



SOCIETY *of*
UNITED PROFESSIONALS
IFPTE 160

Legal Aid Ontario Modernization Consultation Submission

LEGAL AID ONTARIO LAWYERS' LOCAL
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INTRODUCTION

The Society of United Professionals (“Society”) welcomes the opportunity to provide the insights of our members directly to Legal Aid Ontario and indirectly to the Attorney General of Ontario. We share the interests of Legal Aid Ontario and of the Attorney General of Ontario in ensuring the long-term effectiveness of Legal Aid Ontario, and in providing high-quality, cost-effective assistance to low-income Ontarians.

The Society represents nearly 400 Legal Aid Ontario staff lawyers and articling students. In addition, the Society represents legal aid clinic staff from the Chinese and Southeast Asian Legal Clinic, Aboriginal Legal Services and Willowdale Community Legal Services. Our submissions were prepared only on behalf of and based on the input of our Legal Aid Ontario lawyer members. In order to prepare our submissions, we conducted a detailed survey of our Legal Aid Ontario lawyers’ membership. We also invited individual feedback and held multiple focus groups.

We hope that this paper and our meetings with Chair Harnick and the senior executives of Legal Aid Ontario are the beginning of an ongoing, cooperative relationship between the Society and Legal Aid Ontario. We look forward to any opportunity to work with Legal Aid Ontario in the next steps of developing Legal Aid Ontario’s submissions and recommendations to the Attorney General of Ontario.

We have organized our submissions based on the Terms of Reference as set out in the Legal Aid Modernization Project. Ultimately our submissions focus on:

- Prioritizing the Needs of Low-Income Clients,
- Value for Money Recommendations, and
- Accountability and Quality Assurance.



THE ELEPHANTS IN THE ROOM

LEGAL AID ONTARIO FUNDING CUTS

Enhancing access to legal aid services and addressing gaps in services is impossible without first acknowledging the effects of the 35% cut to Legal Aid Ontario's funding. The cut, amounting to \$133 million in the current year, and increasing to \$164 million by 2021, will add other financial costs and create delays in an already overburdened court system.

Every dollar invested in justice typically brings societal returns that are significantly greater than the initial investment. Law Professor Trevor Farrow, as Principal Investigator for the Canadian Forum on Civil Justice (CFCJ), a not-for-profit based out of Toronto's Osgoode Hall Law School, confirms investment in justice creates significant savings in the end in terms of housing costs, medical costs, and social assistance costs.¹ International research has found that every \$1 investment in legal aid leads to a \$6 savings in public spending for income supports and shelters, by speedily resolving legal disputes.²

Our submissions to follow should not be interpreted as endorsing the view that the same access and quality of legal services are available to low-income Ontarians despite these cuts. The Society believes that improved delivery of legal aid services is impossible without a restoration of the funding. We are committed to continuing our campaign to reverse the provincial government's cuts and to restore funding to Ontario's legal aid system. We invite Legal Aid Ontario to join us in this pursuit.

Similarly, while we do not expect this government to make the change to the *Legal Aid Services Act*³ to include immigration and refugee services in the specified areas of law for which Legal Aid Ontario shall provide services, we believe that this amendment is necessary to ensure access to justice for the most vulnerable. Stable funding must be found for immigration and refugee legal services. We support Recommendation 1 of the 2019 Auditor General Report: that Legal Aid Ontario work with the Ministry of the Attorney General and the Federal Government to obtain a more predictable and appropriate proportion of expense coverage from the federal government.⁴ This does not mean however that we believe that the Ministry of the Attorney General should not be responsible for any funding of immigration and refugee legal services. We believe both governments must assist in this funding.

ANTIQUATED COURTS AND OTHER BARRIERS TO ACCESS TO JUSTICE BEYOND LEGAL AID ONTARIO

We would be remiss if we did not also make mention of the pressing need for modernization and the need for the Attorney General to address the significant barriers to access to justice within the justice system and the courts themselves. A review of the justice system is beyond the scope of this paper. However, in

¹ "Researchers to follow legal aid clients for year-long access to justice research project," July 10, 2019, Lawyers Daily,

<https://www.thelawyersdaily.ca/articles/13591/-researchers-to-follow-legal-aid-clients-for-year-long-access-to-justice-research-project>

² Canadian Bar Association Access to Justice Committee, Study on Access to the Justice System – Legal Aid (Canadian Bar Association, 2016) <https://www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a>

³ O. Reg. 106/99: ADMINISTRATION OF SYSTEM FOR PROVIDING LEGAL AID SERVICES under Legal Aid Services Act ("LASA"), 1998, S.O. 1998, c. 26.

⁴ Auditor General Report, 2018: http://www.auditor.on.ca/en/content/annualreports/arreports/en18/v1_305en18.pdf.



our opinion, efforts to modernize and increase efficiencies within Legal Aid Ontario should in fact come after addressing the issues in the larger justice system. The Auditor General's Report itself identifies a number of such issues and makes recommendations to the Ministry of the Attorney General.⁵

Additionally, modernization or a restructuring of such processes as court appearances would lead to immediate and substantial changes in which services Legal Aid Ontario needs to provide. If court appearances could be made electronically or if the Ministry of the Attorney General would make allowances for counsel to appear remotely or not at all, there would be no need for either Legal Aid Ontario to fund agency work by staff lawyers or appearances by counsel or for clients to attend on their own. Currently, due to the funding cuts, Legal Aid Ontario has restricted agency work by staff lawyers but we believe that this has led to the negative consequence of increased bench warrants being seen provincewide. Incarceration, new charges potentially and additional court proceedings resulting from such consequences will result in increased financial costs to the government. Finally, there needs to be an acknowledgement that the policies and practices of the Ministry of the Attorney General including the decisions to charge and prosecute low-level offences take up valuable court resources and Legal Aid Ontario resources.

