

Chapter 4

Section 4.10

Ministry of the Attorney General

Office of the Children’s Lawyer

Follow-up to VFM Section 3.10, *2011 Annual Report*

Background

The Office of the Children’s Lawyer (Office), which is part of the Ministry of the Attorney General (Ministry), provides children under the age of 18 with legal representation in child protection cases, custody and access cases, and property rights matters such as estate matters and personal injury claims. The Office must provide legal representation for children when appointed by the court or when required by legislation in child protection and property rights cases; however, it has discretion in accepting cases when the court requests its involvement in custody and access matters.

In the 2012/13 fiscal year, the Office carried out its duties with approximately 85 staff (also 85 in 2010/11), including lawyers, social workers and support staff. The Office also engages what it calls “panel agents”—approximately 450 private lawyers (440 in 2010/11) and 245 clinical investigators (180 in 2010/11)—on an hourly fee-for-service basis. For the 2012/13 fiscal year, the Office’s expenditures totalled approximately \$40 million (\$32 million in 2010/11). The Office accepts about 8,000 new cases a year and, as of March 31, 2013, it had more than 10,300 open cases (11,000 in 2011).

In our *2011 Annual Report*, we noted that demand for the Office’s legal and clinical investiga-

tion services is significant. The Office is unique—no other jurisdiction in Canada provides children with the same range of centralized legal services. Overall, the legal and investigative work done by the Office is valued by the courts, children and other stakeholders. However, these services are often not assigned or delivered in a timely enough manner.

We identified several areas in which the Office’s systems, policies and procedures needed improvement. Among our more significant findings:

- The Office’s case management system was not meeting its information needs, and the Office did not have an adequate process in place for evaluating the cost-effectiveness of its operations. For example, the Office had not adequately analyzed why its payments to panel agents had increased by more than \$8 million, or 60%, over the last 10 years even though new cases accepted each year decreased by 20% and the Office’s overall active caseload did not change significantly over the same period.
- In the 2010/11 fiscal year, the Office exercised its discretion to refuse more than 40% of child custody and access cases referred to it by a court. We found, however, that the Office had not adequately assessed the impact of these refusals on the children and courts. Many of the decisions to refuse cases were made primarily because of a lack of financial resources.

- Although the Office has substantially reduced the time it takes to accept or refuse custody and access cases—from 68 days in 2008/09 to 39 days in 2010/11—it still was not meeting its 21-day turnaround target.
- In custody and access cases in which the Office is asked to investigate and then provide the court with a report and recommendations, Family Law Rules require it to do so within 90 days. However, the Office met this deadline less than 20% of the time and did not have any formal strategy in place for improving its performance in this regard.
- The Office had a sound process for ensuring that personal rights lawyers and clinical investigators were well qualified and selected fairly. However, there was no open selection process in place for the almost 100 property rights lawyers the Office engaged.
- In 2011, the Office permitted property rights panel lawyers to charge up to \$350 an hour when recovering their costs from a child's interest in an estate, or from trust or settlement funds. Yet if the same lawyers charged the Office directly for their services, they were paid \$97 an hour.
- The Office's programs for reviewing the quality of the work performed by panel agents did not include an assessment of whether the fees charged were reasonable.

We made a number of recommendations for improvement and received commitments from the Office that it would take action to address our concerns.

Status of Actions Taken on Recommendations

The Office of the Children's Lawyer has substantially addressed some of our recommendations and made progress in addressing the majority of the

other recommendations that we made in 2011. For example, it established new and improved criteria for tracking the reasons for accepting and refusing custody and access cases, and was looking more closely into its reasons for refusing cases and into reducing its refusal rates. The Office was in the process of implementing its new CHILD case management system, which would help it capture and report the information it needs to address several of our recommendations. Staff had begun using the case management system and a new agent billing system was scheduled to go live in December 2013.

The status of the actions taken on each of our recommendations at the time of our follow-up was as follows.

INTAKE AND REFERRAL OF CASES

Recommendation 1

To ensure that its intake and referral services make appropriate and timely decisions on whether to accept or reject a custody and access case and whom to assign a personal rights case to, the Office of the Children's Lawyer (Office) should:

- *establish criteria for accepting cases based on the best interests of the children involved and the benefits provided by the Office's involvement, and track these reasons for accepting them—the reasons for refusing cases should also continue to be tracked, but recorded more accurately, including noting when funding limitations affect the decision to refuse a case;*
- *examine the impact on children and the courts of its refusal rate of more than 40% for custody and access cases referred to the Office by the courts;*
- *monitor the number of cases assigned to each in-house lawyer and panel agent, and ensure that higher-than-normal caseloads receive the required authorizations; and*
- *establish recording and reporting systems that allow management to adequately track and monitor the time it takes to accept or reject a custody and access case as well as to assign an*

accepted case, and use this information to identify any systemic reasons for delays.

