

July 7, 2023

Legal Aid Ontario
Consultation Department
Sent via email to consultation@lao.on.ca

To whom it may concern,

RE: Written submission – Tariff reform: number of hours, hourly rates and block fee rates

We are writing in response to your proposal to reform tariffs for the lawyers on your panel. Our comments are in respect of the proposed amendments to the family law tariff. Overall, we are supportive of the proposed amendments, but strongly encourage legal aid to do more to address the widespread gaps in legal representation for survivors of violence.

By way of background, Luke's Place is a non-profit organization devoted to improving the safety and experience of abused women and their children as they proceed through the family law system. We provide direct services to women in Durham Region and systemic programs across the province that address the intersection of gender-based violence and family law. We believe women and their children have a right to be safe and that family law should promote and provide this safety.

In this letter, we use gender-specific language to refer to those who are harmed by violence within the family. We believe it is important to acknowledge that, in Ontario and Canada, women in all their diversity and gender diverse people are overwhelmingly those who are subjected to violence. We also acknowledge the diversity of women and families in this country and the continued adverse impacts of misogyny, homophobia, transphobia and heteronormative culture.

Lack of legal representation for women fleeing violence

To set the context for our submission, the women we support are finding it increasingly difficult to get a family law lawyer to take on their case. This is true for women regardless of whether they qualify for a legal aid certificate. As you know, many women fall just outside the financial eligibility criteria and are unable to afford a privately retained lawyer. Other women have a certificate but cannot find a lawyer to accept it.

It is imperative that women fleeing violence have meaningful access to legal representation throughout the family law process. This process is confusing and challenging to navigate, particularly when simultaneously dealing with trauma and ongoing abuse. Without a lawyer,

these women are at increased risk of negative court outcomes that fail to keep themselves and their children safe. They are also at risk of being pressured to agree to unsafe parenting arrangements or to walk away from their financial entitlements. The court process itself is re-traumatizing and often becomes a conduit for further abuse.

This information is not new. In fact, in your Domestic Violence Strategy Consultation Paper dated July 2015 you stated at page 17 that “[e]xperience and statistics demonstrate that domestic violence clients need legal representation in family court.”

The challenges women are experiencing finding a family law lawyer are not limited to one jurisdiction. Women throughout Ontario are facing these challenges.

We recently surveyed other frontline organizations throughout the province to better understand some of the issues they are seeing when it comes to women finding a lawyer. We received responses from **65** workers across **38** different organizations. Much of the information we received from these workers may not be new to you and is largely consistent with the feedback you received during your domestic violence strategy consultation process back in 2015/2016. However, what is clear is that the problem has not gotten better and, if anything, may be getting worse. Some of the key findings from our survey are as follows:

- 40% of workers reported that the women they serve were hardly able to find a family law lawyer to accept their certificate, with another 34% of workers reporting that the women they serve were only occasionally able to find a family law lawyer willing to accept their certificate.

"The availability for lawyers in our community is few and far between, and those that are willing to take on Family Court cases are now picking which clients they want to represent, which is extremely frustrating when LAO is one of the few if not the only option in Ontario for low-income families."

"It is a continual effort in futility to find a lawyer who will accept a LAO certificate, we literally have 2 lawyers ... who accept LAO for family matters. Once they get too busy, they can no longer accept new clients. Women have been advised to look outside of area, but with court resuming in a hybrid model, out of area lawyers are hesitant to take on clients out of their jurisdiction."

- 63% of workers reported that it is taking women months to be able to find a lawyer to accept their legal aid certificates.

"My clients have to call each lawyer, complete an intake for each lawyer contacted and wait up to five business days to see if the lawyer can take them as a client. Most times, they never receive a response from the lawyer and have to call back to see if they have been accepted as a client. It's so much to go through to get a lawyer or just to be acknowledged. My clients feel no one cares"

about them, their issue and they are being re-victimized. Clients have expressed having to tell their story over and over again without favourable results."

- 72% of workers reported that it is taking longer now than it was before the pandemic for women to be able to find a family law lawyer willing to accept their legal aid certificates.

"I have witnessed clients call 100+ lawyers looking for someone who accepts Legal Aid. This process is taking long and creating barriers when a client needs to respond, that they may not be able to make the deadline."

"My colleague and I tackled the legal aid list for our region. We spent about 3 hours making calls. I got one call back for a POTENTIAL opening in mid July from a first week in May call and no other calls were returned from voice mails left..."

