

Chapter 3

Section 3.09

Ministry of the Attorney General

Legal Aid Ontario

Background

The Legal Aid Services Act, 1998 (Act) took effect in April 1999 and established Legal Aid Ontario as an independent corporation accountable to the Attorney General to provide legal assistance to low-income individuals. Between 1967 and 1999, a similar function had been performed through the Ontario Legal Aid Plan, which was administered by the Law Society of Upper Canada (Law Society).

Under the Act, Legal Aid Ontario is required to provide “consistently high quality legal aid services in a cost-effective and efficient manner” to clients deemed eligible, and is to encourage and facilitate flexibility and innovation in the provision of such services, while recognizing the private bar and clinics as the foundation for providing such services in the areas of criminal and family law, and clinic law, respectively.

Legal Aid Ontario provides assistance in three ways:

- It issues more than 100,000 legal aid certificates annually to people involved in criminal, family, and immigration/refugee law matters, and in certain civil matters. Clients apply for certificates primarily through Legal Aid Ontario’s offices in courthouses, and through its client call centre. About 99% of clients who

are able to obtain a certificate retain private lawyers, who in turn bill Legal Aid Ontario for the services they provide to the client. About 4,700 private-sector lawyers participate in the legal aid program. Legal Aid Ontario also operates law offices with staff who provide legal services to people who have certificates.

- It pays and manages about 1,500 staff and contract lawyers to provide duty counsel services at criminal and family courts. Duty counsel primarily provide legal representation and advice to eligible people appearing in court without counsel.
- It funds and oversees 77 independent community legal clinics, with nearly 550 staff who assist low-income people with clinic law issues such as government-assistance matters and representation at tribunals such as those dealing with landlord–tenant disputes. Funding is also provided to legal aid clinics operating at six universities with law programs.

In Ontario, the income threshold for eligibility for legal aid certificates is very low and has not changed since 1996. According to Legal Aid Ontario, about 80% of approved applicants have gross annual incomes under \$10,000, and the majority are on some form of social assistance or have no reported income.

Legal Aid Ontario employs about 700 staff at its head office in Toronto, nine district offices,

70 courthouses, and 10 law offices. As shown in Figure 1, Legal Aid Ontario received \$354 million in funding during the 2010/11 fiscal year, with 76% of that coming from the provincial government. Additional funds came from the federal government under a cost-sharing agreement, from the Law Foundation of Ontario, and from clients whose income levels require them to help pay for legal assistance. As shown in Figure 2, Legal Aid Ontario incurred \$362 million in operating expenditures, with \$315 million spent on client programs and \$47 million on administration and other expenses.

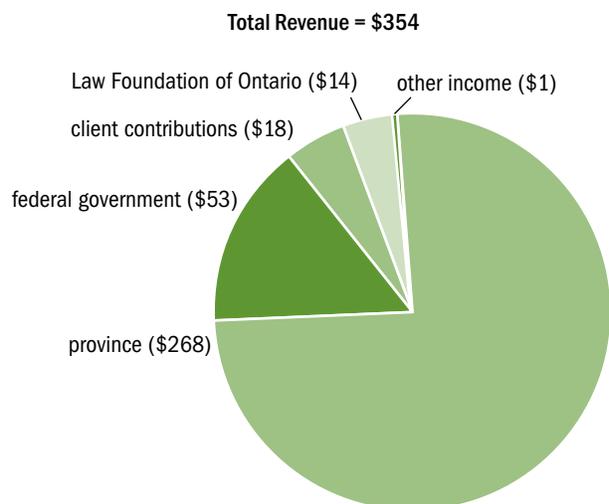
Audit Objectives and Scope

Our audit objective was to assess whether Legal Aid Ontario had adequate systems, processes, and procedures in place to:

- ensure that consistent high-quality legal aid services are delivered in a cost-effective and efficient manner to low-income individuals throughout Ontario in accordance with legislated requirements; and
- measure and report on its effectiveness in doing so.

Figure 1: Revenue by Funding Source, 2010/11 (\$ million)

Source of data: Legal Aid Ontario



Senior management reviewed and agreed to our audit objective and associated audit criteria.

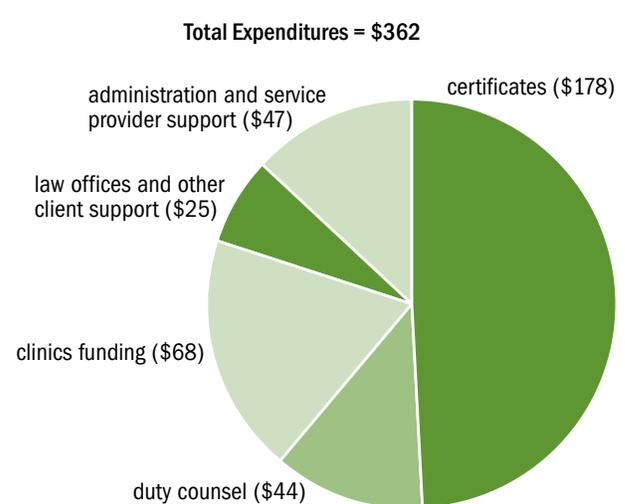
We conducted our fieldwork at Legal Aid Ontario’s head office in Toronto and visited five district offices, five courthouses, and three law offices. Our work included interviewing staff, reviewing recent reports and studies, and examining policies, records, and systems. We also held interviews with representatives of eight community legal clinics, as well as criminal, family, and refugee lawyers’ associations to discuss their perspectives on legal aid services provided in Ontario. We also considered recommendations we made in our last audit of Legal Aid Ontario in 2001.

We researched legal aid programs in other jurisdictions and met with senior program managers in two other provinces. We also engaged an independent expert who has senior management experience in delivering public legal aid programs.