⁵ Ibid.



PRIORITIZING THE NEEDS OF LOW-INCOME CLIENTS

In our opinion, Legal Aid Ontario should prioritize the needs of its low-income clients above all else. We believe the following recommendations are the best ways to achieve this goal.

LEGAL AID ONTARIO BOARD OF DIRECTORS: PROVIDING FOR THE PERSPECTIVE OF CLIENTS THROUGH FRONTLINE STAFF LAWYERS

Board Composition

The Legal Aid Ontario Board of Directors is entrusted with governing and managing the affairs of Legal Aid Ontario.⁶ Its composition is currently mandated under Section 5(2) of the *Legal Aid Services Act* with all members appointed by the Lieutenant Governor in Council based on recommendations and selections enumerated in that subsection.

We are both pleased and confident in the current composition of the Legal Aid Ontario board of directors and in particular the appointment of Charles Harnick as the Chair of the Board. Mr. Harnick is experienced and eminently qualified, moreover, we have been pleased by Mr. Harnick's communication and interest in consulting and collaborating with the Society, as well as with other stakeholders.

We believe that having the Attorney General as the sole selector of members of the board is not in line with the goal of legal aid being low-income client-focused. While currently the Law Society may make recommendations to the Attorney General this is also not a client-focused approach. It is our recommendation that *LASA* be amended such that parties other than the Attorney General and the Law Society may make selections and recommendations for selections for persons to sit on the board. We would recommend that the Attorney General select no more than five members of the board. The remaining members of the board should be selected by a variety of organizations including but not limited to the Law Society of Ontario. One seat should be reserved for the Society of United Professionals to select the member. We believe that the Society is well situated to select persons for the board of directors who will understand and reflect the needs of the low-income clients as this is who our members serve day in and day out on behalf of Legal Aid Ontario. We propose that other seats on the board be selected by organizations that represent the providers and/or users of legal services by low-income Ontarians, with a particular focus on agencies representing equity-seeking groups overly represented in the justice system, rather than by the Ministry of the Attorney General.

For these same reasons, we propose an amendment of section 5 of *LASA* to include "At least one member of the board shall be a person possessing previous direct experience as a front-line staff lawyer for Legal Aid Ontario." We believe that previous experience providing direct legal service as a staff lawyer provides a unique perspective on low-income client needs that is not captured by the current criteria.

In order to successfully fulfill its mandate, we also suggest that members of the legal profession be better represented on the board of directors. We propose an amendment to subsection 5(6) of *LASA* that

⁶ *LASA* S. 5(1)



presently sets a requirement that most of the members of the board be persons who are non-lawyers. In our view, demonstrated experience in the legal field, and in particular the specialized legal needs of and the provision of legal services to low-income individuals and equity-seeking communities, is a critical criterion for selection.

This is not to say that candidates should not be considered from other sectors. We encourage the selection of board members with the appropriate knowledge, skills and experience from a diversity of backgrounds. However, we are of the view that the many years of education and experience possessed by legal professionals can only assist in the proper governance of this organization.

We support and wish to see further development of subsection 5(5). Legal Aid Ontario must ensure that the diversity on the board is not just in industry background or professional expertise, but also in gender and ethnicity. It has been consistently demonstrated that diversity in views and perspectives results in success⁷.

Advisory Committees

The Society recommends that there be a review of the current advisory committees to the board of directors. We propose that there be an advisory role to the board for the Society. As representatives of the staff lawyers at Legal Aid Ontario, we are well-situated to provide input to the board on changes that impact low-income clients. We are well situated to gather input from our members on Legal Aid Ontario initiatives, their implementation and the success and barriers to success of the initiatives. Our members are proud of the work they do as Legal Aid Ontario lawyers and have a direct interest in finding efficiencies and in improving legal services to clients.

Additionally, we believe that there is greater value that could be brought to bear from even the current board advisory committees. We note that on the external website for Legal Aid Ontario the last updates of minutes of the advisory committees is from 2017. It is our belief that a sharing of the advisory committee minutes generally, but specifically with our members and with an encouragement for them to participate in a process of advising the board through a Society advisory role will provide added value.