- Just under 70% of workers reported that there are fewer family law lawyers in their jurisdiction accepting legal aid certificates now than there was before the pandemic.

"We definitely need more LAO lawyers. It's very frustrating for a woman to find a lawyer once the certificate is granted. They are in crisis trying to navigate a challenging system and then to have no lawyers. Quite often woman say they contact lawyers via email or phone and never get a response. It's sad that they can't even reply to a request. Hoping we can collaborate more with lawyers in our area to promote what we can do to support women and lawyers going through the court system. Things have definitely changed since Covid, less and less lawyers. Hoping LAO can hire or recruit more lawyers."

"I feel there are just not enough Lawyers to take on all of the cases, so they choose to take on the cases for those who can pay in full."

"There are fewer and fewer lawyers who understand or seem to be trained in VAW issues, there are far fewer lawyers who accept legal aid. Just because I answered that our women usually get a lawyer, it doesn't capture the fact that I am spending much more time in finding them. There is a marked difference from a couple of years ago. It is only because we have some awesome lawyers on our list who go above and beyond (and take our women when they are already very busy)."

- Just under 45% of workers reported that women are only sporadically able to find a lawyer to accept a 2-hour DV certificate and another nearly 28% reported that women hardly ever find a lawyer to accept these certificates.

- Many workers reported concerns with lawyers' knowledge and understanding of violence and trauma:

"I must say, family lawyers play a huge role in the lives' of VAW - it is frustrating to see how few ... that will present and prioritize VAW in the family court system."

"Many lawyers have an understanding of family violence being physical violence or when criminal charges are present. Some women say lawyers will tell them it will not impact their case when there is abuse other than physical abuse."

"Many lawyers are not empathetic towards the women and end up re-traumatizing them."

- 71% of workers supported women apply for a change of lawyer through legal aid, with many reporting that the reason for women requesting the change was because the lawyer didn't listen to them and understand issues related to trauma and violence.

"I have had some women hire lawyers then call back crying saying they've made a mistake in who they hired and want to change lawyers because they don't understand domestic violence and aren't supportive and understanding about their situation."

- For workers who have supported women change their lawyer through legal aid, they were unanimous in their view that the change of lawyer process is cumbersome for women.

"The process is almost impossible; having to prove why the original lawyer isn't working and then being able to find a new lawyer takes too much time. From my experience, Legal Aid rarely accepts the change"

"LAO makes it so difficult for clients to changes lawyers. Often there is merit to the client's reasoning for changing lawyers and it is a lengthy and tedious process to change lawyers through LAO, it is often denied initially and a lot of resources go into requesting a reconsideration for change of solicitor."

Recommendations

More needs to be done by Legal Aid Ontario to address the significant gap in access to legal representation for women fleeing violence. We raised this issue with various representatives from your policy department back in August 2022 and again in October 2022. Lawyers need to be incentivized to accept certificates and, respectfully, a very modest increase in tariff rates and allotted hours alone is not going to produce widespread change.

We encourage you to consider also addressing some of the following areas:

1. More training and support on issues of trauma and intimate partner violence for all empanelled lawyers

We understand that there is currently no standard training required for lawyers to be a part of the domestic violence panel through legal aid. This is extremely problematic given the complexities of this work and the vulnerability of the clients. Simply requiring that lawyers have experience with domestic violence cases is not enough. If lawyers were provided with more training, resources and support, we strongly believe they may be more willing to take on cases involving violence. This includes promotion of and priority access to the second chair program for cases involving family violence to ensure junior lawyers are mentored and supported while taking on complex cases.

Importantly, better training and support will lead to more effective representation for survivors. A number of lawyers lack a basic understanding of violence and trauma, which makes them unable to properly advise their clients and effectively advance their interests in court. Workers from other frontline organizations in Ontario shared our concern when it comes to the lack of knowledge and training of existing lawyers on the legal aid panel:

"...We also only have a handful of lawyers who truly understand domestic violence and it's impact, and often treat my clients as if they're hysterical or overly emotional when they are actually processing trauma. Many are too abrupt and lacking the emotional intelligence needed to connected with DV survivors."

"...Lawyers also need to be DV informed as this can be a huge barrier for women seeking adequate and effective representation."

"...I also find that a number of lawyers who take the LAO Domestic Violence Advice Forms, don't have a working knowledge of domestic violence outside of physical abuse. It would be beneficial for further training to be available to lawyers to understand the various forms of abuse in order for them to be able to better explain how it can influence a client's case."

