

SASKATCHEWAN LEGAL AID COMMISSION  
REPORT ON RESPONSES FROM PRIVATE BAR FOCUS GROUPS

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## Background

Four Focus Group sessions were held with members of the Private Bar (PB) during the months of March and April, 2006 in order to obtain information, perceptions and recommendations from the Private Bar concerning three issues:

1. The Saskatchewan Legal Aid (SLAC) Tariff
2. Systemic Issues related to Policies of the Courts
3. Communication with the Saskatchewan Legal Aid Commission

Sessions were held in Prince Albert, Regina and Saskatoon with a second focus group in Saskatoon focusing on Family Law which included representation from the Private Bar in Prince Albert. Twenty-five members of the Private Bar participated in the focus groups; seven in each of the two Saskatoon sessions, six in Prince Albert and five in Regina.

Each Focus Group was asked identical questions with some revisions made for the session focusing on Family Law. Copies of the questions used during the focus groups are attached.

There was significant consensus within and amongst each of the four groups about all three issues. The Family Law Focus Group focused on some distinct concerns and will be dealt with separately.

## Criminal Law Responses

### 1. The SLAC Tariff

#### a) Hourly Rate

There was strong agreement amongst all participants that the hourly rate of \$60.00 is very inadequate and does not begin to meet the overhead costs of Private Bar Lawyers. Several individuals indicated that the Private Bar largely subsidizes the work of the SLAC discouraging not only experienced members of the Private Bar from taking Legal Aid (LA) cases but young lawyers as well who could gain from this experience but are under pressure from their firms to produce billable hours at a higher rate of return than what is paid by the SLAC.

The majority of participants indicated that they take on Legal Aid cases out of a sense of obligation to their profession and a commitment to social justice and Legal Aid however it is becoming increasingly difficult to do so when they cannot cover overhead costs. It was noted that even articling students make more at \$70-\$80/hr and that the Department of Justice pays \$100/hr. to court appointed Lawyers.

The current rates charged by the Private Bar in criminal law cases appear to range from \$180-\$300/hr. An hourly rate of \$100- \$125 for Legal Aid cases was given as a realistic hourly rate accompanied by an increased provision for

preparation time. It was emphasized that Legal Aid cases are becoming increasingly complex and generally require an extensive amount of preparation time.

The complexity of cases, the impact of electronic disclosure resulting in more and lengthier documents to review, management of difficult clients, cost of support staff and increased overall administrative costs were presented as factors affecting the hourly rate of the PB.

Concern was conveyed about the challenges of working in the northern part of the province particularly when the PB needs to fly to an isolated court point. The current absence fee covers only travel time and not waiting time. A higher amount can often be negotiated if waiting time is excessive however the point was made that it should not be necessary to negotiate which also consumes valuable time on the part of the PB and SLAC.

Some individuals also suggested having a two tiered rate with a higher rate paid to more senior and experienced Lawyers with consideration also given to the complexity of the case. There was not a strong consensus on this point.

b) Fixed Fee

The fixed fee was viewed as a useful tool to make SLAC work actually pay, if cases are simple enough, however the majority of Legal Aid cases are complex resulting in the hourly rate generally being used whenever possible.

Overall the fixed fee was considered to be very low and the provision of a maximum of five hours preparation time as unrealistic.

Concern was raised about why fees were disproportionate for crimes such as violations of the drug act at \$550 with assault only allowing for \$300. It was suggested that a fixed fee should address procedural complexity of the case and not be based on the kind of offence.

A recommendation was made for a fixed rate of \$1,000-\$1,200 with an increase if the case takes more than three days or a possible Queen's Bench rate of \$750/day increasing to \$1,000 if the case is being heard by a jury with unexpected discretionary disbursements allowed.

c) Items in the Tariff which are liked

PB members indicated they have a very good working relationship with the CEO of SLAC and find her to be reasonable when requests are made for increased preparation time. They find that the SLAC staff are good to work with. Invoices are usually paid if supporting documentation is provided and accounts are adjusted if mistakes are made. The quick turn around time on accounts is greatly valued and is much quicker than that of the Department of Justice.

d) Items in the Tariff needing improvement or clarification

The PB indicated that significant time often needs to be spent with clients in the initial application stage; time which consumes a significant portion of the fee leaving less time available for preparation.