IDENTIFYING THE NEEDS OF LOW-INCOME ONTARIANS THROUGH MEANINGFUL CONSULTATION

Creating opportunities for our members to report ideas and to identify issues and needs of low-income Ontarians in need of legal aid services would go a long way toward helping to drive improved organizational outcomes. Our members are frontline professionals with significant expertise and direct client ties. Through this expertise and experience, our members have an understanding of the needs of their clients as well as of the systems and services that do or are intended to serve clients. Our members

⁷ Many reports and studies over the past decade substantiate this. For example, “Delivering through Diversity” by McKinsey & Company, dated January 2018.

https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Organization/Our%20Insights/Delivering%20through%20diversity/Delivering-through-diversity_full-report.ashx

The report finds that “companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability”. Further, “overall, companies in the bottom quartile for both gender and ethnic/ cultural diversity were 29% less likely to achieve above-average profitability than were all other companies in our data set”. This report’s research is based on a large data set of over 1,000 companies covering 12 countries.



also hold a strong commitment to their clients and to Legal Aid Ontario. Our members are uniquely positioned to offer service recommendations and improvements and yet are not properly engaged to do this by Legal Aid Ontario. The Law Society of Ontario has also raised these same concerns about the need for stronger relationships between stakeholders and Legal Aid Ontario. Like us, the Law Society seeks for stakeholders to receive more openness and transparency, as well as to have more meaningful opportunities to contribute to decision making. These stakeholder relationships have eroded over the past decade.⁸

There is a strongly held view among many stakeholders that Legal Aid Ontario makes policy decisions without sufficient, genuine or timely consultation.⁹ There is an existing concern among our members that Legal Aid Ontario senior management does not foster dialogue with frontline staff prior to changes being approved and put in motion. Furthermore, in a recent survey of our membership, more than a quarter (26%) of respondents reported having shared a service recommendation with management yet never received a response to their suggestion from management.

It is our submission that Legal Aid Ontario should not be identifying the needs of low-income Ontarians and creating policies and priorities for the areas of law in which our members practice without timely and substantial input from our members. In our member survey conducted in preparation for this submission, more than half of respondents rated “Legal Aid staff who provide the services” as the most useful resource for Legal Aid Ontario to determine the needs of low-income Ontarians. This was followed by the clinics, interest-based advocacy groups and organizations advocating on behalf of low-income Ontarians.

We would recommend the development of online consultation where policy counsel and executive decision-makers would liaise with staff via an online forum on current issues the policy department is considering and provide an opportunity to comment. We also propose that management hold regular meetings with the Society and directly with frontline staff, consulting with them specifically when devising policy changes that will affect service delivery. We would hope to see the recommendations and feedback of our members being provided to the decision-makers without significant filtering.

Consultation and engagement with frontline staff would bring a much-needed balance to policy and other similar decisions made by Legal Aid Ontario executives. Further to that end, we propose that Legal Aid Ontario engage smaller regional groups rather than simply issuing organization-wide communications; this will allow for regional needs to become apparent and foster involvement. Clients experience specific challenges to obtaining service in different regions of Ontario. We believe our members are well-suited to assisting Legal Aid Ontario in addressing region-specific challenges if given an opportunity to provide input. We also propose province-wide meetings and team meetings to share information regionally; this would enhance service delivery and identify the needs of low-income Ontarians and gaps in service.

⁸ Law Society of Ontario, “Report of the Legal Aid Working Group: An Abiding Interest” Report to Convocation, January 25, 2018, <http://www.lawsocietygazette.ca/wp-content/uploads/2018/02/2018-LAWG-Report.pdf>

⁹ Ibid, pg 19.



SOCIETY BELIEFS ON LOW-INCOME NEEDS

ACCESS TO LEGAL SERVICES

Low-income clients require the same access to legal services as the rest of the population. The justice system itself is not user-friendly to self-represented litigants; it is challenging to navigate, there are lengthy wait-times for access to services but also for access to the courts themselves. Having in mind that the courts were clearly designed to be used with the assistance of lawyers, one can appreciate the significant barriers that exist in accessing justice by low-income Ontarians who cannot afford counsel.

In an ideal system everyone who cannot afford to hire a lawyer would have access to the same level of legal services. Unfortunately, we are not working with an ideal system. There are currently significant gaps in service to low-income Ontarians, including:

1. Financial thresholds for certificate and duty counsel, staff lawyer and clinic services remain too low. An increase in eligibility to those services is required;
2. Legal eligibility requirements preventing much needed access to legal services, particularly for vulnerable clients;
3. Significant challenges for clients in determining whether or not they will qualify for services and for what services they will qualify as well as where and how they go about obtaining those services and determining eligibility; and
4. Reduction in services as a result of the cuts to funding.

Recommended Changes to Financial Thresholds

We submit that the financial eligibility thresholds need to increase. If an increase in the financial threshold for certificates is not possible, we propose that at a minimum the financial eligibility for staff lawyer legal aid services be increased. Increasing access to Legal Aid Ontario staff lawyers is cost-efficient for the province and is a service improvement that will benefit the greater community. Already the staff exist in the locations where these services would be provided.

We propose that the financial eligibility criteria be simplified for staff lawyer services. Our members report that the process and time taken to conduct the financial eligibility test is substantial. The test is not suited to the fast-paced services that at times staff lawyers provide. We submit that there should be a more involved financial eligibility test, commensurate in complexity to the current test, for more involved staff lawyer services but that a simple test is necessary for simpler services. Ideally, this simpler test would have a higher threshold given that the services provided are lesser and less costly to Legal Aid Ontario but likely with a high impact on reducing the costs to the justice system.

Recommended Changes to Legal Eligibility: Vulnerable Clients and Discretion

Staff lawyers that give immediate legal assistance to people appearing in court without a lawyer are well positioned to properly triage legal matters that merit a legal aid certificate from matters that do not. Our members believe that it should be frontline managers, supervisory duty counsel and duty counsel themselves who should have the discretion to recommend the issuance of a certificate.