A lawyer's lack of knowledge and understanding of violence and trauma not only has a detrimental impact on a woman's case, but also on the lawyer-client relationship. When this relationship inevitably breaks down, women are then forced into the change of lawyer process through legal aid which can be re-traumatizing, invasive and slow. If the change of lawyer request is granted, the woman is then faced with the daunting task of trying to find a new lawyer who will accept her certificate.

An updated mandatory training policy should be created in consultation with organizations and groups that have expertise on issues of intimate partner violence, including organizations that work directly with survivors. As other frontline workers stated:

"DV and trauma informed training for lawyers should come from the experts which would be your local VAW agencies. the expectation should be that lawyers participate in this yearly."

"Lawyers need to be trauma trained and domestic violence trained to be able better understand what women and their children are going through."

The training should at minimum include some of the following topics:

- The dynamics of intimate partner violence, including typologies and abuse behaviours
- The gendered nature of intimate partner violence, in particular as it relates to coercive control
- The impact of intersecting social identities on the lived experience of intimate partner violence and the legal system
- The harmful effects of violence on children
- The impact of violence and trauma on a survivor
- How to make your practice trauma-informed

We strongly believe that if Legal Aid resumes mandatory training for all empaneled lawyers and provides more ongoing support and resources to lawyers, it will not only impact the number of lawyers willing to represent survivors, but the quality of this representation.

2. Increase in base tariffs for cases involving family violence

Cases involving family violence are complex and often require more time from a lawyer. Lawyers taking on cases on behalf a person subjected to violence should be allotted with higher base tariffs from the outset of the case. They should not have to repeatedly apply for more hours when it is clear from the outset that the case will take more time. We understand from lawyers accepting legal aid certificates that the application process for more hours on a file is cumbersome and time-consuming and there is also a delay in receiving a response.

This view was shared by other frontline workers throughout the province who provided some of the following feedback from their work with women:

"Simply put, there are not enough lawyers and the LAO certificates do not provide nearly enough funding for some of my clients' cases. Many of my clients

are dealing with complex cases that require significantly more support than the LAO certificate can pay them for so many lawyers refuse to take the case on..."

"A significant difficulty we are experiencing is lawyers willing to take on family violence cases due to the complex nature of the conflict and the amount of hours that are often needed to work on these cases. Many lawyers have expressed to me their limited capacity to take on Legal Aid certificate cases due to the minimal compensation they received and the numerous limitations when it comes to the hours that are allocated to them..."

"Lawyers... are saying that they will not accept a LAO certificate due to very little pay, not enough hours on the certificate, too many hoops they have to jump through with LAO that they do not get paid for. example: LAO gives the woman a certificate for OCJ when her issues are in SCJ due to matrimonial home. LAO agent knows this when the woman applies for the certificate. Lawyers say that when they need to request the certificate to be in SCJ or more hours, they don't get paid for the letters they write and the amount of time they spend following up trying to get an answer. Lawyers in the past would just work for free once the certificate hours were used up, but will no longer do this. (understandable) Lawyers are saying their case load is full of private paying clients so they do not have to accept LAO clients. Women will call many lawyers and not ever receive a call back..."

If more hours were allotted from the beginning, it may incentivize a greater number of lawyers to accept these cases.

We also encourage legal aid to automatically authorize travel expenses from the outset in cases where they are representing a person who has been subjected to intimate partner violence. This will allow women to seek legal representation from lawyers outside their jurisdiction. Lawyers were more willing to accept clients from other jurisdictions when court was exclusively virtual, but this has now changed with the presumptive modes of hearing now in effect across the province. This is extremely problematic, particularly in smaller communities where there are a very small number of lawyers who accept certificates.

3. Less onerous and more streamlined processes for lawyers and certificate recipients

We understand that the billing process for lawyers can be tedious and time consuming. There are delays in receiving payment once bills have been submitted and the application process for additional hours comes with unreasonable wait times. We also understand that many lawyers are often having to do work for free because of court timelines while they wait and see whether legal aid will approve them for more hours. Simply providing lawyers with a nominal increase in their hourly rate and base tariffs will

not serve to address some of the billing process issues experienced by lawyers across Ontario.

We recommend that legal aid engage in a consultation process with lawyers to better understand the concerns with the current billing processes, including the process for seeking additional hours on a certificate. This process must include lawyers who regularly work with survivors of violence in order to ensure that the nuances of this work and the associated billing challenges are appropriately considered.