Concern was conveyed about additions to the appointment as a result of breaches and new charges. The PB understands that the expectation of SLAC is that the same hourly cap is in place which does not recognize the amount of work required. The PB recognizes that it is in the best interest of the client to have the same lawyer involved however new charges should result in a new appointment. This would provide more adequate compensation and reduce complexity in billing.

There appears to be some confusion with respect to what is eligible for the hourly rate and fixed fee rates.

The Tariff needs to recognize changes when new acts are legislated. A case in point is the new *Youth Criminal Justice Act* and the fact that the tariff does not address case conferences and the time required for these.

Disbursements are not adequately covered. Eg: The costs of photocopying at the court house is .50/page. SLAC only covers .10/page to a maximum of \$70. This is not adequate. Additional concerns re: disbursements included the need for an allowance for courier costs and recognition of the costs for research particularly on-line legal search which entails either a flat fee or fee per search to the PB.

A question was raised about needing to provide invoices in triplicate when the third copy is returned. Duplicate invoicing should be adequate. A Recommendation was also made by one PB member who works in the North for more direct billing provisions with the Saskatchewan Transit Company for bus tickets for clients and witnesses and with hotel, and airlines.

Strong concern was raised about the low rate for absence fees, the lack of coverage for wait time and the fee for ADRs. The absence fee is not adequate when the court point is far away and wait times can often be long with no compensation. The \$600.00 maximum is not adequate if a number of ADRs are being handled at the same time.

e) Adjustments needed to Preparation Time

There was strong consensus that additional preparation time is needed for most cases due to the increasing complexity of cases and the impact of electronic disclosure. In addition PB lawyers often receive boxes of disorganized information including videotaped statements, transcripts of tapes, CDs and reams of paper. It is necessary to review all information in

detail and transcripts are not always consistent with what is captured by video requiring careful viewing.

The PB indicated they are committed to provide the best representation possible for their clients and do not do a lesser amount of work just because the fee is low. They emphasized that their professional reputation is also at stake and they do not compromise on quality for SLAC clients. Lack of recognition of preparation time required coupled with a low hourly fee greatly discourages the PB from taking on SLAC cases as overhead costs cannot be covered. This was considered to be particularly serious in smaller communities where Lawyers have to also put in considerable travel time and have a large number of PB clients due to the low number of PB practicing outside of the large urban centres.

Several individuals indicated that the minimum allocation for preparation time should be doubled with 2 hours of preparation time for every hour of court time. Others suggested that the fee be set at \$100/hr for preparation time and \$125/hr for court time.

## 2. Systemic Issues Related to Policies of the Courts

### a) Changes needed in Provincial Court re:

#### ➤ Setting Court Dates and Times

Concern was conveyed about excessive amounts of time spent waiting at Court and lack of access to space at the Court House.

It was suggested that the situation in Saskatoon could be improved by the addition of a second Docket Court. The PB in Saskatoon indicated that there is a need for more interview rooms and that often it appears rooms are empty due to lack of security. The Saskatoon Focus Group also conveyed that they believe the Court in Regina is better organized than in Saskatoon.

Some members recommended developing an on-line system similar to that used by the Court of Appeal which would enable Lawyers to see the scheduled time of the case and plan accordingly facilitating better use of time.

The PB in Prince Albert focused on issues related to organization of the Courts in rural areas and in the North. It was recommended that accommodation be made to enable counsel to present by phone in smaller communities thereby avoiding travel time. Concern was also identified with respect to the limitations of holding court only once a month in isolated areas.

The Regina PB indicated concern about there being no court currently on Fridays, no summer court and no jury court in January and February.

