

DEFENCE COUNSEL ASSOCIATION OF OTTAWA

Written Submissions to Legal Aid Ontario

re: Modernization Roundtable

- 1. Universal online (web based and third party) practice and case management software mandated for lawyers doing certificate work.** The software must have two components: a docketing function and a file management function. Any lawyer accepting Legal Aid Certificates would be required to purchase the software before being approved for any LAO panel. The lawyer would be required to (1) docket all of his or her time using the software, and (2) use the software to organize all of his or her LAO files – i.e. on a criminal file, save the disclosure, legal research, notes from attending in court and all prep work using the software. LAO would have access to this file via the same software's online portal, given that LAO is part of a joint retainer between the lawyer, LAO and the client. LAO could in turn use their access to perform a more streamlined quality assurance check or audit at any time.

Some examples of a web based, third party program providing this function include Cosmolex, CLIO, PracticePanther, and AbacusLaw. Using one of these programs provides two benefits to LAO. First, a web based platform allows lawyers to access the software on their laptop, smartphone, or tablet from anywhere with an internet connection. Second, a third party program avoids LAO having to develop the software internally, and substantially passes on the cost of a subscription to the lawyer.

What consultation question does this address? Question 5: How to strengthen quality assurance within the legal aid system.

How does this improve client-centered services? Requiring lawyers to comply with more rigorous docketing and case management/organization practices will assist lawyers in being more accountable to and transparent with Legal Aid. In turn, LAO will be able to monitor and audit lawyers more effectively and efficiently, ensuring quality client-centered services are being provided to the clients.

- 2. Joint DCAO/LAO educational programming.** LAO has identified a number of areas where further professional development would be beneficial to lawyers accepting certificates, for example, *Gladue*.¹ The DCAO would like to work with LAO to run nimble, inexpensive – if not free – continuing professional development programs targeting the areas of concern identified by LAO. The DCAO has a long tradition and established expertise in running high quality, effective and often, free, CPD programming, offered not only to its members, but to LAO staff, crown attorneys and other members of the bar. As part of LAO's commitment to ensuring that quality services are provided to the client, LAO could mandate that lawyers on the criminal panel in Ottawa and the surrounding area complete a

¹ LAO Document, *Client-Centered Services*, Summary of Client Feedback, p. 5.

certain number of these DCAO/LAO programs, and have lawyers report their compliance through the LAO portal.

What consultation question does this address? Question 5: How to strengthen quality assurance within the legal aid system.

How does this improve client-centered services? By working with the local defence bar's association, Legal Aid will be able to ensure that lawyers accepting certificates – i.e. criminal certificates – are receiving regular CPD in the areas identified by LAO as its key concern.

- 3. Delegate panel management to local organizations.** One of the most significant issues with lawyers accepting legal aid certificates is lawyers practicing without any meaningful mentorship or supervision from a firm or senior counsel. There can be no doubt that this is one of the most common areas of concern when reviewing historic complaints arising from clients in relation to lawyers. The DCAO is invested in its members providing high quality legal services to persons charged with criminal offences in the East Region. Allowing the DCAO to manage entry and renewal of panel membership would allow a more robust approach to what is required for continued panel membership. We envision a process of enhanced requirements for panel entry, and mandatory legal education that would go far beyond the minimal requirements currently imposed by the Law Society. We think a panel management system run by the local association, in partnership with local legal aid managers, would increase quality assurance in a very significant way.

What consultation question does this address? Question 5: How to strengthen quality assurance within the legal aid system.

How does this improve client-centered services? By delegating the responsibility of managing who can be on the criminal certificate panel to the DCAO, LAO would ensure that less experienced counsel accepting certificates would be mentored and supervised by more experienced members of the bar.

- 4. Consider amending *LASA* to de-fund non-core services.** The *Legal Aid Services Act* requires that the Corporation of Legal Aid Ontario provide legal aid services “in the areas of criminal law, family law, clinic law and mental health law”.² The term “clinic law” is defined as “the areas of law which particularly affect low-income individuals or disadvantaged communities”, including matters of housing and shelter, income maintenance, social assistance, human rights, health, employment and education.³ While these are important services, other provinces do not fund these areas. The Auditor General’s 2018 report on Legal Aid determined that Ontario has the highest expenditure of legal aid per person at \$33 when compared with other provinces in territories. The report concluded that part of the reason for this high cost is because Ontario funds poverty law through the clinic system, covering areas such as landlord and tenant, employment, human rights, and social

² *Legal Aid Services Act, 1998*, SO 1998, c. 26, s. 13(1).

³ *Legal Aid Services Act, 1998*, SO 1998, c. 26, s. 2, “clinic law”.

assistance matters. None of these areas are funded in British Columbia.⁴ If LAO considered removing non-core services, such as ODSP/social assistance matters, human rights files, employment files, civil files, and landlord/tenant files, from its funded services, it would see a significant cost savings. Given the reduction in LAO's operating budget in 2019, and the reductions currently planned for the next two years, any changes to *LASA* must consider and assess what services are most important to the province going forward.

What consultation question does this address? Question 6: How to build a legal aid system that is both responsive to client need and sustainable.

How does this improve client-centered services? With a sizeable reduction in its budget in 2019, and forecast reductions in 2020 and 2021, LAO must re-evaluate what areas of law it funds, and what core areas of service should be retained, in order to continue to provide effective service. A good starting point is a comparison with other provinces, particularly provinces with similar population sizes to Ontario. Given that British Columbia does not fund social assistance matters, human rights files, employment files, civil files, and landlord/tenant files through clinics, this may be a good starting point for Ontario to consider.

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⁴ Office of the Auditor General of Ontario, 2018 Annual Report, Chapter 3: Reports on Value-for-Money Audits, Section 3.05 (Legal Aid Ontario), Online: http://www.auditor.on.ca/en/content/annualreports/arreports/en18/v1_305en18.pdf, at p. 271.