Status

The Office introduced the first phase of its new case-management system—the Children Information and Legal Database (CHILD)—in October 2012. The second phase, which is to include a portal invoicing system to allow panel agents to bill the Office online, is to be implemented in December 2013. At the time of our follow-up, CHILD was not able to generate reliable reports on case timelines and common reasons that cases were accepted or refused. The Office was modifying CHILD to improve reporting and this work was scheduled to be completed by March 2014. We were advised that, once it becomes fully functioning, CHILD will help address several of our recommendations.

In February 2013, the Office established a new set of 26 criteria for determining acceptance of custody and access cases. The Office also increased the existing 13 criteria it uses for refusing cases to 23. The 23 criteria provide a broader number of reasons why a case may be refused, including when funding limitations are a factor. The Office has also been able to reduce its rates of refusal of new custody and access cases from 41% in 2010/11 to 35% in 2012/13, and reduce the variance of refusal rates among its nine regions throughout the province.

The Office did not act on our recommendation to examine the impact on children and the courts of its then-current refusal rate of more than 40% for custody and access cases referred to the Office by the courts. The Office felt this examination would be time- and resource-intensive and it would be difficult to isolate the impact of the refusal of cases from the many factors that determine the outcomes of children's lives.

The Office has taken steps to track and monitor the number of legal cases assigned to each in-house lawyer and panel agent. The CHILD system generates a report that enables the legal director to view on a weekly basis the number of cases each lawyer is assigned. CHILD provides a warning to Office

staff should they attempt to assign new cases to panel agents with more than the set maximum of assigned active files. The Office's policy requires its staff to obtain prior approval from a director to exceed the set maximum. In addition, the Office has retained additional panel agents in certain districts that have historically experienced high caseloads per panel agent.

With these efforts, the Office was able to reduce the number of legal agents carrying more than 50 cases from 15 agents in 2011 to 12 as of June 2013, and the most cases given to any one legal agent was reduced from 123 to 74 over the same period. We were advised that the Office intended to reduce this number even further by the end of the 2013/14 fiscal year. For clinical cases, the Office no longer enforces its policy of requiring clinical agents to be assigned to prepare no more than two Children's Lawyer Reports per month. Instead, it now uses new reports from its CHILD system to regularly monitor that the number of cases assigned to clinical agents is based on their experience, supervision needs, writing skills and promptness in completing assignments. In addition, the Office increased its panel by 35% since 2010/11 to 245 clinical investigators in order to accept more cases, increase agents' availability in certain regions and better manage agents' workloads, particularly so that custody and access cases could be completed in a more timely manner. The Office informed us that it had introduced new measures to expedite senior management decisions on accepting or refusing cases within five days. However, until CHILD system reporting improvements are completed, the Office is unable to determine if it is consistently meeting its 21-day target turnaround time for deciding whether to accept or refuse a case.

To help improve case completion times, the Office's intake processes were changed to obtain earlier consent to gather personal information from and about clients. In addition, it implemented a new procedure that requires a director to review weekly any cases that are not assigned to panel agents to determine if there are delays.

TIMELINESS OF COURT REPORTS

Recommendation 2

To help improve its performance in meeting a regulated 90-day deadline for filing Children's Lawyer Reports with the court, the Office of the Children's Lawyer should establish a formal strategy that addresses the changes needed to its systems and procedures in this area.

Status

As of June 2013, the Office was still unable to generate from its CHILD system reliable reports for management on whether it was consistently meeting the 90-day deadline for filing a Children's Lawyer Report to the courts. It expected system modifications to be made by March 2014 to permit this. The Office has nevertheless developed a formal strategy and action plan to improve its performance in meeting the 90-day deadline and some actions have already been taken. For example, in fall 2012 the Office began issuing interim Children's Lawyer Reports to the courts. Specifically, the interim reports are issued when circumstances prevent parties from engaging in the clinical process or when required additional information or assessments cannot be completed within the 90-day time frame. The interim reports inform the court and parties of the status of the work completed thus far and invite further involvement of the Office at a later date if deemed necessary.