- Issues regarding Disclosure, Adjournments and Big Case Management  
There appears to be increasing use of electronic disclosure which was described as a “nightmare” due to the different word processing programs in place. It was noted that each page in electronic disclosure is a file that needs to be opened requiring a great deal of time. As well, individuals who are unrepresented do not always have access to the technology causing additional challenges.

The significant number of adjournments was raised as a concern causing scheduling problems and resulting in increased costs. One individual suggested that 1% of the SLAC budget is probably time spent on adjournments. It was suggested that better organization and scheduling of court dates and times might alleviate the number of adjournments as the two issues are linked. Concern was also conveyed that adjournments should be set before sentencing which is how the process is supposed to work but that this is not always the case. A suggestion was made that adjournments would also be impacted by having two courts; one in custody and one out of custody.

Big case management is a major concern and one which is anticipated to increase given the prevalence of gang criminal activity. There was strong consensus that a great need exists to increase the financial return to the PB on these cases as they take the PB out of regular practice for a period of time and have a major impact on one’s professional and personal life given some of the high risk individuals being defended.

A recommendation was made to have SLAC conduct research on gangs as currently several parties undertake this research resulting in duplication of effort, time and resources.

The Prince Albert PB indicated a concern about the fact that disclosure is only legally done at time of the trial but should be at the preliminary enquiry as well. It was suggested that SLAC should advocate on this issue. Additional items raised by the Prince Albert PB focused on the fact that the preliminary inquiry judge does not have the ability to rule on charter issues and that the crown can now rely on hearsay evidence at the preliminary inquiry.

b) Changes Needed in the Queens Bench or Family Division

- Setting Court Dates and Times  
Here again, the PB indicated that there is a need for more efficient use of court time, less waiting and access to more space at the courthouse.

Some PB members working in La Ronge indicated a need for more Queen's Bench sittings in La Ronge. This would reduce the cost of bringing in witnesses to Prince Albert. It was felt that the amount of criminal work in the North would justify more QB sittings.

- Arranging Pre-Trial Conferences or Chambers and Resolving Matters at Pre-Trial or in Chambers  
No comments were received on these two items.

### 3. Communications with the Saskatchewan Legal Aid Commission

#### a) Clarity of SLAC Expectations re:

- Service Regarding Clients Who Don't Show  
Expectations appeared to be clear in this area. Some PB indicated that they understand discretion is allowed and that they will be compensated if they are prepared but client doesn't show in court.

Some individuals expressed a need for better communication when a client gets additional charges and the need to clarify that representation will continue for the new charge.

- Need for Legal Services to Have Professional Merit  
Some members indicated there was lack of clarity re: the definition of "Professional Merit." Others indicated a need for some discretion for exceptional circumstances.

It was noted that neither summary offences nor charges under the Indian Act qualify an applicant for legal aid services.

- Changes in Financial Circumstances  
Most individuals indicated it is clear that they need to report to SLAC if they know the financial status of the client has changed however they expressed that challenges exist for the PB to make this call and maintain a good relationship with the client.

Other members indicated that they are unsure of the financial criteria citing that many clients have a very transient work history, often do not work long term and gain employment for a week or a few days at a time.

- When the Client Fires the Lawyer or the Lawyer Can No Longer Provide the Services the Client Wants  
There appeared to be clarity and no concerns raised about this item

- When the Appointment is Amended for Additional Charges  
Some members of the PB in Saskatoon indicated that there are occasions when the PB Lawyer is notified when a breach has occurred but has not agreed to represent the client for the new charge and may not be able to do so at short notice. There appeared to be agreement that it was more efficient and effective for the same Lawyer to represent the client but that there was a need for a better process to consult with the representing Lawyer on the issue.

Questions were also raised about when a file is considered to be closed and a concern that files that drag on are not reflected in the tariff.

b) What Can Legal Aid Do to Ensure There is Better Communication between Legal Aid and the Private Bar

There was overwhelming consensus in all focus groups that the relationship with the administration of SLAC is a positive one. There is admiration and respect for the work done by the SLAC and recognition that the Commission has limitations due to restricted funding. All members stressed the need to convince the Department of Justice that more funding needs to be provided to SLAC to ensure adequate defense for those who are eligible for services. Some suggested that the PB and FSIN should lobby the provincial government on behalf of SLAC.

