

# **Meeting of Legal Aid Ontario prison law advisory committee on May 11, 2017**



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# 1 Committee members

John McCamus (Chair), Bryonie Baxter, Brian Callender, Philip Casey, Seth Clark, Sean Ellacott, Rosemary Gartner, Emily Hill, Elizabeth Hughes, Adelina Iftene, Michael Mandelcorn, Allan Manson, Les Morley, Paula Osmok, Elizabeth Thomas, James Yakimovich (Legal Aid Ontario Board liaison)

## 1.1 Guest

Jessica Wolfe

# 2 Welcome and introductions

The Chair opened the meeting and welcomed those present.

# 3 Minutes, October 19, 2016

The minutes of the October 19, 2016, meeting were approved. It was noted that committee minutes, once approved, 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 Prison law update and discussion

Legal Aid Ontario's criminal law policy counsel provided an update on Legal Aid Ontario's Bail Strategy, which was formally launched in December 2016. The strategy paper is posted on Legal Aid Ontario's website, and the work that is underway now, including the best practices bail court at the 1000 Finch courthouse, stems from that paper.

The best practices bail court project is intended to challenge the risk-averse environment in which people accept a consent release with onerous conditions rather than opting for a contested bail hearing. This pilot is arming duty counsel with tools, techniques, case law and quick access to bail reviews. There have been four bail reviews so far and all have been successful. Legal Aid Ontario will be analyzing statistics from the 1000 Finch site, but can

already see a shift taking place. Legal Aid Ontario hopes that this model can be rolled out across the province.

With new funding from the Ministry of the Attorney General, Legal Aid Ontario will be funding 16 new duty counsel positions. There will be 10 bail coordinators working with Crown “vettors” in busy bail courts, and six duty counsel on-site within institutions. The new positions have been posted, and Legal Aid Ontario hopes to get the initiative underway as soon as possible. Legal Aid Ontario’s electronic “service integration” worksheet will be a valuable resource for duty counsel working in criminal courts. It will allow for seamless recording of information and enable Legal Aid Ontario to track the success of the bail strategy, for example, by tracking the number of conditions placed on an accused. If the number goes down over time, this will be an indication of success.

Legal Aid Ontario policy counsel for the Prison Law Strategy reported that Legal Aid Ontario will soon be completing work on its draft strategy paper, and provided an update on work done to date. Legal Aid Ontario continues to seek the committee’s views and input.

Consultations to date have highlighted a number of recurring themes. The prevalence of human rights issues affecting inmates has been emphasized, along with the importance of test cases in being able to address some of these issues. Another theme arising from consultations is that legal aid is perceived as being relevant only up to sentencing; there is a lack of awareness of legal aid services. Third, there is an evolving picture of client need in provincial institutions, which is at odds with the traditional view of prison law services as being primarily relevant to sentenced custody in federal prisons. Finally, Legal Aid Ontario has heard that it needs to cultivate relationships in communities where institutions are located, to learn more about needs and further build its credibility as a stakeholder.

Some recent developments were noted, including the release of the Ontario Ombudsman’s report on segregation, the publication of the independent report by Howard Sapers, and announcements in the Ontario Budget.

Updates were provided on some Legal Aid Ontario initiatives. The enhanced inmate services project in Milton, focused on providing holistic services to clients with mental health issues, is continuing. Uptake to date has been modest and Legal Aid Ontario will be strengthening outreach efforts to support this project. The red envelope program at the Ottawa-Carleton Detention Centre, which ensures that persons with mental health issues who are released from court are provided with their personal effects such as keys and medications on release, is currently an ad hoc program that Legal Aid Ontario hopes to support. Meetings at the district level are currently underway. A brief report was provided on Legal Aid Ontario’s test case roundtable event in December 2016, which was well-attended. The roundtable focused on test case litigation to support medical care for elderly and disabled prisoners.

