

Family Lawyers Association Submissions  
LAO Open Government Consultation

The Family Lawyers Association is very much in favour of greater transparency in government and at Legal Aid Ontario in particular. Our difficulty with the discussion paper is that it largely constitutes arguments in favour of greater transparency and explanation as to what data is already available, but has very little in the way of recommendations for making more information that is of interest to the profession and to the public available. We recommend that Legal Aid Ontario and the Ministry of the Attorney General consider making the following information, statistics and data available.

1. LAO Decision-Making

We strongly recommend that information about how decisions are made by Legal Aid Ontario be easily accessible on the website and through publications. This includes both decisions affecting the public applying for legal aid certificates and lawyers who work on legal aid certificates.

For the public, it would be useful to know:

a) How do LAO staff decide with respect to whether or not to issue a certificate based on legal merit, when the individual is financially eligible. Financial eligibility criteria are readily available but there is little information available about the types of legal services covered.

b) Are determinations as to whether or not a certificate is required or some lesser form of assistance adequate, consistent across the province? In this regard, it would be helpful to have statistics by region with respect to the number of applications for certificates and the number refused for other than financial eligibility reasons, as well as the number of certificates refused but where the person was provided with document preparation or other services.

c) How does Legal Aid Ontario determine the legal merits of requests for Appeal Certificates, both at the initial stage and the appeal process?

For the profession, it would be useful to know:

d) How does LAO staff determine whether discretion will be allowed at all, and how much will be allowed? There are guidelines in place, so we are aware of the grounds upon which we may seek discretion, but there is no guidance as to how the guidelines are applied. For example, is there a range of additional hours that may be covered where a client has mental health issues, and what information do you need to provide to establish those grounds.

Where the grounds are multiple children/parents/parties, are additional hours tied to how many additional parties?

e) There is some information available about new initiatives such as mid-level case management, the second chair program and the mentorship program, but it is not as widely known about as it should be. There is also confusion about what cases are eligible for mid-level case management.

## 2. Statistics and Information about legal services provided on certificates

There are statistics and other information that the FLA has requested that would enable us to better evaluate how the changes in the *Family Law Rules* have impacted on, for example, trials and Summary Judgement Motions, and the preparation required for same.

### a) Summary Judgement Motions in Child Protection

We have requested information about the number of trials authorized in Child Protection matters and the number of Summary Judgement matters authorized over a period

of four to five years. There was a major change in the Rule regarding Summary Judgement in May 2015 and it is our experience on the ground that far more child protection matters are being dealt with by way of Summary Judgement Motions which means there are far fewer trials. Since these are both steps that require specific authorization, LAO should be able to provide statistics.

b) Focused Hearings in Domestic Cases

Another area where it would be useful to have statistics for comparison is the length of trials since Rule 1(7.1) came into effect. Some judges had already started to require evidence-in-chief to be given by Affidavit in domestic cases (Affidavit evidence by Society Workers has been the norm in Child Protection cases for many years and is now being encouraged for parents in some cases). Some judges had already started, as well, to limit the amount of cross examination and the number of witnesses. Rule 1(7.1) codifies their power to do that and the use of such measures, and focused hearings, appear to have expanded considerably to those of us practicing in the courts.

Again, it would be helpful to have comparative statistics with respect to the length of trials and the amount of preparation being billed over the last several years. This may be more difficult to provide but trial time is billed separately and LAO should be able to separate out the number of hours for attendance at trial from the number of other hours billed.

c) Need for Discretion

We have heard statistics at meetings with LAO staff about the percentage of cases in which discretion is requested, but that information is not otherwise accessible. It would be useful to know the number of hours requested on an aggregate, annual basis, the number of hours allowed and the number of hours not allowed. It would also be helpful to have this broken down between family law domestic cases and child protection cases.

d) Ability of clients to find and maintain counsel on legal aid certificates

We have heard some dated statistics about the number of certificates issued in child protection matters that go unacknowledged, but it would be useful to make such statistics readily available, broken down by area of law. This would help LAO and the family law bar identify areas of need, and ultimately benefits the clients.

It would also be useful to know the number of certificates where a lawyer gets off the record or otherwise terminates the relationship because there are no hours remaining on the certificate.

e) Aggregate Statistics about profile of clients by region

It would be useful to have statistics about the race, disability and gender of certificate applicants, broken down by region and type of case. For example, it would be useful in identifying systemic problems to know if certain areas of the province have more child protection files than others, and the racial background of the people who need to apply for certificates for such cases.

3. What are Legal Aid's administrative costs and what is the cost of administration on a per certificate basis?

4. The profession would like to know what plans LAO has for expanding the number of staff lawyers, opening new clinics and other important decisions before the decisions are made and be given the opportunity to have some input.

All of which is respectfully submitted,

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Jean Hyndman  
Legal Aid Committee Chair  
Family Lawyers Association