Legal Aid Ontario’s internal auditor, and consultants that it hired, conducted a number of recent reviews that were helpful in planning our audit, including an assessment of the adequacy, effectiveness, and efficiency of internal controls over its lawyer billing and payment system, reviews of about half of the community legal clinics, and a value-for-money review of duty counsel services at two court locations.

Figure 2: Program Expenditures, 2010/11 (\$ million)

Source of data: Legal Aid Ontario



Summary

For at least the last decade, Ontario has spent more on legal aid support per capita than any other province, even though it has one of the lowest income eligibility thresholds and issues fewer certificates entitling people to legal aid per capita than most other provinces. Legal Aid Ontario acknowledges the need to address a history of operating deficits, make its operations more cost-effective, improve access to its services, and help make the courts more efficient. We noted that it has a well-defined long-term strategy to address these issues and that it has moved to increase access to legal aid services beyond the issuing of certificates, such as through expanded use of duty counsel available at court-houses and through its new call centre.

We felt its multi-year long-term strategy was heading in the right direction. However, the following are some of the areas the legal aid program must address if it is to be fully successful in meeting its mandate:

- Only people with minimal or no income qualify for legal aid certificates or for assistance from community legal clinics—the financial eligibility cut-offs for qualifying have not changed since 1996 and 1993, respectively. This, combined with an escalation in the average legal billing for each certificate issued, has meant fewer people over the last couple of years have been provided with certificates and more clients have been required to rely on duty counsel, legal advice, and information from Legal Aid Ontario's website for legal services.
- Although the Act requires Legal Aid Ontario to establish a quality assurance program with the Law Society with respect to the work performed by lawyers, it has not implemented quality assurance audits of lawyers since Legal Aid Ontario's inception in 1999. A robust quality assurance program would help ensure that legal services provided by staff and contract

lawyers to low-income and vulnerable clients are of a high standard. Given that legal aid lawyers generally work for lower rates than those in private practice, and approximately 11% of them carried large caseloads representing almost half of all certificates issued, there is a need for quality assurance audits to ensure that legal services meet the legislative requirement that certificate work performed by lawyers be of consistently high quality.

- At the time of our audit, Legal Aid Ontario was working on system improvements to address deficiencies with its lawyer payment system. Most importantly, strengthening of controls is required to ensure that all payments, which total \$188 million annually, are justified.
- Legal Aid Ontario's efforts to extract greater efficiencies from community legal clinics have caused relations to deteriorate. Although the Act technically gives Legal Aid Ontario significant authority and control over all areas of clinics' operations and expenditures, this has tended to conflict with the clinics' culture of independence and their individual board of director governance structure.
- With the significant amount of solicitor–client privileged information on its information technology systems, we expected Legal Aid Ontario to have performed recent and comprehensive privacy and threat risk assessments of its computer databases. However, the last privacy assessment was in 2004, and its systems have changed significantly since then.

As with our 2001 audit, we again noted that Legal Aid Ontario lacks key performance measures on the services it provides to its clients and stakeholders, and its annual reporting was three years overdue. In addition, it has not reported publicly on its strategic and business plans in a comprehensive manner.

OVERALL LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with all of the recommendations of the Auditor General and welcomes his observation that Legal Aid Ontario's Modernization Strategy is heading in the right direction.

As an independent public institution committed to working with its clients, the Ministry of the Attorney General, and all justice-system stakeholders, Legal Aid Ontario looks forward to continually improving the legal aid system for low-income Ontarians.

Detailed Audit Observations

RECENT INITIATIVES

In recent years, Legal Aid Ontario has implemented significant changes to its operations to control costs and improve accessibility for its clients. Many of these changes were ongoing at the time of our audit. The need for change had been identified in public reviews of Legal Aid Ontario, during its participation in initiatives by the Ministry of the Attorney General (Ministry) to make criminal and family courts more efficient, and internally by Legal Aid Ontario management as part of its efforts to improve efficiency and to address ongoing operating deficits.

A July 2008 report resulting from a review commissioned by the Attorney General identified a number of themes that have since driven many of the changes at Legal Aid Ontario. The report said that legal aid reform must be viewed as an integral part of a broader justice-system reform, particularly with regard to timely resolution of disputes; that the income level under which someone must fall to qualify for legal aid services must be raised so that it bears a better relationship to the actual circumstances of those in need; and that varying levels

of services should be provided on a sliding scale of eligibility. Additionally, it recommended that fees paid to lawyers (called "tariff rates") and salaries paid to staff lawyers should be increased; that services should be provided in an integrated fashion, including more one-stop shopping opportunities for clients; that more public electronic information and hotline services should be available; and that Legal Aid Ontario should receive more funding.

Other reviews have said that Legal Aid Ontario needs to pay tariff rates high enough to attract more experienced lawyers to take on the large, complex criminal cases it is sometimes called upon to handle. Legal Aid Ontario spends an average of \$20 million per year, or 25% of its criminal certificate expenditure, on big cases, but these cases represent only 2% of the number of criminal certificates issued. In the 2009/10 fiscal year, the average cost of a case that was not one of these big cases was \$1,391; the average big-case cost was \$24,700, or 18 times the cost of a regular certificate. At the time of these reviews, criminal lawyers working on legal aid cases were organizing a protest of the Ministry's approved legal aid tariff rates and boycotting certain cases.

The provincial government announced a funding increase to Legal Aid Ontario of \$51 million spread over three years, beginning in the 2007/08 fiscal year, to improve access for low-income Ontarians. Legal Aid Ontario officials said that their plan for these funds would include a 5% increase to the tariff paid to lawyers, exemption of the universal child-care benefits from legal aid applicants' income, development of a new financial eligibility test for applicants, increasing the number of certificates for family law matters, an increase in funding to the big-case management program, and initiatives at community legal clinics to increase employee salaries and improve services.