PANEL AGENTS

Recommendation 3

To ensure that it has adequate systems, policies, and procedures for acquiring, reimbursing, and managing its legal and clinical panel agents, the Office of the Children's Lawyer (Office) should:

- develop a more open empanelment process for lawyers hired for property rights cases similar to the sound process already in place for personal rights panel agents;
- further consult with the Ministry of the Attorney General on establishing a process whereby the

tariff rates for panel lawyers would be the same as the rates paid by Legal Aid Ontario;

- assess whether alternatives may be available to retain appropriate lawyers for property rights work to enable at least some reduction in the current significant premium rates being paid for services billed directly to the estates/trusts or out of settlement funds belonging to the child;
- implement better systems and procedures for scrutinizing legal fees, such as post-payment examinations and assessing the reasonableness of invoices, and for paying them within targeted time periods; and
- in conjunction with its stakeholders, research and evaluate alternative methods of payment to its panel agents, such as block-fee payments, that would increase financial certainty in payments and reduce administrative processing requirements and costs for the Office.

Status

The Office told us it could not apply the same empanelment process for selecting and prequalifying lawyers for property rights cases as it does for personal rights cases. The Office said that property rights cases were more varied and it had to find lawyers with suitable expertise and experience in different areas of law, depending on the case. The Office surveyed other jurisdictions across Canada and found that no formal process was used to identify and select panels of lawyers for property rights cases. Instead, the Office recently established a draft plan that outlines the process and criteria for recruiting, selecting and retaining panel lawyers for property rights cases. As of June 2013, the Office was reviewing its current external legal panel against these criteria and was planning to invite additional lawyers to this pre-qualification process in the fall of 2013.

Following our 2010/11 audit, the Ministry approved, retroactive to July 1, 2011, an increase to the tariff rate for panel lawyers to match the rates paid by Legal Aid Ontario to its lawyers. Tariff rate increases for panel lawyers were again approved for

the 2012/13 and 2013/14 fiscal years. The Office has requested a tariff rate increase for 2014/15, but there has been no approval for matching Legal Aid Ontario's rates beyond 2013/14, nor has a policy on this been established.

The Office continues to pay property rights lawyers a \$350 hourly rate when they bill their services directly to a child's interest in an estate or to settlement funds belonging to the child. The Office compared the rates paid to property rights lawyers with the rates of similar organizations as well as the private sector and its existing external panel lawyers. The Office concluded that the Office's rate was already significantly less than the rates of private lawyers and that it would not be workable to reduce its rate and still maintain the current level of service.

The Office informed us that the implementation of the second phase of CHILD in December 2013 would improve procedures for scrutinizing legal fees because it would enable electronic billing with automated controls and verification. Invoices with additional hours would need pre-approval before they could be put into the system for payment to be processed. This is designed to expedite the payment process and ensure additional fees are pre-approved and reasonable.

As of July 2013, the Office was in discussions with Legal Aid Ontario on several alternative methods of payment, including block-fee payments, which are fixed fees paid for common types of services and which Legal Aid Ontario uses to pay criminal law lawyers for certain services. Legal Aid Ontario was researching the viability of these alternative methods of payment for its family law lawyers. The Office planned to use Legal Aid Ontario's research once it is completed to assess if they would be suitable for the types of legal services provided by the Office.

PROGRAM COSTS

Recommendation 4

To ensure that it has adequate management information on costs for services to enable it to more accurately assess the efficiency of both in-house staff and panel agents over time, the Office of the Children's Lawyer should collect information on the actual costs of completing its different types of cases and other activities. It should also explore opportunities for reducing its costs or enhancing its administrative capacity by collaborating with Ontario Public Sector organizations that do similar legal work in areas like property rights and in fields such as training, quality assurance and empanelment processes.

Status

At the time of our follow-up, the Office was developing a new model to improve its ability to estimate the average cost per each type of case. This would help the Office decide how many new cases it will be able to accept within its funding limitations. The Office planned to test the model at the end of 2013 and was to then decide if it should be incorporated into CHILD. However, the Office had not determined the actual costs for completing different types of cases from beginning to end and had no plans to implement a process to monitor the cost of handling cases in-house and compare it to panel lawyers' costs to assess cost-effectiveness for different types of cases.

The Office has not established any substantial new collaborative arrangements with other Ontario Public Sector organizations to reduce its costs, although it told us that it regularly engages with stakeholders both formally and informally, and that the discussions have influenced efficiencies in some day-to-day operations. For example, between May and October 2012, the Office consulted with various stakeholders both outside and within the public sector, identifying and implementing several recommendations to improve the Office's child protection service delivery and make more efficient use of panel agents' time. Also, the Office informed us that

it held informal meetings with Legal Aid Ontario on a regular basis and that the offices often share information on training plans. The Office and Legal Aid Ontario have jointly delivered a training session to lawyers, and further joint training sessions were scheduled for fall 2013.