The PB stressed that they are treated as Professionals by the SLAC. Communication with the CEO of SLAC was considered to be excellent and effective with timely responses. Members indicated they felt they were fairly treated when they needed to consult with the CEO on rationale for billing and additional fees however stressed that the tariff should be addressed to decrease the need for individual consultation which was considered to be time consuming for the PB and the CEO.

Suggestions were made for services which if provided by SLAC, would improve the effectiveness of the work of the PB. There was interest in having access to experts and it was felt that it would be useful to have a list of experts with whom SLAC has worked. The PB would still retain freedom of choice but would have the benefit of knowing that the expertise had been found useful by others. Utilizing experienced resources would be in the best interest of the client and would decrease costs by reducing research time. Expertise in areas of psychiatric testing and DNA analysis were two that were identified. Access to research available to SLAC was also requested.

The focus group sessions were viewed by participants as a useful dialogue not only with the SLAC but amongst themselves as members of the PB who work with Legal Aid. It was strongly recommended that such sessions should be a regular occurrence – perhaps on an annual or biannual basis.

## Family Law Responses

### 1. SLAC Tariff

#### a) Fixed Fee

The PB indicated that the fixed fee needs to be broken down according to process – notice of motion, affidavit, initial interview etc.

Members indicated that the initial interview alone can consume the entire tariff as it is necessary to review a number of documents including financial statements. It was noted that Legal Aid clients often have a complex array of needs and changing financial circumstances resulting in the Lawyer frequently needing to spend considerable time with the client sorting through details, issues and developing a relationship of trust as clients are also frequently wary of the “system.”

#### b) Hourly Rate

The current rate of \$60.00/hr was not considered to be adequate as it does not even cover overhead costs. The PB indicated that LA cases are not taken for financial gain however there is a need to cover overhead. A recommendation was made for a minimum fee of \$100.00/hr.

Currently, most PB charge private clients a retainer of \$2,000 with the fee for a chambers motion ranging from \$1,500-3,500. The hourly rate for a junior lawyer is in the area of \$110/hr. More experienced Lawyers receive \$140-200/hr. with senior Lawyers at \$300/hr.

There was consensus that Legal Aid files usually require considerable time as the cases are often complicated and the clients have many needs. The PB often find that LA clients look to the Lawyer for counseling. It was recognized that a certain amount of counseling is necessary in order to ensure the client understands the process she/he is engaging in however anything more than this takes a great deal of time. A private client accessing a Lawyer for this purpose would receive a bill for the time spent and quickly come to realize the real costs involved. It was felt that LA clients often do not know the true costs of the service being provided and that it is important that Legal Aid advise the client that this is not the role expected from the Lawyer. It was further emphasized that clients should be made aware of the cost of each step and the time involved. The PB indicated that parenting education programs and counseling programs for clients are very helpful and reduce the time required by the Lawyer.

A number of factors affecting current hourly rates were discussed. Overall, there was concern that the court is becoming more demanding with more applications to strike. It is more important now than ever to be very careful in

drafting documents. The change in hearsay rules has also affected the time required and hence the fees required to provide service.

The PB indicated they are not going to do less for the client just because they are getting paid less. They need to spend considerable time ensuring the case is valid and sound and in explaining the situation to the client.

c) Items in the Tariff that are Liked

No items in the tariff are liked. The tariff requires a complete restructuring in order to provide adequate compensation and recognize the changing nature of Family Law.

d) Items in the Tariff Needing Improvement or Clarification

There was consensus that there is a need to spend more time with clients than is provided for in the current Tariff. The recommendation is to have a Tariff that addresses each step in the process. Examples given included the following:

Initial Interview	1 hour
Documentation	2-3 or 4 hours
Petition without Chambers Application	1 hour

The current fee of \$360.00 is woefully inadequate and only applicable in a straightforward non contested divorce case. Members emphasized that it is difficult to calculate an average fee on a file due to the complexity of each individual file.

