

Legal Aid Sub-Committee Report October 2016

1. **Survey Re: Summary Judgement Motions in Child Protection**

The preliminary result indicates that the hours required to do a Summary Judgement Motion, as we expected, have increased significantly since the Rule change. The total hours for all work, including attending on the Motion, range from 14.5 to 100 hours, with 39.3 being the average. When you take out the case that took 100 hours, which is a bit of an anomaly, the average is 37.1.

2. The Sub-Committee met with Legal Aid Ontario on September 28, 2016 and both parties had substantial agendas. We did not get through all of the items, but the highlights of what was covered are as follows:

A. Marcus Pratt, Director of Policy, advised that Legal Aid Ontario is again in a \$20 million deficit and that severely restricts its ability to expand services. One of the reasons that they are in a deficit is the significant increase in the number of certificates issued, as well as increased operating costs and the increased demand for refugee services given the change of government.

B. Second Chair and Mentor Program were on both our agendas.

Legal Aid Ontario now has a list of senior counsel who have been approved as Mentors on the LAO Law Section of their web site. This is accessible for lawyers only. It is not immediately noticeable, so they subsequently sent detailed instructions, including screen shots, that we can share with the membership.

Interestingly, there are 9 lawyers listed as mentors for family law but only 2 lawyers for criminal, one for mental health law and none for refugee law. Clearly, the FLA has done a good job of educating our members about the availability of the program and encouraging people to

sign up for it. Any junior counsel seeking a mentor can go onto the sight and then contact the approved mentors.

We discussed how we could get a list of junior lawyers who are willing to take on Mentee work as right now most of the mentee work goes to lawyers that the mentors know, which is not entirely fair.

There is some confusion about the Second Chair Program and the Mentor Program and the terms have been used interchangeably by both lawyers and LAO staff. The Second Chair Program is primarily designed to provide junior counsel for a trial, or for a junior lawyer to get a senior lawyer to assist them at trial. This program is currently in its third year and 8 second chair certificates were issued in the pilot year and 25 in the second year.

C. Case Conferences and Motions

LAO said that they had done some analysis and there were not many cases where there were more than four Case Conferences and where there are, they are considering capping it at 4 with a requirement to do a Settlement Conference with LAO before further conferences are authorized. They said there is no money to add authorization for Motions and generally no money to enhance the domestic tariff, notwithstanding their acknowledgement that there are difficulties.

We responded that capping the number of Case Conferences without making funding available for Motions would be viewed as a cut back and not acceptable to our members. We raised the possibility that, if there was going to be a cap, it be on court appearances such that counsel could decide whether to bring a Motion after the first or second Case Conference and that we would get the additional time for the court attendance and at least the two-hour additional preparation time that we currently get for Case Conferences. They seemed more amenable to that, viewing it as cost neutral.

D. Domestic Tariff Generally

Many cases can be done within the tariff maximums, provided one get all of the additional issues allotment, including the one available double allotment, but there are still cases

where that is not sufficient. LAO is now considering expanding the Mid Level Case Management into domestic cases so that you would be able to apply for a budget which included additional hours in cases where the ordinary tariff is not going to be sufficient to cover the necessary work.

We also raised the issue of the tariff for appeals and indicated that LAO staff themselves are aware that 16 hours is not adequate to prepare an appeal. Again, they suggested that the Mid Level Case Management might be used for appeals although it is not currently available.

E. Mid Level Case Management

We had previously discussed that we need to make the form simpler and less time consuming to complete and LAO agrees with this. I am now on a committee with some Legal Aid Ontario staff to redesign the form and we are meeting on October 19, 2016. If anyone has any suggestions for the Mid Level Case Management Application Form or the program itself, please pass them along to me before October 19, 2016.

F. Shut Down of Legal Aid On Line for Maintenance

Debbie Stewart had a volume of email correspondence with Lesley Byfield and other LAO staff the previous weekend when the site was shut down. Apparently Legal Aid had posted a notice of this on the site earlier in the week, but it was not noticeable. LAO agreed to look into how best get notification to lawyers, including enhancing the notice on the opening page when it changes from standard and will consider e-mail notices. They also advised that there is a regular maintenance schedule which could be made available, but it is not always necessary that down the site to do routine maintenance.

G. Case Conference Billing

This continues to be a very confusing issue and it was identified by 68% of the respondents to our survey on website and communication issues last year. People are being penalized for billing Case Conferences incorrectly. Certainly the online billing form could be

clearer – e.g. by asking how many Case Conferences have been done since the last account. LAO did not commit to this but this is a change that would be simple and revenue neutral; indeed, it may save staff time trying to explain how to bill Case Conferences.

H. Child Protection Summary Judgement Tariff

I discussed our preliminary survey results and indicated that we would share the stats with LAO once the survey was completed. I referenced the case where Justice Murray commented on how inadequate the tariff was, but also suggested that parents' counsel could reduce the volume of Society materials by asking for Orders limiting, for example, the number of pages for Affidavits or the number of Affidavits.

It was suggested that they would look at Mid Level Case Management for Summary Judgement Motions; it is actually available already where Crown Wardship is being sought, and I believe we will need to make more use of this.

I. ILA and Separation Agreement Certificates

LAO wanted to know if we felt that this was a useful program. We said we felt that these certificates were useful but the number of hours was not adequate and referred to our survey results on the Domestic Tariff from last year. It is mostly junior lawyers who need the work who are taking them. We should at least be able to request additional hours without having to take the matter to court. We also suggested that the initial certificate could simply authorize representation with respect to family law issues and provide the initial 12 hours that a litigation certificate provides, and let the lawyer determine whether to attempt to negotiate a Separation Agreement or immediately commence litigation. The tariff as it is now structured encourages litigation.

Our next meeting with Legal Aid Ontario is scheduled for January 17, 2017 but we will be working on some of these issues with smaller groups in between.

The Family Law Advisory Committee meets on October 17, 2016 so if there are any issues that you wish to have raised in that forum, please let me know.

Jean Hyndman
Chair - Legal Aid Subcommittee
October 4, 2016