We generally support the proposition that our members should be able to assist with drafting minutes of settlement, simple motions to change (i.e., child support, arrears), provide representation in settlement conferences and negotiate or draft agreed statements of fact and simple applications. At a minimum, document drafting services should be available for individuals with literacy issues and other such vulnerabilities. This is particularly crucial in the family law context for motions to change and applications. As an example, in the family law context situations where there is no responding party. Our family law staff lawyers propose to retain the ability to assist in the initial drafting of materials and where the situation becomes more complex, such as the client being served responding materials by the other party, the necessity for a certificate be reviewed. These services provide a high value to clients and save significant costs to our legal aid and court system.

We maintain that vulnerable groups should be able to access legal aid certificates where the case is complex, where the impact of the case would be significant and potentially detrimental (as examples, loss of housing or risk of deportation upon conviction) or where certain client vulnerabilities are identified.

Legal Aid Ontario should also consider other criteria for eligibility to receive services because personal impact for individual clients vary. Eligibility criteria should be reconsidered to better determine jeopardy. In the criminal context, a custodial sentence is not the only negative outcome that can have a detrimental impact on someone's life, losing social assistance and/or housing or other supports, a first conviction resulting in a criminal record, are other examples that have significant detrimental impacts on potential clients.

Improving Client Ease of Access to Legal Aid Services

Duty counsel or other staff lawyer offices should be hubs of Legal Aid Ontario services that provide certificates, referrals to other services, legal advice and full legal representation in limited circumstances. Nearly 90% of member respondents in our survey agreed that access to justice would be improved by having onsite access to make legal aid applications.

The call center is not providing sufficient certificate services. Almost 50% of respondents in our survey reported a minimum of once daily having a client appear before them who has been recommended by duty counsel for a certificate and referred to the call centre to obtain one but then had been sent back to the duty counsel office not having received a certificate. That number jumps to 2/3 of respondents when we add in respondents who reported weekly such occurrences. The availability of onsite legal aid certificate issuance will remedy this situation. Communication between the call centre and staff offices such as the duty counsel offices would also assist.

We propose that Legal Aid Ontario develop an internal directory of Legal Aid Ontario services and of specialized outreach services available to the call centre and for Legal Aid Ontario staff. This internal province-wide directory would be available to call centre employees and staff to consult when assisting Ontarians that cannot use the services available before them. In our recent membership survey, more than half of respondents (54%) reported that Ontarians attending or calling their office seek advice or information that their office does not provide. Nearly half (47%) of survey respondents reported that their office did not have the resources available to direct clients to the appropriate service provider.

We envision addressing this gap in the continuum of services by creating an ability for the call centre and our members to refer clients directly to the appropriate provider by supplying a client the name, location,



contact information and hours of a professional that can assist them. Consideration should also be given to increased communication between the call centre and staff offices and clinics where the call centre employee would make a specific office aware that a referral was made to a client and that their attendance is expected and ensure the appropriateness of the referral.

In the course of our focus groups, many of our members told us that they are not clear on the activities and roles of many of the departments within the organization. We propose that this lack of knowledge contributes to gaps in services to the Ontario public. At present, there is no internal, up-to-date Legal Aid Ontario staff directory. This is a vital resource that is not presently available to our members. To properly serve their clients, our members require a staff directory where they can easily identify the name, contact information and position of each Legal Aid Ontario employee, with a brief description of the activities of each department and of the positions and roles of the employees.

In order to facilitate improved access to justice, we propose the creation of an all-encompassing service directory accessible via telephone (akin to a 211 service) and online portal to the Ontario public. The Portal would provide guidance to specialized outreach services for under-served populations. Consideration should be given to enhance the online guide to law in Ontario “Steps to Justice” (<https://stepstojustice.ca/>) by including such a directory.

We propose that this directory be created by Legal Aid Ontario with the participation of legal aid clinics and the Ministry of the Attorney General. Consideration should be given to include the participation of other Ontario ministries in appreciation of the many overlapping areas of service to the Ontario public. We envision a user-friendly, accessible directory that persons of differing abilities can consult online and easily identify available services depending on the issue(s) they are facing.

Finally, we believe that an additional and significant impediment to access to justice to low-income Ontarians is the title of Duty Counsel itself. We support Legal Aid Ontario’s position that the title of Duty Counsel should be removed from the lexicon. It would be highly desirable for this to be made clear in amendments to *LASA* and its Regulations.¹⁰ We identify the title as itself a barrier to access to justice due to the confusion it creates. Clients are unable to recognize whether they are receiving legal advice versus legal information from a non-lawyer. Our members have witnessed clients advising the courts that they have spoken to duty counsel when in fact they have spoken to someone from the office who is not counsel. In our opinion, there is a high likelihood of this problem leading to miscarriages of justice.

Recommendations on Reinstatement of Specific Service Cuts

We have already prepared and presented submissions to Legal Aid Ontario in June of 2019 without receiving any meaningful feedback. We made recommendations for when it might be appropriate, from a cost-saving and client-service perspective, to provide legal aid certificates to private counsel to conduct some bail hearings. Examples of these circumstances included special bail hearings that required the greater part of the day and requiring the staffing of an additional courtroom or where counsel is appointed under subsection 85(2) of *LASA* or where the Crown is seeking to cancel an existing release and where counsel has reviewed outstanding disclosure and has had pre-trials with the Crown and where triable issues will likely be relevant during the show cause hearing.