INFORMATION MANAGEMENT SYSTEMS

Recommendation 5

To ensure that the new case management information system—Children Information and Legal Database (CHILD)—being developed will resolve deficiencies in the system it is replacing and meet current business and user requirements, the Office of the Children's Lawyer, in conjunction with Justice Technology Services (JTS) project managers, should prepare an interim report for senior management comparing the deficiencies of the existing system to the intended functionality of the new system and identify any expected gaps or limitations in CHILD's design. The interim report should also address how the new system will improve safeguards for confidential information and improve data integrity and case file management and controls.

Status

The Office and the Ministry's Justice Technology Services (JTS) Project Team prepared an interim report and gap analysis in October 2011 to describe how CHILD would address existing system deficiencies. The Office informed us that by the end of the 2013/14 fiscal year, once the second phase of CHILD was implemented, the system would meet 94% of the original documented business requirements. Certain desired functions were not part of the original scope of the project, such as tracking the time Office lawyers spend on each case (time-docketing), and other functions required further consideration. As well, the Office conducted a threat risk assessment in May 2012 to ensure that the new system improved data integrity and safeguards for confidential information.

TRANSITION TO ADULthood

Recommendation 6

To help ensure that children's interests continue to be adequately protected when they turn 18 and no longer qualify for the legal services offered by the Office of the Children's Lawyer (Office), the Office should establish processes that include developing and communicating transition plans for each child, including referrals to appropriate support services.

Status

In 2012, the Office established a committee to examine ways it could better support youth it no longer provided services to. As a result, in July 2013 the Office approved and implemented a new policy and procedure on minors turning 18. Lawyers have begun to apply it in ways such as meeting with minors at age 18 to provide information about their cases and resources available to them, and, where litigation will continue past a minor's 18th birthday, retaining an agent who can continue to act for the youth after he or she turns 18. The Office also revised the letter it uses to inform minors who are turning 18 that the Office can no longer provide services to them. The letter was recast in plain language, included definitions of the legal terms it used, and included referrals to other appropriate support services such as the Community Legal Education Ontario website, the Law Society of Upper Canada referral service and the Law Help Ontario website.

QUALITY ASSURANCE AND TRAINING PROGRAMS

Recommendation 7

To ensure that it is reaping the full benefits of in-house training and continuing education requirements for its panel agents and its own staff, the Office of the Children's Lawyer should better document attendance at training and professional development activities so that such activities can be considered in its panel agents' and staff performance evaluations.

Status

The Office revised its agreements with panel agents to include a mandatory training requirement and had begun keeping track of panel agents' and in-house lawyers' attendance at mandatory in-class or online training sessions. Panel agents or in-house lawyers who miss mandatory training sessions are contacted and instructed to attend alternate sessions.

The Office had revised its panel members' 18-month performance evaluation processes to include a consideration of professional development and attendance at mandatory training sessions. We were advised that annual in-house staff evaluations continue to include an assessment of professional development activities undertaken.

MEASURING PERFORMANCE

Recommendation 8

To help assess whether it is efficiently and effectively meeting the needs of its clients and stakeholders, the Office of the Children's Lawyer should continue to develop and report key performance indicators that are clearly defined and objectively measured, establish realistic targets, and measure and report on its success in meeting such targets. It should also implement a more formal process of obtaining periodic feedback from stakeholders, such as its child clients and the judiciary.

Status

The Office developed a revised set of key performance indicators that it expected would be implemented by the end of the fiscal year when the new CHILD system becomes fully functional and is able to capture and report on the necessary information. The indicators were aligned with key operating goals and strategies of the Office and covered four key areas: processes, people, financials and clients/stakeholders.

The Office advised us that plans were in place as of June 2013 to develop by the end of 2013 a formal stakeholder consultation strategy that would include addressing how youth engagement feedback will be obtained. The Office also informed us that it was continuing its practice of having regular informal discussions with the judiciary across Ontario on improving court processes and making them more efficient. For example, feedback from the judiciary resulted in changes to the intake forms that parties complete and to the standard form orders completed by judges. In 2012, the Office engaged in 24 consultations with a variety of stakeholders, such as school boards, family justice organizations, children's aid societies and law associations, to inform them of the duties of the Office and to provide opportunities for them to give feedback.