In September 2009, the provincial government also announced a transformation plan for Legal Aid Ontario, with additional funding of \$150 million over four years, including an annual increase in base funding growing to \$60 million a year by the

fourth year. The objectives included expanding clinic legal services, developing a faster and easier system for the resolution of family law matters, promoting the Ministry's Justice on Target project for addressing criminal court delays, and creating a big-case management office.

Under the *Law Society Act*, the Law Foundation of Ontario pays Legal Aid Ontario 75% of the interest earned on deposits held in trust by lawyers and paralegals involving transactions such as real-estate purchases. Due to the economic downturn and declining interest rates, recent revenues from the Law Foundation to Legal Aid Ontario had decreased sharply, from a peak of \$56.4 million in 2007/08 to \$4.8 million in 2009/10, a decline of more than 90%. This decline has largely offset the annual funding increases recently announced by the government. As a result, over the three fiscal years from 2008/09 to 2010/11, Legal Aid Ontario incurred operating deficits of \$19.1 million, \$27.7 million, and \$8.6 million, respectively, as it tried to manage with less overall revenue than expected and higher operating costs than prior to this period.

Legal Aid Ontario management has introduced a number of initiatives—including its Value Agenda in 2007 and its Modernization Strategy in 2009—to reduce program costs and improve services and efficiency. The strategies include plans to reduce the use of costly traditional legal services, primarily via certificates, which provide for individual representation, and instead make use of new technologies and alternative service models for individuals whose legal matters do not warrant the issuing of a certificate, such as providing duty counsel services, summary legal advice, and information from its new call centre and an enhanced website. A simplified financial eligibility test was established to reduce the administrative cost and time it takes to review and accept an application. The initiatives also include a goal to reduce administrative costs by 5% over five years, in part by reducing the number of district offices to nine from 51; restructuring payments and payment procedures for lawyers;

increasing to 55 from eight the number of legal aid offices at courthouses to process legal aid applications; and establishing a process to boost the role and effectiveness of community legal clinics.

The Act requires Legal Aid Ontario to submit an annual report to the Attorney General within four months of its March 31 year-end, and to include key information on its activities and results. When the Attorney General tables this report in the Legislative Assembly, it becomes available for public review. However, at the time of our audit in August 2011, the most recent Legal Aid Ontario annual report published was for the year ending March 31, 2008. Although that report included fairly comprehensive data regarding certificates issued by area of law and their cost, and the numbers of assists to clients provided by duty counsel and legal clinics, the report did not include measures on the quality or effectiveness of these programs or of client service in general.

Two Canadian provinces with large legal aid plans that we reviewed issue strategic plans to inform the public of their key priorities for the following five years, and they report annually on the progress. For instance, Manitoba outlines its areas of strategic focus and its action plan, and identifies steps to be taken, who is responsible, implementation date, costs, and outcomes and measures. Its annual report includes achievements, and the most recent report focuses on actions in its strategic plan to improve service delivery to clients, improve internal support services to its staff, and implement a new governance structure.

In a recent Legal Aid Ontario survey of certificate lawyers, 31% of respondents stated that they did not have a clear understanding of Legal Aid Ontario's strategic direction. Our discussions with stakeholders, including lawyers and clinic staff, also confirmed that this was a concern.

As well, although Legal Aid Ontario published several documents on its website describing its plans for its Modernization Strategy and there was some information in its 2008 annual report, considering all the changes and initiatives it has

undertaken over the last few years, it needs to do more to inform the public about these changes, how it is executing them, and whether they are producing the desired results.

Furthermore, in its most recent publicly available annual report, for 2007/08, Legal Aid Ontario stated its intention to develop a plan to establish more comprehensive performance measure reporting across the organization over three to four years. At the time of our audit, Legal Aid Ontario was still working on developing performance measures to assess how it was making a difference to clients and their communities. However, we are concerned about the length of time that it is taking to complete this work.

RECOMMENDATION 1

To better inform the Legislature and the public of its strategic priorities and success in achieving its mandate of providing legal assistance to low-income Ontarians, Legal Aid Ontario should develop and implement meaningful performance measures on its key services and program outcomes, and enhance both the information in its annual report and on its website. It should also work with the Ministry of the Attorney General to ensure that its annual report is made public on a more timely basis.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation. Legal Aid Ontario recognizes the importance of communicating its areas of strategic focus and action plans with the public and stakeholders. Legal Aid Ontario maintains a proactive communications program, and changes were recently made to the organizational structure to enhance Legal Aid Ontario's focus on policy, research, and outreach. Legal Aid Ontario commits to the development of further stakeholder and public communications initiatives and policies, and will seek to update

the memorandum of understanding between the Ministry and Legal Aid Ontario in this regard.

Legal Aid Ontario agrees with the Auditor General that meaningful performance measures are important. Legal Aid Ontario has developed measures to track progress against its Modernization Strategy. For example, productivity target savings of 1% per year over three years were developed and achieved. Legal Aid Ontario has developed performance indicators that have been included in Legal Aid Ontario's reporting to the Ministry and is in the process of developing further measures focusing on program outcomes.

Subsequent to the review by the Auditor General, Legal Aid Ontario's 2008/09 annual report was tabled in the Legislature and is now posted on our website. Legal Aid Ontario also submitted its 2009/10 annual report to the Ministry of the Attorney General for tabling in the Legislature, and its 2010/11 annual report will be submitted shortly.

MEETING DEMAND FOR LEGAL AID

Under the Act, Legal Aid Ontario's mandate is to promote access to justice for low-income people by "identifying, assessing and recognizing the diverse legal needs of low-income individuals and of disadvantaged communities in Ontario," and to do so within its available financial resources. Details about such matters as applications for legal aid, appeals of eligibility decisions, recovery of legal aid costs, functions of duty counsel, and appointment of lawyer panels that provide services are set out in regulations, as are details of recording and billing requirements for lawyers, along with their fee and tariff schedules.