¹⁰ *LASA*



Similarly, in the family law context, we outlined for representatives of Legal Aid Ontario that the reduction in duty counsel services would result in an increase in costs to Legal Aid Ontario directly as the other party in many matters will have counsel funded by Legal Aid Ontario and proceeding will be time consuming due to the lack of legal assistance by duty counsel. This says nothing of the increased court costs to the Ministry of the Attorney General in both family and criminal courts by having an increased number of self-represented litigants/defendants.

We further suggest that impact on services will be very different in different regions. For example, restricting speaking to matters for private counsel or challenging bench warrants or doing bail variations is identified as a service of much more significance in the North where travel distances are an added cost and challenge to court attendance and communication via cellphone and or the use of internet is more limited. Engaging in regular communication with frontline staff of regional offices is crucial in order to appreciate the specific challenges of the diverse communities we serve.

RE-EVALUATION OF LEGAL AID ONTARIO WORK AND POSITIONS FROM A CLIENT-FOCUSED PERSPECTIVE

Legal Aid Ontario should re-evaluate its work and positions from the top down of the organization in order to determine if its work is being done in the interest of the low-income clients. Our members are of the opinion that the work of Legal Aid Ontario is often developed at a high managerial level without a complete understanding of the needs of the clients and of the service-providers on the ground.

IMPROVE EQUITY, DIVERSITY AND INCLUSION AT LEGAL AID ONTARIO

Legal Aid Ontario must ensure that the organization has diversity in their executive team and board; not just in industry background or professional expertise, but also in gender and ethnicity. It has been consistently demonstrated that diversity in views and perspectives results in success¹¹. The overrepresentation of certain equity-seeking groups in the justice system makes this of particular importance for Legal Aid Ontario as an organization. We believe that it is crucial that the make-up of the organization reflects the make-up of the clients to whom Legal Aid Ontario provides legal services. Consequently, Legal Aid Ontario must be required to ensure that substantial diversity targets are met in its staffing efforts at all levels of its organization.

¹¹ Many reports and studies over the past decade substantiate this. For example, “Delivering through Diversity” by McKinsey & Company, dated January 2018.

https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Organization/Our%20Insights/Delivering%20through%20diversity/Delivering-through-diversity_full-report.ashx

The report finds that “companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability”. Further, “overall, companies in the bottom quartile for both gender and ethnic/ cultural diversity were 29% less likely to achieve above-average profitability than were all other companies in our data set”. This report’s research is based on a large data set of over 1,000 companies covering 12 countries.



VALUE FOR MONEY RECOMMENDATIONS

Legal Aid Ontario is a publicly funded organization providing a vital service through the provision of legal aid to low-income Ontarians. The employees who directly provide those services have a wealth of expertise and experience in their respective fields. It is our recommendation that Legal Aid Ontario tap into this extensive resource in the following ways:

COLLABORATION BETWEEN DECISION-MAKERS AND SOCIETY MEMBERS

As outlined above, our members possess a wealth of knowledge and training in addition to direct client-service experience and day-to-day experiences in the justice system. They are available and eager to collaborate directly with Legal Aid Ontario decision-makers to improve policy and other service provision decisions. We believe that there will be immediate and lasting direct savings to Legal Aid Ontario through engaging frontline staff. These savings would result from both improvements service efficacy but also through the elimination of positions that currently serve as filters for that information. Additionally, areas where there may be duplication of managerial duties should be identified. There is a widespread belief among our membership that as a professional service, staff lawyers do not require the layers of management presently in place at Legal Aid Ontario. Many of our members have advised us that they have little to no knowledge of the role and activities of executive leadership and senior management. Where there is not duplication of duties, increased communication and clear identification of the roles and assigned duties of upper management would assist in addressing this issue. This, too, ties into the reported dissatisfaction of our membership (and other Legal Aid Ontario staff) with executive leadership. In the Society's Employee Engagement Survey just 26% of our members held a favourable overall opinion of Legal Aid Ontario executive leadership, which is the same percentage of members that have confidence in the executive leadership's ability to achieve Legal Aid Ontario's goals.¹²

Even within policy development, it is our understanding that greater value for money and efficiencies could be obtained through less filtering of and restrictions on the research and the ideas of those tasked with developing policies and new initiatives. With greater freedom and direct communication with the ultimate decision-makers we believe that a greater wealth of ideas will be developed and creativity will flourish.

ENCOURAGE OUR MEMBERS TO PROVIDE DIRECT INPUT IN IMPROVING LEGAL AID SERVICES

Our members are well-suited to provide direct input and make recommendations to Legal Aid Ontario. We believe that their knowledge is wasted in not being permitted, supported and encouraged to provide direct input, to make recommendations and to work with other stakeholders. Often it is our members, as frontline service providers, and not management, who are best able to speak to issues in our courthouses.

¹² See December 2017 LAO Society Lawyers Engagement Survey Report, Talent Map, Executive Leadership, pg 9. 189 of our members participated in this survey from October 25 to November 10, 2017.



In our experience, however, Legal Aid Ontario frequently prohibits our members from participating directly in this manner. Instead, Legal Aid Ontario requires information to be filtered through management, which often leads to it never reaching the individuals who could make use of the information. This negatively impacts client service, access to justice and employee morale directly, and is also an issue of value for money.

