

REFUGEE LAWYERS ASSOCIATION OF ONTARIO

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Legal Aid Ontario
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By e-mail: opengovernment@lao.on.ca

Submissions: Open government at Legal Aid Ontario

The Refugee Lawyers' Association of Ontario is an association of over 300 members. The RLA membership is primarily made up of lawyers practicing refugee law in the province of Ontario, including lawyers in private practice, employed by Legal Aid Clinics and Legal Aid staff lawyers. It has an active listserv serving as a forum for discussion by refugee lawyers across Canada. Most of its members do Legal Aid work in practice.

The RLA has a long history of involvement in discussions with Legal Aid Ontario with respect to Legal Aid policies and administration. It regularly takes part in consultative meetings with LAO and is part of the Alliance for Sustainable Legal Aid. It is committed to promoting access to justice.

General principles:

The value of open government in relation to Legal Aid Ontario should be

understood in terms of promoting accessibility of Legal Aid services, helping stakeholder groups work with Legal Aid and promoting the public's understanding both of how Legal Aid is administered and the importance of its work.

These ideals must be balanced against other important values.

As an administrative concern, plans or demands for preparation of materials to be published should not take up a disproportionate amount from a budget which is already inadequate in relation to the needs LAO is mandated to address, let alone the further needs that can readily be identified to ensure broader access to justice.

It is important to ensure the protection of the privacy of individual clients, and recognize that privacy can be violated indirectly through release of data that can be interpreted and correlated to individuals. This is particularly so as many of the clients Legal Aid serves are vulnerable or marginalized within society.

Policies should also facilitate service providers and community groups working with LAO, rather than discouraging engagement.

Openness with service providers and stakeholder community organizations:

LAO's Open Government consultation paper discusses the concept of release of information at a broad and conceptual level. Defining the quality of engagement broadly, LAO should be providing stakeholder associations with candid and timely information about its administration and policy development.

The Ministry of the Attorney General should also reiterate that open discussion with stakeholders is approved of. Discussions and information sharing are at times hampered by sensitivity to whether the MAG would approve of information being shared.

The quality of information sharing and engagement is more significant than the volume of data, particularly as most representatives of stakeholder associations volunteer their time.

LAO regularly provides representatives of the RLA and other associations with data. The substantive significance and timeliness of information shared to understanding and taking part in meaningful discussion about Legal Aid decision-making is what is, in practice, most significant. Defining policy such that it encourages substantive and candid engagement is what tends to be most significant to stakeholder groups.

Specific proposals in the consultation paper:

Panel management process:

The RLA long advocated for stricter panel standards, and has been involved in extensive discussions with LAO with respect to the substantial reform of the Immigration and Refugee Law panel it implemented. We agree that informing the public about the panel's standards and how panel management works is helpful not only in promoting public confidence, but also in ensuring clients and community workers assisting them understand how they can ensure practical concerns they have with service are dealt with by LAO.

As a practical measure, we recommend that the lists of lawyers on each panel be made public. This would be in keeping with the statute, which states that Area Directors are to release panel lists on request. These should be available on LAO's web site, so that people looking for a lawyer and community workers assisting them can readily know which lawyers may accept Legal Aid work.

As the consultation paper acknowledges, publishing removals from the panel

may distort the significance of this as many lawyers leave or are removed from the panel for reasons unrelated to substantive concerns with competence or ethics. As well LAO's actual process for resolving substantive concerns is relatively informal and does not have the checks and balances of the Law Society of Upper Canada's disciplinary tribunal. Where LAO has concerns significant enough that a complaint should be referred to the LSUC, it should do so. That in turn may lead to publication of information, in a quasi-judicial context. For stakeholders and the public, a clear policy statement with respect to what LAO's criteria are for referring a matter to the LSUC would be helpful.

Publication of billings and clinic salaries:

Both the RLA and the Alliance for Sustainable Legal Aid have already stated opposition to the publication of private lawyer billings and clinic lawyer salaries. This would be an intrusion into the privacy of lawyers providing service to Legal Aid Ontario which would likely deter lawyers from accepting Legal Aid and lead to some lawyers ceasing to do Legal Aid work or reducing their work with Legal Aid. In some instances publication may also lead to breach of client privacy.

For lawyers in private practice, publication of billings would also distort the representation of the earnings as it would impractical for this to take into account overhead.

Substantive efforts at quality assurance, such as the implementation of panel reform standards are more rationally connected to promoting the public interest in promoting access to justice. A demeaning approach would, to the contrary, reduce the number and quality of lawyers willing to work with Legal Aid, which in turn harms access to representation. Unlike medicine, where the norm is for doctors to work with public funding, only a small minority of lawyers are willing to do LAO work.

Conclusion:

In summary, we encourage the adoption of policies which would further promote engagement of Legal Aid stakeholders and access to justice. Government and Legal Aid Ontario should prioritize the substantive worth of publication of information in relation to those ideals.

Yours truly, on behalf of the Executive and the Association,

A handwritten signature in black ink, appearing to read 'R Boulakia', with a stylized, cursive script.

Raoul Boulakia

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