Moreover, the ability of Legal Aid Ontario to address the needs of its clients is greatly affected by the same problems that have hindered the efficiency of the court system in general. The problems

include the fact that the number of criminal charges and family cases handled by the courts has steadily increased over the past 10 years. Various factors have contributed to backlogs and delays, and courts are dealing with longer-running and more complex cases. Ministry initiatives such as Justice on Target have produced some progress in the last year in addressing court backlogs and delays.

Applicants are eligible for legal aid provided they meet the prescribed financial eligibility requirements and their legal issue is covered by the program. The financial eligibility test considers gross income, family size, and assets. Applicants below a set income threshold are eligible for a free legal aid certificate or other services, while those above the threshold up to a predefined limit can receive a legal aid certificate if they agree to pay for some or all of the services under a contribution agreement. The benefits of such agreements are that the legal services are provided at what is usually a lower legal aid tariff rate and that clients can repay Legal Aid Ontario over time.

As previously noted, the financial eligibility threshold for certificates has not changed since 1996, and only those individuals with little or no income qualify. In our sample, only 8% of certificate clients were employed with some income, 37% were recipients under Ontario Works or the Ontario Disability Support Program, and 55% reported no income whatsoever. Of those reporting no income, more than half were incarcerated. Similarly, Legal Aid Ontario reports that 80% of approved applicants have gross incomes under \$10,000, 73% either receive social assistance or have no reported income, and 94% of certificates were not subject to a contribution agreement.

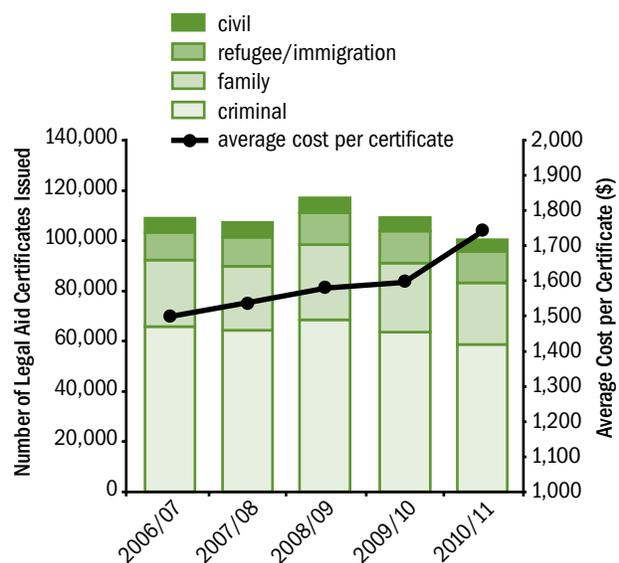
In 2001, Legal Aid Ontario issued almost 118,000 certificates at an average cost of almost \$1,350. In our 2001 audit, we concluded that Legal Aid Ontario had not been effective in controlling the costs of its certificates. However, since that time, Legal Aid Ontario has been working to address these costs. In the 2010/11 fiscal year, legal aid certificates accounted for approximately half

of all Legal Aid Ontario expenditures. As shown in Figure 3, just over 100,000 certificates were issued and the average cost per certificate had risen to \$1,752, an increase of about 30% over the 10-year period. The most recent spike in cost, from 2009/10 to 2010/11, is largely attributable to the fact that certificates are more frequently being reserved for complex and expensive cases, and to increases in the tariff rates paid to lawyers, which was done to address the rate conflict with criminal lawyers.

A goal of Legal Aid Ontario's Modernization Strategy is to reduce reliance on the use of certificates when other, less costly, assistance can be provided. Most people without legal representation can receive legal aid assistance with criminal, family, or refugee/immigration matters from either duty counsel or the call centre. However, the fact that Legal Aid Ontario's financial eligibility cut-off has not changed since 1996 is one of the reasons that, given the effects of inflation, fewer people are qualifying for certificates. A single person applying for a certificate must have an income of less than \$10,800 a year—an amount so low that someone working full time at the minimum hourly wage would earn twice as much.

Figure 3: Legal Aid Certificates Issued and Average Cost per Certificate, 2006/07–2010/11

Source of data: Legal Aid Ontario



As shown in Figure 4, Legal Aid Ontario's eligibility threshold for a fully paid certificate for a single person is the second-most restrictive among the larger provinces. The same is true for the threshold requiring a person to repay Legal Aid Ontario under a contribution agreement.

Even though Legal Aid Ontario has been working to control its certificate costs, Ontario still spends more on legal aid support on a per capita basis than any other province, but it is among the provinces that issue the lowest number of certificates on a per capita basis, as illustrated in Figure 5. However, Legal Aid Ontario offers almost three times more duty counsel assists per capita than the provincial average. Ontario offers more than 1 million duty counsel assists per year at an average cost of \$61 each, and makes such assistance available to people with higher incomes. A court assist is a cost-effective strategy, especially if it can help resolve a legal matter without a certificate. In addition, independent community legal clinics that are almost entirely funded by Legal Aid Ontario assist more than 155,000 people with clinic law issues.

Based on our discussions with various stakeholders, we feel that Legal Aid Ontario's multi-year reform strategy is heading in the right direction since it strives to improve efficiency in service delivery and make at least some level of service available

to a larger number of people, while reserving more costly legal representation certificates for more serious and complex cases. This approach is consistent with its legislated mandate, recent studies of legal aid, and other reforms to make courts more efficient. However, Legal Aid Ontario continues to have more costly programs when compared to other provinces, which can generally provide certificates to more low-income persons because they use higher financial eligibility thresholds.

Because Legal Aid Ontario's Modernization Strategy is being deployed to provide less costly alternative legal aid services using duty counsel, summary legal advice, and information provided via its call centre and website, it will be important for it to undertake a formal risk assessment to see how this approach affects the rights of low-income people to legal representation, and to ensure that low-income individuals receive the appropriate level of legal aid services for their circumstances. This risk assessment should take into consideration a variety of factors, such as a person's having the capacity and knowledge to manage his or her own case in the court system, language barriers, mental-health issues, and computer literacy. We did note, however, that Legal Aid Ontario is taking action to address these risks.