TOOL AND RESOURCE DEVELOPMENT SHOULD BE BOTTOM UP

Legal Aid Ontario should be developing tools and training based directly on the needs of low-income Ontarians and those who are directly serving them. Tools, resources and training should not be based exclusively on the views of management who are isolated from the clients and work in the courtrooms.

One example is the Management Information and Information-Technology Strategy and in particular Service Integration. This has been the source of significant problems for our members due to the myriad issues that have plagued the rollout of this particular tool and its ineffectiveness at addressing the challenges faced by our members in providing legal services.

Many members reported that what purported to be technological advancement has become an impediment to service delivery. The introduced technology as it stands is not user-friendly and does not properly address the everyday needs of many in our membership. Meaningful consultation among the members that will be using any proposed technology is crucial. Technology should consider the perspective of its everyday users as opposed to directors and managers. Legal Aid Ontario's approach led to the purchase of equipment and the development of software that is not critical nor efficient in the delivery of legal services.

In the course of our focus groups, our members told us that the introduction of iPads has not properly addressed their workplace needs. Our members in criminal law duty counsel offices told us that many offices do not have the required number of laptops with access to a CD/DVD drive – equipment that is crucial for the review of a client's disclosure which is usually provided on DVD.¹³ Meaningful summary legal advice is impossible without access to a computer with a CD/DVD drive. Others told us that their ability to type rapidly and efficiently is impeded on an iPad and with the current design of the software. The introduction of iPads within the workplace was welcomed by some of our members, but it is clear that this decision should have been made in consultation with frontline staff. The program itself is not tailored to the needs of our members in performing their work. The current program does not allow for multiple users to access and update the same file simultaneously nor does it allow for one user to have multiple files open simultaneously to flip through quickly. The ability to do both of these tasks is integral to the work of duty counsel. Technological tools are critical to the ability to meet the needs of our members and to ensuring the delivery of high-quality services.

Our members welcome technology that meets the direct needs of the workplace and improves the efficacy of our work. However, there is little confidence that the program as developed can be improved

¹³ Here lies another example too of changes that could be made by the Ministry of the Attorney General that would enable the modernization of Legal Aid Ontario. We understand that efforts are underway to change the delivery of disclosure, however, the situation is an example where change should have been made in the Ministry of the Attorney General processes before the changes were made at Legal Aid Ontario.



sufficiently such that it will meet the needs of those in court. We propose an in-depth consultation of frontline staff in the planning and development of any future modernization tools and as a first step in addressing the current issues with Service Integration. The Society can play an important role in identifying a representative sample of our members to assist in the development of new tools. We are confident that this consultative approach will lead to better and more cost-effective use of technology.

IMPROVED USE OF EXISTING RESOURCES TO CREATE TOOLS, TRAINING AND RESOURCES FOR THE FRONTLINES

Legal Aid Ontario has within its staffing complement a research department that we propose could be further developed into an integrated research, training and resource development service for frontline staff and self-represented litigants. Concerted efforts are already made to compile helpful precedents to assist staff lawyers and certificate panel members in their everyday activities. We recommend an expansion of this work to be done in collaboration with staff lawyers providing those frontline services. Resources including case books for trials and facts specific to charges and grounds of detention should be available for staff lawyers running more complex bail hearings and trials. This service could also assist by providing sentencing tools that staff lawyers in duty counsel offices can access and be encouraged to use for the purpose of plea resolution and sentencing submissions. In family law, an ideal use of this enhanced service could be to provide current precedents and document preparation assistance.

We also suggest that research lawyers and/or senior counsel could be utilized to collaborate with staff lawyers for the purpose of issue spotting and review of disclosure where appropriate. This could be used in providing summary legal advice, trial preparations and in exercising discretion in certificate issuance.

The research service is also well-positioned to offer resources to assist self-represented people in the preparation of briefs, document drafting and the how-tos of representing themselves.

In this vein, consideration should also be given to the creation of professional development tools for staff lawyers and panel members that address issues affecting low-income Ontarians. These programs could be created by the Senior Litigators and Legal Aid Ontario Law Research Department.

DELIBERATE WORK ASSIGNMENT AND COMMUNICATION OF WORK AND ROLES

Efforts should be made to properly identify the diverse work assignments and positions within Legal Aid Ontario. The lack of clear job descriptions and lack of clear identification of roles and responsibilities leads to inefficiencies and worse. As detailed above, we have experienced clients unaware when addressing our courts that they did not, in fact, speak to a staff lawyer and engaged instead with a non-lawyer. It is for this reason that we recommend that non-lawyers also be clearly identified as non-lawyers and lawyers as lawyers for the purpose of enhancing public understanding when receiving services.

As a part of identifying the roles and tasks of counsel, Legal Aid Ontario must identify who is responsible for the supervision of non-lawyers performing legal work. This is especially significant as we propose that legal aid workers across the province increase the services offered to more meaningfully serve the Ontario



public. Our members recognize legal aid workers as professional colleagues. In the family law context, legal aid workers can draft under a lawyer's supervision and provide significant contribution to the provision of cost-effective legal services. In the criminal law context, legal aid workers are well positioned to assist staff lawyers working in bail court in obtaining valuable information from accused persons and family members to devise a proposed release plan whenever possible. By making use of legal aid workers in this manner we can open up the ability of staff lawyers to take on additional legal work. Encouraging staff performance and providing adequate training and proper supervision is crucial in this endeavour.