The change of lawyer process is slow and burdensome. Women are met with scrutiny over their decision and resistance on the part of legal aid to authorize the requested change. Some women opt to continue working with an ineffective lawyer just to avoid engaging in this process. Legal aid should review this process to ensure it is simplified and trauma informed. This review should include consultation with service users who have accessed the change of lawyer process and frontline organizations who support service users through the process. This consultation process must include service users who have been subjected to violence in order to ensure that the particular barriers they experience with this process are properly captured and addressed.

4. Increased financial eligibility criteria for cases involving family violence

The eligibility criteria for legal aid certificates is unreasonably low. As a result, a number of women do not qualify for a certificate but cannot afford to retain a lawyer. This has to change. Workers from other frontline organizations shared our concern when it comes to the financial eligibility criteria applied to the women they support:

"LAO needs to look at reassessing financial eligibility as it is too low, especially to consider inflation and increase in cost of living."

"The financial eligibility makes Legal Aid extremely inaccessible."

"It is very hard to find a lawyer that will accept the certificate. The availability for lawyers is also minimal. The eligibility criteria's are unfortunate, cause the women we deal with, most of the time, are in distress and adding the stress of finding the funds to afford a lawyer is more than they need."

As outlined earlier in our submission, women fleeing abusive partners are particularly disadvantaged and vulnerable throughout the family law process when they do not have a lawyer. We recommend that legal aid consider an increase to the eligibility criteria for applicants who have been subjected to intimate partner violence under the family law certificate program to ensure that more women have access to legal representation. This of course will only be effective if women are then able to find a lawyer to accept

their certificate once issued, which requires that legal aid continue to prioritize lawyer recruitment and retention on the panel.

5. Create a specific task force or advisory committee on family violence and family law

While we understand that you have a Family Law Advisory Committee, a specific subcommittee or working group should be created that is focused exclusively on issues of family violence and family law. This subcommittee should include frontline groups and organizations that work directly with survivors across a variety of communities throughout the province.

This recommendation was echoed by a worker in another jurisdiction who reported that she previously sat on a legal aid advisory group in the past in her Region:

"LAO office is generally helpful as is FL Duty Counsel, and we have many new lawyers in town but that does not seem to be translating into access to justice for the women we serve. We used to sit on an LAO Advisory committee made up of service providers from throughout the Region that was a good place to address these gaps, but that committee no longer meets (or maybe I have just been un-invited???)..."

If legal aid does have an advisory committee focused exclusively on these issues, information needs to be provided to frontline organizations about how to become involved. We previously wrote to your organization in April 2023 inquiring about how we can become involved with the Family Law Advisory Group and have yet to receive a response. Moreover, I note that the most recent meeting minutes on your website for the Family Law Advisory Group are from 2018, which does not provide the reader with insight into the current work being done by legal aid to address gaps and barriers in its family law legal services for survivors of violence.

6. Updated list of lawyers who are currently accepting certificates

We have raised issues with the reliability of your "Find a Lawyer" page on various occasions. The problem with this list is that while the lawyers may technically still be empaneled, they are not currently taking certificates. The women we are supporting should not have to contact endless lawyers to ask if they are accepting certificates. This information should be available through legal aid. We again ask that this issue be addressed and that a more efficient process be created that will allow lawyers to very clearly identify whether they are currently taking new certificates.

Overall, we are hopeful that the proposed tariff increases to the family law certificate program are a step in the right direction when it comes to encouraging lawyers to do this important

work. However, we implore legal aid to consider other strategies to further this objective. Ensuring that women leaving an abusive partner have access to competent and effective legal representation is critical and must be a part of any discussion on reforms to the legal aid process. As one frontline worker stated, the lack of lawyers available "... is a very bad and dire situation at this point."

We would be happy to speak about these issues with you in more detail should you have any questions or concerns.

Yours truly,



Emily Murray
Legal Director

Letter endorsed by the following organizations:

The Emily Murphy Centre and Supervised Access Programs

Manitoulin Family Resources

Sexual Assault Support Centre of Waterloo Region

Cornerstone Family Violence Prevention Centre

Network of Women with Disabilities NOW

Barbra Schlifer Commemorative Clinic

Inasmuch House & Women's Services

Women's Legal Education and Action Fund (LEAF)

Gillian's Place