Figure 4: Provincial Comparison of Financial Eligibility for Legal Aid Certificates, as of September 2011

Prepared by the Office of the Auditor General of Ontario with data from provincial legal aid offices

Province	Maximum Income Eligibility Threshold*			
	Free Certificate		With Contribution Agreement	
	Family Size: 1	Family Size: 5	Family Size: 1	Family Size: 5
Saskatchewan	9,924	20,784	12,540	24,264
Ontario	10,800	26,714	12,500	33,960
Nova Scotia	12,804	25,872	n/a	n/a
Quebec	13,007	21,328	18,535	30,393
Manitoba	14,000	31,000	23,000	37,000
Alberta	n/a	n/a	18,036	42,312
British Columbia	19,632	59,028	n/a	n/a

*Some eligibility figures have been adjusted for comparison purposes to take into account net income vs. gross income. In addition, most provinces, including Ontario, require an applicant's assets to be considered when determining eligibility. We excluded asset assessments from our comparison. Provinces marked n/a above: Alberta expects clients to repay some or all of their legal aid bills, but determines eligibility and client contributions on a case-by-case basis; British Columbia does not use contribution agreements.

Figure 5: Provincial Comparison of Total Legal Aid Funding,¹ Certificates, and Duty Counsel Assists, 2009/10

Source of data: Statistics Canada

Province ²	Total Funding for Legal Aid per Capita (\$)	Approved Certificates per 1,000 Population	Duty Counsel Assists per 1,000 Population
Ontario	28.40	10	87
Manitoba	26.00	22	32
Nova Scotia	23.00	21	20
Newfoundland and Labrador	21.30	10	22
Saskatchewan	21.00	21	16
Alberta	20.90	10	44
British Columbia	17.80	6	27
Quebec ³	17.30	29	0
Provincial Average	22.00	16	31

1. Comparison of total legal aid funding does not take into account program differences among provinces, such as areas in law covered, services provided, and financial eligibility.

2. Prince Edward Island and New Brunswick did not report data to Statistics Canada.

3. Quebec does not provide duty counsel services.

RECOMMENDATION 2

To help ensure that its multi-year efforts to modernize legal aid services result in delivering cost-effective services to those in need, Legal Aid Ontario, in collaboration with the Ministry of the Attorney General, should:

- study the impact on low-income individuals of its current financial eligibility threshold, which has not been raised since 1996, and its shift to using less costly legal aid support services;
- assess legal aid programs in other provinces to identify the factors and best practices contributing to their lower costs that can be applied in Ontario; and
- continue to identify alternative ways to meet the legal needs of low-income individuals in a cost-effective manner.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation. Legal Aid Ontario has made significant progress and takes care to ensure that low-income clients receive cost-

effective legal aid services tailored to their needs while reserving more costly services for more complex and serious cases. This allows Legal Aid Ontario to serve more clients with its available resources. Legal Aid Ontario believes the Auditor General's recommendation to study the impact of this approach on low-income individuals will demonstrate the overall benefits of the Modernization Strategy in offering a broader range of legal aid services.

Legal Aid Ontario's financial eligibility thresholds are governed by the regulations flowing from the *Legal Aid Services Act, 1998*, and any changes are the responsibility of the provincial government. Legal Aid Ontario has been concerned about this issue and has discussed it with stakeholders and the provincial government over a number of years. Legal Aid Ontario will be pleased to assist the Ministry in continuing to review this important matter.

Cost comparisons among legal aid plans in Canada are difficult to make precisely. It is Legal Aid Ontario's opinion that several significant limitations apply and that cost per service is another meaningful measure.

Legal Aid Ontario maintains close contact with other provincial and territorial legal aid plans through its membership in the Association of Legal Aid Plans of Canada, and will continue to share information in the areas identified by the Auditor General.

QUALITY OF LEGAL SERVICES

Panel Management

In 2004, Legal Aid Ontario began phasing in standards that require lawyers to demonstrate a specific level of knowledge, skill, and experience in the area of law they practice. Those who meet the requirements are assigned to one or more of 10 panels to provide service in specific areas of law: criminal; extremely serious criminal, such as murder and terrorism; family; child protection; refugee; consent and capacity (mental-health related); duty counsel criminal court; duty counsel family court; duty counsel advice; and *Gladue* (aboriginal persons) court. Legal Aid Ontario offers support for those lawyers through research, learning opportunities, and mentoring.

New lawyers or lawyers new to a particular area of law who do not meet the experience requirement can be conditionally admitted to a panel if they agree to meet the minimum experience level within 24 months. A conditionally approved lawyer must attend training and be mentored, as determined by the district area director. Conditionally approved lawyers are authorized to accept certificates.

Legal Aid Ontario's district area directors are responsible for assessing applications and admitting lawyers to panels in their geographic area. In addition, district area directors are responsible for ensuring that panel membership requirements are met, for overseeing the correction of non-compliance or unsatisfactory performance or conduct, and, if necessary, for initiating steps to remove from a panel a lawyer who fails to meet applicable standards.

Legal Aid Ontario does not set a specific number of lawyers for each panel, and the total number of panel lawyers increased an average of 5% per year over the past five years to 4,700.

We found that the number of conditionally approved lawyers on panels has increased over the past five years, from an average of 16% in 2007 to 23% in 2011. More than 800 of these lawyers had spent three years or more on conditional status, or at least one year beyond the maximum time allowed, and 27 of them had been on conditional status since 2004. In addition, we were informed that the mentoring process had not been evaluated, so Legal Aid Ontario does not know whether there are enough mentors available and to what extent mentoring needs are being met on a province-wide basis.