It was also emphasized that currently there is no provision for a negotiated settlement. This undertaking was felt to be undervalued and ignored and requires a separate fee similar to pre-trial preparation. \$1,500.00 was considered to be an acceptable fee for settlement or for an application to chambers with flexibility to justify an increase in the fee if necessary.

A recommendation was made to simplify the billing process as it is considered overly complicated at the present time.

e) Adjustments Needed to Preparation Time

The PB indicated that there is so much at stake in family service files that it is critical to ensure preparation is done adequately.

Pre-trial preparation time of 10 hours was considered to be adequate in most circumstances. The pre-trial brief requires extensive time with significant documentation. If a delay should occur since being in chambers there is usually more work to do and sometimes there is a need to start over. In addition, a pre-trial conference can be adjourned from time to time with a requirement for the parent(s) to take counseling or participate in parenting classes. Preparation time is again involved when the case resumes.

- f) Impact of Collaborative Law on the Tariff  
There was agreement that the Tariff does not currently address the collaborative law process however should the chambers' fee change to recognized documentation and preparation time and should a negotiated settlement fee be implemented then a fee for collaborative law would fit into this new framework.

## 2. Systemic Issues Related to Policies of the Courts

### a) Changes Needed In The Queen's Bench or Family Law Division

- Setting Court Dates and Times

The system needs to be changed in order to reduce waiting time. It was suggested that briefer matters should go first with lengthier matters to the foot. This would also allow for more privacy to lengthier matters. It was also emphasized that self represented litigants need a separate time to present.

In addition some members indicated that some judges are requesting briefs in order to set time for cases and in some provinces there are time limits set for arguments which would also be worth considering.

- Arranging Pre-Trial Conferences or Chambers

A recommendation was made to have chambers time set later in the day enabling the Lawyer to leave and do other work before returning alleviating unnecessary waiting time.

- Resolving Matters at Pre-Trial or in Chambers

Questions arose about the necessity to update financial and property statements as it was felt that there are typically few changes. This can be done in the pre-trial brief. It was also noted that the expense part of the statement is needed only for spousal support.

### b) Suggested Changes for Family Service Hearings

It was suggested that the same changes need to be made as to chambers.

A concern was raised that it used to be possible to look at the Assessor's file before pre-trial but now can only do so after pre-trial.

## 3. Communications with the Saskatchewan Legal Aid Commission

### a) Clarity of SLAC's Expectations re:

- Service Regarding Clients Who don't Show  
Expectations in this area are clear.

- Need for Legal Services to Have Professional Merit  
There was discussion amongst the PB that there is so much at stake in family service files that it is often difficult to sort out merit. If in doubt, the PB indicated they usually consult with the CEO of SLAC and believe they are treated fairly by the CEO in this regard.
  - Changes in Financial Circumstances  
It was noted that changes in financial circumstances often change before receiving the file. A recommendation was made that the expectation to declare financial changes should be made clear to clients with reminders also provided.
  - When the Client Fires the Lawyer or the Lawyer Can No Longer Provide the Services the Client wants.  
Expectations were considered to be clear – close the file and bill.
  - When the Appointment is Ammended for Additional Charges  
Expectations are clear.
- b) What Can Legal Aid Do To Ensure There is Better Communication Between Legal Aid and the Private Bar?  
PB members conveyed satisfaction with their relationship with Legal Aid. They were pleased to have the opportunity to participate in the focus group and suggested the process should continue with regularly scheduled sessions taking place on an annual basis.

There was consensus that taking Legal Aid cases is a valuable learning experience for younger lawyers however there is concern that the current Tariff does not enable younger lawyers to take such cases as they face pressure from their firms to produce more revenue than what Legal Aid currently pays.

There appeared to be a perception amongst the PB that they receive the more difficult and complex cases and are expected to perform faster than staff lawyers however they do not share the capacity of Legal Aid staff to clear their desks to prepare as the PB also have private client cases to deal with.