional discretionary hours. A concern has been raised that the 15 hour tariff may be insufficient, and that there may be insufficient awareness of the application process for these certificates. Legal Aid Ontario will be reviewing guardianship cases to look at these issues.

Legal Aid Ontario is engaged in developments in mental health courts through its membership on the provincial Human Services and Justice Coordinating Committee. Legal Aid Ontario will also continue to be engaged with the Ministry of Correctional Services and Community Safety to support and further the development and expansion of the red bag (or red envelope) program. There have been some delays in implementation. Legal Aid Ontario's duty counsel see a great need for this program, which returns personal property such as keys and wallets to mental health clients who are being released at the courthouse.

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

- The community outreach and partnership model employed in the Mental Health Strategy's Justice in Time project is a good one. Through advocacy and negotiation this project has kept people from ending up in the criminal and forensic systems. Many people who are in the forensic system would not be there if they had had access to an advocate at an earlier stage.
- Legal Aid Ontario should make it clear that area committees are expected to consider both stages of the new merit test for Consent and Capacity Board appeals, and not only the first stage which deals with reasonable likelihood of success.
- Members raised an issue with obtaining a legal aid certificate for a Consent and Capacity Board matter in cases where a client indicates, usually erroneously, that they have money or that they have access to money. Very few Consent and Capacity Board clients actually have money or access to money. Legal Aid Ontario was urged to consider upfront funding for all of these clients. A payment agreement can be arranged later, if it turns out that funds are available. There is a need for Legal Aid Ontario to function as a "backstop" where clients tell lawyers that they have access to funds but in fact do not.
- The point was raised that as much as 40-50 per cent of the work on guardianship cases is being covered by lawyers on a pro bono basis. It is very difficult to obtain a discretionary increase from Legal Aid Ontario. It was also noted that there may be issues with awareness of the process of applying for a guardianship certificate.
- Legal Aid Ontario's efforts to enhance mental health expertise on legal aid area committees was noted with approval.

## 6 Action items

1. Legal Aid Ontario will look into reports of patients at the secure treatment facility in Brockville being charged \$25 from their accounts to make a legal aid application. Legal Aid Ontario does not request payment from applicants.
2. Legal Aid Ontario will consider the committee's feedback about the reviewing the discretionary nature of the second stage of Legal Aid Ontario's draft merit test for Consent and Capacity Board appeals.
3. Legal Aid Ontario will review its processes and attempt to obtain a sense of the frequency of cases in which private retainers have been obtained for Consent and Capacity Board clients, or in which certificates issued for these matters have had a payment agreement attached to them.

## 7 Other business

None raised.