Since 2007, panel appointees have been required to confirm annually that they have met the experience and continuous learning requirements. Requirements vary by panel, but all include six hours of legal education and completion of a minimum number of case files in the previous year in the specific panel area of law. For the 2009 calendar year (the most recent statistics and status on self-reporting available to us), almost 1,100 lawyers had not reported on their experience and learning activities by the deadline of June 2010 as required. We were informed that Legal Aid Ontario cannot suspend a lawyer from practising law; only the Law Society of Upper Canada (Law Society), the body that governs members of the bar, can do so. However, Legal Aid Ontario can permanently remove a lawyer from a panel. From 2006/07 through 2010/11, four lawyers were removed from panels, two of them related to fraud and overbilling and the other two for "reasonable cause."

We are concerned that insufficient oversight of panel management could lead to legal aid clients not receiving the expected quality of service, and that panel appointees may conclude that the standards and reporting requirements are not important if little is done to enforce them.

Quality Assurance

The Quality Service Office (Office) of Legal Aid Ontario works with district offices, clinics, lawyers, duty counsel, and other external stakeholders in the justice sector to improve the quality of services provided to clients. The Office's responsibilities include developing and monitoring panel standards for lawyers, providing training seminars and materials to lawyers, conducting site visits at clinics, measuring the satisfaction levels of clients and service providers, and developing a performance measure framework for Legal Aid Ontario.

The Act requires Legal Aid Ontario to implement a quality assurance program to ensure that it is providing high-quality legal aid services in a cost-effective and efficient manner. The Act also states that Legal Aid Ontario may conduct quality assurance audits of providers of legal aid services but not of lawyers; it must, instead, direct the Law Society to perform quality assurance audits of lawyers. Although lawyers are required by their professional ethics and conduct standards to provide quality services, there is a higher risk that legal aid services may not be of a consistently high quality because fees paid to lawyers are lower than the going rate in private practice. As well, legal aid clients are typically more vulnerable and may not be as aware that the level of service they receive is not adequate.

In our 2001 audit of Legal Aid Ontario, we reported on the lack of a quality assurance program to assess the legal aid certificates program. During our follow-up in 2003, Legal Aid Ontario indicated that it had begun discussions with the Law Society on the objectives and approaches common to their respective quality assurance programs, and had identified areas where there could be co-ordination of efforts and support of each other's initiatives. However, beyond these initial discussions, little action has been taken and there was still no agreement or memorandum of understanding between Legal Aid Ontario and the Law Society, nor were there any ongoing efforts to pursue one. Further-

more, no requests have been made by Legal Aid Ontario of the Law Society to carry out any quality assurance reviews of lawyers, nor does it do any quality assurance audits of lawyers on its own.

In January 2010, Legal Aid Ontario, along with the Ministry of the Attorney General, entered into a memorandum of understanding with the Criminal Lawyers' Association in which it committed to developing and establishing revised requirements for panel membership. Legal Aid Ontario did not enter into a memorandum of understanding with other lawyers' associations, but it agreed to consult with them in the development of panel requirements, which would include quality assurance and practice review audits, including after-case review. However, at the time of our audit there had been no progress on these consultations.

Legal Aid Ontario imposes a billing cap of 2,350 hours per year to try to ensure that lawyers do not overbill and that they do not overextend themselves with large caseloads. This works out to a 45-hour week for all 52 weeks of the year. We noted that over the last three years, approximately 11% of panel lawyers carried about 48% of all certificates, which on average would require them to work almost the maximum number of hours each year to complete these files. Legal Aid Ontario has a system for identifying lawyers who are approaching the annual billing cap, and it then informs the lawyer that he or she is approaching the limit. A good starting point for any quality assurance program would be to target those lawyers carrying large caseloads.

Our research on other legal aid jurisdictions showed that in the United Kingdom, formal peer reviews are carried out by independent assessors funded by the Legal Services Commission of England and Wales. The assessors assign one of five grades. The lowest rating carries a recommendation that the contract between the Legal Services Commission and the lawyer or firm be terminated. The second-lowest rating requires a reassessment in six months. This approach might be worth investigating for implementation in Ontario.

RECOMMENDATION 3

To strengthen its ability to ensure that consistently high-quality legal aid services are being provided as required by legislation, Legal Aid Ontario should:

- assess the reasons for a high number of lawyers being on conditional status for panel membership beyond the two-year maximum time allowed, and take timely action to ensure that those not meeting requirements are appropriately followed up on; and
- either address long-standing impediments to establishing a quality assurance audit program with the Law Society of Upper Canada or seek changes to its legislation that would allow alternative means of developing and implementing a quality assurance audit program to oversee lawyers, including considering best practices in other jurisdictions.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation.

Legal Aid Ontario is committed to ensuring that high-quality legal aid services are provided by lawyers and to reviewing its process related to the conditional status of lawyers on the panel.

Legal Aid Ontario will develop proposals for improving its quality assurance program consistent with the Auditor General's recommendations.

BILLINGS BY LAWYERS

Payment Systems and Structures

All private-sector lawyers who accept legal aid certificates, as well as court duty counsel who are paid on a per diem basis, submit their accounts for payment through a Web-based billing and payment system. The system was implemented in 2005 to process payments more efficiently and help com-

pensate lawyers in a timely manner. The system was updated in 2007 to allow lawyers to accept and confirm certificates for clients on-line. In the 2010/11 fiscal year, the system was modified again to accommodate block-fee billing for criminal certificates, whereby a fixed fee would be paid for the most common legal procedures handled by criminal lawyers. Legal Aid Ontario says that it expects the new block-fee billing to achieve cost control, reduce financial risk, and be easier to administer.

In 2010/11, the lawyer billing and payment system settled 215,000 billings, totalling \$188 million in certificate and per diem duty counsel lawyers' payments.