Regarding the form that the new strategy may take, and particularly with respect to potential initiatives in the early stages of the strategy, it was noted that Legal Aid Ontario’s financial circumstances likely point to cost-neutral initiatives rather than those that will require additional

resources. The challenge for Legal Aid Ontario will be responding to the issues in a cost-effective way, and the strategy paper is expected to reflect the concerns that have been identified by the committee, and provide ideas on how to address them. It may not be possible to address all of the concerns raised immediately or comprehensively, at least at first, but different options will be considered.

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

- Members responded positively to the new duty counsel initiatives supporting the bail strategy. They will produce positive results for clients and should also result in cost savings both for Legal Aid Ontario and the Ministry of Community Safety and Correctional Services.
- The importance of properly supported grievances was stressed. Grievances form the record for judicial review. Often the initial level of a grievance is drafted by a prisoner without the assistance of a lawyer and it then becomes the record on which the case must be built, much like a trial record. Cases are often damaged as a result. Assistance is needed in drafting responses to correctional decisions that raise health and liberty issues so that these issues can get before the Federal Court. Legal Aid Ontario was asked to consider certificates for assistance with grievances as part of the prison law strategy.
- The most disadvantaged inmates are the least likely to access services. They are the ones that don't even know they have an entitlement.
- Some client needs, such as those related to medical treatment and transfers to higher security, are immediate and urgent in nature as opposed to longer term. Legal Aid Ontario could consider developing a set of "urgent response" criteria, such as impact on liberty, that would support authorization of a certificate for these kinds of urgent matters so lawyers would be able to respond quickly with the knowledge that they would be paid.
- Up to 80 percent of unmet needs in prison are not prison-specific. Instead, they are civil law needs, such as for assistance with family law matters or wills. Legal clinics provide services in some of these areas and many clinics have at least one detention centre in their geographic catchment area. Some clinics have been contacted by prisoners seeking assistance and would like to help them. The barriers for clinics are logistics and specifically dealing with the layers of bureaucracy in institutions. They don't know how to get access. Clinics already have resources to provide the services, but they lack a contact in the institution or a means to get inside. Legal Aid Ontario could help by training clinic lawyers, perhaps in a one-day workshop, to do what they already do, but in a prison setting.

- A toll-free advice number to reach Legal Aid Ontario or a clinic would be good, although language and literacy limitations need to be taken into account and it was noted that there is no privacy for phone calls. The best access would be to set up a regular on-site clinic where Legal Aid Ontario and clinic lawyers could both be available by appointment to provide advice and assistance in different areas of law.
- Word of mouth is the best way to spread awareness of Legal Aid Ontario and its services.
- The new funding from the province for on-site duty counsel in provincial institutions is a good thing, but finding a means to have duty counsel available on-site in federal institutions to take applications, answer questions about the *Corrections and Conditional Release Act*, and assist with drafting grievances, would also be helpful. It can take days for a lawyer to get into an institution. When duty counsel attend federal institutions now, it is primarily just for the purpose of assisting with disciplinary court matters.
- Perhaps Legal Aid Ontario could take on a role as a repository of prison law information and resources. For example, Legal Aid Ontario could think about expanding awareness of, and access to, programs and options that have the potential to significantly reduce the number of people in institutional custody. Electronic monitoring is expensive, about \$400 per month, but it can change the whole picture of bail if it is used properly and not as a net-widener. In Ottawa and Toronto, there are programs that enable those serving sentences of 90 days or less, for non-sexual offences, to spend only the first two weekends of their sentence in jail; the second two weekends are spent taking a course on how to do volunteer work in their community. The remainder of the sentence is served as house arrest and weekends are spent doing volunteer work. There is also a work-release option that allows people in provincial sentenced custody to get out earlier. Lawyers are generally not aware of these options, although they have been around for years. Also, no one seems to be aware that parole exists on the provincial side. A major difference between federal and provincial custody is that, on the federal side, there are people to tell you what is available, but on the provincial side, there is no information.
- Legal Aid Ontario should consider people in immigration hold under its strategy.
- Human rights issues need to be a priority. They mostly go unnoticed and unreported, and they need to be monitored and addressed.
- Legal Aid Ontario should consider a linkage with the newly-formed Health Care Coalition.
- Legal Aid Ontario was commended for its outreach and work to date on the strategy.

# 6 Other business

None raised.