

Meeting of Legal Aid Ontario prison law advisory committee on October 25, 2017



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1 Committee members

John McCamus (Chair); 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 Guests

Holly Pelvin; Jessica Wolfe

2 Welcome and introductions

Chair John McCamus opened the meeting and welcomed those present.

3 Minutes, May 11, 2017

The minutes of the May 11, 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 Bail Strategy update

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

The Ministry of the Attorney General has provided Legal Aid Ontario with funding for 16 new Bail Strategy positions to support bail system improvement. Ten new duty counsel bail coordinators are now in place in courts, working alongside new Crown bail vettors, and five out of six on-site duty counsel have now been hired to work in jails. The on-site duty counsel have been receiving training and they are learning to negotiate their new environment and build relationships.

Draft key performance indicators have been developed for the Bail Strategy, and they include decreasing the percentage of persons on remand without a bail disposition. These are people who languish in remand detention, and are motivated to plead guilty because they are in a time served position.

Legal Aid Ontario is supporting the Bail Strategy with a number of supports and resources, including training on courageous advocacy and negotiating in difficult situations. Legal Aid Ontario's electronic worksheet, which enables duty counsel to capture client data and record outcomes, will be used at all 16 Bail Strategy sites, each of which has Wi-Fi available.

Legal Aid Ontario has made submissions to support the development of a new Crown policy manual, which will soon be released. Legal Aid Ontario has also developed a bail protocol document that focuses on how bail can be approached procedurally to improve decision-making in bail court. The protocol is not surety-based and supports faster decisions.

The best practices duty counsel bail court pilot at the 1000 Finch courthouse in Toronto is showing very positive results. Its focus is on courageous advocacy and rigorous application of the law at every stage of the bail process and includes access to quick bail reviews. Of six bail reviews brought to date, one was abandoned and all five of the others were successful. There has been a statistically significant decrease in the use of the terms "reside with surety" and "reside with surety daily" at the pilot site, and clients are being released on their own recognizance on an almost daily basis.

6 Presentation on remand custody research

Guest presenter Holly Pelvin presented to the committee on her research focused on experiences of punishment in pre-trial custody. The research involved interviews with 120 people on remand (60 men and 60 women) and 40 staff at 4 institutions in southern Ontario. The presentation highlighted research findings of particular interest to the committee and to planning for Legal Aid Ontario's Prison Law Strategy.

Overwhelmingly, the highest costs associated with the entire remand process are the human costs, and these costs go unrecognized. The disruption of people's lives begins at the point of arrest. People are typically surprised and unprepared when they are arrested and they do not have time to make personal arrangements, for example in relation to childcare or rent payments. At a time when they most need personal contact with family or a partner, their only outside communication in police holding is with a lawyer, usually duty counsel who instructs them not to say anything to the police. Often, people in remand custody do not have meaningful communication with duty counsel, or receive the information that they need, because duty counsel do not know anything about them. If they have a relationship with a private lawyer the experience may be better, because that person will at least, for example, know who to call on their behalf.

Court appearances tend to be extremely unpleasant due to the conditions in holding cells, the long drives (upwards of two hours) that are often required to get to court, and the lack of meals or access to medications. A person may have to endure a 12-hour day with nothing to eat but an energy bar. For this reason prisoners prefer a video court appearance to an in-person appearance, unless the appearance is going to be meaningful. People have no opportunity to contact their proposed surety and no guarantee that their surety will be present in court. Many feel that it is not worthwhile to undergo the effort to seek bail: they are resigned to getting it over with.

Within institutions, people in remand custody continue to be isolated from the people in their lives who would be capable of meeting their immediate needs related to children, housing and banking. Much personal communication is beyond their reach. They can make collect calls to landline phones, but cannot make calls to cellphones. Their calls cannot be transferred, since a transfer results in a dropped call. The institutions struggle to meet the needs of prisoners, particularly those with mental health issues. Space is an issue. There is a problem with lack of access to programs and services. Some people spend their time in remand trying to get off drugs. In fact, health care workers in the institutions can play a role in extending remand, because they will arrange for court dates to be pushed back so that a person can receive a medical diagnosis or get clean. This speaks to a lack of resources in the community.

7 Prison Law Strategy development update and discussion

The update was provided by Legal Aid Ontario policy counsel co-leading the development of Legal Aid Ontario's Prison Law Strategy.

Legal Aid Ontario continues to support prison law litigants through its prison law Test Case Strategy. The strategic priorities for test case work are posted on Legal Aid Ontario's website.

Legal Aid Ontario's involvement in outreach and advocacy since the last committee meeting has included partnering with the John Howard Society of Ontario in drafting a letter to the Ministry of Community Safety and Correctional Services on the issue of the high cost of collect phone calls made by inmates at provincial institutions. Legal Aid Ontario also participated in a Ministry of Community Safety and Correctional Services roundtable on correctional reform in August, and provided a written response to the Ministry's request for submissions. The submission will be posted on Legal Aid Ontario's website.

Consultations on prison law service gaps and the unmet legal needs of prisoners are continuing. Essentially, Legal Aid Ontario has heard that prisoners experience a range of legal needs similar to those of other legal aid and clinic clients. A second layer of legal need that is specific to inmates has to do with their status as prisoners. A third layer has to do with

personal vulnerability factors, such as mental health issues and addictions, commonly found in inmate populations. Service coverage for inmates is often uneven and not well publicized. There is a need for information and outreach. Advice services, in particular, have been identified as a significant gap.

A strategic planning process is being undertaken at Legal Aid Ontario to establish timelines and goals for the development of the strategy. Based on what Legal Aid Ontario has heard to date about needs, gaps and opportunities, three provisional priorities are starting to emerge. Legal Aid Ontario is interested in hearing from members, now or later via email, about the most urgent needs that should be considered for short-term prioritization.

The first provisional priority relates to increasing internal knowledge and building capacity for service provision. This would include clarification of existing policies and available service coverage, and exploring opportunities for training. The second provisional priority relates to improving and expanding legal services for inmates. Some of the service needs identified in consultations point to prioritization of test case work, making advice services available, establishing criteria for issuing certificates in urgent circumstances, and assisting with the non-prison law needs of inmates, particularly in the areas of family law and poverty law. The third priority area would focus on addressing needs through advocacy and systemic reform efforts as well as through outreach and collaboration.

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

- Prisoners lack information about where they can find help and what remedies are available to them. This should be considered a priority by Legal Aid Ontario. Information about Legal Aid Ontario and legal aid services may not be available or visible in many facilities.
- Legal Aid Ontario's new institutional duty counsel may be able to assist with making information available to prisoners and helping them to make connections.
- Getting information into institutions is a significant issue across the province. There are a lot of procedural and administrative barriers to getting information into facilities.
- There is a wide variance in the qualifications of correctional officers. They influence the experience that inmates have. The design of the facility also plays a part. The closed supervision facilities tend to be more inhumane, in terms of the creation of barriers and distance.
- There is an acute lack of information and awareness of how to access assistance from Legal Aid Ontario. This is exacerbated where a prisoner has mental health issues.

8 Other business

None raised.