In April 2010, with the assistance of consultants, Legal Aid Ontario determined that automated controls within the billing system did not adequately support established billing rules and policies. The review also identified \$17.5 million in lawyers' billings over the previous three-year period that warranted follow-up. Among the problems identified were possible violations of rules that state that lawyers should not bill while under suspension, double bill, or bill for unreasonable discretionary costs, or work more than 10 hours per day. The review also found that there were insufficient oversight mechanisms and appropriately trained staff in place to ensure that lawyers complied with the rules. In addition, lawyers were not required to submit court dockets that included the details that Legal Aid Ontario staff needed in order to verify the work that was billed. A total of 21 recommendations were made to address strategic and organizational alignment, staff skills and capabilities, operations, and technology.

At the time of our audit, implementation of eight recommendations had been completed, and implementation of another 12 was expected within the following three to six months. We were advised at the end of our fieldwork that the system changes needed in order to address the remaining recommendation—to improve the accuracy, timeliness, and completeness of the lawyers' database—were in progress.

Legal Aid Ontario suspended post-payment examinations of billings from April 2010 to March 2011 because a new targeted, risk-based process to examine lawyer account billings was being implemented. Billing payments for this period amounted to \$179 million. Accounts that were not examined from April 2010 to March 2011 will be subjected to the new examination process within the new compliance and risk management framework. However, we believe that certain payments prior to April 2010, including the \$17.5 million in questionable billings, should be included in the examination of past accounts.

Billing Oversight and Verification

Legal Aid Ontario's Investigations Department has six full-time staff and is responsible for protecting Legal Aid Ontario from fraud and billing errors by lawyers and other external service providers or legal aid clients. The department investigates alleged breaches of the Act, recovers overpayments made to lawyers and other service providers, and pursues recovery of amounts billed to certificates for which clients were not eligible.

Investigations staff run computer analyses of lawyer billing and payments to identify inconsistencies, which then become the focus of investigations. To complete the investigation, staff must request from the lawyers documents verifying the work they completed. Such documentation can take a long time for the lawyers to produce, if it is ever produced at all. In 2010/11, investigations staff completed more than 250 solicitor and client file reviews, but were able to recover only \$193,000. The amount recovered for 2009/10 was \$110,000. According to Legal Aid Ontario, although management acknowledges that the recoveries may be low, just the existence of the department may well be acting as a deterrent against inappropriate billing.

Beginning January 1, 2011, Legal Aid Ontario implemented a new policy requiring lawyers to submit these documents with their bills, with the exception of block-fee billing for criminal certifi-

cates. Since the information will now be more accessible, staff expect this to improve the investigations process. For lawyers billing on a block-fee basis for criminal cases, staff will still need to ask them to submit documents supporting their work should this be deemed necessary.

Investigations staff also need to obtain court information about specific case proceedings and outcomes in order to verify lawyer billings under investigation. Although Legal Aid Ontario has sought on-line access to the Ministry of the Attorney General's Integrated Court Offences Network (ICON) system for several years, that request has been denied. Instead, a Ministry liaison was appointed to handle their requests. Staff told us that there are often lengthy delays, and that some documents received are of poor quality so that the request must be made again. Our analysis showed that 20% of court information requests took longer than 30 days. We noted from our visits to both Quebec and Manitoba that legal aid staff have on-line access to court information of this nature.

Following our fieldwork, Legal Aid Ontario reached an agreement with the Ministry to receive monthly reporting on requested case details. However, the agreement does not provide Legal Aid Ontario with on-line access to ICON.

RECOMMENDATION 4

To help ensure that internal controls over lawyer billing and payment processing are appropriate, Legal Aid Ontario should:

- assess the recoveries achieved in the most recent year's billings using the new targeted, risk-based approach, and on that basis decide whether or not to proceed with an examination of billings from additional prior periods; and
- assess the cost-effectiveness of its investigation activities and continue to work with the Ministry of the Attorney General for timely access to court information that is needed for verifying lawyers' billings.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation.

Legal Aid Ontario has developed a comprehensive compliance plan that will continue to identify areas of payment risk for the organization and agrees to consider the probability of recoveries as part of its assessment.

Legal Aid Ontario is improving the effectiveness of its investigation group through the implementation of an automated case management program. Legal Aid Ontario has recently been given some access to court information by the Ministry of the Attorney General and continues to work with the Ministry for improved access to court information needed to verify lawyers' billings.

COMMUNITY LEGAL CLINICS

Under the Act, community legal clinics are independent corporations governed and managed by boards of directors, and are accountable to Legal Aid Ontario. When deciding whether to provide funding to a clinic, the Act requires Legal Aid Ontario to consider the legal needs of individuals or communities the clinic serves, the clinic's cost-effectiveness and efficiency in providing legal aid services, the past performance of the clinic, and whether it is within Legal Aid Ontario's financial resources and priorities. In 2010/11, Legal Aid Ontario provided \$65 million to 77 independent community legal clinics, which provided assistance to more than 155,000 low-income individuals. More than 85% of clinic expenditures are for salaries.

We noted the following areas where oversight of the clinics could be improved:

- Of the 77 clinics funded in 2010/11, all but two had submitted their budgets for approval on time as of February 1, 2010. However, we found that Legal Aid Ontario had not approved any of these budgets six months

into the fiscal year (by September 30, 2010). By March 31, 2011, 18 budgets had still not been approved, although the clinics received their expected funding nonetheless. We are concerned that the value of the administrative effort to produce budgets is diminished when they are not analyzed and approved in a timely fashion.