A clear delineation of the roles is required to facilitate cooperation between non-lawyers and staff lawyers and to best serve the public with the resources available, as efficiently as possible. It is our belief that this does not exist currently in many locations across Ontario. The result is an increased demand on management and an inefficient and less cost-effective system of legal aid service delivery in those offices. We propose that management direct the workflow in a clear and punctual manner in order to best make use of all staffing resources. It is not our expectation that our members will directly supervise non-lawyers in the provision of legal services as they have no capacity to direct work.

We further propose that Legal Aid Ontario review the professional standards of legal aid workers and ensure that such standards are applied consistently across the province.

Finally, in consideration of value for money but more related to the outlining of roles and responsibilities, our members also question the use of lawyers to perform tasks that do not require a legal degree. Freeing up lawyers to perform legal work would enable Legal Aid Ontario to improve and increase the legal services it provides to low-income Ontarians.

VALUE FOR MONEY RECOMMENDATIONS

Parenting Coordination Services

Legal Aid Ontario should explore the possibility of training its staff lawyers specialized in family law in the area of collaborative law and as parenting coordinators.

Parenting coordination as a child-centred process seeks to assist former spouses, whose post-separation communication is characterized by high conflict, in managing their conflict and co-parenting in a manner that is less detrimental to their child(ren).¹⁴

Parental coordinators attempt to mediate parents' disputes regarding child-related issues and, if mediation is not successful, to arbitrate the dispute.

Studies on parenting coordination have shown its effectiveness in several areas:

- a substantial reduction in the number of court appearances from before to after commencing parenting coordination;

¹⁴ In 2012, the Ontario Court of Justice explicitly referred to Parental Coordinators in *Sebota v. Sebota*, 2012 ONSC 848 and provided an extensive list of the types of issues that they can deal with at para. 29, including: minor changes or clarification of parenting time/access schedules or conditions including vacation, holidays and temporary variation from the existing parenting plan; transitions/exchanges of the children; health care management; child-rearing issues; mental health care and testing; major educational decisions; extra-curricular activities; religious observances and education; children's travel; clothing and personal possessions of the children; communication between the parents and between a parent with the children; and contact with significant others and extended families.



- a substantial reduction in the number of motions filed in the year after starting parenting coordination than in the preceding year;
- a considerable reduction in the number of legal documents entered into a court file from the two years before starting parenting coordination to the two years after;
- a substantial decrease in the number of hearings and the number of judicial changes to the parenting plan from two years before starting parenting coordination to two years after;
- a reduction in the number of outside agencies involved with families from two years before parenting coordination to two years after.¹⁵

We suggest that family law staff lawyers are well-positioned to become parenting coordinators and assist clients with this alternative dispute resolution method where appropriate. With the adequate training and resources dedicated to such a service, Legal Aid Ontario could consider increasing eligibility to a number of clients presently navigating the family court system without access to a legal aid certificate or duty counsel assistance and thereby reduce the burden on the courts.

We envision parenting coordinators as an offering under Legal Aid Ontario's Centralized Services in which each region would have its own regional parenting coordinator. We suggest that streamlining services in this fashion could lead to significant cost-savings in the prevention or resolution of high-conflict matters that develop in court and often lead to the issuance of legal aid certificates.

It is our view that Legal Aid Ontario's participation in increasing alternative dispute resolution solutions could lead to significant savings that would permit an increase in duty counsel services eligibility thresholds.

Independent Legal Advice by Staff Lawyers for Mediation

It is long recognized that our courts do not provide the most ideal mechanism for resolving the majority of family law disputes. Coinciding with this recognition is the growing interest in the use of mediation with these cases.¹⁶

The Ministry of the Attorney General provides funding support for mediation at all family court sites in Ontario, allowing limited access to family mediation services that are free to low-income Ontarians or has a cost geared to an individual's income. These measures provide a valuable cost-effective service for resolving many family disputes in a child-focused way as opposed to through litigation.

Funding for mediation saves in litigation, issuance of certificates and government spending on the courts while building a more timely, efficient court process. Empirical evidence shows that participants also report higher levels of satisfaction utilizing alternative dispute resolution ("ADR") in the family law context.¹⁷

¹⁵ Bertrand & Boyd, *supra*.

¹⁶ Bertrand & Boyd, *The Development of Parenting Coordination and an examination of Policies and Practices in Ontario, British Columbia and Alberta* (Canadian Research Institute for Law and the Family, 2017) <http://crilf.ca/Documents/Parenting%20Coordination%20-%20Dec%202017.pdf>

¹⁷ Whitehead & Birnbaum, *Family Mediation: Exploring the Benefits and Challenges of Publicly Funded Mediation Services in Ontario* (AFCC-O, 2019) <https://afccontario.ca/wp-content/uploads/2019/04/Whitehead-Birnbaum-Family-Mediation-Report-Final-2019.pdf>



To encourage the reduction of conflict in the separation process while enhancing client satisfaction, we urge Legal Aid Ontario to consider providing legal advice to all financially eligible participants of publicly funded mediation services.

Access to a staff lawyer giving independent legal advice at specific dedicated times, where on-site court mediation takes place, would reduce costs to the court system and ultimately Legal Aid Ontario in the issuance of private certificates.