- The community legal clinics' financial eligibility threshold for their clients receiving clinic services, which is different from Legal Aid Ontario thresholds for certificates, was last set in 1993 and has not been adjusted since then to account for general inflation. Clinics are not required to track the number of clients turned down, the reasons they were turned down, or whether they found alternative assistance—information that would be useful for identifying unmet needs.
- Currently, clinics measure and report on outputs such as number of cases, number of public education sessions held, and number of referrals; however, there are no data on whether these outputs are achieving the desired program outcomes for clinic law matters, such as successful appeals of disability income cases and landlord-tenant disputes. This had been noted as well in an earlier evaluation of clinics in 2004, by consultants hired by Legal Aid Ontario, and was noted again in 2008. In addition, Legal Aid Ontario was concerned about the accuracy of clinic productivity statistics, particularly with respect to whether client assists and the opening and closing of client case files were recorded in a consistent manner. We were advised that Legal Aid Ontario plans to address this issue through the development and implementation of a Clinic Information Management System, as noted in its business plan for 2011/12.
- Legal Aid Ontario's internal auditors commenced a clinic review program in 2009. So far, 42 clinics have been evaluated. During our audit, we were advised that the review was

put on hold pending a review of the program evaluation framework and that no further reviews were scheduled.

Legal Aid Ontario issued a discussion paper to clinics in May 2010 outlining proposals for reducing overhead costs, such as rent and administration, in order to free up resources to serve more clients. Opportunities identified included regional co-ordination of services among clinics; shared space or co-location among clinics or with community agencies; shared services such as human resources, knowledge management, and finance; amalgamation of clinics; and leveraging technology (for example, by providing Internet-based services to clients). At the end of our fieldwork, Legal Aid Ontario and the clinics were still assessing the options.

For the most part, the clinic staff we spoke to expressed concern about Legal Aid Ontario's recent demands for greater efficiencies and about the level of support and communication the clinics receive from Legal Aid Ontario. Although the clinics are legally independent from Legal Aid Ontario, they are dependent on it for virtually all their funding and support, including information technology. For example, Legal Aid Ontario approves the clinics' client financial eligibility thresholds, budgets, salaries, rent, and reporting requirements.

In essence, the clinics are accountable to Legal Aid Ontario, although on a day-to-day operational basis, they are accountable to their local boards of directors. This makes it challenging to propose and implement any system-wide changes because, although Legal Aid Ontario provides the funding, it is not always easy to obtain local buy-in for proposed changes.

RECOMMENDATION 5

To better address the legal needs of low-income individuals served by community legal clinics, Legal Aid Ontario should:

- assess the impact of not increasing the clinics' income threshold for determining financial eligibility since 1993;

- consider requiring clinics to capture and report on the number of applicants who are denied assistance and the reasons they are denied;
- improve the timeliness of the clinic budget review and approval process; and
- develop and implement performance measures for clinics that are reflective of the outcomes achieved, together with a quality assurance program that includes the quality of legal advice and services delivered to clinic clients.

Legal Aid Ontario, in conjunction with representatives of community legal clinics, should assess the overall effectiveness of the local clinic structure and consider whether any changes are possible that would help serve more clients using available funding.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation and acknowledges that its approval process for clinic budgets needs to be faster.

With respect to the issue of financial eligibility for clinic law services, Legal Aid Ontario commits to assessing this matter in the way the Auditor General recommends.

In July 2011, Legal Aid Ontario and the Association of Community Legal Clinics of Ontario (ACLCO) agreed upon an approach that is aimed at achieving \$5.5 million in annualized administrative savings within the clinic system by 2015. Also, the ACLCO is leading a strategic planning initiative for the future of clinic law services. At the invitation of the ACLCO, Legal Aid Ontario will be participating in this process. In the course of these discussions, Legal Aid Ontario commits to raising the Auditor General's observations about the possibility of changes to the local clinic structure to serve more clients using available funding.

Additionally, Legal Aid Ontario is currently working with the clinics to develop and implement a Clinic Information Management System. Performance measures are being developed as part of this project. This system will address the gaps identified by the Auditor General.

INFORMATION TECHNOLOGY

The Information Technology (IT) department of Legal Aid Ontario provides strategy, architecture, systems development, and project management for the organization, and supports approximately 1,500 end users in more than 200 locations across the province, as well as about 4,700 panel lawyers. IT had 41 staff and five managers and an operating budget of \$6.5 million in the 2010/11 fiscal year. Approximately \$8 million is budgeted for upgrading infrastructure and application systems in the next two years.

Ontario government standards require that departments assess threats and risks to which sensitive information, assets and employees are exposed; select risk avoidance options, implement cost-effective safeguards, and develop comprehensive business continuity and disaster recovery plans. Information retained by Legal Aid Ontario on its clients is generally considered solicitor-client privileged, requiring permission of clients before it is disclosed. We noted that, while there is a focus on information technology security and privacy management at Legal Aid Ontario through staffing, policies and procedures, and IT controls, there is no process to formally assess threats and risks associated with sensitive information, assets, and employees. We were advised by Legal Aid Ontario that the last privacy impact assessment was conducted in 2004, which would have been before they introduced the many new web-based systems in place and relocated their head office and most of their offices throughout the province. Without periodic assessments,

management does not have objective assurance that sufficient safeguards exist to respond to privacy, security, and availability threats in the provision of information technology services.

Performance measures are benchmarks for evaluating how information technology investments can be more efficient and effective. The IT department does not currently report on performance measures important to its operations and stakeholders. Such measures typically include system availability, response times to business requests, system changes to meet user needs, and costs of delivering services. IT has not yet developed such performance measures and targets in consultation with its internal and external stakeholders that reflect user needs.

RECOMMENDATION 6

To ensure that information technology systems meet privacy, security, and service level standards, Legal Aid Ontario should:

- periodically assess threats and risks associated with its sensitive information and assets and take steps to manage the issues identified; and
- engage the users of the information technology services in the development of key performance measures that would provide management with information on their progress in meeting user needs.

LEGAL AID ONTARIO RESPONSE

Legal Aid Ontario agrees with the Auditor General's recommendation.

Legal Aid Ontario performed a Threat Risk Assessment and Privacy Impact Assessment before it implemented its new web-based systems in 2005. There is no evidence of privacy breaches associated with Legal Aid Ontario's information technology systems.