Recommendation of mediation with the assistance of a staff lawyer, where appropriate, before a legal certificate is issued could also be explored to ensure long-term effectiveness of the legal aid system.

Permit and Encourage Staff Criminal Lawyers to Conduct Crown Pre-Trials and Trials

When self-represented parties try to make their own way through the criminal justice system it clogs up the courts, costing time and money of the Ministry of the Attorney General, Legal Aid Ontario and other stakeholders. Studies show that more court time and public prosecution resources are used when economically-disadvantaged litigants are unrepresented than when they are represented by counsel.¹⁸

We propose as a solution that Legal Aid Ontario consider whether it may be appropriate for staff lawyers in the duty counsel criminal law offices to take on more responsibilities, including trial advocacy. Evidence suggests that our members are well positioned to take on these duties and had already been doing so. Additionally, 75% of our Modernization survey respondents believe that access to justice would increase if staff lawyers in duty counsel offices conducted simple trials.

There is also a palpable desire for professional growth and a drive to increase our delivery of legal services where appropriate. This assumes that time, training and resources are not at issue. In 2017, only 38% of our members participating in the Legal Aid Ontario Employee Engagement survey believed that their career aspirations can be achieved at Legal Aid Ontario. A further 41% reported having continued opportunities to learn and grow professionally.¹⁹ We submit that improved job satisfaction as well as increased retention of staff would also decrease costs to Legal Aid Ontario.

It is well-known that the setting of trials frequently does not lead to a trial. The setting of a trial date instead frequently leads to improved resolution positions through more meaningful negotiations.

We are not suggesting a complete overhaul of the present certificate model. We strongly support the mixed-model of services. In fact, the model we propose would be akin to the recent Staff Criminal Lawyer Trial Pilot in the Hamilton-Kitchener District (“Trial Pilot Project”). In the course of our criminal law focus group, members described to us an interest in identifying criminal cases where they can take on the file themselves. We propose that this service be provided as an adjunct to the regular duty counsel staff duties but with allowances for the time and resources that will be necessary, particularly in the development and rollout of the program.

¹⁸ Canadian Bar Association, *Canada’s crisis in access to justice*. (Canadian Bar Association, 2006), <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/canadianbarassociation.pdf> and Lamoureux, S. (2006). *The puzzle of Canadian legal aid*. Simon Fraser University. Retrieved March 30, 2014 from <http://summit.sfu.ca/item/7040>.

¹⁹ See December 2017 LAO Society Lawyers Engagement Survey Report, Talent Map, Professional Growth, pg 5.



We propose the following criteria to be used to identify the types of cases that our members can take on, subject to managerial and Director General approval:

- Client is not legally eligible for a certificate,
- Client financially qualifies under the Financial Eligibility Test for duty counsel services;
- Summary conviction matters, or hybrid matters where the Crown has elected to proceed summarily;
- Incarceration is not probable; and
- There is a meritorious defence (Charter or otherwise).²⁰

Legal Aid Ontario should investigate the possibility of our members providing, where eligible and appropriate, full representation for lower level offences, in particular those that frequently are resolved through guilty plea. This initiative would include providing adequate training opportunities and allocating resources to the professional development of our members to make this initiative successful.

²⁰ Note that the proposed criteria are identical to the criteria proposed in the Staff Criminal Lawyer Trial Pilot in Hamilton-Kitchener District.



ACCOUNTABILITY AND QUALITY ASSURANCE

ACCOUNTABILITY

As a publicly funded agency there is a need for a high level of accountability. This is true of the decision-makers and of those providing services with Legal Aid Ontario funds. We would be interested in seeing improvements in accountability and make the following recommendations:

1. Increased transparency within the organization
2. Increased access to the board and sharing of minutes and information from the board
3. Improved Communication from Legal Aid Ontario to its staff and the public
4. Direct responsibility and accountability in work done by management and the executive but also through the clear lines as to who is responsible work at all levels of the organization

QUALITY ASSURANCE

Legal Aid Ontario should conduct in-house peer reviews on standard certificate cases and, where its staff members raise concerns on quality of representation on a certificate, investigate and act responsively to these concerns.

The Society supports the recommendation of the Auditor General that Legal Aid Ontario work with the Law Society of Ontario to create a formal quality assurance audit program, including after-case peer review, to oversee lawyers. We also support the proposed alternative that Legal Aid Ontario seek amendments to the *LASA* that would permit it to develop and implement a quality assurance program²¹. Keeping in mind that the implementation of a formal quality assurance program may not be timely, it is imperative that Legal Aid Ontario relay to the Law Society of Ontario any credible and reliable evidence where a lawyer's professional conduct or competence is brought into question.

²¹ Auditor General Report, 2018: http://www.auditor.on.ca/en/content/annualreports/arreports/en18/v1_305en18.pdf.



CONCLUSION

We look forward to working with Legal Aid Ontario on its initiatives to better assist Ontarians. We, too, are committed to improving access to justice in Ontario.

We look forward to continued dialogue with you in addition to other stakeholders in this endeavour. To this end, we look forward to further opportunities to discuss the modernization of the legal aid system and how we can all best ensure its long-term sustainability.

Sincerely,

Legal Aid Ontario Local, Society of United Professionals, IFPTE Local 160